

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

W.P. No.693 of 2020  
Fauji Fertilizer Company Limited  
Versus  
The Federal Board of Revenue and others

| 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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| 02.03.2020 | Syed Hasnain Ibrahim Kazmi, Advocate for the petitioner. |  |
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Through the instant writ petition, the petitioner, Fauji Fertilizer Company Limited, seeks a restraint against the respondents from recovering the impugned tax liability until the decision on the petitioner's appeal/stay application, which is pending adjudication before Appellate Tribunal Inland Revenue ("A.T.I.R.").

2. The record shows that vide assessment order dated 13.09.2019, a demand for an amount of Rs.3,030,049,853/- was raised against the petitioner by Additional Commissioner, Inland Revenue in terms of Section 122(5A) of the Income Tax Ordinance, 2001 ("the 2001 Ordinance") pertaining to the Tax Year 2018. On 11.10.2019, the petitioner filed an appeal before respondent No.5. Vide order dated 14.12.2019, respondent No.5 disposed of the said appeal and as a result the issue as regards disallowing the adjustment of refunds for earlier years by the Assessing Officer was remanded to the Assessing Officer. Subsequently, the petitioner filed an application for grant of stay before respondent No.5. Respondent No.5, vide order dated 24.02.2020, rejected the said application. Against the said order, the petitioner filed an appeal along with stay application before the A.T.I.R. The said appeal and stay application are still pending adjudication before the said respondent.

3. Learned counsel for the petitioner submits that even though the petitioner's appeal and stay application are still pending adjudication before the A.T.I.R., but the

petitioner has an apprehension that the respondent department may initiate recovery proceedings on the basis of recovery notice dated 25.02.2020; that fearing the adoption of coercive measures during the pendency of the petitioner's appeal and stay application before the A.T.I.R., the petitioner has invoked the Constitutional jurisdiction of this Court to obtain a reprieve, as a stopgap measure, against the recovery of the disputed tax liability; and that if the interim reprieve is not granted, the petitioner shall be subjected to coercive measures.

4. Consistent with the order dated 18.04.2016, passed by this Court in W.P. No.1367/2016 and by following the law laid down in the cases of M/s Pak Saudi Fertilizers Ltd Vs. Federation of Pakistan & 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) and Mehram Ali Vs. Federation of Pakistan etc (PLD 1988 SC 1445), I am inclined to dispose of this petition, without the necessity of issuing notice to the respondents, with the direction to the A.T.I.R. to decide the petitioner's stay application expeditiously, and preferably within a period of two weeks from today. Until the decision on the petitioner's said stay application, the respondent department is directed to restrain from adopting coercive measures for the recovery of the disputed tax liability. The petitioner is also directed to appear and argue its case before the A.T.I.R. without seeking any adjournment as and when its appeal/stay application is fixed for hearing.

5. Disposed of in the above terms.

(MIANGUL HASSAN AURANGZEB)  
JUDGE