

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

Writ Petition No. 1418of 2020

Pakistan Television Corporation Limited

VS

Deputy 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.
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(1)	21.05.2020.	Mr. Muhammad Mohsin Nazir and Hafiz Muhammad Idrees, Advocates for the Petitioner.
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Through this petition, the petitioner seeks interim relief of stay of recovery of disputed sales tax demand of Rs. 46,121,000/- along with penalty of Rs. 23,06050/- and default surcharge (to be calculated at the time of payment) initiated vide Notice u/s 48 of Sales Tax Act, 1990, read with Rule 71(2)(B) of the Sales Tax Rules, & u/s 14 of the Federal Excise Tax 2005 read with Rule 60 of the Federal Excise Rules, 2005.

2. Facts in brief are that respondent No. 1 passed Order-in-Original No. 07/2020 dated 31.01.2020, creating tax demand of Rs. 46,121,000/- against the petitioner u/s 112 of the Sales Tax Act, 1990, recoverable along with default surcharge and penalty. Against the said order, the petitioner filed appeal before the respondent No. 2 on 04.03.2020, along with stay application, however, respondent No. 2 rejected the stay application vide order in stay No. 19/2020, dated 06.03.2020. Against the

rejection of stay application dated 06.03.2020, the petitioner filed stay application before the Appellate Tribunal Inland Revenue for grant of stay from the recovery of disputed tax demand. The Appellate Tribunal vide M.A (Stay) STA Interim No. 106/IB/2020, STA (Interim) No. 67/IB/2020 dated 07.04.2020, rejected the stay application, however, ordered 15 days prior notice before commencing recovery through using coercive measures.

3. Learned counsel submitted that now the department issued impugned notice dated 02.05.2020, for recovery of the disputed demand and, therefore, he has no other alternate remedy for redressal of his grievance as both the forum below has rejected the stay applications.

4. Learned Counsel, *inter-alia*, contended that issuance of recovery notice dated 02.05.2020, during the pendency of appeal before Respondent No.2, is not only violation of relevant provisions of Sales Tax Act, 1990, and Rules made therein but also against the Articles 4, 8, 10A, 18, 23, 25 & 77 of the Constitution of Islamic Republic of Pakistan, 1973. The Petitioner, under the circumstances, apprehends recovery of the disputed tax demand through coercive measures under the provisions of 48 of the Sales Tax Act, 1990, by Respondent No. 1, in pursuance of notice dated

02.05.2020. The learned counsel has argued that Respondent No. 2 and 3 is not justified in dismissing his stay application as it would provide opportunity to Respondent No. 1 to recover the disputed tax demand through coercive means during the pendency of appeal before Respondent No. 2. It was further contended that it is a settled principle of 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 law reported as "Z.N. Exporters Pvt. Ltd. Vs. Collector of Sales Tax"[2003 PTD 1746 Lahore], "Sun-Rise Bottling Company Pvt. Ltd Vs. Federation of Pakistan and 4 others" [2006 PTD 535 Lahore], "Dawood Textile Printing Industries Pvt. Ltd Vs. Federation of Pakistan and 4 others" [2009 Tax 344 Lahore]. Learned counsel further argued that delay in decision of the appeal is not on part of the petitioner, therefore, recovery proceedings be stopped till the final decision of the petitioner's appeal by respondent No.2.

5. The submissions made by the learned counsel for the petitioner have substance. In this behalf the Hon'ble Supreme Court in the case titled "Mehram Ali and others Vs. Federation of Pakistan and others" [PLD 1998 Sc 1445] has specifically held that there

should be adjudication of grievance by an independent forum outside hierarchy of the respondent department.

6. In view of the above, instant petition is disposed of with direction to Respondent No. 2 to decide the appeal of the petitioner within 90 (ninety) days, from the date of receiving of a certified copy of this order. Till then no coercive measures shall be adopted against the Petitioner for recovery of disputed tax liability. The petitioner is directed to appear and argue its case before Respondent No. 2 without seeking any adjournment as and when the appeal is fixed.

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(LUBNA SALEEM PERVEZ)
JUDGE

M. JUNAID USMAN