

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Abdur Rahman

Mr. Justice Dr. Shah Nawaz Memon

High Court Appeal No. 249 of 2019

Pakistan through Secretary Revenue and ex-Officio Chairman FBR and others Vs. M/s
Shan Foods (Pvt.) Limited, Karachi

Date of hearing : 21.09.2026

Date of decision: 24.09.2026

Appellants : Through Mr. Shahid Ali Qureshi, Advocate.

Respondent: Through M/s Hamza Waheed and Sami ur Rehman,
Advocates.

J U D G E M E N T

DR. SHAH NAWAZ MEMON, J.: — This appeal under section 3 of the Law Reforms Ordinance, 1972 is directed against the judgment dated 31.05.2019 and the decree dated 13.06.2019 passed by a learned Single Judge of this Court in Suit No. 938 of 2018, by which the suit of the respondent was decreed in part and the show cause notice dated 28.03.2018 issued by the appellant No. 3 was set aside insofar as it relates to the tax periods from July 2014 onwards.

I. THE CONTROVERSY

1. The controversy is one of construction, and it is a narrow one. It lies between two entries of the Sixth Schedule to the Sales Tax Act, 1990. Entry 29 exempted table salt including iodized salt, but excluded from that exemption salt sold in retail packing bearing brand names and trademarks¹. Entry 107 exempts the import and supply of iodized salt bearing brand names and trademarks, whether or not sold in retail packing. Both entries carry the same tariff heading, 2501.0010. The question is whether the exemption in entry 107 is available to a person who manufactures iodized salt in Pakistan and supplies it in branded retail packing, and who imports nothing at all.

II. FACTS OF THE CASE

2. The respondent is a private limited company incorporated on 11.03.2005, engaged in the manufacture and sale of spices and food items. Among its products is iodized salt, supplied in retail packing of 500 and 800 grams under the brand names *Neutra Salt Plus* and *Maa Lahori Namak*, the packing bearing

¹ Entry 29 was subsequently omitted by the Finance Act, 2021. Entry 107 remains on the statute book.

its brand names and trademarks. For the tax periods July 2013 to June 2017 the respondent treated these supplies as exempt and filed its returns accordingly.

3.
- On 28.03.2018 the appellant No. 3 issued a show cause notice bearing C. No. (01) SCN/E&C/SFL/2018 for the tax periods July 2013 to June 2017. The notice proceeded upon entry 29 of the Sixth Schedule, which it reproduced, and upon the premise that the exemption for table salt is available only to the extent of bulk packing without a brand name, the entry and the heading of the Schedule excluding, in the view of the officer, salt packed in retail packing bearing brand names and trademarks. On that footing the notice put the value of the respondent's salt supplies at Rs. 561,460,301 and called upon it to show cause why sales tax of Rs. 95,448,251 should not be recovered under section 11(2) of the Act, together with default surcharge under section 34 and penal action under section 33(5). The year-wise break-up given in the notice was as follows:

Tax period	Value of supplies of salt (Rs.)	Sales tax involved (Rs.)
2013-2014	113,828,285	19,350,808
2014-2015	112,401,782	19,108,303
2015-2016	154,295,561	26,230,245
2016-2017	180,934,673	30,758,894
Total	561,460,301	95,448,251

4.
- The respondent sought and was granted time to reply, and then instituted Suit No. 938 of 2018 for declaration and permanent injunction. Its case was that its supplies of iodized salt are exempt under entry 107, which relieves iodized salt bearing brand names and trademarks whether or not sold in retail packing; that entry 107 was introduced in the Sixth Schedule by the Finance Act, 2014 in place of an exemption previously available under a notification; and that the words “import and supply” in entry 107 fall to be read disjunctively, since import and supply are separate and independent taxable events under the Act.
5.
- The appellants filed a written statement. They questioned the maintainability of the suit with reference to section 51 read with section 9 of the Code of Civil Procedure, 1908 and section 56 of the Specific Relief Act, 1877. On the merits they maintained that entry 29 governs the respondent's goods and expressly withholds exemption from branded retail packing, and that entry 107 is confined to the import of iodized salt and its onward supply by the importer, so that a person who has imported nothing cannot claim it. During the pendency of the suit, and in compliance with the directions of the Hon’ble Supreme Court in

*Searle Solution*², the respondent deposited Rs. 38,048,727 as fifty per cent of the disputed amount noted in the orders dated 17.08.2018 and 07.09.2018.

