

ORDER SHEET
LAHORE HIGH COURT,
MULTAN BENCH, MULTAN.
JUDICIAL DEPARTMENT

W.P. No. 15377 of 2024

Reliance Weaving Mills Limited
versus

Federal Board of Revenue (FBR) through Chairman, etc.

Sr. No. of order/ proceedings	Date of order/ Proceeding	Order with signature of Judge, and that of Parties' counsel, where necessary
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15.11.2024 M/s Tanveer Hussain Ansari and Abdul Sattar, Advocates for petitioner.
Malik Muhammad Bakhsh Khakhi, Assistant Advocate General, Punjab.
Mr. Kashif Nadeem Malik, Assistant Attorney General for Pakistan.

Through this constitution petition, the petitioner Reliance Weaving Mills Limited ('petitioner') seeks suspension of recovery notices issued by the Deputy Commissioner Inland Revenue, Multan/Respondent No.2 ('DCIR') raising demand for recovery of Sales Tax during the pendency of Sales Tax Reference (STR No.93/2024) filed before this Court by the petitioner under Section 47 of the Sales Tax Act, 1990. The following prayer has been made:-

"It is therefore respectfully that the instant writ petition may graciously be accepted and the notice dated 20-08-2024 alongwith other notices dated 13-11-2024 issued by the respondent No.2 may kindly be set aside/ cancelled till the final decision of STR (Sales Tax Reference) pending before this Hon'ble Court, in the supreme interest of justice.

It is further prayed that till the decision of main STR the operation and proceedings on the impugned notices may also be stayed/suspended.

Any other relief, which this August Court may deems fit in the interest of justice may also be granted to the petitioner."

2. The petitioner is a Public Limited Company incorporated under the Companies Ordinance, 1984 (Now the Companies Act, 2017). The company is

principally engaged in the business of textile Manufacture, Export and Local Sales of Yarn and Fabric. The petitioner on 27.06.2024 filed Sales Tax Reference No.93/2024 before this Court to challenge the Order in Appeal No. 31/2023 dated 22.12.2022 passed by the Commissioner Inland Revenue (Appeals-II), Multan, stated to be served through registered post on 22.05.2024, upholding the Order in Original No.02 of 2022-23 passed on 06.07.2022 by the Assistant Commissioner Inland Revenue, Unit No.03, Audit-II, Large Tax Payers Office Multan whereby demand of Sales Tax for Rs.39,360,490/- was established and raised against the petitioner.

3. It is claimed that the said Sales Tax Reference is still pending before this Court and respondent No.2 due to grudge of filing of STR, has sent notice dated 20.08.2024 for recovery under Section 48 of the Sales Tax Act, 1990 to the concerned Inland Revenue and Customs Authorities with the direction to deduct the aforesaid amount from money owing to the petitioner, which may be under the control of respective authorities; and the Government dues so recovered should be sent to the said respondent immediately for payment to the government treasury. The operative portion is of said notice is reproduced below:-

“No. 41

Dated 20.08.2024

Subject: Notice for recovery under section 48 of the Sales Tax Act, 1990.

Whereas, Government dues amount to Rs.39,360,490/- as Sales Tax and default surcharge is recoverable from M/s Reliance Weaving Mills Limited, on account of Order-in-Original No. 02/2022-23 dated 06.07.2022 bearing NTN: 0133480.

Now, therefore, in exercise of the powers conferred by clause (a) of sub-section (1) of section 48 of the Sales Tax Act, 1990, I do hereby require all Customs, Federal Excise,

Sales Tax and Income Tax Authorities that with immediate effect and till further orders:-

- i. *To deduct the aforesaid amount from any money owing to the said registered person, which may be under the control of respective authorities; and*
- ii. *The Government dues so recovered should be sent to the undersigned immediately.”*

4. The said notice was followed by other notices all dated 13-11-2024 addressed to various banks where petitioner has its accounts. The operative portion of one such notice is reproduced below:-

