

IN THE HIGH COURT OF SINDH, KARACHI

Const. Petition Nos.D-2421/2016 a/w 4524/2015, 1070, 1585,  
2247, 2687 & 3462 of 2016, 2167, 2532 & 2800 of 2017

Present

Mr. Justice Aqeel Ahmed Abbasi

Mr. Justice Nazar Akbar

Young's (Private) limited and others.....Petitioners

Versus

Province of Sindh and others ..... Respondents

Date of hearing : 08.05.2017

Date of judgment : 18.08.2017

Mr. Aminuddin Ansari, advocate for the petitioners.

Mr. Khalid Javed Khan, advocate for petitioner in C.P.No.D-2167 of 2017.

Mr. Amjad Jawaid Hashmi, advocate for petitioner in C.P.No.D-3462/2016.

Mr. Muhammad Younus, advocate for the petitioner.

Mr. Taimur Ali Mirza, advocate for the petitioner in C.P.No.D-2800/2017.

Mr. Farooq H. Naek, advocate for respondent No.2 in C.P.No.D-2167/2017.

Mr. Mohsin Qadir Shahwani, advocate for the respondent in C.P.Nos.4524 of 15, 1070, 2687 and 3462 of 2016.

Mr. Muhammad Najeeb Jamali, advocate for the respondent in C.P.Nos.1585 & 2421 of 2016.

Mr. Muhammad Sarfaraz Ali Metlo, advocate for the respondent.

Mr. Saifullah, AAG

Mr. Mir Hussain, Assistant Attorney General.

Syed Zainul Abdin, Deputy Commissioner (Legal), SRB.

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J U D G M E N T

Aqeel Ahmed Abbasi, J: Since a common controversy has been agitated in the aforesaid petitions by the petitioners, who have challenged the levy of Sindh

Sales Tax at the rate of 6% on **renting of immovable property services** in terms of Section 2 (72C) read with Tariff Heading 9806.3000 of the Sindh Sales Tax on Services Act, 2011, for being ultra-vires to the Constitution of Islamic Republic of Pakistan, 1973, whereas, alternatively it has been prayed that provisions of Section 2 (72C) read with Tariff Heading 9806.3000 may be **read down** and interpreted to mean that renting of immovable property itself is not a taxable service under Sindh Sales Tax on Services Act, 2011, therefore, the aforesaid petitions, by consent of learned counsel for the parties, are heard and disposed of through this common judgment.

2. Instant petitions have been filed by the landlords as well as the tenants of various immovable properties, which have been let-out on rent, whereas, Notices have been issued to the petitioners by the Commissioner, Sindh Revenue Board, whereby, petitioners have been required to pay 6% sales tax on renting of immovable property services in terms of Section 2 (72C) read with Tariff Heading “**9806.3000**” pursuant to amendment through Sindh Finance Act, 2015. Petitioners being aggrieved by proposed treatment to renting of immovable property and charging of sales tax under the Sindh Sales Tax on Services Act, 2011, have approached this Court under Article 199 of the Constitution seeking a declaration to the effect that renting of immovable property does not involve any element of providing taxable services, therefore, the same cannot be brought within the tax net under the Sindh Sales Tax on Services Act, 2011.

3. Mr. Aminuddin Ansari, learned counsel for the petitioners while leading the arguments on behalf of the petitioners, has vehemently argued that imposition of 6% sales tax by virtue of amendment through Finance Act, 2015, while inserting clause 72(B) and 72(C) under Section 2 of the Act, and Tariff Heading “**9806.3000**” is ultra-vires to the Constitution as well as to the Sindh Sales Tax on Services Act, 2011, for the reason that letting out an immovable property on rent does not involve any element of services or taxable services in terms of Section 2(79), Section 2(96) and Section 3 of the Sindh Sales Tax on

Services Act, 2011. It has been contended by the learned counsel for the petitioners that while an immoveable property is let out on rent the right to use such property is transferred from the landlord to the tenant in terms of Section 105 of the Transfer of Property Act, 1882, whereas, such transfer of right to use the premises does not involve any element of providing or receiving services, hence cannot be subjected to imposition of sales tax under the Sindh Sales Tax on Services Act, 2011. Per learned counsel, the amount of rent received by the landlord in respect of any immoveable property has already been subjected to any tax in terms of Section 15 of the Income Tax Ordinance, 2001, whereas, taxes on income other than agricultural income falls within the legislative competence of the Federal legislation in terms of entry 47 of the Federal Legislative List to the 2<sup>nd</sup> Schedule of the Constitution, hence the same cannot be subject to tax through Provincial legislation by inserting Section 2 (72C) and the Tariff Heading “**9806.3000**” through Sindh Finance Act, 2015. Per learned counsel, under the Sindh Sales Tax on Services Act, 2011, no exhaustive definition of the term services or taxable services has been given, whereas, in terms of Section 2(79) service means anything which is not goods and shall include but not limited to the services listed in the 1<sup>st</sup> Schedule of the Act and the term taxable service is defined under Section 3 as service listed in the 2<sup>nd</sup> Schedule to the Act, which is provided by registered person from his registered office or place of business in Sindh, in the course of an economic activity. Learned counsel for the petitioners has also referred to the provision of Section 4 of the Act, whereby the term economic activity has been defined activity carried on by a person that involves or is intended to involve the provision of services to another person and includes (a) activity carried on in the form of a business, including a profession, calling trade, or undertaken of any kind, (b) the supply of moveable property by way of lease, license or similar arrangement; and (c) a one-off adventure or concern in the nature of trade, however, according to learned counsel, letting out of an immoveable property has not been included in the definition of economic activity for the purposes of imposing sales tax under the

