

IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No. D –3132 of 2016

PRESENT:

**MR. JUSTICE AQEEL AHMED ABBASI.
MR. JUSTICE NADEEM AKHTAR.**

M/s Pemcon Logistic & Warehousing (Pvt) Ltd.

Vs.

Province of Sindh and others

Petitioner: M/s Naeem Suleman and Arshad Shahzad, Advocates

Respondents: Mr. Muhammad Aqeel Qureshi, Advocate
& Mr. Meer Hussain, Standing Counsel.

Date of Hearing: 17.05.2017.

Date of Order: 17.05.2017.

ORDER

Aqeel Ahmed Abbasi, J. Through instant petition, the petitioner has sought following relief (s):-

- a. *It may be declared respondent # 3 is not mandated under the constitution to collect and levy sales tax on warehousing services, accordingly impugned show cause notice and subsequent assessment orders to be struck down.*
- b. *It may be declared that warehousing services rendered by petitioner does not come under the scope and definition of supply management services.*
- c. *Alternatively, it is declared that in the absence of any specific definition of supply management services in the said Act, the respondents are not left with all the discretionary powers to interpret the scope of sales tax on supply chain management services at their own will.*
- d. *It may be declared that the Sindh Revenue Board does not exist in terms of section 3 of the Sindh Revenue Board Act, 2010 and*

therefore, all the actions taken by the defendant No.2 are without lawful authority and of no legal effect.

- e. *It may be declared that Notification No. SO(C-IV)SGA&CD/4-31/13 dated 10.12.2013 that appoints ex-officio members of the SRB has been issued without lawful authority and is of no legal effect and the appointment of such members as null and void.*
- f. *It may be declared that impugned Notifications Nos. SRB-3-4/3/2015 dated 01-07-2015, SRB-3-4/12/2015 dated 04-08-2015, SRB-3-4/14/2014 dated 01-07-2014 and SRB-3-4/4/2015 dated 01-07-2015 have been issued without lawful authority and are of no legal effect.*
- g. *Permanently restrain the Defendants, its officers, representatives, and attorneys of the Petitioners and / or anybody from compulsory Sindh sales tax registration under the ambit of supply chain management service and demanding sales tax from the Petitioner on warehousing services and / or restrain them from taking any adverse action against the Petitioners or against the business of the Petitioners.*
- h. *Cost of the suit may be granted.*
- i. *Any other, better, adequate and / or alternate relief this Honourable Court may deem fit under the circumstances to grant.*

2. Learned counsel for the petitioner submitted that the petitioner company is engaged in warehousing business, which is chargeable to income tax @ 8% under Section 153(1)(b) of the Income Tax Ordinance, 2001. However, according to learned counsel, petitioner company does not provide any services, which are chargeable to tax under the Sindh Sales Tax on Services Act, 2011. Learned counsel for the petitioner further argued that petitioner was issued Notices by the S.R.B. requiring the petitioner to be registered under Sindh Sales Tax on Services Act, 2011, whereas, such notices were duly responded by the petitioner from time to time, however, the respondents have not acceded to the request of the petitioner, and consequently, an order has been passed under Section 24B of the Sindh Sales Tax on Services Act, 2011, whereby, petitioner has been compulsorily registered. It has been contended by the learned counsel for the petitioner that it may be declared that the warehousing services rendered by the petitioner do not come within the scope and definition of supply management services, hence not chargeable to tax under the Sindh Sales Tax on Service Act, 2011,

in terms of Tariff Heading 9845.0000. It has been prayed that proceedings and the order passed under Section 24B of Sindh Sales Tax on Services Act, 2011, may be declared to be illegal and the same may be quashed.

