

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**  
**MR. JUSTICE EJAZ AFZAL KHAN**  
**MR. JUSTICE QAZI FAEZ ISA**  
**MR. JUSTICE MAQBOOL BAQAR**

**CIVIL APPEAL NO. 1348 OF 2006**

*(On appeal from the judgment dated 10.3.2005  
in CA No. 3/2002 passed by the Lahore High  
Court Lahore)*

Superintendent, Central Excise, Sheikhpura

.... Appellant

**VERSUS**

Fauji Sugar Mills, Sangla Hills, Sheikhpura & others

.... Respondents

For the Appellant	:	Sheikh Izhar-ul-Haq, Advocate Supreme Court
For Respondent No.1	:	Malik Shakil-ur-Rehman, Advocate Supreme Court Raja Abdul Ghafoor, Advocate on Record Mr. Muhammad Azam Chattha, (Legal Advisor)
Respondents Nos. 2 &3	:	Ex-parte
Date of Hearing	:	9 <sup>th</sup> November 2015

**JUDGMENT**

**QAZI FAEZ ISA, J.** Leave to appeal in respect of a learned Division Bench's judgment dated 10<sup>th</sup> March 2005 of the Lahore High Court, Lahore was granted in the following terms:

“Leave to appeal is granted, inter-alia, to examine as to whether in presence of SRO 455(I)/96 dated 13.06.1996, the respondents manufacturers of sugar were not liable to pay excise duty if 5% has been exported because this notification was followed by SRO 456(I)/96 of even date whereby under its clause (i), total exemption was granted in respect of the goods produced or manufactured in Pakistan, whereas its clause (ii) has created an exception qua rate of duty in respect of the earlier notification SRO 455(I)/96 dated 13.06.1996.”

2. The Excise Department claims that respondent No.1 is liable to pay excise duty on a certain quantity of sugar manufactured by it for the period 1998-1999. The dispute turns on the interpretation of certain statutory regulatory orders (“**SROs**”) issued by the Federal Government under section 12A of the Central Excises Act, 1944 (“**the Act**”), which provision is reproduced hereunder:

“12A Exemptions. (1) The Federal Government may from time to time, by notification in the official Gazette, exempt subject to such conditions, if any, as may be specified therein, any goods or class of goods or any services from the whole or any part of the duty leviable under this Act.

(2) The Central Board of Revenue may, by special order in each case, exempt from the payment of the whole or any part of the duty leviable under this Act, under circumstances of an exceptional nature to be stated, in such order, any goods or services on which such duty is leviable.

(3) Any notification or order issued under this section shall be effective from the day specified in the notification or the order, notwithstanding the fact that the issue of the official Gazette in which such notification appears is published, or the orders is delivered to the person concerned, at any time after that day.”

Under section 12A of the Act, the Federal Government from time to time issued certain exemptions from payment of excise duty in respect of ‘cane sugar’. The First Schedule to the Act describes different goods and allocates a code to each one. In this regard the code with regard to ‘cane sugar’ is 1701.1100.

3. In exercise of its powers under sub section (1) of section 12A of the Act, the Federal Government issued S.R.O. No. 455(I)/96 and S.R.O. No. 456(I)/96 (“**SRO 455**” and “**SRO 456**” and collectively referred to as “**the SROs**”). Both the SROs were published in the Gazette of Pakistan (Extraordinary) on 13<sup>th</sup> June 1996 and both were to take effect from 13<sup>th</sup> day of June 1996.

4. SRO 455 and the amendments made thereto, which would be relevant for consideration of the liability, if any, of respondent No.1 for the manufacturing period of 1998-1999, are reproduced hereunder:

**S.R.O. 455(I)/96.** In exercise of the powers conferred by sub-section (1) of section 12A of the Central Excises Act, 1944 (I of 1944), and in supersession of this Ministry’s Notification No. S.R.O. 545 (I)/94, dated the 9<sup>th</sup> June, 1994, the Federal Government is pleased to exempt the goods

produced or manufactured in Pakistan and services provided or rendered specified in column (1) of the table below and falling under the heading or sub-heading numbers of the First Schedule to the Central Excises Act, 1944, specified in column (2) of the said table, from so much of the duties of excise as are in excess of the rates of duty specified in the corresponding entries in column (4) of the said table subject to the conditions specified in column (3) thereof:

TABLE

Description of goods and services	Heading/sub Heading number	Conditions	Rate of duty
(1)	(2)	(3)	(4)
Cane Sugar	1701.1100	If manufactured in a factory in a financial year in excess of the average annual production of cane sugar in that factory in the preceding three financial years provided that the factory operated for a period not less than 150 working days for crushing, in each of the preceding financial years, for production of cane sugar, and that while exporting sugar, whether directly or indirectly, the manufacturer clears for export from the stock of sugar allowed exemption under this notification by the date the clearance is made for export.	One rupee and fifty eight paise per kg

SRO 455 was amended on 10<sup>th</sup> December 1997, vide the following SRO:

**S.R.O. 1226(I)/97.** In exercise of the powers conferred by sub-section (1) of section 12A of the Central Excises Act, 1944 (I of 1944), the Federal Government is pleased to direct that the following further amendment shall be made in its Notification No. S. R. O. 455 (I)/96, dated the 13<sup>th</sup> June, 1996, namely:

In the aforesaid Notification, in the table, in column (1), against item relating to “Cane sugar”, in column (3), the commas and words “, and that while exporting sugar, whether directly or indirectly, the manufacturer clears for export from the stock of sugar allowed exemption under this notification by the date the clearance is made for export” shall be omitted.

SRO 455 went a further change on 1<sup>st</sup> April 1998 by the following SRO:

**S.R.O. 212(I)/98.** In exercise of the powers conferred by sub-section (1) of section 12A of the Central Excises Act, 1944 (I of 1944), the Federal Government is pleased to direct that the following further amendments shall be made in its notification No. S. R. O. 455 (I)/96, dated the 13<sup>th</sup> June, 1996, namely:

In the aforesaid Notification, in the table, in column (1).

- (a) against item relating to “Cane sugar” and the entry relating thereto in column (4), for the words “One rupee and fifty eight paisa per kg” the word “Nil” shall be substituted; and
- (b) against item relating to “Beet sugar”,
- (i) against clause (iii) in column (3), in column (4), for the words “One rupee and fifty paisa per Kg” the word “Nil” shall be substituted; and
- (ii) against clause (iv) in column (3), in column (4), for the word “Two rupees per kg” the word “Nil” shall be substituted.

On 23<sup>rd</sup> December 1998 SRO 455 was further amended by the following SRO:

**S.R.O. 1391(I)/98.** In exercise of the powers conferred by sub-section (1) of section 12A of Central Excises Act, 1944 (I of 1944), the Federal Government is pleased to direct that the following further amendments shall be made in its Notification No. S.R.O. 455(I)/96, dated 13<sup>th</sup> June, 1996, namely:

In the aforesaid Notification, in the table, against item relating to “Cane sugar” in column (1), in column (3),--

- (a) the existing clause shall be numbered as (i); and
- (b) after clause (i), numbered as aforesaid, the following new clause and the entry relating thereto in column (4) shall be added, namely:

“(ii)	If a sugar mill does not export during the same financial year twenty-five per cent of the total sugar produced in that financial year, the remaining balance of unexported quantity out of that twenty-five per cent.	Four rupees and forty paisa per kg.”
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The last amendment made to SRO 455, for the relevant period, was made on 21<sup>st</sup> June 1999, through the following:

**S. R. O. 766(I)/99.** In exercise of the powers conferred by sub-section (1) of section 12A of the Central Excises Act, 1944 (I of 1944), the Federal Government is pleased to direct that the following further amendments shall be made in its Notification No. S. R. O. 455 (I)/96, dated the 13<sup>th</sup> June, 1996, namely:

In the aforesaid Notification, in the Table, in column (1),

- (a) in column (2), in clause (ii),
  - (i) for the words “twenty-five” the word “five” shall be substituted; and
  - (ii) the following Explanation shall be added, namely: “Explanation. the export by a mill shall also include export of sugar by commercial exporters to whom the sugar has been provided by the said mill.”; and
- (b) in column (3), for the words “Four rupees and forty paisa” the words “One rupee and eighty-five paisa” shall be substituted;

5. SRO 455, incorporating the aforesaid amendments, reads as under:

TABLE

6. SRO 456 and the changes made thereto which would be relevant for the consideration of the liability, if any, of respondent No.1 for the period 1998-1999 are reproduced hereunder:

(i) the goods produced or manufactured in Pakistan and services provided or rendered specified in column (2) of the table below and falling under the heading and sub-heading numbers of the First Schedule to the said Act specified in column (1) of the said Table,

from so much of the duties of excise as are in excess of the rates of duty specified in the corresponding entries in column (3) of the said Table; and

- (ii) all other goods produced or manufactured in Pakistan and services provided or rendered as are given in the First Schedule to the said Act, except those specified in Notification No. SRO.455(I)/96, dated the 13<sup>th</sup> June 1996, from the whole of excise duties.

**TABLE**

Heading/sub-heading number	Description of goods and services	Rate of duty
(1)	(2)	(3)
1701.1100	Cane Sugar	two rupees and ten paisa per kg.

SRO 456 was also amended from time to time and the first amendment was made on 31<sup>st</sup> March 1998 as under:

**S.R.O. 213(I)/98.** In exercise of the powers conferred by sub-section (1) of section 12A of the Central Excises Act, 1944 (I of 1944), the Federal Government is pleased to direct that the following further amendments shall be made in its Notification No. S. R. O. 456 (I)/96, dated the 13<sup>th</sup> June, 1996, namely:

In the aforesaid Notification, in the Table, against heading numbers 1701.1100 and 1701.1200 in column (1), in column (3), for the words “Two rupees and ten”, the words “Forty” shall be substituted.

2. This notification shall take effect on the 1<sup>st</sup> April, 1998.

On 16<sup>th</sup> February 1999 SRO 456 was further amended as under:

**S.R.O. 94(I)/99.** In exercise of the powers conferred by sub-section (1) of section 12A of Central Excises Act, 1944 (I of 1944), the Federal Government is pleased to direct that following further amendment shall be made in its Notification No. S.R.O. 456(I)/96, dated 13<sup>th</sup> June, 1996, namely:

In the aforesaid Notification, in the Table, against heading numbers 1701.1100 and 1701.1200 in column (1), in column (3), for the word “Forty”, the word “Fifteen” shall be substituted.

Then on 21<sup>st</sup> June 1999 SRO 456 was amended as under:

**S.R.O. 767(I)/99.** In exercise of the powers conferred by sub-section (1) of section 12A of Central Excises Act, 1944 (I of 1944), the Federal Government is pleased to direct that following further amendment shall be made in its Notification No. S.R.O. 456(I)/96, dated 13<sup>th</sup> June, 1996, namely:

In the aforesaid Notification, in the table, in column (1), against heading numbers 1701.1100 and 1701.1200, in column (3) for the words “Fifteen paisa per kg” twice occurring, the word “Nil” shall be substituted.