III. THE IMPUGNED JUDGMENT

6. On 26.09.2018 the learned Single Judge settled three issues, the first two being whether the respondent is entitled to exemption under S.R.O. 551(I)/2008 dated 11.06.2008 and entry 107 of the Sixth Schedule for the tax periods July 2013 to June 2017, or whether the goods are more appropriately covered by entry 29, and whether the terms “import and supply” in entry 107 have to be read disjunctively.
7. The learned Single Judge traced the exemption through its successive forms. Prior to 2014 there were two exemptions in the field. One was entry 29 of the Sixth Schedule. The other was entry 14 of the Table to S.R.O. 551(I)/2008 dated 11.06.2008, issued under section 13 of the Act, which described the goods as “iodized salt bearing brand names and trademarks whether or not sold in retail packing” and, in the column stating the extent of the exemption, carried the words “import and supplies thereof”. On 26.06.2014 that notification was rescinded and entry 107 was simultaneously inserted in the Sixth Schedule, the exemption now reading “import and supply of iodized salt bearing brand names and trademarks whether or not sold in retail packing”. The learned Judge attached significance to the fact that the word “thereof”, which in the notification had tied the exempt supplies to the goods imported, was not carried forward.
8. Reading sections 3 and 13 of the Act, the learned Single Judge held that import and supply are two distinct and separate transactions on which sales tax is leviable and that it is not necessary that both must occur together; that the word “and” in entry 107 must accordingly be read disjunctively; and that a construction requiring a single person to import and then supply in one transaction is neither legally nor practically workable. Reliance was placed on the judgment of a Division Bench of this Court in *Iqbal Hussain*³. The learned Judge declined to supply the word “thereof” into entry 107, observing that what the legislature had consciously left out could not be restored by the Court.
9. For the tax period July 2013 to June 2014, however, the learned Single Judge held that the exemption was governed by S.R.O. 551(I)/2008, which contained the word “thereof”, and was therefore not available to the respondent. Issue No. 1 was reframed and answered in favour of the respondent for the tax periods from 2014 onwards, Issue No. 2 was answered in the affirmative, and the show cause notice was set aside to that extent, the respondent being left to answer the notice for the tax period 2013-2014. The department was directed to refund

² *Searle Solution (Pvt.) Limited v. Federation of Pakistan* [2018 SCMR 1444]

³ *Iqbal Hussain v. Federation of Pakistan* [2010 PTD 2338]

the deposited amount within thirty days, failing which the respondent was permitted to take the amount as an input tax adjustment against its sales tax liability over the next two returns.

IV. THE POINTS FOR DETERMINATION

10. Upon the pleadings, the impugned judgment and the memorandum of appeal, the following points arise for determination⁴:
 - (i) Whether entry 107 of the Sixth Schedule to the Sales Tax Act, 1990 exempts the supply of iodized salt bearing brand names and trademarks, whether or not sold in retail packing, or whether that exemption is available only to a person who has imported such salt and thereafter supplies it.
 - (ii) Whether the excluding words in entry 29 of the Sixth Schedule preclude relief under entry 107 in respect of salt sold in retail packing bearing brand names and trademarks.
 - (iii) Whether the words “import and supply” in entry 107 are to be read conjunctively, so that the two events must be found together and in the hands of the same person.
 - (iv) What effect, if any, the statement dated 22.09.2026 filed on behalf of the appellants has upon the impugned judgment.
 - (v) What should the order be.

