JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Sales Tax Reference No. 27/2022

M/s ADOS Pakistan Limited, Islamabad
Vs.
The Commissioner Inland Revenue, Islamabad, & others

APPLICANT BY:	Syed Tauqeer Bukhari and Syed Ali Murtaza Abbas, Advocates.
RESPONDENTS BY:	Barrister Atif Rahim Burki, Advocate.
DATE OF DECISION:	04.02.2025.

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BABAR SATTAR, J.- This reference emanates from the order of the Appellate Tribunal Inland Revenue, Islamabad **("Appellate Tribunal")**, dated 21.06.2022, pursuant to which the applicant's claim for exemption from payment of sales tax pursuant to SRO 678(I)/2004 dated 07.08.2004 **("SRO 678")** was denied and the order of Deputy Commissioner Inland Revenue dated 30.11.2020 generating demand for payment of sales tax against the applicant and the order of Commissioner (Appeals) dated 28.12.2020 were upheld.

2. The questions framed for our consideration, as recorded in order dated 05.07.2022, are the following:

1. *Whether under the facts and circumstances of the case, Appellate Tribunal was justified to hold that the supply of locally manufactured oil & gas field equipment to exploration and production (E&P) Companies are taxable under Clause (4) of SRO 678(1)/2004 dated 07.08.2004?*

2. *Whether under the facts and circumstances of the case the appellant was entitled to claim exemption from sales tax on import of raw material and components, not manufactured locally, for use in the manufacture of goods specified in clauses (1) & (2) and subsequent supply of locally manufactured finished goods to the Petroleum Sector Companies under Clause (4) of SRO 678(1)/2004 dated 07.08.2004?*

3. *Whether Clause 4 of said SRO read in isolation or read in conjunction with clause 1 & 2 of SRO 678(1)/2004 dated 07.08.2004?*

4. *Whether the exemption of sales tax under the clauses of SRO. 678(1)/2004 dated 07.08.2004 for subsequent supplies to Exploration and Production Companies is available to importers ONLY and such exemption is not available to local manufacturers who manufactured the said goods by savings the foreign reserves of the country and providing employment in the country. The learned Appellate Tribunal erred in holding that the said exemption on subsequent supply is available to importers only.*

5. *Whether non-charging of sales tax by the appellant to Exploration & Production (E&P) Companies caused any revenue loss to government exchequer. [If appellant charged sales tax to E & P under section 3 of the Act, the same should be adjustable tax for E&P under section 7.]*

6. *Whether, exemption of sales tax which is vested right of the taxpayer could be denied on the basis of interpretation of clauses of SRO and in case of any ambiguity in drafting of SRO, it should be interpreted in favour of the citizen?*

7. *Whether on the facts and in the circumstances of the case, the case reported as 2004 SCMR 456 is squarely applicable to this case regarding imposition of penalty and default surcharge in the case where the non-payment of tax, if any is not deliberate.*

3. While the applicant has framed a number of questions, the relevant question addressed by the Appellate Tribunal and argued before us for purposes of this reference is question No.2 above. The controversy between the applicant and the Tax Department is whether the applicant is entitled to seek exemption from payment of sales tax on manufactured goods supplied to Petroleum Sector Companies in terms of clause (4) of SRO 678, where such goods have been manufactured while using raw materials and components not manufactured locally and imported pursuant to clause (4) of SRO 678.

4. The learned counsel for the applicant submitted that clause (1) of SRO 678 granted an exemption in relation to

import of finished goods and in relation to customs duty in excess of five percent and whole of sales tax. He submitted that under clause (4) of SRO 678, the exemption was further extended to the entire of customs duty and the whole of sales tax leviable to the supply of goods to Petroleum Sector Companies that have been manufactured from imported raw materials and components but manufactured locally. He submitted that the scope of exemption under clause (4) of SRO 678 was wider so as to encourage local manufacture of goods to be supplied to Petroleum Sector Companies. He further submitted that plain reading of the notification reflects that the taxpayers as an importer of raw materials and components, that fall within the goods identified in clause (1) of SRO 678 but are used to manufacture goods locally, is liable to the exemption both from customs duty at the import stage and sales tax at the time of supply of such locally manufactured goods. He submitted that the exemption was in relation to products, which were manufactured and subsequently supplied to Petroleum Sector Companies in Pakistan, which is how the scheme of the Sales Tax Act, 1990 **("Sales Tax Act")**, works. He further submitted that no question of loss of revenue to the exchequer was involved and the only question was whether or not the taxpayer was exempt from withholding tax at the time of supply of locally manufactured goods. As even if the applicant were to be deemed not to fall within the exemption as provided in clause (4) of SRO 678, the cost of the withholding taxes would be added to the value of the goods supplied to Petroleum Sector Companies and such cost would be passed on to Petroleum Sector Companies and sales tax would be chargeable on such supply causing no

loss to the exchequer. But the manner in which the tax department was reading SRO 678 created a cashflow issue and such interpretation was in breach of the plain reading of SRO 678. He further submitted that there was need to undertake purposive interpretation of SRO 678. The purpose of the said SRO was to ensure that the goods/supply received by Exploration and Production (E&P) Companies, and Petroleum Sector Companies more generally, was cost-efficient. For such purpose, clause (1) of SRO 678 granted exemption from payment of sales tax in relation to machinery and equipment imported by E&P Companies or by their suppliers. Clause (4) of SRO 678 granted exemption essentially to manufacturers of goods to be supplied to Petroleum Sector Companies in order to encourage local manufactures of such goods to undertake such manufacturing domestically, even when the raw materials and components required for such manufacturing were not available locally and were thus imported. He submitted that the policy of the Federal Government was not to incentivize importers of machinery used by E&P Companies and/or Petroleum Sector Companies, while affording lesser incentive to the manufacturers who had set up plants to manufacture goods used by such companies based on imported raw materials and components.

5. The learned counsel for the tax department submitted that the manner in which clause (4) of SRO 678 had been interpreted by the Deputy Commissioner Inland Revenue in order dated 30.11.2020 suffered from no infirmity. The Deputy Commissioner had taken into account all clauses of SRO 678 to highlight that while clause (1) of SRO 678 explicitly afforded exemption from sales tax both at the stage of import as well as

subsequent supply, clause (4) of SRO 678 limited grant of exemption from sales tax only at the import stage in relation to raw materials and components not manufactured locally but used to manufacture goods supplied to Petroleum Sector Companies. Consequently, no exemption could be read into such clause in relation to manufactured goods. He submitted that the scope of the exemption was also evident from the conditions pursuant to which an exemption under clause (4) of SRO 678 could be availed, which conditions were also mentioned in the said SRO. The conditions, as mentioned, reflected that the focus of the SRO was on the use of exempt raw materials and components and the purpose for which they were to be used (i.e. for manufacture of goods exclusively for use of Petroleum Sector Companies). To the extent that the intent of the Federal Government in issuing the exemption in terms of section 13(2) of the Sales Tax Act was to afford exemption to goods supplied to Petroleum Sector Companies, while utilizing the raw materials and components imported subject to sales tax exemption under clause (4) of SRO 678, the said clause would have stated that the supply of finished goods was also exempt from sales tax just as has been done in clause (1) of the said SRO. He submitted that there was no room for purposive interpretation of provisions of a taxing statute where the language itself was unambiguous. Further, as the applicant was seeking an exemption from payment of tax, it was for the applicant to establish that it fell within the four corners of the exemption in view of the plain language of the taxing statute, which the applicant had failed to do as held by the Deputy Commissioner, the Commissioner (Appeals), and the Appellate Tribunal.

6. For adjudicating question No.2 above, let us reproduce clauses (1) and (4) of SRO 678 to consider the scope of exemption afforded thereunder:

