

IN THE HIGH COURT OF SINDH, KARACHI

Present

Muhammad Shafi Siddiqui, J

Mahmood A. Khan, J

CP No.D-310 of 2019

***[M/s Al-Tariq Constructors (Private) Limited v.
Province of Sindh & Others]***

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For the Petitioner	Dr. Ahsan Laliwala, Advocate
For Respondent No.1	Mr. Saifullah, AAG
For Respondents No.2&3	Mr. Shamshad Ahmed, Advocate
Date of hearing	09.12.2021

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JUDGMENT

Muhammad Shafi Siddiqui J.- The petitioner being an engineering construction company, rendering services in relation thereto, has invoked the jurisdiction of this court by challenging the amendment carried out in Rule 42-B to Sales Tax on Services Rules, 2011 which is meant for special procedure for payment of tax on construction services. The amendment was carried out by virtue of impugned Notification No.SRB 3-4/3/2015 and Notification No.SRB 3-4/5/2015 both dated July, 1, 2015 which are claimed to be unconstitutional and without mandate of law.

2. The petitioner has primarily urged that the impugned notifications are unconstitutional as the imposition and collection of statutory rate of tax and claiming input credit/tax adjustment is the vested right of the petitioner as provided in Section 8(1) of of Sales Tax on Services Act, 2011. It is further argued that the power to levy higher/lower rate of tax under Section 8(2) of

SST Act, 2011, cannot be subjected to conditions via impugned notification as far as statutory rate provided under Section 8(1) of SST Act, 2011 is concerned. It is further argued that powers given under Section 8(2) of SST Act, 2011 could only be exercised through notification for any given tax period and such powers could not be exercised without specifying the tax period and since no tax period has been assigned in the challenged notification/amendment, it is contrary to main statute in terms of Section 8(2) of SST Act, 2011.

3. We have heard learned counsel and perused the available record.

4. Section 8 of SST Act, 2011 is a charging provision in terms whereof there shall be charged, levied and collected tax known as sales tax on the value on taxable services at the rates specified in the schedule in which taxable services is listed. It further provides that the Board with the approval of government may, subject to such conditions and restrictions, as it may imposed by notification in the official gazette, declare that in respect of any taxable services provided by registered person or a class of registered persons, a tax shall be charged, levied and collected at such higher or lower rate or rates as may be specified in the said notification for any given tax period.

5. The impugned notification referred above brought amendment in the earlier notification No.SRB 3-4/8/2013 dated 1st July, 2013. Similarly, the second impugned notification of the same date brought the amendment in Rule 42B to the Sales Tax on Services Rules 2011. Earlier notification of 2013 wherein amendment was made via impugned notification is not challenged on the touchstone that the notification does not suggest a given tax period. Therefore, on this very count that earlier notification was not challenged and

the latest amendment only suggests higher or lower rate with the choice to be opted by the service provider, is not available for a challenge.

6. Earlier, the rate of tax on construction services reduced to 8% in terms of notification of 2013 as amended from time to time subject to conditions, limitations and restrictions, available, however, by virtue of this the impugned amendment the service provider may elect or opt to pay tax of statutory rate of 13% on all such construction services by submitting his written election or option in Form-C as attached to the Rule under consideration for the convenience of the commissioner of Sindh Revenue Board, within three weeks from the date of commencement of financial year, however, those who commenced their activity for the subject tariff for the first time after impugned amendment is carried out, may exercise their right of election or option atleast 14 days/two weeks before the commencement of such economic activity and this option was available for that financial year only, subject to consequential election/option for another tax period. Thus by virtue of this amendment the service provider in relation to the tariff under construction may opt the standard rate of Sindh Sales Tax in terms of showing their desire by submitting Form-C within the timeframe available.

7. In the instant case the change in Rule 42B of Rules 2011 by prescribing limitation and restriction for opting to charge at standard rate, is apparently within frame of Section 8(2) of SST Act, 2011 which exercise has not been availed, as required, in terms of time specification, which consequently led to an attempt on the part of the petitioner to challenge the amendment as brought by way of a notification duly approved by the government, to which no arguments were raised.

8. Earlier notification of 2013 was issued for specifying reduced rate of tax of certain categories alongwith restriction, therefore, there is no need to mention specific tax period for its validation as for that a new notification could have been issued whereas this is only an amendment of the earlier notification. Even otherwise, the timeframe of tax period as far as implementation of this amendment is concerned is always available in terms of proviso to Rule 42B which is as under :

*“Provided that where a service provider elects or opts to pay the tax at the statutory rate of [13%] on all such construction services, he may do so by submitting his written election or option in Form “C”, as appended to this rule, so as to reach the concerned Commissioner SRB within 21 days from the date of commencement of every financial year (i.e. by 21st July every year). However, the persons commencing their economic activity in relation to such construction services for this first time after the date of this notification (i.e. after the first day of July, 2015), may exercise their right of such election or option atleast 14 days before the commencement of such economic activity. **The election or option, so exercised, shall be valid only for the financial year in which the election or option, as prescribed, is submitted with an additional option to submit the written election or option, financial year-wise, on or before the 21st day of each of the subsequent financial year.**” [emphasis provided]*

Hence, there is nothing which could even remotely render the impugned amendment to be either *ultra vires* the constitution or the present law itself, therefore, the petition was dismissed by our short order dated 09.12.2021 and these are the reasons for the same.

JUDGE

JUDGE

Karachi:
Dated:29.12.2021.