JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

S.T.R. no. 17 of 2021
MOL Pakistan Oil & Gas
versus
Federal Board of Revenue and others

S.T.R. no. 79 of 2022
Pakistan Oil Field Limited
versus
Commissioner Inland Revenue (Legal) and others

S.T.R. no. 80 of 2022
Pakistan Oil Field Limited
versus
Commissioner Inland Revenue (Legal) and others

S.T.R. no. 82 of 2022
Al-Haj Pakistan Exploration Limited
versus
Commissioner Inland Revenue

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Applicants by: M/s Abuzar Salman Khan Niazi, Wasim Abid, Sardar Ahmed Jamal Sukhera, Sikander Sukhera, Muhammad Shaheer Roshan Sheikh and Muhammad Saqib Nafees, Advocates

Respondents by: M/s Osama Shahid and Muhammad Abual Hassan, Advocates

Date of Hearing: **28.01.2025**

Sardar Ejaz Ishaq Khan, J: The question of law for us to answer in these sales tax reference applications under section 47 of the Sales Tax Act, 1990, was framed by our predecessor Bench in STR 17/2021 as follows:

> Whether the learned ATIR has erred in concluding that 'condensate' is not part of the same family of petroleum oils as 'crude oil' and hence incorrectly determined tax liability against the petitioner?
>
> Whether the impugned judgment incorrectly interpreted the application and provisions of SRO number 549 of 2008?

2 From the written and oral submissions, the following further question of law has arisen:

> Whether the zero-rating was available only for petroleum crude oil 'imported and supplied' or whether import was not an essential condition?

3 The applicant companies were engaged in the business of exploration, production, and sale of petroleum and natural gas. They did not charge sales tax on the sales of 'condensate' for various tax periods in the belief that the supply of condensate was zero-rated for sales tax purposes. Their belief emanated out of SRO 549(I)/2008, dated 11.06.2008, which, in relevant part, read as follows:

> In exercise of the powers conferred by clause (c) of Section 4 of the Sales Tax Act, 1990, the Federal Government is pleased to direct that the goods mentioned in column (2) of the table below shall be charged to tax at the rate of zero percent subject to the conditions and restrictions specified in column (3) of that table, namely:-
>
> **Table**

S.No.	Description of Goods	Conditions and restrictions
(1)	(2)	(3)
…	…	…
4(xvii)	Petroleum crude oil (PCT Heading 2709.0000)	Import and supplies thereof
…	…	…

4 The progress of the disputes in these STRs from the show-cause notices up to the ATIR was substantially similar, with the orders-in-original and the orders by the Commissioners (Appeal) in all cases coming out against the taxpayers, except in STR 17, where the Commissioner (Appeals) decided for the taxpayer. The ATIRs' decisions were all against the taxpayers, with the ATIR's judgment dated 08.09.2021 leading to STR 17 being the most detailed one. The ATIRs' decisions in the other STRs followed the ATIR's judgment dated 08.09.2021 with some additional reasoning, which will be discussed below. For convenience, we will henceforth track the reasoning in the case that led to STR 17, and will deal with the ATIR's reasoning assailed in the other STRs at the relevant juncture in this judgment.

5 The assessing officer in the case leading to STR 17 disallowed the taxpayer's stance by returning the finding that, though both crude oil and condensate were petroleum products, they were distinct products on several counts, including the methods of their production and their physical and

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chemical properties. The assessing officer referred to several treatises to conclude that condensate oil is yielded as a liquid when natural gas is depressurized at atmospheric conditions after extraction from the earth, much in the same manner as steam condenses in a decanter to produce water; hence the term 'condensate'. On the other hand, crude oil exists in liquid form from inception and is pumped out of the earth as a liquid. The API gravity[1] is also distinct for the two products. He therefore concluded that the zero rating was limited to crude oil only, because entry no. 4(xvii) in SRO 549 did not mention condensate.

6 The Commissioner (Appeals) disagreed by referring to the definitions of the expression 'petroleum' in other legislations, which included condensate oil along with crude oil within the meaning of 'petroleum'. [2]

7 On further appeal, the learned ATIR considered that the other legislations were promulgated for a different purpose, namely, the licensing and regulation of the petroleum industry, and had little bearing on the question of a concessionary tax notification. The ATIR took great pains to delve into the technical aspects of the means and methods of production of condensate oil, and the differing physical and chemical properties vis-à-vis the liquid crude oil, by referring to expert treatises, and also borrowed language from a judgment of the Gujarat High Court[3]. The ATIR then came to the same conclusion as the assessing officer.

