IN THE HIGH COURT OF SINDH, KARACHI
C.P No. D- 3592 of 2020

Engro Elengy Terminal (Pvt) Limited V. Federation of Pakistan & others.

Present:
Mr. Justice Yousuf Ali Sayeed,
Mr. Justice Muhammad Osman Ali Hadi

Dates of hearing:	28.01.2026 & 10.02.2026.
Date of decision:	01.04.2026.
Petitioner:	Through Mr. Ali Almani, Advocate.
Respondents:	Through Mr. Ameer Buksh Metlo, Advocate. Mr. Muhammad Akbar Khan, Asstt. Attorney General.

JUDGEMENT

Muhammad Osman Ali Hadi, J: The instant Petition has been filed against Order-in-Revision dated 24.07.2020 passed by Respondent No. 3/ Chief Commissioner Inland Revenue (**"Impugned Order"**),[1] which upheld order dated 03.11.2017 (**"Order-in-Original"**),[2] relating to the tax year 2016, whereby the Petitioner's claim of exemption from Advance Tax under section 148 of the Income Tax Ordinance 2001 ("**ITO 2001"**) was rejected. It is the contention of the Petitioner that the Respondents discarded mandatory statutory instruments and the law when passing the said Impugned Orders, which violated their fundamental rights, against which they were left without option, except to file this instant Petition.

2. The Petitioner is a private limited company incorporated under the laws of Pakistan. They established and operate a terminal for handling, regasification, storage, treatment and processing of

[1] Available at page 853 of the File
[2] Available at page 827 of the File

Liquefied Natural Gas (**"LNG"**) and Re-gasified Liquefied National Gas (**"RLNG"**). They were to establish the terminal by using a Floating Storage and Regasification Unit (**"FSRU"**),[3] which was to be parked within the territorial waters of Pakistan.

3. The said FSRU was obtained by the Petitioner vide entering into a Time Charter Party and LNG Storage and Regasification Agreement (**"Charter Party Agreement"**) [as novated by Deed of Novation dated 26.01.2015], with Excelerate Energy Development DMCC (**"Excelerate"**), a Company incorporated in the United Arab Emirates (**"UAE"**). The FSRU was chartered for a period of fifteen (15) years from the date of commencement of commercial operations.[4]

4. Learned counsel for the Petitioner submitted that due to the apparent energy crises at such time, the Economic Coordination Committee of the Government (**"ECC"**) had given various initiatives for establishing LNG Terminals, one such relevant initiative being that an FSRU shall be deemed to be considered as part of plant, machinery and equipment, and that the LNG Terminal Operators would be exempted on payment of income tax for a period of 5 years[5]. Counsel asserted that implementation of the ECC Decision (mentioned *ibid.*) was also encompassed (in the now erstwhile) Clause 141 of Part-I of the Second Schedule of the ITO 2001.[6]

5. He next contended that due to various the legal enactments, the Petitioner was entitled to claim exemption from payment of income tax. Counsel further averred that under SRO 678(I) of 2004 dated 07.08.2004 issued by Respondent No. 1 (**"SRO 678"**),[7] plant, machinery and equipment were exempted from payment of

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[3] FSRU is a specialized vessel / ship *inter alia* used for purposes relating to transport LNG
[4] The Petitioner's terminal began commercial operations on 29.03.2015
[5] ECC Decision dated 09.04.2015 available at page 457 of the File.
[6] Through the Finance Act 2016
[7] Available at page 459 of the File

Customs duty above 5% as well as Sales Tax; and that the FSRU was *deemed* to be considered as 'plant, machinery and equipment of a Floating LNG Terminal'. To implement the aforementioned exemptions, Respondent No. 1 issued SRO 337 of 2015 dated 22.04.2015 (**"SRO 337"**),[8] which amended clause '(2a)' of SRO 678 to accommodate the same.

6. Counsel for the Petitioner then submitted that SRO 947(I) of 2008 dated 05.09.2008 ("**SRO 947"**) was enacted,[9] the provisions of under which the Petitioner was clearly entitled to exemptions from payment of income tax under section 148(1) read with section 159 of the ITO 2001 (for reasons explained in detail below). Due to aforementioned, the Petitioner sought exemption from payment of income tax.

