



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."

It is not in dispute that controversy has been decided by a learned Division Bench of this Court through aforesaid Judgment, whereas, though the Judgment has been impugned before the Hon'ble Supreme Court, but till date neither it has been suspended nor set-aside. In fact even the leave granting order has not been placed on record. Learned Counsel for SRB has made an attempt that since appeal is pending, therefore, this Suit may also be kept pending; however, it is settled law that even suspension of

judgment is always inter-se parties and this Court is bound by the judgment of the learned Division Bench, whereas, a leave granting order is not a binding precedent; hence this argument cannot be sustained. If any reference is needed reliance may be placed on the case of ***Yousuf A Mitha v Aboo Baker*** (PLD 1980 Karachi 492) and ***Collector of Sales Tax and Federal Excise v Wyeth Laboratories Limited*** (2009 YLR 2096).

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