

Form No: HCJD/C.

**JUDGEMENT SHEET**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

**Case No: Writ Petition No. 4016 of 2017**

**Hilong Oil Service & Engineering Pakistan**

**Vs.**

**Federation of Pakistan and 3 others**

**Petitioner by: Dr. Amjad Sarfraz, Advocate.**

**Respondents by: Syed Ashfaq Hussain Naqvi & Mr.  
Zeeshan Ali Syed, Advocates.**

**Date of Hearing: 15.05.2019**

**AAMER FAROOQ, J.-** Through the instant petition, the petitioner has assailed orders dated 05.10.2017 and 23.10.2017 passed by respondents No.4 & 3, respectively.

2. The facts in brief are that the petitioner is a company registered in Pakistan and is providing services to exploration companies. For the purpose of providing services, the petitioner imported certain machinery/ material and applied for exemption from payment of advance income tax under Section 148 read with 159 of the Income Tax Ordinance, 2001 (the Ordinance) alongwith the relevant notifications. The exemption was declined by respondent No.4 vide order dated 05.10.2017 on the ground that the company is not an industrial

undertaking. Revision petition was filed before respondent No.3 which was dismissed vide order dated 23.10.2017. Hence, the petition.

3. The learned counsel for the petitioner *inter alia* submitted that the petitioner company fulfills the criteria as provided in Section 2(29) of the Ordinance *qua* the industrial undertaking. It was further submitted that in terms of paragraph 8 of S.R.O. 947(I)/2008 dated 05.09.2008, the petitioner also fulfills the criteria. It was also contended that due to acts of the petitioner the advance income tax in the sum of Rs.66,427,591/- was paid under protest; that the jurisdiction has been exercised by respondents No.3 & 4 in an arbitrary and whimsical manner and has not taken into account the relevant law.

4. Learned counsel for the respondents *inter alia* contended that the petitioner is not an industrial undertaking, hence is not entitled to the exemption as provided in the laws. It was also argued that the impugned orders do not suffer from any illegality or jurisdictional error calling for interference.

5. Arguments advanced by the learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

6. Under Section 148 of the Ordinance the Collector of Customs is required to collect advance tax from every importer of goods on the value of the goods at the rate specified in Part II of the First Schedule. However, Section 159 of the Ordinance provides exemption from payment of the tax under the Ordinance. Moreover, S.R.O. 947(I)/2008 also deals with the subject of exemption from deduction of advance tax. Under the referred SRO dated 05.09.2008 a person who imports plants, machinery, fixtures, fittings or its allied equipments for the purposes of setting up an industrial undertaking owned by such person, or for installation of an existing industrial undertaking is exempted from payment of the advance tax. The said exemption is subject to the conditions which are as follows:

*“(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; and*

*(c) 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;”*

7. Likewise, under Clause-6 a person who imports machinery and plants for execution of contract with the Federal Government on a Petroleum (E&P) under S.R.O.947(I)/2008 are exempted. The word 'Industrial Undertaking' is defined in Section 2(29C) of the Ordinance and is as follows:

*"2 [(29C) **"Industrial undertaking"** means —*

*(a) an undertaking which is set up in Pakistan and which employs,—*

*(i) ten or more persons in Pakistan and involves the use of electrical energy or any other form of energy which is mechanically transmitted and is not generated by human or animal energy; or*

*(ii) twenty or more persons in Pakistan and does not involve the use of electrical energy or any other form of energy which is mechanically transmitted and is not generated by human or animal energy:*

*and which is engaged in,—*

*(i) the manufacture of goods or materials or the subjection of goods or materials to any process which substantially changes their original condition; or*

*(ii) ship-building; or*

*(iii) generation, conversion, transmission or distribution of electrical energy, or the supply of hydraulic power; or*

*(iv) the working of any mine, oil-well or any other source of mineral deposits; and*

*(b) any other industrial undertaking which the Board may by notification in the official gazette, specify.]"*

8. The contention of the petitioner is that it fulfills the criteria of industrial undertaking inasmuch as more than 20% of its employees are working in the field of

mine, oil-well and other source of mineral deposits. However, during the course of arguments it was emphasized that the petitioner is also entitled to exemption under Caluse-8 of S.R.O. 947(I)/2008. In this behalf under S.R.O. 678(I)/2004 the companies which import machinery etc. which are not locally manufactured and is imported by production companies, their contractors, sub-contractors and service companies, from customs duty in excess of five percent *ad valorem*. The referred SRO when is read with Caluse-8 of S.R.O. 947 (I)/2008, shows that the exemption from deduction of advance tax is only with respect to exploration and production companies and not their sub-contractors or service providers for the purposes of deduction of advance income tax. Even though the exemption from payment of custom duties, is extended to the service providers.

9. The order passed by the Commissioner dated 05.10.2017 is admittedly without reasons; however, respondent No.3 vide order dated 23.10.2017 has elaborately dealt with the law and the facts. The conclusion reached by respondent No.3 is just and proper in the facts and circumstances as well as law inasmuch as there is no provision of law i.e. Section 148 read with 159 of the Ordinance as well as S.R.O. 947 (I)/2008 read

with S.R.O. 678 (I)/2004 which extends the exemption to the companies which provide services to exploration and production companies. The petitioner does not fall within the industrial undertaking as provided under Section 2(29C) of the Ordinance and does not qualify to exemption under S.R.O. 947 (I)/2008. The impugned order dated 23.10.2017 does not suffer from any illegality or jurisdictional error.

10. For the above reasons, the instant petition is without any reason, hence accordingly dismissed.

**(AAMER FAROOQ)**  
**JUDGE**

*Announced in open Court on the 31<sup>st</sup> day of July, 2019*

**JUDGE**

\*M.Naveed\*