IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

Present
Mr. Justice Umar Ata Bandial
Mr. Justice Munib Akhtar
Mr. Justice Yahya Afridi

Civil Appeals No.1089 to 1090 of 2015
(On appeal from the order dated 14.5.2015 passed by the Islamabad High Court, Islamabad in ICA No.82 of 97, W.P.287 and 1105 of 1996.in of 20)

Federal Board of Revenue (in both cases)

...Appellant (s)

vs

Dewan Salman Fiber Ltd and others
(in C.A.1089-1090/15)

...Respondent (s)

For the appellant:	:	Dr. Farhat Zafar, ASC. Raja Abdul Ghafoor, AOR. Mr. Abdul Hameed Anjum, Secy. Legal FBR.(C.A.1089-1090/15)
For the contesting respondents:	:	Mr. Sikandar Bashir Mohmand, ASC. (C.A.1089-1090/15)
Dates of hearing:	:	30.01.2019 & 10.08.2023

JUDGMENT

Munib Akhtar, J.- The judgment of the learned High Court assailed in these appeals is reported as *Dewan Salman Fibre Ltd. and others v. Federation of Pakistan and others* 2015 PTD 2304. Three matters—all filed by the present contesting respondents—were disposed of by means of the impugned judgment. (The contesting respondents are the respondent No. 1 and its chief executive; for convenience, they are together referred to as the "company".) Two of the matters were writ petitions filed in the High Court (WP 287/1996 and WP 1105/1996) and one was an Intra-Court Appeal (ICA 82/1997). The ICA arose out of a writ petition

that had been filed by the company but was dismissed by a learned Single Judge. The learned Division Bench that gave the impugned judgment allowed ICA 82/1997 and WP 287/1996, but dismissed WP 1105/1996. The present appellant (FBR) filed leave petitions against the two matters that had been allowed while the company filed a leave petition in respect of the matter that stood dismissed. Leave was granted in all three petitions.

2. In the two matters allowed by the learned High Court the company had challenged certain exemption notifications which had been issued in respect of sales tax, excise duty and customs duty. In the third matter, that stood dismissed, the company had challenged the *vires* of certain provisions of the Sales Tax Act, 1990 ("1990 Act"). The three appeals that resulted (as noted above) were being listed together, and so came up before us. After some preliminary submissions, it was decided that the two appeals in which the FBR is the appellant (being CA 1089/2015 and CA 1090/2015), which relate to the exemption notifications, would be heard first, and together. The third appeal (CA 1091/2015), in which the company is the appellant and which relates to the *vires* of the legislation, was adjourned. (It now awaits the outcome of the decision in these two appeals.) Thus, this judgment disposes of CA 1089/2015 and CA 1090/2015.

3. We begin by noting that the company was incorporated as a public limited company on 04.06.1989. It manufactures polyester staple fiber, commonly referred to as PSF. The principal raw materials for the manufacture of PSF are mono-ethylene glycol (known as MEG) and pure terephthalic acid (PTA). The company set up its production facilities in District Hattar, NWFP, an under-developed part of the country. The first unit ("Unit I") came into production on 01.01.1992 and there appears to be no dispute as regards this unit. The second unit ("Unit II") came into production, according to the company, on 15.06.1995. As we will see, there is a dispute raised with regard to Unit II. It is to be kept in mind (as this aspect is crucial for the company's case) that there are other

companies that also manufacture PSF, but these are located in other parts of the country. More particularly, none of those companies (save perhaps one) have (or at least had at the relevant time) a plant in NWFP (now of course KPK).

4. The dispute and issues that eventually came before the learned High Court have a long and rather tangled history involving, and requiring reference to, many notifications issued over quite a few years under the Central Excises Act, 1944 ("1944 Act"), the Sales Tax Act, 1951 ("1951 Act"), the 1990 Act and also (though this is somewhat marginal) the Customs Act, 1969 ("1969 Act"). During the course of his submissions, learned counsel for the company filed a detailed note giving the history of, and background to, the dispute as per the company's perspective. We would like to acknowledge the assistance provided to the Court in this regard. It will be convenient to set out in tabular form the various notifications that will be referred to below. We may note that the notifications identified below in bold are those that were challenged specifically by the company.

Notification	**How identified in this judgment**	**Purpose/effect**
SRO 462(I)/88 dated 26.06.1988	SRO 462/88	Issued under the 1951 Act and the 1969 Act. Effect: granted exemption on the import/sale of PTA and MEG
SRO 529(I)/88 dated 26.06.1988	SRO 529/88	Issued under the 1951 Act: exempted all goods produced or manufactured by industries set up between 01.07.1988 to 30.06.1991 in (inter alia) NWFP from sales tax. The exemption was to be effective for a period of 8 years from 01.07.1988.
SRO 531(I)/88 dated 26.06.1988	SRO 531/88	Issued under the 1944 Act: amended a general exemption notification SRO 555(I)/79 dated 28.06.1979. Effect: exempted the manufacture of PSF from excise duty
SRO 580(I)/91 dated 27.06.1991	SRO 580/91	Issued under the 1990 Act: exempted all goods produced or manufactured by industries set up between 01.07.1991 to 30.06.1996 in NWFP from sales tax "for a period of five years from the date the industry is set up"
SRO 482(I)/92 dated 14.05.1992	SRO 482/92	Issued under the 1969 Act and the 1990 Act, in supersession of SRO 462/88. Effect: removed the exemption previously available on the

