

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.3667/2019

M/s Fauji Fertilizer Bin Qasim Limited

Versus

Federation of Pakistan through Chairman, 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.
-------------------------------------	-------------------------------	--

**23.10.2019 Mr. Ayyaz Shaukat and Malik Sardar Khan, Advocates
for the petitioner**

Through the instant writ petition, the petitioner, M/s Fauji Fertilizer Bin Qasim Limited, seeks issuance of a writ declaring the impugned order dated 30.06.2019 and notice of demand dated 30.06.2019 passed/issued by respondent No.2 (Additional Commissioner Inland Revenue), to be illegal and without lawful authority. Furthermore, the petitioner seeks a restraint against the respondents from recovering the impugned tax liability until the decision on the petitioner's appeal which is pending adjudication before respondent No.3 (Commissioner (Appeals-I) Large Taxpayer Unit).

2. The record shows that vide order dated 30.06.2019, a demand for an amount of Rs.7,14,864,195/- was raised against the petitioner by respondent No.2 in terms of Section 122(5A) of the Income Tax Ordinance, 2001 ("the 2001 Ordinance") pertaining to the Tax Year 2013. On the same very day, a notice of demand was issued to the petitioner directing it to make the payment of the above-said disputed tax liability within a period of thirty days. The petitioner challenged the said order dated 30.06.2019 in an appeal before respondent No.3. Along with the said appeal, the petitioner also filed an application for grant of stay. Respondent No.3, vide order dated 21.10.2019, rejected the said stay application whereas

the main appeal 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.3, the petitioner has an apprehension that the respondent department may initiate recovery proceedings on the basis of impugned notice of demand; that fearing the adoption of coercive measures during the pendency of the petitioner's appeal before respondent No.3, 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 on 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.3 without seeking any adjournment as and when the appeal is fixed.

5. Disposed of in the above terms.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan*