

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD, AT KARACHI

DB-I

APPEAL NO. AT-78/2022

M/s PGP Consortium Limited

(SNTN: 77249907-2), 1st Floor,

Associated House 7, Egerton Road,

Lahore.....Appellant

Versus

The Assistant Commissioner (Unit-32)

Sindh Revenue Board, (SRB),

2nd Floor, Shaheen Complex,

M.R. Kiyani Road, Karachi.Respondent

Date of filing of Appeal: 20.06.2022


Date of hearing: 15.08.2022

Date of Order: 26.08.2022

Mr. Shahid Hussain, Advocate for the appellant.

Mr. Irfan Waheed, AC, SRB (Unit-32), SRB Karachi send adjournment application.

ORDER


Justice [©] Nadeem Azhar Siddiqi: This appeal has been filed by the appellant challenging the Order-in-Appeal (hereinafter referred to as the OIA) No. 51/2022 dated 22.04.2022 passed by the Commissioner (Appeals) in Appeal No. 111/2022 filed by the appellant against the order of suspension of registration under section 25(3) of the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) dated 25th January, 2022 passed by Mr. Abdul Muhaimin, Assistant Commissioner, (Unit-32) SRB Karachi.





02. The facts as stated in the OIO were that the appellant was registered with Sindh Revenue Board (SRB) on 31st January, 2017 in the service category of [Service provided or rendered by port operator and others] covered under Tariff Heading 9819.9090 of the Second Schedule to the Act chargeable to Sindh Sales Tax (SST) at the statutory rate of tax under section 3 read with section 8 of the Act read with rule 40 of the Sindh Sales Tax on services Rules, 2011 (hereinafter referred to as the Rules).

03. The allegations against the appellant in the OIO were that from the scrutiny of tax profile it was revealed that the appellant had failed to make payment of SST as required under section 9 and 17 of the Act read with the Rule pertaining to the tax periods from October 2021 to December 2021 despite service of various Notice by the SRB. It was further alleged that the appellant failed to e-file the SST returns (Form SST-03) as required under section 30 of the Act read with rule 12 of the Rules within the time limitation and the manner as prescribed under Rule for the tax periods from October 2021 to December 2021.

04. The appellant was served with a Show-Cause Notice (SCN) dated 23.12.2021 through which it was confronted that it had made non-payment of SST and had not filed SST returns for the tax periods August-2021 to November-2021 under section 25 (2) of the Act. The appellant was asked to discharge its legal obligation and to pay default surcharge under section 44 of the Act and e-file SST returns. In addition to the SCN the representative of the appellant was telephonically approached and requested to issue advisory to the appellant which was issued on 30.12.2021, but was not acted upon by the appellant.

05. It was also alleged in the OIO that the appellant had willfully and deliberately failed to pay SST of Rs.427,264,924/= for the tax periods from October-2021 to December-2021 and also had failed to e-file SST returns for the same period. Finally the Assessing Officer (AO) in exercise of powers conferred on him under section 25(3) of the Act read with SRB Circular

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No.02 of 2013 dated 08.02.2013 and rule 10 of the Rules passed the OIO suspending the registration of the appellant with immediate effect.

06. The appellant challenged the said OIO by filing appeal under section 57 (1) of the Act before Commissioner (Appeals), SRB who instead of hearing and deciding the appeal on merits disposed of the same on the basis of revocation order passed by the AO. The relevant portion of Order in Appeal (OIA) is reproduced as under:-

"...5) In pursuance of the Appellant's request for restoration of SST registration along-with payment plan and an undertaking submitted on 04.02.2022 and in compliance of interim order dated 31.01.2022 issued by the Hon'ble High Court, Sindh in C.P .NO.580 of 2022 filed by the appellant, the respondent issued an order for Revocation of Suspension dated 11.02.2022. Relevant portion of interim order is as under:

"To come up on 17.02.2022. However, in the interim period, the impugned notice dated 25-01-2022 against which appeal has been filed by the petitioner to remain suspend .Bank account of the petitioner attached by the respondents 2-4 should also be detached forthwith and no coercive action to be taken against the petitioner till the next date of hearing."



