



# Securities and Exchange Commission of Pakistan

## BEFORE APPELLATE BENCH NO. IV

In the matter of

Appeal No. 04 of 2016

Pakistan Tax Advisers Association

Appellant

Versus

The Deputy Registrar of Companies, C&CD, SECP

Respondent

Date of hearing:

16/03/16

Present:

For Appellant:

1. Mr. M. Amjad Khan, ASC
2. Mr. Javed Iqbal Qazi, Chairman
3. Mian Abdul Ghaffar, President, Advocate High Court
4. Kh. Riaz Hussain

For Respondent:

1. Mr. Mubasher Saeed Saddozai , Director C&CD
2. Syed Sajjad, Deputy Director C&CD

### ORDER

1. This order shall dispose of appeal No.04 of 2016 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the Act) against the decision dated 13/01/16 (the Impugned Decision) of the Respondent.
2. Brief facts of the case are that the Appellant applied for name of "Pakistan Tax Advisers Association" to the Respondent which was duly made available vide letter dated 03/09/13. Thereafter, the Appellant submitted an application u/s 42 of the Companies

Appellate Bench No. IV

Appeal No. 04 of 2016

Page 1 of 6



## Securities and Exchange Commission of Pakistan

Ordinance, 1984 (the Ordinance) to obtain license vide letter dated 18/03/14 however, the Appellant was advised vide letter dated 31/03/14 to seek Registration with Directorate General of Trade Organization, Ministry of Commerce Islamabad. In view of Respondent advice the Appellant submitted application to obtain registration under Trade Organizations Act, 2013 however, the Directorate General of Trade Organization rejected the application of Appellant with the observation that registration of proposed Pakistan Tax Advisers Association is beyond its jurisdiction. The Appellant once again submitted application before the Respondent for grant of license under section 42 of the Ordinance vide letter dated 15/10/15. The Respondent vide letter dated 30/12/15 sought comments of the Appellant with respect to existed Pakistan Tax Bar Association, which were provided vide letter dated 04/01/16, however being dissatisfied with the Response the Respondent rejected the application for grant of license u/s 42 of the Ordinance vide letter dated 13/01/16. Thereafter the Appellant filed two applications with the Respondent vide letters dated 16/01/16 and 21/01/16 for review of the matter which were responded through letter dated 10/02/16 wherein original decision was maintained. It is important to note here that the Appellant has not disclosed the fact related to filing of review applications in memorandum of appeal.

3. The Appellant being aggrieved with the Impugned Decision preferred an appeal on the following grounds:

- i. The Pakistan Tax Bar Association is neither registered with any government department/authority nor have the same objects as submitted by the Appellant.
- ii. The Tax Bar Association is illegal and legal proceedings have been initiated by the Punjab Bar Association against different Tax Bar Associations.
- iii. The All Pakistan Tax Bar Association was registered with Registrar of Societies Lahore in 1979 / 1980 and it was never renewed because audited accounts were never submitted to the Registrar of Societies. Thereafter the name of All Pakistan Tax bar Association was changed as Pakistan Tax bar Association and it was never registered with Registrar of Societies or Securities Exchange Commissioner of Pakistan.

Appellate Bench No. IV

Appeal No. 04 of 2016

Page 2 of 6



## Securities and Exchange Commission of Pakistan

- iv. After confirmation of the availability of name Pakistan Tax Advisers Association, the rejection decision of the Respondent is illegal and malafide.
  - v. The Pakistan Tax Advisers Association is practically contributing towards the betterment of taxation system in Pakistan and role of Appellant is well recognized by the Federal Board of Revenue. Furthermore, the president of the Appellant has also been recommended as a Member of the Advisory Council of the taxation Commission of Pakistan.
  - vi. The objects of the Appellant deals with individuals like Chartered Accountants, Advocates, Tax Practitioners and students whereas Pakistan Tax Bar Association has illegally affiliated different Tax Bars of the Country as its Members.
  - vii. That it is the duty of Securities Exchange Commission of Pakistan to grant license to such bodies who have taken availability of name and it should not protect other bodies which are not registered with SECP or any other government department/authority.
4. The Respondent has not rebutted the grounds of appeal specifically, however preliminary objections have been raised with regard to maintainability of appeal in the following manner:
- i. The instant appeal is not maintainable on the ground that the impugned letter does not qualify to be an order as per the provisions of section 22(3) of the Act.
  - ii. The impugned letter is merely an administrative action which is exempted under proviso to section 33 of the Act.
  - iii. A bare reading of the provisions of section 42(2) of the Ordinance makes it abundantly clear that the prerogative of granting a license under section 42 of the Ordinance rests with the Commission which may be granted subject to such conditions or regulations deems appropriate.
  - iv. In the instant matter since the license has not been granted therefore no right of the Appellant has accrued nor adjudicated upon which would require passing of an order as per the provisions of section 24-A of the General Clause Act, 1897.
  - v. The Appellant has filed letters dated 16/01/16 and 21/01/16 for review of the matter which were responded through letter dated 10/02/16.

