

Form No: HCJD/C-121

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD  
(JUDICIAL DEPARTMENT)

Federal Excise Reference No.10/2013

M/s MOL Pakistan Oil & Gas Company B.V, Islamabad Pakistan

Versus

The Deputy Commissioner, Inland Revenue, etc

Applicant by : Mr Ali Sibtain Fazli, Advocate.

Respondents by : Sheikh Anwar ul Haq and Dr. Farhat Zafar, Advocates.

Date of Hearing : **07-04-2022.**

**ATHAR MINALLAH, C.J.-** Through this consolidated judgment, we will decide the reference in hand alongwith F.E.R.A No.03 of 2012 titled "M/s MOL Pakistan Oil & Gas Company B.V. Islamabad vs. The Deputy Commissioner, Inland Revenue and another".

2. M/s MOL Pakistan Oil & Gas Company (hereinafter referred to as the "**applicant Company**") has proposed for our consideration questions of law stated to have arisen out of orders, dated 06.11.2013 and 20.01.2012, passed by the learned Appellate Tribunal Inland Revenue, Islamabad (hereinafter referred to as the "**Tribunal**").

3. The applicant Company was served with a show cause notice, dated 12.04.2010, wherein it was alleged that it had failed to

pay the federal excise duty payable on account of providing franchise services. It was explicitly stated in the show cause notice that the payment was made by the branch office of the applicant Company situated in Pakistan to its head office. The expression 'franchise' was defined in sub-rule (ma) of Rule 2 of the Federal Excise Rules 2005 (hereinafter referred to as the "**Rules of 2005**") which is reproduced herein below:-

*"Franchise means an agreement by which the franchisee is granted representational right to sell or manufacture goods or to provide service or to undertake any process identified with franchiser against an agreed fee or consideration including royalty, whether or not a trade mark, service mark, trade name or logo or any such symbol, as the case may be, is involved."*

4. The show cause notice was decided vide Federal Excise Order-In-Original No.6-7/101, dated 13.05.2010. The appeal preferred by the applicant Company was dismissed by the Commissioner Inland Revenue (Appeals-I) vide Sales Tax Order-In-Appeal No.76/2010, dated 01.10.2010. The learned Tribunal vide judgment, dated 20.01.2012 dismissed the appeal preferred by the applicant Company. In case of Federal Excise Reference Application No.10/2013, the Tribunal vide its judgment, dated 06.11.2013 had placed reliance on the aforementioned judgment, dated 20.01.2012 for the purposes of determining the status of the branch office and the head office as that of a 'franchisee' and a 'franchisor' respectively. It was, however,

acknowledged by the learned Tribunal that the agreement, dated 01.05.2003 was not in the nature of granting rights covered under the definition of 'franchise'.

5. We have heard the learned counsels. The definition of the expression 'franchise' has been reproduced above. It manifests existence of two distinct entities i.e. 'franchisee' and a 'franchisor'. In the case in hand, the show cause notice, dated 12.04.2010 unambiguously acknowledges that the payment was made by a branch office of the applicant Company to its head office. The show cause notice did not refer to any agreement nor the mandatory characteristics of 'franchise'. The respondent Department had failed to discharge its onus to establish the relationship between the branch office and the head office as being in the nature of a 'franchisee' and 'franchisor'. The learned Tribunal while passing the judgment, dated 10.01.2012 had gone beyond the show cause notice by declaring the status of the applicant Company as a 'subsidiary'. It is settled law that no authority can go beyond the allegations stated in the show cause notice. Reliance is placed on the case titled "*The Collector Central Excise and Land Customs and others v. Rahim Din*" [1987 SCMR 180]. In the other reference, the learned Tribunal, therefore, could not have placed reliance on the earlier judgment while passing the order, dated 06.11.2013 so as to establish the relationship between the branch office and the head office as that of a 'franchisee' and a 'franchisor'. There is nothing on record to show that the respondent Department had discharged its onus of establishing the relationship between the branch office and the head office as being in the nature of a

'franchisee' and a 'franchisor'. In the facts and circumstances of the case, the payments made by the branch office of the applicant Company to its head office cannot be treated as a franchise payment.

6. We, therefore, answer the questions proposed for our consideration in the references in the light of our above discussion.

7. A copy of this order is directed to be sent to the Registrar of the learned Tribunal under the seal of this Court.

**(CHIEF JUSTICE)**

**(BABAR SATTAR)**  
JUDGE

*Asif Mughal/\**