> *(1) machinery, equipment, materials, specialized vehicles or vessels, picks-ups (4x4), helicopters, aircraft, accessories, spares, chemicals and consumables, as are not manufactured locally, imported by the Exploration and Production (E&P) Companies, their contractors, sub-contractors and service companies, from customs-duty in excess of five present ad valorem leviable under the First Schedule to the Customs Act, 1969 (IV of 1969), and the whole of sales tax leviable under the Sales Tax Act, 1990, on their import and subsequent supply, subject to the conditions specified under the caption "CONDITIONS WITH REFERENCE TO CLAUSES (1), (2) and (2a).*
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> *(4) raw materials and components, as are not manufactured locally, and are imported for use in the manufacture of goods specified in clauses (1) and (2), to be supplied to the petroleum sector companies as specified in the said Notification from whole of customs duty leviable under the First Schedule to the Customs Act, 1969 (IV of 1969), and the whole of sales tax leviable under the Sales Tax Act, 1990, subject to the conditions specified under the caption "CONDITIONS WITH REFERENCE TO CLAUSE (4).*

7. To appreciate the scope of exemptions granted, let us also reproduce for convenience Section 3(1) of the Sales Tax Act:

> ***Scope of tax.***- *(1) Subject to the provisions of this Act, there shall be charged, levied and paid a tax known as sales tax at the rate of eighteen percent of the value of-*
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> *(a) taxable supplies made by a registered person in the course or furtherance of any taxable activity carried on by him; and*
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> *(b) goods imported into Pakistan, irrespective of their final destination in territories of Pakistan.*

8. SRO 678 has been issued in exercise of powers under section 13(2) of the Sales Tax Act to exempt, inter alia, the

supplies made and/or imports, as the case may be, from the whole or any part of tax chargeable under the Sales Tax Act. While interpreting SRO 678, we need to bear in mind the product in relation to which an exemption has been granted as well as the entity that is entitled to claim such exemption. There is also some discussion in the impugned orders as to whether clauses (1) and (2) of SRO 678 have to be read together with clause (4) of SRO 678 for purposes of delineating the scope of exemption under clause (4) of SRO 678. It is clarified at the outset that clauses (1) to (4) of SRO 678 are stand-alone clauses. Clauses (1) and (2) of SRO 678 become relevant for purposes of clause (4) of SRO 678 only to the extent that clause (4) of SRO 678 incorporates by reference that the imported raw materials and components exempt from sales tax in terms of clause (4) of SRO 678 are only those as are imported for use in the manufacture of goods specified in clauses (1) and (2) of SRO 678. In other words, the incorporation by reference is only in relation to the description of goods mentioned in clauses (1) and (2) of SRO 678 and the scope of exemption from tax afforded under clauses (1) and (2) of the Sales Tax Act have no correlation with the scope of exemption from tax under clause (4) of SRO 678.

9. Let us now consider clauses (1), (2) and (4) of SRO 678. Clause (1) of SRO 678 grants exemption partly from customs duty and from sales tax to the machinery, equipment and other goods mentioned therein that are not manufactured locally and are imported either by E&P Companies or by their suppliers. The exemption afforded is (i) in relation to customs duty in excess of five percent of customs duty leviable under the Customs Act, 1969 **("Customs Act")**, and (ii) the whole of sales

tax leviable under the Sales Tax Act both on the import of such goods and their subsequent supply to E&P Companies.

10. Clause (2) of SRO 678 exempts machinery and equipment, not manufactured locally, imported by Petroleum Sector Companies (as specified in clause (i) of the conditions with reference to clauses (1) and (2) of SRO 678). Clause (2) of SRO 678 affords no exemption from sales tax.

11. The relevant clause for our purposes is (4) of SRO 678. If we read SRO 678 along with the introductory language, the said SRO reads as follows: *"the Federal Government is pleased to exempt … raw materials and components … from whole of customs duty leviable … and the whole of sales tax leviable…"* The language above has been selectively reproduced to highlight the goods in relation to which exemption has been afforded pursuant to clause (4) of SRO 678. What has been exempt from customs duty and sales tax are "raw materials and components". The question that naturally follows is which raw materials and components are so exempt? The answer is then provided by clause (4) of SRO 678 itself, which lists the conditions to be satisfied to claim such exemption. The conditions to be satisfied are that such raw materials and components (i) are not locally manufactured (i.e. are not included in the list of local manufactured goods), (ii) are imported, (iii) for use in manufacture of the goods specified in clauses (1) and (2) of SRO 678 (i.e. machinery, equipment, materials, specialized vehicles or vessels, pick-ups (*4x4*), helicopters, aircraft, accessories, spares, chemicals and consumables), and (iv) and goods

manufactured while using such raw materials and components are to be supplied to Petroleum Sector Companies.

