

Subsection 2 (8) of Sindh ST on Services Act 2011, SHC allows petitions against amendment

KARACHI: The Sindh High Court (SHC) on Tuesday allowed the petitions against amendment in subsection 2 (8) of the Sindh Sales Tax on Services Act 2011 brought by amendment in rules.

A division bench of the SHC, comprising Justice Junaid Ghaffar and Justice Agha Faisal, in a short written order declared that value of services (of taxable supply) for the purpose of levy of sales tax on service providers/recipients (in respect of labour and manpower) shall be the amount of the net receipt of service charges received on actual basis exclusive of all reimbursed amounts of salary and allowances.

The division bench issued the short order in multiple petitions, filed by Zaheer Minhas, an advocate of the Supreme Court, and others on behalf of the Employers Federation of Pakistan (EFP) and others.

The Sindh government and the Sindh Revenue Board (SRB) had been made respondents in the petitions.

The petitioners submitted in the court that the act of the SRB of amending Rule 42-E in such a manner that as a result the petitioners are liable to pay a bigger amount of tax on the same quantum of service amounts to increasing rate of tax which is not permissible under the law.

They stated that it is a settled law that no tax can be imposed through delegated legislation. In the present case the Board has amended Rule 42-E by way of delegated legislation in such a manner that as a result, the petitioners are liable to pay a bigger amount of tax on the same service, amounting to increasing the rate of tax which is not permissible under the law.

Furthermore, even the government is not empowered to impose any tax without authority of any statute. So, therefore, amending Rule 42-E in such a manner that it causes higher rate of tax on employers, the respondents have violated the Constitution, they submitted.

They prayed the court to declare that the amendment in sub-section 2 (8) of the Sindh Sales Tax on Services Act 2011 brought by the Finance Act 2013 whereby SRB has been empowered to change or impose the tax is ultra vires of the Constitution, illegal, void, infructuous and of no legal effect. The petitioners also requested the court to declare that tax cannot be charged on the salaries and allowances payable to the manpower/ labour and restrain the SRB from demanding/collecting tax from the petitioners.