SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
MR. JUSTICE MUNIB AKHTAR
MR. JUSTICE MALIK SHAHZAD AHMAD KHAN
MR. JUSTICE SALAHUDDIN PANHWAR

C.P.L.A.2972/2022
(Against judgment dated 27.04.2022 passed by the Islamabad High Court, Islamabad in STR No.26/2012.)

Attock Refinery Limited Morgah, Rawalpindi ... **Petitioner**

vs

Appellate Tribunal Inland Revenue, Islamabad and others ... **Respondents**

For the Petitioner : Sardar Ahmed Jamal Sukhera, ASC
Syed Rifaqat Hussain Shah, AOR

For the Respondents : Mr. Imtiaz Ahmed, ASC

Date of hearing : 04.09.2026

ORDER

Munib Akhtar, J.: This matter is being disposed of as an appeal; see below. It arises out of the Sales Tax Act, 1990 ("Act"). The case of the respondent Commissioners (herein after "the Department") was that certain transactions, in respect of which the present petitioner received payments from third parties, were liable to tax under s. 3. Sales tax not having been charged, proceedings were initiated against the petitioner, whose case was that the said transactions did not come within the scope of the Act. The appeal by the petitioner before the Appellate Tribunal was dismissed and the tax reference filed in the High Court met the same fate, in terms of the impugned judgment. In coming to the conclusion that the Department had correctly brought the transactions to tax the learned High Court relied on two judgments of this Court, reported as *Sheikhoo Sugar Mills Ltd. v Government of Pakistan and others* 2001 SCMR 1376 ("*Sheikhoo Sugar*") and *Collector of Customs, Sales Tax and Central Excise and others v Sanghar Sugar Mills Ltd. and others* PLD 2007 SC 517 ("*Sanghar Sugar*").

2. The facts relevant for present purposes may be taken from the impugned judgment (emphasis supplied; the "applicant" is of course the present petitioner while the "respondents" are the Department):

> "3. The applicant purchases crude oil from different companies engaged in the business of exploring and producing oil and gas, including Oil and Gas Development Company Limited (O.G.D.C.L.). The crude oil supplied at the applicant's premises needs to be decanted and desalted before the same is processed at the applicant's oil refinery. *Under the agreements executed with the suppliers of crude oil, the decanting and desalting is the responsibility of the supplier. The applicant provides the services of decanting and desalting for the suppliers at the applicant's premises*. The financial statements of the applicant duty reflect the amount earned by the applicant for the decanting and desalting services provided for the suppliers. The department's assertion was that the activity of decanting and desalting is a taxable activity as defined in Section 2(35) of the Sales Tax Act, 1990....
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> ...
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> 9. Decanting is the process of the transfer of crude oil from oil tankers/lorries to the tanks in the oil refineries, whereas desalting is the process of removing salts from the crude oil. For this purpose, crude oil is processed in the desalting plant.
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> 10. *In the case at hand, the contractual mechanism between the applicant and the supplier of crude oil is such that the decanting and desalting of crude oil is the obligation of the supplier*. The decanting activity is carried out by the applicant for which it is paid by the supplier. The desalting plant is installed at the applicant's premises. For the process of desalting, the applicant has been paid by the suppliers. The applicant does not deny the receipt of decanting and desalting charges from the suppliers. The respondents' point of view is that the processes of decanting and desalting comes within the ambit of taxable activity and therefore, are subject to the charge and levy of sales tax."