Para 13 of the aforementioned revocation order is reproduced as under:

" in the light of above undertaking submitted by taxpayer through their authorized representative and an interim order issued by HON'BLE Sindh High Court the suspension of the registered person is hereby revoked with an immediate effect"

6. In view of the fact legal position of the case as stated above I am of considered view that as the department revoked impugned order dated 25-01-2022, hence, the instant appeal has no legal standing and hereby disposed of accordingly".

Resultantly the instant appeal was filed before the Tribunal.

07. The learned representative of the appellant Mr. Shahid Hussain, Advocate for the appellant submitted as under:-

i. The suspension order was illegal and was passed in haste without providing proper right of hearing to the appellant.

ii. The OIA was passed without considering the merits of the appeal and the same was passed on the basis of revocation order issued by Officer-SRB on the basis of an interim order passed by the Honorable High Court in the Constitution Petition filed by the appellant.

iii. The revocation order was not a final order and was subject to outcome of the final order of the Honorable High Court to be passed in the Constitution Petition filed by the appellant.

iv. The pre-suspension letter No. SRB-COM II/AC-32/To/2021/54234 dated 23.12.21 issued by the AC contained different tax periods i.e. in para 2 (i) the periods were mentioned as August-2021 to November-2021 (which was incorrect as the compliance of August-2021 was already made) whereas, in the suspension order the periods contained were from October-2021 to December-2021.

v. The AC was inconclusive about the period of default and before suspending the registration had not ascertained the actual SST due. He suspended the registration on estimation making the suspension order as assumptive and presumptive.

vi. The suspension order was an attempt to destroy the business of the appellant without any cause and justification.

08. Mr. Irfan Waheed, AC-SRB had send adjournment application. However considering the fact that the appeal was not admitted and keeping in view its nature we have decided to hear the learned advocate for the appellant and to decide the appeal on merits.

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09. We have heard the learned advocate for the appellant and perused the record made available before us.

10. We have at the very outset asked the advocate for the appellant to explain how the appeal before the Commissioner (Appeals), SRB was maintainable against an order of suspension of registration passed under section 25 (3) of the Act. The advocate for the appellant submitted that section 57 of the Act provided for filing of appeal against the orders passed by the AO. He further submitted that due to suspension of registration the business of appellant had ceased thus the matter required immediate indulgence and for that purpose the appeal was filed before Commissioner (Appeals) on 28.01.2022. However since no interim order was passed till 30.01.2022 a Constitutional Petition was filed before Honorable High Court of Sindh on 31.01.2022 which was taken up on same day and interim order was passed.

11. We have carefully examined sub-section (1) of section 57 of the Act which provided as under:-



57. Appeals: (1) Any person, other than the Board or any of its officers, aggrieved by any decision or order passed under sections 1[22, 23, 2[or 24] or under sub-section (5) of section 25 or under sections] 3[25A, 43], 44, 47, 68 or 76] by an officer of the SRB may, within thirty days of the date of receipt of such decision or order, prefer an appeal to the Commissioner (Appeals) SRB.

12. It is evident from the perusal of the above provision that only one appeal was provided against the order passed under sub-section (5) of section 25 of the Act. Moreover no appeal was provided against the order passed under sub-section (3) of section 25 of the Act under which the suspension order was passed which was apparently an interim order and a final order was to be passed under sub-section (5) of section 25 of the Act after expiry of sixty days of the order passed under sub-section (3) of section 25 of the Act.

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13. The Commissioner (Appeals) has not apparently gone through sub-section (1) of section 57 of the Act and has erroneously entertained an appeal filed against the suspension order, which was an interim order passed under sub-section (3) of section 57 of the Act, against which no appeal was provided under law.

14. The contention of the advocate for the appellant has force that the order passed by the Honorable High Court was an interim order and was subject to final outcome of the petition. The Honorable High Court may confirm the stay order or may recall the same. The Officer-SRB under section 25 has no power to revoke the suspension order. The revocation order passed on the basis of the interim order of the Honorable High Court was also an interim order subject to the final order passed in the Constitutional Petition filed by the appellant. In case the interim order is recalled or petition is dismissed the revocation order will also lose its value.

15. The Officer-SRB has no jurisdiction to revoke the suspension Order. However, the Officer-SRB after suspending the registration at any time within sixty days of the suspension order may withdraw the suspension order if it is satisfied with the remedial actions taken by the appellant as provided under sub-section (4) of section 25 of the Act.

16. The appellant instead of taking remedial actions had not only filed the appeal before Commissioner (Appeals) but also filed the Constitutional Petition before the Honorable High Court.

17. An appeal is a process by which a judgment/order of a subordinate court is challenged before its superior court. A party to a case does not have any inherent right to challenge the judgment/order of a Court before its superior court unless provided by law. A person aggrieved by any judgment/order is not entitled as of a right to file appeal unless conferred by statute. In the reported case of Chairman, Central Board Of Revenue versus M/s Pak Saudi Fertilizer Limited, 2001 SCMR 777 it was held as under:-

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"The right of appeal is a creature of statute and there can be no right of appeal unless it is conferred by the statute. Perusal of section 129 of the Ordinance, 1979 would show that the Legislature has purposely not mentioned section 53 of the Ordinance, 1979 in respect of payment of advance income-tax so as not to make it appealable".

18. The above decision squarely applies to the provisions of the Act and the instant appeal. The Legislature purposely ignores the order passed under sub-section (3) of section 25 of the Act since the same was not included under subsection (1) of section 57 of the Act.

19. The Commissioner (Appeals), SRB could not hear the appeals filed against the suspension order passed under sub-section (3) of section 25 of the Act unless provided by relevant statute. The jurisdiction to hear appeal could not be conferred by consent of the parties. This view gains support of the reported case of Muhammad Ramzan versus Member (Rev), 1997 SCMR 1635 in which it was held as under:-



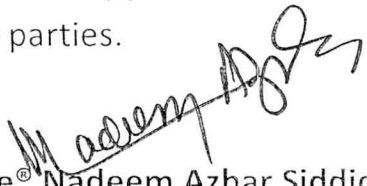
26.....It is indeed well settled that consent can neither vest nor taken away jurisdiction which otherwise did not vest in any authority or forum". Reference, however, be made to the observations in the cases reported in PLD 1983 SC 243, (Sultan Ali v. Khushi Muhammad), 1983 PCr.L.J. 682, (Azad Jammu and Kashmir Government through Chief Secretary and 4 others v. Sardar Muhammad Ibrahim Khan) and 1980 SCMR 469 (Shahul Hamid v. Tahir Ali).

20. In view of the above discussions we hold that the appeal filed before the Commissioner (Appeals) by the appellant was not maintainable. The Commissioner (Appeals) instead of returning the appeal has erroneously entertained the same and passed the OIA on the basis of revocation order issued by Officer-SRB on the basis of interim order passed by the Honorable High Court. Resultantly the appeal filed before us, arising from an OIA, which was not maintainable is also not maintainable. Therefore the same is returned to the appellant for taking appropriate remedy available to it under law.

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21. The appeal is disposed of accordingly. The copy of the order may be provided to the learned representative of the parties.


(Imtiaz Ahmed Barakzai)
TECHNICAL MEMBER


(Justice[®] Nadeem Azhar Siddiqi)
CHAIRMAN

Karachi:

Dated:26.08.2022

Copy Supplied for compliance:

- 1) The Appellant through Authorized Representative.
- 2) The Assistant Commissioner, (Unit-32), 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 26/08/2022

Order Dispatched on 26/08/2022

Registrar

Registrar