Act, 2001. According to learned counsel, giving immoveable property by way of lease, license has been recognized by the legislature as an economic activity for the purpose of Sindh Sales Tax on Services Act, 2011, however, to let-out an immoveable property on rent has been excluded from such definition deliberately, which shows that any economic activity relating to an immoveable property, which otherwise has not been expressly included in the definition of taxable services in terms of Section 3 of the Act. Learned counsel for the petitioners has further argued that the levy of sales tax on goods on services involved the element of value addition and the concept of input and output tax, whereas, while letting out an immoveable property on rent neither any element of value addition is involved nor the landlord or the tenants are allowed to claim input or output in respect of the sales tax to be paid/collected at the rate of 6% in terms of Tariff Heading “**9806.3000**”. It has been contended by the learned counsel for the petitioners that a tax is to be imposed through clear and unambiguous words provided there is legislative competence under the Constitution, whereas, in case of any ambiguity in the charging provision of any taxing provision the benefit is to be extended in favour of the tax-payer and against the legislature. While concluding his arguments, learned counsel for the petitioners has prayed that imposition of sales tax at the rate of 6% in terms of Section 2(72-C) read with Tariff Heading “**9806.3000**” and renting of immoveable property services may be declared ultra-vires to the Constitution as well as Sindh Sales Tax on Services Act, 2011, and alternatively the provision of Section 2(72) may read down to exclude the mere act of letting out of immoveable property on rent from the purview of such levy and it may be declared that the aforesaid provision may be applicable only on the services provided or rendered by renting of immoveable property. In support of his arguments, learned counsel for the petitioners has placed reliance in the following case law:-

1. *Iftikhar Ahmed and others v. President, National Bank of Pakistan and others (PLD 1988 SC 53)*
2. *Collector Sales Tax and Federal Excise v. Messrs Abbot Laboratories (Pakistan) Ltd., Karachi. (2010 PTD 592)*

3. *Superintendent, Central Excise, Sheikhpura v. Fauji Sugar Mills, Sangla Hills, Sheikhpura and others. (PTCL 2016 CL 1)*
4. *Commissioner of Income Tax Legal Division, Lahore and others v. Khurshid Ahmed and others (PLD 2016 SC 545)*
5. *Messrs Pakistan Beverage Limited Karachi v. Large Taxpayer Unit (L.T.U.), Karachi (2010 PTD 2673)*
6. *Agha Syed Mushtaque Ali Shah v. Mst. Bibi Gul Jan and others (2016 SCMR 910)*
7. *Pakistan International Freight and Forwarders Association v. Province of Sindh and another (2017 PTD 1)*

4. Mr. Amjad Javed Hashmi, appearing on behalf of the petitioners in some of the cases, while adopting the arguments of Mr. Aminuddin Ansari, has referred to entry No.43 to 53 of the 2<sup>nd</sup> Schedule to the Constitution and submitted that from perusal of the aforesaid taxing entries, it can be seen that taxes can be imposed on income, on corporation, on the sales and purchase of goods, on the capital value of the assets, on mineral oil, natural gas etc., duty of customs, duty of excise through clear and unambiguous term to avoid any dispute with regard to legislative competence while imposing tax. However, according to learned counsel, after 18<sup>th</sup> Amendment of the Constitution, tax on services has been excluded from the domain of Federal Legislative List and has been brought within the legislative competence of provinces to impose sales tax on services. Learned counsel for the petitioner after having readout the provision of Section 2(48) and 2(72C) has contended that the term service involves an activity, whereas, mere renting out of immovable property does not involve any element of service. It has been further contended by the learned counsel that no specified service relating to renting immovable property has been mentioned under Section 2(72C), whereas, there can be no presumption as to tax, nor there can be any ambiguity on the part of the legislature while creating a charge or burden of tax. Per learned counsel, charge or any levy of tax can be imposed through express and clear words, whereas, in case of any ambiguity towards the charge of tax, the same has to be resolved against the revenue and in favour of the subject. It has been further argued by learned counsel that through amendment in the

definition clause, instead of bringing an amendment in the charging provisions of Sales Tax on Services Act, 2011, any charge or burden cannot be created. According to learned counsel, perusal of provisions of Sections 3, 4, 5 and 8 of the Sindh Sales Tax on Services Act, 2011 clearly reflects that the immoveable property, and income derived from renting out any immoveable property, has been excluded from the charge of sales tax on services, as it does not involve any element of rendering any service. Moreover, according to learned counsel for the petitioners, the income derived from letting-out of immoveable property is already subjected to income tax in terms of Section 15 of the Income Tax Ordinance, 2001, as income from house property falls within the legislative competence of Federal Legislation in terms of Entry 49 of Federal Legislative List and cannot, by any stretch of imagination, be brought within the domain of Provincial Legislation, by merely treating such economic activity of earning rental income, as **services** towards renting of immoveable property under the Sindh Sales Tax on Services Act, 2011. While concluding his arguments, learned counsel for the petitioner has prayed that insertion of Section 2(72C) and Tariff Heading 9806.3000 through Finance Act, 2015 may be declared to be ultravires to the Constitution as well as to the Sindh Sales Tax on Services Act, 2011, and alternatively, may be read down to exclude mere renting of immoveable property from the charge of sales tax on services.

5. Mr. Khalid Jawaid Khan Advocate, appearing on behalf of the petitioner in C.P.No.D-2167/2017, at the very outset submitted that the act of renting of an immoveable property by the landlord to a tenant is not a **service**, and in case, if it has been brought within the definition of service through Amendment in Section 2(72C), then it is not a **taxable service** in terms of Section 3 of the Sindh Sales Tax on Services Act, 2011. It has been further contended by the learned counsel that definition of the term **taxable service** has to be read with reference to the definition of term **economic activity** as defined under Section 4 of the Sindh Sales Tax on Services Act, 2011, according to which, an economic activity means any activity carried on by a person that involves **the provision of**

