

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.1888 of 2020
Oracle Systems Pakistan (Private) Limited
Versus
Pakistan through the Secretary, 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.
	15.07.2020	Mr. Saad M. Hashmi, Advocate for the petitioner

Through the instant writ petition, the petitioner, Oracle Systems Pakistan (Private) Limited, seeks the issuance of writ restraining the respondents from recovering the disputed tax liability on the basis of the impugned recovery notice dated 06.07.2020 until the decision on the petitioner's appeal, which is pending adjudication before respondent No.2 (Commissioner Inland Revenue (Appeals-I)).

2. The record shows that vide Order No.01/18, dated 03.06.2020, a demand for an amount of Rs.3,03,058,141/- was raised against the petitioner by respondent No.5 (Deputy Commissioner Inland Revenue) under Section 124 of the Income Tax Ordinance, 2001 (**"the 2001 Ordinance"**) pertaining to the tax year 2013. On the same very day, a demand notice was issued in terms of Section 137(2) of the 2001 Ordinance to the petitioner requiring it to deposit the above-said disputed liability within a period of thirty days. The petitioner challenged the said assessment order and notice of demand in an appeal before respondent No.2. Along with the said appeal, the petitioner also filed an application for grant of stay. Respondent No.2 vide order dated 29.06.2020 rejected the said stay application. Thereafter, the petitioner challenged the said

order in an appeal before respondent No.3 (Appellate Tribunal Inland Revenue). Along with the said appeal, the petitioner also filed an application for grant of stay. Respondent No.3, vide order dated 02.07.2020, dismissed the stay application. However, a direction was issued to the respondent department not to use coercive measures without prior fifteen days' notice.

3. Learned counsel for the petitioner submits that the impugned recovery notice dated 06.07.2020 has been issued by respondent No.5 without lawful authority as the respondent department failed to abide by the direction issued by respondent No.3 in its order dated 02.07.2020, whereby the respondent department was directed not to use coercive measures for the recovery of the disputed tax liability without prior fifteen days' notice; that even though the petitioner's appeal is still pending adjudication before respondent No.2, but the petitioner has an apprehension that the respondent department may initiate recovery proceedings on the basis of the impugned recovery notice dated 06.07.2020; 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 and 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 respondent No.2 to decide the petitioner's appeal expeditiously, and preferably within a period of 60 days from today. Until the decision on the petitioner's appeal, the respondent department is restrained from adopting coercive measures for the recovery of the disputed tax liability. Furthermore, the respondent department is also directed not to adopt coercive measures for seven days after the decision of the petitioner's appeal by respondent No.2 in case the petitioner's said appeal is dismissed. The petitioner is directed to appear and argue its case before respondent No.2 without seeking any adjournment as and when its appeal is fixed for hearing.

5. Disposed of in the above terms.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

Qamar Khan*