

# IN THE HIGH COURT OF SINDH AT KARACHI

CONSTITUTIONAL PETITION NO. D- 8004 OF 2018

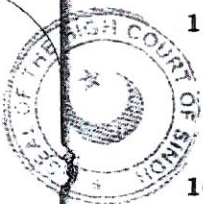
Presented on 15-11-18

Additional Registrar (Writ)

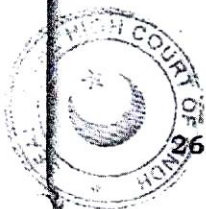
1. **ALL PAKISTAN SECURITY AGENCIES ASSOCIATION**  
1<sup>st</sup> Floor, 8-C, 24<sup>th</sup> Commercial Street  
Phase II Extension, DHA  
**KARACHI**
2. **AHL SECURITY MANAGEMENT (PVT.) LTD.**  
M-1, Mezzanine Floor, Falaknaz Plaza  
Main Shahrah-e- Faisal  
**KARACHI**
3. **AL-AUN GUARD'S (PVT.) LTD.**  
Suite No. 410, R.S.M. Square, Plot E-1, Block 7&8  
Shaheed-e- Millat Road  
**KARACHI**
4. **AQSA SECURITY GUARDS (PVT.) LTD.**  
Building No. 47C, 1<sup>st</sup> Floor, 21<sup>st</sup> Commercial Street  
Phase II Ext, DHA  
**KARACHI**
5. **BEEP GUARDS (PVT.) LTD.**  
D-46, K.D.A. Scheme No.1  
Miran Muhammad Shah Road  
**KARACHI**
6. **CROWN SECURITY SERVICES (PVT.) LTD.**  
8-C, 24<sup>th</sup> Commercial Street  
Phase II Extension, DHA  
**KARACHI**
7. **DEFENDER SECURITY SERVICES (PVT.) LTD.**  
Plot No. 110, Mezzanine Floor  
10<sup>th</sup> Street, Phase IV, DHA  
**KARACHI**
8. **DOGMA SECURITY & CONSULTANCY SERVICES (PVT.) LTD.**  
Office No. 104, 1<sup>st</sup> Floor, Portway Trade Centre  
Plot No. 189/A, Sindhi Muslim Co-Operative Housing Society  
**KARACHI**



9. **DRAGON SECURITY SERVICES (PTV.) LTD.**  
C-5, P-52, 3<sup>rd</sup> floor, Phase II  
Main Korangi Road, DHA  
**KARACHI**
10. **FALCON SECURITY (PVT.) LTD.**  
101 & 306, Aiwan-e-Sanat, Plot No. ST-4/2  
Sector 23, Korangi Industrial Area  
**KARACHI**
11. **FIST SECURITY (PVT.) LTD.**  
42-J, Block 6  
P.E.C.H.S  
**KARACHI**
12. **FRONTLINE SECURITY SERVICES (PVT.) LTD.**  
C 2 C, Saadi Lane 1, Khayaban-e-Ittehad  
Near Askri Bank, Phase VII, DHA  
**KARACHI**
13. **GHAZI SECURITY GUARDS (PVT.) LTD.**  
503, Hannan Centre, Plot No.55  
Block-7/8, D.A.C.H.S  
Shahrah-e-Faisal  
**KARACHI**
14. **GHOURI SECURITY GUARDS (PVT.) LTD.**  
Suite II, 2<sup>nd</sup> Floor, Al-Babar Center  
F-8 Markaz  
**ISLAMABAD**
15. **G.M. SECURITY SERVICES (PVT.) LTD.**  
3<sup>RD</sup> Floor, Building No.10-E/1  
Jami Commercial Street No. 1, Phase VII, DHA  
**KARACHI**
16. **GRANDEUR SECURITY GUARDS (PVT.) LTD.**  
405, 4<sup>th</sup> Floor Marine Faisal 10- A  
Block 6, PECHS  
**KARACHI**
17. **INDUS SECURITY SERVICES (PVT.) LTD.**  
B-7, Block-B, Gulshan-e-Jamal  
Main Rashid Minhas Road  
**KARACHI**
18. **JAGUAR SECURITY GUARDS (PVT.) LTD.**  
Office No. 18, 2<sup>nd</sup> Floor  
Rehmat Centre, I-8 Markaz  
**ISLAMABAD**

