

SRB notification: SC sets aside SHC ruling

The Supreme Court has set aside the Sindh High Court judgement that had curtailed the scope of the Sindh Revenue Board to issue notification dated 17th April, 2014. The judgement authored by Justice Qazi Faez Isa said that it was also not appropriate for the High Court to restrict the scope of the Sindh Revenue Board's notification dated 17th April, 2014, particularly when there was no formal challenge thereto.

The notification dated 17th April, 2014 encouraged those who had not paid the penalty and default surcharge to get exemption from payment, provided they came forward and paid five per cent of the default surcharge amount. Once the requisite amount was paid pursuant to the said notification, the government of Sindh, which had itself approved the issuance of the said notification, could not seek to restrict the scope of the said notification and contend that under the Sindh Sales Tax on Services Act, 2011 the said exemptions could not be given. A three-judge bench headed by Justice Gulzar Ahmed and comprised Justice Qazi Faez Isa and Justice Yahya Afridi after hearing the arguments of all parties on the petition of Independent Media Corporation (IMC) on 10th April, 2019 had reserved the judgement.

The court noted that the Sindh government's contention that the said notification was issued in excess of delegated powers or to seek to restrict its scope when it had itself approved its issuance and had not withdrawn it or supplanted it with another restricting the scope of the stated exemptions seemed inappropriate. The judgement observed that confusion and mischief may result when those issuing or approving a notification themselves question its legitimacy or grant unfettered discretion to the department and/or its officers with regard to its application.

According to the judgement, the IMC Pakistan admittedly paid Rs 237,702,668 in respect of the period of July 2004 to December 2006. It is also admitted that IMC Pakistan paid Rs 744,442,264 for the period January 2007 to June 2009 pursuant to the Federal Board of Revenue's notification dated 25th June, 2011.

The dispute is with regard to the accrued amount of penalty and default surcharge amounting to Rs 444,625,560 for the period from July 2004 to December 2006.

The IMC Pakistan claimed the benefit of the notification dated 17th April, 2014 and paid five per cent of the default surcharge which, according to it, exempted it from the remaining ninety-five per cent of the default surcharge and the entire penalty amount.

The judgement noted that the SHC itself restricted the application of the said notification for the reason that, "The 2011 Act [the Sindh Sales Tax or Services Act, 2011] was promulgated on 10th

June, 2011 and admittedly it has no retroactive effect."

A division bench of Sindh High Court through a judgement on 30th May, 2018 decided three constitutional petitions and two special sales tax references.

The Sindh Sales Tax on Services Act, 2011 was promulgated on 10th June, 2011 and came into effect on 1st July, 2011, however in its section 83 matters which had accrued under the Sindh Sales Tax Ordinance, 2000, has been attended to, including recovery of "any sum found due" in respect of assessments made under the repealed Ordinance and those "may be recovered under this Act" (respectively subsection (3) and (7) of section 83).

With the promulgation of the Sindh Sales Tax on Services Act, 2011, the Sindh Revenue Board Act, 2010 and the establishment of the Sindh Revenue Board the province of Sindh's dependency on the Federation and on the Federal Board of Revenue to administer and collect on its behalf sales tax on services, including penalty and default surcharge thereon, came to an end.

The Sindh Sales Tax Ordinance, 2000 had enabled the Federal Board of Revenue to, inter alia, recover taxes, penalties and surcharges by applying the provisions of the Sales Tax Act, 1990; however, after the promulgation of the Sindh Sales Tax on Services Act, 2011 these functions came to vest with the Sindh Revenue Board.

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