

**33rd KTBA CASE LAW UPDATE
(March 04, 2024)**

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Dear Members,

A brief update on a recent judgment by the Appellate Tribunal, Sindh Revenue Board on **“Extension of Stay Over 120 Days is Permitted Discontinuing Stay During Pending Appeal, Only Facilitates Illegal Coercive Recovery”** is being shared with you for your knowledge. The order has been attached herewith the update.

This update is in line with the efforts undertaken by our **“CASE LAW UPDATE COMMITTEE”** to apprise our Bar members with important court decisions.

You are equally encouraged to share any important case law, which you feel that should be disseminated for the good of all members.

You may contact the Committee Convener Mr. Shams Ansari or at the Bar’s numbers 021-99212222, 99211792 or email at info@karachitaxbar.com & ktba01@gmail.com

(Syed Zafar Ahmed)
President

(M. Mehmood Bikiya)
Hon. General Secretary

33rd KTBA CASE LAW UPDATE

(March 04, 2024)

Extension of Stay Over 120 Days is Permitted Discontinuing Stay During Pending Appeal, Only Facilitates Illegal Coercive Recovery

Authority: Appellate Tribunal, Sindh Revenue Board, Karachi

Appellant: Falcon – I (Private) Limited

Section: Section: Section 57(1) & 58(4) of the Sindh Sales Tax on Services Act, 2011.

Detailed judgment was issued on February, 02 2024 [(Appeal No. 25/2024)].

BACKGROUND: The appellant, registered under 'Vehicle tracking and other tracking services', filed an appeal with a stay application against an alleged sales tax short payment. At the Commissioner (Appeals) level, the extension in stay was denied citing lack of progress on reconciliation. The appellant appealed to the Tribunal, which allowed the appeal based on the principle that no recovery should occur during the first appeal's pendency.

Decision of the Court:

First Ruling of the Court: The appeal remains pending before the Commissioner SRB (Appeals) due to a missing reconciliation report from the concerned AC – SRB. The taxpayer or his counsel bears no responsibility on this account. Since the appellant isn't accountable for the appeal's delay, discontinuing the stay only to facilitate coercive recovery by the Department is unjustified. Rejecting the stay via a non-speaking order is also legally objectionable and holds no validity.

Second Ruling of the Court:

The Tribunal has expressed its dissatisfaction that the rejection of stay by the Commissioner (Appeals) is perplexing given the prior order dated 19-01-2023, where the stay was extended for 120 days in Appeal No. 71/2023, M/s Megatech Trackers vs. AC – SRB. Moreover, other orders of the tribunal, notably in Appeal No. AT-162/2023, M/s National Highway Authority vs. AC – SRB Unit 24A, granting stays beyond 120 days, was disregarded. Ruling of the Islamabad High Court in M/s Dowell Schlumberger vs. Federation of Pakistan, 2016 PTD 1702, which deemed the time specified in section 131(5) of the Income Tax Ordinance, 2001 as directory and allowed the continuation of stay until appeal disposal unless expressly recalled, was also overlooked.

Third Ruling of the Court:

It has also been observed by the Tribunal that the provisions of section 131(5) of the Income Tax Ordinance, 2001, which is similar to Section 58(4) of the SST Act, allow for the continuation of stay for a specified period. Since, the Commissioner (Appeals) decision to vacate the stay disregards the previous orders, tribunal rulings, and judgments from the Islamabad High Court the same has resulted in lack of consistency, which is concerning. The Chairman and SRB Board should address this issue. This conduct wastes time, energy, and departmental resources, affecting both the department and taxpayers.

Conclusion:

The appellant's appeal was granted, and the SRB is prohibited from coercively recovering tax dues from the appellant until the Commissioner (Appeals) makes a decision on the appeal. However, the appellant was asked to deposit 10% of the principal tax amount within fifteen days from the Tribunal's order failing which would result in the vacation of the stay without further notice.

Comments: This order from the Appellate Tribunal - SRB serves as a check on the inconsistency often witnessed in decisions from the first appellate forum. By granting the appellant's appeal and restraining the SRB from coercive tax recovery till issuance of the order by the Commissioner (Appeals), the Tribunal has reinforced the principle of fairness in tax proceedings.

DISCLAIMER:

This update has been prepared for KTBA members and carries a brief narrative on a detailed Judgment and does not contain an opinion of the Bar, in any manner or sort. It is therefore, suggested that the judgment alone should be relied upon. Any reliance on the summary in any proceedings would not be binding on KTBA.

