

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.3667 of 2021
MOL Pakistan Oil & Gas B.V.
Versus
Federal Board of Revenue and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	14.10.2021	M/s Abuzar Salman Khan Niazi and Wasim Abid, Advocates for the petitioner.

Through the instant writ petition, the petitioner, MOL Pakistan Oil & Gas B.V., impugns letter dated 05.10.2021 from the Office of the Deputy Commissioner Inland Revenue (Enforcement Unit-V), Large Taxpayers' Office, Islamabad (respondent No.3), whereby the petitioner was requested to provide month-wise details of condensate sales (excluding crude oil) for the period between July, 2008 to September, 2021 in the format provided in the said letter. The position taken by respondent No.3 in the said letter was that the Appellate Tribunal Inland Revenue ("A.T.I.R.") had, vide judgment dated 08.09.2021 passed in sales tax appeal No.251/IB/2014, held that crude oil and condensate were two separate products and hence condensate is liable to the charge of sales tax at the rate of 17% under Section 3 of the Sales Tax Act, 1990 ("S.T.A.").

Learned counsel for the petitioner submitted that the explanatory notes issued by the World Customs Organization clarifies that PCT heading 27.09 covers crude oil as well as condensate; that between 11.06.2008 to 30.06.2021, crude oil remained zero rated for the purposes of S.T.A.; that after 30.06.2021, crude oil became taxable at the rate of 17%; that on the

basis of the said judgment passed by the A.T.I.R., the sales tax authorities are taking steps to demand sales tax in respect of condensate sales since 2008 on the ground that only crude oil and not condensate had been zero rated; that respondent No.3 could not seek information through the impugned letter under Section 38B(2) of the S.T.A. since there was no audit, inquiry or investigation that had been initiated against the petitioner which had necessitated the issuance of the said letter; that even otherwise the prerequisites for initiating an inquiry under the provisions of the S.T.A. against the petitioner have not been satisfied; that at no material stage has any allegation of tax fraud or tax evasion been made against the petitioner; that since there is no allegation that the petitioner had concealed a source of income through manipulation or deceitful means, the question of tax evasion by the petitioner did not arise; that in the judgment reported as 2018 SCMR 1305, it had clearly been held by the Hon'ble Supreme Court that there was a clear difference between failure to pay taxes and to evade tax; that it is not possible for the petitioner to give details of the condensate sales beyond a period of the past five years; and that at no material stage in the past had any demand been raised by the respondents for the payment of sales tax on condensate sales. Learned counsel for the petitioner prayed for the impugned letter from respondent No.3 to be suspended till the pending adjudication of this petition.

Learned counsel for the petitioner shall satisfy this Court on the maintainability of the instant petition since the petitioner was a party in

the proceedings before the A.T.I.R. which culminated in the judgment dated 08.09.2021.

Issue notice to the respondents.

Re-list on 21.10.2021.

C.M. No.01/2021

Notice. At this stage, I am not inclined to suspend the operation of the impugned letter dated 05.10.2021. Let the petitioner provide the information available with it to respondent No.3, who shall bear in mind a realistic period within which such information can be provided. However, until the next date of hearing, the respondents are restrained from raising a demand for the deposit of sales tax on condensate sales with effect from 2008 against the petitioner.

C.M. No.02/2021

Exemption sought for is allowed subject to all just and legal exceptions.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

The instant case is on a differing footing from those in writ petitions No.3659/2021, 3660/2021

In the instant case, the Appellate Tribunal Inland Revenue (“A.T.I.R.”) has already passed an order dated 08.09.2021 against the petitioner holding that crude oil is a different product from condensate. Till date, a sales tax reference has not been filed against the order dated 08.09.2021 passed by the A.T.I.R. The issuance of the impugned letter to the petitioner is a corollary and a legal consequence of the said order dated 08.09.2021.

Learned counsel for the petitioner shall assist the Court on the maintainability of the instant petition since a remedy of an appeal against the said order is available to the petitioner under the law.

C.M.No.01/2021

Notice.

C.M.No.02/2021

Exemption sought for is allowed subject to all just and legal exceptions.