

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
MR. JUSTICE UMAR ATA BANDIAL, CJ
MR. JUSTICE SYED MANSOOR ALI SHAH
MRS. JUSTICE AYESHA A. MALIK

Civil Petition Nos. 3308 of 2021
and 538-K to 540-K of 2021

(On appeal from the judgment/order dated 10.03.2021 of the High Court of Sindh, Karachi passed in CP D-7409, D-7042, 7409/18, 8302/19)

Sindh Revenue Board
(in CP 3308 of 2021)

...Petitioner(s)

The Province of Sindh, Karachi
(in CP 538-K-540-K of 2021)

Versus

Karachi Club, Karachi and others
(in CP 3308 of 2021)

...Respondent(s)

M/s. Karachi Golf Club (Pvt) Limited
(in CP 538-K/21-540-K/21)

For the Petitioner(s) : Mr. Uzair Karamat Bhandari, ASC
Mr. Fauzi Zafar, Addl. AG Sindh
Mr. Anis M. Shahzad, AOR

For Respondent 1 : Ch. Tanweer Akhtar, ASC

For Respondent 7 : Malik Naeem Iqbal, ASC

For Respondent 5 : Mr. Makhdoom Ali Khan, Sr. ASC
Mr. Anwar Kashif Mumtaz, ASC
Mr. K.A. Wahab, AOR

Date of Hearing : 16.02.2022

ORDER

UMAR ATA BANDIAL, CJ.- We have read the impugned judgment dated 10.03.2021 very carefully. In paragraph-8 thereof it sets out the question whether membership/entrance fee and subscription charges (monthly and/or annual) received by member's clubs from their members fall within the purview of Sales Tax on

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Services under the Sindh Sales Tax on Services Act, 2011 ("Act 2011"). By reading the Act, 2011 in tandem with the doctrine of mutuality the same question is reiterated in paragraph-30 of the impugned judgment. From a number of precedents the judgment notes the treatment of contributions and payments by members to a members' club. These are governed by the doctrine of mutuality and do not amount to income for purposes of charging income tax. This view is based on the principle that income of the members' club is not driven by the profit motive and represents complete identity between the contributor and the participant/beneficiary. That analysis made in the context of income tax is extended to the services provided by a members' club to its members. However, the analogy is drawn without any discussion on how services by a members' club do not qualify as an economic activity. The said finding is, *prima facie*, based on an assumption. As a result, the same finding given in paragraph 35 of the impugned judgment proceeds to relieve all services provided by a members' club to its members from the charge of Sales Tax on services under the Act.

2. This view overlooks the fact that all respondent clubs pay Sales Tax on several services rendered to their members and that their plea is confined only to membership fee and monthly/annual subscription




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charges. The benefits that accrue to members on account of their membership in their clubs are not noticed by the impugned judgment. Whether the ambiance, the company, the environment and the premises do not constitute benefits having the nature of services availed by members, has not been touched. The absence of a profit motive noted in the paragraph 39 of the judgment may have relevance for purposes of income tax but that fails to account for the corresponding benefits, *quid pro quo* or service rendered by the members club. We consider that the controversy between the parties has certain crucial aspects that have been overlooked by the impugned judgment. In this regard the learned counsel for the petitioners has emphasised:

- i. Whether the Doctrine of Mutuality, as applicable to certain direct tax matters (Income Tax cases), can without a factual analysis be lawfully extended to cases of indirect taxes, especially to levy of Sindh Sales Tax on Services on provision of services by Clubs to their members under the Sindh Sales Tax on Services Act, 2011?
- ii. Whether services provided by a members' club to its members constitutes "economic activity" as defined in section 4 of the Sindh Sales Tax on Services Act, 2011 or whether they fall within the exclusion contained in section 4(3)(b)?
- iii. Whether intangible benefits rendered by Clubs to their members against entrance/admission fees and the monthly/annual subscriptions amount to distinct services so that those amounts that are taxable and can be included in the value of taxable services under the Sindh Sales Tax on Services Act, 2011?



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- iv. Whether the Constitutional Petition filed before the Honourable High Court of Sindh was competent against show cause notices given the availability of departmental, statutory remedies and disputed questions of fact such as the nature of incorporation and operation of the Respondent Clubs, their relationship with their members and the manner in which the amounts in question (i.e. entrance/admission fees and the monthly/annual subscriptions) are utilized by the Clubs, especially when the relevant documents had not been filed before the High Court?

3. On the other hand, the learned counsel for one of the respondent clubs has highlighted these points:

- *1. Whether the entrance fee and subscription fee of a club falls within the definition of service as envisaged in Entry 49 of the Fourth Schedule to the Constitution?
2. Whether the entrance fee and subscription fee of a club falls within the expression "services provided or rendered by clubs" under the Sindh Sales Tax on Services Act, 2011 ("Act, 2011").
3. Whether there is a distinction between "services provided or rendered by clubs" and eligibility to receive a service provided or rendered by clubs and whether both are liable to sales tax on services or only the former?
4. Whether the entrance fee or subscription fee of a members' club is not liable to Act, 2011 on the basis of doctrine of mutuality?
5. Whether the entrance fee and subscription fee of a club can be termed as a "service" being "provided or rendered" in terms of sections 2 to 5 and 8 of the Act, 2011 read with its First and Second Schedules as well as the scheme and context of the Act, 2011?
6. Whether Rule 42 of the Act, 2011 is ultra vires the Act, 2011.

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4. We would have been benefited by the view of the learned High Court on, *inter alia*, the foregoing points to the extent that these are relevant for resolving the controversy between the parties.

5. For the reasons given above, these petitions are converted into appeals and allowed. The matter is returned to the learned High Court for its fresh determination of the matters in dispute.

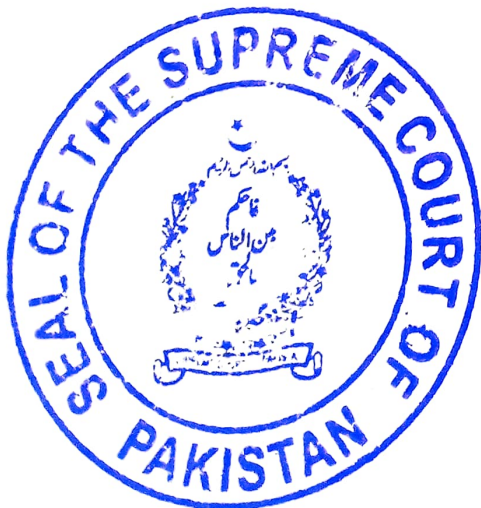
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16.02.2022
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3368/2022
 CR No: _____ Civil/Criminal
 Date of Presentation: 16-2-2022
 No of Words: 1000
 No of Folios: 15
 Acquisition Fee Rs. 500
 Copy Fee Rs. 93
 Court Fee Stamps 143
 Date of Completion of Copy 25-1-23
 Date of Delivery of Copy 26/1/23
 Compared by/Prepared by _____
 Received by: _____