

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.3147/2019
M/s Pakistan Gypsum Board Industry (Pvt.) Ltd.
Versus
Federation of Pakistan and others

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| 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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23.09.2019 Mr. Basharat Ali Awan, Advocate for the petitioner

Through the instant writ petition, the petitioner, M/s Pakistan Gypsum Board Industry (Pvt.) Ltd., seeks interim reprieve from the adoption of coercive measures for the recovery of the disputed sales tax liability by the respondents during the pendency of the petitioner’s appeal before the Appellate Tribunal Inland Revenue (“A.T.I.R.”). The petitioner has assailed the order dated 27.03.2018 passed by the Commissioner Inland Revenue (Appeals) before the A.T.I.R in an appeal. Section 46 (2) of the Sales Tax Act, 1990 provides that the Appellate Tribunal may admit, hear and dispose of the appeal as per procedure laid down in Sections 131 and 132 of the Income Tax Ordinance, 2001 (“the 2001 Ordinance”) and rules made thereunder.

2. Section 131 of the 2001 Ordinance empowers the A.T.I.R. to grant interim relief to an appellant but not for a period exceeding 180 days in aggregate. The proviso to section 131(5) of the 2001 Ordinance has been amended through the Finance Act, 2018. The amended proviso to section 131(5) reads as follows:-

"Provided further that where recovery of tax has been stayed under this section, such stay order shall cease to have effect on expiration of the said period of one hundred and eighty days following the date on which the stay order was made and

the Commissioner shall proceed to recover the said tax."

3. The petitioner fears that despite the fact that the petitioner's appeal before the A.T.I.R. has not been decided, the respondents would initiate recovery proceedings through coercive measures upon the expiration of the 180 days for which interim relief was granted to it by the A.T.I.R. Although there are three Benches of the A.T.I.R. in Islamabad, but presently only one Bench is functional due to the retirement of Members of the A.T.I.R. The adoption of coercive measures for the recovery of the disputed sales tax liability during the pendency of an appeal has been termed as a "travesty of justice" by the Hon'ble Lahore High Court in the case of Pearl Continental Hotel Vs. Customs, Excise and Sales Tax Appellate Tribunal (2005 PTD 1368).

4. Indeed, the A.T.I.R. is empowered to grant interim relief for a period of 180 days. However, this presupposes that appeals would be decided by the A.T.I.R. within the said period. Failure on the part of the A.T.I.R. to decide the appeal within the said period, cannot operate to the prejudice of the petitioner/appellant who is not responsible for causing of delay in adjudication of the appeal.

5. Consistent with the order dated 29.06.2018, passed by this Court in W.P No.2507/2018 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 notice to the respondents, with the direction to A.T.I.R. to decide the petitioner's appeal expeditiously and preferably within a period of 60 days from today. Until the decision on the petitioner's appeal, the respondent department is restrained from adopting coercive measures for the recovery of the disputed sales tax liability. The petitioner is directed to appear and argue its case before A.T.I.R. without seeking any adjournment as and when its appeal is fixed for hearing.

6. Disposed of in the above terms.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan