

*Quard file*

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD

APPEAL NO. AT- 19 OF 2021  
ARISING OUT OF APPEAL NO. 255/2019

M/s Ali Transport Services.....Appellant

Versus

Assistant Commissioner, Unit 23, SRB, Karachi.....Respondent

File Received by Transfer: 18.03.2021  
Date of Order : 01.04.2021

**ORDER**

**Justice (R) Nadeem Azhar Siddiqi**: The order in original (hereinafter referred to as the OIO) dated 2<sup>nd</sup> July, 2019 was passed by the Assistant Commissioner (Mr. Muhammad Danish Khan) SRB Karachi.

2. The brief facts of OIO are that the appellant was providing taxable services falling under the Tariff Heading 9836.0000 of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) bearing description "intercity transportation or carriage of goods by road or through pipeline or conduit". It was stated in the OIO that the Assessing Officer (AO) issued statutory notices to the appellant and on failure to submit any reply including that to Show Cause Notice (SCN) the appellant was compulsorily registered under section 24 of the Act. Moreover penalty of Rs.100,000/- was also imposed under Serial No.1 of the Table under section 43 read with Section 24B of the Act.

The appellant challenged the said OIO by filing appeal before Commissioner (Appeals) under Section 57(1) of the Act on 18.11.2019 whereby he assailed his compulsory registration under Section 24B of the Act and levy of penalty. The Commissioner (Appeals) did not dispose of the appeal within statutory time and instead transferred it to this Tribunal under sub-Section (7) read with Section (8) of Section 59 of the Act vide report bearing No.SRB-COM-APP-II/2019 dated 18.03.2021.

4. The Commissioner (Appeals) mentioned that the matter was fixed for hearing on 29.11.2019, 12.12.2019, 31.12.2019, 14.01.2020, 25.02.2020, 19.03.2020, 22.03.2020, 29.07.2020, 24.09.2020, & finally on 20.10.2020 and on this date the matter was reserved for order. However, the Order could not be passed and eventually, the statutory time-limit under section 59(5) of the Act in this matter expired on 07.12.2020.

5. The Commissioner (Appeals) had filed statement of calculation of time consumed in finalizing the appeal wherein the following adjournments were wrongly attributed towards the appellant.

- a) No Note Sheet was available on file for adjournment allowed from 31.12.2019 to 14.01.2020 (14 days). In absence of Note Sheet 14 days adjournment was wrongly attributed towards the appellant.
- b) The case was adjourned on 25.02.2020 to 19.03.2020 (23 days). The Note Sheet showed that the case was adjourned for filing additional comments in the matter by the DR. Thus 23 days adjournment was wrongly attributed towards the appellant.
- c) No Note Sheet was available on file for adjournment allowed from 19.03.2020 to 22.03.2020 (3 days). In absence of Note Sheet 3 days adjournment was wrongly attributed towards the appellant.
- d) No Note Sheet for hearing dated 22.03.2020 to 29.07.2020 (129 days) was available on file. However the Commissioner (Appeals) excluded 70 days on account of lockdown due to Covid-19. Such adjournment of 129 days in absence of any Note Sheet was wrongly attributed towards the appellant.

6. The Commissioner (Appeals) had thus retained the appeal for 241 days from 18.11.2019 (date of filing) till 29.07.2020. Although on date of filing of appeal the appellant had requested vide his letter dated 18.11.2019 that he was a poor man and was unable to pay the penalty, but no cognizance of this request was taken by Commissioner (Appeals) since he could easily dispose of the instance appeal by reducing the penalty without indulging in issue of compulsory registration. In this case the statutory time limit for deciding the appeal was 120 days which had expired on 30.03.2020 much before 29.07.2020. Moreover the Commissioner (Appeals) has mentioned in his report that OIA was reserved for orders by him on 20.10.2020. However such order could not be passed due to excessive load of work as he was holding dual

charge and the disposal of pending appeals were beyond his capacity. He thus transferred the appeal to this Tribunal vide his report under Section 59(8) read with Section 59(7) of the Act on 18.03.2021 after reserving the order for five months. Thus the transfer of appeal after expiry of statutory time limit on 30.03.2020 and reserving the appeal for order on 20.10.2020 and transferring the appeal to us on 18.03.2021 is patently illegal and without any merit.

7. Sub-section (7) of section 59 of the Act provides as under:-

*(7) Where the Commissioner (Appeals) has not made an order under sub-section (1) before the expiration of the period prescribed under sub-section (5), read with sub-section (6), the Commissioner (Appeals) shall transfer the undecided appeal to the Appellate Tribunal which shall decide the undecided appeal as if it has been filed against the order of the Commissioner (Appeals):*

*Provided that while transferring the un-decided appeal to the Appellate Tribunal, the Commissioner (Appeals) shall give due intimation, in this regard, to the appellant and his agent or authorized representative and also to the Chairman of the Board.*

It is evident from the bare reading of the above provision that in case the Commissioner (Appeals) has not made an order under sub-section (1) of the Act before the expiration of the period prescribed under sub-section (5), read with sub-section (6), he shall transfer the undecided appeal to the Appellate Tribunal. The appeal has to be decided or transferred to the Tribunal within total 180 days (120+60 days).

