

(Guard File)

**BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD AT KARACHI**

**DOUBLE BENCH-I**

**APPEAL NO. AT-03/2022**

M/s National Bank of Pakistan(SNTN: 0700271-8)  
4<sup>th</sup> Floor, Head Office Building,  
I.I.ChundrigarRoad, Karachi.....Appellant

**Versus**

Assistant Commissioner, (Unit-09)  
Sindh Revenue Board,  
02<sup>nd</sup> Floor Shaheen Complex,  
M.R. Kiyani Road, Karachi.....Respondent

Date of Filing of Appeal: 17.01.2022  
Date of hearing: 17.02.2022  
Date of Order: 17.02.2022

Mr. Kazi Zeeshan Akbar, FCA and Syed. Masood-ur-Rehman, ACMA for appellant.

Mr. Imran Ali, AC-SRB (Unit-09) Mr. Nasir Bachani, AC-DR, Mr. Sahil Kumar, SSTO and Ms. Masooma Zainab, SSTO for respondent.

**ORDER**

**Justice<sup>®</sup> Nadeem Azhar Siddiqi:** This appeal has been filed by the appellant challenging the Order in Appeal (OIA) dated 22.12.2021 passed by Commissioner (Appeals), SRB refusing to grant stay against the recovery of the tax dues.

02. The facts relating to the instant appeal are that the appellant was registered with SRB and was engaged in providing/rendering taxable services provided, or rendered by banking companies classified under Tariff Heading



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*Nadeem Azhar Siddiqi*

9813.4000 of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (the Act). This was chargeable to Sindh sales tax at the statutory rate under section 2(28), 3, 8, 9 and 17 of the Act read with Rule 30 of the Sindh Sales Tax on Services Rules, 2011 (the Rules).

03. It was alleged in the OIO No. 601/2021 dated 08.11.2021 (OIO) that from scrutiny of the monthly sales tax returns filed by the appellant with SRB for the tax periods from January-2012 to December-2012 the value of services was short declared & short payment of Sind Sales Tax was found.

04. The appellant was served with Show-Cause Notice (SCN) dated 02.04.2019 to explain as to why the tax liability of Rs.482,327,612/-, should not be assessed & recovered under the provisions of Section 23(1) & Section 47 of the Act along with the amount of default surcharge under Section 44 of the Act, (to be calculated at the time of payment). The appellant was also called upon to explain as to why penalties should not be imposed under Serial No.2 and 3 of the Table under Section 43 of the Act for contravention of Section 3, 8, 9, 17 and 30 of the Act read with rules 11, 12, 13, 14 and 30 of the Rules. The appellant in response to the SCN filed written arguments, and also made submissions through various letters and e-mail which were considered by the Assessing Officer (AO).

05. The AO finally passed OIO determining the SST of Rs.113,331,840/= against Rs. 482,327,612/= claimed in the SCN alongwith payment of default surcharge. The AO also imposed penalty of Rs. 5,666,592/= under Serial No. 3 of the Table under section 43 of the Act.

06. The appellant challenged the said OIO before Commissioner (Appeals), SRB by way of filing of appeal under section 57 of the Act. The stay application was also filed alongwith appeal but the Commissioner (Appeals) refused to grant stay vide OIA. Resultantly filing of the instant appeal by the appellant.

07. The learned representative of the appellant Mr. Kazi Zeeshan Akbar, FCA submitted as under:-

i. The appeal was filed before Commissioner (Appeals) on 08.12.2021 and was taken up on 22.12.2021 and on the same day

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stay was refused without proper hearing and without assigning proper reasons.

ii. The appeal was still pending before Commissioner (Appeals), SRB thus the vacation of stay without hearing of the matter by an independent forum was against the principles of natural justice and against the various decisions of Superior Courts.

iii. The appellant had paid an amount of Rs.16,525,229/- inclusive of default surcharge of Rs.1,586,229/- under Amnesty of 2020-2021 which was not accepted.

iv. The demand was raised on the OIO on the value of services provided in other jurisdictions which was illegal.

v. The case was prima facie in favour of the appellant as the amount of tax determined in the OIO did not relate to the services provided in Sindh.

vi. The vacation of stay without just cause and proper hearing during pendency of appeal amounted to depriving the appellant from fair trial and providing an opportunity to the respondent to recover the amount without hearing of appeal.

08. The learned representative of respondent Mr. Imran Ali, AC submitted as under:-



i. That the stay was not granted since the appellant had not cooperated in providing the details & documents for preparing the Reconciliation statement. Moreover the OIO was supported in totality.

ii. The soft and hard copies were provided without supporting documents and the same were incomplete.

iii. The share of other provinces were excluded from the reconciliation at the stage of OIO.

iv. The appellant was guilty since it had suppressed the material and details to avoid payment of due SST.

*M. Ali*

*[Handwritten signature]*

vii. The appellant instead of filing of this appeal had a choice to deposit 25 percent of the due tax amount as provided under proviso of section 66 of the Act for obtaining a stay order.

09. The learned representative of the appellant in rebuttal submitted that the appeal before Commissioner (Appeals) was fixed on 24.02.2022 and all documents in the shape of soft and hard copies were provided to the AC and the allegation that the appellant had not cooperated with AC was not based on facts.

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

11. The grant of stay is an equitable relief and could only be refused if the appellant had failed to show a prima facie case, balance of inconvenience or irreparable loss. The relief is discretionary in nature and the discretion has to be exercised judiciously and not arbitrarily. The provision of stay inserted in the statute is to avoid undue hardship to the tax payer. Moreover the stay could not be refused on the whims of the appellate authority just to facilitate the department to recover the tax without hearing of appeal. The refusal of the stay without proper hearing amounts to giving undue advantage to the department over the tax payer, and the power to grant stay or interim relief is co-existent with the power to grant final relief.

