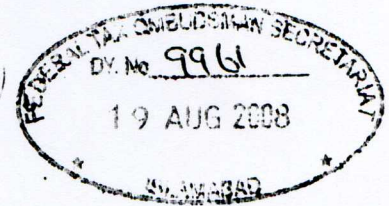


No.103/2007-Law(FTO)
Government of Pakistan
Law and Justice Division

Islamabad, the 26th July, 2008.

From: Mr. Muhammad Aslam,
Deputy Assistant Solicitor.

To: The Secretary(TO-I),
Central Board of Revenue,
Islamabad.



Subject: **REPRESENTATION TO THE PRESIDENT UNDER SECTION 32 OF THE ORDINANCE XXXV OF 2000 AGAINST THE FINDINGS/RECOMMENDATIONS OF THE F.T.O IN COMPLAINT NO. 1018-K/2007 (F.B.R. VS. M/S PAKISTAN MACHINE TOOL FACTORY (PVT) Ltd.)**

I am directed to refer to your representation No. 4(1018)TO-1/07, dated 13.11.2007 on the above subject and to say that the President has been pleased to pass the following orders: -

"The complainants complained to the FTO that the Commissioner was guilty of maladministration in not making the refund of the excess amount of tax paid by them for the assessment year 2002-2003. The departmental representative pleaded before the FTO that a part of the refundable amount has been adjusted against the complainants' tax liability and the balance refund of Rs.832,636 has ~~not~~ been verified by the DPC and in that regard the assistance of the complainants is needed. The complainants assured that the requisite information will be provided to the department expeditiously. In view of the parties' pleadings the FTO concluded that "the department has not been able to offer any plausible explanation regarding non compliance of section 170(4) of the Income Tax Ordinance 200 I (decision on refund application within 45 days)" and recommended that "the FBR to direct the taxation officer concerned to expedite the verification of deduction of tax relating to the assessment year 2002-2003 and issue the resultant refund within 30 days of the receipt of this order alongwith compensation admissible under the law."

The department has made representation against the FTO's recommendation.

The FTO's findings/recommendation have been objected to by the department on two grounds One, that section 170(4) of the Income Tax Ordinance 200 I does not apply to the refund pertaining to the assessment year 2002-03, and two, that the FTO had no jurisdiction to conduct the investigation of the complaint in view of the bar of jurisdiction contained in section 9 (2) (b) of the FTO Ordinance 2000.

Both grounds are misconceived. The Income Tax Ordinance 2001 repealed the Income Tax Ordinance 1979 w.e.f 1.7.2002. Section 170(4) of the 2001 Ordinance provides that the Commissioner shall, within forty-five days of a refund application, serve on the person applying for the refund an order in writing of his decision. It is a machinery provision. It would apply to all refunds arising after 1.7.2002 whether any arose out of the assessment governed by the 1979 Ordinance or the 200 I Ordinance. Section 9(2) of the FTO Ordinance 2000, so far as material, provides that the FTO shall not have jurisdiction to investigate or inquire into any matter which relate to assessment of income or determination of tax liability etc. The FTO did not investigate the matter relating to the assessment of income or tax liability. He ~~only~~ investigated the neglect, inattention, delay etc. in the discharge of duties and responsibilities by the Commissioner in finalising the complainants' refund claim and such neglect, inattention, delay etc. is maladministration.

Accordingly, the President has been pleased to reject the representation of the department."

(Muhammad Aslam)
Deputy Assistant Solicitor

Copy to: -

1. The Registrar, FTO, Islamabad.
2. President's Secretariat (Section Officer (Legal), Islamabad with reference to their No.58/FTO/2008, dated 19.6.2008.
3. M/s Pakistan Machine Tool Factory (Pvt.) Ltd. Karachi.

(Muhammad Aslam)
Deputy Assistant Solicitor