

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No. 2093/2021

M/s Al Ghurair Giga Pakistan Private Limited.

Versus

The Commissioner Inland Revenue (Appeals-I), Islamabad & others.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
(01)	16.06.2021	Syed Tanseer Bukhari, Advocate for the petitioner.

The petitioner is aggrieved by order-in-original dated 30.06.2020 pursuant to which a demand has been generated under Section 122(5A) of the Income Tax Ordinance, 2001.

2. The learned counsel for the petitioner states that an appeal alongwith a stay application against the order was filed before respondent No.1 on 30.04.2021. However, no order has been passed in relation to the appeal and the stay application has also not been adjudicated so far. 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 order. He further 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. The learned counsel for the petitioner further states that under Rule 76-G (a) of the Income Tax Rules, 2002, promulgated under S.R.O. No.1315 dated 09.12.2020, the Commissioner (Appeals) is under mandatory obligation to fix the stay application on the next date of hearing and dispose of the application within a period of seven days of its fixation, which the Commissioner (Appeals) has not done.

3. The learned counsel for the petitioner 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. Issue notices to the respondents for 05.07.201. Respondent No.5 will file a report

together with data on fixation of appeals and stay applications subsequent to the promulgation of S.R.O. No.1315 dated 09.12.2020 and submit whether or not the amendments introduced in the Income Tax Rules, 2002, for expeditious disposal of stay applications are being complied with by the Commissioners Appeal.

C.M. No. 01/2021

Notice. Meanwhile, the respondents will not affect any recovery pursuant to order-in-original dated 30.06.2020 through coercive means till the next date of hearing.

C.M. No. 02/2021

Exemption sought for is allowed subject to all just and legal exceptions.

**(BABAR SATTAR)
JUDGE**