3. Learned counsel for the petitioner submitted that the decanting and desalting processes applied to the crude oil being supplied to the petitioner did not amount to "taxable supplies" within the meaning of the Act. It was submitted that crude oil came within heading No. 27.09 of the Pakistan Customs Tariff (PCT), which is the First Schedule to the Customs Act, 1969 (and determines what goods are liable to customs duty in terms of s. 18 thereof). It was submitted that the PCT is in large measure a codification of the Harmonized System Code (HS Code) which is developed and maintained by the World Customs Organization

(WCO). That body issues explanatory rulings in relation to the HS Code from time to time and the First Schedule provides that the rulings are “authentic” sources for interpreting the PCT. Learned counsel submitted that it had been expressly ruled by the WCO that crude oil remained as such even after the processes of decanting and desalting were applied thereto. It was contended that that was exactly the situation at hand and hence there was only one taxable supply, of crude oil going from the oil and gas exploring companies to the petitioner. There was no dispute as to that supply. The application of the processes under consideration did not alter anything and those transactions were not within the ambit and scope of the Act. It was submitted that the learned High Court had erred materially in upholding the decision of the learned Tribunal and it was prayed accordingly. Learned counsel for the Department on the other hand submitted that the learned High Court had correctly applied the law to the facts of the case and reached the right conclusion. The petition ought to be dismissed.

4. In our view, the following question of law requires determination:

> “Whether the facts and circumstances of the case, being the application of the processes of decanting and desalting by the petitioner to the crude oil supplied to it by third parties, for which processes the third parties made payments to the petitioner, amounted to or resulted in a “taxable supply” or constituted a “taxable activity” within the meaning of the Act and hence were liable to tax under s. 3?”

5. As will become apparent a determination of the question requires a close consideration of various definitions set out in s. 2 of the Act. Now, this section was substituted in its entirety by the Finance Act, 1996. The definitions so brought in have thereafter undergone changes, both by substitution of or amendments to the various clauses, and also by way of insertion or deletion of clauses. In particular, certain clauses relevant for present purposes were substituted or amended by the Finance Act, 1998 and also by the Finance Act, 2008. The tax periods involved will therefore have to be kept in mind with some particularity, not only when considering the facts and circumstances at hand, but also

those involved in the two decisions of this Court relied upon by the learned High Court.

6. We begin by noting that the tax periods involved in the present case were from 01.07.2008 to 30.06.2009. Section 3, as it stood in relation to those tax periods, and insofar as presently relevant, was as follows:

> "**3. Scope of tax**.– (1) Subject to the provisions of this Act, there shall be charged, levied and paid a tax known as sales tax at the rate of fifteen per cent of the value of–
>
> (a) taxable supplies made by a registered person in the course or furtherance of any taxable activity carried on by him; ..."

It may be noted that prior to the Finance Act, 1996 clause (a) had used the term "business", which was substituted by the present phrase "taxable activity" by that statute. The term "business" was never defined in the Act.

7. Section 3 is of course the charging section and its subsection (1) lies at the heart of the Act. (The tax being in VAT mode, there are certain other sections and provisions which are just as important, but those do not concern us here.) The manner of interpreting and applying a charging section is too well known to require any elaboration. For present purposes, s. 3(1) can be regarded as having three elements: (i) the making of a "taxable supply", (ii) by a registered person, (iii) in the course or in furtherance of any "taxable activity" carried on by him. Here, we are only concerned with the first and the third elements. A consideration of each of these requires recourse to the definition section, since both "taxable supply" and "taxable activity" are (elaborately) defined in s. 2. However, one point may be made. While (obviously) both elements must exist for the taxing event to be completed each must also be examined in its own light. What s. 3(1) seeks to achieve is to bring to tax a "taxable supply". But that supply must be in a certain context, being in the course or furtherance of a "taxable activity". Put differently, not only must both elements—a "taxable supply" and a "taxable activity"—be shown to exist but there must also be the necessary linkage

between the two ("in the course or furtherance of") for the taxing event to be completed.

