

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No.309/2022

M/s Inovine, Islamabad through its Member AOP.

Versus

Assistant Commissioner Inland Revenue, Islamabad & 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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(01)	31.01.2022	Ch. Imran Ul Haq, Advocate for the petitioner.
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The petitioner is aggrieved by demand generated by respondent No.1 pursuant to order dated 29.04.2021.

2. The learned counsel for the petitioner states that an appeal against the impugned order was filed before respondent No.2 on 27.12.2021 alongwith a stay application. He states that the stay was granted by order dated 27.12.2021 for a period of thirty days. He further states that prior to the expiry of such period in which recovery was stayed, an application was filed before respondent No.2 for extension in the stay order, which application has not been fixed for hearing or adjudicated thus far. He further states that the petitioner apprehends that during the pendency of the stay application respondent No.1 may wish to proceed for recovery of demand generated through the impugned order. The learned counsel for the petitioner 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**
Shipyards & 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.1 is restrained from taking coercive action against the petitioner pursuant to the impugned order dated 29.04.2021 till such time that either the appeal is decided by respondent No.2 or the application for extension in the stay order dated 27.12.2021 filed by the petitioner is decided by respondent No.2, whichever is earlier.

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

(BABAR SATTAR)
JUDGE