

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.2778/2019

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.
-------------------------------	----------------------------	---

29.07.2019 Ch. Naeem ul Haq, Advocate for the petitioner

Through the instant writ petition, the petitioner, M/s Pakistan Telecommunication Authority, seeks issuance of a writ directing respondent No.1 (Deputy Commissioner Inland Revenue) not to issue any recovery notice under Section 48 of the Sales Tax Act, 1990 ("the 1990 Act"). 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.2 (Commissioner Inland Revenue (Appeals-I)).

2. The record shows that vide Order-in-Original dated 20.05.2019, a demand for an amount of Rs.7,791,129,376/- was raised against the petitioner by respondent No.1 under the provisions of Federal Excise Act, 2005 ("the 2005 Act") 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.2 on 20.06.2019. Along with the said appeal, the petitioner also filed an application for grant of stay. Respondent No.2, vide its order dated 24.06.2019, rejected the stay application, whereas the main appeal is still pending adjudication before the said respondent. Subsequently, the petitioner filed an interim appeal along with stay application before respondent No.4 (Appellate Tribunal Inland Revenue) on

03.07.2019. Respondent No.4, vide its order dated 03.07.2019, disposed of the said appeal and stay application with the direction to the respondent department *“to not initiate any recovery proceedings unless the prior notice is issued at least 15 days before the recovery, if any. However, the learned CIR(A) is directed to decide the appeal preferably on out of turn basis within a period of 30 days.”*

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 the impugned order-in-original; 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 is fixed for hearing.

5. Disposed of in the above terms.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Ahtesham*

Uploaded by IT Department of IHC