

HCJD/C-121
ORDER SHEET
ISLAMABAD HIGH COURT
ISLAMABAD

W.P No. 3830 OF 2014

Dowell Schlumberger (Western).S.A

Versus

Federation of Pakistan, etc

S.No. of order/ Proceeding	Date of hearing	Order with signature of Judge, and that of parties or counsel, where necessary.
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28-05-2018 Mr. Babar Bilal, Advocate for the applicant.
 Mr. Saad M. Hashmi, Advocate for the respondent.

C.M.No.1551 of 2018

The judgment, dated 01-03-2016, passed in W.P.No.3830 of 2014 shows that the learned counsel for the Department had not given consent. However, this Court had rendered the said judgment on the basis of the statutory provisions and the precedent law.

2. The application is misconceived nor maintainable. However, it is disposed of in the light of the above observation.

(ATHAR MINALLAH)
JUDGE

*Asif Mughal/**

HCJD/C-121
JUDGMENT SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

W.P. No.3830/2014

DOWELL SCHLUMBERGER (WESTERN) S.A.
VERSUS
FEDERATION OF PAKISTAN, ETC.

Petitioner by : **M/s. Makhdoom Ali Khan & Saad M. Hashmi, Advocates**
Respondents by : **Mr. Babar Bilal, Advocate**
Date of Hearing : **01-03-2016**

ATHAR MINALLAH J: The petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as the "*Constitution*"). The prayer sought in the instant petition is as follows:-

"It is, therefore, prayed in the interest of justice that this Honourable Court may be pleased to:

- I. Prohibit the Respondents, jointly and severally, from taking any adverse actions or any measures whatsoever for the recovery and/or collection of any amount on the basis of the Impugned Order, CIRA Order and the First, Second and Third Impugned Recovery Notices or otherwise including but not limited to the attachment of the bank accounts of the Petitioner or removing and/or collecting any funds therefrom.***

II. Direct the Respondents to decide the Petitioner's appeal and not to create any further tax demand against the Petitioner until such time as this appeal is finally decided and in case of any adverse order against the Petitioner, until the decision of this Honorable Court in any reference filed before it.

III. Grant such other relief as may be deemed necessary in the circumstances of the case.

IV. Grant costs."

2. The facts, in brief, are that the appeal of the petitioner is pending before the learned Appellate Tribunal Inland Revenue Islamabad Bench, Islamabad (hereinafter referred to as the "***Tribunal***"). The learned Tribunal had granted an injunctive order for 30 days or till the decision of the main appeal whichever is earlier. The said stay order was extended for a further 15 days on 26-02-2014 since the appeal had not been decided. It was then extended for 30 days each time on 13-03-2014, 15-04-2014, 16-05-2014 and 17-06-2014. The learned Tribunal had, therefore, granted stay in respect of recovery of the tax for a total of 165 days. The appeal of the petitioner was heard on 28-05-2014 and the judgment was reserved. The respondent issued recovery notice dated 24-07-2014, followed by a third recovery notice. The petitioner again approached the learned Tribunal and the latter granted an injunctive order for 15 days on 05-08-2014. In the light of Section 34 of the Federal Excise Act, 2005 (hereinafter referred to as the "***Act of 2005***"), Section 46(2) of the Sales Tax Act, 1990 (hereinafter referred to as the "***Act of 1990***") read with Section 2(3) of the Act of 2005 and Section 131 (5) of the Income Tax Ordinance, 2001 (hereinafter referred to as the "***Ordinance of***"),

2001”) the learned Tribunal cannot grant a stay for a period of more than 180 days in aggregate. The petitioner had, therefore, invoked the jurisdiction of this Court under Article 199 of the Constitution.

3. At the very outset, the learned counsel appearing on behalf of the petitioner has contended that the learned Tribunal is yet to be constituted pursuant to judgment rendered by this Court dated 24-02-2016 in W.P.No.3414 of 2011 titled “Pakistan Oil Field Limited vs. Federation of Pakistan and others”. The learned counsel has further argued that the period of limitation for the purposes of a stay granted by the learned Appellate Tribunal is directory in nature. In the instant case the judgment was reserved by the learned Tribunal on 28-05-2014 and has not been announced as yet. It has, therefore, been urged that the petitioner is not at fault and, therefore, cannot be made to suffer in the circumstances. The learned counsel has, therefore, suggested that the instant petition could be disposed of with the direction that the recovery be stayed till a decision has been rendered by the learned Tribunal.

4. When confronted with the above, the learned counsel for the department has also not opposed the suggestion made by the learned counsel for the petitioner. Moreover, from a plain reading of Section 131(5) of the Ordinance of 2001 it obviously appears that the time specified for the validity of an order passed in relation to the stay of recovery of the tax is directory in nature. It would give rise to an anomaly if the provision is interpreted in a manner that on the one hand the learned Tribunal has been empowered to grant the stay after forming an opinion to the effect that the recovery shall cause

hardship and on the other hand for the legislature to have intended that the taxpayer is exposed to the rigours of hardship merely because the appeal was not decided within a specified period and that too without any fault on part of the appellant. It is settled principle of interpretation of a statutory provision that absurdity cannot be attributed to the legislature. It has been consistently held by the august Supreme Court that the determination, whether a provision is mandatory or directory, largely depends upon the “intention and language in which the provision is couched.” It is, however, settled law that “where the consequence of failure to comply with the provision is not mentioned the provision is directory and where the consequence is expressly mentioned the provision is mandatory.” Reliance is placed on “Malik Umar Aslam vs. Mrs. Sumaira Malik and others”, **2014 SCMR 45**, “Maulana Nur-ul-Haq vs. Ibrahim Khalil”, **2000 SCMR 1305** “Ghulam Hassan vs. Jamshaid Ali and others” **2001 SCMR 1001**, “Human Rights Cases Nos.4668 of 2006, 1111 of 2007 and 15283-G of 2010”, **PLD 2010 SC 759**. In the instant case, the provision is couched in such language which renders the provision as directory and not mandatory. As already noted above, the legislature could not have intended to cause undue hardship to a taxpayer. A reasonable interpretation of Section 131 (5) obviously would be that the time specified therein is directory and, therefore, if the appeal is not decided within the said period, the stay would continue till the disposal or decision of the appeal unless expressly recalled by the learned Tribunal. Any other interpretation would defeat the legislative intent of protecting a taxpayer against undue hardship.

5. In the light of the above, the stay granted by the learned Tribunal shall continue to remain effective till the disposal/decision of the appeal unless expressly recalled after affording an opportunity of hearing. It is,

however, expected that the learned Tribunal would decide the appeal expeditiously.

6. The petition is, therefore, disposed of in the above terms.

(ATHAR MIN~~A~~LLAH)
JUDGE

*Asif Mughal/