“No. 120

Dated: 13-11-2024

*The Manager Operation,
Habib Metropolitan Bank Limited,
Multan Branch, Multan.*

ACCOUNT NO. 6281081771417167 AND ANY OTHER BANK
ACCOUNTS MAINTAINED BY THE TAXPAYER,

SUBJECT: NOTICE UNDER SECTION 48 OF THE SALES TAX
ACT, 1990 - RECOVERY OF SALES TAX DEMAND,
PENALTY AND DEFAULT SURCHARGE
AMOUNTING TO RS. 56,875,908/- AGAINST
ORDER IN ORIGINAL NO. 02/2022 DATED
05.07.2022 IN THE CASE OF M/S RELIANCE
WEAVING MILLS LIMITED - NTN 0133480-8.

Refer to the subject cited above.

As per this office record, sales tax demand of Rs. 56,875,908/- is outstanding against the subject mentioned tax defaulter.

You are therefore requested to attach all types of bank accounts (i.e personal, joint, business, foreign currency account) and investments being maintained by the aforementioned tax defaulter in branches of your bank and remit FORTHWITH a pay order of Rs.56,875,908/- in favour of the undersigned (please don't enter the amount in paisas as State Bank raises objection on the same) for payment to the government treasury under sales tax head of account and also provide bank statement from 1" October, 2024 to date. The undersigned shall be highly indebted for your expeditious response in this matter.”

5. The afore-referred notices have been challenged through this Constitution petition seeking suspension of recovery notices/proceedings during pendency of the afore-referred STR.

6. The question under consideration of this Court is as to whether this Court while exercising its Constitutional jurisdiction should stay the recovery

notices issued to the petitioner during the pendency of Sales Tax Reference before this Court, which ought to be heard by a Bench comprising of not less than two judges of this Court i.e. at least a Division Bench of this Court in terms of Section 47 of the Sales Tax Act, 1990.

7. It is not disputed that access to justice is a fundamental right and an essential feature of the said right is that there should be adjudication of grievance by an independent Tribunal before a person can be proceeded against under the law as laid down by the Hon'ble Supreme Court of Pakistan in case titled *Mehram Ali and others v. Federation of Pakistan and others* (**PLD 1998 SC 1445**) and in the case titled *Jawad S. Khawaja and another v. Federation of Pakistan and others* (**PLD 2024 SC 337**) while considering Scope and essential ingredients of right of fair trial in reference to Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 "**the Constitution**" it has been held that basic ingredients for a fair trial in the light of Article 10-A of the Constitution are that there should be an independent, impartial court, a fair and public hearing, right of counsel, right to information of the offence charged for with an opportunity to cross examine witnesses and an opportunity to produce evidence. It also includes the right to a reasoned judgment and finally the remedy of appeal. Hence, the ultimate objective is to ensure fairness in the process and proceedings and fairness itself being an evolving concept cannot be confined to any definition or frozen at any moment, with certain fundamentals which operate as constants. Independence of the decision maker and their impartiality is one such constant. A reasoned judgment before a judicial forum is another constant

without which the right of fair trial would become meaningless. Right of an independent forum of appeal is another relevant constant which ensures fair trial.

8. It is also pertinent to mention here that the law laid down in a case titled Central Board of Revenue and others versus Chanda Motors (1993 SCMR 39) is that Assessment Orders as such do not have touch of finality unless all the forums are exhausted in which such orders can be challenged, so that the orders take the shape of final decisions. Order of Assessment passed by Income Tax Officer is an order of original authority but is not final for the reason that it can be challenged in appeal or revision, as the case may be, and would be final only when it goes through all the forums and finding of the last forum shall be binding as conclusive. Legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding. When an appeal is filed against an Assessment Order before the Appellate Authority, the assessment is thrown open and the appellate proceedings constitute a continuation of the assessment proceedings. The legislature when it provides a hierarchy of tribunals for the determination of a dispute is really providing one complete procedure for such determination, proceedings before different tribunals being only steps in this procedure. Order passed in original proceedings is not final unless it crosses all the forums set up under that law in which it can be challenged and the order of the last forum would become final.