12. In view of the plain language of clause (4) of SRO 678, read with the conditions in reference to clause (4) of SRO 678 mentioned in the said SRO, it is evident that the exemption from customs duty and sales tax is in relation to raw materials and components alone and not manufactured or finished goods supplied to Petroleum Sector Companies. The reference to Petroleum Sector Companies in clause (4) of SRO 678 is in the nature of a condition to qualify imported raw materials and components. As where imported raw materials and components are not used for the purpose of manufacture of goods to be supplied to Petroleum Sector Companies, they are not exempt from customs duty and sales tax in terms of clause (4) of SRO 678. The conditions to be satisfied to qualify for the exemption under clause (4) of the SRO 678 also focus on the importer-cum-manufacturer possessing the ability to manufacture goods or having in hand a contract for manufacture for purposes of clause (4) of SRO 678. What the conditions establish is that the purpose of exemption from customs duty as well as from sales tax is that raw materials and components not available in Pakistan but required to be imported for purposes of manufacture of goods used by Petroleum Sector Companies are available to manufacturers of such goods at a cheaper cost. The supply of finished goods (manufactured using the duty/tax exempt raw materials and components) to Petroleum Sector Companies is therefore a condition to be satisfied to qualify for the exemption. But this does result in the manufactured or

finished goods themselves being exempt from the whole of sales tax.

13. To read clause (4) of SRO 678 in any other way would require imagining language, which is not provided in the said clause. The imported raw materials and components, which meet the conditions in clause (4) of SRO 678 are exempt from the whole of customs duty as well as sales tax. The goods manufactured while utilizing such raw materials and components are to be be manufactured in Pakistan and customs duty is not be applicable to such manufactured goods. Consequently, to give clause (4) of SRO 678 the interpretation that the applicant wishes to give it would require the reader to assume that while raw materials and components mentioned in clause (4) of SRO 678 are exempt from customs duties as well as sales tax, the manufactured/finished goods produced for purposes of Petroleum Sector Companies are also exempt from the whole of sales tax but the mention of customs duties in relation to such manufactured goods is a redundancy in clause (4) of SRO 678. Further, clause (1) of SRO 678 provides an exemption for machinery and equipment etc. for purposes of E&P Companies. Clause (1) of SRO 678 does not refer to any manufacturing process. However, it clearly provides that the goods that fall within such clause are exempt from customs duties and sales tax in excess of five percent and from the whole of sales tax both on their import as well as subsequent supply. If the intent while granting exemption to imported raw materials and components covered by clause (4) of SRO 678 was to exempt the raw materials and components from customs duties and sales tax at import stage, and further exempt the manufactured/finished

products to be supplied to Petroleum Sector Companies from the whole of sales tax, the language of clause (4) of SRO 678 could very easily be worded as the language in clause (1) of SRO 678 to unequivocally and explicitly provide that the manufactured goods, utilizing exempt imported raw materials and components, would also be exempt from application of sales tax at the supply stage. This clause (4) of SRO 678 does not do, as has been correctly found by the tax department and held by the Appellate Tribunal.

14. We have reproduced above Section 3 of the Sales Tax Act, which is the charging Section. Section 3(1)(a) of the Sales Tax Act creates a charge on taxable supplies. Section 3(1)(b) of the Sales Tax Act creates a charge on goods imported into Pakistan. For our present purposes, clause (1) of SRO 678 grants an exemption in terms of Section 13 of the Sales Tax Act both from imposition of sales tax on imported goods as well as taxable supplies in terms of Section 3(1)(a) and 3(1)(b) of the Sales Tax Act. On the contrary, clause (4) of SRO 678 merely creates an exemption from imposition of tax on imported goods, attracted in terms of Section 3(1)(b) of the Sales Tax Act. Thus, in the event that the Federal Government had intended to exercise its authority to grant exemption, from imposition of sales tax, to taxable supply by local manufacturers (i.e. manufacturers of goods being supplied to Petroleum Sector Companies), it would have done so in clear and plain language.

