

IN THE HIGH COURT OF SINDH, KARACHI

PRESENT:

Mr. Justice Aqeel Ahmed Abbasi
Justice Mrs. Rashida Asad

1. Const. Petition No.D-6442/2020
General Shipping Agencies (Pvt) Ltd.....Petitioner
2. Const. Petition No.D-6443/2020
Asia Marine (Pvt) Ltd.Petitioner
3. Const. Petition No.D-6444/2020
Hussain Trading Agencies (Pvt) Ltd.....Petitioner
4. Const. Petition No.D-6445/2020
Globelink Pakistan (Pvt) Ltd.Petitioner
5. Const. Petition No.D-6448/2020
Console Shipping Services Pakistan (Pvt) Ltd.....Petitioner

Versus

Province of Sindh and othersRespondents

Date of hearing : 26.01.2021

Date of Order : 26.01.2021

Mr. Ahmed Madni, advocate for the petitioners.

M/s. Shamshad Ahmed and Ghulam Murtaza Korai, advocates for the respondents.

Mr. Saifullah, AAG.

ORDER

Learned counsel for the petitioners at the very outset submits that the controversy agitated through instant petitions has already decided by a Divisional Bench of this Court in the case of ***Pakistan International Freight Forwarders Association through General Secretary Vs. Province of Sindh through Secretary and another (2017 PTD 1)***, therefore, these petitions may also be disposed of in the terms of declaration as recorded in paragraph 73 of the aforesaid judgment. Learned counsel for the respondents and learned Assistant Advocate General Sindh could not controvert above submissions, however, it has

been stated that Department has filed an appeal before the Hon'ble Supreme Court against the aforesaid judgment and leave has been granted and operation of the impugned judgment has been suspended.

2. Learned counsel for the petitioners however, submits that instant petitions may be disposed of in terms of the earlier judgment of this Court as referred to hereinabove irrespective of the fact that respondents have preferred appeal against the judgment of this Court, as according to learned counsel, a Divisional Bench of this Court, in similar petitions, has been pleased to pass orders to this effect. Learned counsel referred to hereinabove and has placed on record copy of order dated 22.10.2020 passed by this Court in **C.P.No.D-2518 of 2019 (Re: Shipco Transport Pakistan (Pvt) Ltd. v. Province of Sindh and others)** and several other petitions.

3. Accordingly, by consent, instant petitions are disposed of in the terms as contained in paragraph 73 of the aforesaid reported judgment, which read as follows:-

73. In light of the discussion and analysis undertaken in this judgment, the following declarations are made:

a. The provisions of the Federal Excise Act, 2005, insofar as they relate to the providing or rendering of services, were valid when enacted (01.07.2005) since at that time the exclusive power to impose a levy on the rendering or providing of services vested in the Federation alone. However, on account of the 18th Amendment to the Constitution (and in particular by reason of the addition of the "exception" to entry No. 49 of the Federal Legislative List), the said provisions are declared to be ultra vires the Constitution, with effect from 01.07.2011 in relation to the Province of Sindh.

b. It is declared that the Sindh Sales Tax Ordinance, 2000 was ultra vires the Constitution.

c. It is declared that on account of the 18th Amendment to the Constitution (which took effect from 19.10.2010) the Provinces alone have the legislative power to levy a tax on the rendering or providing of services, but this is subject to Article 270AA(7) of the Constitution (as substituted by the said Amendment), and by reason thereof the legislative competence has manifested in the Province of Sindh from

01.07.2011 onwards, the date on which the Sindh Sales Tax on Services Act, 2011 came into force.

d. Subject to sub-para (e) below, the Sindh Sales Tax on Services Act, 2011 is validly enacted and intra vires the Constitution.

e. The provisions of the Sindh Sales Tax on Services Act, 2011 as relate to shipping agents etc. (being clauses (47), (80), (82) and (89) of section 2 and headings Nos. 9805.1000, 9805.2000, 9805.2100 and 9805.3000 of the First and Second Schedules thereof) are ultra vires the Constitution, being a direct encroachment on the exclusive federal taxing power contained in entry No. 53 of the Federal Legislative List.

Petitions stand disposed of in the above terms along with listed applications.

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