8 The conclusions by the learned assessing officer and the learned ATIR are premised – *sub silentio* though – on the application of a canon of statutory construction, namely, *expressio unius est exclusio alterius*. Their reasoning was simple. By establishing that condensate oil and crude oil were two different products, they inferred that the mention of one of the two products in SRO 549 implied the exclusion of the other.

9 After hearing submissions at the bar and reviewing the record, we wonder why so much controversy flew on the point whether condensate and

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[1] The American Petroleum Institute gravity, or **API gravity**, is a measure of how heavy or light a petroleum liquid is compared to water.
[2] Being section 2(v) of the Oil and Gas Regulatory Authority Ordinance, 2002, and Rule 2(ix) of the Onshore Petroleum Exploration and Production Rules, 2013.
[3] But in their zeal omitting to attribute the language borrowed from that judgment – *Indequip Chem Dyes Ltd vs State of Gujrat*, Gujrat High Court, 24.02.1993

crude were distinct or the same products. Anyone familiar with the petroleum industry is aware that condensate and crude oil are two different products of the petroleum family, just as cheese, cream, and butter are distinct products of the dairy family.

10 But the taxpayers' case had never been the one the assessing officers and the learned ATIR set up for themselves to rebut. The taxpayers' case was that condensate was to be meted out the same treatment of zero-rating because *it was also crude oil for the purposes of the PCT heading 2709.0000*, with reference to which the good in question was zero-rated in exercise of the power under section 4(c) of the Sales Tax Act, which, in relevant part, reads as follows:

> … [t]he following goods shall be charged to tax at the rate of zero percent:--
> …
> (c) such other goods as the Federal Government may, by notification in the Official Gazette, specify.[4]

11 The Federal Government could have mentioned petroleum crude oil only while issuing SRO 549. But it chose to identify the goods with reference to the PCT heading 2709.0000. Mr. Sukhera appearing for the applicants in STRs 79 and 80 of 2022 made the compelling argument that the mention of the PCT heading necessitated its proper consideration while construing serial no. 4(xvii) in SRO 549, and the preceding expression 'petroleum crude oil' neither can nor ought to be read in isolation without reference to the PCT heading. We agree. The department's stance that the PCT heading was only for identification is not persuasive; in identification lies the delineation of what is being identified. If the description in the PCT heading is meant to be ignored, as urged by the department, then the reference to the PCT heading in serial no. 4(xvii) would be rendered a surplusage, running counter to the settled principle that redundancy is not to be ascribed to any provisions in a statutory instrument[5].

12 The PCT headings are the HS Code (Harmonized System Codes) or PCT Codes (Pakistan Customs Tariff Codes) for the *classification of goods*.

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[4] Clause (c) as it stood at the time SRO 549 was issued.
[5] *Messrs V.N. Akiiani & Company vs M.V. Lakatoi Express and 2 others* (PLD 1994 SC 894)

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Their very purpose is to identify any given goods under consideration, enabling a globally accepted classification and identification system of goods. The Finance Act, 1994, amended the Customs Act, 1969, to add the "General Rules for Interpretation" in the First Schedule of PCT headings to the Customs Act, which, under the sub-heading 'Pakistan Rules', reads as follows:

> For the purposes of interpretation, "Explanatory Notes to the Harmonized Commodity Description and Coding System" published by World Customs Organization, Brussels, as amended from time to time, shall be considered authentic source of interpretation. (emphasis added)

13 Mr. Sukhera then referred to the sixth edition (2017) of the Explanatory Notes aforesaid, where the PCT heading 27.09[6] in relevant part appears as follows:

> **27.09 Petroleum oils and oils obtained from bituminous minerals, crude.**
>
> This heading covers crude petroleum oils and crude oils obtained from bituminous minerals (e.g., from shale, calcareous rock, sand), i.e., natural products, whatever their composition, whether obtained from normal or condensation oil deposits …
>
> …
>
> The heading also covers gas condensates, i.e., crude oils obtained during the stabilization of natural gas immediately upon its extraction. This operation consists of obtaining, mainly by cooling and depressurization, the condensable hydrocarbons (C4 to approximately C20) from the wet natural gas. (emphasis added)

14 Mr. Sukhera then referred to the October 1999 *Report to the Customs Co-operation Council of the Twenty-Fourth Session of the Harmonised System Committee of the World Customs Organisation*, where Pakistan was also represented amongst 56 member States, where, under agenda item no. 13, titled 'Classification of gas condensates', the Committee concluded to classify "gas condensates in heading 27.09".