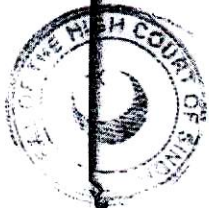


19. **KARACHI SECURITY SERVICES (PVT.) LTD.**  
A-5, A-6, First Floor, Jumani Arcade, Block-14  
Main University Road, Gulshan-e-Iqbal  
**KARACHI**
20. **MARS SECURITY GUARDS (PVT.) LTD.**  
18-A, Block-6, PECHS,  
**KARACHI**
21. **MEER SECURITY SERVICES (PVT.) LTD.**  
Office No. 5, 3<sup>rd</sup> Floor Plot 13-C  
37<sup>th</sup> Street, Tauheed Commercial Area  
Phase V, DHA  
**KARACHI**
22. **MERNAD PROTECTION & SECURITY (PVT.) LTD.**  
73-E, 9<sup>th</sup> Jami Commercial Street  
Phase VII, DHA  
**KARACHI**
23. **MUSTANG SECURITY SERVICES (PVT.) LTD.**  
3<sup>rd</sup> Floor, Ehtesham Center, Plot No. C-121  
Main Korangi Road, Phase-I, DHA  
**KARACHI**
24. **OMAR ALI SECURITY SERVICE (PVT.) LTD.**  
Room No. 305, 3<sup>rd</sup> Floor, Service Building  
K.I.C.T West Wharf  
**KARACHI**
25. **OMER RAZZAQ ENTERPRISES (PVT.) LTD. (OREL)**  
17-C, Sunset Lane-4  
Phase-II Extension, DHA  
**KARACHI**
26. **OQAB SECURITY SERVICES (PVT) LTD.**  
46, Al-Riaz Co-Operative Housing Society Ltd.,  
**KARACHI**
27. **PACIFIC SECURITY SERVICES (PVT.) LTD.**  
1/3, 2<sup>nd</sup> Mezzanine Floor, West Point Tower  
Phase-II Extension, Main Korangi Road, DHA  
**KARACHI**
28. **PAK SECURITY SERVICES (PVT.) LTD.**  
1<sup>st</sup> Floor, 10-C, 28<sup>th</sup> Street  
Tauheed Commercial Area, Phase V, DHA  
**KARACHI**
29. **PARWEST PACIFIC SECURITY (PVT.) LTD.**  
176, Street No. 4, Cavalry Ground,  
Lahore Cantt  
**LAHORE**





