

(Grand file)

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD AT KARACHI

DOUBLE BENCH-I

APPEAL NO. AT-08/2020

Assistant Commissioner, SRB, Hyderabad  
Bungalow No. 14-A/1, Defence Housing Society,  
Phase-I, Cantt.  
Hyderabad.....Appellant

Versus

M/s D.S Motors (Pvt.) Limited,  
(NTN: 2143289-9),  
Plot No. A-28, Opposite Customs Office,  
Near FIA Office, S.I.T.E Area,  
Hyderabad.....Respondent

Date of filing of Appeal: 12.03.2020  
Date of hearing: 16.09.2021  
Date of Order: 18.10.2021



Mr. Ayub Ali Hingorjo, AC-SRB, Hyderabad and Mr. Nasir Bachani, AC-DR, for appellant.

Mr. A.S Jaffri, advocate along with Mr. Armughan Mehmood for respondent.

ORDER

Justice ® Nadeem Azhar Siddiqi: This appeal has been filed by the appellant/department challenging the Order-in-Appeal (hereinafter referred to as the OIA) No. 126/2019 dated 29.06.2019 passed by the Commissioner (Appeals) in Appeal No. 330/2018 filed by the respondent against the Order-in-

*MAS*

*Nadeem Azhar Siddiqi*

Original (hereinafter referred to as the OIO) No. 937/2018 dated 09.11.2018 passed by Mr. Nasir Bachani, Assistant Commissioner, SRB Hyderabad.

02. The department was aggrieved from the OIA through which the Commissioner (Appeals) had set aside the principal amount of Sindh Sales Tax (SST) of Rs.36,110,150/= out of total adjudged amount of SST of Rs.45,955,781/=. He had also set aside the corresponding penalty imposed under Serial No. 3 of Table under section 43 of the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act).

03. The relevant facts while disposal of this appeal were that the respondent was served with a Show-Cause Notice (SCN) dated 10.01.2018 on the allegation that from the scrutiny of the Audited Financial Statements for the period ended June-2015 and June-2016 it was revealed that the respondent had failed to withhold, deduct and deposit the SST of Rs.45,955,781/= on receipt of various taxable services. The OIO was passed after hearing and SST was determined at Rs.45,955,781/= alongwith payment of default surcharge and penalty of Rs.2,307,789/= under Serial 3 of the Table under section 43 of the Act for non-payment of SST.

04. The respondent filed an appeal before the Commissioner (Appeals) against the OIO. However the Commissioner (Appeals) after hearing the appeal set aside the OIO to the extent of SST amounting to Rs.36,110,650/= and maintained the SST of Rs.9,845,132/=.

This appeal was filed before the Tribunal on 12.03.2020 against the OIA dated 29.06.2019 without certified copy of the OIA. The appeal was filed apparently after a long delay and an objection to this effect was raised and communicated to the appellant vide Order of this Tribunal dated 16.03.2020 with the direction to explain the non-filing of certified copy of the OIA as well as delay in filing of appeal.

06. The appellant filed Explanation dated 21.04.2020, submitting that the appeal was filed on the basis of true and certified copy of the OIA supplied by the Commissioner (Appeals) under covering letter dated 03.02.2020.

*MS*

07. The appellant in the affidavit dated 22.06.2020 submitted that the true copy of OIA was not received in his Hyderabad Office. It was further stated in the Affidavit that the Commissioner (Hyderabad) intervened through relevant office to obtain a true and certified copy of the OIA. The present Commissioner (Appeals) tried, but could not find the relevant record in his office. It was further stated that the Commissioner (Appeals) was officially requested to supply a certified true copy of the OIA after hearing notice was received from the Tribunal in the identical Appeal No. AT-69/2019 filed by the respondent against the same OIA.

08. A report was also called from Commissioner (Appeals) vide order dated 14.09.2020, who vide his Report dated 20.10.2020 submitted that "the copy of OIA being supplied, had been obtained unofficially owing to the fact that original copy had not been delivered to the SRB, Hyderabad by the then incumbent Commissioner SRB (Appeals) while the relevant appeal-case-file was also not traceable in the SRB Karachi office record". The Commissioner (Appeals) endorsed that AC-SRB-Hyderabad received the certified true copy of OIA on 04.02.2020. the Commissioner (Appeals) vide another report dated 03.12.2019 had mentioned that the copy of same OIA was sent to the respondent on 12.07.2019 which was received by him on 13.07.2019.