7. Learned Counsel submitted their application for exemption, was placed before Respondent No. 4 on 25.02.2015,[10] but was rejected. The Petitioner then filed a Revision Application against the said rejection with Respondent No. 3, which was also declined on 19.06.2015, and the initial rejection order was upheld.[11]

8. The Petitioner then filed Suit No. 1084 of 2015 before a learned Single Judge of this Court,[12] in the case titled ***Engro Elengy Terminal (Pvt.) Ltd. vs. Federation of Pakistan & others***, reported as 2017 PTD 959 (**"the EETL Case"**).

9. Counsel continued his arguments by stating the said Suit was decided (in their favour), and the learned Single Judge, *inter alia*, held (as per submissions of the Petitioner) the Respondents No. 3 & 4 had not taken into consideration Clause 141 of the Second Schedule of the ITO 2001 for which the Petitioner could be granted a direct

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[8] Available at page 479 of the file
[9] Available at page 511 of the File
[10] Available at page 481 of the File
[11] Available at page 553 of the File
[12] At such this Court held Original Civil Jurisdiction

exemption under section 159 of the ITO 2001; as well as the named Respondents' findings being incorrect in their reading of SRO 947, as no basis existed as to exclude the Petitioner from an exemption under clause (viii) of SRO 947. The learned Single Judge remanded the matter back to the said Respondents for adjudication upon issuance of an exemption certificate.

10. Learned counsel averred that pursuant to the EETL Case, the Petitioner filed a 2nd Exemption Application before Respondent No. 4, which was (again) rejected by order dated 24.06.2016.[13] Against the 2nd rejection, a Revision Application was filed before Respondent No. 3, in which Respondent No. 3 remanded the matter back to Respondent No. 4, vide order dated 22.08.2016, to decide the matter (again).

11. The said Exemption Application was yet again rejected by Respondent No. 4 for a third time, vide the Order-in-Original dated 03.11.2017,[14] against which another Revision Application was filed before Respondent No. 3, which was also rejected on 24.07.2020 (**"Impugned Order"**).[15] It is against this Impugned Order that the instant Constitutional Petition has been filed.

12. The gist of the Petitioner's case before this Court is that the Petitioner claimed exemption from payment of Advance Tax, on the following grounds:

i) Advance tax is collected from the 'importer' of goods under section 148(1) ITO 2001, and is treated as tax of the importer. Ergo, the Respondents' findings that the Petitioner is not the owner of the FSRU remains irrelevant, as the Petitioner is the person liable for payment (and exemption) of any tax under section 148 ITO 2001;

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[13] Available at page 773 of the File
[14] Available at page 827 of the File
[15] Available at page 853 of the File

ii) Further, since the Petitioner were (admittedly) exempt from payment of income tax under Clause 141 Second Schedule of the ITO 2001; section 148 of the ITO 2001 remains inapplicable to them since they are not liable for payment of any tax, and as such they are also entitled to an Exemption Certificate per section 159 of the ITO 2001;

iii) The Respondents have not kept in account the scheme of taxation, which is relevant. The Petitioner imported the goods (i.e. the FSRU), and under section 79(1) of the Customs Act 1969, it is deemed to be the *owner* who imports the goods and files a Goods Declaration form (as was done by the Petitioner in this instance). Therefore, the Petitioner is in any event to be considered as *'owner'* of the goods / FSRU, and is entitled to an exemption thereof. He further relied on Rule 387[a] Customs Rules 2001 in support of this contention;

iv) Under clause (v) of SRO 947, the person who "imports" any plant, machinery etc. for setting up an industrial undertaking *'owned'* by such person, is entitled to an exemption. This applies directly to the Petitioner, since they have imported the FSRU and are the *owners* of the industrial undertaking for which the FSRU has imported. The Petitioner contends that they are therefore squarely covered by this clause, and are entitled to exemption per the said SRO 947;

v) Under clause (viii) of SRO 947, the Petitioner also holds an exemption from payment of tax under section 148 ITO 2001. The said clause provides exemptions to Petroleum (E & P) Companies which are covered under SRO 678. SRO 678 applies to the

Petitioner, as was also settled by the learned Single Judge of this Court in the EETL Case, which judgement remains in the field. As such, the Petitioner submits they are entitled to an exemption under this provision as well.

13. Whilst concluding, counsel stated that the Petitioner has been undeservedly dragged through repeated litigation / proceedings due to the inactions of Respondents No. 3 & 4 in following the law. He further alleged the Respondents have acted in derogation of law and have not followed the *dictum* and *ratio* provided in the EETL judgement, which they were bound to do. In support of the above contentions, learned counsel for the Petitioner has taken us exhaustively through the various relevant SRO's, statutes and case law (mentioned *supra*).