- 30. QUICK ACTION SECURITY SERVICES (PVT.) LTD.**  
MA-07 & 08, Mezzanine Floor, Shalimar Pride  
Near Mehran Depot, Malir Cantt. Road  
Model Colony  
**KARACHI**
- 31. RAPID SECURITY GUARDS (PVT.) LTD.**  
Suit No. 2, Al-Karam Building  
Main Shahrah-e-Liaquat  
Near Regal Chowk  
**KARACHI**
- 32. RESCUE SECURITY SERVICES (PVT.) LTD.**  
Anum Apartment, 2<sup>nd</sup> Floor, Plot No. 11-C  
27<sup>th</sup> Street, Touheed Commercial Area, Ph-V, DHA  
**KARACHI**
- 33. SAFETY & SECURITY SERVICES (PVT.) LTD.**  
Eamaan Tower, Commercial Market  
Chaklala Scheme III, Rawalpindi Cantt  
**RAWALPINDI**
- 34. SAKRU SECURITY SERVICES (PVT.) LTD.**  
3C, 1<sup>st</sup> Jami Commercial Street, 3<sup>RD</sup> Floor  
Khayaban-e-Jami, Phase VII, DHA  
**KARACHI**
- 35. SECSOL (PVT.) LTD.**  
Suit No. A-2, 2<sup>nd</sup> Floor, Plot No. 2-C  
Stadium Lane No. 3  
Khayaban-e- Shamsheer, Phase-V, DHA  
**KARACHI**
- 36. SECURITY 2000 (PTV.) LTD.**  
1 Anjum Plaza, Shaharh-e-Quaideen, PECHS  
**KARACHI**
- 37. SECURITY AND MANAGEMENT SERVICES (PVT.) LTD.**  
12th Floor Kawish Crown Plaza  
Shahrah-e-Faisal  
**KARACHI**
- 38. SHEZADA SECURITY SERVICES (PVT.) LTD.**  
41-C, 15<sup>th</sup> Commercial Street  
Phase-II Extension, DHA  
**KARACHI**
- 39. THE MUHAFIZ SECURITY (PVT.) LTD.**  
A-1/3, West Land Trade Centre  
3<sup>rd</sup> Floor, Block 7 & 8,  
K.C.H.S, Main Shaheed-e-Millat Road  
**KARACHI**



40. **TRI-WAH SECURITY (PVT.) LTD.**  
 101, 1<sup>st</sup> Floor, 53-C  
 27<sup>th</sup> Street, Tauheed Commercial  
 DHA, Phase V  
**KARACHI**
41. **VALIANT SECURITY SERVICES (PVT.) LTD.**  
 Apartment No. 2, 1<sup>st</sup> Floor, Plot No. 31-C  
 12 Commercial Street, Phase-II Extension, DHA  
**KARACHI**
42. **ZULFIQAR SECURITY COMPANY (PVT) LIMITED**  
 P 39, Rahman Garden,  
 Near Fish Farm, Satiana Road  
**FAISALABAD..... PETITIONERS**

*VERSUS*

1. **PROVINCE OF SINDH**  
 Through its Chief Secretary,  
 Sindh Secretariat,  
**KARACHI**
2. **SINDH REVENUE BOARD**  
 Through its Chairman  
 Government of Sindh,  
 Shaheen Complex,  
 I.I. Chundrigar Road  
**KARACHI ..... RESPONDENTS**

**PETITION UNDER ARTICLE 199 OF THE CONSTITUTION  
 OF ISLAMIC REPUBLIC OF PAKISTAN 1973**



1

**IN THE HIGH COURT OF SINDH, KARACHI**

**PRESENT:**

**MR. JUSTICE MUHAMMAD JUNAID GHAFFAR  
MR. JUSTICE AGHA FAISAL**

**C.P No. 8014 of 2018**

**All Pakistan Security Agencies Association  
& others.....**Petitioners

**V/s.**

**Province of Sindh &  
another.....**Respondents

**PETITIONERS:**

Through M/s. Khalid Mahmood  
Siddiqui & Ghulam Rasool Korai,  
Advocates.

**RESPONDENTS**

Through M/s. Malik Naeem Iqbal,  
Shamshad Ahmed Narejo along with  
Zamir Khalid, Commissioner (Legal)  
Sindh Revenue Board.

**Date of Hearing:**

19.01.2021.

**Date of Judgment:**

19.01.2021.

**JUDGMENT**

**Muhammad Junaid Ghaffar J.-** Through this petition, the Petitioners have challenged the vires of Rule 42D of the Sindh Sales Tax on Services Rules, 2011 ("**2011 Rules**"). Learned Counsel for the Petitioner has argued that the said Rule is ultra vires to various provisions of the Sindh Sales Tax on Services Act, 2011 ("**Act**") and no sales tax is payable on the salaries and allowances, which are being paid to the security guards posted or placed on disposal of the service recipient by the Petitioners



Company. He submits that this Court in respect of Labour and Manpower services falling under Rule 42E of the 2011 Rules has already decided the issue vide Judgment dated 17.11.2020<sup>1</sup> and has interpreted Rule 42E(3), which is *pari materia* to Rule 42D(3) and the ratio of the said judgment squarely applies to the case of the petitioner.

