

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No.528/2022

M/s MAC Associates through Sole Proprietor & 34 others.

Versus

Federation of Pakistan through Secretary, Ministry of Commerce,
Islamabad & 07 others.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
(01)	16.02.2022	Syed Usman Shah, Advocate for the petitioners.

The petitioners are aggrieved by final determination dated 25.01.2022 and instructions dated 17.07.2020 and submit that the said determination suffers from legal infirmity.

2. The learned counsel for the petitioners states that an appeal alongwith a stay application against the impugned final determination was filed before respondent No.2 on 14.02.2022. However, no order has been passed in relation to the appeal and the stay application has also not been adjudicated so far. He further states that the impugned instructions dated 17.07.2020 have been issued by respondent No.8 to the petitioners for recovery of demand generated through the impugned determination. The learned counsel for the petitioners 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. He 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.8 is restrained from taking coercive action against the petitioners pursuant to the impugned final determination dated 25.01.2022 and the impugned instructions dated 17.07.2020 till such time that either the appeal is decided by respondent No.2 or the stay application filed alongwith the appeal is decided by it, whichever is earlier.

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

(BABAR SATTAR)
JUDGE