

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD, AT KARACHI

DB-1

APPEAL NO. AT-86/2022

M/s Optiserve (Pvt.) Limited, (SNTN: S2886436-7)  
Suit No. 402, 4<sup>th</sup> Floor, Green Trust Tower,  
Jinnah Avenue, Islamabad..... Appellant

Versus

Deputy Commissioner (Unit-01),  
Sindh Revenue Board (SRB)  
2<sup>nd</sup> Floor, Shaheen Complex,  
M.R. Kiyani Road, Karachi.....Respondent

Date of filing of Appeal: 23.06.2022  
Date of hearing: 01.07.2022  
Date of Order: 18.07.2022

Mr. Nadeem Hussain Jatui, Advocate for appellant.

Ms. Ambreen Fatima, DC-(Unit-01), SRB Karachi.



ORDER

Justice (R) Nadeem Azhar Siddiqi. This appeal has been filed by the appellant challenging the Order of Commissioner (Appeals) by which the stay was not extended under section 58 (4) of the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act).

02. The facts of the case are that Assessing Officer (AO) passed order-in-original No. 553/2021 dated 01.11.2021 determining SST of Rs.22,243,160/= which was challenged before Commissioner (Appeals) by way of filing Appeal No. 174/2021 along with an application for stay. The Commissioner (Appeals) vide Notice dated 26.11.2021 informed the appellant that the appeal was admitted and was fixed for hearing on 01.01.2022 and stay was granted till 31.12.2021.

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*Justice Nadeem Azhar Siddiqi*

03. The appellant on receipt of Recovery Notice dated 21.06.2022 approached Commissioner (Appeals) vide application dated 22.06.2022 for extension of stay till the decision of the appeal or passing of a refusal order so that it could approach the Tribunal. The appeal was statedly fixed on 23.06.2022 and on such date the Commissioner (Appeals) was not available since he was suffering from COVID-19, and thus the instant appeal was filed before the Tribunal on 23.06.2022 for obtaining stay from it.

04. The learned advocate for the appellant Mr. Nadeem Hussain Jatoi, submitted as under:-

i) The stay was granted till 31.12.2021 and thereafter the appellant on 22.06.2022 applied to Commissioner (Appeals) for extension of stay which was fixed on 23.06.2022. Such plea could not be heard due to non-availability of Commissioner (Appeals) and the appeal was adjourned without fixing any date resultantly the appellant had filed the instant appeal.

ii) The appeal is still pending before Commissioner (Appeals) and enforcing recovery without hearing by an independent forum is against the principles of natural justice, due process of law, fair play and right to fair trial.

iii) The department had issued recovery notice dated 21.06.2022 for attachment of bank account and in case the bank account was attached the appellant would not be able to carry out its day to day business activities which would cause loss of business and reputation.

iv) The appellant has no other remedy available in law except to approach the Tribunal for stay of recovery proceedings.

v) The appellant had provided taxable services in other jurisdictions also and such fact was not taken into consideration while passing the OIO.

vi) The appellant was not liable to pay huge amount of SST determined by the AO without properly reconciling the due tax amount.

05. The learned DC-SRB Ms. Ambreen Fatima submitted as under:-



- i) The appellant after obtaining the stay order failed to appear and proceed with the appeal, thus it could not blame others for its fault and negligence.
- ii) The stay order was vacated by operation of law after 120 days on 30.04.2022 and the Commissioner (Appeals) has no jurisdiction to grant stay beyond 120 days.
- iii) No amount was recovered from the attachment of bank accounts as no amount was available in such accounts.
- iv) The client of the appellant M/s Link dot Net Telecom Limited also informed that no balance of appellant was available with it.
- v) The appellant failed to provide details and documents in support of its contention that the taxable services were also provided in other jurisdictions.

The appeal may be sent back to Commissioner (Appeals) with the direction to the appellant to provide necessary details and documents in support of its contention and to proceed with the appeal without obtaining adjournments.

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

07. This appeal has been filed challenging the order of Commissioner (Appeals) for not extending the stay beyond 120 days. Therefore the merits of the OIO have not been considered in this appeal.

08. The instant case appears to be of hardship. The appeal is still pending before Commissioner (Appeals) who is on sick leave and during the pendency of appeal the statutory period for grant of stay by the Commissioner (Appeals) has lapsed. The appeal was not decided within a reasonable time and the appellant is entitled to protect its right. The Commissioner (Appeals) should decide appeals within a reasonable time in which the stay was granted by him to avoid such situation. However leaving the taxpayer on the mercy of the department and taking coercive action against the tax payer during pendency of appeal is highly objectionable and cannot be approved. We find substance in arguments of the learned representative of the appellant that forced recovery without determination





of the dispute by an independent forum (Tribunal) is against the principles of natural justice, due process of law, fair play and right to fair trial as ordained in the Constitution of Pakistan. The tax payer should not be deprived from its usual right to approach an independent forum for redressal of its grievances and all orders passed by the authorities including vacation of stay should be provided to them without delay.

09. We deem it appropriate to point out that obtaining certified true copy of all orders including order of vacation of stay order is the right of the parties and they could not be denied or deprived from the same on any ground. If the Commissioner (Appeals-I) was not available the appeal should be placed before the Commissioner (Appeals-II) for appropriate order. It is also appropriate for the competent authority to issue direction/instruction to the Commissioner (Appeals) available that he should attend the urgent matters/appeals of the Commissioner (Appeals) who is not available due to any reason.

10. In Appeal No. AT-13/2022, M/s Sindh Bank Limited versus Assistant Commissioner, SRB we had directed as under:-



*"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."*

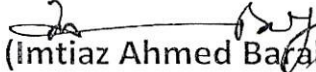
11. In view of our above instructions and since the appeal is still pending with Commissioner (Appeals-I) who is on leave it appears appropriate that the appeal should be heard by Commissioner (Appeals-II), SRB. The appeal should be decided within 30 days from the receipt of copy of this order, and for such period the Department is restrained from taking any coercive measures against the appellant for recovery of tax dues. The Commissioner (Appeals-II) should take up this matter expeditiously without granting unnecessary adjournments to both the parties. However in case the

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*[Handwritten signature]*

appellant or its representative fails to appear the appeal should be decided in their absence on merits.

12. The appeal is disposed of in terms of para 11 above. The copy of the order may be provided to the learned representatives of the parties and to the Learned Chairman, SRB for enforcing the directions of this Tribunal in letter and spirit.

  
(Imtiaz Ahmed Barakzai)  
TECHNICAL MEMBER

  
(Justice Nadeem Azhar Siddiqi)  
CHAIRMAN

Certified to be True Copy

Karachi:

Dated: 18.07..2022

Copy Supplied for compliance:

- 1) The Appellant through Authorized Representative.
- 2) The Deputy Commissioner, (Unit-01), SRB, for compliance

Copy for information and compliance to:-

- 3) The Learned Chairman, SRB, Karachi
- 4) The Commissioner (Appeals-I), SRB, Karachi.
- 5) The Commissioner (Appeals-II), SRB, Karachi.
- 6) Office Copy.
- 7) Guard File.

  
REGISTRAR  
APPELLATE TRIBUNAL  
SINDH REVENUE BOARD

Order Issued on

19/07/2022  


Registrar

Order Dispatched on

19/07/2022  


Registrar