8. Turning first to "taxable supply", it may be noted that the definition of this term, in clause (41) of s. 2 (as that section stood substituted by the Finance Act, 1996) was also applicable to the tax periods at hand subject to certain amendments. The definition is set out below in comparative form:

As brought in by the Finance Act, 1996	As it stood for the tax periods 01.07.2008 to 30.06.2009
"taxable supply" means a supply of taxable goods made in Pakistan other than a supply of goods which is exempt under section 13 and includes a supply of goods chargeable to tax at the rate of zero per cent under section 4;	"taxable supply" means a supply of taxable goods made [ ] <u>by an importer, manufacturer, wholesaler (including dealer), distributor or retailer</u> other than a supply of goods which is exempt under section 13 and includes a supply of goods chargeable to tax at the rate of zero per cent under section 4;

The words emphasized in column 2 of the table were inserted by the Finance Act, 1998 and the words "in Pakistan" (indicated by the "null" brackets) were omitted by the Finance Act, 2003. In essence, a "taxable supply" means a "supply" of "taxable goods". The latter are defined in s. 2(39) as meaning "all goods other than those which have been exempted under section 13", while "goods" are defined in clause (12) as including "every kind of movable property other than actionable claims, money, stocks, shares and securities". These definitions, brought in by the Finance Act, 1996, applied in the same terms to the tax periods at hand.

9. The position of the definition of "supply" was however different. It is defined in clause (33) of s. 2. The definition, as brought in by the Finance Act, 1996, was substituted in its entirety by the Finance Act, 2008. It is of course the latter that applied to the tax periods at hand. However, as will presently become clear, it is also important to consider the definition as it applied as a result of the Finance Act, 1996. Both definitions, to the extent presently relevant are set out as follows in tabular form (emphasis supplied):

As brought in by the Finance Act, 1996	As substituted by the Finance Act, 2008
"supply" includes sale, lease or other disposition of goods in furtherance of business carried out for consideration and also includes – (a) putting to private, business or non-business use of goods acquired, produced or manufactured in the course of business;...	"supply" means a sale or other transfer of the right to dispose of goods as owner, including such sale or transfer under a hire purchase agreement, and also includes – (a) putting to private, business or non-business use of goods produced or manufactured in the course of taxable activity *for purposes other than those of making a taxable supply*; ...

10. We now turn to the third element of the taxing event, "taxable activity". This is defined in clause (35) of s. 2. Here also, the definition brought in by the Finance Act, 1996 was substituted in its entirety by the Finance Act, 2008. Again, it is necessary to consider both definitions, which are set out in the following table (emphasis supplied):

As brought in by the Finance Act, 1996	As substituted by the Finance Act, 2008
"taxable activity", means any economic activity carried on by a person whether or not for a pecuniary profit, and involves in whole or in part, the supply of goods to any other person, whether for any consideration or otherwise, and includes any activity carried on in the form of a business, trade or manufacture;	"taxable activity", means any economic activity carried on by a person whether or not for profit, and includes — (a) an activity carried on in the form of a business, trade or manufacture; (b) an activity that involves the supply of goods, *the rendering or providing of services*, or both to another person; ...

As noted by the learned High Court, the Department relied primarily on the words emphasized in the second column to contend that the desalting and decanting processes amounted to the rendering or providing of services by the petitioner to its suppliers and hence constituted a "taxable activity" which came within the scope of the s. 3(1); the transactions were accordingly liable to tax.

11. In order to address the question noted in para 4 above, it will be convenient to begin by considering the two decisions of this Court relied upon by the learned High Court. Of these, *Sheikhoo Sugar* is the first, both in time and importance for present purposes. The judgment, given by a learned two member Bench of the Court, decided a bunch of cases, being appeals and leave petitions. The tax periods involved there were from 01.07.1996 to 13.06.1997 (pg. 1384; para 2). Thus, it was the definitions brought in by the Finance Act, 1996 that were applicable. The taxpayers carried on the business of the manufacture and sale of sugar. Now, one by-product of such manufacture was bagasse. As noted by the Court (pg. 1386, para 5) bagasse could be regarded as an "intermediary, marketable produce used as fuel for burning [boilers] containing juice of sugarcane or for making soft or hard building board" (see also the observations at pg. 1390, para 9). The taxpayers did not sell or otherwise dispose of the bagasse but used it as fuel for the manufacture of sugar, thereby catering for 70-80 percent of their energy requirements (*ibid*). The question was whether such use amounted to a "taxable supply" within the meaning of s. 3 such as brought the matter to tax in terms of subsection (1) thereof. The crux of the sugar mills' case was that the self-use of bagasse did not amount to any sale inasmuch as that could only take place between two persons, which was admittedly and patently not the situation. After considering the definitions of "supply", "taxable supply" and "taxable activity", and also of "manufacture" and "manufacturer" given in clauses (16) and (17), it was held that the self-use of the bagasse did come within the scope of s. 3(1) (pg. 1398, para 28). A number of cases, both from our and the Indian jurisdiction (which, in the main, related to the meaning of "manufacture"), were cited but were found distinguishable. Certain other points raised by the taxpayers, such as retrospectivity, etc., were also extensively dealt with but found wanting. Those issues have no relevance for present purposes.