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Best regards

(Syed Zafar Ahmed)
President

(M. Mehmood Bikiya)
Hon. General Secretary

(Shams M. Ansari)
Convener: Case Law Update Committee

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD, AT
KARACHI
APPEAL NO. AT-25/2024

M/s Falcon-I (Pvt.) Limited
(SNTN: S2868087-1)
Corporate Head Quarters, 10-B,
Lalazar, M.T. Khan Road, Karachi..... Appellant

Versus

The Assistant Commissioner (Unit-01), SRB
Sindh Revenue Board, 2nd Floor,
Shaheen Complex, M.R. Kayani Road
Karachi..... Respondent

Date of filing of appeal: 30.01.2024

Date of hearing: 06.02.2024

Date of Order: 06.02.2024

Mr. Anwar Kashif Mumtaz, Advocate along-with Mr. Wasif Iqbal, ITP for the appellant.

Mr. Imran Ali, AC-SRB for the respondent.

ORDER

Justice® Nadeem Azhar Siddiqi. This appeal has been filed by the appellant challenging the Order dated 22.01.2024 passed by the Commissioner (Appeals) in Appeal No. 411/2023 under section 58 (4) of the Sindh Sales Tax on Services Act, 2011 refusing to extend the stay beyond (60) sixty days.

02. The facts as disclosed in the Show Cause Notice (SCN) are that the appellant having SNTN # 2868087-1, is registered with the Sindh Revenue Board (SRB) as a service provider of Telecommunications under the services category of "Vehicle tracking and other tracking services" falling under Tariff Heading 9812.8100 of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (Hereinafter referred to as the Act) chargeable to Sindh Sales Tax (SST) at the applicable rates.

03. It was alleged in the SCN that during examination/scrutiny of monthly SST returns filed with SRB by the appellant for the tax periods from January-2015 to June-2016 alongwith reconciliation with annual audited accounts of the appellant for the year ended June-2016 and 2015, it was observed that the appellant has not discharged due SST liability and has made short payment of Rs.110,706,658/-.

04. The appellant was served with a SCN dated 21.12.2022 under section 23(1) read with section 47(1A) of the Act to explain as to why SST of Rs.110,706,658/- should not be assessed, alongwith default surcharge under section 44 of the Act. The appellant was also called upon to explain as to why penalties under serial No.3 and 6(d) of the Table section 43 of the Act should not be imposed.

05. The Assessing Officer (AO) determined the SST at Rs.110,706,658/- to be recovered alongwith default surcharge under section 44 of the Act. The AO also imposed penalty of Rs.5,535,332/- under serial No.3 of the table under section 43 of the Act, 2011.

06. The appellant challenged the said OIO by filing appeal under section 57 (1) of the Act before Commissioner (Appeals), SRB and also filed an application under section 58 (4) of the Act for stay of recovery of SST, which was granted on 11.09.2023.

07. The appellant vide letter dated 15.01.2024 requested for extension of stay which was refused on 22.01.2024 on the pretext that the 'progress on reconciliation is still not made'. The appellant challenged that Order in Appeal (OIA) before this forum.

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

i. The appeal filed by the appellant on 06.09.2023 is still pending and during the pendency of appeal the stay granted on 11.09.2023 was rejected by way of a non-speaking order passed on 22.01.2024.

ii. The learned AC was directed to reconcile the matter and the appellant was directed to provide record which was provided to the AC and the delay in finalization of appeal was due to non-submission of reconciliation report by the AC.

iii. The Commissioner (Appeals), SRB has rejected the stay ignoring the earlier order dated 19.01.2023 passed by Commissioner (Appeals), SRB in Appeal No. 71/2023 M/s Megatech Trackers versus AC, SRB vide which the stay was extended beyond 120 days, various orders of this Tribunal particularly in Appeal No. AT- 162/2023 National Highway Authority versus AC, SRB Unit 24A by which the stay was granted beyond 120 days and the orders of Islamabad High Court in the case of M/s Dowell Schlumberger versus Federation of Pakistan, PTD-2016 1702, in which it was held that the time specified in section 131 b(5) of the Income Tax Ordinance, 2001 was directory and therefore, if appeal was not decided within said period, stay would continue till disposal or decision of appeal unless expressly recalled by Appellate Tribunal Inland Revenue.



