

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

**Constitutional Petition No. D – 1711 of 2020**

Date	Order with signature of the Judge
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1. For hearing of Misc. No.7799/2020
2. For hearing of main case

**28.10.2021**

Mr. Javaid Farooqui, advocate for the petitioner  
Mr. Saifullah, Additional AG  
Mr. Kafeel Ahmed Abbasi, DAG  
Mr. Hussain Bohra, Assistant Attorney General  
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Mr. Shamshad Ahmed advocate files Vakalatnama on behalf of respondents No.2 and 3, which is taken on record, whereas Mr. Ghulam Murtaza Korai advocate, who appeared on the last date, failed to appear today. Counsel was put on notice as to whether case is covered by *Freight Forwarders* case.

Learned counsel in attendance submits that the controversy involved in this petition is identical to some of the findings reached by a Bench of this Court in the case of *Pakistan International Freight of Forwarders Association through General Secretary v. Province of Sindh through Secretary and another* [2017 PTD page 1], relevant text and conclusion in the above referred judgment is as under: -

*73-e. The provisions of the Sindh Sales Tax on Services Act, 2011 as relate to shipping agents etc. (being clauses (47), (80), (82) and (89) of section 2 and headings Nos. 9805.1000, 9805.2000, 9805.2100 and 9805.3000 of the First and Second Schedules thereof) are ultra vires the Constitution, being a direct encroachment on the exclusive federal taxing power contained in entry No. 53 of the Federal Legislative List.*

*74-c. Any notices issued, proceedings taken or pending, orders made, tax recovered or action taken under the 2011 Provincial Act in respect of the rendering or providing of services (to the extent as challenged in any relevant petition) as are covered by para 73(e) above are hereby quashed and set aside.<sup>1</sup>*

The petitioner has prayed in this petition as under: -

1. *Declare that the provisions of Sindh Sales Tax on Services Act, 2011 as relates to Stevedores being section 2(89) and tariff headings 9805-2000 of the First and Second Schedules are ultra vires the Constitution, being a direct encroachment on the exclusive federal taxing power*

*contained in entry 53 of the Federal Legislative List to the Fourth Schedule to the Constitution of Pakistan, 1973.*

- 2. Declare that the petitioner's stevedoring services are not chargeable to Sindh Sales Tax on Services Act, 2011, and thus petitioner is not liable to pay Sindh Sales Tax on Services under the Sindh Sales Tax on Services Act, 2011 and is entitled for refund of such taxes as already been paid to the respondents.*
- 3. Declare that items 9805-2000 to the first and second schedules of the Sindh Sales Tax on Services Act, 2011, are illegal, unlawful without jurisdiction, unconstitutional, ab-initio void, and of no legal effect.*
- 4. Declare that the show cause notice dated 17.02.2020 (Annexure 'A') as unlawful and of no legal effect, and same may be quashed/set aside and suspended till decision of the above petition.*
- 5. Restrain the respondents permanently from recovery and withholding of Sales Tax on Services of Stevedores under the Sindh Sales Tax on Services Act, 2011 from the petitioner by themselves or through any other agency working under them.*

We have gone through the conclusion drawn in paragraphs 73 and 74 of the referred judgment and find no reason to form any other view, in view of facts and circumstances of the case. Hence by applying the rationale and reasoning and a conclusion in the shape of paragraphs 73-e and 74-c, the findings and conclusion is applied here mutatis mutandis and the petition is allowed accordingly. However, since the Sindh Revenue Board claimed to have challenged the said judgment, they are at liberty to seek any relief as they deem fit and proper and this order is without prejudice to their such rights.

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