

IN THE HIGH COURT OF SINDH AT KARACHI
SUIT No. 737 of 2013

Plaintiff: **Pakistan Defence Officers Housing Authority
through Mr. Khalid Jawed Khan, Advocate.**

Defendants: **Province of Sindh & another through
Mr. Ayaz Sarwar Jamali Advocate for SRB.
Mr. Zainul Abidin DC SRB.**

For hearing of CMA No. 6993/2013.

Date of hearing: **28.08.2019**

Date of order: **28.08.2019**

ORDER

Muhammad Junaid Ghaffar, J. In this Suit the Plaintiff was aggrieved by issuance of Show Cause Notice by Sindh Revenue Board in respect of two issues. One for payment of sales tax for services provided or rendered as a member's club under tariff heading 9801.4000; and the other for their construction activities under heading 9807.0000 demanding levy and payment of Provincial Sales Tax on such services. Insofar as the first portion of the Show Cause Notice is concerned, learned Counsel for the Plaintiff has not pressed the Suit, and therefore it stands dismissed as not pressed to that extent.

Insofar as the other issue is concerned it appears that various other construction companies and aggrieved persons including the Association of Builders and Developers had filed various Petitions before this Court and in the case of ***Association of Builders and Developers of Pakistan v. province of Sindh and others*** reported as **2018 PTD 1487**, the Show Cause Notices issued to all categories of persons engaged in Services of Property Developers or Promoters in respect of development of purchased or leased land for conversion into residential

or commercial purposes, and so also construction for residential or commercial units and construction services were *set aside*. It further appears that pursuant to the Judgment of the learned Division Bench as above various Suits pending before this Court were decreed including Suit No. 547/2015 vide order dated 30.04.2018. Though, the Counsel for Sindh Revenue Board has argued that such judgment of the Division Bench, as above, has been impugned before the Hon'ble Supreme Court, however, he has not been able to place on record any order, whereby, the judgment in question was suspended. The operating part of the Judgment, reported above, is contained in Paragraphs 42 and 44 which reads as under:-

“42. Keeping all of the above analysis and discussion in mind, and now examining the impugned notices and orders in the light thereof, we are of the view that the SRB and departmental authorities have seriously, and to an extent fundamentally, misunderstood and misapplied the Act and, more specifically, the three tariff headings here involved. The impugned notices and orders disclose an approach that is rather simplistic and superficial, and in our view clearly runs counter to the requirements of the statute. Serious errors of law have been made at a fundamental level. No attempt appears to have been made to discover the specific facts applicable to each Petitioner, and to the extent that the facts are set out at all, the same have not been fully appreciated or explored. The impugned notices and orders are not sustainable and cannot therefore, be allowed to stand.

44. In view of the foregoing, we hereby quash the notices and orders impugned in the petitions and restrain the respondents from taking, or continuing with, any action or proceedings in terms or in respect thereof. However, this shall not prevent the SRB or the departmental authorities from initiating fresh proceedings or taken action anew in accordance with the Act (if at all such proceedings and / or action are lawfully sustainable), but at all times and in manner only that is consistent with what has been held and laid down in this judgment.”

In view of hereinabove position, this Suit is decreed to the extent of Para 44 as above whereas, all pending applications stand disposed of accordingly.

J U D G E