

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.4133 of 2019
M/s Pakistan Telecommunication Authority
Versus
Deputy Commissioner Inland 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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29.11.2019 Ch. Naeem ul Haq, Advocate for the petitioner

Through the instant writ petition, the petitioner, M/s Pakistan Telecommunication Authority, seeks a restraint against the respondents from recovering the impugned Federal Excise Duty until the decision on the petitioner's appeal which is pending adjudication before respondent No.2 (Appellate Tribunal Inland Revenue).

2. The record shows that vide Order-in-Original dated 20.05.2019, a demand for an amount of Rs.136,001,264/- was raised against the petitioner by respondent No.1 (Deputy Commissioner Inland Revenue) under the provisions of Federal Excise Rules, 2005 ("the 2005 Rules") pertaining to the tax period 01.07.2016 to 30.06.2018. The petitioner challenged the said order dated 20.05.2019 in an appeal before respondent No.3 (Commissioner Inland Revenue). Respondent No.3, vide order dated 18.09.2019, rejected the said appeal. Against the said order, the petitioner filed an appeal before respondent No.2. Along with the said appeal, the petitioner also filed an application for grant of stay. The said appeal along with stay application is still pending adjudication before the said respondent.

3. Learned counsel for the petitioner submits that even though the petitioner's appeal is still pending adjudication before respondent No.2, the petitioner has an apprehension that the respondent department may initiate recovery proceedings on the basis of recovery notice dated 25.11.2019; that fearing the adoption of

coercive measures during the pendency of the petitioner's appeal before respondent No.2, 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 with the observation that until the decision of the petitioner's appeal, the respondent department is directed to restrain from adopting coercive measures for the recovery of the disputed tax liability. The petitioner is directed to appear and argue its case before respondent No.2 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

Qamar Khan*