

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No.01 of 2023

M/s Islamabad Electric Supply Company Limited
VS

Federal Board of Revenue through its Chairman, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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03.01.2023. M/s Muhammad Asif Khan and Asad Tayyab Tirmizi, Advocates for the petitioner.

Through the instant Writ Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has sought *inter alia* direction to respondent No.2, to decide its pending appeal alongwith stay application and in the meanwhile restraining respondent No.1 from initiating the recovery proceedings in pursuance of Order in Original No.11/22-23 dated 28.10.2022 for the tax year from July-2018 to June, 2019.

2. Learned counsel for the petitioner submitted that the impugned order is illegal, arbitrary and against the law. It was further contended that initiation of recovery proceedings during the pendency of petitioner's appeal alongwith stay application is against his fundamental rights guaranteed under the Constitution. It was further contended that it is trite law that unless there is adjudication by one independent forum, no recovery proceedings can be initiated against the assessee. In this behalf learned counsel placed reliance on the case titled "*M/s Pak Saudi Fertilizers Ltd. Vs. Federation of Pakistan and*

others" (2002 PTD 679), *"Z.N. Exporters (Pvt.) Ltd Vs. Collector of Sales Tax"* (2003 PTD 1746), *"Brothers Engineering (Pvt.) Ltd Vs. Appellate Tribunal Sales Tax"* (2003 PTD 1836). Learned counsel further contended that delay in decision of the appeal alongwith stay application is not on part of the petitioner, therefore, impugned order dated 28.10.2022 may be suspended and recovery proceedings be stopped till final decision of the appeal by respondent No.2.

3. The submissions made by the learned counsel for the petitioner have substance. In this behalf the Hon'ble Supreme Court of Pakistan in case titled *"Mehram Ali Vs. Federation of Pakistan etc."* (PLD 1998 SC 1445) has specifically held that there should be adjudication of grievance by an independent Tribunal and even Lahore High Court in numerous judgments has 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.

4. In view of the above, the instant Writ Petition is **disposed of** with direction to respondent No.2 to hear and decide the pending appeal of the petitioner alongwith stay application within a period of Ninety (90) days and till then no coercive measures shall be adopted against the petitioner for recovery of disputed tax liability by respondent No.1.

(CHIEF JUSTICE)