V. SUBMISSIONS

11. Mr. Shahid Ali Qureshi, learned counsel for the appellants, submitted that the learned Single Judge did not appreciate that the respondent’s case does not fall within entry 29 at all, salt sold in retail packing bearing a brand name being expressly excluded from that entry. He next submitted that the word “thereof” had been omitted by the legislature by mistake when the exemption was carried into the Sixth Schedule as entry 107, and that the impugned judgment rests upon that omission. On being asked to substantiate the assertion that the omission was a mistake, and on being asked whether the legislature had at any time thereafter restored the word, learned counsel was not in a position to assist the Court. He further submitted that an exemption clause is to be construed restrictively and that any ambiguity is to be resolved against the person claiming the exemption. He prayed that the judgment and decree be set aside. In support of his submissions learned counsel placed on record the judgments in

⁴ Order XLI, rule 31 of the Code of Civil Procedure, 1908 requires the judgment of the Appellate Court to state the points for determination, the decision thereon, the reasons for the decision, and, where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

*Federation of Pakistan v. Durrani Ceramics*⁵, *Oxford University Press v. Commissioner of Income Tax*⁶, *Central Board of Revenue v. Water and Power Development Authority*⁷ and *Commissioner Inland Revenue, Zone-III v. M/s IGI Insurance Company Limited*⁸.

12. Learned counsel for the respondent took us through the several paragraphs of the impugned judgment and adopted the reasoning contained in them. He submitted that entry 29 was the entry put against the respondent in the show cause notice and was not the entry under which the respondent had claimed exemption; and that exemption under entry 107 had earlier been allowed to the respondent, the officer having thereafter taken the position that it was not entitled to exemption under entry 29. He prayed that the appeal be dismissed.
13. In rebuttal, learned counsel for the appellants reiterated his submissions. He did not controvert the statement that exemption under entry 107 had earlier been allowed to the respondent.
14. After the conclusion of arguments, and while judgment stood reserved, learned counsel for the appellants filed a statement dated 22.09.2026. By that statement it is said that the judgment of this Court reported as *Digicom Trading (Pvt.) Limited*⁹, described in the statement as having interpreted the expressions “import” and “supply” in section 13 of the Act disjunctively, has been set aside by the Hon’ble Supreme Court by order dated 15.09.2022 passed in Civil Appeal No. 2019 of 2016 and connected appeals¹⁰. A certified copy of the order is annexed to the statement. The statement is taken up in Part X below.
15. The remaining grounds taken in the memorandum of appeal were not separately pressed at the hearing. They have nonetheless been considered, and are dealt with at the appropriate places in what follows.

VI. THE SCHEME OF THE ACT

16. It is convenient to begin not with the entries but with the sections under which they are made, because the appellants’ construction of entry 107 has to live with them.
17. Section 3(1) is the charging provision. It charges tax at the prescribed rate on the value of, first, “taxable supplies made by a registered person in the course or furtherance of any taxable activity carried on by him”, and secondly, “goods

⁵ *Federation of Pakistan v. Durrani Ceramics* [PLD 2015 SC 354]

⁶ *Oxford University Press v. Commissioner of Income Tax, Companies Zone-I, Karachi* [2019 SCMR 235 = 2019 PTD 523], followed and restated in *Pakistan Stock Exchange Limited v. Commissioner Inland Revenue, Zone-VI, Karachi* [2026 SCMR 373 = 2026 PTD 252]

⁷ *Central Board of Revenue v. Water and Power Development Authority* [2014 PTD 1861]; *Getz Pharma (Pvt.) Limited v. Federation of Pakistan* [2019 PTD 2209]

⁸ *Commissioner Inland Revenue, Zone-III v. M/s IGI Insurance Company Limited* [2018 PTD 114]

⁹ *Digicom Trading (Pvt.) Limited v. Federation of Pakistan* [2016 PTD 648]

¹⁰ *Deputy Commissioner Inland Revenue v. Digicom Trading (Pvt.) Limited*, Civil Appeal No. 2019 of 2016 and connected appeals, order dated 15.09.2022 (unreported).

imported into Pakistan, irrespective of their final destination in territories of Pakistan". The two limbs are lettered separately and joined by the word "and" in the sense of enumeration. They describe two different events, attracted at different times, borne by persons who need not be the same, and collected through different machinery. Nothing in section 3 requires an importer to make a supply, or a supplier to have made an import, before the charge attaches.

18. Section 13(1) is the exempting provision. It reads:

"13. Exemption. – (1) Notwithstanding the provisions of section 3, supply of goods or import of goods specified in the Sixth Schedule shall, subject to such conditions as may be specified by the Federal Government, be exempt from tax under this Act."

