HASCOL PETROLEUM LIMITED

August 7, 2019

The General Manager
Pakistan Stock Exchange Limited
Stock Exchange Building,
Stock Exchange Road
Karachi

Dear Sir,

Re: Material Information - Sales Tax Appeal under Section 45-B of the Sales Tax Act 1990 decided in favour of the Company

Further to the Company's announcements to the Exchange vide letter dated 30th April 2019, and 3rd May 2019 we are pleased to notify that the Commissioner Inland Revenue (Appeals-I) Karachi vide Order dated 31-7-2019 (communicated to the Company today) has allowed the Company's appeal and **held that since the action of the learned officer (Inland Revenue) is totally based on assumption and presumption, lack of reasoning and short of evidence regarding allegation of issuance of fake invoice, the impugned Order In Original dated 26-4-2019 passed by the Deputy Commissioner Inland Revenue is not sustainable in the eyes of law hence directed to be annulled.** A copy of the Order is attached herewith.

You may please inform the TRE Certificate holders of the Exchange.

Yours truly,

Zeeshan Ul Haq
General Manager Legal &
Company Secretary

Copy to:
The Securities & Exchange Commission of Pakistan, Islamabad

Encl: Order dated 31-7-2019 of the Commissioner Inland Revenue (Appeals-I) Karachi, FBR.

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OFFICE OF THE
COMMISSIONER INLAND REVENUE
(APPEALS-I), KARACHI

ORDER NO. **STA/540/LTU/2019** 12 **Dated:** 31-7-2019

PASSED BY:- **SAJJAD AKBAR KHAN**
Commissioner Inland Revenue
(Appeals-I), Karachi

1. Case No. **ACIR/E&C-02/Zone-III/LTU/2018-19 dated 28.02.2019**

2. Date of Institution of Appeal **27.05.2019**

3. (i) This copy is granted free of charge for the private use of the person to whom it is issued.

(ii) An appeal against the order lies to the Appellate Tribunal, Inland Revenue, Karachi, sixty days from the date of receipt of this order. An appeal should bear a court Fee stamp of Rs.1000/- (Rupees one thousand) only as prescribed under scheduled - II item 22 of the Court Fee Act, 1870 and must be accompanied by a copy of this order.

(iii) An extra copy of appeal, if filed, should simultaneously be sent to this office for information and record.

(iv) If an appeal is filed, the appellant should state whether he desires to be heard in person or through an advocate.

Subject: **Appeal U/S 45-B OF THE SALES TAX ACT, 1990.**

4.	Appellant Name &	:	**M/s. Hascol Petroleum Ltd.,** Suit No. 101, 104 & 105 G-20, The Forum Khayaban-e-Jami, Clifton, Karachi
5.	STR No.	:	12-00-2710-183-73
6.	Tax Periods	:	July-2016 to December-2018
7.	Respondents	:	CIR Zone III, LTU, Karachi
8.	Date of Hearing	:	08.07.2019
9.	Date Judgement	:	31-7-19
10.	Present	:	Mr. Ahsan Laliwala

OFFICE OF THE COMMISSIONER INLAND REVENUE

ORDER

1. This appeal is filed against the Order-In-Original No.58/P-58/2018-19 dated 26.04.2019 passed by the Deputy Commissioner Inland Revenue, E&C Unit-02, Zone-III, LTU, Karachi. The grounds taken by the appellant are as under:-

1. *That the order passed by the Learned Deputy Commissioner Inland Revenue (DCIR) Enforcement and Collection Unit-02, Zone-III, Large Taxpayers Unit, Karachi is bad in law and against the facts of the case.*

Absence of provision for delegation of powers under Sales Tax law

2. *That the learned DCIR erred to issued OIO under section 11 of the Sales Tax Act, 1990 without having legal jurisdiction; whereas jurisdiction for this purpose is only available to Commissioner and that too without delegation powers.*

   (Ref: Honorable High Court of Lahore reference W.P. 37295 of 2016 and Honorable High Court of Islamabad reference 2016 PTD 2332)

Tax Periods Already Assessed

3. *The Learned DCIR erred not to appreciate the fact that the assessments for the aforesaid Tax Periods have already been made and without any provision in the Sales Tax Act, 1990 there cannot be more than one assessment for the same tax period.*

   Without prejudice to the above, the learned Officer failed to acknowledge that once input tax claim made by the appellant have already been assessed and approved through various orders, it can not be re-opened through another notice being merely change of opinion as well as disturbing past and closed transaction.

