

## **SRB cannot impose ST on services provided by CAA: SC**

Supreme Court of Pakistan has declared that the functions and regulatory duties performed by Civil Aviation Authority (CAA) are within the exclusive sphere of the Federal Legislature and the Sindh Revenue Board (SRB) cannot impose sales tax on the purported services provided by CAA. It is learnt that the SC has issued the judgement in the civil petition number 767 of 2014 and C.M.A. number 565-K/2013 in case of SRB (appellant) versus CAA (respondent).

The case of CAA was pleaded by Syed Naveed Andrabi Advocate Supreme Court of Pakistan. According to the judgement, SC has declared that the CAA performs functions mentioned in the Federal Legislative List and is also a federal regulatory authority envisaged in item 6 of Part I of the Federal Legislative List.

Matters of common concern to the federating units of Pakistan are attended to by the Federal Legislature and the Federal Government has the power to exercise executive authority in respect of all such matters itself or through an authority (like CAA) in terms of Articles 97 and 98 of the Constitution. Amongst the objectives of the Eighteenth Amendment was to further strengthen the Federation and institutions therefore it cannot be interpreted to weaken the Federation and institutions like CAA.

SC held that the Sindh Sales Tax on Services Act and the Sindh Sales Tax on Services Rules, 2011 to the extent that they impose on CAA sales tax on services are contrary to the provisions of the Constitution, are void ab initio and of no legal effect. The Sindh Sales Tax on Services Act and the Sindh Sales Tax on Services Rules, 2011 to the extent that they tax CAA violate Article 142(a) since only the Federal Legislature can make laws with respect to matters pertaining to CAA, it added.

The impugned judgement of the High Court is upheld to the extent that it had determined that, CAA "...is not liable to pay the tax under the Sindh Sales Tax on Services Act, 2011. All demands made, proceedings initiated, orders passed or notices issued to the petitioner [CAA] under or in terms thereof are hereby quashed and set aside". Consequently, this appeal is dismissed. Since this case required the examination and scope of provincial laws and determining their constitutionality, which had not previously been done by the court.

Having already determined that the province did not have the power to impose sales tax on CAA the second question, whether CAA provides taxable services, no longer needs to be answered, it said. SC has examined the nature of Constitution and the distribution of the legislative powers between the Federal and the provincial legislatures. The significance of powers vesting in the Federal Legislature, and the manner in which the Federal Legislative List and the incidental or ancillary matters clause therein, and the Constitution was interpreted. The background of Eighteenth Amendment and what was sought to be achieved thereby, considered the significance of the five words which were added to item 49 of the Federal Legislative List and whether they simply affirmed the pre-Eighteenth Amendment position or provided a new taxing power to the provinces. SC has also examined the scope of the CAA Ordinance, the establishment of CAA, its functions and regulatory role. The Sindh statutes which attempted to tax CAA were scrutinised.

The question whether CAA provides services and, if it does, can these be taxed was also examined. After scrutinising all these different matters and from different perspectives SC come to the same conclusion; a province cannot impose sales tax on CAA. Therefore, the question whether CAA can benefit from the "exemption" under Article 165(1) of the Constitution becomes irrelevant, it said.

Background of the case revealed that the High Court of Sindh at Karachi allowed a petition filed by the Civil Aviation Authority ("CAA") under Article 199 of the Constitution. The CAA, which was established under the Pakistan Civil Aviation Authority Ordinance, 1982 ("the CAA Ordinance"), had filed the said petition challenging the imposition of sales tax on services levied upon it under the Sindh Sales Tax on Services Act, 2011 (hereinafter "the Act") and the Sindh Sales Tax on Services Rules, 2011 (hereinafter "the Rules").

The Division Bench of the High Court allowed the petition filed by CAA and declared that CAA was, "not liable to pay the tax under the Sindh Sales Tax on Services Act, 2011", consequently, all demands made, proceedings initiated, orders passed or notices issued to CAA under the Act and the Rules were quashed and set aside. Since this case required the interpretation of the Constitution notices under Order XXVII-A of the Code of Civil Procedure were issued to the Attorney General for Pakistan and the Advocate General of Sindh.

The senior counsel Farooq H. Naek, represented Sindh Revenue Board ("the Board"), took SC through the various provisions of the Act, the Rules, the CAA Ordinance and the Constitution. He stated that only the Federal Government is exempt from taxation under Article 165(1) of the Constitution and this exemption would not extend to CAA as it is a statutory body set up under the CAA Ordinance. By referring to item 49 of Part I of the Federal Legislative List (the Fourth Schedule to the Constitution) he stated the Eighteenth Amendment to the Constitution (Act X of 2010) amended the said item 49 by inserting therein the words, "except sales tax on services" thereby meaning that the Federal Legislature does not have the power to impose sales tax on services and the power to impose sales tax on services exclusively vests in the provinces. He next referred to section 8 of the President's Order No 5 of 2010 (published in the Gazette of Pakistan on May 10, 2010) which stipulates that, "sales tax on services is a provincial subject under the Constitution ... and may be collected by respective provinces". Through the said Presidential Order the recommendations of the National Finance Commission were implemented. The provinces, according to the counsel, have always had the legislative power to tax services and the imposition of the sales tax on the services provided by CAA accords with the Constitution, the Act and the Rules; and cannot be circumvented by misplaced reliance on Article 165(1) of the Constitution. After referring to the CAA Ordinance the senior counsel stated that from these provisions it is clear that the CAA is not the Federal Government nor can it be equated with it, therefore CAA cannot avail of the exemption provided to the Federal Government in Article 165(1) of the Constitution. It was alternatively canvassed by Naek that with regard to the regulatory functions of CAA in connection with air-navigation no sales tax is imposed and it is only on the commercial activities undertaken and billed by CAA on which sales tax is imposed. The learned senior counsel alternatively averred that, neither on the property nor on the income of CAA sales tax has been imposed therefore on this ground too Article 165(1), which only exempts property and income, is not applicable. Mr. Naek took us

through the provisions of the Act and the Rules where under sales tax on the services provided by CAA is levied and the mode and manner of calculation and payment thereof.

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