

## **ORDER SHEET.**

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

### **Writ Petition No.4599/2021**

M/s Build Trade Private Limited through its Project Manager.

***Versus***

The Anti-Dumping Appellate Tribunal, Islamabad & others.

<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>
(01)	27.12.2021	Ms. Shazia Malik, Advocate for the petitioner.

The petitioner is aggrieved by notices of final determination dated 19.01.2017, 08.02.2017 and 13.06.2018 (**“Impugned Notices”**) and submits that the said determination suffers from legal infirmity.

2. The learned counsel for the petitioner states that the petitioner had filed a writ petition No.1139-M of 2020 before the learned Peshawar High Court and by order dated 03.11.2020, the said petition was converted into an appeal deemed to be pending before the learned Anti-Dumping Tribunal, Islamabad and was granted Appeal No.414 of 2021. She states that since the conversion of the petition into an appeal pending before the learned Anti-Dumping Tribunal, Islamabad, the appeal has not been fixed and neither the stay application has been decided. She further states that the petitioner apprehends that during the pendency of the stay application

respondent No.2 may wish to proceed for recovery of demand generated through the Impugned Notices. The learned counsel for the petitioner states that it is settled law that a liability created by a department or agency ought to be adjudicated by at least one forum outside the hierarchy of such department or agency before coercive action can be taken to settle such liability. She relies on the judgments **M/s Pak Fertilizers Limited 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 (2005 PTD 535)**.

3. 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 **Z.N Exporters**

**(Pvt.) Ltd.** 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.) Limited vs. Federation of Pakistan and others (2006 PTD 535)** as well as in **Karachi Shipyard & Engineering Works Ltd. Karachi vs. Addl. Collector Customs, Excise and Sales Tax and 2 others (2006 PTD 2207)** and has been followed consistently.

4. In view of the jurisprudence settled by this Court and the Hon'ble Supreme Court a liability created by a department or agency ought to be adjudicated by at least one forum outside the hierarchy of such department or agency before coercive action can be taken to settle such liability. In view of settled law, serving notice upon the respondents shall serve no purpose. Meanwhile, respondent No.2 is restrained from taking coercive action against the petitioner pursuant to the Impugned Notices dated 19.01.2017, 08.02.2017 and 13.06.2018 till such time that either the appeal is decided by respondent No.1 or the stay application filed alongwith the

appeal is decided by respondent No.1,  
whichever is earlier.

5. With the above direction, the instant writ  
petition stands **disposed of**.

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