12. The Commissioner (Appeals) while rejecting the stay application observed as under:-



*"The display of the above facts show that at one side the AR speaks of a factual issue involved as is stated in the paras supra. But at the same the appellant seeks stay and refuses to provide reconciliation of the amounts, which per the appellant were exempt in other jurisdictions.*

*No purpose will be served as far today hearing in such a situation. Therefore, in such a situation the refusal of the appellant to provide the reconciliation and documents the stay application dated 07<sup>th</sup> December, 2021 is hereby dismissed."*

13. The Commissioner (Appeals) while dismissing the stay application failed to consider the settled principles relating to grant and refusal of stay. Apparently the stay was not granted on the basis that the appellant had refused to provide the reconciliation. Moreover the appeal was taken up for the first time and the Commissioner (Appeals) could had directed the appellant to provide details and documents.

14. The appellant's intention for not getting the matter reconciled and to linger on the matter are not appropriate. The appellant should fully cooperate with the AO and it should had provided all documents and details required by the AO. The appellant firstly filed CP-No. D- 7457/2021, which was disposed of on 10.01.2022 with the observation that the appellant has the remedy to file appeal before the Tribunal against the dismissal of stay application. The appellant instead of filing of appeal before the Tribunal again filed CP-D No.252/2022 on 15.01.2022 which was taken up on 17.01.2022. The contention of the appellant before the Sindh High Court was that against the dismissal of stay application an appeal was pending before the Appellate Tribunal which had not been taken up. This statement given before the Honorable High Court was factually incorrect. On 15.01.2022 no appeal was pending before the Tribunal. The appeal was received through post on 17.01.2022 and was taken up on 18.01.2022 and was fixed for hearing on 25.01.2022. In the mean while the appellant filed urgent application on 21.01.2022 at 4.10 pm for anti-dating the hearing of appeal without assigning any reason as such the same was declined on 24.01.2022. The appeal was taken up on 25.01.2022 and 01.02.2022 respectively, and on such dates the representative of the appellant had obtained adjournments. The appeal was taken up again on 09.02.2022 and the department was directed for not taking any coercive action against the appellant for recovery of tax. It is thus clear from the above narration that the appellant obtained the urgent hearing and stay order from the Honorable High Court on misrepresentation of facts and on false ground. It is therefore evident that the appellant and its representative have tendency, and are capable of making false statements before the courts. The appellant being a reputable bank and should avoid such tactics which could bring bad name to it.



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15. Despite our observations in para 13 supra we are not impressed with the manner the stay was refused. Since the appellant had filed appeal before the Commissioner (Appeals) he was to be provided with some protection and it was inappropriate to leave it at the mercy of department. The Commissioner (Appeals) before refusing the grant of stay should consider the judgments of Superior Courts which provide that the recovery of tax dues without hearing by an independent forum should be violative of principal of natural justice. The Commissioner (Appeals) should act as an independent forum and should not be influenced because he was an officer of SRB. The Commissioner (Appeals) though being an officer of SRB has an onerous duty to perform and is required to do justice with the parties without accepting any influence from the department. In our view the Commissioner (Appeals) is an independent forum and should act as such and impart the justice which should be visible.

16. We have found force in the arguments of the learned advocate for the appellant that recovery of tax without determination of tax by an independent forum was not proper and the superior courts had deprecated such practice. Therefore the Commissioner (Appeals) should adhere to such decisions which are binding on him.

17. In view of the above discussions to foster cause of justice the appeal is allowed. The appellant is granted stay for thirty days from today during which the department will not take any coercive action against it for recovery of tax dues. The AC is directed to intimate the appellant in writing within three days from today the documents and details required by him. Moreover the appellant shall provide all such documents and details to the AC within next three days from the date of receipt of such requirement from the AC. In case the appellant fails to provide the details and documents asked for by the AC or fails to cooperate with the AC in preparing the reconciliation than the Commissioner (Appeals) for reasons to be recorded in writing may vacate the stay.

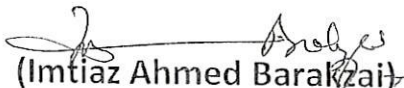
18. We done it appropriate to point out before parting with the order that the manner in which the Commissioner (Appeals) issued copy of order of refusing stay after receiving cost from the appellant was not proper. The Commissioner


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(Appeals) and all officers of SRB should issue proper readable and typed certified copies of the orders with title of the case (showing the name of the parties and number of appeal in which such order was issued). Issuing unreadable hand written order is not a proper practice for an institution like SRB. We hope that officers of SRB will be careful in future.

19. The appeal is disposed of in terms of para 17 above. The copies of the order may be provided to the learned representative of the parties. The copy of this order may also be provided to the learned chairman, SRB for issuing directions to the officers of SRB as pointed out in para 18 supra.

  
(Imtiaz Ahmed Barakzai)  
TECHNICAL MEMBER

  
(Justice® Nadeem Azhar Siddiqi)  
CHAIRMAN

Karachi: Dated: 17.02.2022

Copy Supplied for compliance:

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

Certified to be True Copy  
  
REGISTRAR  
APPELLATE TRIBUNAL  
SINDH REVENUE BOARD

Copy for information to:-

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

Order issued on 18/02/2022

  
Registrar

Order Dispatched on 18/02/2022

  
Registrar