7. That, after incorporating the amendments relevant for our consideration, SRO 456 came to read as under:

**S.R.O. 456(I)/96.** In exercise of the powers conferred by sub-section (1) of section 12A of the Central Excises Act, 1944 (I of 1944), read with section 4(2) thereof and in supersession of this Ministry’s Notification No. S.R.O. 546 (I)/94, dated the 9<sup>th</sup> June, 1994, the Federal Government is pleased to exempt:

- (i) the goods produced or manufactured in Pakistan and services provided or rendered specified in column (2) of the table below and falling under the heading or sub-heading numbers of the First Schedule to the said Act specified in column (1) of the said Table, from so much of the duties of excise as are in excess of the rates of duty specified in the corresponding entries in column (3) of the said Table; and
- (ii) all other goods produced or manufactured in Pakistan and services provided or rendered as are given in the First Schedule to the said Act, except those specified in Notification No. SRO.455(I)/96, dated the 13<sup>th</sup> June 1996, from the whole of excise duties.

TABLE

Heading/sub heading number	Description of goods and services	Rate of duty
(1)	(2)	(3)
1701.1100	Cane Sugar	Nil

8. Sheikh Izhar-ul-Haq, the learned counsel for the appellant, contended that even though vide SRO 456 the rate of duty on cane sugar was brought down to “Nil” however since clause (ii) thereof referred to SRO 455 therefore SRO 456 would not be applicable to cane sugar that was produced as ‘cane sugar’ was also mentioned in SRO 455. He further stated that as the respondent No.1 did not export any cane sugar therefore it was liable to pay excise duty on 5% of its total production at the rate of Rs.1.85 per kilogram.

9. Mr. Shakil-ur-Rehman, the learned counsel for respondent No.1, opposed the appeal and relied upon the judgment of the Hon’ble High Court. He stated that clause (ii) of SRO 456 has no application to respondent No.1 as it pertains to goods other than those which have been attended to in clause (i) of SRO 456 and since SRO 456 specifically mentioned ‘cane sugar’ it could not be excluded by reference to clause (ii). The learned counsel stated that if the interpretation of the appellant’s counsel is accepted then it would render clause (i) of SRO 456 and the Table therein completely redundant. He further stated that the Federal Government had consciously brought down the excise duty payable on cane sugar to zero or “Nil” at the relevant time hence no excise duty can be charged. Alternatively, the learned counsel submitted, that

though there is no conflict between the SROs and within clauses (i) and (ii) of SRO 456, however, even if one is presumed, then as per settled rules of interpretation of fiscal statutes the interpretation favourable to the tax payer (the respondent No.1) is to be preferred; reliance was placed upon the cases of Mehran Associates Ltd. v. Commissioner of Income Tax (1993 PTD 69) and Government of Sindh v. Muhammad Shafi (PLD 2015 Supreme Court 380).

10. We have carefully gone through the available record with the assistance of the learned counsel, examined the said SROs and the referred to judgments.

11. The apparent object of SRO 455 was to encourage manufacturers of sugar to export a certain quantity of the sugar produced, and if they did so then no excise duty would be payable on it and if they exported less than the stipulated minimum (which quantity kept varying) they would have to pay excise duty on the quantity which fell below the said minimum quantity of sugar at the prescribed rate (which too kept changing). The Federal Government amended SRO 455 four times (on 10.12.1997, 1.4.1998, 23.12.1998 and 21.6.1999) during the relevant period, i.e. 1998-1999. The amendments both changed the said minimum quantity of sugar as well as the rate of excise duty thereon.

12. The Federal Government confounded the matter further by the issuance of another SRO (SRO 456) on the very same date as SRO 455 was issued, i.e. 13<sup>th</sup> June 1996, and both these SROs stated that they will come into effect on 13<sup>th</sup> June 1996. Strangely enough, both the SROs were also in respect of the quantum of excise duty payable on the very same kind of sugar (cane sugar, heading 1701.1100) that was produced. In respect of the same period as mentioned above (1998-1999) SRO 456 was amended thrice (on 31.3.1998, 16.2.1999 and 21.6.1999). The last amendment brought down the rate of excise duty to “Nil”, or to put it simply, no excise duty was payable.

