

**IN THE HIGH COURT OF SINDH, KARACHI**  
**Constitution Petition No.D-7523 of 2018**

Date

Order with signature of Judge

**Present: Mr. Justice Muhammad Junaid Ghaffar**  
**Mr. Justice Mohammad Abdur Rahman**

**PETITIONER** : **National Investment Trust Limited**  
**Through Mr. Ovais Ali Shah, Advocate.**

**RESPONDENT** : **Sindh Board of Revenue &**  
**NOS.2&3** **Asst. Commissioner SRB-II**  
**Through Ms. Sumaya Kalwar, Advocate.**

**Province of Sindh** : **Through Ms. Deeba Ali Jafri, Asst. Advocate-**  
**General, Sindh.**

**Date of Hearing** : **11.09.2024**

**Date of Judgment** : **11.09.2024**

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

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

- I. *Declare that sub-rules (2) and (4) to Rule 30 of the Sindh Sales Tax Rules, 2011 are ultra vires the Act, 2011, unlawful and unconstitutional and strike them down;*
- II. *Alternatively, read down sub-rules (2) and (4) to bring them in conformity with the Act, 2011 by declaring that they are only applicable on services which have been listed in the second schedule to the Act, 2011 and further, the tax is leviable on the net amount attributable to any corresponding service and not the gross amount;*
- III. *Declare the Impugned Show Cause Notice dated 07.09.2018 issued by the Respondent No.3 for Tax Periods June 2014 to June 2016 to be illegal and unconstitutional and without jurisdiction;*
- IV. *Restrain the Respondents, jointly and severally, directly as well as through their servants, officers, employees or assigns from taking any action against the Petitioner for the Tax Periods June 2014 to June 2016 on basis of Show Cause Notice dated 07.09.2018;*
- V. *Grant any other relief deemed just and appropriate in the circumstances of the case; and*
- VI. *Grant costs and special costs.*

2. Learned counsel for the petitioner submits that the issue, as raised in this petition as to whether the value of service can be defined by way of Rules issued under the Sindh Sales Tax on Services Act, 2011, has already been decided in the case of ***Sami Pharmaceutical (Pvt.) Ltd. and others v. Province of Sindh through Chief Secretary and others [2021 PTD 731]***, and has read out Paras 8 and 9 thereof. According to him, though Show Cause Notices have been issued, but sales tax is being demanded on the gross amount as defined under Rule 30 of Sindh Sales Tax Rules 2011, which is ultra vires to the provisions of the Act as sales tax cannot be charged on the gross amount of service by way of Rules as held in the above judgment.

3. On the other hand, learned counsel appearing on behalf of Sindh Revenue Board has opposed to this Petition on the ground that some earlier Show Cause Notices have been adjudicated against the Petitioner, hence no case is made out.

4. Heard both the learned counsel for the parties and perused the record.

5. Insofar as the contention of the Petitioner's counsel that value of service cannot be extended or enlarged through Rules on the gross amount received by a service provider, which may include an amount not falling within the services rendered is concerned, the same already stands decided in the case of ***Sami Pharmaceutical (Supra)*** and maintained by the Hon'ble Supreme Court in the case reported as ***Sind Revenue Board v Sami Pharmaceuticals (Private) Limited (2023 SCMR 1776)***.

5. Moreover, in the parawise comments, SRB has itself supported the stance of the Petitioner that Rule 30, ibid, is subordinate legislation and can never replace charging sections, whereas it is clarificatory to the extent of the provisions of the Act in question. Para 10 of the comments read as under: -

“10. Strongly denied. The petitioner has tried to distort the facts. Sub-rule 2 of Rule 30 of the Rules, 2011 provides that all taxable services provided or rendered by all listed persons including Asset Management Companies in main tariff heading 98.13 shall pay the tax on such taxable services except the services of Hajj & Umra, services of cheque book issuance, Musharika & Modaraba financing. Furthermore, sub-rule 4 also stipulates that value of such taxable services shall constitute gross amount excluding mark-up charged from the service recipients. It is humbly submitted that rule 30 is subordinate legislation and can never replace charging section i.e. section 17 of the Act, 2011. In view hereof, rule 30 is clarificatory of provisos enshrined under section 3, 4, 5, 8, 9, 17 of the Act, 2011.”

6. In fact, the above response supports the stance of the Petitioner that the value of service cannot be extended or enlarged by way of rules to levy sales tax on the gross amount received by a service provider, and it is only the actual quantum of service which is taxable. In view of the above, since SRB itself has taken the stance that the value of services is to be determined under the Act and not by way of sub-ordinate legislation i.e. Rule 30, coupled with the fact that same has already been interpreted by this Court in the case of **Sami Pharmaceutical (Supra)**, we deem it appropriate to remand the matter to the concerned Adjudicating Authority, who has issued Show Cause Notices, which shall be decided strictly in view of the above comments of SRB and the judgment relied upon by the Petitioner's Counsel after affording an opportunity of hearing to the Petitioner.

7. Petition stands disposed of in the above terms.

**J U D G E**

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\*Farhan/PS\*