**services to another person** and includes the supply of **moveable property** by way of lease, licence or similar arrangement, whereas, according to learned counsel, nowhere in the definition of taxable service or economic activity there is any reference to **immoveable property**. Learned counsel for the petitioner has also referred to provisions of Section 8 of the Sindh Sales Tax on Services Act, 2011, and has contended that the charge of sales tax on services under the aforesaid section has been created on the **value of taxable service provided by a registered person at the rate specified in the schedule** in which, the taxable service is listed, according to which, the term service includes the element of an economic activity provided by a registered person from his registered office or place of business, whereas, renting of immoveable property by the landlord to the tenant does not involve any element of providing service, as according to learned counsel for the petitioner, such act of renting of immoveable property by the landlord for consideration to a tenant **is merely a transfer of right to use such property in terms of Section 105 of the Transfer of Property Act, 1882**. Learned counsel for the petitioner has also referred to the provisions of section 7 of the Sindh Sales Tax on Services Act, 2011, wherein, according to learned counsel, there is reference to the goods leased out by a registered person and not the immoveable property, which reflects upon the intention of the legislature to exclude renting of immoveable property from the purview of Sindh Sales Tax on Services Act, 2011. It has been further contended by the learned counsel that the place of business as defined in terms of Section 2 (64) and Section 3(1)(a) as well as under Section 24 of the Sindh Sales Tax on Services Act, 2011, does not include any immoveable property rented out to a tenant in consideration of rent. On the contrary, according to learned counsel, **only such property can be treated as place of business in Sindh where a registered person carries on an economic activity in terms of Section 4 of the Sindh Sales Tax on Services Act, 2011**. Learned counsel for the petitioner while referring to the provisions of Section 2 (72C) has contended that there is reference to any service provided or rendered,

to any person by another person, **by renting of an immoveable property** as defined in clause (72B) of Section 2 or **any other service in relation to such renting** for use as offices or factories or in the course or furtherance of business and commerce, which reflects that mere renting of immoveable property on rent has not been brought within the definition of taxable service. On the contrary, according to learned counsel, it refers to some **additional economic activity or taxable service, if provided, in relation to such renting**. While concluding his arguments, learned counsel for the petitioner submits that a land or any immoveable property, by itself, does not generate any taxable service, therefore, cannot be brought into the net of Sindh Sales Tax on Services Act, 2011. In support of his contention, learned counsel for the petitioner has placed reliance in the following case law:-

1. Collector of Sales Tax and Federal Excise v. Messrs Abbot Laboratories (Pakistan) Ltd. Karachi (2010 PTD 592)
2. Superintendent, Central Excise, Sheikhpura v. Fauji Sugar Mills Sangla Hills, Sheikhpura and others (PTCL 2016 CL 1)
3. Collector of Income Tax Legal Division, Lahore and others v. Khurshid Ahmed and others (PLD 2016 SC 545)
4. Messrs Pakistan Beverage Limited Karachi v. Large Taxpayer Unit (L.T.U.), Karachi (2010 PTD 2673)
5. Agha Syed Mushtaque Ali Shah v. Mst Bibi Gul Jan and others (2016 SCMR 910)
6. Pakistan International Freight of Forwarders Association v. Province of Sindh and another (2017 PTD 1)

It has been prayed by the learned counsel for the petitioner that insertion of Section 2(72C) and Tariff Heading 9806.3000 through Finance Act, 2015 may be declared to be ultravires to the Constitution as well as to the Sindh Sales Tax on Services Act, 2011, and alternatively, may be **read down** to exclude mere renting of immoveable property from the charge of sales tax on services.

6. Conversely, Mr. Farooq H. Naek, while leading the arguments on behalf of the respondents has opposed the contention of the learned counsel for the petitioners and submitted that after Eighteenth Amendment to the Constitution,

tax on services has been excluded from the purview of legislative competence of the Federal Legislature, whereas, in terms of Entry 49 of the Fourth Schedule to the Constitution, **while excluding the sales tax on immoveable property from entry 49, the sales tax on services has been brought within the legislative competence of the provincial legislation.** Per learned counsel, in none of the petitions, the petitioners have challenged the vires of the Eighteenth Amendment or the enactment of Sindh Sales Tax on Services Act, 2011, with particular reference to Entry 49 of the Fourth Schedule of the Constitution of Islamic Republic of Pakistan, 1973, therefore, mere challenge to amendment in Section 2 (72C) and insertion of Tariff Heading 9806.3000 in the First and Second Schedule to Sindh Sales Tax on Services Act, 2011 is misconceived in law and facts. Learned counsel for the respondents has readout the various provisions of Sindh Sales Tax on Services Act, 2011, with particular reference to the provision of Section 2(64), 2(72B), 2(72C), 2(79) and Sections 3 to 8, whereby, according to learned counsel for the respondents, a charge has been created in respect of various economic activities and for providing taxable services, including renting of immoveable property service under the Sindh Sales Tax on Services Act, 2011. Per learned counsel, renting of residential immoveable property has not been taxed under the Act, however, renting of commercial properties has been brought within the net of Sindh Sales Tax on Services Act, 2011, therefore, according to learned counsel, the plea of arbitrariness and hardship as raised by the learned counsel for the petitioners in this regard is misconceived. According to learned counsel for the respondents, renting of immoveable property by itself is an economic activity which is taxable under the Sindh Sales Tax on Services Act, 2011. It has been further argued by the learned counsel for the respondent that concept of value addition is not necessary in the case of services rendered under the Sindh Sales Tax on Services Act, 2011. According to learned counsel, there are various types of services, which are considered as taxable service under the Sindh Sales Tax on Services Act, 2011, inspite of the fact that there is no value addition nor any adjustment of input tax is permissible. Per learned

counsel, the concept of value addition, is only available under the Sales Tax Act, 1990, which is relatable to supply of goods and not to the services rendered or provided by a person to another person. Learned counsel further submits that the term **any service** in terms of Section 2(72C) cannot be read in isolation, and the same is to be read in conjunction with provisions of Section 2(72B) read with explanation (ii) (a). Per learned counsel, Sale tax on services is a tax on service and not on the service provider, therefore, any service provided or rendered is covered under the definition of taxable service liable to be charged to sales tax under the Sindh Sales Tax on Services Act, 2011. Learned counsel has further argued that concept of taxing immovable property services is not new, as according to learned counsel, in the Indian jurisdiction, in terms of similar legislation i.e. "Goods and Services Tax in India", the renting of immovable property has been considered as a taxable service, however, according to learned counsel, under Goods and Services Tax in India, the sales tax on services is a Federal Legislation, and as per Indian law, it is a value added tax, according to which, while any immovable property is let-out on rent, value is added keeping in view the location and facility attached to the immovable property. In support of his contention, learned counsel for the respondent has placed reliance in the case of Purshottam Das Malpani v. Union of India and others (2012) 52 VST 409 (Raj), Messrs Colony Sugar Mills Ltd. through Deputy Manager v. Province of Punjab and 5 others (2017 PTD 406), Badshah Gul Wazir v. Government of Khyber Pakhtunkhwa and others (PLD 2014 Peshawar 210), Muhammad Khalid Qureshi v. Province of Punjab and another (2017 PTD 805), Fecto Belarus Tractor Ltd. v. Government of Pakistan and others (PLD 2005 SC 605), K. A. Abbas v. The Union of India & another (AIR 1971 SC 485), Pakistan International Freight of Forwarders Association v. Province of Sindh and another (2017 PTD 1), Athar Ijaz Khan v. Station House Officer (2015 YLR 1919 [Lahore]).