9. This Court and other High Courts in numerous judgments relating to recovery of tax, where either stay was not granted or had expired due to efflux of

maximum time provided by the statute for which time a forum can grant interim relief, have held that an assessee is entitled to adjudication in respect of his disputed tax liabilities by at least one independent forum outside hierarchy of the respondent department and the appellate tribunal in taxation matters is the first independent forum in terms of principles laid down in judgments reported as Caltex Oil (Pakistan) Ltd. versus Collector, Central Excise and Sales Tax and others (2005 PTD 480 (Supreme Court) = **2006 SCMR 1519**), Messrs. Islamabad Electric Supply Company Limited v. Additional Commissioner Inland Revenue and other (2024 PTD 30 Islamabad), Pakistan Oil Fields Ltd. through Authorised Attorney and General Manager v. Federation of Pakistan through Secretary Revenue and 2 others (2016 PTD 1590 Islamabad) = **PLD 2016 Islamabad 76**), Messrs. Magna Processing Industries (Pvt.) Ltd., Faisalabad through Chief Executive v. Federation of Pakistan through Secretary and others (2014 PTD 841), Messrs. Niagara Mills (Pvt.) Ltd. through Chief Executive v. Federation of Pakistan through Secretary Revenue, and others (2014 CLD 1253), Messrs Dawood Textile Printing Industries (Pvt.) Ltd., Faisalabad through Chief Executive v. Federation of Pakistan through Secretary, Revenue Division, F.B.R. and others” (2009 PTD 1220).

10. The High Court while directing the said forums i.e. the Appellate Tribunal and appellate forums in the department to adjudicate the matter within specified time frame have passed orders staying the recovery of tax by the department/departmental authorities during the pendency of appeal before the said forums. Reference may be made to the judgment by a Full Bench

of the Sindh High Court titled Messrs. Pak Saudi Fertilizers Ltd. v. Federation of Pakistan and others reported as (2002 PTD 679) where in proceedings for recovery of tax were stayed by the High Court while directing the Income Tax Appellate Tribunal to adjudicate the matter. Similarly, in cases titled Messrs Islamabad Electric Supply Company Limited v. Additional Commissioner Inland Revenue and other" (2024 PTD 30) and Messrs Pakistan Housing Foundation v. The Commissioner Inland Revenue Appeal and others (2022 PTD 1263), the Islamabad High Court stayed proceedings for recovery tax while directing the Additional Commissioner Inland Revenue and Commissioner Inland Revenue (Appeals) to decide the matter pending before them, respectively. This Court in cases titled Messrs Kamal Ltd. through Director v. Federation of Pakistan through Chairman and 2 others (2017 PTD 243), Messrs Magna Processing Industries (Pvt.) Ltd., Faisalabad through Chief Executive v. Federation of Pakistan through Secretary and others (2014 PTD 841), Messrs Niagara Mills (Pvt.) Ltd. through Chief Executive v. Federation of Pakistan through Secretary Revenue, and others (2014 CLD 1253), Messrs Dawood Textile Printing Industries (Pvt.) Ltd., Faisalabad through Chief Executive v. Federation of Pakistan through Secretary, Revenue Division, F.B.R. and others (2009 PTD 1220), Sun-Rise Bottling Company (Pvt.) Ltd. through Chief Executive v. Federation of Pakistan and 4 others (2006 PTD 535), Brothers Engineering (Pvt.) Ltd. v. Appellate Tribunal Sales Tax (2003 PTD 1836) and Z.N. Exports (Pvt.) Ltd. v. Collector of Sales Tax (2003 PTD 1746), directed the Appellate Tribunal to decide the appeal filed by the assessee and stayed recovery proceeding in the mean

