

IN THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD AT KARACHI.
(Before: Mrs. Alia Anwer, Member Judicial)

Appeal No. AT-100/2022

Master Beverages & Foods Ltd,
Huzaifa Tufail Building,
Attawa GT Road,
Gujranwala. appellant

Versus

The Assistant Commissioner Unit-24,
Sindh Revenue Board,
Karachi. respondent

Syed Irshad-ur-Rehman, advocate for appellant
Mr. Amiruddin Kolachi, AC Unit-24, for respondent.

Date of hearing: 03.04.2023, 17.04.2023 and 08.05.2023
Date of order: 16.05.2023

ORDER

The appellant has assailed the order dated 05.03.2020 passed by the Assistant Commissioner (Unit-24) vide Order-in-Original No.46 of 2020 (*hereinafter referred to as "the Original Order"*) whereby the appellant has been directed to pay as under;

- a. Sales Tax amounting to Rs.3,821,367/- along with default surcharge (to be calculated at the time of payment) under section 44 of the Sindh Sales Tax on Services Act, 2011 (*hereinafter referred to as "the Act"*), and
- b. Penalty amounting Rs.191,068/- under serial No.3 of the Table in section 43 of the Act.

2. Along with the memo of appeal, learned counsel has filed application for condonation of delay of 17 (seventeen) days in filing instant appeal and today the matter is fixed for hearing of above application.



3. Learned counsel for appellant contended that on 04.06.2020 Commissioner (Appeals-I) issued notice in the instant appeal informing the appellant that instant appeal has been admitted for regular hearing. Learned counsel argued that while going through the wordings of such notice he presumed that learned Commissioner (Appeals-I) has condoned delay in filing appeal and has fixed the matter for regular hearing. He argued that Courts/ Tribunals are competent to presume existence of certain facts even no material is available on record. In support of such contention, learned counsel placed reliance upon the case law reported as Abdul Zahir versus Khuda-e-Dad (2016 YLR 188). There is no denial to the legal proposition that court may presume existence of certain facts. The list of such facts is provided in Article 129(g) of Qanun-e-Shahadat, 1984. Same principle has been held in the case law (cited *supra*) and it is of no help to the appellant. Mentioning of words in notice that "appeal has been admitted for regular hearing", in no circumstance draw inference that delay has been condoned, nor this fact is mentioned in any of the clause in Article 129(g) of Qanun-e-Shahadat, 1984, hence; such arguments have no force.

4. Learned counsel for appellant argued that appellant is permanently settled in Punjab so also carrying on his business there and the proceedings against appellant were conducted *exparte*. Learned counsel contended that since April 2020 entire city was observing lock-down situation due to which no official was available in the concerned office to issue challan slip for payment of appeal fee. In support of such contention learned counsel has submitted abstract from WHO's website. Learned counsel argued that respondent's office refused to receive memo of appeal without challan. Learned counsel argued that having no other alternate, on 20.04.2020 he wrote letter to the concerned Assistant Commissioner, Unit-24 requesting therein for issuance/ creation of Challan for payment



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of appeal-fee. Learned counsel argued that considering his request, the Assistant Commissioner, Unit-24 on 21.04.2020 issued Challan enabling appellant to deposit "Appeal fee" and file instant appeal on the very day i.e. 21.04.2020. Learned counsel contended that above mentioned circumstances were beyond the control of appellant and the delay in filing instant appeal is neither willful nor deliberate. Learned counsel argued that issue of limitation is mere technicality, which should not be used as the weapon to harm litigants. He contended that even otherwise law favors adjudication on merits rather than on technicalities. He argued that appellant has pleaded sufficient cause and he is entitled to get condonation of delay. In support of his arguments learned counsel placed reliance upon the case law reported as Head Master, Government High School, Ratodero and 3 others versus Imamuddin (2020 CLC 1568), Karachi Metropolitan Corporation through Mayor and another versus Messrs Zafar Memorial Education Society Karachi through President (2019 CLC 1697), Zamurad Khan versus Sabir Khan (2017 YLR 355), and Abdul Ghafoor versus Kala (2001 MLD 1489). Learned counsel prayed that delay in filing instant appeal may be condoned and same may be admitted for regular hearing.

5. Learned Assistant Commissioner, Unit-24 vehemently opposed the above arguments. He argued that during entire period of COVID all public offices were functional with 50% attendance. He contended that all official work was being carried out on regular basis and office was receiving each and every appeal filed. He argued that for the convenience of litigants, office was issuing Skype id to the litigants and matters were being conducted online (via Skype). He argued that appellant has taken the plea of absence of official to shift his lack of vigilance to the respondent. He further argued that appellant's letter dated 20.04.2020 was responded immediately, which itself prove that respondent's office was functional. Learned Assistant



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Commissioner, Unit-24 prayed for dismissal of instant application.

6. With due regard to the arguments advanced by learned counsel for appellant that issue of limitation is mere technicality, I propose to differ in the light of principle settled by the Hon'ble Supreme Court in the case of IMTIAZ ALI versus ATTA MUHAMMAD and another, reported as PLD 2008 Supreme Court 462, wherein it has been held that;

"7. Winding up the above noted discussion, the appeal having been filed after one day of period of limitation, has created valuable right in favour of respondents. We having found no sufficient cause for filing of delayed appeal, are not prepared to condone it. Hence, the appeal is dismissed in limine".

