

(Quard file)

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD KARACHI

SB-1

APPEAL NO. AT-57/2019

M/s First Women Bank LimitedAppellant

Versus

Commissioner, SRB, Karachi.....Respondent

Mr. Moiz Mitahiwala, ITP and Mr. Adeel Ahmad Siddiqi, ITP for appellant called absent.

Mr. Kaleemullah, AC-DR for SRB and Mr. Hasan Abbas, AC-SRB for respondent

Date of filing of Appeal 03.06.2019
Date of hearing: 16.10.2019
Date of Order: 21.10.2019

ORDER

Justice (R) Nadeem Azhar Siddiqi. This appeal has been filed by the appellant challenging the Order of the Commissioner (Appeals) in Appeal No. No.40/2019 refusing to extend the stay beyond sixty days as provided under section 58 (4) of the Sindh Sales Tax on Services Act, 2011.



01. In this appeal the learned representatives of the appellant called absent. The contention of the learned representatives were recorded in the diary sheet dated 13.06.2019 and for this reason instead of dismissing

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the appeal in non-prosecution this appeal is decided on merits. The other reason for deciding this appeal on merits that several other appeals of same nature were decided on merits.

02. The facts of the case are that Assessing Officer passed order-in-original No. 72/2019 dated 30.01.2019 which was challenged by the appellant before Commissioner (Appeals) by way of filing Appeal No. 40/2019 along with an application for stay. The stay was granted which remained effective for sixty days and after expiry of statutory period the Commissioner (Appeals) refused to extend the stay vide order dated 28.05.2019.

03. On 13.06.2019 the learned representative for the appellant submitted that appeal before Commissioner (Appeals-1) was filed on 28.02.2019 and is still pending for want of Reconciliation Report to be prepared by the learned AC. He then submitted that the Commissioner (Appeals) has not extended the stay in view of provision of sub-section (4) of section 58 of the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) which provides that the stay order shall remain operative for no more than sixty days (now one hundred twenty days). He then submitted that appellant was not instrumental in delaying the disposal of appeal.

04. He further submitted that the appellant apprehends coercive action for recovery of tax on the part of the department during pendency of appeal before Commissioner (Appeals). He also submitted that force recovery without determination of dispute by an independent forum is against the principle of natural justice and due process of law and against the fundamental right of the appellant and in violation of the orders of superior courts.

05. Mr. Kaleemullah the learned AC submitted that Commissioner (Appeals) has granted stay and the same cannot be extended beyond sixty days (now one hundred twenty days) as provided under sub-section (4) of Section 58 of the Act, 2011. He supported the order of Commissioner



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(Appeals) refusing to extend the stay. He then submitted that the delay in disposal of appeal was not on the part of the respondent. He also submitted that the appeal before Commissioner (Appeals -I) is fixed on 21.10.2019 for hearing.

We have heard the learned representative of the parties and perused the record made available before us.

05. This case appears to be a case of hardship. The appeal is still pending before Commissioner (Appeals) and during the pendency of appeal the statutory period for which the Commissioner (Appeals) can grant stay was lapsed. However after filing of this appeal sub-section (4) of section 58 of the Act was amended and the time for which stay can be granted by Commissioner (Appeals) has been enlarged from sixty days to one hundred twenty days. Although all the laws are prospective in absence of clear intention of the legislature to give retrospective effect. However the amendment introduced in sub-section (4) of section 58 of the Act relating to enlargement of time during which the stay granted by Commissioner (Appeals) will remain effective is procedural in nature and same is a remedial and beneficial legislation and can be applied on pending appeals.

06. In the reported case of The Commissioner of Income Tax Central Zone B, Karachi Versus M/s Asbestos Cement Industries Limited, Karachi, 1993 SCMR 1276 it has been held as under:-

"4. The first legal proposition not open to question is that the law of limitation is by and large and substantially a procedural law. It was so held in *M. Junaid v. President of Pakistan* PLD 1981 SC 12. The other principle equally well established is that a procedural law has a retrospective application and is attracted forthwith to the pending proceedings. In between these two general principles is to be found a word of caution put in by the Privy Council in *Yew Bon Tev v Kenderaan Bas Mara* (1983 Pakistan Supreme Court Cases 1200 Privy Council), in the following words:---

Their Lordships consider that the proper approach to the construction of the 1974 Act is not decide what label to apply to it, procedural or otherwise, but to see whether the statute is applied retrospectively to a particular type of case would impair existing rights and obligations. The appellants assert that a



Limitation Act does not impair existing rights because the cause of action remains, on the basis that all that that is affected is the remedy. There is logic in the distinction on the particular facts of *The Ydun* because the right to sue remained, for a while totally unimpaired. But in most cases the loss, as distinct from curtailment, of the right to sue is equivalent to the loss of the cause of action.