7. Mr. Mohsin Shahwani Advocate, appearing on behalf of the respondents in some of the petitions, while adopting the arguments advanced by M/s. Farooq

H. Naek and Khalid Jawaid Khan, Advocates, has drawn our attention to provisions relating to input or output adjustment by referring to Section 2(52), Section 15, 15A, 16, 17 of the Sindh Sales Tax on Services Act, 2011, as well as Section 22 (a) (2) of the Sindh Sales Tax on Services Rules, 2011, and has submitted that to provide for input adjustment of Sales tax on Services is the legislative competence of the Provincial legislation, therefore, the landlord cannot be treated as an aggrieved party, hence, the petitions filed by the landlords of immovable property are liable to be dismissed in this account. Learned counsel for the respondent has also referred to the provisions Canadian Excise Act, as well as Australian Law, wherein, according to learned counsel for the respondents, the renting of immovable property has been treated as a taxable activity, hence liable to be taxed. Per learned counsel, Provincial Legislature is competent to impose sales tax on services after 18<sup>th</sup> Amendment to the Constitution and also to include various services within the domain of Sindh Sales Tax on Services Act, 2011, therefore, amendment in Section 2(72C) and insertion of Tariff Heading 9806.3000 in the First and Second Schedule to Act is not ultra vires to Constitution or the Sindh Sales Tax on Services Act, 2011. It has been prayed that petitions being misconceived may be dismissed.

8. Mr. Muhammad Najeeb Jamali Advocate, appearing on behalf of the respondents in some of the petitions, after having referred to various provisions of Sindh Sales Tax on Services Act, 2011, exception in Entry 49 of the Federal Legislative List of Fourth Schedule to the Constitution and Article 260 of the Constitution, as well as the provisions of Chapter 98 of the Customs Act, has contended that nowhere the term **service** has been defined exhaustively, whereas, according to learned counsel, in terms of Section 2 (79), it has been defined to include anything, which is not **goods** and shall include but not limited to the services listed in the 1<sup>st</sup> Schedule of this Act. Learned counsel for the respondent has referred to the provisions of Article 142(c) of the Constitution of Islamic Republic of Pakistan, as well as the provisions of Entry 49 of the Federal Legislative List, Fourth Schedule of the Constitution, and submits that provincial

legislature has the power to make laws with respect to any matter not enumerated in the Federal Legislative List. Per learned counsel, under Entry 49, **sales tax on services** otherwise has been excluded from the legislative competence of Majlis-e-Shoora (Parliament), therefore, the Provincial Legislature has the legislative competence to impose sales tax on services. Per learned counsel, since the term service has not been defined exhaustively either in the Constitution or in the Act, therefore, the definition as provided under the Sindh Sales Tax on Services Act, 2011, has to be taken into consideration, whereas, reference to dictionary meaning in such circumstances cannot be made. Learned counsel for the respondents has also referred to provisions of Article 70, 77, 127, 165 of the Constitution of Islamic Republic of Pakistan, 1973 and submits that provincial legislature can impose sales tax on services, whereas, the very act of letting-out immovable property by landlord to a tenant for consideration amounts to providing taxable service under the Sindh Sales Tax on Services Act, 2011. According to learned counsel, bringing such service of letting immovable property under the tax net in terms of Sindh Sales Tax on Services Act, 2011, is neither ultra-vires to the Constitution or to the Act itself. It has been prayed that instant petitions are misconceived and may be dismissed. In support of his contention, learned counsel for the respondents has placed reliance in the following case law:-

1. Muhammad Khalid Qureshi v. Province of Punjab and another (2017 PTD 805)
  2. Muhammad Ramzan v. The State (PLD 2007 Sindh 1)
  3. Abdul Sattar Dadabhoy and 2 others v. Director General, National Accountability Bureau and 2 others (PLD 2017 Sindh 331)
  4. Pakistan Peoples Party v. Government of Punjab and others (PLD 2014 Lahore 330)
  5. Lahore Development Authority through D.G. and others. (2015 SCMR 1739)
9. While exercising the right of rebuttal, Mr. Khalid Jawaid Khan, learned counsel for the petitioners has contended that concurrent list, which has been

abolished pursuant to Eighteenth Amendment, never carried taxing powers, whereas, under Article 142(c) there is already exclusion of sales tax on services. Per learned counsel, under various taxing statutes, there is clear concept of **subject matter of tax**. For instance, according to learned counsel, under the Income Tax Ordinance, 2001, the **income tax is on the income** of the person, whereas, under the Sindh Urban Immovable Property Tax (Amendment) Ordinance, 1999, the **tax is on the property itself**. Similarly, according to learned counsel, the concept of **taxing an economic activity** is also available under Federal Excise Act, 2005, where, the **manufacturing activity** is subject to Federal Excise Duty, whereas, in the Customs Act, the **import or export activity** is subject to Custom Duty, and under the Sales Tax Act, 1990, **sale and supply of goods** is subject to sales tax. Similarly, according to learned counsel, under the Sindh Sales Tax on Service Act, 2011, the sales tax has been imposed on **services**. According to learned counsel, **the sales tax on service is imposed on a taxable service provided by a service provider to service recipient in the course of an economic activity**. It has been further contended by the learned counsel for the petitioner that in the instant matters, the term **service** requires proper interpretation by this Court with reference to context, and there is no need either to challenge the vires of the charging provisions or to declare provisions of Section 2(72C) or Tariff Heading 9806.3000 as ultra vires to the Constitution or the Act. It has been further contended by the learned counsel for the petitioner that without prejudice to hereinabove legal position as emerged in the instant matters, by merely introducing some amendment in the definition clause, without amendment in the charging provisions, any economic activity cannot be brought within the tax net, whereas, this Court is otherwise competent to **read down** impugned provisions in conformity to the charging provisions of the Act itself, without declaring the same to be ultra-vires. While referring to the case law from Indian jurisdiction as relied upon by the learned counsel for the respondents, learned counsel for the petitioners submits that the facts of the cited cases are distinguishable from the facts of the instant cases, as according

