

**ORDER SHEET.**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

**Writ Petition No.1781 of 2021**

**Ms. Zeenat Ayesha**  
***Versus***  
**The Federal Board of Revenue, etc**

<b>S. No. of order/ proceedings</b>	<b>Date of order/ Proceedings</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
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**(01)      19.05.2021    Mr. Mamoon Nisar, Advocate.**

The petitioner is aggrieved by order-in-original dated 25.12.2020, whereby a liability in the amount of Rs.3,655,335/- has been created against the petitioner and by notice the recovery notice issued under Section 138 of the Income Tax Ordinance, 2001 dated 08.04.2021.

2. Learned counsel for the petitioner states that an appeal against the order-in-original was filed before the learned Commissioner Appeal alongwith stay application and the learned Commissioner Appeal granted stay which expired on 12.05.2021 and that prior to the expiry of stay a further stay application was submitted on 07.05.2021 but neither the stay application has been fixed for hearing nor the main appeal.

3. The learned counsel relies on Article 10-A of the Constitution and the judgments reported as "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 Textile Mills Ltd. Vs. Federation of Pakistan through Secretary and 3 others" [2003 PTD 2834] and "M/s Pearl Continental Hotel, Lahore through Director Finance and another vs. Customs, Excise and Sales Tax Appellate Tribunal Lahore and another" [2006 PTD 535]* and states that it is settled law that recovery of demand ought not be affected while appeal against the demand along with an application seeking stay of recovery is pending adjudication and has not been decided.

4. The Hon'ble Supreme Court in the case of Mehram Ali & others vs. Federation of Pakistan & others (PLD 1998 SC 1445) held that access to justice is a fundamental right. In the instant case, the adjudication of the appeal has been delayed without any fault of the petitioner. In the case reported as Z.N Exporters (Pvt.) Ltd. vs. Collector Sales Tax (2003 PTD 1746) it was held that an assessee is entitled to adjudication in respect of his disputed liability by at least one independent forum outside the hierarchy of the tax department. This view was reaffirmed in Sun-Rise Bottling Company (Pvt.) Ltd. v. Federation of Pakistan and others (2006 PTD 535) as well as in Karachi Shipyard & Engineering Works Ltd. Karachi v. Addl. Collector Customs, Excise and Sales Tax and 2

others (2006 PTD 2207) and has been followed consistently.

5. In view of the above and the jurisprudence settled by this Court and the Hon'ble Supreme Court serving notice upon the respondents shall serve no purpose. Respondent No.2 is directed to fix the matter and preferably decide the appeal, but at a minimum the pending stay application filed by the petitioner through a speaking order within a period of thirty (30) days from the receipt of this order.

6. The petitioner shall not seek to delay adjudication of the said matter by seeking adjournments and shall facilitate respondent No.2 in expeditious disposal of the application.

7. Meanwhile, the respondents are restrained from affecting recovery of the demand generated through the impugned order-in-original dated 25.12.2020 by coercive measures for a period of seven (07) days after the passage of a speaking order in relation to the stay application pending before respondent No.2.

8. The petition stands disposed of accordingly.

**(BABAR SATTAR)**  
**JUDGE**