

**IN THE HIGH COURT OF SINDH, KARACHI**  
**C. P. No. D-860 / 2024**

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Date Order with signature of Judge

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**Present: *Mr. Justice Muhammad Junaid Ghaffar***  
***Mr. Justice Muhammad Abdul Rehman***

**Petitioners:** Arfeen International Pvt. Limited & others, Through Mr. Khalid Javed Khan, Advocate.

**Respondents:** Sindh Revenue Board  
Through M/s. Ovais Ali Shah, Marium Riaz, Fahad Hussain Narejo, Advocates.  
Province of Sindh through Ms. Deeba Jafri, Assistant Advocate General.

**Date of hearing:** 13.08.2024  
**Date of Order:** 13.08.2024

**J U D G M E N T**

**Muhammad Junaid Ghaffar, J:** Through this Petition, the Petitioner has sought the following relief: -

- i) Declare that the Respondents have no lawful authority or jurisdiction to levy sales tax on any relationship including foreign suppliers of goods and local agents described as Indenters or any other description.
- ii) Declare that in order to levy sales tax on any business activity or economic activity amounting to provision or rendering of service within the territorial limits of a Province, the service and its essential ingredients must be defined, enumerated and specified in the statute itself and no relationship or transaction without defining and enumerating elements of service constituting a taxable service can be made liable to or subjected to tax under the Sales Tax on Services Act. 2011.
- iii) Declare that the Petitioners not providing or rendering any taxable service, therefore not liable to any pay tax under the provisions of the Sindh Sales Tax on Service Act, 2011.
- iv) Declare that Section 2(51A), read with Heading 9819.1200 in the Second Schedule, of the Sindh Sales Tax on Services Act 2011, along with Rule 41B of Sindh Sales Tax on Services Rules, 2011, are ultra vires the Constitution of Pakistan. 1973.
- v) Declare that the Respondents have no lawful authority or jurisdiction to levy, demand or recover sales tax on any relationship or activity, directly or indirectly, on activity leading to export or import of goods.

Without prejudice to the above, and only as an alternate

- vi) Declare that the services provided by the Petitioners are covered under exports, therefore fall outside the ambit of the Sindh Sales Tax on Services Act, 2011.
- vii) Restrain the Respondents, its officers or anyone on their behalf, from demanding and / or collecting sales tax under the Sales Tax on Services Act, 2011, from the Petitioners on their receipts from foreign principal and / or restrain them from taking any action or passing any order against the Petitioners in any manner whatsoever
- viii) Grant any other relief as deemed just and appropriate in the circumstances of the case
- ix) Grant cost of the petition."

2. Though learned Counsel for the Petitioners has made various submissions including, but not limited to, that the question of leviability of Sales Tax on the Petitioners is still open and can be challenged before this Court, in view of order dated 13.04.2023 passed by the Hon'ble Supreme Court in the case of **Bhattra Sons**<sup>1</sup> whereby, a Division Bench's Judgment of this Court in **Zona Pakistan**<sup>2</sup> has been maintained, whereas, the Province cannot levy any Sales Tax on business relations not involving any rendition of services as according to him, such statement was given by the Counsel for Sindh Revenue Board in the said order. He has also placed reliance on **Suresh Kumar & Young Tech Private Limited**<sup>3</sup>.

3. However, notwithstanding these submissions, for the present purposes, we are of the considered view, that this Petition is incompetent as to the above submissions. For that we may refer to the order of the Hon'ble Supreme Court as relied upon by the Petitioner's Counsel which reads as under:-

The matter in issue before us is whether the appellants/petitioners, who are engaged in the business of Indenting are liable to be registered under the Sindh Sales Tax on Services Act, 2011 ("**Act**"). The learned High Court through the impugned judgment dated 10.01.2022 has concluded that there is no bar to

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<sup>1</sup> M/s. Bhattra Sons v. Province of Sindh through the Secretary Finance Department and others (C.A. No. 671/2022)

<sup>2</sup> Zona Pakistan (Pvt) Limited v. Province of Sindh (2022 PTD 984)

<sup>3</sup> Suresh Kumar v. Federation of Pakistan (P L D 2020 Sindh 62) & Collector of Customs v. Young Tech Private Limited (2024 S C M R 457)

the registration of the appellants/petitioners. Insofar as the matter of taxability is concerned, that is to be decided as & when the dispute or question arises.