2. On the other hand, learned Counsel for Sindh Revenue Board has made an effort to distinguish the above judgment and submits that sales tax in the present facts is payable on the entire amount received by the Petitioners as it cannot be separated. He has placed reliance on certain reported cases<sup>2</sup>.

3. We have heard both the learned Counsel and perused the record. Insofar as Rule 42D(3) and Rule 42E(3) of the 2011 Rules are concerned, they are identical in terms and reads as under:

**"42D. Service provided or rendered by Security Agency.-- (1) .....**

(2) .....

(3) The value of taxable services for the purpose of levy of sales tax shall be the gross amount charged for the services provided or rendered.

(4) .....

(5) .....

(6) .....

**42E. Procedure for cancellation and payment of sales tax on Labor and manpower Supply Services. --(1) .....**

(2) .....

(3) The value of taxable services for the purposes of levy of sales tax shall be the gross amount charged for the services provided or rendered.

[\* \* \*]

(4) .....

(5) .....

(6) .....

(7) .....

<sup>1</sup> passed in C.P No.D-5220/2017 and other connected matters (Sami Pharmaceuticals (Pvt) Ltd. Vs. Province of Sindh & others),

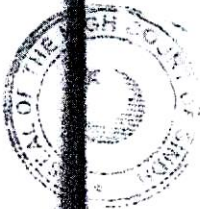
<sup>2</sup> 2001 (77) ECC 322 (Advertising Club And Ors. Vs Central Board of Excise And), 2008 13 STJ 285 CESTAT Chennai (Sudharson Security vs Commissioner of Central Excise), (2007) 6 STT 246 (Punjab Ex-Servicemen Corpn. V. Commr. Of C.Ex. Chandigarh) and 2003 (89) ECC 381 (Gda Security Private Limited vs The Union of India).



4. Though in the judgment relied upon on behalf of the Petitioners, there was also an issue regarding a proviso and its deletion; however, issue has been also dilated upon even in absence of the proviso, read with Section 4(3)(a) of the Act in question and it has been held that insofar as salaries of employees engaged by the service provider is concerned, that is not liable to sales tax on services. The relevant finding in the said judgment is as under:-

"10. It may also be observed that in absence of anything to the contrary, ordinarily, the quantum of service charge is a matter between the service provider and the recipient. For the present purposes no other value and taxable service in question has either been notified or otherwise fixed or determined by SRB. It is not the case of SRB that the service provider is hiding or concealing, or for that matter, is issuing an invoice of his service charges which is lesser than what the service recipient is paying to the service provider. The dispute which has now arisen is after the omission of the proviso from Rule 42(E) of the 2011 Rules as now SRB is demanding the service provider to charge sales tax on the entire gross amount of service, invoiced or billed to the service recipient. Such invoice includes the amount of expenses reimbursed by the service recipient in respect of salary and allowances of the labor and manpower supplied and the charges of services so rendered by the service provider. In fact, in our considered view, though the proviso had earlier provided certain clarification as to the levy of tax on services in question; however, to us it seems superfluous as whether the proviso remains there or not. We are fully in agreement with the contention of one of the Petitioners Counsel that even the omission of the proviso cannot have any implication so as to require the Petitioners to pay sales tax on the entire gross amount in question as it is only the quantum of service rendered and the amount thereof which could be taxed under the Act. Such contention appears to be correct and in line with the spirit and the various provisions of the Act as discussed hereinabove. It is settled law that by a rule making power no tax could be imposed or levied as it is only the charging provision of the Act which can do so. If we are to read sub-rule 3 of Rule 42(E) after omission of the proviso, even then, it appears that what SRB is explaining through the rule is that the value of taxable service for the purpose of levy of sales tax shall be the gross amount charged for the services provided or rendered and in any case, it cannot, through the rule making power, require the service provider to charge sales tax on the amount which are being reimbursed in lieu of salary and wages. The tax would still remain to be chargeable for the services provided or rendered and in no way a service provider could be asked to charge sales tax even on the amount which does not include the value or the price for the services rendered; but only pertains to the reimbursed amounts of salary and wages. It is between the service provider and the recipient to arrive at a mechanism for issuing of a sales tax invoice. At best the service provider and the service recipient can mutually agree to have two separate invoices; one for the reimbursement of expenses i.e. salary and wages, and the other for the purposes of reimbursement of the actual service provided or rendered, or even a single invoice, showing both these amounts separately; but in any case the tax is only chargeable or payable on the amount of services rendered and not otherwise.