[challenged in WP 287/96, the subject matter of CA 1090/2015]		import/sale of PTA and MEG
SRO 500(I)/93 dated 14.06.1993	SRO 500/93	Issued under the 1944 Act: superseded and replaced exemption notification SRO 555(I)/79 dated 28.06.1979. Effect: exemption on the manufacture of PSF from excise duty was continued
SRO Nos. 545(I)/94 and 546(I)/94, both dated 09.06.1994	SRO 545/94 and SRO 546/94	Issued under the 1944 Act. General notifications. Combined effect: superseded SRO 500/93, but exemption on the manufacture of PSF from excise duty was continued
SRO 561(I)/94 dated 09.06.1994 [challenged in WP 287/96, the subject matter of CA 1090/2015]	SRO 561/94	Issued under the 1990 Act: superseded SRO 580/91 and exempted all goods produced or manufactured by industries set up between 01.07.1991 to 30.06.1994 in (inter alia) NWFP from sales tax "for a period of five years from the date the industry is set up". Also contained certain conditions set out in its two provisos
SRO 477(I)/95 dated 14.06.1995 [challenged in ICA 82/97, the subject matter of CA 1089/2015]	SRO 477/95	Issued under the 1944 Act: amended SRO 546/94. Effect: imposed a 5% excise duty on the manufacture of PSF
SRO 515(I)/95 dated 14.06.1995 [challenged in ICA 82/97, the subject matter of CA 1089/2015]	SRO 515/95	Issued under the 1990 Act: reduced the sales tax on the supply of locally produced PSF to 10%

5. Learned counsel for the company (who, in the event, ended up arguing first) submitted that when it was incorporated (in 1989) the fiscal regime applicable in the country was that on the sale of locally produced PSF, there was a sales tax of 15% under the 1951 Act. There was no excise duty on the manufacture of PSF, by virtue of SRO 531/88. There was also no customs duty or sales tax on the import or supply of the raw materials for the manufacture of PSF, i.e., MEG and PTA. This was by reason of SRO 462/88. Thus, looking at the matter commercially and holistically, in the whole of the country the total indirect taxes

applicable (as presently relevant) were 15%, and this was wholly in the shape of a sales tax on PSF. At the same time, there was an exemption notification available in respect of sales tax, SRO 529/88. In terms of this notification an industrial unit set up (inter alia) in the NWFP and compliant with the conditions thereof (in particular, that it be set up between 01.07.1988 to 30.06.1991) was entitled to exemption from sales tax on the goods manufactured and sold by it, for a period of eight years from 01.07.1988 (i.e., up to 30.06.1996). (We pause to note that as far we have been able to make out, the rate of sales tax under the 1951 Act was in fact 12.5%, from 1981 till its replacement by the 1990 Act. It appears that even under the latter statute the rate did not become 15% till 1993.)

6. From the submissions made by learned counsel the grievances of the company can be regarded as falling into two distinct categories. Firstly, learned counsel submitted that the benefit of SRO 580/91 was wrongly denied to the company in relation to Unit II, on the purported basis that that notification had been superseded and replaced by SRO 561/94. Learned counsel submitted that Unit II had started commercial production by 15.06.1995 as, inter alia, confirmed by the Director of Industries Commercial and Mineral Development, Government of NWFP. This was well within the range stipulated by SRO 580/91 for the setting up of a unit, the last date for which was 30.06.1996. The right to take the benefit of the notification had become vested in the company, and could not be defeated or taken away by SRO 561/94. The latter notification not only purported to reduce the period (making the cut off date to be 30.06.1994) but also imposed certain other conditions (as contained in its two provisos) which were not to be found in SRO 580/91. It was contended that the learned High Court had correctly held that SRO 561/94 could not defeat the rights of the company under SRO 580/91.

7. The second category of grievances, learned counsel submitted, was regarding the impairment of the benefit conferred by SRO 580/91. This applied in relation to both Unit I and Unit II (on the basis that the latter also came within the scope of the notification). Learned counsel submitted that the company's competitors, i.e., the other manufacturers of PSF, could not abide by or accept the sales tax benefit that the company had obtained by setting up its production facilities in District Hattar, NWFP. Learned counsel emphasized that the company could easily have set up its unit elsewhere, in a more developed part of the country, but relying on the representation and promise contained in SRO 529/88, and continued by SRO 581/91, made a huge investment in an under- developed area. In this regard, it was submitted that an additional amount of Rs. 800 million had to be spent by the company. This was over and above the investment of USD 100 million in the plant and facilities itself. Learned counsel submitted that at the behest of its competitors, the Federal Government and/or CBR, acting in bad faith and a mala fide manner and in flagrant misuse and abuse of the statutory powers conferred to issue exemption notifications and to modify, vary and rescind the same, altered the indirect tax regime such that the position for the competitors remained essentially unchanged but the company suffered material deterioration in its financial and commercial situation. This submission constituted the core of the second category of grievances aired by the company.

8. Expanding on his submissions in this regard, learned counsel again drew attention to the indirect tax regime as prevailing at the time of the company's incorporation, referred to in para 5 above. Learned counsel submitted that there was a deliberate, mala fide and unlawful stage-wise move to alter this regime in a manner that impinged (wholly negatively) only on the company. For its competitors the position essentially remained the same: they were, as before and throughout, exposed to a 15% indirect tax levy. However, the company's position was altered dramatically, and to its manifest disadvantage and detriment.

Explaining this point, learned counsel submitted that in 1992, by SRO 482/92 (which was issued on 14.05.1992, i.e., within a few months of Unit I going into production), the exemption regarding the import/supply of PTA and MEG was removed. By then, the 1951 Act had been replaced by the 1990 Act. The sales tax regime had moved into the VAT mode (i.e., had become a value added tax). Learned counsel submitted that at the heart of the VAT mode lay the output-input tax adjustment mechanism. Now, the company's competitors were already paying sales tax on their sale of PSF. This became their output tax under the VAT regime. So, when sales tax was imposed on the raw materials (PTA and MEG) by removal of the exemption that simply became the input tax for them. They could adjust the latter against the former and were liable only to pay the net amount. The position for the company was however materially different. Since its sales of PSF were exempt, it could not charge any sales tax on the same, i.e., it had no output tax. At the same time, it now had to face an input tax on account of the removal of the exemption on sale/supply of PTA and MEG. This tax perforce had to be absorbed by the company itself. Thus, there was a material deterioration in its position, and the benefit of the exemption granted by SRO 580/91 was adversely impacted. Learned counsel emphasized that all of this was done by the Federal Government/CBR (i.e., the predecessor of the present FBR) at the behest of the competitors, and in an unlawful and colorable exercise of the statutory powers conferred by the 1969 Act and the 1990 Act.

