

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P No.2114 of 2021

M/s. Myson Engineering System
VS
The Commissioner Inland Revenue etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	17.06.2021.	Syed Muhammad Abbas, Advocate for the petitioner.

This is second writ petition on the subject,
filed under Article 199 of the Constitution of
Islamic Republic of Pakistan, 1973 in which
the petitioner has sought *inter alia* direction to
respondent No.3 to decide its pending appeal
and stay application and in the meanwhile
restraining respondent No.2 from initiating the
recovery proceedings in pursuance of recovery
notice dated 01.02.2021 for the tax year 2017.

2. Learned counsel for the petitioner
submitted that the impugned notice is illegal,
arbitrary and against the law. It was further
contended that initiation of recovery
proceedings during the pendency of petitioner's
appeal and stay application is against its
fundamental rights guaranteed under the
Constitution. It was further contended that it

is trite 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 titled "*M/s Pak Saudi 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 Engineering (Pvt.) Ltd Vs. Appellate Tribunal Sales Tax*" (2003 PTD 1836). Learned counsel further contended that this is second petition on the subject and the delay in decision of the appeal and stay application is not on part of the petitioner, therefore, impugned recovery notice dated 01.02.2021 may be suspended and recovery proceedings be stopped till the final decision of the appeal and stay application by respondent No.3.

3. The submissions made by the learned counsel for the petitioner have substance. In this behalf the Hon'ble Supreme Court of Pakistan in case titled "*Mehram Ali Vs. Federation of Pakistan etc.*" (PLD 1998 SC 1445) has specifically held that there should be adjudication of grievance by an independent Tribunal and even Lahore High Court in numerous judgments has held that an assessee

is entitled to adjudication in respect of his disputed tax liabilities by at least one independent forum outside hierarchy of the respondent department.

4. In view of the above, the instant Writ Petition is disposed of with direction to respondent No.3 to hear and decide the appeal and stay application within a period of sixty days and till then no coercive measures shall be adopted against the petitioner by respondent No.2.

(AAMER FAROOQ)
JUDGE