7. Same principle has been followed in the case of PAKISTAN HANDICRAFTS, SINDH SMALL INDUSTRIES CORPORATION, GOVERNMENT OF SINDH versus PAKISTAN INDUSTRIAL DEVELOPMENT CORPORATION (PVT.) LTD. and 2 others, reported as 2010 CLC 323, wherein it was held that;

"4. Learned counsel for the petitioner contended that Court should decide controversies on the basis of merits rather than technicalities. I cannot agree more with him. I do not think that limitation is a technicality because limitation confers very valuable rights as has been held by the Supreme Court in Imtiaz Ali v. Atta Muhammad and another PLD 2008 SC 462. Therefore, limitation is not a technicality but it confers very valuable rights".

8. In view of the above discussion I am of the considered view that issue of limitation is not a technicality rather it confers valuable rights, being of great importance because on account of delay in filing appeal valuable rights accrued in favour of respondent. In this regard I am fully guided with the case of Dr. MUHAMMAD JAVAID SHAFI versus Syed Rashid Arshad and others, reported as PLD 2015 Supreme Court 212 wherein it was held that;

"The law of limitation requires that a person must approach the Court and take recourse to legal remedies with due diligence, without dilatoriness and negligence and within the time provided by the law; as against choosing his own time for the purpose of bringing forth a legal action as his own whim and desire. Because if that is so permitted to happen, it shall not only result in the misuse of the judicial process of the State, but shall also cause



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exploitation of the legal system and the society as a whole. This is not permissible in a State which is governed by law and Constitution. And it may be relevant to mention here that the law providing for limitation for various causes/reliefs is not a matter of mere technicality but foundationally of the "LAW" itself".

9. It is admitted fact that instant appeal is 17 days barred by limitation. It is well settled principle that law favors vigilant and not the indolent, who sleeps over their claim and the party who seeks condonation of delay in respect of limitation period is bound to show that the

delay was caused by the reason, beyond his control and such condonation is sought in good faith. An aggrieved person has to pursue his legal remedies with due diligence and in case any appeal is filed beyond limitation then delay of each day has to be explained as held in the case of PROVINCE OF SINDH and others versus Messrs PAKROCK CORPORATION (PVT.) LTD. and others, reported as PLD 2020 Sindh 136, wherein it was held that;


"It is a settled proposition of law that law helps the vigilant and not the indolent and after the expiry of the limitation period a vested right is always created in favour of the other side. Reference in this regard may be made to the decisions given by the Hon'ble Supreme Court of Pakistan in the cases of Muhammad Nawaz and 3 others v. Mst. Sakina Bibi and 3 others (1974 SCMR 223) and Central Board of Revenue, Islamabad through Collector of Customs, Sialkot Dry Port, Samberial District Sialkot and others v. Messrs Raja Industries (Pvt.) Ltd. through General Manager and 3 others (1998 SCMR 307). Once limitation starts it could only be condoned after considering valid and cogent reasons for the same. Matter has been examined minutely by us, however, unfortunately the factors for condoning the delay are totally lacking in the instant matter. It is also a settled proposition of law that delays are condoned when reasonable and plausible reasons for the same are given but a perusal of the affidavit and the application clearly demonstrate that neither plausible reasons nor justification have been given for filing the HCA late, rather, there is, in fact, no ground either in the affidavit or in the application justifying the cause of delay. It is also a settled proposition of law that it is the bounden duty of the Court to dismiss a lis before it if the same is barred by limitation and no plausible explanation has been furnished, with regard to such delay. We need not to cite decisions or case law on the above legal propositions since the same are quite settled by now."



10. On the one hand appellant pleaded that no official was available in the office of respondent, on the other hand appellant pleaded that office of respondent refused

to receive memo of appeal without payment of "Appeal-fee". Limitation to file instant appeal expired on 04.04.2020 and appellant was required to explain the delay of each and every day, which restricted him from filing appeal within the limitation, but such requirement has not been fulfilled. There is nothing on record to establish that appellant remained vigilant to pursue its case. The letter dated 20.04.2020 apparently seems to have been sent to bring the case within the period of limitation.

11. In view of above discussion, I am of the humble view I am of the considered view that appellant has not made out any sufficient cause for condonation of delay in filing of instant appeal, therefore; he is not entitled to any indulgence. Hence, instant application is hereby dismissed. Resultantly, instant appeal stands dismissed, being time-barred along with listed application(s). Let the copy of this order be provided/ sent to the parties or their representatives, if any.


16/5/23
(ALIA ANWER)
Member Judicial,
Appellate Tribunal,
Sindh Revenue Board.

Karachi;
Dated: 16.05.2023

Copy supplied to:-

1. The appellant,
2. The Assistant Commissioner (Unit-24), SRB, Karachi,
3. The Commissioner (Appeals), SRB, Sindh,
4. Office File, and
5. Record file.

Certified to be True Copy


18-05-2023
REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Order Dispatched on 18-05-2023


Registrar

Order issued on 18-05-2023


Registrar