11. Insofar as the argument of learned Counsel for SRB that Rule 37 pertaining to the services rendered by Customs House Clearing Agents and Ship-Chandlers is somewhat couched in a different language and would not apply to the present case of the Petitioners appears to be misconceived inasmuch as any service provider who issues an invoice which includes both the amounts; that of his services and any other reimbursement or charges paid by or on behalf of the service recipient, would not ipso facto render the entire invoice amount to be taxed. If that be so, then it would go beyond the mandate of the Province to levy tax only on service and would transgress into the domain of the Federation. By no means this could be permitted. At times, the service provider incurs expenses or pays for such expenses on behalf





of the service recipient in different modes and manner, and if he issues an invoice to claim reimbursements along with the amount of services rendered; this would not make him liable to pay sales tax on the entire amount of invoice and as rightly contended by one the Petitioners Counsel that the levy of tax is on the service and not either on the revenue or the amount of the invoice. It may also be noted that tax can only be levied pursuant to a charging provision. In the Act such incidence has been provided in s.3 i.e. taxable services listed in the 2<sup>nd</sup> Schedule provided by a registered person in the course of an economic activity, whereas, per s.4(3)(a), economic activity explicitly excludes the activities of an employee providing services in that capacity to an employer. Now merely for the reason that the service recipient is engaging service providers and is also paying for the salaries of employees engaged by the service provider, would that render such payments liable to sales tax. The answer is a big No. What the Act by itself has excluded under s.4(3)(a), cannot then be included by way of Rules or clarification so as to create a charging provision. It is not in dispute that the amount or payment in question is in respect of salary and wages of employees; be that paid by the service provider or the recipient. Once by law i.e. s.4(3)(a) it is out of the ambit of an economic activity, then in no manner it could be brought into a taxable service; hence, any clarification or rule could not require payment of sales tax on it. The salary and wages in question is being paid by the service provider to the employee, and then is being reimbursed. And that is it. By implication that since the amount is being paid to the service provider on issuance of an invoice or for the reason that by this methodology applicability of some other laws is being avoided, does not make it a taxable service or to be included in the value of taxable service."

5. In view of hereinabove facts and circumstances of this case, since we have already decided the controversy in respect of the above Rule, which is *pari materia* to the Rule in question, therefore, for the reasons so assigned in the judgment passed (supra)<sup>3</sup>, this Petition is also allowed in the same terms.



Ayaz P.S

Sd/- Muhammad Khawid Chaffar  
Judge  
Sd/- Agha Faisal  
Judge

<sup>3</sup> Sami Pharmaceuticals (Pvt.) Ltd. & others

CERTIFIED TO BE TRUE COPY

COPY APPLIED FOR ON 2801-2021  
FEES ESTIMATED ON 01/01  
ESTIMATED FEES DEPOSITED ON 01/01  
COPY MADE READY ON 01/01  
STAMP: SIGNED ON 01/01  
COPY CERTIFIED ON 01/01  
COPY DELIVERED ON 01/01

Assistant Registrar (Copying)

COPYING FEES : PAGE 09 RS 80  
URGENT FEES : PAGE 09 RS 80  
COMPENSATION FEES : PAGE 09 RS 80

Assistant Registrar (Copying)