

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD AT KARACHI

DOUBLE BENCH-I

APPEAL NO. AT-17/2022

M/s Fauji Meat Limited (NTN:4205304-8).....Appellant
1st Floor, FFBL Tower, C1/C2, Sector B,
Jinnah Boulevard, DHA-II, Islamabad,

Versus

Assistant Commissioner, (Unit-24)
Sindh Revenue Board,
02nd Floor Shaheen Complex,
M.R. Kiyani Road, Karachi.....Respondent

Date of Filing of Appeal: 11.03.2022

Date of hearing: 29.03.2022

Date of Order: 29.03.2022

Mr. Mohsin Ishtiaq, FCA and Mr. Aamir Khan, ITP for appellant.

ORDER

Imtiaz Ahmed Barakzai: An appeal was filed against vacation of stay order dated 13.09.2019 issued by the Commissioner (Appeals) whereby he vacated the stay granted to the appellant on lapse of 120 days.

2. The brief facts of the case are as under:-

a) The appellant had filed an appeal before Commissioner (Appeals) against the Order-in-Original (hereinafter referred to as OIO) No.41 of 2018 dated February 3, 2018 issued by the learned Assistant Commissioner (AC) Unit-24 Withholding, Sindh Revenue Board, Karachi under section 47 of the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) whereby demand of Sindh Sales Tax (SST) amounting to Rs.111,218,773/- was raised.

b) The above mentioned appeal was filed with the Commissioner (Appeals) on 13.02.2018 which is still pending before him.

c) The Appellant had also filed stay application before Commissioner (Appeals) on 13.02.2018 against the recovery of impugned demand of Rs.111,218,773/- raised vide OIO dated 03.02.2018 who after hearing the

appeal on 15.08.2018 issued directions to the AC to suspend the recovery proceedings till next date of hearing which was fixed for 14.09.2018 and the said stay was further extended from time to time. However, during hearing held on 26.08.2019 the Commissioner (Appeals) rejected the Appellant's request for extension in stay on the basis that stay already granted had exceeded one hundred and twenty days in aggregate which was the maximum limit as per sub-section (4) of section 58 of the Act.

d) The appellant filed Constitutional Petition C.P. No.D-5936 of 2019 before the Honorable Sindh High Court wherein the Honorable Court vide order sheet dated 20.09.2019 granted stay against recovery of the impugned demand till the next date of hearing.

e) The Honorable High Court vide order dated 31.01.2020 disposed off the said petition by restraining the department from enforcing the recovery of impugned demand for 7 days after the date of said order to enable the appellant to seek further remedy as may be available to the Appellant in accordance with law by approaching the relevant forum i.e. Appellate Tribunal since adverse order on stay application had already been passed by the Commissioner (Appeals).

3. The appellant did not file appeal before the Appellate Tribunal within 7 days from the date of order of Honorable High Court passed on 31.01.2020. The appellant contended that he was unaware of such order of Honorable High Court due to frequent changes in it's Management.

4. The appeal was presented in the Tribunal on 11.03.2022 alongwith stay application. The appeal was filed after lapse of 2 years and 32 days from the order of Honorable High Court dated 31.01.2020 which had stayed the demand for 7 days i.e upto 07.02.2020.

The representative of the appellant submitted before us that huge amount was involved which was not payable by the appellant and that in case the stay was vacated the appellant could suffer irreparable harm and loss.

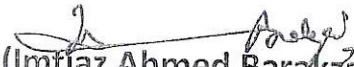
6. We have perused the grounds of appeal and find that the appeal filed for condoning delay in filing appeal and granting stay to the appellant has to be filed before this Tribunal within 7 days from the date of order of Honorable High Court dated 31.01.2020. The appellant has filed the appeal late by 2 years and 32 days. The appellant has failed to justify the long delay in filing of appeal.

7. 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. Moreover 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.

8. However since the constitutional petition filed by appellant in Honorable High Court was decided on 31.01.2020 and it had allowed the appellant 7 days to file appeal before the Appellate Tribunal, but such right was not exercised. The instant stay application is time barred by 2 years and 32 days, therefore the same needs no further action. It is appropriate to mention that the 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.

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

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


(Imtiaz Ahmed Barakzai)
TECHNICAL MEMBER


(Justice® Nadeem Azhar Siddiqi)
CHAIRMAN

Karachi:

Dated: 29.03.2022

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 31/03/2022

Order Dispatched on 31/03/2022