Appellate Bench No. IV

Appeal No. 04 of 2016

Page 3 of 6



## Securities and Exchange Commission of Pakistan

vi. The Appellant has also exhausted his review forum, which also disqualifies the instant appeal as per the provisions of section 33 of the Act.

5. We have heard the parties i.e. Appellant and Respondent and perused the record of the appeal. It is admitted position of the parties that the name Pakistan Tax Advisers Association was initially allowed, however, subsequently the Appellant was denied the grant of licence under section 42 of the Ordinance. The Respondent has refused the grant of licence to the Appellant in the following manner;

“..... It has come to our knowledge that an association namely M/s Pakistan Tax Bar Association (though not registered with this Commission) is already in existence, with the objects similar to that of Pakistan Tax Advisers Association (Proposed Company), therefore we regret to inform you that the license to the proposed association/company cannot be granted.”

6. The Appellate Bench (the Bench) shall not address or adjudicate upon the facts related to the legal status of M/s Pakistan Tax Bar Association mentioned in grounds of appeal because such are not relevant facts for adjudication of the instant appeal.

7. The bare reading of the Impugned Decision makes it clear that the discretion has been used without application of judicious mind and it also lacks the substantial reasons. The Bench has no doubt to acknowledge that a licence is a privilege and not a legal right and issuance or refusal of a licence is discretion of licensor (in present case the Commission), however as per the settled principles of law a discretion cannot be exercised in an arbitrary or fanciful manner but law mandates its use judiciously in accordance with the settled norms of justice and equity. Therefore the refusal of licence to the Appellant on the basis of existence of society registered as Pakistan Tax Bar Association, which is neither licensed nor registered entity with the Commission, is not a valid reason or permitted use of discretion.

Appellate Bench No. IV

Appeal No. 04 of 2016

Page 4 of 6



## Securities and Exchange Commission of Pakistan

8. It is also important to note that the Appellant has categorically mentioned in its correspondence with the Respondent that its objects deals with individuals like Chartered Accounts, Advocates, Tax Practitioners and students whereas Pakistan Tax Bar Association has affiliated different Tax Bars of the Country as its Members, however the Respondent has not considered this fact while deciding the matter. The conduct of the Respondent reflects its failure to use discretion in a careful manner. .
9. The Respondent has raised some preliminary objections with respect to maintainability of the appeal, which needs consideration for just conclusion of the appeal. The Respondent has an argument that refusal of the licence was an administrative action which is exempted under proviso to section 33 of the Act and the impugned letter do not qualify to be an order as per the provisions of section 22(3) of the Act. The Respondent further argued that the Appellant has exhausted review remedy vide letters dated 16/01/16 and 21/01/16 which were responded through letter dated 10/02/16, therefore instant appeal as per the section 33 of the Act is not maintainable.
10. The first preliminary objection of the Respondent that the Impugned Decision cannot be assailed before the Bench due to proviso of section 33 of the Act is not sustainable because the referred proviso exempts an administrative direction whereas the instant case is not of direction rather the Respondent has denied grant of licence to the Appellant, which amounts conclusive determination of eligibility or rights of the concerned. Furthermore, an administrative direction implies only to do or refrain to do some act or instructions by an authority.
11. The Respondent in support of application of proviso of section 33 further argued that the impugned action do not qualify to be an order as per the provisions of section 22(3) of the Act. In our view the instant case should have been dealt under the section 22(3) of the Act, however the Respondent while deciding the application of the Appellant has not provided any opportunity of hearing, which is a gross violation of law on part of Respondent.
12. The last objection of the Respondent is valid because the Appellant has filed two review applications dated 16/01/16 and 21/01/16 for review of the matter which were entertained



## Securities and Exchange Commission of Pakistan

and responded by the Respondent through letter dated 10/02/16, however the Appellant has not disclosed this fact in memorandum of appeal. As the Appellant has already exhausted the remedy of review therefore due to express prohibition of proviso of section 33 of the Act the Bench has no jurisdiction to hear matter in hand. The instant appeal got registered because of concealment of fact by the Appellant. The Appeal has been filed by Mr. Javed Iqbal Qazi who solemnly declared in an affidavit that the contents of appeal are true to the best of his knowledge and belief and nothing has been concealed therein. Therefore, Mr. Javed Iqbal Qazi is directed to file unconditional apology to the Bench for the act of concealment regarding filing of review applications within seven day of this order, to avoid any legal consequences.

13. The Bench was initially inclined to grant relief as prayed for, however due to express bar of section 33 of the Act; the Bench is unable to grant desired relief. Therefore the Appellant is advised to approach the appropriate forum for grant of relief claimed in the instant appeal. In view of the aforementioned facts and circumstances, the appeal is dismissed being non-maintainable.

14. Parties to bear their own cost.

(Fida Hussain Samoo)  
Commissioner (Insurance)

(Zafar Abdullah)  
Commissioner (SCD)

Announced on: **05 APR 2016**