12. We have carefully considered the decision and the reasoning that found favor with the Court as relevant for present purposes, the essence of which is set out in paras 8-B and 9 (pp. 1389-90). It must be said at the outset that, with respect, it is somewhat difficult to reconcile the decision with established principles of tax

jurisprudence. Thus, e.g., it appears to lose sight of the fact that what was under consideration was whether the facts and circumstances of the case came within the scope of s. 3, a charging provision and one that, as noted above, lies at the heart of the Act. The observation therefore made in para 8-B (pg. 1389) with regard to the definitions of "taxable activity" and "taxable supply", that they "have to be taken into consideration broadly to ensure the objects for which the Act has been promulgated" would appear to be at odds with long settled tax jurisprudence. Being the decision of a learned two member Bench we would respectfully note that it is, as such, not binding on this Bench. However, we are also cognizant that the decision has been in the field for over two decades now. Overall, in our view, it suffices to conclude, for reasons herein after stated, that the decision is distinguishable in relation to the matter at hand, both on account of the differences in the facts and circumstances of the respective cases and also because the crucial definitions of "supply" and "taxable activity" as applicable were different for the respective tax periods involved.

13. In our view, for the reasoning in *Sheikhoo Sugar* to be, with respect, at least understandable (leaving aside the question whether it is at all sustainable), can be restated as follows. The first and foremost aspect of the reasoning, which was foundational for what followed, was that the case involved a specific and identifiable product, bagasse, which not only existed in its own right but also could be put to different uses, including sale or use as a fuel. Furthermore, the bagasse came into existence, even if only as a by-product, as a result of the manufacturing activities at the taxpayers' sugar mills, which were of course concerned with the production of sugar. These facts set the stage for applying the definitions of "taxable activity" and "supply". As to the former (see the first column of the table in para 10 above) it was concluded that the requirement that there be a "supply of goods to any other person" set out therein did not (as strongly contended by the sugar mills) necessarily have to apply to the goods under consideration, i.e., to the bagasse. Rather, it could relate to the goods being supplied as a result of the "economic activity" being carried on by the taxpayer. If there were such goods, then the requirement of "taxable activity" was met. The "economic activity" that the sugar mills were engaged in was of course the

manufacture and sale of sugar and that certainly involved the supply of goods to other persons. Thus, the third element of s. 3(1) applied. But that still left the matter of the first element: was there a "taxable supply"? Here, the Court looked at the definition of "supply" (see the first column of the table in para 9 above). That definition used the word "includes" not only in relation to the main part but also with respect to certain clauses that followed thereafter, of which the first was relevant. That provided that putting to private or business use goods manufactured "in the course of business" was also to be regarded as a "supply". In the case before the Court there were goods manufactured (i.e., the bagasse) in the course of the sugar mills' business (which was to manufacture and sell sugar) and the said goods were being put to private or business use by them (as fuel for the business). There was therefore a supply within the meaning of the definition and hence a "taxable supply" within the meaning of clause (41), being a (statutorily defined) "supply" made in Pakistan. Thus, the first element of the taxing event in s. 3(1) was also fulfilled and hence the self-use of bagasse was liable to the charge of tax in terms thereof.

