

-7-

**THE  
PESHAWAR HIGH COURT  
PESHAWAR**

No. 1158 /Judl: Dated Peshawar the 31/1 2012

**From**

The Additional Registrar,  
Peshawar High Court,  
Peshawar.

**To**

1. The Assistant Commissioner (Dost Muhammad),  
(E&C-IV), refund division Zone-1,  
Regional Tax Office, Peshawar.
2. The Commissioner, Inland Revenue,  
Regional Tax Office, Peshawar.
3. The Deputy Commissioner, Inland Revenue, (Refund),  
Regional Tax Office, Peshawar.
- ✓ 4. The Chairman,  
Federal Board of Revenue,  
Islamabad.
5. The Secretary,  
Ministry of Finance, Islamabad.

**Subject** CM No. 66/2012 in Amended Writ Petition No. 111/2012.

**M/S Javedan Traders**

**---Petitioner**

**Versus**

**The Assistant Commissioner & others**

**---Respondents**

\*\*\*\*\*

**Memo**

I am directed to forward herewith copy of order dated 25/01/2012, passed by a Division Bench of this Court in the subject case, for compliance.

**Additional Registrar (J)**

**Enclosed;**  
**Copy of order**

17/02/2012  
M(L)

may be considered  
and also placed  
in w.c.h.

Chief (Legal)

17007  
03 FEB 2012

17007  
06-02-12  
10:30 AM

IN THE HON'BLE PESHAWAR HIGH COURT, PESHAWAR

In Re: Writ Petition No. 111 of 2012

M/s Javedan Traders  
Flat No. C - 5, 2nd Floor, United Plaza,  
Tehkal Payan, University Road,  
Peshawar ... Petitioner

Versus

1. The Assistant Commissioner (Dost Muhammad)  
(E & C- IV), refund Division Zone-I,  
Regional Tax Office, Peshawar.
2. The Commissioner, Inland Revenue,  
Regional Tax Office, Peshawar.
3. The Deputy Commissioner, Inland Revenue, (Refund)  
Regional Tax Office, Peshawar.
4. The Federal Board of Revenue,  
Islamabad, Through its Chairman.
5. Pakistan, Through, The Secretary,  
Ministry of Finance, Islamabad. ... Respondents

WRIT PETITION UNDER ARTICLE 199 OF THE  
CONSTITUTION OF PAKISTAN, 1973.

Respectfully Sheweth:

1. That the petitioner is a sole proprietorship and is a commercial exporter under the name and style of M/s Javedan Traders having its office located at flat No. C-5, 2nd Floor, United Plaza, Tehkal Payan, University Road, Peshawar. Mr. Abdul Rehman Butt the sole proprietor is well conversant with the facts of the case and is competent to file the instant writ petition.

FILED TODAY  
Deputy Registrar  
24 JAN 2012

5

# PESHAWAR HIGH COURT, PESHAWAR

## FORM OF ORDER SHEET

Court of.....

Case No.....of.....

Date of Order of Proceedings	Order of other Proceedings with Signature of Judge.
1	2
25.01.2012	<p><b><u>C.M.No. 66/2012.</u></b></p> <p>Present: Mr. Abdul Latif Yousafzai, Advocate, for the petitioner.</p> <p style="text-align: center;">***</p> <p><b><u>DOST MUHAMMAD KHAN C.J.-</u></b> This application for permission to amend the main writ petition bearing No.111/2012 is allowed, so that, to procure the ends of justice.</p> <p><b><u>A.W.P.No. 111/2012.</u></b></p> <p><b><u>DOST MUHAMMAD KHAN C.J.-</u></b> Petitioner, M/s. Javedan Traders, Flat No C-5, 2<sup>nd</sup> Floor, United Plaza, Tehkal Payan, University Road, Peshawar, has questioned the legality, propriety &amp; vires of actions of the respondents, refusing to honour &amp; accept the audit report &amp; verification, duly made by the Departmental Authority of the relevant Wing, with regard to the refund claim of the petitioner about input tax paid on the export of goods.</p> <p>2. The grievance of the petitioner is that it paid input</p>

tax on the purchase of plastic goods which were exported to Afghanistan, therefore, under the provisions of Sales Tax Act, 1990, it was entitled to the refund claim, amounting to Rs.1,86,53,756/- plus Rs.55,41,999/-. When the refund claim was submitted, the same was subjected to verification & refund audit and it was confirmed in view of Rule 28 of the Sales Tax Refund Rules, 2006, that the respondents were under legal obligation to make good the payment to the petitioner but it sat quiet and did not respond to the same. Further grievance of the petitioner is that after the expiry of much time the case was reopened and was subjected to audit without any lawful justification thus, having no alternative, the petitioner approached the High Court through W.P.No. 3277/2011 but once again the killing device of delaying tactics were employed & pressed into service by the respondents, however, the said writ petition was disposed of on 08.12.2011 with clear directions to the respondents to pass an appropriate order strictly in accordance with law on the case of the petitioner but within a period of one

month. The respondents could not finalize the matter and delayed the same beyond the given time and thereafter, issued a show-cause notice to the petitioner, containing various allegations and denial of claim of the petitioner. Moreover, as has been alleged, while taking drastic decision against the petitioner, no opportunity of hearing was given to it, hence, it flagrantly violated the principle of natural justice and the entire proceedings were conducted in a malafide manner.

3. Learned counsel for the petitioner after relying on the case of "*Independent Music Group (SMC) Vs. Federation of Pakistan*" (PLD 2011 SC 805) vehemently argued that whenever a statutory authority without any lawful justification refused to listen to an aggrieved person or to provide it what is due to him under the law or is otherwise permissible under the law then, the High Court may step into the matter and grant the relief in its constitutional jurisdiction. This dictum was laid down indeed in the above case.

4. True that the respondents, as was alleged &

highlighted at the bar, have not processed the case of the petitioner in the manner prescribed by the law, delaying tactics were pressed into service which go unexplained and when directions were issued in W.P.No. 3277/2011 on 08.12.2011 by the High Court even then, the proper procedure was not adopted nor fair opportunity was given to the petitioner and this was the grievance of the petitioner at the bar as well which fact was vehemently argued by the learned counsel.

5. Whatever the factual & legal position might be, all the law points on which reliance was placed by the learned counsel can be conveniently agitated before the Collector Appeals which is a Judicial Forum and can grant speedy & efficacious remedy to the petitioner if it has a convincing case on legal premises. It is well settled principle of law that once a remedy of appeal, efficacious in nature, is available then, the High Court shall exercise maximum restraint not to interfere into the matter. In this case not only the right of appeal but also of second appeal and then a privilege of Reference to the High Court is

- 1 -

available to the petitioner, therefore, in our view, this petition is not maintainable before the High Court and the petitioner may raise all the law points, highlighted above, before the Collector (Appeals) Sales Tax.

For what has been discussed above, this petition is disposed of and the petitioner, if so wishes, may challenge the impugned actions of the respondents before the Collector Appeals.

Any omission whatsoever with regard to the facts of the case in this order, shall not preclude the petitioner to re-agitate the same in a proper manner before the Collector Appeals.

~~\_\_\_\_\_~~  
**CHIEF JUSTICE**

~~\_\_\_\_\_~~  
**JUDGE**

*Mc Issue*  
*[Signature]*  
*Adil Nazki*  
*[Signature]*

*[Handwritten notes]*  
27/11