19. Three features of section 13(1) bear directly on the question before us. First, the operative words of exemption are in the section, not in the Schedule; the function of the Schedule is to *specify goods*. Secondly, the connector which the legislature has used between the two events is "or", so that the goods specified in the Schedule are relieved upon either event, supply or import, and neither is made a condition of the other. Thirdly, Table-1 of the Sixth Schedule, which carries the marginal reference "[See section 13(1)]", is itself headed "(Imports or Supplies)". The Schedule thus announces, in its own heading, the disjunctive character of the relief it specifies.

20. A Schedule takes its colour from the section under which it is framed and cannot be read so as to cut down that section. Once it is appreciated that the exemption is granted by section 13(1) in respect of goods, and that it operates upon supply or import of those goods, the words of an individual entry which name both events cannot sensibly be read as making each event conditional upon the other.

VII. THE TWO ENTRIES READ TOGETHER

21. Entry 29, as it stood during the tax periods in question, described the goods as "table salt including iodized salt excluding salt sold in retail packing bearing brand names and trademarks", against tariff heading 2501.0010. Entry 107 describes the goods as "import and supply of iodized salt bearing brand names and trademarks whether or not sold in retail packing", against the same tariff heading.

22. The first thing to be said about entry 29 is that its excluding words do not impose tax. An entry in the Sixth Schedule is an instrument of relief, and the words "excluding salt sold in retail packing bearing brand names and trademarks" do no more than withhold from that description the relief which entry 29 confers. The charge upon branded retail salt, if it exists, comes from section 3 and not from entry 29. It follows that the exclusion in entry 29 is not a prohibition. It says

nothing about whether the same goods may be relieved by some other entry of the same Schedule, and it cannot be read as though it did.

23. The second thing to be said is that the two entries, read together, produce a coherent and intelligible scheme, and that neither is rendered idle by the other. Three categories emerge. Table salt, including iodized salt, which is not sold in retail packing bearing brand names and trademarks, is relieved by entry 29. Iodized salt bearing brand names and trademarks is relieved by entry 107, whether it is sold in retail packing or in bulk. Salt which is not iodized and is sold in retail packing bearing brand names and trademarks is relieved by neither, and remains chargeable. The excluding words in entry 29 therefore retain real and substantial work to do, and the apprehension that the construction adopted by the learned Single Judge empties them is, with respect, not borne out.
24. Nor is the scheme so produced a capricious one. Entry 107 relieves iodized salt and only iodized salt, and it relieves it without regard to branding or packing. The iodization of edible salt is a recognised public health measure, and a relief which follows the iodized product into the retail pack, where alone the ordinary household buys it, is readily intelligible. On the appellants' construction, by contrast, the relief would follow not the iodized character of the salt but the accident of whether the person supplying it had imported it, a distinction for which the entry offers no reason and the Act no purpose.
25. It may be added that it is well recognised that where goods answer the description in two entries of an exemption schedule, the person assessed is entitled to the benefit of whichever entry is the more favourable to him, and that an entry dealing with a species is not to be read down by an entry dealing with the genus. Entry 29 speaks of table salt at large; entry 107 speaks of a specific species, iodized salt bearing brand names and trademarks, whether or not in retail packing. If there were a competition between the two, the specific entry would prevail; but on the view taken above there is no competition, only a division of the field.

VIII. "IMPORT AND SUPPLY" IN ENTRY 107

26. This brings us to the words on which the appeal principally turns. In our view the phrase "import and supply of iodized salt bearing brand names and trademarks whether or not sold in retail packing" identifies, compendiously, the goods relieved and the two events at which the relief operates. It is descriptive, not conditional. The grammatical office of "and" in such a phrase is to join the two events in a single description, as when a statute speaks of the import and export of a commodity, or of the sale and purchase of shares. No one reads such a phrase as requiring the same person to do both.

