

ORDER SHEET

Case No: W.P.No.169/2024

Versus

Govt. of Punjab etc.

13.06.2024 Hafiz Muhammad Idrees, ASC on behalf of the
Petitioner alongwith M/s Hassan Askari Kazmi
and Muhammad Bilal, Advocates.
Mr. Abid Aziz Rajori, Assistant Advocate
General Punjab.
Mr. Hassan Kamran Bashir, ASC on behalf of
the Respondent/PRA alongwith M/s Abdul
Wakeel, Muhammad Hussam, Advocates.
Mst. Nadia Murad, Legal Officer, PRA and
Finance Department, Government of the
Punjab, Lahore.

Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the “Constitution”), the Petitioner/Pak Gulf Construction (Private) Limited has called in question the *vires* of impugned order dated 14.12.2023, whereby the Respondent No.4 has proceeded to compulsory register it in terms of Section 27 of the Punjab Sales Tax on Services Act, 2012 (the “Act”).

2. Brief facts of this case are that the Petitioner is the private limited company managing, developing and constructing the project known as “Centaurus” situated in Islamabad, comprising of shopping mall, residential apartments and hotel.

The Petitioner is duly registered for the purpose of sales tax with the Federal Board of Revenue (the “FBR”) since its physically located in Islamabad and fall under the territorial jurisdiction of the FBR and is discharging its due sales tax liability on CAM charges and branding income as per provisions of the Islamabad Capital Territory (Tax on Services) Ordinance (the “Ordinance”).

3. Hafiz Muhammad Idrees, ASC, at the outset, submitted that the Petitioner is not liable to be registered under Section 25 of the Act because under this provision of law a person providing any taxable service from his place of business in the Punjab, is required registration whereas the Petitioner is doing its entire business in the capital territory, Islamabad, and is already registered with the FBR. He maintained that the Respondents PRA have no lawful authority to compulsory register the Petitioner under the Act because the Punjab Revenue Authority (the “PRA”) is being controlled by the Government of the Punjab. He next argued that even otherwise Respondent No.4 has not authority to issue the impugned order, therefore, the same is liable to be set-aside.

4. Conversely, learned counsel for the PRA submitted that though registration is compulsory as per Section 25 under Chapter IV of the Act but Section 29(1) of the Act also provides the provisions about de-registration by clarifying that the Commissioner may de-register a registered person or such class of registered person not required to be registered under this Act and the

Petitioner may seek this remedy before the competent authority by making an application.

5. In response, Hafiz Muhammad Idrees, ASC contended that the Petitioner has already filed an application in terms of Section 29(2) of the Act but the same has not been decided thus far, hence, this petition. However, he next argued that the Petitioner would be satisfied if the matter be referred to the concerned authority for its expeditious disposal in light of aforesaid provisions of law.

6. Arguments heard and record perused.

7. The crux of the issue in this case is the registration or de-registration of the Petitioner and stance of Hafiz Muhammad Idrees, ASC is that the Petitioner is not liable to be registered with the PRA because it provides taxable service outside the province of Punjab. Before making any discussion on this point, firstly a quick glance is taken at preamble of the Act, which is reproduced hereunder for ease of the matter:

“Whereas it is expedient to provide for the levy of a tax on services provided, rendered, initiated, originated, executed, received or consumed in the Punjab and to deal with ancillary matters.”

The relevant provisions, which describe the procedure about registration and de-registration are Sections 25 and 29 of the Act, are also given below for ready reference:

“25. Registration.— (1) A person shall register under this Act, who—

- (a) *provides any taxable service from his office or place of business in the Punjab; or*
- (b) *is otherwise required to be registered under any of the provisions of the Act or the rules; or*
- (c) *fulfills any other criteria or requirements which the Authority may prescribe under sub-section (2).*

(2) *The registration under this section will be regulated in such manner and subject to such conditions and restrictions as the Authority may, by notification in the official Gazette, prescribe.*

3) *A person who receives a service, which is a taxable service by virtue of sub-section (2) of section 3, and is not a registered person shall be deemed to be a registered person for the purposes of the tax period in which—*

- (a) *such person receives the service;*
- (b) *an invoice for the value of the service is issued or sent to or received by the person; or*
- (c) *consideration for the service is paid by the person —*
whichever is earlier and all the provisions of this Act and the rules shall be applicable to such person for that particular tax period and any matters relating to, arising out of, or concerning that tax period as if that person had provided the service.

(4) *The Authority may publish on its website a list of persons registered under this Act.*

(5) *It shall be reasonable for a person to believe that another person is registered under this Act if that other person is on the list placed on the website of the Authority.”*

“29. De-registration.— (1) *The Commissioner may de-register a registered*

person or such class of registered persons not required to be registered under this Act.

(2) Where any person registered under this Act believes that he does not satisfy the requirements for registration specified in section 25, he may make an application to the Commissioner to be de-registered.

(3) If upon receiving such an application, the Commissioner is satisfied that the person is not required to be registered under this Act and has fulfilled the obligations under the Act, it shall de-register such person.

(4) Where the Commissioner receives an application under sub-section (2), it shall dispose of the application within a period of three months from the date of the receipt of the application, or within such extended period, not exceeding sixty days, as the Commissioner may, for reasons to be recorded in writing, fix.”

If preamble of the Act is read with the provisions of Section 25(1)(a) of the Act, it will clarify that the Act has been introduced by the legislature for levy of tax, in expedient manners, on the services (i) provided, (ii) rendered, (iii) initiated, (iv) originated, (v) executed, (vi) received or (vii) consumed in the **Punjab** and a person is required to be registered under this Act if he or she provides any taxable service from his or her office or place of business in the **Punjab**. The main stress of learned counsel for the Petitioner is that his client is not rendering services in the province of Punjab rather its entire business is in Islamabad territory, thus, it cannot be forced to be registered with the PRA. Under Article 1 Pakistan consists of four Provinces and one capital territory i.e. Islamabad Capital Territory. The PRA is controlled by the

province is Punjab while capital territory comes within the administrative mechanism of the Federal Government, therefore, the stance taken by learned counsel for the Petitioner has some force.

8. Be that as it may, since under Section 29(2) if a person does not satisfy with the requirements for registration specified in section 25 of the Act, he may make an application to the Commissioner in this regard, a copy of this writ petition is transmitted to Respondent No.3 who will consider it as a representation of the Petitioner and decide the same after hearing all concerned, including the Petitioner, and examining the entire record, strictly as per relevant provisions of the Act [specifically Section 29(2)], through a speaking order, within four weeks from the receipt of certified copy of this order. In the meanwhile, under the Doctrine of Stopgap Arrangement developed by this Court in the judgments reported as Shell Pakistan Limited versus Government of Punjab etc. (2020 PTD 1607) and Shaheen Merchant versus Federation of Pakistan/National Tariff Commission and others (2021 PTD 2126), the Respondents are restrained from taking any coercive measures against the Petitioner, till decision of its representation.

(JAWAD HASSAN)
JUDGE