9. This however, was not all. Sometime later two notifications, SRO 477/95 and SRO 515/95, were issued on the same day, 14.06.1995. The first notification, under the 1944 Act, imposed an excise duty of 5% on the manufacture of PSF by altering the relevant exemption notification. The second notification, under the 1990 Act, reduced the sales tax on the supply of locally manufactured PSF to 10% from 15%. For the company's competitors, there was no overall change in the fiscal regime: viewed commercially, it remained at the same rate as before,

though now bifurcated into a sales tax and an excise duty. For the company however, there was a material alteration. It enjoyed a complete exemption from sales tax. However, by imposing the 5% excise duty, there was an immediate and material impairment of the sales tax exemption: 5% (or one-third of the benefit) was now "lost" on account of the imposition of the excise duty.

10. Learned counsel emphasized that these changes were discriminatory and person-specific in that they applied to only one PSF manufacturer in the country, i.e., the company. It was submitted that the record amply demonstrated that all of this was orchestrated by the company's competitors in a flagrant breach of law and a complete failure by the Federal Government/CBR to properly and effectively exercise their powers in accordance with law.

11. Learned counsel also placed strong reliance on the Protection of Economic Reforms Act, 1992. It was submitted that the changes made to the company's manifest disadvantage were in breach thereof and reliance was placed on s. 6. This could not therefore have been done. In this context, it was also submitted that when the sales tax was imposed on the raw materials (PEG and PTA) the company remonstrated with the Federal Government and eventually an arbitration committee was set up to consider and resolve the issues between the company and its competitors. This committee was constituted by SRO 1040(I)/92 dated 28.10.1992. Three members were empanelled of whom one was nominated by the company, one by its competitors (who was also the Chairman) and one was the concerned member CBR. The notification also specified the committee's terms of reference. (The notification can be found at PTCL 1993 St. 177(i).) Learned counsel relied on the committee's report and the recommendations made therein. We pause here to note that without as such referring to the arbitration committee it is clear from the impugned judgment that the learned Division Bench has been strongly influenced by its report.

12. On the foregoing basis, learned counsel submitted that the impugned judgment was correct in granting relief to the company, and that the appeals presently under consideration ought to be dismissed.

13. Learned counsel for the appellant (FBR) on the other hand submitted that the learned High Court had erred materially in holding for the company, and that the appeals ought to be allowed. Learned counsel essentially made and reiterated the submissions made before the learned High Court, and recorded in paras 8 and 9 of the impugned judgment (at pp. 2310-11). We intend no disrespect in not reproducing the same *in extenso* herein. It was prayed accordingly.

14. We have heard learned counsel as above, and considered the record and material as made available. We begin with the first issue, as to whether the company was entitled to the benefit of SRO 580/91 in respect of Unit II, notwithstanding that the notification had already been superseded, and replaced with SRO 561/94 by the time that the said unit went into production (on 15.06.1995). It is necessary to set out the two notifications, which provided in material part as under (as originally issued):

SRO 580(I)/91 dated 27.06.1991	SRO 561(I)/94 dated 09.06.1994
In exercise of the powers conferred by sub-section (1) of section 13 of the Sales Tax Act, 1990, the Federal Government is pleased to direct that all goods produced or manufactured by such industries which are set up in the North-West Frontier Province between the 1st July, 1991, and the 30th June, 1996, shall be exempt from the tax payable under the said Act for a period of five years from the date the industry is set up. Explanation.- For the purpose of this Notification, the expression "set-up" shall mean the date on which the industry goes into production including trial production, which date shall be	In exercise of the powers conferred by sub-section (1) of section 13 of the Sales Tax Act, 1990, and in supersession of this Ministry's Notification No. S.R.O. 580(I)/91, dated the 27th June, 1991, the Federal Government is pleased to direct that all supplies made by manufacturers or producers of industrial units which are set up in the North-West Frontier Province ...between the 1st July, 1991, and the 30th June, 1994, shall be exempt from the tax payable under the said Act for a period of five years from the date the industry is set up: Provided that this exemption shall also be available to

intimated, in writing, by an intending manufacturer to the Assistant Collector of Sales Tax having jurisdiction in the area at least fifteen days before commencing such production.	such units which have opened letters of credit before the 30th June, 1994, for import of machinery or have firmed up financial arrangements with the banks or financial institutions before the said date for the new unit to be set up upto the 30th June, 1995: Provided further that these letters of credit or firmed up financial arrangements with the banks or financial institutions are registered with the Central Board of Revenue before the 15th July, 1994 by such units and the Board, after verifying the facts, will intimate to the applicant in writing whether he is entitled to enjoy exemption under this Notification or otherwise: Explanation. --For the purpose of this Notification, the expression "set up" shall mean the date on which the industrial unit commences its production including trial production, which date shall be intimated, in writing, by manufacturer to the Assistant Collector of Sales Tax having jurisdiction in the area at least fifteen days before commencing such production but shall not include the date of expansion, balancing, modernization or replacement of such industry.

We may note that within a few days of its issuance SRO 561/94 was amended vide SRO 612(I)/94 dated 14.06.1994, such that for “1995” as appearing in the first proviso, “1996” was substituted. SRO 561/94 was subsequently again twice amended, vide notifications dated 22.11.1994 and 13.06.1996. However, those amendments need not detain us. We will consider SRO 561/94 as amended up to the first time.

