

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD

AT KARACHI

DOUBLE BENCH-I

APPEAL NO. AT-19/2020

M/s Abdullah Construction Company.....Appellant

Versus

Assistant Commissioner, Hyderabad..... Respondent

Date of Filing: 21.05.2020
Date of hearing 14.09.2020
Date of Order 05.10.2020

Mr. Lajpat Khatri Advocate for the Appellant
Mr. Nasir Bachani AC, Hyderabad for SRB, Hyderabad

ORDER

Justice (R) Nadeem Azhar Siddiqi: This appeal has been filed by the appellant challenging the Order-in-Appeal (hereinafter referred to as the OIA) No.24/2020 dated 17.02.2020 passed by the Commissioner (Appeals) in Appeal NO. 394/2019 filed by the Appellant against the Order in Original (hereinafter referred to as the OIO) No. 735/2019 dated 29.10.2016 passed by the Assistant Commissioner, SRB Hyderabad. The appellant alongwith the appeal also filed an application for condonation of delay in filing of such appeal.

02. It was stated that the delay in filing of appeal was neither willful nor deliberate but it occurred due to lockdown imposed by the Federal and Provincial Governments throughout country to avoid the spread of coronavirus (Covid-19) a worldwide Pandemic. The other ground urged was that the business was running under supervision of the father of the



appellant who had expired on February, 25, 2020 in a road accident at M-9, while travelling from Hyderabad to Karachi and he came to know regarding issuance of OIA very late.

03. The learned AC filed para wise comments and opposed the application for condonation of delay and submitted that the delay was deliberate and willful and the appeal is liable to be dismissed on this count alone.

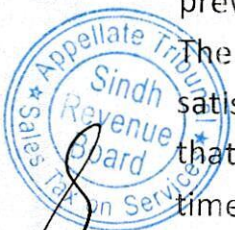
04. We have heard the learned representatives of the parties and perused the record made available before us.

05. The Order-in-Appeal (OIA) was passed on 17.2.2020 and the appeal before the Tribunal was filed on 21.05.2020 after delay of 34 days. The appeal before the Tribunal can be filed within sixty days from the date of receipt of the OIA as provided under sub-section (2) of section 61 of the Sindh Sales Tax on Services Act, 2011 (The Act). As per the contention of learned AC the copy of OIA was served upon the appellant on 18.02.2020 thus the appeal before the Tribunal could be filed till 17.04.2020. Moreover the appellant has not disputed the date of receipt of OIA and the date of filing of appeal before the Tribunal.

06. The Tribunal can admit an appeal upon receiving an application after the expiration of the period specified in clause (d) of sub-section (2) of section 61 of the Act if it is satisfied that the person appealing was prevented by sufficient cause from filing the appeal within that period.

The requirement of section is that there should be sufficient cause to the satisfaction of Tribunal. The burden was upon the appellant to show that he was prevented by sufficient cause from filing the appeal within time.

07. The plea raised by the appellant was that he was prevented from filing the appeal within time allowed by law due to lockdown imposed by Federal and Provincial Governments. The appellant also submitted that his business was being run by his late father, who had expired on February 25, 2020, and he was not aware about the passing of OIA on 17.02.2020.



08. It is true that the Government of Sindh vide Notification dated 23.03.2020 (extended from time to time) had imposed complete lockdown across the Province of Sindh. The Notification provided that there shall be a complete ban on movement of people including Intercity or Interprovincial travel or gatherings of any kind for social, religious, or any other purpose at any place, public or private, including all offices, public or private situated within the territorial limits of province of Sindh.

09. Pursuant to the Notification of Government of Sindh the High Court of Sindh had also issued Notification dated 23.03.2020 for relaxing the period of limitation of filing of all judicial proceedings before the High Court and all legal forums subordinates to it where statutory period of filing may expire during the lock down. The said Notification was issued in exercise of powers vested under Article 202 and 203 of the Constitution of Pakistan, read with Rule 4, 6, 7, 43 and 58 of the Sindh Chief Court Rules (Appellate side) Rule 13 of Sindh Civil Court Rules, Section 9 and 10 of the General Clauses Act, 1897, Section 9 of the Sindh General Clauses Act, 1956. The operative clause of the Notification was read as under:-

*"**THEREFORE**, while exercising powers under Articles 202 and 203 of the Islamic Republic of Pakistan, 1973 read with Rule 4, 6, 7, 43 and 58 of Sindh Chief Court Rules (A.S), of Sind Civil Courts Rules, Section 9 and 10 of the General Clauses Act, 1897, Section 9 of the Sind General Clauses Act, 1956 along with all other enabling provisions, it is notified that---*

For the purpose of Section 4 of the Limitation Act, 1908 ("the Act"); as to computing the period of limitation stipulated in the 'Act' and its 'Schedules', or any other law for the being in force, this Court and its Offices which include the Institution Branches at the Principal Seat, its Bench at Sukkur and Circuit Court at Larkana and Hyderabad; and District Courts, Ex-Cadre Courts and all Legal Forums and their Offices; under the control and sub-ordination of this Court, shall be deemed to be closed from 22-03-2020 till 15-04-2020 (both days inclusive); for the litigants who are unable to approach on account of lockdown announced by the Federal/Provincial Governments"



The above notification was extended from time to time until rescinded on 25.07.2020.


10. The Tribunal is under supervisory control of the Sindh High Court, thus under Article 203 of the Constitution the said Notification issued by the High Court by which the limitation of filing of judicial proceedings was relaxed is binding upon the Tribunal.

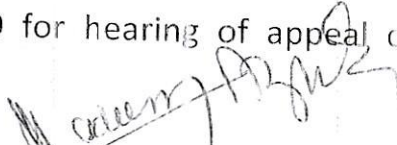
11. The last date for filing of the appeal before the Tribunal was 17.04.2020. The said period of sixty days for filing of appeal before the Tribunal had expired during the lockdown imposed by Government of Sindh and during the existence of the Notification dated 28.03.2020 issued by High Court of Sindh.

12. The Tribunal is vested with the discretion to admit a time barred appeal if satisfied that the person appealing was prevented by sufficient cause from filing appeal within time specified by law. The discretion available to the Tribunal is not unqualified but the same could only be exercised on showing sufficient cause to the satisfaction of the Tribunal. Sufficient cause being a question of fact varies from case to case. Discretion available to the Tribunal cannot be exercised in an arbitrary manner but on settled judicial principles. The cause shown by the appellant is sufficient to condone the delay and to admit the appeal after prescribed period of limitation.

13. In view of the above discussions we are satisfied that the appellant was prevented from sufficient cause for filing the appeal within time prescribed by law. The delay is condoned and the appeal is admitted for hearing. The Copy of this order may be supplied to the representatives of the parties.

14. The case is adjourned to 28.10.2020 for hearing of appeal on merits.


(Imtiaz Ahmed Barakzai)
Technical Member


(Justice® Nadeem Azhar Siddiqi)
Chairman

Karachi:

Dated: 05.10.2020

Certified to be True Copy

Order Dispatched on

07/10/2020

Registrar

Order issued on

07/10/2020

Registrar

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APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Copy Supplied for compliance:

- 1) The Appellant through Authorized Representative.
- 2) The Assistant Commissioner, SRB, Hyderabad.

Copy for information to:-

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

