

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

**Suit Nos.1795, 1796, 1797, 1806, 1815,
1824, 1830, 1864 & 1865 of 2016**

Date	Order with signature of Judge
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Suit No.1795/2016

For hearing of CMA No.11520/2016

Suit No.1796/2016

For hearing of CMA No.11522/2016

Suit No.1797/2016

For hearing of CMA No.11524/2016

Suit No.1806/2016

For hearing of CMA No.11580/2016

Suit No.1815/2016

For hearing of CMA No.11620/2016

Suit No.1830/2016

For hearing of CMA No.11761/2016

Suit No.1824/2016

For hearing of CMA No.11694/2016

Suit No.1864/2016

1.For hearing of CMA No.13102/2017

2.For hearing of CMA No.11880/2016

Suit No.1865/2016

1.For hearing of CMA No.13108/2017

2.For hearing of CMA No.11883/2016

22.02.2018

Mr.Hyder Ali Khan, Advocate for Plaintiffs in Suit Nos.1795, 1796, 1797 and 1806 of 2016.

Mr.Ovais Ali Shah, Advocate for the Plaintiffs in Suit No.1815 and 1824 of 2016

Mr.Umair A. Qazi, Advocate for the Plaintiff in Suit No.1830/2016

Mr.Hyder Ali Khan, Advocate holding brief for Mr.Faiz Durrani, Advocate for the Plaintiffs in Suit Nos.1864 and 1865 of 2016.

Dr.Shahnawaz, Advocate for Defendants in Suit Nos.1796, 1830,

Mr.Ameer Bux Metlo, holding brief for Mr.Sarfra Ali Metlo, Advocate for the Defendants in Suit Nos.1795, 1797, 1806, 1815 and 1824 of 2016.

Mr.Ghulam Shoaib Jally, Advocate for the Defendants in Suit Nos.1864 and 1865 of 2016.

Mr.Ghulam Murtaza Korai, Advocate for Sindh Revenue Board.

Syed Zainul Abidin, Deputy Commissioner, Sindh Revenue Board present in person.

Mr.Aqueel Qureshi, Advocate.

Since common question of law and facts are involved in the aforesaid suits, therefore, with the consent of all learned counsel for the plaintiffs and defendants, all suits are taken up jointly for disposal with this common order.

In fact the plaintiffs have sought the declaration that Section 3(i)(iii) of the Finance Act, 2016 is unconstitutional and void ab initio. As an alternative, they have further sought declaration that under Section 7(i) of the Sales Tax Act, 1990, the plaintiffs are entitled to claim sales tax on services paid or payable to any province is adjustable input tax under the Sales Tax Act, 1990.

Today, learned counsel for the plaintiffs produced a copy of gazette notification of Tax Laws (Amendment) Ordinance, 2016 promulgated on 31.08.2016. The Section 2 of this Ordinance germane to the amendment of Sales Tax Act, 1990. This amendment is made effective from 01.07.2016. For the ease of reference Sub-section (14) of Section 2 of the Sales Tax Act, 1990 is reproduced as under which defines the Input Tax:-

“2. Definitions.

(14). “input tax”, in relation to a registered person, means—

(a) tax levied under this Act on supply of goods to the person;

(b) tax levied under this Act on the import of goods by the person;

(c) in relation to goods or services acquired by the person, tax levied under the Federal Excise Act, 2005 in sales tax mode as a duty of excise on the manufacture or production of the goods, or the rendering or providing of the services;

(d) Provincial sales tax levied on services rendered or provided to the person; and

(e) levied under the Sales Tax Act, 1990 as adapted in the State of Azad Jammu and Kashmir, on the supply of goods received by the person;”

Earlier the aforesaid clause (d) was omitted by the Finance Act, 2016 (XXIX of 2016). However, this same clause has been revived and inserted by the Tax Laws (Amendment) Ordinance, 2016 promulgated on 31.08.2016. Due to deletion or omission of clause (d) through Finance Act, 2016, the plaintiff were aggrieved and filed above suits for declaration that the deletion of clause (d) is unconstitutional. Now on revival of clause (d) again through aforesaid amendment their grievances have been redressed and they request that aforesaid suits may be disposed of. All learned counsel appearing for the defendants have jointly stated that on revival of clause (d) of sub-section 14 of Section 2 of the Sales Tax Act, 1990, there is no further necessity to keep the aforesaid suits pending in the court’s docket.

In view of the above situation, all aforesaid suits are disposed of accordingly along with pending applications.

Judge

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