15. It is clear from a comparison of the two notifications that there were material differences between them. Thus, SRO 580/91 provided that if an industry were set up within the period 01.07.1991 to 30.06.1996, then it was entitled to exemption from sales tax for a period of five years from the date of being set up. In this, the notification can be regarded as the natural successor of SRO 529/88, which required the industry to be set up within the

period 01.07.1988 to 30.06.1991: as is obvious, the periods provided in the two notifications were "back-to-back". The period of exemption granted by SRO 529/88 was fixed at eight years from 01.07.1988, i.e., did not relate to the date of the setting up of the industry. This eight year period ended on 30.06.1996, which again co-relates with SRO 580/91. By contrast, SRO 561/94 reduced the period within which the industry had to be set up to 30.06.1994. It is true that the first proviso purported to provide a window for the setting up of the industry up to 30.06.1996. However, this "additional" period (i.e., from 01.07.1994 till 30.06.1996) was highly conditional, as is clear from the two provisos. Thus, quite unlike the situation under SRO 580/91, to avail of this "additional" period, the letters of credit etc. had to be in place by 30.06.1994 and registered with the CBR by 15.07.1994. Even then, there was in terms of the second proviso not just a power but also discretion vested in the CBR, to decide whether the industry was entitled to the benefit of the notification. Such requirements were wholly absent in SRO 580/91. Furthermore, the last part of the Explanation to SRO 561/94 ("but shall not include the date of expansion, balancing, modernization or replacement of such industry") was intended to exclude certain situations from the benefit thereof. The Explanation to SRO 580/91 had no such restrictions.

16. As the review just undertaken indicates, the supersession of SRO 580/91 by SRO 561/94 had negative consequences for the company's Unit II. It is in this context that the submissions by learned counsel for the company, that Unit II continued to enjoy the benefit of SRO 580/91 by reason of the Protection of Economic Reforms Act, 1992 ("1992 Act"), are to be considered. We turn therefore to the said Act.

17. Section 6 of the 1992 Act provided as follows:

> "**6. Protection of fiscal incentives for setting up of industries**. The fiscal incentives for investment provided by the Government through the statutory orders listed in the Schedule or otherwise

> notified shall continue in force for the term specified therein and shall not be altered to the disadvantage of the investors."

The 1992 Act also defined "economic reforms" in s. 2(b), in the following terms:

> ""economic reforms" means economic policies and programmes, laws and regulations announced, promulgated or implemented by the Government on and after the seventh day of November, 1990, relating to privatization of public sector enterprises, and nationalized banks, promotion of savings and investments, introduction of, fiscal incentives for industrialization and deregulation of investment, banking, finance, exchange and payments systems, holding and transfer of currencies;".

It is interesting to note that although the term "economic reforms" is defined in the substantive part of the statute, it does not appear at any place therein other than the preambles. None of the sections, as such, use it or refer to it. An obvious question is whether the definition is to be disregarded as redundant, or does it have some role to play in respect of the substantive provisions? Since redundancy is not to be lightly imputed to any part of a statute (including any term specifically defined therein), in our view the benefit conferred by s. 6 of the 1992 Act is to be measured against the definition of "economic reforms". It will be noted that s. 6 speaks of "fiscal incentives for investment". The definition of "economic reforms" makes express reference to "fiscal incentives for industrialization". When there is a combined reading of s. 2(b) and s. 6, in our view, two points emerge. Firstly, s. 6 applied only to those laws, regulations etc. as were announced, promulgated or implemented on and after 07.11.1990. As presently relevant, this meant that it applied to those notifications as were issued on or after the said date. Secondly, s. 6 applied only to such notifications as contained time-bound provisions. This is clear not merely from the words "for the term specified therein" as used in the section, but also on an examination of the two notifications specifically listed in the Schedule. One was under the Income Tax Ordinance, 1979, i.e., related to direct taxation whereas the other was under the 1969 Act, i.e., was in respect of an indirect tax. Both had a specific (and the same) period, 01.12.1990 to 30.06.1995, for the

setting up of the industry. The notification under the 1969 Act applied also to "expansion or balancing, modernization and replacement of existing units".

18. If a notification complied with the terms identified in the last preceding para, it came within the scope of s. 6. It could not then be "altered to the disadvantage of the investors". In our view, SRO 580/91 came squarely within the scope of the section. It was issued after 07.11.1990. Even a bare perusal shows that it was intended to encourage industrialization in NWFP. The notification thus provided a fiscal incentive for investment, which came within the scope and meaning of "economic reforms". It specified the period within which the industry had to be set up: 01.07.1991 to 30.06.1996. SRO 561/94 on the other hand, while covering the same ground as SRO 580/91 and even (if the provisos were taken into account) ostensibly the same period, clearly altered the benefit and incentive provided under the earlier notification to the disadvantage of the investors. In our view, it could not prevail against the provisions of s. 6. In this context s. 3 of the 1992 Act is also relevant, which provides that the Act is to have overriding effect over the various statutes mentioned therein and also "any other law for the time being in force". The 1990 Act was a law that clearly came within the scope of the overriding clause. Therefore, notwithstanding the issuance of SRO 561/94 and the purported supersession of SRO 580/91 thereby, the latter notification continued to remain available for its term by virtue of s. 6 of the 1992 Act. It follows from this that the benefit of the exemption from sales tax under SRO 580/91 was available for the company's Unit II, and could not be defeated by SRO 561/94. To this extent therefore the impugned judgment must be affirmed (though for reasons rather different from those that prevailed with the learned High Court).

19. We turn to consider the second category of the company's grievances, and recall the nature thereof as submitted by learned counsel (as set out in paras 5 to 9 above). Three notifications were

involved. Firstly, there was SRO 462/88 which provided exemption from sales tax on the import/supply of MEG and PTA, the raw materials of PSF. Learned counsel for the company submitted that this exemption was long standing. This appears to be so. SRO 462/88 superseded SRO 652(I)/81 dated 25.06.1981. A perusal of the latter notification shows that the exemption for MEG and PTA had also been given therein. As noted above, SRO 462/88 was superseded by SRO 482/92, and the latter notification did away with the exemption for MEG and PTA. Learned counsel has sought to argue, in effect, that by reason of the 1992 Act the benefit conferred by SRO 462/88 could not have been taken away. In our view, the 1992 Act did not as such apply to SRO 462/88 in and of itself. This is so for two separate and distinct reasons. Firstly, SRO 452/88 was issued before 07.11.1990, the date specified in the definition of "economic reforms" for purposes of the 1992 Act. Secondly, it was not a time-bound notification, i.e., the exemption granted in terms thereof did not operate over any specific period.

