Form No: HCJD/C-121.

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

JUDICIAL DEPARTMENT.

W.P No.1875 of 2022

Oracle Systems Pakistan (Pvt.) Ltd.

VS

Pakistan through Secretary Revenue etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	26.05.2022	**Khwaja Aizaz Ahsan, Advocate for the petitioner.**

Through the instant petition, under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has sought, *inter alia,* direction to respondent No.2 to decide its pending appeal and stay application and in the meanwhile restraining respondents from initiating recovery proceedings in pursuance of order-in-original dated 22.04.2022 for the tax year 2018-19.

2. Learned counsel for the petitioner submitted that the recovery proceedings are illegal, arbitrary and against the law. It was further contended that initiation of recovery proceedings during the pendency of petitioner's appeal is against its fundamental rights guaranteed under the Constitution. It was

further contended that it is trite 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 titled "*M/s Pak Saudi Fertilizers Ltd. Vs. Federation of Pakistan and 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). Learned counsel further contended that delay in decision of the appeal is not on part of the petitioner, therefore, recovery proceedings may be stopped till the final decision of the appeal and stay application by respondent No.2.

3. The submissions made by the learned counsel for the petitioner have substance. In this behalf the Hon'ble Supreme Court of Pakistan in case titled "Mehram Ali *Vs. Federation of Pakistan etc." (PLD 1998 SC 1445)* has specifically held that there should be adjudication of grievance by an independent Tribunal and even Lahore High Court in numerous judgments has held that an assessee is entitled to adjudication in respect of his

disputed tax liabilities by at least one independent forum outside hierarchy of the respondent department.

4. In view of the above, the instant Writ Petition is disposed of with direction to respondent No.2 to hear and decide the appeal and stay application within a period of ninety days and till then no coercive measures shall be adopted against the petitioner by respondents.

(AAMER FAROOQ)
JUDGE

M..NAVEED