

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

Suit No.997 of 2016

Date Order with signature of Judge

For hearing of CMA No.6811/16 (U/O 39 Rule 1 & 2 CPC)

10.09.2018

Mr. Fawwad Baloch, Advocate for Plaintiff.

Mr. Shamshad Ahmed Advocate alongwith Syed Zain-ul-Abidin, Deputy Commissioner, SRB.

Ms. Rakshanda Waheed, State Counsel.

In this Suit, 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.*

It is 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.

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 immovable

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 immovable 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 immovable 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 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."

Since the controversy has been decided by a learned Division Bench of this Court through aforesaid Judgment, which is pending before this Court, whereas, though the Judgment has been impugned but till date neither it has been suspended or set-aside. As to the passing of some legislation retrospectively as contended on behalf of SRB, the same has to be dealt with as and when challenged and has no bearing on this case; therefore, in view of

such position the following Legal Issue under 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 the Suit stands decreed as above.

J U D G E

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