20. The second notification was SRO 531/88. This amended a general exemption notification issued under the 1944 Act, SRO 555(I)/79 dated 28.06.1979 ("SRO 555/79"). The effect was to grant complete exemption from excise duty in respect of the manufacture of PSF. Now, before this notification (i.e., SRO 531/88) was issued, the position was that even under SRO 555/79 the manufacture of PSF was liable to the payment of excise duty, though at the exempted rate of Rs. 2.50 per kg. Thus, when the company was incorporated (1989) and its units came into operation thereafter the complete exemption from excise duty was a relatively recent phenomenon. The practice adopted under the 1944 Act was for general exemption notifications to be issued, encompassing a wide range and variety of manufactured goods. SRO 555/79 was replaced by another such general notification (SRO 500/93), which in turn gave way to two general notifications, both issued on 09.06.1994, being SRO 545/94 and SRO 546/94. (Reference may be made to the table in para 4 above.) For present

purposes, the combined effect of all of this was that the (complete) exemption from excise duty on the manufacture of PSF provided by SRO 531/88 was continued. Then came SRO 477/95, which amended SRO 546/94 such that a 5% excise duty was imposed on the manufacture of PSF. Learned counsel has sought to argue, in effect, that by reason of the 1992 Act the benefit conferred by SRO 531/88 could not have been taken away. In our view, the 1992 Act did not as such apply to SRO 531/88 in and of itself. This is so for two separate and distinct reasons. Firstly, SRO 531/88 was issued before 07.11.1990, the date specified in the definition of "economic reforms" for purposes of the 1992 Act. Secondly, neither it nor the general exemption notification that it amended (SRO 555/79), nor the general exemption notifications that came thereafter were time-bound notifications, i.e., the exemptions granted in terms of the general notifications did not operate over any specific period.

21. The third notification was SRO 515/95. This, it will be recalled, reduced the rate of sales tax on the supply of PSF to 10%. At that time (14.06.1995) the rate was 15%. This notification did not, as such, apply to the company itself since the latter in any case enjoyed a complete exemption from sales tax for the specified periods in relation to its units. Rather, it applied in relation to its competitors. Now, SRO 515/95 was issued under subsection (2) of s. 3 of the 1990 Act, as those provisions then stood. At that time, this subsection (in its clause (a)) allowed the Federal Government, by notification in the Official Gazette, to provide that the supplies of goods as specified therein were to be charged at such higher or lower rates as set out in the notification, i.e., the specified rates could be greater or less than the statutory rate given in s. 3(1). And that is what was done by SRO 515/95. It was not an "exemption" notification, providing only for a rate of sales tax less than 15%. For many of the goods specified therein, the rate was in fact enhanced beyond and above the statutory rate.

22. SRO 515/95 was therefore of a character somewhat different from a simple exemption notification. For the supply of some goods (such as PSF) it provided a benefit but for others it acted in a negative manner. It is therefore not easy to "fit" this notification into the scheme of s. 6 of the 1992 Act. However, even if we focus only on the supply of PSF (and those goods where the rate was reduced below that provided in the statute) the notification did not come within the scope of s. 6. This is so because it did not provide for any time-bound measure.

23. Therefore, none of the three notifications that the company sought to challenge in terms of its second category of grievances came as such, and in and of itself, within the scope of s. 6. On the other hand, as held above, what might be called the "principal" notification for the company's purposes (i.e., SRO 580/91) certainly did. Could it be said that the protection given by s. 6 to "fiscal incentives for investment" was such that the section created (as it were) a "penumbra", so that even those notifications that did not themselves directly come within the scope thereof were nonetheless protected, if that was what it took to give full effect and meaning to a notification that did come within the scope of the section, thereby ensuring that the benefit conferred by the latter was not altered to the disadvantage of the investors? This is what was, in effect, sought to be argued by learned counsel for the company. Is this a plausible and possible interpretation of s. 6?

24. Now it is not at all surprising that a business concern looks at the fiscal regime (both direct and indirect taxation) in which it operates holistically and commercially. For a business it is the bottom line that matters, and when so viewed it will invariably look at the entirety of its tax situation, tending to take and treat it as a whole. Obviously, this would apply equally to any exemptions and/or other tax benefits or advantages that may be in the field. When viewed from this perspective, the submissions so emphatically made by learned counsel for the company (especially as noted in paras 5, 8 and 9 above) are not surprising. However,

what may be sensible when viewed commercially may be an approach that a Court of law is unable to take when considering and interpreting the relevant fiscal statutes. For, in law each such statute operates in its own field. Of course there are general principles (e.g., those relating to interpretation) that apply across the whole of tax law. There may even be specific linkages and overlapping created in the statutes themselves. However, in the end it must be kept in mind that the statutes are discrete and separate. It is therefore not an approach open to a Court of law to take a company's tax situation in its entirety and view it commercially, treating it simply as one whole. Each tax and the regime created thereby (including exemptions and/or other tax benefits and advantages) must be considered and applied in its own context unless some other approach is required or permitted by the terms of the statute itself, whether expressly or by necessary implication.