27. The appellants' construction requires something quite different to be read into the entry. It requires the entry to say, in substance, "import of iodized salt bearing brand names and trademarks and the supply by the importer of the goods so imported". Not one of those additional words is there. A Court construing a fiscal provision may not add to it, and this is as true of an exempting provision as of a charging one.
28. The consequences of the appellants' construction also tell against it. The exemption under section 13(1) is an exemption of goods. On the appellants' reading it would become an exemption of persons, available to an importer and denied to a manufacturer in respect of goods identically described. It would further follow that identical packets of iodized salt on the same shelf would be taxed or relieved according to their provenance, and that where imported salt passed from the importer to a distributor, the importer's supply would be exempt and the distributor's supply of the very same packets would not, since the distributor has imported nothing. The entry provides no machinery for tracing provenance through a chain of supplies, and it is difficult to accept that the legislature intended a relief which could only be administered by an enquiry the statute does not provide for.
29. It follows that we are not required to read the word "and" as "or", and we do not do so. The disjunctive operation of the relief comes from section 13(1) and from the heading of Table-1, and not from any transposition of the words of the entry. The word "and" in entry 107 is given its ordinary meaning, which in the phrase in which it stands is to join the two events in a single description of the relief. It is the construction pressed by the appellants which departs from the ordinary meaning, by requiring that the two events be performed by the same person and in respect of the same goods, a requirement which the words do not contain.
30. Upon this part of the case learned counsel for the appellants placed reliance upon the judgment of the Hon'ble Supreme Court in *Durrani Ceramics*¹¹, in which the submission that the word "and" in Entry 51 of Part I of the Federal Legislative List should be read as "or" was declined. It was there held that words are to be given their ordinary meaning unless the context otherwise requires; that the words of that Entry posed no difficulty in interpretation and led to no absurdity when so read; and that had the legislature intended otherwise it would have used the word "or". With respect, that authority does not advance the appellants' case, for two reasons.
31. The first is that the rule it lays down is the rule of ordinary meaning, and it is the ordinary meaning of the word "and" for which the respondent contends and which we have adopted. There, it was the Federation which asked that a word

¹¹ *Federation of Pakistan v. Durrani Ceramics* [PLD 2015 SC 354]

be given a meaning it does not ordinarily bear; here it is the department. The second is that the rule is in terms subject to the context, and the context is not the same. There the Court was construing an Entry in the Legislative List standing by itself. Here the entry is one in a Schedule which has no operation except through section 13(1), a section which uses the word “or”, and it stands in a Table which is itself headed “(Imports or Supplies)”. If anything, the discipline which *Durrani Ceramics* enjoins tells against the appellants: as the legislature there would have used “or” had it meant “or”, so the legislature here would have retained the word “thereof” had it meant the relief to remain tied to goods imported.

32. It remains to notice the ground that the authorities for reading “and” disjunctively arose under non-fiscal statutes. The judgment principally relied upon before the learned Single Judge¹² arose upon the classification of imported goods under the First Schedule to the Customs Act, 1969 read with the Import Policy, which is fiscal ground. But the answer does not depend upon that, since we have not read “and” disjunctively at all. Strict construction is a rule against extending the words of a fiscal provision. It is not a rule which permits words to be inserted in order to narrow them.
33. Had it been necessary to read the word “and” in entry 107 disjunctively, we would have held that the context requires it, and it is right to say so, the point having been argued. That the course is open is settled. In *Suo Motu Case No. 8 of 2018*¹³ a seven-member Bench of the Hon’ble Supreme Court, approving what had earlier been said in *Khadim Hussain*, held that although in common parlance “and” is conjunctive and “or” disjunctive, the two are interchangeable in a legislative instrument where the change is necessary to give effect to the clear and obvious intention of the legislature, or to avoid absurdity, unreasonableness or redundancy. That is the very qualification which *Durrani Ceramics* preserves when it says that words take their ordinary meaning unless the context otherwise requires. The method to be followed where the provision is a fiscal exemption is settled too, and by a judgment of this Court upon the very notification with which the history of this exemption begins: the starting point is to read “and” conjunctively, and that reading is to be preferred if it yields a sensible and reasonable meaning¹⁴.

¹² *Iqbal Hussain v. Federation of Pakistan* [2010 PTD 2338]

¹³ *Suo Motu Case No. 8 of 2018* [PLD 2019 SC 201], approving *Khadim Hussain v. The Additional District Judge, Faisalabad* [PLD 1990 SC 632]

¹⁴ *Shazeb Pharmaceutical Industries Limited v. Federation of Pakistan* [2015 PTD 1532], per Munib Akhtar, J. (as he then was): “The starting point must therefore be to read the ‘and’ conjunctively. If this leads to a sensible and reasonable meaning, then that is to be preferred over reading the word disjunctively ... In my view therefore, the use of ‘and’ as such does not lead to a sensible or reasonable meaning.”

