

## **ORDER SHEET.**

### **IN THE ISLAMABAD HIGH COURT, ISLAMABAD.** **JUDICIAL DEPARTMENT.**

#### **Writ Petition No. 1598/2021**

M/s F & R Enterprises Private Limited.

***Versus***

Collector of Customs (Adjudication), MCC, Islamabad & others.

<b>S. No. of order/ proceedings</b>	<b>Date of order/ Proceedings</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
(01)	30.04.2021	Mr. Aasim Shafi, Advocate for the petitioner.

The petitioner is aggrieved by order-in-original ("Impugned Order") dated 06.01.2021, issued by respondent No.1, whereby certain financial liability has been created against the petitioner.

2. The learned counsel for the petitioner states that an appeal against the Impugned Order was filed before the learned Customs Appellate Tribunal, Islamabad ("Tribunal") on 27.04.2021 alongwith an application for stay of recovery. However, the learned Tribunal is presently dysfunctional and consequently the appeal and the stay application could not be taken up for hearing. The learned counsel further states that the petitioner apprehends that during the pendency of the said application the respondents may wish to proceed for recovery of demand generated through the Impugned Order.

3. The learned counsel for the petitioner relies on Article 10-A of the Constitution and the

judgments reported as "M/s Pak Fertilizers Ltd. 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)** and states that it is settled law that recovery of demand ought not to be affected while appeal against the demand along with an application seeking stay of recovery is pending adjudication and has not been decided.

4. The Hon'ble Supreme Court in the case of "Mehram Ali & others vs. Federation of Pakistan and others" **(PLD 1998 SC 1445)** held that access to justice is a fundamental right. In the instant case, the adjudication of the appeal has not been delayed for any fault of the petitioner. In the case reported as "ZN Export vs. Collector Sale Tax" **(2003 PTD 1746)** 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 Limited, Karachi vs. Additional Collector Customs, Excise and Sales Tax and 2 others" **(2006 PTD 2207)** and has been followed consistently.

5. In view of the above and 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 order-in-original dated 06.01.2021, till such time that either the appeal is decided by respondent No.5 or the stay application, filed alongwith the appeal is decided, whichever is earlier.

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

**(BABAR SATTAR)**  
**JUDGE**