

ORDER SHEET  
**IN THE HIGH COURT OF SINDH AT KARACHI**

Suit Nos.1096 of 2017

DATE

ORDER WITH SIGNATURE OF JUDGE

1. For further orders (in view of Court's Order dated 08.02.2018).
2. For hearing of CMA No.6375/16 (U/O 39 Rule 1 & 2 CPC)

22.02.2018.

**Mr. Naeem Suleman & Arshad Hussain, Advocates for Plaintiffs in Suit No.942 & 974 of 2016.**

**Mr. Muhammad Mushtaq, Advocate for Plaintiffs in Suit Nos.2068 & 1123 of 2016.**

**Mr. Agha Imtiaz Ahmed, Advocate for Plaintiff in Suit No.1135/2016.**

**Mr. Ali Asghar, Advocate for Plaintiff in Suit No.1976/2016.**

**Mr. Abdul Raheem, Advocate for Plaintiff in Suit No.1877/2016.**

**Mr. Suneel Kumar Talreja, AAG alongwith Ms. Nigar Afaq, State Counsel.**

**Mr. Ghulam Murtaza, Advocate for SRB.**

1-2. In all these connected Suits, there is only one legal controversy i.e. as to *whether the renting of immovable property (by the landlord to a tenant) falls within the definition of providing or rendering services and/or falls under economic activity and consequently liable to Sales Tax on services under the Sindh Sales Tax on Services Act, 2011.*

On the last date of hearing, this Court was informed that such controversy has already been settled in a Constitution Petition bearing No.D-2421/2016 and other connect petitions **(Young's (Private) Limited and others v. Province of Sindh and others)** vide Judgment dated 18.08.2017 and it has been held that no Sales Tax is payable on renting of the immovable properties as it does not fall within the definition of rendering and or providing services.

Today through statement, a copy of such Judgment has been placed on record and the operating part of the same reads as under:-

“14. In the back drop of above discussion relating to the definitions of the term service as given in the Act, as well as in various Dictionaries as referred to hereinabove, we may now examine the effect and implication of the amendment introduced through Finance Act, 2015, while inserting Section 2(72C) i.e. renting of immovable property service. In the definition clause, as well as a new Tariff Heading 9806.3000 in the First Schedule as well as in Part-B of the Second Schedule to the Act. The term renting of immovable property services has been defined to mean any service provided or rendered to any person by another person, which shows an element of performing of an act, falling within the definition of service provided or rendered to any other person, by renting of an immoveable property as defined in Section 2(72B), or any other service in relation to such renting for use as offices or factories or in the course of furtherance of business and commerce. In order to bring such activity or service as defined in terms of sub-section 2(72C), within the tax net, it is necessary to examine as to whether such service is taxable service in terms of Section 3 of the Act or not. In terms of Section 3 of the Sindh Sales Tax on Services Act, 2011, taxable service has been defined as service listed in the Second Schedule to the Act, which is provided by a registered person from his registered office or place of business in Sindh in the course of an economic activity. Whereas, the term economic activity has been defined under Section 4 of the Act, which means any activity carried on by a person that involves or is intended to involve the provision of services to another person and includes, an activity carried on in the form of a business including a profession, calling trading or undertaking of any kind, whether or not the activity is undertaken for profit. The term economic activity as per definition also includes the supply of moveable property by way of lease, licence or similar arrangement, however, it is interesting to note that the supply of immovable property by way of lease, licence or similar arrangement has been excluded by the legislature from the purview of the definition of the term economic activity, which reflects upon the intention of the legislature to the effect that renting an immoveable property by itself has neither been considered as an economic activity under Section 4 of the Act, nor the same can be treated as a taxable service under Section 3 of the Act, to bring such renting of immovable property within the scope of tax in terms of Section 8 of the Sindh Sales Tax on Services Act, 2011. Mere renting of immoveable property by a landlord to a tenant for consideration (rent), does not involve any element of service, or taxable service or economic activity, as defined under the Sindh Sale Tax on Services Act, 2011, therefore, the intention of the respondents as chargeable to tax under Sindh Sales Tax on Services Act, 2011, have been issued without lawful authority. It is hereby declared that mere letting out of an immoveable property by the landlord to a tenant on rent for consideration does not involve any element of providing any taxable services, therefore, the amount of rent received by the landlord from the tenant cannot be subjected to tax, while invoking the provisions of Section 2(72C) read with Tariff Heading 9806.3000 of First Schedule and Part-B of the Second

Schedule to the Sindh Sales Tax on Services Act, 2011. Accordingly, above petitions are allowed in the aforesaid terms alongwith listed applications.”

Since the controversy stands decided by a learned Division Bench of this Court through the aforesaid judgment which is binding on this Court, whereas, no assistance has been provided on behalf of the Defendants as to whether the said judgment has been impugned before the Hon’ble Supreme Court and any order for its suspension or setting aside has been passed; in view of such position, the following Legal Issue in terms of Order 14 Rule 2 CPC is settled for adjudication:-

- i. Whether the renting of immovable properties by the landlord to a tenant falls within the definition of rendering and/or providing services or economic activity under the Sindh Sales Tax on Services Act, 2011 and is chargeable any Provincial Sales Tax?

And the issue is answered in negative and it is hereby declared that mere letting out of an immovable property by the landlord to a tenant on rent for consideration does not involve any element of providing any taxable services, therefore, the amount of rent received by the landlord from the tenant cannot be subjected to tax, while invoking the provisions of Section 2(72C) read with Tariff Heading 9806.3000 of First Schedule and Part-B of the Second Schedule to the Sindh Sales Tax on Services Act, 2011.

Consequently all listed Suits stand decreed as above.

J U D G E

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