

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P. No. 1044 of 2018

Oracle System Pakistan (Pvt.) Ltd.

Vs

Pakistan 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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<u>02.02.2023.</u>	Mr M Shaheer Roshan Sheikh Advocate for the Petitioner. Ms Hajira Zakir Shah Advocate vice learned counsel for the Respondents.
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The learned counsel for the Petitioner has submitted his arguments. According to him the Petitioner had not only filed an appeal before the Commissioner Inland Revenue (Appeals) (“**Commissioner**”) against the Order-in-Original but had also approached this Court by filing a writ petition in which an order was passed on 04.05.2017 whereby this Court had specifically restrained the Respondents from taking any coercive measure against the Petitioner during a period of seven days from the date of decision of the Commissioner. Therefore the Impugned Recovery Notice dated 20.09.2017 was issued in violation of the stay order. The learned counsel submits that such seven days’ period commences from the date of communication of the Commissioner’s decision and that although the decision was passed on 18.08.2017 it was communicated to the Petitioner on 13.09.2017. In order to establish such date of communication the learned counsel submits that copy of the decision dated 18.08.2017 bearing a handwritten notation stating “*received on 13.09.2017*” was forwarded to the Petitioner by the bank along with the Impugned Recovery Notice. However, there is no covering letter of the bank which would establish that the aforementioned copy of the decision allegedly bearing the Petitioner’s receiving date was forwarded to the Petitioner by the bank which would indicate that the Respondents sent the received copy to the bank thereby establishing the date of receipt by the Petitioner.

2. Secondly, the learned counsel relies upon an unreported judgment dated 10.11.2021 of this Court passed in W.P. No. 3876/2021, titled *Oracle Systems Pakistan (Private) Limited v. Pakistan through the*

Secretary Revenue & Ex Officio Chairman Federal Board of Revenue FBR, Islamabad, etc. whereby this Court concluded that in view of the fact that the appeal before the Commissioner had been pending for eleven months, propriety demanded that a notice should have been served upon the taxpayer before initiating recovery proceedings and submits that in the instant case too despite the fact that the appeal had been filed before Commissioner and was pending for over four months no notice was served upon the Petitioner prior to sending the Impugned Recovery Notice to the Petitioner's bank and acting upon it.

3. Lastly, he submits that the case law that has developed provides that no recovery proceedings should be initiated till a decision has come from an independent forum i.e. Appellate Tribunal Inland Revenue ("ATIR") and he submits that according to the law the period of limitation for filing an appeal before ATIR is sixty days and in this case appeal before the ATIR was filed on 20.09.2017 which is still pending and on the same date the Impugned Recovery Notice was issued. The learned counsel for the Petitioner is directed to provide case law in support of such proposition.

4. On the last date it was made clear that the matter will be heard on the basis of arguments submitted by the Petitioner and material available on the record in case of non-appearance of the Respondents' counsel. However, today once again proxy counsel requests for an adjournment that the learned principal counsel for the Respondents is not available. In the interest of justice, however, the adjournment request is being allowed for the last time.

5. Relist on 01.03.2023 for arguments on behalf of the Respondents and rebuttal, if any, from the Petitioner side.

(SAMAN RAFAT IMTIAZ)
JUDGE