

IN THE HIGH COURT OF SINDH, KARACHI

Special Sales Tax Reference Application No. 169 of 2018

Present: *Mr. Justice Muhammad Junaid Ghaffar*
Mr. Justice Mohammad Abdur Rahman,

Applicant: M/s. Dogma Security & Consultancy Services (Pvt) Ltd. Through Mr. Yousuf Ali, Advocate.

Respondent: The Commissioner-V, SRB, Hyderabad. through Mr. Fahad Hussain Areejo, Advocate.

Date of hearing: 24.03.2025.

Date of Judgment: 24.03.2025.

J U D G M E N T

Muhammad Junaid Ghaffar, Acting Chief Justice: Through this Reference Application, the Applicant has impugned Order dated 16.05.2018 passed in Appeal No. AT-06/2018 by the Appellate Tribunal Sindh Revenue Board, at Karachi proposing various questions of law; however, on perusal of the Order-in-Original and as contended by the Applicant's Counsel, the same is time barred in terms of Section 23(4) of the Sindh Sales Tax on Service Act, 2011 inasmuch as the Show Cause Notice was issued on 21.04.2015; whereas, Order-in-Original was passed on 27.02.2016. The Tribunal has recorded its finding to this effect in paragraph-18 and has repelled the contention of the Applicant's Counsel in the following terms:-

"18. The first point raised by the appellant is that the order in original was passed beyond the time prescribed in subsection (3) of section 23 of the Act and the department cannot exclude more than thirty day time obtained through adjournments. The subsection (3) of section 23 of the Act provides that any order under subsection (1) shall be made within one hundred and twenty days of issuance of the show-cause notice or within such extended period as the officer of SRB may, for reasons to be recoded in writing, fix provided that such extended period shall in no case exceed sixty days. Subsection (4) of section 23 of the Act provides that in computing the period specified in sub section (3), any period during which the proceedings are adjourned on account of a stay order or proceedings under section 65 or the time taken through adjournment by the

person shall be excluded. Earlier subsection (4) of section 23 of the Act provides that a period of 30 days on account of adjournments can be excluded. The law was amended vide Sindh Finance Act 2014 Mate effective from 7th July, 2014 and the words "not exceeding thirty days" Sindh were omitted. The consequence of the amendment appears that now revenue board there is no limit for excluding time on account of adjournments. In this matter the show-cause notice was issued on 21.04.2015 and the order in original was passed on 27.02.2016 meaning thereby that the order was passed on 312th day from the show-cause notice. It is on record that appellant has obtained 132 days by way of extension/adjournments. If 132 days is deducted from 312 days the numbers of days left are 180. As far as the arguments of the learned advocate for the appellant that statute dealing with substantive law are prospective is concerned is correct. However in this case the law was amended before the issuance of the show cause notice and the proceedings has to be decided on the basis notice (commencement of action). In the reported case of Mian Rafiuddin versus Chief Settlement and Rehabilitation Commissioner PLD 1972 SC 252 at page 306 it was held that *"It is well settled that when the law is altered during the pendency of action, the rights of the parties are decided according to the law as it existed when the action was begun and not the law that existed at the date of judgment or order"*. In this case the law was not amended during the pendency of proceedings; therefore, the case was rightly decided according to the law as it existed when the action was begun. We hold that order in original was not time barred."

2. From perusal of the above observations, it appears that though the adjournments of 132 days sought by the Applicant have been excluded; however, the Tribunal has erred in observing that the period provided in Section 23(3) of the Act in question is 180 days. Prior to 2017 the period provided was 120 days and it could further be extended for 60 days for reasons to be recorded in writing. There is no extension of time so recorded in the Order-in-Original; and therefore, the finding of the Tribunal that the order has been passed within 180 days (120+60 days) is incorrect as apparently the Order-in-Original is time barred. If no extension has been specifically granted with reasons, then presumption would be that the time was never extended. Moreover, such extension must be allowed / granted before the time actually expires. There is nothing on record to suggest that any such extension was ever granted. Therefore, on the face of it the Order in Original has been passe beyond the stipulated period, whereas, such period has been held to be mandatory by the Hon'ble Supreme Court in the cases reported as ***The Collector of Sales Tax V. Super Asia Mohammad Din***

(2017 SCMR 1427), *Mujahid Soap & Chemical Industries (Pvt.) Ltd. V. Customs Appellate Tribunal* (2019 SCMR 1735) and *A.J. Traders V. Collector of Customs* (PLD 2022 SC 817).

3. In view of the above, the question that “***Whether the Order-in-Original was passed beyond the stipulated period as provided in section 23 of the Sindh Sales Tax on Services Act, 2011***” is answered in the affirmative. As a consequence thereof the impugned orders are set-aside and this Reference Application is ***allowed***.

4. Let copy of this order be issued to the Appellate Tribunal Sindh Revenue Board in terms of subsection (5) of Section 63 of the Sindh Sales Tax on Service Act, 2011.

ACTING CHIEF JUSTICE

J U D G E

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