

Guard file

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD AT KARACHI

DOUBLE BENCH-I

APPEAL NO. AT-02/2022

M/s Trafco Tracking (Pvt.) Limited,  
Trafco House, 3<sup>rd</sup> Floor,  
1-C/1, Canal Bank,  
Gulberg, Lahore.....Appellant

Versus

1. The Commissioner (Appeals-1).
2. The Assistant Commissioner, (Unit-01)  
Sindh Revenue Board,  
3<sup>rd</sup> Floor, Shaheen Complex,  
M. R. Kiyani Road, Karachi. ....Respondents

Date of Filing of Appeal: 12.01.2022  
Date of hearing: 24.01.2022  
Date of Order 27.01.2022

Asif Khaliq Shar, advocate for appellant

Mr. Muhammad Faraz AC-SRB (Unit-01) & Mr. Nasir Bachani, AC-DR, SRB for  
respondent

ORDER

**Justice<sup>®</sup> Nadeem Azhar Siddiqi:** This appeal has been filed by the appellant challenging the Order passed by Commissioner (Appeals) dated 04.01.2022 in which he had refused to extend stay beyond sixty days. The Appeal was filed by the appellant before Commissioner (Appeals) against the Order-In-Original (OIO)

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No. 233/2019 dated 26.03.2019 passed by (Mr. Vickey K. Dhingra, Assistant Commissioner, Unit-1.

02. The brief facts as stated in the OIO were that the appellant was voluntarily registered with SRB as vehicle tracking service provider [Tariff Heading 9812.9490] of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) on 18-09-2018.

03. It was alleged in the OIO that during the examination of SST returns of other persons ("recipients") who were already registered with SRB for the tax periods July-2011 to July-2017 and that the appellant had provided taxable services, charged/collected the SST against which recipients had claimed/adjusted input tax adjustment of Rs.13,236,536/=. However the appellant neither paid the Sindh Sales Tax (SST) nor e-filed the returns.

04. The appellant was served with Show-Cause Notice (SCN) dated 21.01.2019 under section 23 (2) of the Act to explain as to why SST of Rs.13,236,536/= should not be assessed and recovered alongwith default surcharge under section 44 of the Act. The appellant was also called upon to explain as to why penalties under serial No. 2, 3, 6(d) and 11 of the Table under section 43 of the act should not be imposed.

05. The appellant filed reply dated 26.01.2019 in which it was stated that its registered head office was situated at Lahore and the nature of services provided by the appellant were sale and service of tracking system. It was also stated that the actual jurisdiction was with Punjab Revenue Authority.

06. The Assessing Officer (AO) passed OIO determining the SST of Rs.13,236,536/= to be deposited alongwith default surcharge under section 44 of the act. The AO also imposed penalty of Rs. 661,827/= under Serial No. 3 of the Table under section 43 of the Act for non-payment of SST and penalty of Rs.680,000/= under Serial No. 2 of the Table under section 43 of the Act for non-filing of returns from July-2011 to August 2018.

07. The appellant challenged the OIO before Commissioner (Appeals), SRB under section 57 of the Act. Initially the Commissioner (Appeals) granted stay



against the recovery of tax dues. The department during the pendency of the appeal vide Notice dated 22.12.2022 issued to Habib Metro Bank and the bankers of the appellant have required the banks to pay the tax dues of the appellant. The appellant requested the Commissioner to extend stay which was refused, hence this appeal before this Tribunal.

08. The learned advocate for the appellant submitted as under:-

- i) That the appeal was pending before Commissioner (Appeals) since April-2019 and could not be decided for want of re-conciliation by the concerned AC.
- ii) The appellant is based at Lahore and all its activities were taxed in Sindh without proper bifurcation of the share of Sindh.
- iii) The bank accounts were attached by the Department vide letter dated 22.12.2021. Moreover the Commissioner (Appeals), SRB vide order dated 04.01.2022 has refused to extend the stay on the ground that the stay could not be extended beyond the period of sixty days.
- iv) That in presence of attachment order the appellant was deprived from doing its business.
- v) The issuance of attachment order during the pendency of appeal and without first hearing the case by an independent forum was against the dictum laid down by Superior Courts.

09. The learned AC-SRB submitted as under:-

- i) The Reconciliation could not be finalized due to non-furnishing of details and documents by the appellant and due to non-cooperative behavior of the appellant.
- ii) The stay was rightly not extended beyond the period of sixty days in view of sub-section (4) of section 58 of the Act, which prohibited grant of stay beyond sixty days.
- iii) The appellant for obtaining further stay had to deposit 25% of the tax dues under the first proviso to sub-section (1) of section 66 of the Act.
- iv) The appellant despite providing services within Sindh had failed to deposit SST thus it had committed tax fraud and was not entitled to further relief.



10. The learned advocate for the appellant in rebuttal submitted that the appeal was filed to avoid attachment of bank accounts. Moreover due to bank attachment the business of the appellant was badly effected as neither the appellant could receive any amount nor could pay the salaries and other expenses.

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

12. The grant of stay beyond sixty days was refused by the Commissioner (Appeals) keeping in view the provisions contained under sub-section (4) of section 58 of the Act, which prohibited grant of stay beyond sixty days.

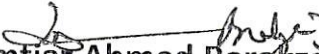
13. We find force in the arguments of the advocate for the appellant that issuing attachment order during the pendency of appeal before Commissioner (Appeals) and without first hearing of the case by an independent forum is against the dictum laid down by the Superior Courts. However we have noticed that the appeal was pending since 2019 without any progress.

14. The AC has rightly pointed out that for obtaining further stay beyond sixty days the appellant had to deposit 25% of the tax dues under the first proviso to sub-section (1) of section 66 of the Act. However both the learned representatives of the parties have agreed that since the attachment order had been withdrawn thus this appeal had borne fruit, and have requested that the Commissioner (Appeals) may be directed to decide the appeal on priority basis within the time frame provided under sub-section (5) and (6) of Section 59 of the Act.

15. In view of the above discussion the appeal is disposed of with the direction to the appellant to provide all details, material and documents to the AC within seven days from the date of receipt of this order for preparation of Reconciliation Report. Furthermore the AC is directed to prepare Reconciliation Report within next seven days and submit the same before Commissioner (Appeals) who should decide the appeal within the time frame provided under sub-section (5) and (6) of Section 59 of the Act without any further loss of time. However before parting with this order we find it appropriate to point out that the manner of issuance of copy of impugned order in this appeal was improper since the title page of the order was missing. It may be ensured in future that all certified copies of the order must contain the title page.



16. The appeal is disposed of accordingly. Copy of the order may be provided to the learned representative of the parties.

  
(Imtiaz Ahmed Barakzai)  
TECHNICAL MEMBER

  
(Justice<sup>®</sup> Nadeem Azhar Siddiqi)  
CHAIRMAN

Karachi

Dated: 27.01.2022

Copy Supplied for compliance:

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

Copy for information to:-

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

Certified to be True Copy

  
REGISTRAR  
APPELLATE TRIBUNAL  
SINDH REVENUE BOARD

Order issued on 28/01/2022

  
Registrar

Order Dispatched on 28/01/2022

  
Registrar