Pakistan; Belgium; Denmark

Supreme Court Rules Shipping Container and Terminal Handling Charges Entitled to Treaty Benefits

31 January 2024

Report from our correspondent Dr Ikram ul Haq, Advocate Supreme Court, Huzaima & Ikram, Lahore

The Supreme Court of Pakistan has ruled that income of a shipping company arising from container and terminal handling charges falls within the category of "profits from the operation of ships in international traffic" and is entitled to the benefits available under the treaties with Belgium and Denmark. The decision was handed down on 12 January 2024 in CIT Zone-IV, Karachi v A.P. Moller Maersk and another.

(a) Facts. The respondents in the case are two non-resident companies, one incorporated in Denmark and the other in Belgium (A.P. Moller Maersk and Safmarine Container Line), that are involved in cargo shipping activities and conduct their business operations within Pakistan through the authorized agent, Maersk Pakistan (Private) Limited. The respondents filed income tax returns, accounting for income derived from freight charges, container detention charges (CDC), container service charges (CSC) and terminal handling charges (THC). They claimed entitlement to tax benefits under article 8 of the Belgium-Pakistan and Denmark-Pakistan treaties, as the case may be, which extends beneficial taxation in relation to profits from the operation of ships in international traffic.

The tax authority rejected the claim on the basis that the charges were not explicitly covered under article 8 of either treaty. The taxpayers remained unsuccessful both before the Commissioner Inland Revenue (Appeals) and the Appellate Tribunal Inland Revenue. Nevertheless, the Sindh High Court concluded that the income from CDC, CSC and THC fell within the scope of the term "profits from the operation of ships in international traffic" as stipulated in article 8 of the two treaties. The tax authority appealed this decision in the Supreme Court.

(b) Issue. The issue before the Supreme Court was whether income arising from CDC, CSC, and THC falls within the ambit of the expression "profits from the operation of ships in international traffic" as used in article 8 of the treaties under consideration.

(c) Decision. The Supreme Court observed that article 8 of the OECD and UN model conventions applies not only to profits directly obtained in international traffic, e.g. transport of passengers or cargo, sales of tickets of the enterprise and leasing of ships, but also to "profits directly connected with international traffic and to profits ancillary to international traffic e.g. inland transport, interest, code sharing and slot chartering, haulage services and catering services, provision of goods and services to other enterprises, sales of tickets on behalf of other enterprises, advertising on behalf of other enterprises, letting of immovable property, rental of containers".

The Court concluded that profits arising from CDC, CSC and THC are connected with and ancillary to the operation of ships in international traffic, and thus are part of the revenue earned in shipping in international traffic and are within the scope of article 8 of the treaties. As a result, it upheld the judgment of the High Court and dismissed the appeals.

In reaching its conclusion, the Court notably relied on the OECD Model and UN Model commentaries as well as Klaus Vogel on Double Taxation Conventions (fifth edition 2021, volume 1, article 8, paragraphs 33, 35).
