

Form No: HCJD/C-121.

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No. 45 of 2021

M/s Khan Enterprises

Vs

Assistant Commissioner Inland Revenue, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
---	---	--

11-01-2021. Raja M. Shafqat Khan, Advocate for the petitioner.

The petitioner has impugned notice of demand dated 30.09.2020 issued under section 137(2) of the Income Tax Ordinance, 2001.

2. The learned counsel states that the appeal against the said demand notice has been filed along with the stay application, which is pending before respondent No.2. The learned counsel further states that the petitioner has also filed an application for condonation of delay and that the impugned order was issued ex-parte and was not in the knowledge of the petitioner. The learned counsel further states that the petitioner apprehends that during the pendency of the said application the respondents may wish to proceed for recovery of demand generated through the impugned notice of demand.

3. The learned counsel relies on Article 10-A of the Constitution and the judgments reported as "M/s Pak Fertilizers Ltd. Vs. Federation of Pakistan and others" [2002 PTD 679], "Z.N Exporters (Pvt.) Ltd. vs. Collector of Sales Tax" [2003 PTD 1836], "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" [2005 PTD 535] and states that it is settled law that recovery of demand ought not to be affected while appeal against the demand along with an application seeking stay of recovery is pending adjudication and has not been decided.

4. 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 and application for condonation of delay filed by the petitioner through a speaking order within a period of sixty (60) days from the receipt of this order.

5. 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.

6. Meanwhile, the respondents are restrained from affecting recovery of the demanded generated through the impugned notice dated 30.09.2020, till a period of seven (07) days has elapsed after the passage of a speaking order in relation to the applications pending before respondent No.2.

7. The petition stands disposed of accordingly.

(BABAR SATTAR)
JUDGE