15. There is no room for purposive interpretation of provisions of the Sales Tax Act read with the language of SRO 678. It is settled law that there is no intendment as to a tax and

that equity and tax liability are strangers[1]. Nothing is to be read into or out of a taxing statute while construing the plain language used for purposes of creating liability. Only where the language is ambiguous and/or affords two different interpretations, the interpretation that benefits the citizen is to be adopted[2]. The other principle applicable while interpreting taxing statutes is that any exemption from tax is to be strictly construed and it is for the taxpayer seeking exemption to establish that upon fair and plain interpretation of the language, such taxpayer falls within the scope of the exemption[3]. This is because taxes are a shared burden within a polity. And to the extent that a taxpayer falls within the scope of an exemption, and the remaining taxpayers are to continue to bear the burden of generating revenue for the exchequer, it is for the exempt taxpayer to discharge the burden of establishing that it is so exempt.

16. The principles of interpreting taxing statute as enumerated in ***M/s Pakistan Television Corporation Limited vs. Commissioner Inland Revenue (Legal) LTU, Islamabad and others*** ***(2017 SCMR 1136)*** were reiterated by the Supreme Court in ***M/s Pakistan Television Corporation Limited vs. Commissioner Inland Revenue (Legal) LTU, Islamabad and others*** ***(2019 SCMR 282)*** as follows:

> *(i) There is no intendment or equity about tax and the provisions of a taxing statute must be applied as they stood;*

[1]M/s Warid Telecom (Pvt.) Ltd vs. Appellate Tribunal Inland Revenue **(2022 PTD 1220)**
[2]Superintendent, Central Excise vs. Fauji Sugar Mills **(2016 SCMR 121)**; see also M/s Warid Telecom (Pvt.) Ltd vs. Appellate Tribunal Inland Revenue **ibid**
[3] Liaquat National Hospital vs. Province of Sindh **(2019 SCMR 865)**

(ii) The provision creating a tax liability must be interpreted strictly in favour of the taxpayer and against the revenue authorities;

(iii) Any doubts arising from the interpretation of a fiscal provision must be resolved in favour of the taxpayer;

(iv) If two reasonable interpretations were possible, the one favouring the taxpayer must be adopted;

(v) When a tax is clearly imposed by a statutory provision any exemption from it must be clearly expressed in the statute or clearly implied from it;

(vi) Where the taxpayer claims the benefit of an express or implied exemption, the burden is on him to establish that his case was covered by the exemption;

(vii) The terms of the exemption ought to be reasonably construed; and

(viii) If a taxpayer was entitled to an exemption on a reasonable construction of the law it out not to be denied to him by a strained, strict or convoluted interpretation of the law.

17. The case before us relates to the applicant claiming to fall within an exemption afforded under clause (4) of SRO 678 when it comes to its supply of manufactured goods to Petroleum Sector Companies. As has been discussed above, the applicant has failed to establish that it is so exempt as clause (4) of SRO 678 affords no exemption from imposition of sales tax on goods manufactured locally when supplied to Petroleum Sector Companies. In construing the language of SRO 678, read together with the Sales Tax Act, any policy considerations of the Federal Government while issuing the said SRO can neither be imagined nor can have any bearing on the meaning to be given to the plain language used in the said SRO.

18. The only other question that needs our attention is question No. 7 i.e. whether default surcharge is attracted on the short-paid sales tax even without a determination that such short payment was deliberate. This question has already been

adjudicated in ***M/s Attock Refinery Limited vs. The Collector Of Sales Tax*** *(2021 PTD 1680) and* ***Commissioner Inland Revenue vs. M/s Bestway Cement*** *(STR No.257 of 2011)*, by this court holding that the imposition of default surcharge in such case is automatic and does not required prior proof of *mens rea*.

19. For the aforementioned reasons, the impugned orders suffer from no infirmity. We answer the questions framed for our consideration accordingly in favor of the Tax Department and against the applicant.

20. Let the office send a copy of this judgment to the Registrar of the Appellate Tribunal under seal of this Court.

(SAMAN RAFAT IMTIAZ)
JUDGE

(BABAR SATTAR)
JUDGE

Approved for reporting.

A.Rahman Abbasi.