34. Taking that starting point, the conjunctive reading of entry 107 does not yield a sensible or reasonable meaning. Import and supply are not concurrent but successive. A consignment is first imported and is thereafter supplied, and the two are separate events under section 3, attracted at different times and answered for through different machinery. A relief expressed to attach only where the two are found together would therefore attach to no transaction at all, unless words are supplied to carry the exemption from the one event to the other; and that is precisely the word, “thereof”, which the legislature did not carry forward in 2014. In *Shazeb Pharmaceutical* the conjunctive reading was rejected for a like reason, the raw material there being incapable of use at two successive stages at one and the same time. The conjunctive reading here produces, besides, the consequences already noticed: a relief granted in respect of goods becomes a relief attached to the person who supplies them, identical packets are taxed or relieved according to their provenance, and the entry can be administered only through an enquiry for which the statute makes no provision. Upon this alternative footing also the construction pressed by the appellants cannot be accepted.

IX. THE LEGISLATIVE HISTORY AND THE OMISSION OF “THEREOF”

35. The history of the exemption confirms, rather than displaces, this reading. Under entry 14 of the Table to S.R.O. 551(I)/2008 the goods relieved were iodized salt bearing brand names and trademarks, whether or not sold in retail packing, and the extent of the relief was stated as “import and supplies *thereof*”. The word “thereof” performed exactly the function which the appellants now ascribe to entry 107, namely, it referred the exempt supplies back to the goods imported. The linkage for which the appellants contend was therefore, at that stage, textual, and the department’s present reading would have been the natural one.
36. On 26.06.2014 the notification was rescinded and entry 107 was inserted in the Sixth Schedule in its place. The legislature thus had the language of the notification before it and reproduced it, save that the referential word “thereof” was not carried forward. A change of language in a re-enactment of the same relief is a deliberate act, and the deletion of the very word which had confined the relief to imported goods cannot be treated as an accident of drafting. Had consolidation alone been intended, the obvious course was to reproduce the notification verbatim. The Court must give effect to the words which the legislature has enacted, and cannot restore a word which it has dropped.
37. The submission that the word was dropped by mistake cannot, with respect, be accepted. The legislature is presumed to know the existing state of the law, including the terms of the very notification it was replacing, and every act of the legislature is presumed to have been done consciously and with deliberation.

Omnia praesumuntur rite et solemniter esse acta: all things are presumed to have been rightly and regularly done, and the presumption attaches with particular force to a solemn act of the legislature. That presumption is not displaced by an assertion at the bar that a mistake has occurred, unsupported by anything on the record. Learned counsel was not able to point to any material in support of the assertion, nor able to say that the legislature had at any time since 2014 restored the word to entry 107, which it could readily have done had the omission been inadvertent. Entry 107 has stood in the form in which it was enacted from that date until the present.

38. The learned Single Judge gave effect to this change in both directions, and that is a further reason for accepting his conclusion. For the tax period July 2013 to June 2014, when the word “thereof” stood in the notification, the exemption was held not to be available to the respondent, and it was relegated to the show cause notice for that period. For the tax periods from July 2014, when the word had gone, the exemption was held to be available. The difference in outcome between the two periods is not a preference for the taxpayer; it is the consequence of a change in the text, faithfully applied.

X. THE PRINCIPLES GOVERNING CLAIMS OF EXEMPTION

39. The principles on which a claim of exemption under a fiscal statute is to be judged are settled, and are conveniently found in the very authorities which the appellants have placed before us. They were stated by a Division Bench of this Court in *IGI Insurance Company Limited*¹⁵ and restated by the Hon’ble Supreme Court in *Oxford University Press*¹⁶, in three propositions: first, the onus lies on the taxpayer to show that his case comes within the exemption; secondly, if two reasonable interpretations are possible, the one against the taxpayer will be adopted; but thirdly, if the taxpayer’s case comes fairly within the scope of the exemption, he cannot be denied the benefit of it on the basis of any supposed intention to the contrary of the legislature or of the authority granting it. To the same effect is *Water and Power Development Authority*¹⁷, which requires a person claiming exemption to bring himself within the four corners of the exempting provision.
40. Applying these propositions, the onus upon the respondent is discharged by the entry itself. Its goods are iodized salt bearing its brand names and trademarks, sold in retail packing, which is precisely the description in entry 107, and the

