

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD, AT KARACHI
DB-I

APPEAL NO. AT-92/2023

M/s Telenor Pakistan (Pvt.) Limited

(SNTN: S2046004-3)

Plot No.55, River View Avenue Bock-B,

Gulberg Greens Islamabad.....Appellant

Versus

The Assistant Commissioner (Unit-01),

Sindh Revenue Board (SRB),

2nd Floor, Shaheen Complex,

M.R. Kayani Road, Karachi..... Respondent

Date of filing of appeal: 27.06.2023

Date of hearing: 13.09.2023

Date of Order: 14.09.2023

Mr. Arslan Siddiqi, ACMA for the appellant.

Mr. Shareef Malik, DC-DR, SRB and Mr. Yousuf Bukhari, DC-SRB for the respondent.

ORDER

Justice® **Nadeem Azhar Siddiqi.**

This appeal has been filed by the appellant challenging the Order dated 05.06.2023 passed by the Commissioner (Appeals) in Appeal No. 04/2023 under section 58 (4) of the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) wherein conditional stay was granted subject to deposit of 25% of the tax amount.

02. Brief facts of the case are that Assessing Officer (AO) passed Order-in-Original (OIO) No. 2740/2022 dated 22.11.2022 against the appellant determining the Sindh Sales Tax (SST) at Rs.27,466,007/- along-with penalty and default surcharge. The said OIO was challenged by the appellant before Commissioner (Appeals) by way of filing Appeal No. 04/2023 along-with application for grant of stay from recovery of tax dues. The stay was granted subject to deposit of 25% of the tax involved under the proviso to sub-section (1) of section 66 of the Act.

M. 27
h.

03. The allegation against the appellant in the Show Cause Notice (SCN) dated 13.12.2019 was that the appellant has claimed inadmissible input tax adjustment of Rs.27,466,007/-. The appellant filed Reply dated 10.01.2022 wherein it was stated that the appellant was discharging their due SST liabilities and details of alleged input tax were not provided in the SCN. The appellant also requested to provide details of tax period and invoices. It was also stated that the SCN was very general and casual, which does not fulfill the pre-requisite of SCN.



04. The appellant has challenged the above order of conditional stay before this forum by taking the following grounds, 'conditional stay'.

- i. The Commissioner (Appeals), SRB instead of passing the stay order on the basis of merit of the case has erroneously invoked first proviso to sub-section (1) of Section 66 of the Act.
- ii. The legislature has not imposed any condition under sub-section (4) of Section 58 of the Act and as such order for depositing 25% of tax amount for grant of stay is not legal and proper.
- iii. The conditional order of stay amounts to depriving the appellant from the protection provided under section 58 (4) of the Act.
- iv. The appeal is pending before the Commissioner (Appeals), SRB and the coercive recovery during the pendency of appeal without determination by an independent forum has been deprecated by the superior courts.

The appellant apprehends coercive action for recovery of tax on the part of the appellant and submitted that in case the stay is not granted the Department will attach their bank account causing monetary loss and loss of reputation.

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

- i. That huge amount of exchequer is involved and grant of stay amounts to jeopardizing public exchequer.
- ii. The order for grant of stay subject to deposit on 25% tax amount of was rightly passed to safeguard the interest of both the parties.
- iii. The Commissioner (Appeals) in appropriate cases can grant stay with condition.
- iv. The appellant has failed to make out a prima facie case in his favour for grant of stay.

06. We have heard the learned representatives of the parties and perused the record made available to us. This case appears to be a case of hardship. The appeal is still pending before Commissioner (Appeals) for want of hearing. The appellant has not deposited 25% of the amount of tax involved and filed this appeal. The appellant rightly apprehends coercive recovery on the part of SRB during the pendency of appeal before Commissioner (Appeals) if the stay is not granted.

07. The Commissioner (Appeals), SRB on the first date of hearing instead of passing the stay order and considering the merits of the appeal invoked first proviso to sub-section (1) of section 66 of the Act and advised the appellant to deposit of 25% of the amount of tax involved.

08. From the submissions of the parties it appears that factual and legal controversies are involved and require serious consideration. The Commissioner (Appeals) is yet to resolve the issue of disallowance of input tax adjustment and pass an order accordingly.

09. The appeal is still pending and fixed for hearing. The passing of the conditional stay order on the first day of hearing without considering the merits of the appeal was apparently a harsh order. The legislature has not provided any condition under sub-section (4) of section 58 of the Act. However, in appropriate case the first proviso to sub-section (1) of section 66 of the Act can be invoked.

10. This appeal is only against the conditional stay order and no purpose will be served in keeping the same pending for long time. We therefore, to foster cause of justice reduced the deposit of tax from 25% to 10% of the principal tax amount and the appellant has deposited the said amount with SRB. The stay against recovery of tax dues is granted for a period of forty five days from today. The Commissioner (Appeals) will decide the appeal within that period and in case the appeal is decided against the appellant further seven days-time will be allowed to the appellant to avail legal remedy available under law. In case the Commissioner (Appeals) fails to decide the appeal within forty five days the Department will not take any coercive measure against the appellant. The time will start from the date of receipt of this order.

11. The Commissioner (Appeals), SRB is directed to expeditiously proceed with the appeal and to decide the same within next forty five days from the date of this

order without allowing unnecessary adjournments to the parties. The parties are directed to cooperate with the Commissioner (Appeals) in bringing the case to a just conclusion.

12. The appeal is disposed of in the above manner. A copy of this order may be provided to the learned representatives of the rival parties.


(Syed Tahir Raza Zaidi)
Member Technical


(Justice® Nadeem Azhar Siddiqi)
CHAIRMAN

Karachi

Dated: 14.09.2023

Copy for compliance:-

1. The Assistant Commissioner, (Unit-01), SRB, Karachi.
 2. The respondent through Authorized Representative.
- Copy for information to:-
3. The Commissioner (Appeals-I), SRB, Karachi.
 4. Office Copy.
 5. Guard File.


Certified to be True Copy
19-09-2023
REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Order Issued on

19-09-2023


Registrar

Order Dispatched on

19-09-2023


Registrar