

(Ground file)

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

**DB-I**

**APPEAL NO. AT-59/2022**

M/s Express Digital (Pvt.) Limited  
(SNTN: S4392632-7)  
Plot # 05, Expressway before Defense View  
Project, Off Korangi Road, Defense View,  
Karachi.....Appellant

**Versus**

The Assistant Commissioner (Unit-20), SRB  
Sindh Revenue Board, 02<sup>nd</sup> Floor Shaheen  
Complex, M.R. Kiyani Road, Karachi.....Respondent

Date of filing of Appeal 06.06.2022  
Date of hearing 13.06.2022  
Date of Order 17.08.2022

Mr. Ameer Azam, Advocate along with his Associates Mr. Abdul Wakeel for  
appellant.

Mr. Naeemullah Bhutto, AC-SRB, for respondent.



**ORDER**

**Justice<sup>®</sup> Nadeem Azhar Siddiqi:** This appeal has been filed by the  
appellant challenging the Order of Rejection of Stay dated 28.02.2022 passed  
by Commissioner (Appeals) in Appeal No. 08/2022 filed by the appellant  
against the Order-in-Original (hereinafter referred to as the OIO) No. 11/2021  
dated 29<sup>th</sup> October, 2021 passed by Mr. Allah Rakhio Jogi, Assistant  
Commissioner, (Unit-20) SRB Karachi.

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02. The facts as stated in the OIO were that the appellant was registered with Sindh Revenue Board (SRB) under the service category of "Other advertisement including those on web or internet" classified under Tariff Heading 9802.000 of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (referred to as Act), which was subject to levy of Sindh Sales Tax (SST).

03. It was alleged in the OIO that during the scrutiny of the annual accounts of the appellant for financial year 2015-16 ending at June 30, 2016 it was discovered that the appellant had provided services exclusively covered under the services category of "advertisement services" and "agency commission" specified as taxable services in the Schedule to the Act. The detailed calculation of the sales tax payable is given below:

Revenue details M/s Express Digital (Private) Limited [SNTN: S4392632-7]	
Particulars	FY 2015-16@ Tax rate 14%
a. Local Revenue	28,415,045
b. Agency Commission	1,661,859
c. Foreign Revenue	52,997,201
Total Value of Service as per Income Statement (PKR)	83,074,105
Less: Value of Service declared at SRB	26,383,236
Short declared value of service at SRB	56,690,869
Sales Tax payable on short declared value at applicable tax rate	7,936,722
Short Paid SST with SRB	7,936,722

04. In view of the foregoing table, it was apparent that the appellant had short declared the sales revenue valuing to Rs.56,690,869/- involving payment of SST of Rs.7,936,722/- at applicable tax rate during the period July, 2015 to June, 2016.

05. The appellant was served with a Show-Cause Notice (SCN) calling upon it to explain as to why the tax liabilities of Rs.7,936,722/- may not be assessed and recovered in terms of the provisions of section 23 and section 47 (1A) of the Act alongwith default surcharge under section 44 of the Act. The appellant was also called upon to explain as to why penalties provided under Serial No. No. (2) and (3) of the Table under section 43 of the Act should not be imposed for violation of the provisions of the Act and rules made thereunder. The appellant despite service of SCN and obtaining adjournments and extension of time did not file its written reply.

06. The Assessing Officer (AO) finally passed OIO determining the SST at Rs. Rs.7,936,722/- on the value of service of RS. 56,690,869/= at the applicable rate of 14%. And directed the appellant to deposit the same with default surcharge. The AO also imposed penalty of Rs. 1,111,141/= under Serial No. 3

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*In progress*

of the Table under section 43 of the Act and the penalty of Rs. Rs.120,000/- under Serial No.2 of Table under section 43 of the Act.

07. The appellant challenged the said OIO before Commissioner (Appeals), SRB by filing appeal under section 57 of the Act. The stay application was also filed alongwith appeal. Initially the Commissioner (Appeals) granted the stay on 14.02.2022. However the stay was recalled on expiry of sixty days as provided under sub-section (4) of section 58 of the Act. Resultantly the instant appeal was filed before this forum against vacation of stay.

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

- i. The appeal is still pending before Commissioner (Appeals) for hearing, but the stay was vacated on expiry of sixty days provided in the sub section (4) of Section 58 of the Act without appreciating that the department may enforce recovery of tax dues during the pendency of appeal.
- ii. The vacation of stay was against the principle of natural justice and the provision of Article 10A of the Constitution which provided right of fair trial and due process of law.
- iii. The recovery of SST without hearing of the case by an independent forum i.e. Appellate Tribunal, SRB is against the various pronouncements of the Superior Court.
- iv. The appellant apprehended forced recovery of tax dues during the pendency of appeal.

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

- i. The stay was rightly vacated on expiry of sixty days as provided under sub-section (4) of section 58 of the Act.
- ii. The Commissioner (Appeals) is not vested with the power to extend stay beyond sixty days.
- iii. The appellant has a remedy under law to deposit 25 percent of the amount of tax due for obtaining further stay as provided under the proviso of section 66 of the Act.

10. The learned representative of the appellant in rebuttal submitted that the delay in disposing of appeal was not caused by the appellant. He contended that the department was responsible for the such delay and vacation of stay during pendency of appeal amounts to depriving the appellant from fair trial and due process of law.

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

12. The grant of stay is an equitable relief and could only be granted on showing prima facie case, balance of convenience or causing of irreparable loss. The relief is discretionary in nature and the discretion has to be exercised judiciously and not arbitrary. After preliminary hearing the grant of stay by the Commissioner (Appeals) clearly reflected that the appellant had made out a prima facie case. The stay once granted could be vacated only on sound grounds and reasoning and not arbitrarily merely to penalize a tax payer or to provide an opportunity to the department to recover the tax dues during pendency of appeal.

13. The grant of stay cannot be subjected to the deposit of 25 percent of the tax amount as per proviso of section 66 of the Act, as sub-section (4) of section 58 is an independent provision and does not provide any such condition or restriction.

14. We have also 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.

15. The instant case appears to be that of hardship. The appeal is still pending before Commissioner (Appeals), and the appellant has rightly apprehended forced recovery of tax dues. Apparently the appellant was not at fault if the appeal was not decided by Commissioner (Appeals) within a reasonable time and the appellant is entitled to protect its right.

16. Keeping in view the fact that the appeal is still pending before the Commissioner (Appeals) therefore it would be appropriate to provide a fair chance to the appellant to get its appeal decided on merits. Thus this appeal is allowed and stay against recovery of tax dues is granted till decision of First Appeal. The Commissioner (Appeals) is directed to decide the appeal expeditiously without allowing unnecessary adjournments. However in case the appeal is decided against the appellant further seven days-time is allowed to it after the service of appellate order to avail any remedy under the law.

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17. The appeal and stay application is disposed of in the above terms. The copy of this order may be provided to the learned representatives of the parties.

  
(Imtiaz Ahmed Barakzai)  
TECHNICAL MEMBER

  
(Justice® Nadeem Azhar Siddiqi)  
CHAIRMAN  
Certified to be True Copy

Karachi:

Dated: 17.08.2022

Copy Supplied for compliance:

- 1) The Appellant through Authorized Representative.
- 2) The Commissioner (Appeals), SRB.
- 3) The Assistant Commissioner, (Unit-20), SRB, for compliance.

Copy for information to:-

- 4) Office Copy.
- 5) Guard File.

  
REGISTRAR  
APPELLATE TRIBUNAL  
SINDH REVENUE BOARD

Order issued on 19/08/2022

  
Registrar

Order Dispatched on 19/08/2022

  
Registrar