

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD, AT KARACHI

APPEAL NO. AT-22/2023

M/s VIS Credit Rating Agency Limited,
(SNTN: 2125048-7)
VIS House, 128/C, Jami Commercial,
Street No.14, Phase-VII, DHA, Karachi. Appellant

Versus

The Assistant Commissioner (Unit-12),
Sindh Revenue Board, (SRB),
2nd Floor, Shaheen Complex,
M.R. Kayani Road
Karachi..... Respondent

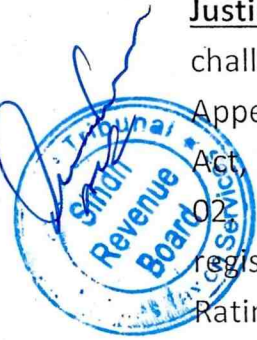
Date of filing of Appeal: 21.02.2023
Date of hearing: 13.03.2023
Date of Order: 27.03.2023

Mr. Qazi Zeeshan Akbar, FCA for the appellant.
Mr. Shareef Malik, DC-DR, SRB along-with Ms. Sania Anwer, DC-SRB for the respondent.

ORDER

Justice[®] Nadeem Azhar Siddiqi: This appeal has been filed by the appellant challenging the Order dated 15.02.2023 passed by the Commissioner (Appeals) in Appeal No. No.43/2022 under section 58 (4) of the Sindh Sales Tax on Services Act, 2011 refusing to extend the stay beyond sixty days.

The brief facts of the case as stated in the OIO were that the appellant was registered with Sindh Revenue Board (SRB) under the service category of "Credit Rating Agency (tariff heading 9818.2000)" of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter to be referred as of the Act).



03. It was alleged in the OIO that during the scrutiny of the annual audited accounts available with SRB for the tax periods July-2015 to June-2020 revealed that the appellant has provided credit rating service which was covered under Tariff Heading 9818.2000 (Services provided or rendered in respect of Credit Rating Agency). It was further alleged that the Annexure-C of Sindh Sales Tax Returns (Form SST-03) submitted by the appellant showed that the appellant has short paid the Sindh Sales Tax (SST) of Rs.17,904,959/=.

04. The Assessing Officer (AO) after issuing Show-Cause Notice (SCN) Dated 21.10.2021 and after completing the required formalities passed the Order-in-Original No, (OIO) 1059/2021 dated 20.12.2021 determining the short paid SST at Rs. 17,904,959/=.

05. The appellant has challenged the said OIO by filing appeal before the Commissioner (Appeals) SRB, who initially granted stay in favour of the appellant. However, on expiry of sixty days invoking the provision of sub-section (4) of section 58 of the Act has vacated the stay, which order has been challenged in this appeal.

06. The learned representative of the appellant submitted as under:-

- i. The Commissioner (Appeals), SRB has vacated the stay by a non-speaking order.
- ii. The stay was vacated without considering that the delay in preparing reconciliation statement was on the part of the AC-SRB and the appellant was penalized for no fault on its part.
- iii. The AC-SRB Mr. Ghulam Mustafa has already submitted the reconciliation on 20.04.2022 but on taking charge the DC-SRB Ms. Sania Anwer has reopened the reconciliation. Copy of said Report is place on record.
- iv. The department had already recovered an amount of Rs.2,168,297/- by attachment of bank account and in case the stay is refused the department may take further coercive action.

07. The learned DC-SRB submitted as under:-

Mos

- i. The Commissioner (Appeals), SRB rightly invoked sub-section (4) of section 58 of the Act to vacate the stay as the Commissioner (Appeals), SRB Could not extends stay beyond sixty days.
- ii. The earlier reconciliation report submitted by the then AC was not factually correct and have some errors which requires re-examination and the said reconciliation is under process and same will be finalized before the next date of hearing fixed before the Commissioner (Appeals).
- iii. The DC-SRB has opposed the grant of stay on the ground that huge amount is involved and the appellant is not entitled for grant of stay.

08. I have heard the learned representatives of the parties and perused the record made available before us.

09. The Commissioner (Appeals), SRB vacated the stay invoking sub-section (4) of section 58 of the Act, which provided that the stay granted by Commissioner (appeals) shall remain operative for no more than sixty days.

10. This case appears to be a case of hardship. The appeal is still pending before Commissioner (Appeals) and during the pendency of appeal the statutory period for which the Commissioner (Appeals) can grant stay was lapsed. The appellant is not at fault if the appeal was not decided within a reasonable time and is entitled to protect its right. In the cases where stay was granted the Commissioner (Appeals) should decide the same within a reasonable time to avoid vacation of stay during pendency of appeal.

11. The taking of coercive action against the tax payer during pendency of appeal is highly objectionable and our superior courts have deprecated such practice. The department should avoid such coercive action against the tax payers during pendency of appeal in the interest of justice and fair play even if the stay is vacated.

12. The appellant is not at fault if the reconciliation statement was not finalized by the DC within a reasonable time and should not be penalized. Since the



KCS

appellant was not at fault it should not be deprived from its usual right to approach an independent forum for redresses of its grievances.

13. I have noticed that the department has already recovered an amount of Rs.2,168,297/= from the appellant. The Commissioner (Appeals), SRB before vacating the stay should asked the appellant to deposit 25% of the due tax for further extension of stay under the First Proviso to sub-section (1) of section 66 of the Act and by not doing this the Commissioner (Appeals), SRB has not acted fairly and justly and by vacating the stay has unnecessarily favour the department to recover the amount during the pendency of appeal before it.

14. The appeal before Commissioner (Appeals), SRB is still pending and the appellant is required protection from coercive recovery and required a fair chance to get its appeal decided on merits. The appellant is required to deposit a sum of Rs.2,519,267/= with SRB making the total deposit of Rs.4,687,564/= which is equivalent to 25% of the tax due. The amount should be deposited within one week from the date of receipt of this Order.

15. The DC is directed to expeditiously prepared the reconciliation statement and submit the same before Commissioner (Appeals) within fifteen days from the date of receipt of this order. The Commissioner (appeals) is also directed to expeditiously decide the appeal without granting unnecessary adjournments.

16. view of above, this appeal is allowed and stay against recovery of tax dues is granted subject to deposit of Rs.2,519,267/=. The appellant is required to deposit the amount within seven days from the date of receipt of this order.

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

Karachi: -

Dated: 27.03.2023

(Justice[®] Nadeem Azhar Siddiqi)

CHAIRMAN

Order Dispatched on

28-03-2023

Registrar

Order issued on

28-03-2023

Registrar

Certified to be True Copy

Page 4 of 5

REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Copy Supplied for compliance:

- 1) The Appellant through Authorized Representative.
- 2) The Deputy Commissioner, (Unit-12), SRB, for compliance

Copy for information to:-

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