5. Section 136, clauses (1) and (2) of the Ordinance had the effect of enlarging the period of limitation both for applying to the Tribunal for making a reference as well as for making a reference thereafter to the High Court. The provision being beneficial and relating to procedure should have been given effect to forthwith and in matters decided after coming into force of the Ordinance. Of course such an application could not revive the period of limitation or extend it where at the time when the Ordinance came into force the period of limitation under the Act has already expired”.

07. In the reported judgment in the case of *The Taxation Officer/Deputy Commissioner, Income Tax Lahore, Versus M/s Rupafil Ltd. and others*, 2018 SCMR 1131 it has been held as under:-

“4.It is also relevant to note that subsection (4) of section 221 of ITO 1979, prescribes a period of limitation, and it is now well settled that the law prescribing period of limitation, is to be considered as procedural. The said provision is thus clearly procedural rather than substantive, though where right to commence a proceedings has already become time barred then a subsequent enlargement of time through an amendment can be of avail, as with the lapse of time prescribed, the transaction becomes a past and closed transaction, vesting a party with a right thus accrued which cannot be taken away by a subsequent amendment.

5.It is now well settled that procedural amendments apply to all cases which have not become past and closed transactions therefore the provisions of section 221 of ITO 2001 have been rightly invoked in the present case.

08. In the reported judgment in the case of *M/s Kurdistan Trading Company versus Commissioner Inland Revenue*, 2014 PTD 339 it has been held as under:-

“8.There is no cavil to the legal proposition that normally amendments introduced in fiscal statues through



Finance Act apply prospectively in the year in which it has been inserted, unless, some retrospective effect has been given by the legislature. On the other hand, in cases where the amendment introduced is remedial and beneficial in nature, it has to be given retrospective effect and also to apply to all pending case on the date of amendment/ enactment as well, unless some prospective effect is given by the legislature or it is made prospective by its implication".

09. From the above reported judgments it is clear that the amendment relating to enlargement of time for grant of stay by the Commissioner (Appeals) under sub-section (4) of section 58 of the Act is procedural in nature and is a beneficial and remedial provision of law and is applicable on all appeals pending before Commissioner (Appeals) and stay in pending cases can be extended up to one hundred twenty days.

10. Apparently the appellant is not at fault if its appeal was not decided within a reasonable time after the grant of stay by Commissioner (Appeals) and the appellant is entitled to protect its right.

11. The Commissioner (Appeals) should decide appeals within a reasonable time in which the stay was granted by him to avoid such situation. Coercive action against the tax payer during pendency of appeal is highly objectionable and Department should avoid such coercive action in the interest of justice and fair play even if the stay is vacated. Since the appellant was not at fault it should not be deprived from its usual right to approach an independent forum to redress its grievances. Reliance is placed on ZN Exports versus Collector of Sales Tax, 2003 PTD 1746 and Huawei Technical Pakistan versus Commissioner Inland Revenue, 2016 PTD 1799.

12. Keeping in view that the appeal of appellant is still pending before the Commissioner (Appeals) and is fixed for hearing on 21.10.2019 it appears appropriate to provide protection to it against coercive recovery and a fair chance to the appellant to get its appeal decided on merits.

W. A. S.



13. In view of above, this appeal is allowed and stay against recovery of tax dues is granted for a period of thirty days from today. The Commissioner (Appeals) will expeditiously proceed with the appeal pending before him and decide the same within thirty days from the date of receipt of this order without granting unnecessary adjournments and in case the appeal is decided against the appellant further seven days stay is granted to the appellant to avail remedy available to it under law.

14. The appeal and stay application is disposed of in the above terms. The copy of this order be provided to the learned representatives of the parties.


(Justice[®] Nadeem Azhar Siddiqi)
Chairman


Karachi
Dated: 20.10.2019

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APPELLATE TRIBUNAL
SINDH REVENUE BOARD


Copies supplied for compliance:-

1. The Appellant through authorized Representative.
2. The Assistant Commissioner (Unit-), SRB, Karachi.

Order issued on 23/10/19

Registrar

Copy for information to:-

- 3) The Commissioner (Appeals-I), SRB, Karachi.
- 4) The Commissioner (Appeals-II), SRB, Karachi.
- 4) Office copy
- 5) Guard file.

Order Dispatched on 23/10/19

Registrar