

# **IN THE HIGH COURT OF SINDH, KARACHI**

Special Sales Tax Reference Applications No. 07 of 2024

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

**Applicant:** M/s. Regus Executive Center  
Karachi (Private) Limited  
Through Mr. Sauban Tasleem,  
Advocate.

**Respondents:** Assistant Commissioner (Unit-  
04), SRB, Karachi & another  
Through Mr. Shamshad Ahmed  
Advocate.

**Date of hearing:** 17.03.2025.

**Date of Judgment:** 17.03.2025.

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

**Muhammad Junaid Ghaffar, Acting Chief Justice:** Through this Reference Application, the Applicant has impugned Order dated 12.12.2023 passed in Appeal No. AT-70/2023 by the Appellate Tribunal, Sindh Revenue Board, at Karachi, proposing various questions of law; however, vide Order dated 02.05.2024, this Reference Application was admitted for Regular hearing on question Nos. (iii) and (v), which reads as under:-

- “iii. Whether mere renting of immovable property by a landlord on rent to a tenant for consideration, would be treated as a taxable service in terms of the judgments of High Court of Sindh and the Supreme Court in *Young’s Private Limited*?
- v. Whether default surcharge and penalty could be imposed upon the Applicant in the instant case?”

2. Heard learned Counsel for the parties and perused the record. The issue in hand is in respect of demand of Sales Tax on “Business Support Services” being rendered by the Applicant as raised through Show Cause Notice dated 01.07.2021 pertaining to tax period starting from July 2015 to June 2018, as according to SRB the said service is defined under Section 2(19) of the Sindh Sales Tax on Services Act, 2011, whereas the Applicant has not paid sales tax on the

entire amount of services rendered. On the other hand, Applicant's case is that they provide rental space / service to various clients along with ancillary services under the head of "Business Support Services" and for that they issue a common invoice specifying both services separately, along with the amount of service and payable tax distinctly. According to them, though no sales tax is payable on renting of property pursuant to judgment of this Court in the case of **Youngs (Pvt) Limited<sup>1</sup>**, however, in the instant matter tax has been paid @3%, and therefore, the impugned orders are not sustainable.

3. Record reflects that the applicant is registered as a business support service provider and pays tax accordingly. Insofar as the levy of provincial sales tax on rental income from properties is concerned, the same stands decided by this Court against the department in the case of **Youngs (Pvt) Limited (Supra)**. It further appears that from 2017 onwards the definition of renting of immoveable property (section 2(72C) was though amended and the department had also sought a review of the Supreme Court's judgment, however, the same also stands dismissed vide Order dated 11.01.2024. Be that as it may, for the present purposes, the said issue is not relevant as the Applicant's case is that they have paid the amount of 3% tax chargeable on such rental income, whereas, the tax period involved till 2017 cannot even otherwise be charged to tax on rental income from property as it is to be governed by the earlier un-amended provision of law, which has been interpreted by this Court in the case of **Young's (Pvt) Ltd. (Supra)**, whereby, it was held that renting of property is not a service. Therefore, to the extent of such service, if at all being rendered by the Applicant, no sales tax is payable.

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<sup>1</sup> Young's (Private) Limited v. Province of Sindh (2019 PTD 389), maintained by the Honourable Supreme Court vide Judgement dated 05.09.2022 passed in Civil Appeal No. 2133/2017 (Province of Sindh etc. v. Young's (Pvt) Ltd and others)

4. As to the arguments of the Respondent's Counsel that the entire quantum of service is to be charged under the "Business Support Services", we are of the considered view that such contention is incorrect as the Applicant has been generating invoices with separate amounts and in various cases it is only the rental service from property, which has been charged; therefore, this objection does not hold field. The Tribunal appears to have been swayed by irrelevant application of law as well as facts in passing the impugned order. If the Tribunal believed no substantial material was provided by the Applicant, then at the same time it was also incumbent upon it to confront SRB as to from where they had gathered the information and made out a case without proper invoices issued by the Applicant. Before us, various invoices have been placed on record and in our considered view, the Applicant has discharged the burden as to providing two separate and distinct services inasmuch as the invoices very clearly depict that they provide separate and distinct services to various clients and have charged sales tax accordingly.

5. The other issue raised in the impugned orders of the forums below that the in the alternative, the services rendered by the Applicant falls within infrastructural support services as defined in section 2(19) of the Act, it would suffice to hold that this was never the case of Respondents in the show cause notice; hence, no finding could have been recorded by the said forums including the Tribunal. The best case of the Respondent was that the entire amount of service is to be charged sales tax under Business Support Services, which is not the case in hand based on the explanation and material submitted by the Applicant. The Applicant is offering / renting the space which at times also include certain support services, and therefore, the renting of space remains a separate and distinct service, and mere issuance of a common invoice does not ipso facto makes

such services wholly taxable. Per settled law, neither the definition nor the category under which a person is registered can create liability of tax as it is the actual service so rendered which is taxable. In addition, the Memorandum and Articles of Association of a registered person also do not denote the exact nature of services being rendered and based on that no definite determination regarding providing a particular service can be arrived at. The forums below have seriously erred in relying upon the said Memorandum and Articles of Association. At the most they ought to have investigated the matter on their own by approaching the Applicant first and then the tenants if so warranted. It is also noticed that the Commissioner Appeals has relied upon some Indian judgment in somewhat similar facts; however, before that it was incumbent upon it to first examine the similarity in both the laws. As rightly pointed out by the Applicant that the law in India is materially different as compared to the Act in question, therefore, no reliance can be placed on the said judgment.

6. In view of hereinabove facts and circumstances of this case, both the above questions are answered in favour of the Applicant and against the Respondents. Consequently, thereof, the orders of the forums below are set-aside to this extent and the Reference Application is **allowed**. Let copy of this order be issued to the Appellate Tribunal Sindh Revenue Board in terms of subsection (5) of Section 63 of the Sindh Sales Tax on Service Act, 2011.

**ACTING CHIEF JUSTICE**

**J U D G E**

Ayaz