to learned counsel, the facilitation of marriage ceremony in mandup does not only involve the act of providing space for the wedding, but also includes other ancillary services, hence it cannot be equated with the term renting of immovable property service as proposed by the respondents in the instant matters. According to learned counsel, if owner of any immovable property, who constructs a plaza through a builder, and then puts the same on rent, then such construction of building by a builder does not involve any element of any taxable service in terms of Sindh Sales Tax on Services Act, 2011. Similarly, by merely letting out any immovable property on rent does not involve any element of taxable service under the Sindh Sales Tax on Service Act, 2011. Moreover, according to learned counsel for the petitioners, the provisions of Indian Act, are differently couched in relation to taxing immovable property services through substantive charging provisions by Federal Legislature, whereas, under the Sindh Sales Tax on Service Act, 2011, through mere amendment in the definition clause, and by providing an entry in Tariff Heading in the First and Second Schedule to the Act, an attempt has been made to treat the renting of immovable property as taxable service, however, without bringing necessary amendment under the charging provisions of the Sindh Sales Tax on Services Act, 2011. In support of his contention, learned counsel for the petitioners has placed further reliance in the case of **State of Haryana v. State of Punjab and another [(2002) 2 Supreme Court Cases 507], Defence Authority Club, Karachi and 5 others v. Federation of Pakistan and 2 others (2007 PTD 398).**

10. We have heard the learned counsel for the parties and perused the relevant provisions of the Constitution, Sindh Sales Tax on Services Act, 2011 and the case law cited by learned counsel with their assistance. In order to examine the scope and application of the charging provisions of the sales tax on service under Sindh Sales Tax on Services Act, 2011, it will be advantageous to reproduce hereunder the relevant provisions of Sindh Sales Tax on Services Act, 2011, which read as follows:-

**Section 2(72B)“renting of immovable property”** includes renting, letting, sub-letting, leasing, sub-leasing, licensing or similar other arrangements of immovable property for use in the course or furtherance of business or commerce, but does not include--

- (i) renting of immovable property by a religious body to another religious body;
- (ii) renting of vacant land or premises solely used for agriculture, aquaculture, farming, forestry, animal husbandry or mining purposes;
- (iii) renting of land or premises solely used for outdoor games and sports;
- (iv) renting of buildings solely used for residential purposes or solely used as hostels and boarding homes of a recognized educational institution; and
- (v) renting of immovable property by hotels, motels, guest houses, clubs and marriage halls and lawns which are otherwise liable to tax under tariff heading 98.01 and the sub-headings thereof.

*Explanation-I.* Where renting of immovable property is effected under a single composite contract or agreement involving part of property for use in commerce or business and part of it for residential accommodation purpose, the entire property under the contract or agreement shall be treated, for the purpose of levy of tax under this Act, as property for use in commerce or business and, accordingly, the total value of the contract or agreement shall be treated as taxable value.

*Explanation II.* For the purpose of this clause--

- (a) the term “for uses in the course or furtherance of business or commerce” includes the use of immovable property as factories, offices including government offices or public offices, warehouses, laboratories, educational institutions, shops, showrooms, retail outlets, multiple-use buildings, etc.;
- (b) the term “renting of immovable property” includes allowing or permitting the use of land or space in an immovable property, irrespective of the transfer of possession or control of the said property;
- (c) the term “immovable property” includes—
  - (i) building and part of a building and the land or space appurtenant thereto;
  - (ii) land or space incidental to the use of such building or part of a building;
  - (iii) common or shared areas and facilities relating to the property rented;
  - (iv) vacant land or space given on lease or license for construction or temporary structure to be used at a later stage for furtherance of business or commerce; and

- (v) plant, machinery, equipment, furniture, fixture or fitting installed in or provided in or attached to the immovable property; and
- (d) the term “rent” means any payment or consideration, by whatever name called, received or receivable under any lease, sub-lease, tenancy or any other contractor agreement or arrangement for use, occupation or right to use or occupy any immovable property, and includes any forfeited deposit paid under such lease, sub-lease, tenancy or other contract or agreement or arrangement;

**Section 2(72C) “renting of immoveable property services”** means any service provided or rendered to any person, by another person, in relation to renting of immoveable property or any other service in relation to such renting for use in the course or furtherance of business and commerce.

**Section 2(79) “service” or “services”** means anything which is not goods or providing of which is not a supply of goods and shall include but not limited to the services listed in the First Schedule of this Act.

**Section 3. Taxable Service.--** (1) A taxable service is a service listed in the Second Schedule to this Act, which is provided:

- (a) by a registered person from his registered office or place of business in Sindh;
  - (b) in the course of an economic activity, including in the commencement or termination of the activity.
- (2) A service that is not provided by a registered person shall be treated as a taxable service if the service is listed in the Second Schedule to this Act and:
- (a) is provided to a resident person;
  - (b) by a non-resident person in the course of an economic activity, including in the commencement or termination of the activity.
- (3) For the purposes of sub-section (2), where a person has a registered office or place of business in Sindh and another outside Sindh, the registered office or place of business in Sindh and that outside Sindh shall be treated as separate legal persons.
- (4) The Board may, <sup>19</sup>[\*\*\*] by notification in the official Gazette, prescribe rules for determining the conditions under which a particular service or class of services will be considered to have been provided by a person from his registered office or place of business in Sindh.

**Section 4. Economic activity.--** (1) An economic activity means any activity carried on by a person that involves or is intended to involve the provision of services to another person and includes--

- (a) an activity carried on in the form of a business, including a profession, calling, trade, or undertaking of any kind, whether or not the activity is undertaken for profit;
- (b) the supply of moveable property by way of lease, license or similar arrangement; and
- (c) a one-off adventure or concern in the nature of a trade.

