

F.No.68/08-Law (FTO)
Government of Pakistan
Law and Justice Division

Islamabad, the 11th May, 2009.

From: Mr. Azhar Amin Chaudhary,
Section Officer.

To ✓ Second Secretary (TO-),
Federal Board of Revenue,
Islamabad.

Sub:- **REPRESENTATION UNDER SECTION 32 OF THE ORDINANCE XXXV OF 2000 AGAINST FINDINGS OF THE FEDERAL TAX OMBUDSMAN IN COMPLAINT NO. 240-K/08 [FBR VS M/S JUGNU MATCH INDUSTRIES]**

I am directed to refer to your representation No. C.No. 4(240)TO-I/08, dated 10.05.08, on the above subject and to say that the President has been pleased to pass the following orders:-


2. As per return of income tax for the tax year 2006 filed on 18.09.2006 the complainants had paid Rs.262,672/- in excess of the amount which they were properly chargeable as tax. The taxation officer noticed certain deficiencies in the return. When he asked the complainants to explain certain aspects of the return they revised it, whereby the excess amount of tax was reduced from Rs.262,672/- to Rs.190,360/-. The taxation officer still found certain shortcomings in the revised return. After the complainants had removed the shortcomings the taxation officer by his order dated 21.08.2007 disallowing a credit of Rs.6610 created the refund amounting to Rs.183,750/- but applied the same in reduction of the complainants' sales tax liability for which he had received demand notice from the sales tax officer. The complainants complained to the FTO that the taxation officer was guilty of maladministration in disallowing the credit of Rs.6,610/- and applying the refund against their sales tax liability. After investigating the complaint the FTO formed the opinion that the taxation officer was justified in disallowing the tax credit to the extent of Rs.6,610/- and transferring the refund to the sales tax department in pursuance of the demand notice. The FTO however formed the opinion that taxation officer was guilty of maladministration in failing to pass refund order dated 21.08.2007 within statutory limit. Accordingly he recommended that the FBR shall take appropriate action against the taxation officer.

3. The department has made representation against the FTO's recommendation. The complainants have furnished written comments on the representation.

4. The FTO's opinion that the taxation officer was required to pass order on the refund application within 45 days of the filing of the application cannot be accepted unreserved. Sub-section (4) of section 170 of the Income Tax Ordinance, 2001, providing for that the Commissioner shall, within 45 days of the receipt of a refund application under sub-section (1) serve on the person applying for the refund an order in writing of the decision implies that the taxation officer has no reservations regarding the refund claim made in the application. It does not imply that the refund shall be made as claimed. It envisages only a decision. A taxation officer can give decision that he cannot make refund unless discrepancies in

return are removed. What the taxpayer will gain from such a decision is not understandable. The complainants revised their return whereby their refund claim was reduced. It can be assumed that there are some substantial discrepancies in the return. It will not be rational to affirm the FTO's findings of maladministration when he has not identified the reasons, which compelled the complainants to revise their return.

5: Accordingly, the President has been pleased to set aside the FTO's recommendations dated 08.04.2008 in complaint No.240-K/08.


(Azhar Amin Choudhary)
Section Officer.

Copy to:

1. The Registrar, Federal Tax Ombudsman, Islamabad.
2. Director (Legal), President Secretariat (Public), Islamabad with reference to their NO.142/FTO/2008, dated 9.04.2009.
3. M/S Jugnu Match Industries S.I.T.E. Tando Adam Sindh.

(Azhar Amin Choudhary)
Section Officer.