Violation of Section 3, 3(1A), 7, 8, 22, 23, 26 and 73 of the Sales Tax Act, 1190.

4. *That the learned DCIR has erred to conclude that the Company has made violation of Section 3, 3(1A), 7, 8, 22, 23, 26 and 73 of the Sales Tax Act, 1990.*

No further Tax on POL Products excluding Lubricants

5. *That learned officer erred to allege the default of further tax on whole supply of the POL products made by the Company in utter disregard to the provisions of SRO 648(I)/2013 dated 9th July, 2013 wherein Motor Spirit, diesel Oil, jet Oil, Kersine Oil and Fuel Oil are excluded from the levy of Further Tax.*

Further Tax Properly Charged to Lubricant Products

6. *Without prejudice to the above, the learned DCIR erred to appreciate the fact that the Company has duly charged and deposited further tax on the applicable product i.e. Lubricants to unregistered persons in accordance with the provisions of the Sales Tax Act, 1990.*

No instance of flying invoice

7. *The learned DCIR erred to allege that the flying tax invoices have been issued by the company without providing even the single instance of it.*

Without prejudice to the above, the learned DCIR failed to appreciate that the disclosure of the sales in its own name by the company in Annexure C is only due to practical limitations on sale at COCO pumps/sites (company owned and company operated).

No Loss to the Government Treasury

8. *The learned DCIR failed to appreciate that mere reporting of sales in its own name by company due to practical limitations did not result in the loss of revenue in Government Treasury as all the applicable sales taxes were in fact deposited to the treasury in advance.*

Non consideration of whole industry practice

9. *That the learned DCIR erred to not to appreciate that subject practice of reported of sales at COCO sites in its own name is universally adopted throughout Pakistan by all the petroleum distribution companies.*

Alleged default without product bifurcation

10. *The Learned DCIR erred to base his allegations of short paid tax without bifurcating the monthly figures into product specific sales value and applicable tax rate and tax amount' whereas different rates were in force during those tax periods for different POL products.*

Penalty and Default Surcharge

11. *That the learned officer failed to appreciate that besides the principle amount; Penalty under section 33 and default surcharge under section 34 are also recoverable in the instant situation without appreciating the facts and legal aspect and presence of genuine issue of interpretation of law.*

12. *That the learned officer failed to appreciate that besides the principal amount; Penalty under section 33 and default surcharge under section 34 are also recoverable in the instant situation without appreciating the absence of menas rea on part of appellant.*

2. Brief facts of the case are that the appellant is public limited company and engaged in the business as Importer/Exporter/ Distributor/Wholesaler and dealing in the supplies and distribution of petroleum products. During scrutiny/analysis of Sales Tax returns for the tax periods July-2016 to December-2018 it was revealed that appellant had declared sales in the name of M/s. Hascol Petroleum Ltd by issuing flying invoices to conceal further tax on supplies of lubricants and other related items. Discrepancies were accordingly confronted through show cause notice 28.02.2019, in response to which, the learned AR submitted reply which was not found satisfactory. After examining the available

record, facts and legal position the impugned order was passed. The appellant being aggrieved of the OIO filed the instant appeal.

3. Call notices were issued to both sides. None appeared from department`s side. While Mr. Ahsan Laliwala, AR attended and argued the case. Arguments of the learned AR and my findings on the issues are detailed as under:-

3.1 The learned AR argued that the order-in-original passed in the instant situation is illegal for want of jurisdiction. The jurisdiction in this case is exclusively provided by the Federal Board of Revenue to the Commissioner Zone III, LTU; while the order under consideration is passed by the learned DCIR Karachi. The order passed by learned DCIR is *void ab initio* because he does not have legal jurisdiction to exercise powers of adjudication; because:

a) None of the provision of the Sales Tax Act, 1990 grants powers to the Commissioner to make further delegation. (unlike section 210 of the Income Tax Ordinance, 2001).

b) Once the delegation order is made by the FBR (as cited above) the delegate i.e. Commissioner cannot further delegate jurisdiction; unless provided in the law or jurisdiction order.

c) There is difference between 'powers', 'jurisdiction' and 'functions'; directing to do specific function does not cover granting power or jurisdiction to subordinate officer.

Reliance was placed on the decisions of the two Honorable High Courts in W.P No. 37295 and 2016 PTD 2332.