09. The AC-SRB submitted that the appeal filed on 12.03.2020 was within time as the certified copy of OIA was received on 04.02.2020 and there was no negligence in filing of the appeal on his part and the objection may be withdrawn. He further submitted that the Hyderabad Office was not responsible for delay if any, in filing of the appeal as the office of Commissioner (Appeals) had failed to provide the true copy of the OIA within a reasonable time.

10. Mr. A. S. Jaffri, advocate for the respondent submitted that the respondent had also filed Appeal No. AT-69/2019 on 02.09.2019 against the same OIA which was delivered to the respondent on 13.07.2019. He further submitted that copy of memo of appeal and OIA in that appeal was supplied to the AC-SRB, Hyderabad under cover of his letter dated 29.08.2019 and in response thereof Mr. Kaleemullah, AC-DR-SRB appeared before this Tribunal on 06.11.2019 and 19.11.2019 and on one hearing Mr. Nasir Bachani, AC-SRB



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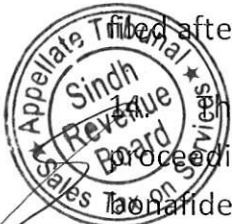
who had filed this appeal had also appeared. He further submitted that the appellant had full knowledge of the OIA and despite that failed to file the appeal within time allowed by law. It was argued that hopelessly time barred appeal should not be entertained by the Tribunal as valuable right was accrued in favour of the respondent which could not be taken away at the whims of the appellant.

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

12. This appeal was filed on 12.03.2020 against the OIA dated 29.06.2019. Before that the respondent filed Appeal No. AT-69/2019 on 02.09.2019 challenging the same OIA. It is evident that the copy of memo of appeal filed with OIA was delivered to the AC, Hyderabad on 29.08.2019. In that appeal Mr. Kaleemullah, AC-DR appeared on 06.11.2019, 19.11.2019 and 05.12.2019. On 13.01.2020 Ms. Umi Rabbab, AC-DR appeared and requested for time. On 29.01.2020 and 17.02.2020 Mr. Nasir Bachani, AC-Unit-34 who had filed this appeal appeared and requested for time for filing parawise comments. It is therefore established that the department was aware about the passing of OIA, but had remained silent till March, 2020.

13. The controversy is whether the appeal filed by the appellant on 12.03.2020 against the OIA dated 29.06.2019 was within time or the same was filed after expiry of the period allowed by law.

The source of knowledge and date of knowledge in such type of proceedings is very important, and play a significant role in deciding the outcome of the appeal. It was stated in the Affidavit of the AC-SRB that the Commissioner (Appeals) was officially requested by him to supply the certified true copy of the OIA after a hearing notice was received from the Tribunal in the appeal filed by the respondent. The AC deliberately failed to mention the date on which he came to know about the appeal filed by the respondent. The AC has also failed to mention the date on which he applied for the true copy of OIA. The suppression of material dates has created doubt about the bonafides of the appellant.



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15. The AC-SRB has mentioned that he had received the true copy of OIA on 04.02.2020 and filed the appeal on 12.03.2020 i.e. after the lapse of one month and eight days from the date of receipt of the OIA. This reflects to a very casual and careless attitude of the AC who had failed to take immediate action for filing of appeal. The law favours the vigilant and not the indolent. This was considered by Islamabad High Court, in its Judgment dated 09.04.2021 passed in Writ Petition No. 1343/2021 in case of Muhammad Yasir versus Additional District Judge, Islamabad wherein it was held as under:-

*"...12. It is cardinal principle that „equity aids the vigilant and not the indolent. He, who knocks the door of equity court with inordinate delay, has to justify such delay".*

16. It is pertinent to mention that the appeal could be filed as per law within sixty days from the date of receipt of the appellate order. It was the duty of the Commissioner (Appeals) or his staff to provide the true copy of OIA to both the parties immediately after passing of the OIA. The copy of OIA was dispatched to the respondent on 12.07.2019 which was received by him on 13.07.2019, but he filed appeal after considerable delay on 02.09.2019. The memo of the appeal alongwith the copy of OIA was delivered to the appellant on 29.08.2019 and the appellant came to know about the passing of OIA on 29.06.2019. If the copy of the OIA was not received by the AC-SRB, Hyderabad from Commissioner (Appeals) earlier, he could have immediately approached the Commissioner (Appeals) for obtaining true copy of OIA and should have filed appeal within sixty days from the date he came to know about the OIA. However this was not done.

