

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P No. 536/2021

M/S YASEEN TRADE INTERNATIONAL (PVT) LTD.

Vs

**ASSISTANT COMMISSIONER INLAND REVENUE, UNIT-III & IV
ENFORCEMENT, CORPORATE TAX OFFICE, MAUVE AREA, G-9/1,
ISLAMABAD, ETC.**

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. 11.02.2021. Mr. M. Mohsin Nazir Malik, Advocate for the
Petitioner.

Through this petition, the petitioner seeks interim relief of stay of recovery of disputed tax liability of Rs. 2,433,491/-, created u/s 11(2) of the Sales Tax Act, 1990 (hereinafter referred to as the "**Act 1990**"), imposed vide Order-in-Original 11/77, dated 11.05.2017.

2. Learned counsel for the petitioner submitted that appeal against Order-in-Original dated 11.05.2017, is pending before Respondent No. 2 along with stay application, which is pending till date and it is apprehended that the Respondent No.1 will initiate recovery proceedings u/s 48 of the Act, 1990, read with rule 71(2)(B) of the Rules, 2006.

3. Learned Counsel, *inter-alia*, contended that initiation of recovery proceedings during the pendency of appeal before Respondent No.2, is not only violation of relevant provisions of the Act of 1990, but also against the Articles 4, 8, 10A, 18, 23, 25 & 77 of the Constitution of Islamic Republic of Pakistan,

1973. The Petitioner, under the circumstances, apprehends recovery of the disputed tax liability u/s 33 of the Act, 1990, through coercive measures under the provisions of Section 48 of the Act of 1990, by Respondent No. 1, in pursuance of Order-in-Original dated 11.05.2017. The learned counsel has argued that since, there is no restraining order in field, therefore, there is strong apprehension of recovery of disputed tax liability by Respondent No.1 through coercive means during the pendency of appeal before Respondent No. 2. It was further contended that it is a settled principle of law that unless there is adjudication by one independent forum, no recovery proceedings can be initiated against the assessee. In this behalf learned counsel placed reliance on the case law reported as "Z.N. Exporters Pvt. Ltd. Vs. Collector of Sales Tax"[2003 PTD 1746 Lahore], "Sun-Rise Bottling Company Pvt. Ltd Vs. Federation of Pakistan and 4 others" [2006 PTD 535 Lahore], "Dawood Textile Printing Industries Pvt. Ltd Vs. Federation of Pakistan and 4 others" [2009 Tax 344 Lahore]. Learned counsel further argued that delay in decision of the appeal is not on part of the petitioner, therefore, recovery proceedings be stopped till the final decision of the petitioner's appeal by Respondent No.2.

4. The submissions made by the learned counsel for the petitioner have substance. In this behalf the Hon'ble Supreme Court in the case titled "Mehram Ali and others Vs. Federation of Pakistan and others" [**PLD 1998 SC 1445**] has specifically held that there

should be adjudication of grievance by an independent forum outside hierarchy of the respondent department.

5. In view of the above, instant petition is disposed of with direction to Respondent No. 2 to decide the appeal of the petitioner within 90 (ninety) days, from the date of receiving of a certified copy of this order. Till then no coercive measures shall be adopted against the Petitioner for recovery of disputed tax liability. The petitioner is directed to appear and argue its case before Respondent No. 2 without seeking any adjournment as and when the appeal is fixed.

(LUBNA SALEEM PERVEZ)
Judge

Adnan.