14. In our view, the facts and circumstances at hand were quite different from those in *Sheikhoo Sugar* as was the statutory framework in certain crucial respects. Firstly, there was no identifiable and distinct product as such. There was only the crude oil, which was being supplied to the petitioner by the oil and gas producing companies. The definition of "supply" applicable (see the second column in the table at para 9 above) could therefore only apply if its clause (a) was attracted. That required "goods produced or manufactured in the course of taxable activity". That meant that the application of the decanting and desalting processes to the crude oil, which was the crux of the transactions, had to result in some specific goods or product, existing or identifiable as such, coming into existence. But the onus for that lay on the Department, since the matter related to an element of a charging section. It is foundational that the onus of establishing that all the "ingredients" or elements of a taxing event exist lies on the State and not on the taxpayer. Here, there was only the crude oil, both before and after the application of the decanting and desalting processes. That was in contrast to the

position in *Sheikhoo Sugar* where there was no dispute that a distinct and separate product, bagasse, did come into existence as a result of the sugar mills' operations. However, even if it be assumed in favor of the Department that there was something that was produced or manufactured as a result of the application of the processes, it further had to be shown that what was so produced or manufactured was being put to private or business use "for purposes other than those of making a taxable supply". It will be noted that this was in stark contrast to the definition as it stood relevant for the periods involved in *Sheikhoo Sugar*, where there was no such condition. As is obvious the crude oil, both before the application of the processes and thereafter, was used only for purposes of making taxable supplies, i.e., of the petroleum products etc produced by the petitioner's refinery. Thus, on any view of the matter the facts and circumstances at hand did not come within the applicable definition of "supply". There could therefore have been no "taxable supply" and hence the first element of the charge in s. 3(1) did not exist.

15. What of the third element, "taxable activity", on which great emphasis was laid on behalf of the Department. Of course, it is trite law that if even one element or "ingredient" of a taxing event is missing the charge fails, and in that sense what has been concluded as regards the first element may be regarded as dispositive. However, the third element was also missing, as even the definition of "taxable activity" did not apply. The applicable definition was set out in clause (35), as substituted by the Finance Act, 2008. We turn therefore to consider this aspect. The Department placed reliance on the words "the rendering or providing of services" in clause (b) of the definition to contend that the processes of decanting and desalting constituted such services, making the definition applicable. Indeed, the Department's case, echoing what was held by the learned Appellate Tribunal, was that that was in and of itself sufficient to bring the matter within the scope of s. 3(1). This is incorrect and misconceived, for two reasons. Firstly, the decanting and desalting processes applied to the crude oil by the petitioner, and for which it received payment from its suppliers, was not the rendering or providing of any services at all. Even the learned High Court, with respect, erred materially in characterizing the processes as such

(see the extracts from the impugned judgment reproduced in para 3 above, especially as emphasized). The reason is that, as noted by the learned High Court itself, it was for the suppliers to have decanted and desalted the crude oil. Indeed, it was their contractual obligation to do so. The learned High Court noted this expressly twice in the impugned judgment (again, see para 3 above) but, with respect, failed to appreciate the significance thereof. Indeed, the learned High Court, with respect, fell into a singular contradiction when it observed, in relation to the desalting as follows: “This is a service performed by the applicant for the supplier/O.G.D.C.L., since it is the latter’s contractual obligation to supply crude oil in a desalted form” (para 12 of the impugned judgment). If the suppliers were contractually obliged to decant and desalt there was nothing to provide a service for. And if such a service was being provided to the suppliers then it could not be their contractual obligation. The correct position rather seems to be that the applicant, for (undoubtedly) sound commercial and business reasons, chose to accept the crude oil without decanting or desalting but also without absolving the suppliers of their contractual obligations in this regard. It undertook the decanting and desalting processes itself, but then required the suppliers to make payment for the same. Those payments were not for any services rendered or provided to the suppliers (since they were contractually bound and legally obliged to decant and desalt the crude oil) but rather, in a commercial sense, an “adjustment” or “correction” of the price being paid by the petitioner for the supply of the oil. Therefore, clause (b) did not have any application in the facts and circumstances at hand.

