

ORDER SHEET.

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

Writ Petition No. 463/2021

M/S GKG.

Versus

Assistant/ Deputy Commissioner (Withholding Tax), Inland Revenue & others.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
(01)	03.02.2021	Ch. Naeem Ul Haq and Ch. Imran Ul Haq, Advocates for the petitioner.

The petitioner is aggrieved by demand notice dated 01.12.2020, issued by respondent No.1 under Section 138(1) of the Income Tax Ordinance, 2001.

2. Learned counsel for the petitioner states that the petitioner filed an appeal against the order under Section 122(5A), which is pending before respondent No.3 alongwith stay application. The appeal was filed on 28.01.2021 and stay application was filed on 29.01.2021. However, no order has been passed in relation to the appeal and the stay application has also not been adjudicated so far. 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 notice of demand.

3. The learned counsel 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 1836], "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 & 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 1363**) 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 respondent department. This view was reaffirmed in *2006 PTD 535* as well as *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 serving notice upon the respondents shall serve no purpose. Respondent No.3 is directed to decide the appeal expeditiously.

6. The petitioner shall not seek to delay adjudication of the said matter by seeking adjournments and shall facilitate respondent No.3 in expeditious disposal of the appeal.

7. Meanwhile, the respondents are restrained from affecting recovery of the demand generated through the impugned notice dated 01.12.2020, till a period of seven (07) days has elapsed after the passage of a speaking order in relation to the appeal pending before respondent No.3 or the stay application, whichever is earlier.

8. The petition stands **disposed of** accordingly.

(BABAR SATTAR)
JUDGE

A. Rahman Abbasi