14. Learned counsel for the Respondents / FBR vehemently opposed the assertions put forth by the Petitioner, and submitted that the Petitioners are not owners of said FSRU, and therefore, were not entitled for benefit of exemption from section 148 of the ITO 2001. Learned counsel premised his entire contentions on the fact that the Petitioner was only a charterer and not an owner, and the actual owner of the FSRU was Excelerate, which was a foreign entity. He continued that the owner, i.e. Excelerate, would be the entity eligible for launching a claim (if any was available), but not the Petitioner. He referred to the Charter Party Agreement between Petitioner and Execlerate,[16] in particular clause 1.4, and stated the same shows the Petitioner to be a charterer and <u>not</u> owner of the FSRU, therefore disentitling them to the exemption benefit which was only provided for an *owner* (and not for a charterer). The Respondent refuted the entirety of claims forwarded by the Petitioner, stating them to be without merit. He further contended

[16]Available at page 221 of the File

that the Impugned Order(s) passed by the Respondents [17] are detailed and do not warrant any further interference.

15. Counsel for the Petitioner exerted his right of rebuttal and submitted that section 148 of the ITO 2001 was applicable for payment by persons who are residents, and it is therefore only such persons paying any advance who can apply for exemption of the same, which in this case would be the Petitioner. He further contended the Respondents are confusing the issue of payment of tax by non-residents, which is governed under separate taxing provisions, not relevant to the matter-at-hand. He reiterated that the tax in the instant situation is collected and paid by the local taxpayer, i.e. the Petitioner.

16. We have heard learned counsels and with their assistance gone through the material available on record. The crux of this disparity is that the Petitioner's application seeking an Exemption Certificate against payment of Advance Tax under section 148 of the ITO 2001 was rejected by Respondent No.4[18]. Against the said rejection, the matter went back and forth through various proceedings, [19] which eventually culminated in the Petitioner's Revision Application[20] being dismissed by Respondent No. 3, vide the Impugned Order dated 24.07.2020 (hereby challenged).

17. The Petitioner's arguments have been exhaustively detailed above, which have been summarized by us in Para 12 (*supra*). The Petitioner's grievance is against the Impugned Order (and Order-in-Original), in that the framework of the Income Tax Ordinance 2001 along with the statutory benefits under the respective SRO's 678 and 947 (**"the SRO's"**) which accrued to the Petitioner, have been denied by Respondents No. 3 & 4.

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[17] Available at page 853 of the File
[18] Available at page 531 of the File
[19] Already mentioned in the Petitioner's contentions *supra*
[20] Available at page 853 of the File

18. We remain mindful that we are sitting under the Constitutional 'Writ' Jurisdiction, and not as an Appellate nor a Referential Court, and we have maintained our deliberations and findings accordingly.

19. A perusal of the Impugned Order illustrates Respondent No. 3 has not considered the legal aspects contended by the Petitioner, but have premised their finding primarily only on a single point, i.e. the Petitioner not being the 'owner' of the FSRU was not entitled to an Exemption Certificate under the ITO 2001 & SRO's.

20. It would be advantageous to reproduce SRO 947, which has formed the vast basis for the Petitioner's claim. SRO 947(I)/2008 reads:

> GOVERNMENT OF PAKISTAN REVENUE DIVISION
> FEDERAL BOARD OF REVENUE
> **** Islamabad, the September 5, 2008.
>
> NOTIFICATION (Income Tax) S.R.O. 947(I)/2008.- In exercise of the powers conferred by sub-section (2) of section 148 read with clause (b) of sub-section (3) of section 159 of the Income Tax Ordinance, 2001 (XLIX of 2001), hereinafter referred to as "the Ordinance" and in supersession of its Notification No. SRO.593(I)/91, dated the 30th June, 1991, the Federal Board of Revenue is pleased to specify the following to be classes of persons to whom the provisions of sub-section (1) of section 148 shall not apply, namely:-
>
> (i) the Federal Government;
> (ii) a Provincial Government;
> (iii) a Local Government;
> (iv) a foreign company and its associations whose majority share capital is held by a foreign government;
> **(v) a person who imports plant, machinery, fixtures, fittings or its allied equipments for the purposes of setting up an industrial undertaking (including hotels) owned by such person, or for installation of an existing industrial undertaking (including hotels) owned by the person and a certificate to that effect from the Commissioner of**

income tax, in respect of such plant, machinery, fixtures, fittings or equipments is produced.