¹⁵ *Commissioner Inland Revenue, Zone-III v. M/s IGI Insurance Company Limited* [2018 PTD 114]

¹⁶ *Oxford University Press v. Commissioner of Income Tax, Companies Zone-I, Karachi* [2019 SCMR 235 = 2019 PTD 523]

¹⁷ *Central Board of Revenue v. Water and Power Development Authority* [2014 PTD 1861]

event on which it claims relief is a supply, which is one of the two events on which section 13(1) operates. Nothing further was required of it, and the absence of import documents is beside the point once it is held that import is not a condition of the relief.

41. The second proposition does not assist the appellants either, because it presupposes two interpretations each of which is reasonable. For the reasons given in the preceding parts of this judgment, the construction pressed by the appellants requires words to be supplied which the legislature deleted, sits uneasily with the disjunctive language of section 13(1) and with the heading of Table-1, converts a relief granted in respect of goods into a relief attached to the status of the supplier, and cannot be administered on the terms in which it is cast. A construction with those features is not a competing reasonable interpretation, and the rule of preference therefore never comes into play.
42. The third proposition is the one which governs this case. The respondent's case falls fairly within the words of entry 107, and the benefit cannot be withheld from it by attributing to the legislature a contrary intention which the words do not carry. The *Cape Brandy* principle¹⁸, invoked in the memorandum of appeal, does not carry the appellants further, for the substance of that principle is that in a taxing statute one looks simply at what is clearly said, that there is no room for any intendment, and that nothing is to be read in and nothing implied. It is the appellants' construction, and not the respondent's, which asks the Court to read in and to imply.
43. Two matters of record may be noticed, although neither is decisive and neither has been treated as such. The first is the statement made at the bar on behalf of the respondent, not controverted in rebuttal, that exemption under entry 107 had earlier been allowed to it, and that it was the officer who thereafter confronted it with entry 29. The second is that the Assistant Commissioner (Audit), Unit-4, Zone-IV, in assessment order No. 06 of 2018 dated 30.03.2018, proceeded upon the footing that the respondent's supplies of salt were exempt, and on that footing declined input tax on the packing material referable to those supplies. A practice of the department cannot create an exemption which the statute does not give, and cannot prevent the department from applying the law correctly once the error is perceived. It is, however, some indication that the construction now pressed is not one which the words of entry 107 naturally bear, and no reason has been placed before us for the change of position.
44. One subsidiary ground taken in the memorandum of appeal may be disposed of here. It was said that the show cause notice confronted the respondent only with entry 29 and made no mention of entry 107, so that no grievance had arisen to

¹⁸ *Cape Brandy Syndicate v. Inland Revenue Commissioners* [(1921) 1 K.B. 64] at 71

it. The premise of the notice, however, was that no exemption at all was available to the respondent's supplies, the officer having taken the view that the relief for table salt extends only to bulk packing without a brand name. An answer that the goods are relieved by another entry of the same Schedule is a defence to that very premise, and not a new cause of action. The point, in any event, does not touch the construction of entry 107, upon which the notice must ultimately stand or fall.