13. The High Court, in its appellate jurisdiction under section 36-C of the Act, set aside the judgment of the Customs, Excise and Sales Tax Tribunal and the order-in-original of the Additional Collector Adjudication. The reasoning of the High Court is



given in the penultimate paragraph of the impugned judgment, which is reproduced hereunder:

“After hearing the learned counsel for the parties we will agree with the learned counsel for the appellant that the latter notification SRO 456(I)/96 was beneficial to the tax payer as manufacturer and since apparently the provisions of two SROs, detailed above, were contradictory which could not be reconciled, the appellant was justified in seeking application and protection of the latter SRO. The view adopted by the Tribunal, as reproduced above, that general rate of duty on sugar prescribed under latter SRO was not applicable on the unexported quantity of sugar which was 5% of the total production in the year 1998-1999 does not appear correct in the case of the appellant as tax payer. All the more-so when the appellant sought application and protection of the SRO which though issued on the same day was obviously issued latter in time, which is evident from its number. It is also an established principle of interpretation of fiscal statutes that when two equally reasonable interpretations of a provision are possible then the one favourable to the tax payer needs to be adopted. The attempt on the part of the learned Members of the Tribunal to reconcile the two SROs only to find against the tax payer was therefore unjustified. We are also informed that in a subsequent judgment dated 30.01.2001 the Tribunal in an identical situation in two appeals filed by M/s Humza Sugar Millsa and Layyah Sugar Mills found for the tax payer observing that the appellants having elected to follow SRO 456(I)/96 dated 13.9.1996 and without exporting any quantity of sugar paid the central excise duty accordingly nothing was due to the department from either of them.”

14. The aforesaid reasoning of the High Court cannot be faulted. The Federal Government repeatedly amended the SROs and (as noted above) confounded what should have been a relatively simple matter. It could also have resolved the tax matter by issuing unambiguous SRO/s in the matter, but did not do so. Duties and taxes cannot be imposed/charged on the basis of assumptions or conjecture. It would be appropriate to reproduce the following extracts from the cases referred to by the learned counsel for the respondent. In the case of Mehran Associates, the judgment which was authored by Ajmal Mian, J. (as he then was) it was held (at page 83E) that:

“The cardinal principles of interpretation of a fiscal statute seem to be that all charges upon the subject are to be imposed by clear and unambiguous words. There is no room for any intendment nor there is any equity of presumption as to a tax. A fiscal provision of a statute is to be construed liberally in favour of the tax-payer and in case of any substantial doubt the same is to be resolved in favour of the citizen.”

In the case of Government of Sindh v. Muhammad Shafi, wherein the judgment was authored by Mian Saqib Nisar, J. it was held (page 387A) as under:

“Before resolving the proposition(s) in hand, we may like to mention that the charging section in a fiscal statute, as per the settled law, demands its strict interpretation and application in so far as the

revenue is concerned, but where it is susceptible to two possible interpretations, it should be liberally construed in favour of the tax payer/citizen; particularly, where there is substantial doubt about the true import and application of a charging section, it (*the doubt*) should be resolved in favour of the tax payer/citizen.”

15. The two SROs contradict each other with regard to the matter of ‘cane sugar’ and the contradiction therein cannot be reconciled. The contention of the learned counsel for the appellant that sub-clause (ii) of SRO 456 would be attracted also does not stand to reason. If for the sake of argument such a contention is accepted then the same clearly conflicts with the insertion of ‘cane sugar’ in the Table therein and would make the same redundant. SRO 456 brought down the excise duty to “Nil”, therefore, no excise duty could be chargeable even if the respondent No.1 did not export any sugar in the said period. In these circumstances the judgment of the High Court does not call for any interference. Consequently, the appeal is dismissed, but with no order as to costs.

We take this opportunity to prevail upon the Federal Government that in exercise of its powers while issuing SROs, the same should be intelligible and must not be open to misinterpretation or to more than one meaning.

Judge

Judge

Judge

Announced in open court

On 18th November 2015

By Justice Qazi Faez Isa, J.

At Islamabad

**APPROVED FOR REPORTING**  
(Zulfiqar)