15 It may be remembered that there is a fairly large number of petroleum 'oils' that human industry and scientific discovery has been able to extract, produce, or manufacture. Amongst these myriad varieties, a high-level

[6] There was no difference at the bar amongst counsels that PCT heading 27.09 and 2709.0000 were the same thing.

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distinction between crude oils and non-crude oils is quite marked, and can be gauged by looking at the PCT heading 27.10 in contrast to PCT heading 27.09. If one were to draw an analogy with the Linnaean system of biological classification, 'petroleum oils' appear to fall in the higher category of a 'family', with crude oil and non-crude oil falling within the lower category of 'genus', and then their respective sub-categories falling into species.

16 When the Explanatory Notes – being 'authentic source of interpretation' – categorise all crude oils under PCT 27.09, that includes condensate oil, can the sales tax department claim that, even though PCT 27.09 includes gas condensate, and even though SRO 549 identified the zero-rated good in question with reference to PCT 27.09, condensate should nonetheless be excluded? We think this argument might have held water if PCT 27.09 was not mentioned in SRO 549, but we cannot pretend to ignore that it was indeed mentioned, that it became an indivisible part of serial no. 4 (xvii), and that PCT 27.09 expressly regards condensate as 'crude oil'. It is common wisdom to interpret and construe technical expressions according to the meaning carried by such expressions in a given trade or industry, and in such case the general principle of giving the words their ordinary dictionary meaning is displaced: see the judgment of a four-member Bench of the Supreme Court in *Messrs Usmania Glass Sheet Factory Limited, Chittagong vs Sales Tax Officer, Chittagong* (PLD 1971 SC 2025), citing Craies on Legislation. When the PCT 27.09 identifies various kinds of '<u>natural products … whether obtained from normal or condensation oil deposits</u>…' as crude oils, how did the assessing officer and the learned ATIR conclude that only one of such oils was meant to be zero-rated in SRO 549, and under what statutory guidance did they determine that only the naturally occurring crude oil was intended and the crude oil obtained by condensation was not? Their orders provide no answer, but simply proceeded on the assumption that it was so, with their orders pursuing ad infinitum the irrelevant inquiry whether condensate and naturally occurring crude oil were two distinct products, instead of the key question, namely, whether petroleum crude oil, when identified with reference to PCT 27.09, includes condensate oil. For the reasons aforesaid, we concluded that it does.

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17 The learned ATIR in STRs 79, 80 and 82 went on an altogether different limb, and came up with their homespun startling scientific discovery that condensate was 'liquefied natural gas' (LNG) and fell in an altogether different PCT heading 2711! The ATIR bumped into this scientific discovery by finding the secret thereof in the Sales Tax Special Procedure Rules 2007, which define 'natural gas' for the purposes of those rules. But the ATIR concluded on that basis that "…*the condensate locally produced from the gas well in liquid form is natural gas*…". We reckon the learned member of the ATIR who authored this sentence ought not be wasting his scientific talents writing tax judgments, but ought to head out to some leading Petroleum Institute to teach all the petroleum scientists and engineers in the world that they all have been wrong in treating condensate as oil, because it is not oil but natural gas! We reckon we need say no more to demonstrate the sheer absurdity of the reasoning followed by the learned member to come to this phantasmagorical conclusion in a desperate attempt to move condensate out of the pale of PCT heading 2709.0000 into another PCT heading.

18 The third question concerning 'import and supply' already stands answered by a Division Bench of the Lahore High Court in *Commissioner Inland Revenue, Legal Zone, LTU, Lahore vs Messrs Sapphire Dairies (Pvt) Ltd.* (2023 PTD 44). That case held on an identical question, albeit with reference to the dairy industry, that the expression "import and supplies thereof" was to be interpreted with reference to the definition of "taxable supply" in section 2(41) of the Sales Tax Act, and was to be interpreted disjunctively. We are in respectful agreement with the said judgment, and do not need to repeat here the reasoning therein.

19 Resultantly, these sales tax reference applications are answered in the **positive**, that is, for the taxpayers and against the revenue.

(Mohsin Akhtar Kayani)
Judge

(Sardar Ejaz Ishaq Khan)
Judge

Announced in open Court on **10.04.2025**.

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Judge **Judge**

Imran

Approved for reporting

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