8. The following case laws though related to the provisions of Sales Tax Act, 1990 are also relevant to the instant case.



M/s Abbasi Enterprises versus Collector of Sales Tax, Peshawar, 2008 PTD 2025, DB-Islamabad High Court). Wherein it was held as under:-

“...The order of extension in our view can be passed by the Collector even after the expiry of the ninety days at any time before 180 days of the show cause notice.”

ii) M/s Tanveer Weaving Mills versus Deputy Collector Sales Tax, 2009 PTD 762. Wherein it was held as under:-

“...3. As is clear from the language of the above proviso, it has limited the scope of exercising of the jurisdiction after issuance of notice to basically 90 days or such extended period as the Collector after duly recording proper reasons in writing has fixed.

However, it is again subject to the limitation in the manner that the said extension also cannot be for more than 90 days. The period for deciding the order-in-original after issuance of a notice under section 36(1) and (3) thus is maximum 180 days including earlier 90 and extended 90 days. Obviously if the extension has been given by the Collector before the expiry of the earlier 90 days."

iii) Abbasi Enterprises versus Collector of Sales Tax and Federal Excise, 2019 SCMR 1989. Wherein it was held as under:-

"...9. Since the Collector's order was invalid and inoperative in law, it followed that there had been no lawful extension of time, which meant that the order-in- original ought to have been made by the Additional Collector within ninety days of 13.06.2005, i.e., by 12.09.2005. Since it was admittedly made beyond that date it was invalid, and non est in law. It ought therefore to have been quashed and the forums of appeal, including the High Court in tax reference, erred materially in failing to do so."

9. In view of above case laws it appears that the extension order could be passed before expiry of original 120 days or at the best before the expiry of subsequent 60 days. In the instant case no order of extension of time was passed. Similarly the decision of transferring the appeal to the Tribunal has to be taken before expiry of original 120 days or before the expiry of subsequent 60 days if the time was extended. Whereas in the instant case the decision for transferring of the appeal to the Tribunal was taken on 18.03.2021. However as per the version of Commissioner (Appeals) 120 days had expired on 07.12.2020, whereas as per our calculation as mentioned supra the time had expired on 30.03.2020 much before the decision was taken to transfer the appeal to the Tribunal.

10. In our opinion after the expiry of total 180 days (120+60) the Commissioner (Appeals) become *functus officio* and could not pass any order either under sub-section (5) of Section 59 (extension of 60 days) of the Act or under sub-section (7) of Section 59 (transferring the Appeal to Tribunal) of the Act. Since the Commissioner (Appeals) has retained the appeal beyond the statutory period under which he could pass an order the appeal stands abated and the relief is allowed to the tax payer. However in view of above legal position no further order could be passed by this Tribunal.

11. It may be pointed out further that we are not satisfied with the manner of maintenance of files by Assistant Commissioners and Commissioner (Appeals). On examination of such files we have noticed that Note Sheets are

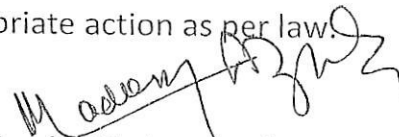
not maintained properly, and were either missing or the same were not signed by the Officers. Thus in absence of Note Sheets the adjournments were incorrectly attributed towards the tax payer, and such practice is not acceptable. Similarly in absence of any signature of officer on the Note Sheet the adjournment could not be attributed towards the tax payer. We have also noticed that the Officers generally misreport the adjournments sought by the tax payers, while passing OIO or OIA and this practice on the part of the Officers of SRB is illegal, malafide and inappropriate and action is required to be taken against those Officers who bring bad name to the SRB and also caused loss to exchequer.

12. It has further been noticed that the orders passed by officer of SRB are mostly whimsical and are not based on proper appreciation / interpretation of facts and law. Therefore in our opinion it would be appropriate that the Board should issue necessary instructions including framing of the Rules for conducting the adjudication as well as the appeal proceedings.

13. Copy of this order may be sent to the Commissioner (Appeals) as well as to the learned Chairman-SRB, Karachi for perusal and necessary action at his end.

14. The appeal file is returned for appropriate action as per law.

  
(Imtiaz Ahmad Barakzai)  
Member Technical


  
(Justice (R) Nadeem Azhar Siddiqi)  
Chairman

Karachi:  
Dated: 01.04.2021

Copy Forwarded to:

- 1) The Commissioner (Appeals). SRB, Karachi.
- 2) The PS to Chairman-SRB, Karachi.

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REGISTRAR  
APPELLATE TRIBUNAL  
SINDH REVENUE BOARD

Order issued on

07/04/2021

Order Dispatched on

07/04/2021