25. The foregoing discussion has a direct bearing on how s. 6 is to be applied. The section is undoubtedly intended to provide powerful protection to investors as regards fiscal incentives for investment. In the end however, each notification that is sought to be given the cover of s. 6 must be shown, in and of itself, to come within the scope thereof. If two or more notifications are so covered, then it may be permissible to read them together in order to determine whether the fiscal incentives conferred by any one of them are being altered to the disadvantage of the investors. In such a situation one (or more) of the notifications may be regarded as acting in support of the other(s). However, it is impermissible to bring a notification, that otherwise does not come within its fold, into the scope of s. 6 on the ground that that would buttress some other notification covered by the section. That which is not possible directly cannot happen indirectly. A notification within the scope of s. 6 cannot, by some sort of fiscal adhesion/cohesion (as it were), pull into the section's orbit that which could not of itself find a place therein. There is, in other words, no "penumbra" surrounding the section. Put differently, while the words "fiscal

incentives for investment" and "altered to the disadvantage of the investors" are to be given a broad and generous interpretation, they cannot be applied in so open-ended a manner as to include therein those notifications which do not of themselves come within the scope of s. 6. In our view, the interpretation of the section postulated in para 23 above is not possible. We hold accordingly.

26. The views contrary to what has just been said, as have been expressed by the learned High Court in the impugned judgment (especially in paras 16 to 20 (at pp. 2314-2317), 23 to 26 (pp. 2318-2319) and 27 to 29 (pp. 2319-20)), are therefore not sustainable and, being contrary to law, must be regarded as having been set aside. It is to be noted that these observations were made to answer two questions posed by the learned High Court. The first (and principal) question was as follows (pg. 2314; emphasis supplied):

> "Whether the Central Board of Revenue was justified in law *or in equity* in imposing the Sales tax on the import of raw material by the company?"

Immediately after posing this question, the learned High Court observed as follows (*ibid*, emphasis supplied):

> "As is obvious the scope of the question has been expanded in two directions firstly it is no longer tied only to the ambit of the Protection of Economic Reform Act, 1992 and secondly *it also extends to consideration of equity as well as law*."

With respect, the question posed with reference to the position in equity is contrary to principles of interpretation of fiscal statutes that are not just well settled but entrenched in the jurisprudence of our country. It is not a question that a Court of law can posit or answer. The classic formulation of Rowlatt J. in *Cape Brandy Syndicate v. Inland Revenue Commissioners* [1921] 1 KB 64 is too well known to require any rehearsal. The approach thereby provided infuses the whole of the tax jurisprudence in this country. One of us (Munib Akhtar, J., while in the High Court) had occasion to say the following in *Commissioner Inland Revenue Zone*

III v. IGI Insurance Co. Ltd. 2018 PTD 114 (pp. 157-160; cases cited in the paras extracted below omitted):

> "47. ... As is well known, the general interpretive approach to fiscal legislation in this country is still literal, formalistic and strict. The bedrock of tax jurisprudence in Pakistan is the well-known words of Rowlatt, J. in *Cape Brandy Syndicate v. Inland Revenue Commissioners* [1921] 1 KB 64 ... instantly recognizable by tax lawyers in this country....
>
> 48. The Rowlatt, J formulation has been affirmed many times by the Superior Courts of Pakistan and never doubted. It can be safely said that it is woven into the very fabric of our tax jurisprudence....
>
> 49. Incidentally, we may note that the position in India is essentially the same ...
>
> The tax jurisprudence of the Subcontinent, it seems, continues to remain deeply enamored of, and indeed wedded to, what Rowlatt, J said so many decades ago. There appear to be no signs that a separation (let alone a divorce) is on the horizon."

It must be stated emphatically that there is nothing in the 1992 Act nor, in particular, in s. 6 that can, or is intended to, set at naught or to alter the foregoing position. It must also be remembered that the objectives sought to be achieved by the 1992 Act are not policy guidelines or general declarations of executive intent. The 1992 Act is a statute, which is to be understood and applied in accordance with well established principles of statutory interpretation. This is all the more so in respect of s. 6, which has to be applied in relation to fiscal incentives such as exemption notifications. The section has to be applied by reading it along with fiscal statutes, which move in their own interpretative locus. Those principles, read along with what has been said in paras 17 and 25 above, provide the limits to what is the permissible extent of the scope and effect of s. 6. With respect, the observations of the learned High Court (especially in the passages from the impugned judgment identified above) have travelled well beyond that which is permissible. They must be regarded as having been set aside.

27. As regards the company's case that the withdrawals of the various notifications were orchestrated at the behest of its competitors and constituted a bad faith misuse and abuse of

statutory powers by the Federal Government/CBR, we have gone through the material placed on record, including in CMA Nos. 170/2016 (filed in CA 1089/2015) and 169/2016 (filed in CA 1090/2015) (filed by learned counsel for the company). With respect, we are unable to agree that any such case is made out from the record.

28. In view of the foregoing discussion, in relation to the company's second category of grievances, we are of the view that the learned High Court erred materially in coming to the conclusion that the company was entitled to the relief that it sought in respect of SRO 482/92, SRO 477/95 and SRO 515/95. Those notifications applied in terms as stated therein, and as much in relation to the company as to any other person within the scope thereof. To this extent, the impugned judgment must be set aside.

29. Accordingly, these appeals are partly allowed and disposed of in the following terms. To the extent as stated in para 18 above, the judgment of the High Court is affirmed and the appeals are hereby dismissed. To the extent as stated in the last preceding para, the impugned judgment is set aside and the appeals are hereby allowed. There will be no order as to costs.

Sd/-
Judge

Sd/-
Judge

Sd/-
I have added my separate note Judge

Announced in open Court today _____ at Islamabad

Judge

Approved for reporting

Yahya Afridi, J.- I have had the privilege of reading the proposed judgment authored by my learned brother, Justice Munib Akhtar. I agree with his conclusion regarding SROs 561/94, 477/95 and 515/95. But, with respect, I am unable to agree with his findings to the extent of SRO 482/92, and also deem it appropriate to add further reasons for upholding the challenge of the respondent-company to SRO 561/94; hence, this note.

2. The facts leading to the present appeals by the Federal Board of Revenue have most ably been set out in the judgment of my learned brother, and they require no repetition. However, the narration of certain essential facts will provide the necessary context for a better understanding of the discussion on the law points that follows.