- (2) Anything done or undertaken during the commencement or termination of an economic activity is part of the economic activity.
- (3) An economic activity does not include--
- (a) the activities of an employee providing services in that capacity to an employer; <sup>21</sup>[or]
  - (b) a private recreational pursuit or hobby of an individual <sup>22</sup>[.]
  - (c) <sup>23</sup>[\*\*\*]
  - (d) <sup>24</sup>[\*\*\*]

**Section 5. Value of a Taxable Service.--** (1) The value of a taxable service is:

- (a) the consideration in money including all Federal and Provincial duties and taxes, if any, which the person providing a service receives from the recipient of the service but excluding the amount of sales tax under this Act:

Provided that--

- (i) in case the consideration for a service is in kind or is partly in kind and partly in money, the value of the service shall mean the open market price of the service as determined under section 6 excluding the amount of sales tax under this Act; and
  - (ii) in case the person provides the service and the recipient of the service are associated persons and the service is supplied for no consideration or for a consideration which is lower than the price at which the person provides the service to other persons who are not associated persons, the value of the service shall mean the price at which the service is provided to such other persons who are not associated persons excluding the amount of sales tax;
  - (iii) in case a person provides a service for no consideration or for a consideration is lower than the price at which such a service is provided by other persons, the value of the service shall mean the open market price for such a service;
- (b) in case of trade discounts, the discounted price excluding the amount of sales tax under this Act, provided the tax invoice shows the discounted price and the related tax and the discount allowed is in conformity with customary business practice;
  - (c) in case there is reason to believe that the value of a service has not been correctly declared in the invoice or for any special nature of transaction it is difficult to ascertain the value of a service, the open market price, as determined under section 6;
  - (d) notwithstanding any of the above, where the Board deems it necessary it may, by notification in the official Gazette, fix the value of any service or class of services and for that purpose fix different values for different classes or description of the same or similar types of services;

Provided that where the value at which the service is provided is higher than the value fixed by the Board, the value of the service

shall, unless otherwise directed by the Board, be the value at which the service is provided.

**Section 8. Scope of tax.--** (1) Subject to the provisions of this Act, there shall be charged, levied and collected a tax known as **sales tax on the value of a taxable service** at the rate specified in the Schedule in which the taxable service is listed.

(2) The <sup>26</sup>[Board, with the approval of Government,] may, subject to such conditions and restrictions as it may impose, by notification in the official Gazette, declare that in respect of any taxable service provided by a registered person or a class of registered persons, the tax shall be charged, levied and collected at such higher or lower rate or rates as may be specified in the said notification for any given tax period.

**Section 9. Person liable to pay tax.--** (1) Where a service is taxable by virtue of sub-section (1) of section 3, the liability to pay the tax shall be on the registered person providing the service.

(2) Where a service is taxable by virtue of sub-section (2) of section 3, the liability to pay the tax shall be on the person receiving the service.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the [Board] may, by a notification in the official Gazette, specify the services or class of services in respect of which the liability to pay tax shall be on the person providing the taxable service, or the person receiving the taxable service or any other person.

(4) Nothing contained in sub-sections (1) and (2) shall prevent the collection of tax from a different person if that person is made separately or jointly or severally liable for this tax under section 18.

10. Since the learned counsel for the respondents have placed reliance heavily on various provisions of the Indian services tax, which according to learned counsel for the respondents are peri-materia to the provision of Sindh Sales Tax on Services Act, 2011, relating to renting of immovable property services, therefore, it will be advantageous to examine some relevant provisions of Chapter V of the Finance Act, 1994 (Indian), with particular reference to provisions of Section 65 (90-A), 105 (zzz) and Section 68, which read as follows:-

**“Section [65. Definitions]**

In this Chapter, unless the context otherwise requires,--

- (1) -----
- (2) -----
- (3) -----
- (4) -----
- (5) -----

[(90a) **“renting of immovable property”** includes renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the Course or furtherance of business or commerce but does not include—

- (i) renting of immovable property by a religious body or to a religious body; or
  - a. renting of immovable property to an educational body, imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre.

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(105) “taxable service” means any [service provided or to be provided]-

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(zzzz) [to any person, by any other person, by renting of immovable property or any other service in relation to such renting for use in the course of or, for furtherance of business or commerce.]

**Section 4[68 Payment of service tax].—**

- (1) Every person providing taxable service to any person shall pay service tax at the rate specified in section [66B] in such manner and within such period as may be prescribed.
- (2) Notwithstanding anything contained in sub-section (1), in respect of such taxable service as may be notified] by the Central Government in the Official Gazette the service tax thereon shall be paid by such person and in such manner as may be prescribed at the rate specified in section 66 and all the provisions of this chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service.]

“Provided that the Central Government may notify the service and the extent of service tax which shall be payable by such person and the provisions of this Chapter shall apply to such person to the extent so specified and the remaining part of the service tax shall be paid by the service provider.”;

11. Before we may proceed to dilate upon the subject controversy agitated through instant petitions, challenging the amendment introduced through Finance Act, 2015, whereby, Section 2(72C) as well as Tariff Heading 9806.3000 in the First and Second Schedule to the Sindh Sales Tax on Services Act, 2011, have been inserted, for being ultra-vires to the Constitution and the Sindh Sales Tax on Services Act, 2011, we would first examine the legislative competence of the provinces to impose sales tax on services, with particular reference to the Constitutional provisions and the entry in the legislative list, if any, after Eighteenth Amendment through Act No.X of 2010 passed by the Parliament, which was assented by the President on 19<sup>th</sup> April, 2010, and published in the official gazette on 20<sup>th</sup> April, 2010. Under Article 70 of Constitution of Islamic

