

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.1850/2020
M/s Air Blue Limited

Versus

Federation of Pakistan through Chairman Federal Board of 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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13.07.2020	M/s Ayyaz Shaukat and Shaheer Bin Tahir, Advocates for the petitioner	
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Through the instant writ petition, the petitioner, M/s Air Blue Limited, seeks a restraint against the respondents from recovering disputed tax liability on the basis impugned order-in-original dated 24.06.2020 until the decision on the petitioner's appeal which is pending adjudication before respondent No.4 (Chairman, Customs Appellate Tribunal).

2. The record shows that vide show cause notice dated 18.03.2020 issued in terms of Section 179 and 180 of the Customs Act, 1969 ("the 1969 Act") it was alleged that the petitioner company willfully short paid the taxes amounting to Rs.1,000,047,075/- at the time of clearance of GDs dated 21.11.2012, 08.08.2012 and 20.09.2012 and committed offence under Section 25, 26, 26A and 32(1)(2) of the 1969 Act. On 24.06.2020, respondent No.2 issued the order-in-original and directed the petitioner to pay the above-said short paid amount of duty/taxes. The petitioner challenged the said impugned order in original in an appeal along with stay application before respondent No.4. The said appeal along with stay application is still pending adjudication before the said respondent.

3. Learned counsel for the petitioner submits that respondent No.2, without any notice of hearing, passed the impugned order-in-original dated 24.06.2020 and directed the petitioner to pay the disputed short paid amount of duty/taxes; that even though the petitioner's appeal is still pending adjudication before respondent No.4 but the petitioner has an apprehension that respondent department may initiate recovery proceedings on the basis of impugned order-in-original dated 24.06.2020; that till date the petitioner's appeal has not been taken up for hearing due to the appellate authority, i.e. Customs Appellate Tribunal, being non-functional due to unavailability of its Chairman; that fearing the adoption of coercive measures during the pendency of the petitioner's appeal before respondent No.4, the petitioner has invoked the Constitutional jurisdiction of this Court to obtain a reprieve, as a stopgap measure, against the recovery of the disputed tax liability; and that if the interim reprieve is not granted, the petitioner shall be subjected to coercive measures.

4. Consistent with the order dated 18.04.2016, passed by this Court in W.P No.1367/2016 and by following the law laid down in the cases of M/s Pak Saudi Fertilizers Ltd Vs. Federation of Pakistan & 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) and Mehram Ali Vs. Federation of Pakistan etc (PLD 1988 SC 1445), and since the learned Customs Appellate Tribunal is presently non-functional, I am inclined to dispose of this petition, without the necessity of issuing notices to the respondents, with the direction to respondent

No.4 to decide the petitioner's appeal expeditiously, and preferably within a period of 60 days from today. Until the availability of the Chairman Customs Appellate Tribunal, the respondent department is directed to restrain from adopting coercive measures for the recovery of the disputed tax liability. The petitioner is directed to appear and argue its case before respondent No.4 without seeking any adjournment as and when its appeal/stay application is fixed for hearing.

5. Disposed of in the above terms.

(MIANGUL HASSAN AURANGZEB)
JUDGE

*Qamar Khan**