

ORDER SHEET
THE HIGH COURT OF SINDH AT KARACHI
Special STRA No.277 of 2018

Date	Order with signature of Judge(s)
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1. For orders on office objection No.19
2. For hearing of Main case.

12.10.2021

Mr. Ameer Bux Metlo, Advocate for the Applicant

The applicant has assailed order of the learned Appellate Tribunal Inland Revenue dated 07.02.2018 ("Impugned Order") and questioned the deletion of an OGRA penalty from computation of the value of supply and whether the learned Tribunal rightly treated the crude oil as zero rated in the Impugned Order.

It is considered expedient to reproduce respective findings pertinent to this reference herein below:

"Since, the amount of Price Difference is included in the above amount of Rs.5,483,142,000/- and break up of which was also provided to the DCIR, therefore, in our view the DCIR is not justified to levy sales tax thereon. Further, in our considered opinion, the penalty imposed by OGRA for not maintaining the Euro-II quality of HSD cannot be treated as part of sale as the registered person has paid the sales tax due on the invoice value i.e. the value of supply. By paying penalty to OGRA, in fact its revenues are reduced by the same amount. Therefore, there is no question of suppression of sales to this extent. Therefore, in our view the DCIR is not justified to levy sales tax thereon. The addition made under this head is, therefore, deleted in toto".

"The submissions of AR are logical because if both companies have been merged from July 1, 2016 then the sales/purchase of crude oil will have nil effect in annual accounts for the year ended June 2017. Further, crude oil is zero rated and sales tax is not applicable on it. Therefore, the DCIR is directed to verify whether merger has been concluded. If so, then there will be no sales tax implication on sales/purchase of crude oil".

The applicant's counsel was confronted as to the law which permitted the inclusion of OGRA penalty as part of sale, however, he failed to point out any provision of law enable such an action. Our attention was drawn to section 2 (46) of the Sales Tax Act, being the definition of value of supply. Learned counsel sought to rely on (b) therein, however, the said provision is pertinent to trade discounts and has no nexus with the issue before us. It is observed in the Impugned Order that the respondent has duly demonstrated the claim there against in respect of the OGRA penalty and that no further verification was merited in respect thereof. It was thus found that there was no question of treating the said amount as sales to the said extent and the DCIR was not justified

to levy sales tax thereon. The applicant's counsel articulated no cavil before us in respect of these findings.

Insofar as the zero rating of crude oil was concerned the applicant's counsel admitted before us that the merger of the companies had taken effect prior to the period of the annual accounts under consideration. It was further admitted that crude oil was zero rated in respect of the respondent. Even otherwise, the learned Tribunal has directed the DCIR to verify the factum of merger and only upon such satisfaction was it held that there would be no sales tax implication in respect of crude oil.

It is observed that the entire premise of the applicant is based on factual/evidential issues and the applicant's counsel has articulated no cavil to the findings of facts recorded by the learned Tribunal.

The applicant has proposed various questions of law which we, respectfully, considered extraneous and dissonant to the Impugned Order. The learned Appellate Tribunal has already appraised the evidence and concluded that no case was made out to include the OGRA penalty in determination of sales and further that the case of zero rating in respect of crude oil was also borne from the record/evidence was there before. It is settled law that the learned Tribunal is the final arbiter of facts and factual controversies are not amenable before the Reference jurisdiction of this Court.

In view hereof we are of the considered view that the applicant has failed to raise any question of law arising out of the Impugned Order meriting the consideration of this court, therefore, the present reference is hereby dismissed in *limine*.

A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to the learned Appellate Tribunal Inland Revenue, as required per section 47(5) of the Sales Tax Act, 1990.

JUDGE

JUDGE