

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.451/2022

Teradata Pakistan (Pvt.) Limited

Versus

Federation of Pakistan through the Secretary, Revenue Division and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
-------------------------------	----------------------------	---

10.02.2022 Mr. Muhammad Adil Saeed, Advocate for the petitioner

Through the instant writ petition, the petitioner, Teradata Pakistan (Pvt.) Ltd., seeks a restraint against the respondents from recovering the disputed tax liability/federal excise duty until the decision on the petitioner’s appeal, which is pending before respondent No.2 (Appellate Tribunal Inland Revenue).

2. The record shows that vide Order-in-Original dated 29.04.2021, a demand for an amount of Rs.416,266,862/- was raised against the petitioner by respondent No.5 (Deputy Commissioner Inland Revenue) under Section 14 along with default surcharge in terms of Section 8 of the Federal Excise Act, 2005 (“the 2005 Act”) for the tax period from 01.01.2017 to 31.12.2017. The petitioner challenged the said order dated 29.04.2021 in an appeal before respondent No.6 (Commissioner Inland Revenue (Appeals-IV)). Vide order dated 21.01.2022, respondent No.6 disposed of the said appeal and as a result order dated 29.04.2021 passed by respondent No.5 was upheld/confirmed. The petitioner challenged the said orders dated 29.04.2021 and 21.01.2022 in an appeal before respondent No.2 (Appellate Tribunal Inland Revenue). Along with the said appeal, the petitioner also filed an application for grant of stay. The said application was fixed for hearing on 02.02.2022. However, on the said date respondent No.2 adjourned the matter to 08.02.2022. Taking advantage of the delay in granting a stay to the

petitioner by respondent No.2 against the impugned demand, respondent No.8 (Citi Bank N.A. Pakistan) was illegally served the impugned notices dated 04.02.2022 by respondent No.3 and as a result the petitioner's bank accounts were attached purportedly in terms of Section 48(1)(ca) of the Sales Tax Act, 1990.

3. Learned counsel for the petitioner submits that even though the petitioner's appeal along with stay application is still pending adjudication before respondent No.2, the respondent department could not have initiated the process of recovery in pursuance of the impugned notices/approval dated 04.02.2022 and / or on the basis of the impugned Order-in-Original dated 29.04.2021 until the issuance of judgment by respondent No.2; that on 08.02.2022, a hearing could not be conducted on the petitioner's appeal along with stay application owing to non-availability of the relevant bench of the Appellate Tribunal Inland Revenue; that fearing the adoption of coercive measures during the pendency of the petitioner's appeal before respondent No.2, 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), I am inclined to

dispose of this petition, without the necessity of issuing notices to the respondents, with the direction to respondent No.2 to decide the petitioner's stay application expeditiously and preferably within a period of two weeks from today. Until the decision on the petitioner's stay application, the respondent department is restrained from adopting coercive measures for the recovery of the disputed tax liability/federal excise duty in pursuance of impugned notices dated 04.02.2022 and impugned Order-in-original dated 29.04.2021. The petitioner is directed to appear and argue its case before respondent No.2 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