Guard file

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD AT KARACHI

DB-I

APPEAL NO. AT-13/2022

M/s Sindh Bank Limited ..... Appellant
(SNTN: 2975222-1)
3rd Floor, Federation House,
Abdullah Shah Ghazi Road, Clifton,
Karachi.

Versus

Assistant Commissioner, (Unit-09) ..... Respondent
SRB, Karachi, 02nd Floor Shaheen Complex,
M.R. Kayani Road, Karachi

Date of hearing 02.03.2022
Date of Order 02.03.2022

Mr. Kazi Zeeshan Akbar, (FCA) for appellant

ORDER

Imtiaz Ahmed Barakzai: An appeal was filed against rejection/ vacation of stay order dated 17.02.2022 issued by the Commissioner (Appeals) whereby he vacated the stay granted to the appellant was vacated on the lapse of 120 days.

02. Mr. Kazi Zeeshan Akbar, FCA for appellant submitted that this appeal was filed against the vacation of stay by Commissioner (Appeals) after expiry of 120 days.

03. The appeal was presented yesterday i.e. on 01.02.2022 along with the urgent application and stay application. The appeal was filed after lapse of 11 days after the vacation of stay.

04. No grounds of urgency were mentioned in the urgent application but keeping in view that the stay application had been filed the matter was taken up today on 02.03.2022.

05. The representative of the appellant submitted that huge amount was involved which was not payable by the appellant and that vacation of stay without proper hearing was against the principles of natural justice.

06. We have perused the grounds of appeal and find that no defect has been pointed out in the order. Moreover the merits of appeal could not be considered relating to instant appeal since it was still pending before Commissioner (Appeals).

07. The Commissioner (Appeals) under sub-section (4) of Section 58 of the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) could only grant stay for 120 days, and as per the Order the stay was granted on 17.06.2020 and was vacated on 17.02.2022 after lapse of 120 days. The appellant has failed to point out any defect in the order of vacating the stay therefore no case is made out by it. In the reported case of Noori Trading (Pvt.) Ltd. versus Federation of Pakistan, PLD 1997 Karachi 663 at page 677 relating to interpretation of Article 199(4-A). It was held that any extension beyond the period specified under Article 199 (4A) of the Constitution would amount to tempering with the provisions of the Constitution. From this judgment it is clear that the Commissioner (Appeals) could not grant stay beyond 120 days specified in sub-section (4) of section 58 of the Act.

08. It would be appropriate to mention that by virtue of sub-section (4) of section 58 of the Act the stay had ceased to be operative after expiry of 120 days. It is, thus, imperative for the appellant to show prima facie case, balance of inconvenience and existence of irreparable injury for claiming interim relief. Learned representative of the appellant has not been able to satisfy us about legal justification on impending irreparable injury which could entitle appellant the nature of interim relief sought for. Moreover appellant has a remedy under provisio to sub-section (1) of Section 66 of the Act to deposit 25% of the amount of tax dues to avoid coercive recovery and the appellant may avail such remedy.

09. We deem it appropriate to point out before parting with the stay application that the manner in which the Commissioner (Appeals) issued copy of order of vacation of stay was not proper. The Commissioner (Appeals) and all officers of SRB should issue proper readable and typed certified copies of order with title of the case (showing the name of parties and number of appeal in which such order was issued). Issuing unreadable

handwritten order is not proper practice for an institution like SRB. We hope that officers of SRB will be careful in future. The copy of this order may be sent to learned Chairman, SRB for ensuring compliance."

10. In view of above we do not find any merit in this appeal which is hereby dismissed in liminie.

11. The copy of order may be provided to the concerned parties.

(Justice ® NadeemAzhar Siddiqi)
CHAIRMAN

(Imtiaz Ahmed Barakzai)
TECHNICAL MEMBER

Certified to be True Copy

REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Karachi
Dated: 02.03.2022

Copy Supplied for compliance:

1. The Appellant through Authorized Representative.
2. The Assistant Commissioner, (Unit-03), SRB, for compliance

Order issued on 03/08/2022

Registrar

Copy for information to:-

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

Order Dispatched on 03/08/2022

Registrar