XI. THE STATEMENT FILED AFTER ARGUMENTS

45. Two things may be said about the statement. The first is that *Digicom Trading* did not decide any question as to the conjunctive or disjunctive reading of the words "import" and "supply". The controversy there was whether, a rate of tax having been fixed by the Federal Government under S.R.O. 460(I)/2013 for the import and supply of cellular telephones, a further amount of tax could be demanded under section 3(1)(A) of the Act upon supply to unregistered persons. It was held that section 13 has an overriding effect upon chargeability under sections 3(1) and 3(1)(A), so that once the liability had been discharged in accordance with the special procedure prescribed, no further tax could be demanded. The expressions "import" and "supply" were not there being read either conjunctively or disjunctively.
46. The second is that the impugned judgment does not rest upon *Digicom Trading*. Upon the question now in issue the learned Single Judge proceeded upon the judgment of a Division Bench of this Court in *Iqbal Hussain*¹⁹, which has not been shown to have been disturbed. *Digicom Trading* finds place in the list of authorities that was placed before the learned Single Judge, and nothing more. Taken at its highest, therefore, the statement removes from a list of citations a judgment which formed no part of the reasoning under appeal, and it leaves the construction of entry 107 untouched.
47. Since the order annexed to the statement might otherwise be thought to carry a wider consequence, it should be added that the ground upon which the Hon'ble Supreme Court set aside the judgments before it was that a show cause notice ought not to have been quashed in the exercise of the constitutional jurisdiction, the taxpayer being required to take his remedy through the departmental hierarchy²⁰. No such question arises here, nor was any objection to the maintainability of the suit pressed before us. The present proceeding is not a petition but a suit upon the original civil side of this Court, and the jurisdiction to entertain such a suit was expressly preserved and regulated by the Hon'ble

¹⁹ *Iqbal Hussain v. Federation of Pakistan* [2010 PTD 2338]

²⁰ *Commissioner Inland Revenue v. Jahangir Khan Tareen* [2022 SCMR 92]

Supreme Court in *Searle Solution*²¹, which held that a learned Single Judge of this Court sitting on the original side is a High Court and not a civil court, and directed that cognizance of a suit arising out of an action or order of the tax authorities may be taken, that the jurisdiction be sparingly exercised, that such suits be decided within a year, and that they be entertained only upon a deposit of fifty per cent of the tax calculated by the authorities, to be refunded or made up according to the determination at the conclusion of the suit. It was upon that footing that the suit was entertained and the deposit made. Nothing in this judgment enlarges that jurisdiction, or detracts from the direction that it be exercised sparingly.

XII. THE DEPOSIT AND THE EXECUTION OF THE DECREE

48. The decree carries a direction for refund of the amount of Rs. 38,048,727 deposited by the respondent in compliance with the orders passed on 17.08.2018 and 07.09.2018. That deposit was made under the regime laid down in *Searle Solution*, which contemplates that upon the conclusion of the suit, and according to the correct determination of the tax due or exempt, the amount deposited be refunded or the remaining balance be paid. The challenge in the suit was to the show cause notice, and the learned Single Judge set it aside for the tax periods from July 2014 onwards. The appeal having failed, the decree stands as it was passed, and it will be open to the respondent to seek its execution in accordance with law. We say nothing upon the amount, which is a matter for the Court executing the decree.
49. For the avoidance of doubt, nothing in the impugned judgment or in this judgment precludes the appellants from proceeding with the show cause notice for the tax period July 2013 to June 2014 and from recovering such amount as may be found due on its conclusion, and the remedies of the respondent against any order so passed remain open to it.

XIII. THE DECISION UPON THE POINTS FOR DETERMINATION

50. For the reasons set out above, the points framed are decided as follows.
- (i) Entry 107 of the Sixth Schedule exempts the supply of iodized salt bearing brand names and trademarks, whether or not sold in retail packing. The exemption is not conditional upon the person making the supply having imported the salt. The point is answered in favour of the respondent.

²¹ *Searle Solution (Pvt.) Limited v. Federation of Pakistan* [2018 SCMR 1444]

- (ii) The excluding words in entry 29 withhold the relief which that entry confers and do not impose tax. They do not stand in the way of relief under entry 107. The point is answered in favour of the respondent.
- (iii) The word “and” in entry 107 is given its ordinary meaning, which is to join the two events in a single description of the relief; the disjunctive operation of the exemption comes from section 13(1) and from the heading of Table-1. In the alternative, and had it been necessary, the context requires that the word be read disjunctively. The point is answered against the appellants.
- (iv) The statement dated 22.09.2026 does not affect the impugned judgment. The point is answered against the appellants.
- (v) The appeal fails and the decree calls for no variation, so that no question arises of relief to the appellants.

XIV. ORDER

51. The appeal is dismissed. The judgment dated 31.05.2019 and the decree dated 13.06.2019 passed in Suit No. 938 of 2018 are maintained, subject to the clarification in paragraph 49 above. There will be no order as to costs.

J U D G E

J U D G E