16. Secondly, the third element, i.e., “taxable activity” does not constitute a taxing event in its own right. Rather, it provides the framework or context in, or in relation to, which the “taxable supply” must be made for s. 3(1) to apply. This is made clear by the words “in the course or furtherance of”, which link the first and third elements. Therefore, even if the decanting and desalting processes could be regarded as the rendering or providing of services by the petitioner to its suppliers that did (and indeed could) not in and of themselves make said services liable to tax in terms of s. 3(1). In our view, the correct approach to, and interpretation and application of, the definition is to first

determine whether it applies in the facts and circumstances of the case, i.e., there is a “taxable activity” being carried on, and then to further determine whether there is or has been a “taxable supply” (which is yet another separate determination) in the course or furtherance thereof. In relation to the rendering or providing of services as set out in clause (b), that would require determining whether there is such “an activity” and then to determine whether in the course or furtherance thereof there has been a “taxable supply” (which, as noted, would also require separate determination). In the instant case, with respect, the exercise has been reversed by the learned High Court. It has been determined that there was a “taxable supply” (of the crude oil, which is not in dispute) and in the course or furtherance of said supply there was an (incidental and ancillary) rendering or providing of services, i.e., the decanting and desalting thereof, thereby resulting in a “taxable activity”. With respect, this is a misunderstanding and misapplication of not only the definition of “taxable activity” but also of the taxing event itself, as set out in s. 3(1) and in particular of how the first and third elements are linked and required to operate in conjunction.

17. This brings us to the second case relied upon, *Sanghar Sugar*. A large number of appeals were decided by a learned three member Bench. The taxpayers carried on diverse businesses. The tax periods were also widely divergent, ranging overall from 1994 to 1999. Thus, the relevant definitions applicable were those as set out in the Act prior to the Finance Act, 1996, as brought in by that statute and also as amended/substituted by the Finance Act, 1998. The common element was that in all the cases the taxpayers had disposed of various items and goods as scrap, old or obsolete materials. The Department’s case was that such sales were within the scope of s. 3(1). The taxpayers contended that that was not so, since they were only getting rid of what had become, for them, junk and (howsoever valuable the goods may have been when acquired and used) essentially at a throwaway price. In essence, the question was what was meant by the words “in the course or furtherance of” as used in s. 3(1), there being really no dispute that the sales involved were otherwise “taxable supplies” and that the taxpayers were engaged in “taxable activities”. After considering the matter, it was concluded (see para 24 at pg. 534)

that the sales were indeed within the scope of the words “in the course or furtherance of”, i.e., not only did the first and third elements exist but so did the necessary linkage between them to complete the taxing event. It will be seen that the facts and circumstances of the case were quite different from those at hand. The decision is clearly distinguishable. Two further points may be made. Firstly, the goods involved were specific, particular and identifiable as such. Here, as noted, that is patently not the case; there was only the crude oil and the processes of decanting and desalting. Secondly, although the learned author Judge of both *Sheikhoo Sugar* and *Sanghar Sugar* was the same, no mention or reference was made in the latter to the former. This again confirms that the fact-situations involved were entirely different. In our view, *Sanghar Sugar* being even further removed from the present facts and circumstances did not provide any useful basis for determining the issue at hand. With respect, the learned High Court erred materially in relying on the decision.

18. In view of the foregoing analysis and discussion we conclude that the question posed in para 4 above ought to be answered in the negative, in favor of the petitioner and against the Department. It is so held and declared.

19. Accordingly, this leave petition is converted into an appeal and allowed. The impugned judgment of the learned High Court and the decision of the learned Appellate Tribunal are set aside. There will be no order as to costs.

Sd/-
Judge

Sd/-
Judge

Sd/-
Judge

Announced in Court at Islamabad on the 12th day of November 2026

Sd/-
Judge

Approved for reporting