while and in cases reported as Agri Force Chemicals v. Federation of Pakistan and others (2016 PTD 1070), Messrs. Aidy Vee & Co. (Pvt.) Ltd. through Director v. Taxation Office of Income Tax, Lahore and 4 others (2009 PTD 1715) and Messrs Ibrahim Fibers Limited through Secretary v. Commissioner of Income Tax (Audit), Large Taxpayer Unit, Lahore and 3 others (2009 PTD 2006), directed the Commissioner Inland Revenue (Appeals) and Commissioner Income Tax (Appeals) to decide the appeal and in the meanwhile granted stay against recovery. However, in none of the above mentioned cases, stay order against recovery of demand of tax was issued by this Court in its constitutional jurisdiction, when the Tax Reference had already been filed before this Court; hence, the aforementioned judgments are distinguishable on the basis of facts of the case especially when the adjudication by an independent forum i.e. the Appellate Tribunal, has already taken place.

11. After an appeal is decided by the Appellate Tribunal, the aggrieved party has a right to approach this Court by filing a reference application to challenge the order passed by the Appellate Tribunal, for which, limitation of 90 days has been provided in the law. Where a right to approach this Court through any remedy provided by law such as appeal, revision, review or reference is available to the party, this Court ordinarily does not entertain the constitution petition against the said order due to availability of the said alternate remedy especially when it is also equally efficacious, which is subject to the exception/power of this Court that this Court can always convert one type of proceeding into another type of proceeding and decide it

itself, subject to the rider that it has jurisdiction over the issue, subject matter of the dispute and if jurisdiction is not vested in this Court to decide then to refer the same to the competent authority, forum, officer or court for its decision on merits. Reliance may be placed on Hafsa Habib Qureshi and others versus Amir Hamza and others (PLD 2024 Supreme Court 780), where it is laid down as under:-

"9. Besides, the High Court has the power to convert and treat one type of proceeding into another type. After doing so, it can proceed to decide the matter itself, provided it has jurisdiction over the issue, or it may remit the matter to the competent authority, forum, or court for a decision on its merits. Reference in this regard may be made to the cases of Muhammad Akram v. DCO, Rahim Yar Khan and others (2017 SCMR 56); Sher Alam Khan v. Abdul Munim and others (PLD 2018 Supreme Court 449); and the Commissioner of Income Tax (Legal) RTO, Abbottabad v. Messrs Ed-Zublin AG Germany and another (2020 SCMR 500)."

12. Reliance in this behalf may also be placed on Muhammad Salman versus Naveed Anjum and others (2021 SCMR 1675) wherein it is provided as under:-

"The power to convert and or treat one kind of proceeding into another is derived from the doctrine of "ex debito justitiae", wherein, the Court owes a debt to the litigant to correct an error in judicial dispensation. This authority is inherently possessed and exercised by the Court not only to advance the cause of justice but also to prevent the injustice. The Superior Courts cannot be barred or restrained to convert one type of proceeding into another and either proceed to decide the matter itself, provided the court itself having jurisdiction over the lis, or may remit the lis to the court/forum of competent jurisdiction for decision on its own merits. The Superior Courts have been treating and/or converting appeal into revisions and vice versa and Constitution Petitions into appeal or revisions."

13. Needless to mention that despite the power vested in this Court to convert this Constitution petition into a reference application/petition, it is not a plausible/feasible option in the present case for the reason that a reference application has already been filed by the

petitioner prior to the filing of this constitution petition and the Division Bench of this Court, that has to hear the said reference application, enjoys full powers to grant relief prayed for by the petitioner.

14. Without prejudice to what has been discussed above, a situation may arise that recovery proceedings are commenced against an assessee before the reference is filed and limitation period for filing reference has still not expired, which necessitates the filing of the constitution petition for redress of grievance for the reason that reference application cannot be immediately filed by the assessee due to circumstances beyond his control, such as, the non-receipt of order of the Appellate Tribunal, which is necessarily to be attached with the reference application, then this Court may in appropriate cases exercise its constitutional jurisdiction to restrain the respondent from taking coercive measures for recovery of the demand raised by the tax authorities and stay the same during the pendency of the limitation period in order to enable the assesee to have resort to remedy available to him under the law i.e. by filing reference before this Court. However, this is not the situation in the present case as no plausible reason or disability has been cited to justify filing of this petition to seek relief as an interim measure.