The Commissioner, however, shall issue exemption certificate subject to the following conditions, namely:-

(a) in the case of new industrial undertaking, the taxpayer is not likely to pay any tax on his income from business under the Ordinance, in the tax year in which import is made;

(b) in the case of existing industrial undertaking, the taxpayer is not likely to pay any tax on income from business under the Ordinance, due to brought forward assessed losses or depreciation allowance in the tax year in which the import is made;

(c) and in the case of an industrial undertaking or a person whose entire income is subject to final taxation being covered under sub-section (8) of section 148 or sub-section (6) of section 153 or sub-section (4) of section 154 of the Ordinance and the taxpayer is not likely to pay any further tax under the Ordinance, in the tax year in which the import is made;

(vi) a person who imports plant and machinery for execution of a contract with the Federal Government or a provincial government or a local government and produces a certificate from that government;

(vii) companies importing high speed diesel oil, light diesel oil, high octane blending component or kerosene oil, crude oil for refining and chemical used in refining thereof in respect of such imports; and

(viii) **Petroleum (E&P) companies covered under the Customs and Sales Tax Notification No. S.R.O.678 (I)/2004, dated the 7th August, 2004, except motor vehicles imported by such companies**.

2. The Federal Board of Revenue is pleased to empower Commissioner of Income Tax concerned in accordance with the provisions of clause (b) of sub-section (3) of section 159 of the Ordinance to issue system based exemption certificate only

> (through computer) in the cases mentioned at clause (v) above, on case to case basis.
> (*Emphasis supplied*)

21. Clause **'(v)'** (*ibid.*), holds that any person who imports plant / machinery for setting up an industrial undertaking *owned* by such person, is exempt from payment of advance tax under section 148 ITO 2001. The Respondents have not disputed the Petitioner's LNG Terminal falls within the definition of 'industrial undertaking', nor that such 'industrial undertaking' is owned by the Petitioner.[21] Clause **'(viii)'** (*ibid.*) provides an exemption for Petroleum (E&P) companies who are covered under SRO 678, which, as also held by learned Judge in the EETL Case, includes the Petitioner.

22. Both the above provisions appear to apply squarely to the Petitioner, thereby entitling them to exemption against payment under section 148 ITO 2001. To counter this, the Respondents have not shown any legal justification for denying the Petitioner this benefit.

23. The Impugned Order stated the Petitioner was not the owner of the FSRU, and hence denied them an exemption from Advance Tax on this ground, without addressing the serious legal reasoning supplied by the Petitioner. The logic as applied in the Impugned Order appears flawed as the entire mechanism for providing an exemption would be compromised if the Respondents' view was adhered. There is no bar under law on the Petitioner being able to rent or lease any/all of their equipment, machinery, etc. as may be necessary for them to develop / utilize their industrial undertaking, nor has any such condition been set by the Respondent No. 1 when granting the exemption. The only condition established under clause ('v') [*ibid.*] is that the 'industrial undertaking' must be <u>owned</u> by the Petitioner, which it admittedly is. By limiting the scope of the exemption, the Respondents No. 3

[21] Definition available under section 2 (29C) ITO 2001

& 4 have substituted their own conditions for circumstances that do not exist, which of course is impermissible under law.

24. It appears the Respondents No. 3 & 4 have reached such conclusion through their own whims and surmises. It is trite law that words or expressions not present in a statute cannot be supplied, as the same is tantamount to legislating, which is the domain of the legislature. [22] Therefore, the self-created interpretation used by the Respondents is not found in the wordings of the ITO 2001 or the SRO's (which are statutory instruments); rendering the interpretation supplied by Respondents No. 3 & 4 to be beyond their (i.e. Respondents No. 3 & 4) legal capacity, and rendered to be unlawful.

25. Furthermore, in addition to the said Respondents not having illuminated any basis for their deviation from the relevant legal provisions, they have further failed to adequately explain their ignorance of the relevant observations passed by the learned Single Judge of this Court in the EETL Case;[23] such as the Petitioner having been recognized as a petroleum company in terms of SRO 678 for which an exemption from income tax has been provided (in clause 'viii' of SRO 947).

26. Combining the above, with certain concessions / exemptions provided under the customs and sales tax regimes vide SRO 337, whereby an FSRU was deemed to be considered as plant / machinery etc. of a Floating LNG Terminal, further bolsters our view that the said Respondents have failed to understand the focus of the tax regime and incentives provided by Respondent No. 1 for granting such exemptions, which was done in a bid to encourage LNG import / supply. By the Respondents No. 3 & 4 creating such hindrances, this entire scheme gets compromised.

