

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Special Sales Tax Reference Application No. 234 of 2014 along with
STRA Nos. 323, 324, 325, 326 & 327 of 2012.

Date	Order with signature of Judge
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Hearing of case (Priority).

- 1) For hearing of CMA No. 705/17 (U/S 47)
- 2) For hearing of main case.

27.03.2025.

Mr. Ijaz Ahmed, Advocate for the Applicants.
Mr. Munawwar Ali Memon, Advocate for Respondents.

These Sales Tax Reference Applications have been filed impugning Orders dated 31.10.2013, 02.07.2011 and 10.10.2012 passed in STA No.203/KB/2013, STA Nos. 116, 117, 118, 119, 120 of 2011, respectively by the Appellate Tribunal Inland Revenue at Karachi proposing various questions of law.

It is the case of the Applicant that the proceedings of recovery of sales tax initiated in respect of certain services as Stevedores in terms of The Sindh Sales Tax Ordinance, 2000, now stands abated as during pendency of these proceedings, the vires of the said Ordinance were challenged in various petitions and through judgment in the case of ***Pakistan International Freight of Forwarders Association v. Province of Sindh and another (2017 PTD 1)***, the said Ordinance has been declared ultra vires to the Constitution. Learned Counsel for the Applicant has also referred to Order dated 02.03.2017 passed in these matters including C.P No. D-3965 of 2012, which reads as under:-

“Learned counsel for the petitioner submits that since the petitioner has also challenged the vires of Rule 55(1)(k) of the Sales Tax Special Procedure Rules 2005, Rules 2(liv) and 72 of the Sales Tax Special Procedure Rules 2006 and Rules 2(xxiii-a) and 39-A of the Sales Tax Special Procedure Rules 2007 through C.P.Nos.D-3965 & 4427 of 2012, which rules have been applied by the respondents in the case of petitioners in connected S.T.R.As. Nos 232 to 327 of 2012 and 234 of 2014, therefore, it will be appropriate if this Court may decide the fate of aforesaid petitions first, as according to learned counsel, the decisions in the aforesaid petitions will apply to above preference applications. Learned counsel for the petitioner has further intimated that the Sindh Sales tax on Services Ordinance, 2000 which has been applied in the aforesaid cases has

been stuck down by a Division Bench of this Court in the case of *Pakistan International Freight of Forwarders Association vs. Province of Sindh and another (2017 PTD 1)* against which decision, the leave to defend has been granted and the operation of the aforesaid decision has been suspended. He undertakes to place on record such order of the Honourable Supreme Court on next date of hearing.

This aspect of the matter will be examined on the next date of hearing.
By consent, adjourned to 29.03.2017.”

Though the said judgment of this Court has been impugned before the Honourable Supreme Court wherein leave has been granted it has been suspended; however, this is not an impediment in disposing of these Reference Applications as the proceedings were initiated under an Ordinance which now stands declared *ultra vires*. Therefore, for the present purposes, no further action can be taken against the present Applicant by the Respondents. When confronted, Respondents’ Counsel is not able to controvert this factual position; however, submits that the said judgment is suspended. To that we may observe that the Respondents are well within their right to agitate this issue before the Supreme Court and if they are successful, law would follow its own course.

In view of such position, since the Ordinance under which the recovery proceedings were initiated has been declared *ultra vires*, the orders passed by the forums below are hereby set-aside and these Reference Applications are disposed of. Let copy of this order be sent to Appellate Tribunal Inland Revenue, Karachi Bench in terms of sub-section (5) of Section 47 of the Sales Tax Act, 1990 and a copy shall also be placed in the connected files.

Acting Chief Justice

Judge