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

- i. The stay was rightly vacated in terms of sub section (4) of Section 58 the Act.
- ii. A huge amount of public exchequer is involved and grant of stay beyond 120 days was not within the domain of the Commissioner (Appeals), SRB Karachi.
- iii. The department in view of the pendency of appeal before the Commissioner (Appeals), SRB has not initiated any recovery proceedings.
- iv. The earlier order of the then Commissioner (Appeals), SRB in the case of Megatech Trackers was without jurisdiction and is not binding on the present Commissioner (Appeals), SRB.

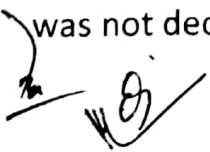
10. We have heard the learned representatives of the parties and perused the record made available before us.

11. The appeal is still pending before the Commissioner (Appeals), SRB for want of reconciliation report to be submitted by the concerned AC-SRB. Apparently, the appellant or its representative was in no way responsible for the delay in disposal of the appeal.

12. The vacation of stay by way of a non-speaking order is against the spirit of law and fundamental right of the taxpayer to protect from the coercive recovery during pendency of appeal. Hence it is consistent view of Superior Courts of Pakistan that initiating recovery proceedings during the pendency of appeal is not proper practice and coercive recovery should not be made unless the matter is decided by an independent forum.

13. In this matter since the appellant was not responsible for delay in disposal of appeal and stay should not be discontinued to give an edge to the Department to recover SST by way of coercive measure. The rejection of the stay by a non-speaking order is also highly objectionable and has no value in the eyes of law.

14. It is strange that the Commissioner (Appeals), SRB has rejected the stay ignoring the earlier order dated 19.01.2023 passed by then Commissioner (Appeals), SRB in Appeal No. 71/2023, M/s Megatech Trackers versus AC- SRB by which the stay was extended beyond 120 days. Various orders of this Tribunal more particularly in Appeal No. AT- 162/2023, M/s National Highway Authority versus AC-SRB Unit (24A) by which the stay was granted beyond 120 days and the orders of Islamabad High Court in the case of M/s Dowell Schlumberger versus Federation of Pakistan, PTD-2016 1702, in which it was held that the time specified in section 131 (5) of the income tax Ordinance, 2001 was directory and therefore, if appeal was not decided within said period, stay would continue till disposal or decision of



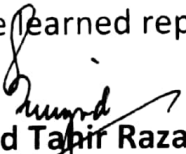
appeal unless expressly recalled by Appellate Tribunal Inland Revenue, were also ignored.

15. The provision of section 131 (5) of the Income Tax Ordinance, 2001 is similar to the provision of section 58 (4) of the Act. Both provisions provide for the continuance of stay for a specific period.

16. There should be consistency between the orders of Commissioner (Appeals), SRB and it is highly inappropriate and against propriety that Commissioner (Appeals), SRB passed orders for vacating of the stay in ignorance of the earlier order of then Commissioner (Appeals), SRB, the SRB, Appellate Tribunal and the above quoted judgment of the Islamabad, High Court.

17. The learned Chairman and SRB Board should take notice of the same that the Commissioner (Appeals), SRB by vacating the stay by nonspeaking orders and on flimsy grounds is not only wasting the time, energy and money of the department and others also. The Conduct of the Commissioner (Appeals), SRB is against the claim of SRB that it is a taxpayer friendly organization and is generating revenue for the people.

18. In view of the above discussions the appeal is allowed. The stay is granted and the department is restrained from taking any coercive measure against the appellant for recovery of tax dues till the disposal of appeal by the Commissioner (Appeals), SRB. However, this stay order is subject to deposit of 10% of the principal amount of tax by the appellant with SRB within fifteen days from the date of this order. Failing which the stay will stand vacated without any further notice. The appeal is disposed of in the above manner. The copy of this order may be provided to the learned representatives of the parties.


(Syed Tabir Raza Zaidi)
Member Technical


(Justice Nadeem Azhar Siddiqi)
CHAIRMAN

Karachi

Dated: 06.02.2024

Copy for compliance:-

1. The respondent through Authorized Representative of the appellant.
2. Assistant Commissioner (Unit-23), SRB Karachi.

Copy for information to:-

1. The Commissioner (Appeals-I), SRB, Karachi.
1. Office Copy.
1. Guard File.