2. The learned counsel for the appellants / petitioners submits that they are acting on behalf of foreign principals under an agreement which is available on record and that they do not render any services in the performance of their contractual duties. Accordingly, they are not liable to registration under the Act.

3. The learned counsel for the Sindh Revenue Board submits that on an analysis of the indenting agreements entered by the appellants/petitioners, four different *fora* in the departmental hierarchy have given the concurrent finding that the appellants/petitioners have to render services of one nature or another to advance the business interest of their foreign principals. Consequently, they are liable to registration under the Act.

4. On our query whether the sales tax on services levied by the Province under Section 8(3) & (4) of the Act, is leviable on business relations not involving the rendition of services, learned counsel for the respondent Sindh Revenue Board has categorically stated that under the provisions of Entry 49 in Part-I of the Federal Legislative List, the Province does not have legislative or executive competence to do so. Entry 49 is reproduced below:

*"Taxes on the sales and purchases of goods imported, exported, produced, manufactured or consumed [except sales tax on services]"*

5. Clearly under the constitutional mandate a Provincial Government can levy sales tax on services alone. The apprehension of the appellants/petitioners that in absence of any services being rendered by them, the Provincial Sales Tax shall still be levied on their transactions stands addressed by the above noted statement of the learned counsel for the Sindh Revenue Board. At the moment that question does not arise for our determination because no sales tax has yet been levied on the appellants/petitioners. The question regarding *leviability* of sales tax is, therefore, academic at this stage. It will be open for the appellants/petitioners to contest the *leviability* of the tax when they are called upon to pay the same by the respondents under a notice relating to any particular transaction. Nonetheless, the Court expects that the respondents shall while determining the *leviability* of the sales tax bear in mind the aforementioned statement made in Court by their learned counsel on their behalf. In case an adverse eventuality arises, the appellants / petitioners shall be justified to approach a competent forum for a declaration of their rights in accordance with the Constitution and law.

6. For the present, we consider that these appeals/petitions are premature to the extent *leviability* of sales tax is concerned, that is a matter to be taken up for consideration once a grievance in that behalf has actually materialised. With respect to the question of registration of the appellants/petitioners with the respondent sales tax authorities, that is an obligation contemplated by the Act which the appellants / petitioners are liable to perform.

7. These matters are disposed of in the above terms."

4. Insofar as the impugned notices are concerned, for requirement of registration of the Petitioners under the Sindh Sales Tax on Service Act, 2011, ("Act") there cannot be any exception to that as held by the Hon'ble Supreme Court in the above order. For the present purposes, the impugned notices

issued to the Petitioners are only in respect of their registration pursuant to the above order of the Hon'ble Supreme Court and though in the impugned notices, there is reference to certain figures and amounts of sales tax; however, learned Counsel appearing on behalf of SRB has candidly conceded that impugned notices are not in fact any demand notices; but only seek registration of the Petitioners under the Act in question. He has further submitted that these figures have been obtained from the Banks of the Petitioners and instead of challenging the registration notices before this Court once again, they are required to submit to the jurisdiction of the officer concerned and raise all such legal question before the said authority, whereas they will be dealt with in accordance with law. As to the Registration of the Petitioners, in fact, on the very first date of hearing on 21.02.2024 the Petition was not pressed to this extent in view of the observations of Hon'ble Supreme Court.

5. In view of the above facts and circumstances since the impugned notices are only in respect of Registration for which the Petitioners are already held to be liable, we do not see any reason to interfere with such notices, whereas, if any further notices including a Show Cause Notice is issued by SRB, the Petitioners may respond to the same and raise all such objections as may be available to them which are to be dealt with in accordance with law by the Respondents. For these reasons by means of a short order passed on 13.08.2024 this Petition was dismissed, and these are the reasons thereof.

**J U D G E**

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