3. Learned counsel for the petitioner was directed to satisfy this Court as to maintainability of instant petition in view of the fact that the impugned Show Cause Notices issued by respondent which were duly responded and the same have merged into an Order-in-Original No.06/2017 dated 20.04.2017 passed by the Deputy Commissioner, Sindh Revenue Board, after having provided opportunity of being heard to the petitioner, which otherwise, is an appealable order in terms of Section 57 of the Sindh Sales Tax on Services Act, 2011, before the Commissioner (Appeals). In response to such query of this Court, learned counsel for the petitioner could not submit any satisfactory response and has contended that since the warehousing services provided by the petitioner do not fall within the mandate of Sindh Sales Tax on Services Act, 2011, as the same has not been specifically mentioned in the second Schedule, therefore, the entire proceedings as well as the order passed by the respondent may be declared to be illegal. Record shows that before passing the impugned order under Section 24B of Sindh Sales Tax on Services Act, 2011, requiring the petitioner to register under Sindh Sales Tax on Services Act, 2011, the petitioner was specifically confronted by issuing Notices, which Notices were duly responded by the petitioner through written reply, wherein, petitioner did not dispute the jurisdiction of the SRB, on the contrary, took the plea that since, nature of the services being provided by the petitioner are not chargeable to tax in terms of Sindh Sales Tax on Services Act, 2011. Such contention of the petitioner has not been approved by the respondent, who has passed an order in terms of Section 24B of the Sindh Sales Tax on Services Act, 2011, which is appealable under Section 57 of the Sindh Sales Tax on Services Act, 2011. Learned counsel for the petitioner has not been able to point out any jurisdictional defect or patent illegality or error in the impugned order passed under Section 24B Sindh Sales Tax on Services Act, 2011, which otherwise, is appealable under Section 57 of the Sindh Sales Tax on Services Act, 2011, and has also failed to assist this Court as to how

the statutory forums provided for the purposes of determination of tax liability and in case of any adverse order the forum of appeal for redressal of the grievance in terms of Section 57 and 61 of the Sindh Sales Tax on Services Act, 2011, can be allowed to be abandoned or bypassed without any lawful excuse, particularly, when the alternate remedy in terms of appeal has already been provided under the Sindh Sales Tax on Services Act, 2011. We may further observe that extra ordinary constitutional jurisdiction of this Court under Article 199 of the Constitution, is being misused in the matters pertaining to fiscal laws, including Income tax, Sales tax & Customs duty, particularly, when a taxpayer submits to the jurisdiction of the relevant Statutory forum and, thereafter, an order is passed in accordance with law, and thereafter, the taxpayer, instead of availing the remedy of appeal provided under the relevant statute choses to file a Constitutional Petition instead of approaching the relevant forum of appeal without any lawful excuse or valid cause of action. Tendency to abandon the statutory forums and to bypass the alternate remedies available under the relevant statute for redressal of grievance, requires to be depreciated. As it not only increases the unnecessary burden of this Court, but also creates no confidence in the statutory forums provided for redressal of the grievance to an aggrieved party. In the instant case, an order has been passed under Section 24B of Sindh Sales Tax on Services Act, 2011, after providing opportunity of being heard to the petitioner, which order is an appealable order in terms of Section 57 of the Sindh Sales Tax on Services Act, 2011, therefore, instead of filing instant petition, the petitioner should have filed an appeal in terms of Section 57 of the Sindh Sales Tax on Services Act, 2011. This Court in number of similar cases has already held that tendency to abandon the statutory forum or to bypass remedies provided under the law for redressal of grievance, without any lawful excuse, has to be depreciated. Moreover, a forum once availed cannot be allowed to be abandoned at mere whims or desire of any party to thwart the legal proceedings. Reference in this regard can be made to the reported decisions of this Court in the cases of *Messrs Pakistan Mobile Communications Ltd v. Sindh Revenue Board Karachi and 2 others* (2014 PTD 2048) *Messrs Maritime Agencies (Pvt) Ltd., through Company Secretary v. Assistant*

Commissioner-II of SRB and 2 others (2015 PTD 160). Accordingly, instant petition was dismissed vide our short order dated 17.05.2017 and above are the reasons of such short order.

JUDGE

Dated: .05.2017

JUDGE