15. In the present case, STR has already been filed on 27.06.2024, yet it is claimed that the same has not yet been fixed for hearing as the same was filed as a motion case without attaching an urgent form. However, pendency of the same in motion does not deprive the petitioner of the right to file an application for early hearing of the same or an application to seek stay

accompanied by an urgent form. The said application, if filed, is to be fixed before a Division Bench of this Court, for appropriate orders, which would not require more time than required to file a separate constitution petition for the same purpose. However, no attempt has yet been made by the petitioner to get the said matter fixed for hearing by a Division Bench of this Court and the instant Constitution petition has been filed to seek the same relief.

16. In this scenario, the question arises whether this Court should exercise its constitutional jurisdiction to entertain the said grievance or request, it is settled by now that there is no legal impediment in the way of court or tribunal to decide question of its own jurisdiction to entertain and decide a matter. Reliance is placed on Muhammad Salman v. Naveed Anjum and others (2021 SCMR 1675), Government of Punjab v. Sanosh Sultan (PLD 1995 SC 541) and Raunaq Ali v. Chief Settlement Commissioner (PLD 1973 SC 236). Although this Court may in appropriate cases exercise its constitutional jurisdiction despite availability of alternate remedy, yet that jurisdiction is to be exercised by keeping in view the question whether equally efficacious remedy is available to the petitioner or not. In this case, it is apparent from the above mentioned narration of facts that equally efficacious alternate remedy is available to the petitioner which right has also been exercised by the petitioner by filing a reference application before this Court, which is still pending and consequently it would not be appropriate for this Court to exercise constitutional jurisdiction at this stage for the reason that where a thing is required to be done in a particular manner then it should be done in that manner

as required by the statute otherwise such act will be illegal and without jurisdiction. Reliance is placed on Commissioner Inland Revenue, Large Taxpayers Office, Islamabad v. Pakistan Oilfields Ltd., Rawalpindi and others (2024 PTD 1085 (SC) = 2024 SCMR 853).

17. Petitioner has not made any attempt to get his reference application and the stay application fixed for hearing before approaching this Court for redress of grievance through the instant constitution petition. Needless to mention here that proper procedure for exercising of jurisdiction is dependent upon two principles of law that “what can be done directly should not be allowed to be done indirectly” and “what cannot be done directly cannot be done indirectly”. Reliance may be placed on Muhammad Hanif Abbasi v. Imran Khan Niazi and others (PLD 2018 SC 189) and Federal Board of Revenue v. Dewan Salman Fiber Ltd. and others (2023 SCMR 1871).

18. Moreover, this Court in its Constitutional jurisdiction is not in a position to give direction to the learned Division Bench of this Court to entertain and decide the reference application already pending before it for the reason that the same would amount to High Court entertaining constitution petition against itself which jurisdiction has specifically been excluded by Article 199 of the Constitution and High Court cannot exercise its writ jurisdiction against itself. Reliance is placed on Gul Taiz Khan Marwat v. The Registrar, Peshawar High Court, Peshawar and others (PLD 2021 SC 391), Chief Justice of Pakistan Iftikhar Muhammad Chaudhry v. President of Pakistan through Secretary and others (PLD 2010 SC 61), Muhammad Iqbal and others v. Lahore High Court through Registrar and

others (**2010 SCMR 632**) and Muhammad Shafi and another v. Attaullah and others (**1984 SCMR 1124**).

19. Consequently, this petition, at this stage is not entertainable/maintainable due to equally efficacious alternate remedy available to petitioner, under the law. However, it is observed that the petitioner, if advised, in the first instance may avail the said remedy.

20. When this order was announced, the learned counsel for petitioner states that he does not press this petition any further and wants to withdraw the same in order to avail alternate remedy under the law.

21. **Disposed of** accordingly.

(MUZAMIL AKHTAR SHABIR)
JUDGE

KMSubhani

Approved for reporting.