Republic of Pakistan, the legislative procedure for introduction and passing of any bill with respect to any matter in the Federal Legislative List has been provided. Whereas, under Article 73 of the Constitution the procedure with respect to money bill has been enumerated, according to which, notwithstanding anything contained in Article 70, money bill originates from National Assembly provided that simultaneously when a money bill, including the Finance Bill, containing the Annual Budget Statement, is presented in the National Assembly, a copy thereof is to be transmitted to the Senate, which may, within fourteen days, make recommendations thereon to the National Assembly. The National Assembly thereafter, considers the recommendation of the Senate and if the bill has been passed by the Assembly with or without incorporating the recommendations of the Senate, it is presented to the President for assent. Under sub-article (2) of Article 73, it has been provided that **a bill or amendment shall be deemed to be Money Bill, if it contains provisions dealing with all or any of the matters, including the imposition, abolition, remission, alteration or regulation of any tax.** However, under sub-article (3) of Article 73, it has been provided that the Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition or alteration of any other fine or other pecuniary penalty, or for the demand or payment of a licence fee or a fee or charge for any service rendered. In terms of Article 77 of the Constitution, it has been provided that no tax shall be levied for the purposes of the Federation except by or under the authority of Act of the Parliament. Having referred to the constitutional provisions relating to legislative procedure for Federal Legislation in respect of Fiscal Statutes, we may now examine the provisions relating to legislative competence of the Provincial Legislature in respect of Fiscal Statutes. Distribution of legislative power has been defined under **Article 141 of the Constitution**, according to which, the Parliament, subject to the Constitution, has the authority to make laws (including laws having extra-territorial operation) for the whole or any part of Pakistan, **and a Provincial Assembly may make laws for the Province or any part thereof.** Under Article 142 of the Constitution, it

has been provided that the subject matter of Federal and Provincial laws, are distinct and separate. In terms of Article 142(a), both the Parliament has the exclusive power to make laws with respect to any matter in the Federal Legislative List, however, in terms of Article 142(b), both the Parliament and the Provincial Assembly have powers to make laws with respect to criminal law, criminal procedure and evidence. Similarly, in terms of Article 142 (c), subject to paragraph (b) a **Provincial Assembly shall, and the Parliament shall not, have power to make laws with respect of any matter not enumerated in the Federal Legislative List**, whereas, in terms of Article 142(d), Parliament shall have the exclusive power to make laws with respect to all matters pertaining to such areas in the Federation as are not included in any Province. Prior to Eighteenth Amendment in the Constitution, Fourth Schedule issued under Article 70(4) of the Constitution, contained the Federal Legislative List, wherein, there were about fifty-nine (59) Entries in Part-I and eighteen (18) Entries in the Part-II specifically enumerated, whereas, the Fourth Schedule also contained the Concurrent Legislative List comprising of about forty-seven (47) Entries enumerated therein. Needless to state that there was no Provincial Legislative List provided in the Constitution of Islamic Republic of Pakistan, 1973, since promulgation of the Constitution, however, the Provincial enactments were made under the legislative competence in terms of Article 142(b) and the Entries 1 to 47 as enumerated in the Concurrent Legislative List. However, after Eighteenth Amendment through Act No.X of 2010, in the Fourth Schedule, Concurrent Legislative List (containing Entries 1 to 47) has been omitted. Resultantly, there is no Legislative List available in the Constitution enumerating specific subjects on which, the Provinces can legislate with reference to **any specific entry as enumerated in the Concurrent Legislative List prior to Eighteenth Amendment in the Constitution**. The scope of legislative competence of Provinces appears to have been defined in the **amended sub-article (c) of Article 142 of the Constitution through Eighteenth Amendment**, whereby, it has been provided that a Provincial Assembly shall, and Parliament shall not,

have power to make laws with respect to any matter not enumerated in the Federal Legislative List. To summarize the effect of amendment in Article 142 of the Constitution through Eighteenth Amendment, we may observe that the legislative competence of Provinces is no more restricted to, or dependent upon, any Legislative List as it was, restricted to and dependent upon forty-seven (47) entries as incorporated in the Concurrent Legislative List to the Fourth Schedule of the Constitution prior to Eighteenth Amendment. This change brought in the Constitution of Islamic Republic of Pakistan, 1973 through Eighteenth Amendment, relating to legislative competence of Provinces, particularly, in respect of matters pertaining to Fiscal Statutes, requires a careful examination and scrutiny of all such taxing statutes, which create a charge or burden upon citizens of the Pakistan, for the reason that principles of interpretation of taxing statutes are different from the principles of interpretation of non-taxing statutes, as in the case of a taxing statutes, wherein, a charge or burden is created, **principle of restrictive interpretation is attracted**. Moreover, it is now well settled principle of interpretation that tax can be levied by a clear and unambiguous legislation, whereas, in case of any doubt or ambiguity in the matter of levy of tax, the same is to be resolved against the revenue, and in favour of the subject/taxpayer upon whom the burden of such tax is created through such enactment. Reliance in this regard can be placed in the case of **Pakistan Television Corporation Limited v. Commissioner Inland Revenue (Legal)**, LTU, Islamabad (2017 SCMR 1136 & 2017 PTD 1372), **Chairman, Federal Board of Revenue, Islamabad v. Al-Technique Corporation of Pakistan Ltd** (2017 PLD 99) and **Commissioner of Income Tax v. Gilani Transport Company** (2017 SCMR 197 & 2017 PTD 1540). Prima-facie, from perusal of the provisions of Article 70, 73, 142 as they stand after Eighteenth Amendment, it appears that the scope of Provincial Legislation has been enhanced while abolishing the Concurrent Legislative List from the Fourth Schedule to the Constitution, whereas, the express restriction upon the Provincial Legislation has been imposed to the extent of Federal Legislative List in the Fourth Schedule to

the Constitution. Learned counsel for the respondents, while confronted to assist the Court with regard to legislative competence of the Provincial Legislation to impose sales tax on services have relied upon a recent judgment of a Divisional Bench of this Court in the case of **Pakistan International Freight of Forwarders Association v. Province of Sindh and another (2017 PTD 1)**. From perusal of the aforesaid judgment, it has been observed that the learned Divisional Bench in cited judgment has in fact examined the legal issue to the effect **“as to where lies the legislative competence to impose a fiscal levy (whether tax or duty) on the rendering or providing of services?”** After having examined the effect of Eighteenth Amendment, while referring to relevant constitutional provisions and by placing reliance on various case law on subject, the learned Divisional Bench of this Court has been pleased to declare as under:-

“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 18<sup>th</sup> 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 18<sup>th</sup> 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.”