4. I have considered the objection on this issue of jurisdiction/power to issue notice u/s 11 by the learned DCIR and found untenable, as

section 32 of the Act clearly provides for delegations of powers enshrined upon the Commissioner Inland Revenue to the Deputy Commissioner Inland Revenue. Further, that the decision relied upon by the learned AR of the honorable Lahore High Court was issued by relying on the decision of Islamabad High Court referred to as 2016 PTD 1675 which was of Single Member Bench and whose operation was suspended by the Hon'ble High Court in intra court appeal. Further, that the Appellate Tribunal Peshawar bench had also not followed said judgment on that basis. In view of above stated facts, the legal grounds raised challenging authority of the learned DCIR to issue notice u/s.11 of the Sales Tax Act, 1990 held to be not sustainable hence rejected.

4.1 I have however further noted that these case laws are even otherwise not applicable to the facts of the present case being falling under jurisdiction of LTU, Karachi. It is important to mention here that the FBR had issued Jurisdiction Order C.No. 57(2) Jurisdiction(2)/2011-Vol-IV-50407-R dated 07.04.2012 assigning jurisdiction to the commissioners of Large Taxpayers Unit, Karachi. This order is available on the website of the Board www.fbr.gov.pk. Examination of the order shows that the Board has in Column (3) relating to powers and functions directed that "The Commissioner Inland Revenue shall exercise powers and functions as assigned in provision of Sales Tax Act, 1990 and Rules thereunder". The jurisdiction order does not assign powers and functions under section 11 to the Commissioner Inland Revenue as was the case in above-mentioned judgments. Therefore, the ratio of these judgments cannot be applied to the case at hand. The appeal fails on this issue.

5. The learned AR next contented that the learned officer failed to consider the fact that impugned order issued was pertaining to tax periods July-2016 to December-2018 whereas OIO No.10/39/2018 for tax periods July-2016 to December-2016 and OIO Ni.Nil/2018 for tax periods

January-2017 to December-2017 were already passed which were also appealed. Hence, transaction pertaining to these periods attained finality and it could not be reopened or changed without express provision of law. On perusal of record the contention of the appellant seems to be justified. Since, for major portion of tax periods i.e. July-2016 to Decmeber-2017 the department had already issued orders-in-original, therefore impugned order passed for tax periods July-2016 to December-2018 is not liable to sustain on this legal issue only.

5.1 However, on perusal of OIO it transpires that it involves sole issue of issuance of sales tax invoice by the appellant on its own name/NTN. The learned officer attributed such act of issuance of sales tax invoice by the appellant in own name as issuance invoice against actual sales made to un-registered person to avoid payment of further tax. The learned officer is found to have no supporting evidence to substantiate his stance except those invoices.

5.2 On the other hand the learned AR's contention is considered and found it carries weight. The contention of the learned AR that the appellant is engaged in POL products which were excluded from purview of levy of further tax through entry No.3 of SRO 648(I)/2013 dated 09.07.2013 except lubricant on which appellant had duly charged further tax on supply to un-registered person. The learned AR furnished evidence in shape of monthly sales tax return filed where further tax as applicable were mentioned as duly paid. Further, that the appellant is running more than two hundred pumps across the country and Azad Kashmir and according to the learned AR such self name sales tax invoices were issued due to practical limitation based on industry practice whereby supply through owned outlets is invoiced in the name of company is also with consideration. Hence, appellant had not issued any flying invoices and such allegation is also principally incorrect on the gourd that the no input sales tax was claimed by the appellant in respect of those invoices. But the learned officer rejected these contentions of the learned AR just mentioning that the reply submitted was found unsatisfactory and not tenable due to reason that appellant had failed to provide any plausible reason/evidence. The learned officer failed to mention as to how and why reply of appellant was found by him as unsatisfactory and untenable and what sort of evidence and reason he required for acceptance of the appellant's assertion. Furthermore, the learned officer also failed to give any reason as to how and under what circumstances he treated the entire amount of sales declared through self named invoices pertaining to items whereon further tax was not applicable on its supply to unregistered person. The impugned order is silent on all these aspects where the learned officer rebutted the contention of the appellant through such stock phrase. Since the action of the learned officer is totally based on assumption and presumption, lack of reasoning and short of evidence regarding allegation of issuance of fake invoice, therefore in these circumstances I have no other option but to hold that the impugned OIO is not sustainable in the eyes of law due to aforementioned facts, hence directed to be annulled.

The appeal is disposed off as indicated above.

Sd

(SAJJAD AKBAR KHAN)
COMMISSIONER INLAND REVENUE
APPEALS-I, KARACHI

Copy to: -

1. The CIR (Zone-III), LTU, Karachi.
2. The Appellant.

(SAJJAD AKBAR KHAN)
COMMISSIONER INLAND REVENUE
APPEALS-I, KARACHI