2.1. The Government of Pakistan **('Government')**, to attract investment for industrialization in less developed areas of Pakistan, including the province of erstwhile N.W.F.P., presently Khyber Pakhtunkhwa, offered financial incentives, *inter alia*, in the form of exemption from sales tax to potential investors for setting up industrial units in the said areas. In order to avail such financial incentives offered by the Government, the respondent-company, as a joint venture with foreign companies of Japan and South Korea, set up two industrial units in the area earmarked by the Government for sales tax exemption. It would also be important to note that, there were four industrial competitors **('competitors')** of the respondent-company, who did not opt to avail the financial incentives offered by the Government, as they established their industrial units in other areas of Pakistan. On the request of the competitors, the Government issued certain notifications, which substantially resulted in withdrawing the financial incentives offered to the respondent-company, the sole industrial undertaking set up in the less developed area. The respondent-company challenged such withdrawal of the financial incentives earlier offered by the Government and acted upon by the respondent-company. The grievance of the respondent-company was essentially aimed at the following four Notifications:

> **(i) SRO 482/92**, which withdrew the exemption of sales tax on raw material earlier granted by SRO 462/88. This tax was adjustable for the competitors of the respondent-company as input tax for calculating tax liability on final product;
>
> **(ii) SRO 561/94** which modified certain conditions for exemption of sales tax on final product earlier granted by SROs 529/88 and 580/91;
>
> **(iii) SRO 477/95** which withdrew the exemption of excise duty earlier granted by SROs 531/88 and 546/94 and imposed 5% excise duty on final product; and
>
> **(iv) SRO 515/95** which reduced the sales tax on final product from 15% to 10%, for the competitors of the respondent-company.

3. My learned brother has upheld the challenge of the respondent-company to the extent of SRO 561/94, and that too, only on the basis of section 6 of the Protection of Economic Reforms Act, 1992 **("Act of 1992"),** and has rejected it as against the other three Notifications. Except to the extent of SRO 482/92, I concur with the conclusion of my learned brother, and add this note to give my reasons for upholding the challenge of the respondent-company to the two Notifications: SRO 482/92 and SRO 561/94.

4. Given the above essential factual background of the case, it would be appropriate to mention that, I uphold the challenge of the respondent-company to SRO 561/94 not only on the basis of section 6 of the Act of 1992, as done in the judgment of my learned brother, but also on the doctrines of vested rights and promissory estoppel, which are well-entrenched in our jurisprudence and have been relied upon by this Court when striking down such subsequent notifications that had affected the vested rights of the taxpayers. As to the doctrine of vested rights, the landmark case of **Azizuddin Industries**[1] may be cited. While declaring a notification that had withdrawn the exemption from excise duty granted by an earlier notification in respect of goods produced or manufactured in the specified economically backward areas for four years to be void and of no legal effect, this Court observed:

> It is a settled rule that an executive authority cannot in exercise of the rule-making power or the power to amend, vary or rescind an earlier order, take away the rights vested in the citizens by law ..... The respondent had acquired a vested right of exemption from the levy of excise duty on all the goods produced or manufactured by it for a period of four years under the Notifications of the Central Government referred to above. That vested right could not, therefore, be taken away by an executive action.

[1] Collector of Central Excise v. Azizuddin Industries PLD 1970 SC 439.

In addition to the doctrine of vested rights, this Court applied the doctrine of promissory estoppel in **Army Welfare Sugar Mills case**[2] for upholding the claim of several Sugar Mills regarding exemption from excise duty granted under a notification, notwithstanding the withdrawal of the same by a subsequent notification. The Court held:

> It may be mentioned that by now, it is well-settled proposition of law obtaining in Pakistan that if an exemption from payment of excise duty or any other tax, has been granted for a specified period on certain conditions and if a person fulfils those conditions, he acquires a vested right, he cannot be denied the exemption before the expiry of the specified period, through an executive instrument like a notification …
>
> It is … evident that the doctrine of promissory estoppel is available in Pakistan against the Government and its functionaries …
>
> We are inclined to hold that the above SRO 560(1)/82 contained standing representation to the effect that if a factory would manufacture sugar in a financial year exceeding from the average production in that factory for the preceding two years, such an excess quantity of sugar shall be exempt from the payment of excise duty. The above representation could have been rescinded before it was acted upon or if it was acted upon, its effect could have been nullified by a statutory provision … and not by an executive act …
>
> [T]he doctrine of promissory estoppel is pressed into service in order to prevent the exercise of legal right where it would be unconscionable for the possessor of those rights to do so …

I would say, with great respect, that while examining the claim of the respondent-company in respect of SRO 482/92, my learned brother has not adverted to these well-settled doctrines and the well-established principle that what cannot be done directly is not permissible to be done indirectly[3], and has limited the judicial review of the act of the Government only to the extent of examining its legal power to issue the said SRO, within the scope of Act of 1992.

5. The doctrine of promissory estoppel is pressed into service in order to prevent the very exercise of a legal power or right, as observed in **Army Welfare Sugar Mills case**, where it would be unconscionable for the possessor of that power or right to do so. Therefore, the question in the circumstances of the case is not, as observed in **Al-Samrez Enterprise**,[4] whether SRO 482/92 is *ultra*

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[2] Army Welfare Sugar Mills v. Federation of Pakistan 1992 SCMR 1652.

[3] Abdul Baqi v. Govt. of Pakistan PLD 1968 SC 313; Nawaz Sharif v. President of Pakistan PLD 1993 SC 473; Shahid Mehmood v. Afzal Mehmood 2011 SCMR 551; Al-Jehad Trust v. Federation of Pakistan PLD 2011 SC 811; Hanif Abbasi v. Imran Khan PLD 2018 SC 189.