12. We do not find any error in the aforesaid declaration by the learned Divisional Bench of this Court with regard to legislative competence of the Provincial legislature relating to imposition of tax on service, therefore, would not record our own reasoning while reaching to aforesaid conclusion on the subject. However, the issue before us is more complex, as we intend to examine the legislative competence of the Provincial Legislation with particular reference to scope and extent to impose such tax on various kinds of services, when such terms has not been specifically defined in the Constitution, unlike various entries enumerated in the Federal Legislative List of Fourth Schedule to the Constitution, wherein, the legislative competence can be ascertained through interpretation of such express provisions relating to taxing authority of the Federal Legislature. From perusal of the pleadings and the submissions made by the learned counsel for the parties in the instant matters, it appears that this Court has to decide **“as to whether, mere renting of immoveable property by landlord on rent to the tenant for consideration, would be treated as a taxable service or not?”** As we have already noted that no exhaustive definition of the terms **service** or **taxable services** has been given either in the Constitution or under the Sindh Sales Tax on Services Act, 2011, whereas, the definition given in terms of Section 2(79) and Section 3 to the terms service, and taxable service is inclusive in nature, therefore, in order to examine the scope and chargeability of sales tax on **service**, we will have to make reference to ordinary definitions of the term **service** as given in various Dictionaries, as well as legal Dictionaries. In concise Oxford English Dictionary, Revised Eleventh Edition, the term service has been defined as the **action or process of serving, an act of assistance etc, a system supplying a public need such as transport or utilities, such as electricity and water.** In Judicial Dictionary Thirteenth Edition by K J Aiyar, the term service has been defined as **“the duty which a subordinate owes to the superior and paymaster, the mode of bringing a notice or process to the**

**knowledge of the person mentioned in it.** It has been further defined as to usually mean, permanent service or temporary service, which is likely to be made permanent in the course of time, if certain usual conditions are satisfied. The word 'service' must necessarily mean **something more than being merely subject to the order of government or control of the government.** Coal Mines Provident Fund Commissioner v Ramesh Chander Jha (AIR 1990 SC 648). Facilities in connection with banking have been included in the definition of 'service' as defined in clause (o) of Section 2(1) of the Consumer Protection Act. In another Dictionary i.e. Legal Terms & Phrases, 2006 Edition, the term service has been defined as **"the word service has two folds meaning. It is used to signify duty performed by a servant or employee for his master and employer and also used for the method of notifying a party to litigation about the case. The word 'services' with regard to a trade, profession or similar Association would mean to perform specific service, 'conferring on its members' some benefit which otherwise would not be available to them, except the payment received by the Association in respect of those services bills.** The term service has been further defined as **the act of serving, the act or instance of helping or benefitting; the act of helping another; the deed of one who serves.** The word service is further defined as meaning **aid or assistance rendered; a benefit, advantage, or obligation conferred; that which promotes interest or happiness.** Similarly, in Black's Law Dictionary, Sixth Edition, the term service has been defined as **variety of meaning dependent upon the context or the sense in which used. Duty or labor to be rendered by one person to another, the former being bound to submit his will to the direction and control of the latter.** The act of serving the labor performed or the duties required. The term service has been defined in the Chambers Twentieth Century Dictionary **as the condition or occupation of a servant or of one who serves; work; the act or mode of serving: employ.....performance of a duty or function.**

13. From perusal of hereinabove definitions of the term **service** as given in the

aforesaid Dictionaries, it can be safely concluded the term service refers and relates to **performance of an act by any person for the benefit of another person either for consideration or otherwise**, whereas, in terms of Section 2 (79) service has been defined to mean **anything which is not goods and shall include but not limited to the services listed in the First Schedule of the Act**. On examination of various Tariff Headings and the relevant description thereto, as detailed in the First Schedule and the Second Schedule to the Sindh Sales Tax on Services Act, 2011, it appears that number of **various acts performed by a person in the course of an economic activity have been mentioned in both the Schedules to mean and include various taxable services provided or rendered by a registered person in the course of an economic activity**. Perusal of the provisions of **Section 8** of the Sindh Sales Tax on Services Act, 2011, which defines the chargeability and scope of tax, shows that **a charge of tax has been created on the value of a taxable service provided by a registered person or a class of a registered person** at the rate specified in the Schedule to the Sindh Sales Tax on Services Act, 2011, whereas, in terms of **Section 9** of the Sindh Sales Tax on Services Act, 2011, liability to pay tax has been fixed on the registered person, according to which, where a service is taxable by virtue of sub-section (1) of section 3, **the liability to pay the tax shall be on the registered person providing the service**, and in case, where service is taxable by virtue of subsection (2) of Section 3, **the liability to pay the tax shall be on the person receiving the service**.

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 immoveable 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 immoveable 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 immoveable 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 immoveable 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 Sales Tax on Services Act, 2011, therefore, the intention of the respondents as

expressed through impugned Show Cause Notices in the instant matters, to bring the renting of an immovable property under the charge of sales tax on service is misconceived in fact and law. Moreover, unless, the renting of immovable property is part of business, profession, calling, trade or undertaking of any kind, of a person, the same cannot otherwise, be treated as an economic activity involving any provision of service to another person, therefore, cannot be considered as a taxable service, chargeable to tax under Sindh Sales Tax on Services Act, 2011.

15. The cumulative effect of hereinabove statutory provisions shows that unless an activity involves the provision of providing service by a registered person in the course of economic activity from his registered office or place of business in Sindh, then such economic activity cannot be considered as a taxable service for the purposes of charging sales tax on services under Section 3 read with Section 8 of the Sindh Sales Tax on Services Act, 2011. Careful examination of the provisions of Section 2(72C) further reveals that the term renting of immovable property services has been defined as “any service provided or rendered to any person by another person, or any other service in relation to such renting for use as offices or factories or in the course or furtherance of business and commerce”. We are of the considered opinion that mere letting out an immovable property by a landlord to a tenant on rent, does not involve any element of providing any **taxable service** in terms of Section 3, therefore, it is not taxable in terms of Section 8 of the Sindh Sales Tax on Services Act, 2011. Provincial Legislature cannot levy or impose any charge of tax on the amount received towards rent under the Sindh Sales Tax on Services Act, 2011, unless there is some economic activity and taxable service, provided by or rendered by a person to another person.

16. In view of hereinabove facts and circumstances of the case, we are of the considered opinion that the impugned notices issued by the respondents to the petitioners, while treating the renting of immovable property as taxable service,

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 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. Accordingly, above petitions are allowed in the aforesaid terms alongwith listed applications.

JUDGE

JUDGE

Karachi  
Dated: 18-08-2017