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[22] Reference can be made to *Dpy. Director Finance & Administration FATA v Dr. Lal Marjan* 2022 SCMR 566 & *Dr. Zahid Javed v Dr. Tahir Riaz Choudhry* PLD 2016 SC 637

[23] Para 35 of the EETL Case is of particular relevance in this regard

27. The power to grant exemptions rests with the Respondent No. 1 / GOP. The Respondents No. 3 & 4 have gone beyond the normal language provided by the exemption SRO's, and substituted their own interpretations. The pulse of the said Respondents' reasoning for refusal to grant such exemption, as seen in the Impugned Order as well as the Order-in-Original, is simply that the Petitioner is not held to be owner of the goods (i.e. in this case the FSRU). In addition to us remaining unable to find under which provision of the SRO's or law the Respondents have arrived at the conclusion that it was mandatory for the Petitioner to own (as opposed to lease / rent) all plant / machinery utilized in their undertaking for the exemption to be in effect, we find another contradiction in the Impugned Order. On the one hand, the Respondents acknowledged that Advance Income Tax under section 148 ITO 2001 relates to the income of the owner, but yet they have charged the Petitioner for payment of the same; whereas in their next breath, they have submitted that exemption from payment of Advance Income Tax can only be extended to the owner, but have denied the Exemption Certificate to be issued to the Petitioner (whom they otherwise are holding liable for payment). In simple terms, the Respondents have held the Petitioner responsible for the liability, when on the same transaction, they have denied them the benefit arising. This contradiction cannot be sustained, as it provides two contrasting views issued by Respondents No. 3 & 4.

28. Counsel for the Petitioner had also contended (which remained unrebutted by the Respondents) similarly placed undertaking(s) have been exempted from payment of advance tax. As already mentioned, even the EETL Judgment (*referred ibid*) observed that since the Petitioner was recognized as a Petroleum (E&P) Company falling under SRO 678 and being exempt vide SRO 947, it is unfathomable as to why the Petitioner has been singled out and discriminated against by the said Respondents, and

not having been granted an Exemption Certificate? Such discriminatory acts have repeatedly been admonished by the Courts, as deliberated by the Supreme Court in the cases of *Pakistan Match Industries (Pvt.) Ltd. v Asst. Collector Customs* and *Chairman FBR v Hazrat Hussain*,[24] and are an infringement of fundamentally protected rights.

29. Our overall conclusion has led us to believe the Respondents No. 3 & 4, when passing the Impugned Order(s), have failed to remain in consonance with provisions of ITO 2001, the SRO's and the scheme of taxation; resulting in the Petitioner's violation of fundamental rights.[25]

30. Moreover, when passing the Impugned Order(s), in addition to the Respondents No. 3 & 4 having failed to consider and/or apply the provisions of the SRO's and ITO 2001, they further did not pay proper heed to the *dictum* of the EETL Case.

31. Accordingly, whilst we hereby set-aside the Impugned Order and the Order-in-Original for being in derogation of law and violative of the Petitioner's fundamental rights, we remand the matter back to Respondents No. 3 & 4 for reconsideration of the Petitioner's request for an Exemption Certificate under section 159, for which they appear to be entitled. We emphasise the said Respondents are to strictly consider and adhere to the findings, deliberations and observations in this Judgement; as well as the relevant *dictum* of the EETL Case. The said Respondents shall give the Petitioner a fair opportunity to present any submissions / documents the Petitioner deems necessary is support of their application for exemption. In the event the said Respondents still choose to decline the grant of the Exemption Certificate to the Petitioner, they should pass a careful comprehensively detailed order of the same, explaining their reasons therewith. The said

[24] 2019 SCMR 906; 2018 SCMR 939;
[25] Particularly under articles 4, 18 & 25 of the Constitution of Pakistan 1973

order (of declining the Exemption) must include proper legal rationale for the same, and their reasons for deviation from the law as we understand and have detailed in this Judgement.

32. It is further held that since the Petitioner has been repeatedly running from pillar to post in an attempt to have this matter resolved by the Respondents for several years, the Respondents No. 3 & 4 should determine this matter expeditiously, preferably within a period of sixty (60) days from the date of this Judgement.

33. This Petition stands disposed accordingly.

Judge

Judge

Ayaz