[4] Al-Samrez Enterprise v. Federation of Pakistan 1986 SCMR 1917. It may be noted that the effect of this judgment as to customs duty exemption was undone through the legislative intervention by adding Section 31-A, in the Customs Act, 1969

vires of the legal power of the Government, but whether the said notification could be made applicable to the respondent-company resulting in taking away the exemption of sales tax granted to it by SROs 529/88 and 580/91 for establishing an industrial unit in a less developed area.

6. Admittedly, SRO 482/92 withdrew the exemption of sales tax on raw material earlier granted *vide* SRO 462/88, and thus, the payment thereof became an additional cost for the respondent-company, as it could not be adjusted against the output tax, which had been exempted *vide* SROs 529/88 and 580/91. More importantly, the incentives offered for establishing an industrial unit in a less developed area had in effect been reduced to naught, and that too, after the respondent-company had done all that was required on its part, to acquire vested right to avail the benefit under the said SROs. The Government by imposing the sales tax on the raw material by SRO 482/92 indirectly withdrawn the benefits of the financial incentive offered by it, and has in essence made redundant the exemption of sales tax granted by SROs 529/88 and 580/91 on the final product. Since the sales tax paid on raw material is adjustable as input tax for calculating the sales tax liability on the final product, SRO 482/92 has practically made the net result the same, if not worse, for the respondent-company when compared to its competitors, who had not opted to avail the financial incentive of sales tax exemption offered by the Government for establishing industrial units in the specified less developed areas.

7. The Government has, in fact, taken the impugned steps expressly, "in order to make the playing field level" for the competitors of the respondent-company, irrespective of the area wherein their industrial units were set up, and that too, at their behest[5]. The impugned steps were in effect respondent-company specific, and not only adversely affected its vested rights, but

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but the principle of law enunciated therein as to the doctrine of vested rights remained operative and was applied in regard to sales-tax exemption in Pakistan v. Fecto Belarus Tractors PLD 2002 SC 208.

[5] Letter dated 23.04.1992 of the Chairman, ICI, to the Secretary Finance, Government of Pakistan. Later, another letter dated 30.05.1995 was also written for imposition of excise duty and reduction of sales tax on final product and the Finance Minister referred to it in his budget speech.

blatantly benefited the commercial interests of the competitors. In doing so, the Government failed to notice that it could not take the impugned steps, not only because of the doctrines of vested rights and promissory estoppel, but also on the principle that, what cannot be done directly is not permissible to be done indirectly.

8. More so, the Government also defied the *raison d'etre* of the Act of 1992, which as manifest from its preamble was enacted by the legislature *inter alia* to create a liberal economic environment for investments and to maintain confidence in continuity of such environment, and thereby to ensure and encourage development of less developed areas of Pakistan. By taking such unconscionable steps, like issuing SRO 482/92, the very object of inviting and protecting foreign investments in less developed areas of the country had been blatantly thwarted. It is unfortunate that the vested commercial interests of the competitors of the respondent-company subdued the Government, and led it to take such steps that may make the less developed areas of Pakistan, once aimed to be developed, a potential industrial graveyard. More importantly, these steps of the Government may also have detrimental effect of deterring foreign investments to shy away from availing any such economic incentive offered by the Government in the future.

9. In this regard, it would be appropriate to mention the valuable observations of Advocate Khalid Anwar, Member of the Arbitration Committee constituted by the Government in the present matter, made in the report of the Committee, which were concurred in by Justice (R) Mian Nisar Ahmad, Chairman of the Committee, and have been adopted by the learned Judges of the Division Bench of the High Court in the impugned judgment:

> We lay great stress on the importance of the Government adhering to sovereign commitments made by it, whether in the form of statutory orders or notifications issued by it or in the shape of policies announced by it. The commitments made on behalf of the Government of the Islamic Republic of Pakistan should neither be lightly disregarded nor deliberately ignored. The orderly development of a civilized society requires that citizens should be entitled to place implicit faith and confidence in representations which are

> made by or on behalf of the duly constituted government authorities. The importance of this underlies the sustained thrust towards the industrialization of the country in which both the nationals of Pakistan as well as nationals of foreign countries should have complete confidence that official commitments will be duly honoured and acted upon in letter and in spirit.

Conclusion

C.A.1090/15

10. For the above reasons, I hold that: SRO 482/92 cannot be made applicable to the respondent-company in taking away indirectly the exemption of sales tax granted to it by SROs 529/88 and 580/91; and SRO 482/92 shall not apply to the respondent-company during the period of exemption from sales tax provided under SROs 529/88 and 580/91. Resultantly, C.A.1090/15 that impugns the judgment of the High Court in favour of the respondent-company to the extent of SRO 482/92 and SRO 561/94 is dismissed.

C.A.1089/15

11. As to SROs 477/95 and 515/95, I would briefly say that the doctrines of vested rights and promissory estoppel do not affect the exercise of its legal power by the Government to withdraw the exemption of excise duty by SRO 477/95 or to reduce the rate of sales tax on final product for the competitors by SRO 515/95, as the Government had not made the earlier exemption from excise duty conditional on establishing an industrial unit in the specified less developed areas, as it had done in regard to sales tax exemption, nor had it made any representation to the respondent-company that it would not reduce the rate of sales tax on final product for the competitors. Thus, the stance of the Revenue has legal force. Resultantly, C.A.1089/15, that impugns the judgment of the High Court in favour of the respondent-company to the extent of SRO 477/95 and SRO 515/95 is accepted.

Judge

ORDER OF THE COURT

These appeals are disposed of in the following terms:

(i) In relation to SRO No. 561/1994 the appeals are unanimously dismissed.

(ii) In relation to SRO Nos.477/1995 and 515/1995 the appeals are unanimously allowed.

(iii) In relation to SRO No.482/1992 by majority of 2:1 (Mr. Justice YahyaAfridi dissenting) the appeals are allowed.

sd/-
Judge

sd/-
Judge

Sd/-
Judge

Announced in open Court on 1.9.2023 at Islamabad

Sd/-
Judge

Approved For Reporting.