Apparently, the appeal was filed beyond the period provided under law in which the AC-SRB could only blame himself. The AC-SRB has not produced Computerized Branch Diary of Commissioner (Appeals) and Hyderabad Office for our perusal to show his bonafide that the true copy of OIA was neither dispatched nor delivered to him. Moreover the Commissioner (Appeals) had reported that the appeal filed in which OIA was passed was also not traceable. It is not known that when file was not available how the true copy was provided to the appellant on 04.02.2020. It is pertinent to mention that the Commissioner (Appeals) vide this Tribunal's order dated 06.11.2019 passed in Appeal No. At-69/2019 was directed to submit report regarding the mode and date of supply of OIA to the respondent. The Commissioner (Appeals)

submitted his Report dated 05.12.2019 mentioning that OIA was sent to the respondent through TCS Courier on 12.07.2019 which was delivered on 13.07.2019. This contradiction creates reasonable doubt about the bonafide of the department.

18. It has been established that the AC gained knowledge of passing of OIA and got the copy of the same on 29.08.2019 and the time for filing of appeal commenced from the said date of knowledge of OIA and the period of sixty days provided under law expired on 28.10.2019. Thus the appeal filed by the AC on 12-03-2020 was clearly time barred as it was filed after unexplained delay of about 196 days.

19. The appeal in terms of sub-section (4) of Section 61 of the Act could be admitted if the Tribunal is satisfied that the person filing appeal within time was prevented by sufficient cause from filing such appeal. The requirement of section in the instant case is satisfaction of Tribunal and on showing sufficient cause. The burden was upon the appellant to show that the appellant was prevented by sufficient cause from filing the appeal within time. The plea raised by the appellant is that he gained knowledge of the OIA after receiving the notice in the appeal filed by the respondent. The copy of the memo of appeal and OIA was delivered to AC-SRB, Hyderabad on 29.08.2019. The contention of the AC that he had received the copy of OIA on 04.02.2020 has no significance in view of the fact that he had gained knowledge and copy of OIA on 29.08.2019.

20. It is therefore abundantly clear that the appeal after receipt of the first copy of the OIA had become time barred, another copy was obtained to cover up the delay and to show that the appeal was filed within time.

The supply of copy of OIA by Commissioner (Appeals) and receipt of said copy by appellant is an internal departmental matter and the respondent should not suffer due to any error or omission on the part of the department. The valuable right was accrued in favour of the respondent on account of late filing of appeal by the department which could not be taken away.


22. An appeal which is time barred could only be admitted if the Tribunal is satisfied that the person appealing was prevented by sufficient cause from filing appeal within time as specified by law. The discretion available to the Tribunal is not unqualified. The discretion can only be exercised on showing sufficient cause. The cause shown by the appellant in the instant case is not



sufficient to admit the appeal after expiry of limitation provided by law for filing of appeal. Sufficient cause is a question of fact and it varies from case to case and rests on the satisfaction of the Tribunal. Discretion available to the Tribunal cannot be exercised in an arbitrary manner but on settled judicial principles. The person appealing beyond time prescribed by law has to justify the delay of each day, which is lacking in this case. Question of limitation cannot be considered as a mere technicality as it has its own significance upon the rights of the parties to the litigation. The right accrued to the respondent due to delayed filing of appeal cannot be easily taken away unless a valid ground is made out and cause of delay is satisfactorily explained. Where sufficient cause is not shown the time bared appeal could not be admitted.

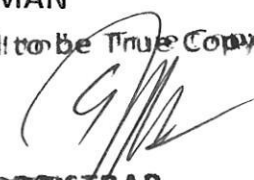
23. We are satisfied that the appellant/department has failed to show that it was prevented by sufficient cause from filing the appeal within time prescribed by law. Therefore the appeal being time barred is accordingly dismissed.

24. The copy of this order may be provided to the learned representatives of the parties.

  
(Imtiaz Ahmed Barakzai)  
TECHNICAL MEMBER

  
(Justice® Nadeem Azhar Siddiqi)  
CHAIRMAN

Certified to be True Copy

  
REGISTRAR  
APPELLATE TRIBUNAL  
SINDH REVENUE BOARD

Karachi:

Dated: 18.10.2021

Copy Supplied for compliance:-

- 1) The Assistant Commissioner, (Unit-34) SRB, Hyderabad.
- 2) The Respondent through Authorized Representative.

Copy for information to:-

- 3) The Commissioner (Appeals), SRB, Karachi.
- 4) Office Copy.
- 5) Guard File.

Order issued on

28/10/2021

  
Registrar

Order Dispatched on

28/10/2021

  
Registrar