

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P. No. 1044 of 2018

Oracle System Pakistan (Pvt.) Limited

Vs

Pakistan through the Secretary 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.
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01.03.2023.

Mr M. Shaheer Roshan Sheikh Advocate for the Petitioner.

M/s Syed Ishfaq Hussain Naqvi and Muhammad Imtiaz Abbasi Advocates for the Respondents.

The learned counsel for the Respondents submits that the seven days' period as referred to in the order dated 04.05.2017 passed in W.P. No. 1645/2017 categorically states that such period shall commence from the date of decision and that it does not state that the starting point would be the date of communication. He submits that the date of decision cannot be read as the date of communication as the latter date is only relevant for the purposes of appeal as per Sections 34 and 37 of the Federal Excise Act, 2005 (**"Act, 2005"**). Whereas, for the purposes of recovery the relevant date is the date on which the government dues are adjudged as per Rule 71 of the Sales Tax Rules. He has further explained that notwithstanding the provisions of Section 7 of the Act, 2005 whereby excise duty is to be recovered through the Sales Tax Mode, the provision of appeal as provided in the Act, 2005 are intact. He further submits that the date of decision i.e. 18.08.2017 was very much in the knowledge of the Petitioner as they were duly represented by the A.R. and as such recovery on 20.09.2017 was not in violation of the stay order dated 04.05.2017. He has also denied that the date of communication to the Petitioner was 13.09.2017 as contended by the Petitioner. He, on the other hand, submits that the Appeal was taken up before the learned ATIR on 21.09.2017. Lastly he

submits that an alternate remedy is available to the Petitioner in terms of Section 44 of the Act, 2005 whereby refund can be claimed in case of favourable decision by the learned ATIR and in this respect both the learned counsel have apprised this Court that the learned ATIR has already decided the appeal in favour of the Petitioner and has remanded the matter to the Assessing Officer.

2. While exercising his exercise of rebuttal the learned counsel for the Petitioner has relied on the *Messrs Pakistan LNG Limited through Authorized Representative v. Federation of Pakistan, through Secretary Revenue Division, Ministry of Finance, Islamabad and 2 others*, 2022 PTD 1763 according to which impugned recovery was set aside despite pendency of appeal.

3. On the other hand, the learned counsel for the Respondents submits that the distinguishing factor in such case was that there were material violations of the law and as such the recovery was not found sustainable despite pendency of appeal, whereas, in the instant case according to the learned counsel there are no violations of the law as the impugned recovery was made after the seven days' period provided for vide stay order dated 04.05.2017 and before the stay order passed by the learned ATIR on 22.09.2017 and even otherwise there are disputed questions of facts involved.

4. Now to come up for further submissions in rebuttal by the learned counsel for the Petitioner on 24.03.2023.

(SAMAN RAFAT IMTIAZ)
JUDGE