

F.No.52/08-Law (FTO)  
Government of Pakistan  
Law and Justice Division

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Islamabad, the 24<sup>th</sup> April, 2009.

From: Mr. Azhar Amin Chaudhary,  
Section Officer.

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

Sub:- **REPRESENTATION UNDER SECTION 32 OF THE ORDINANCE  
XXXV OF 2000 AGAINST FINDINGS OF THE FEDERAL TAX  
OMBUDSMAN IN COMPLAINT NO. 1272-K/2007 [FBR VS  
KHATTAK TRADERS]**

I am directed to refer to your representation No. C.No. 4(1272) TO-1/2007/08/56726, dated 07.04.08, on the above subject and to say that the President has been pleased to pass the following orders:-

2. During the period relevant to the tax year 2004 the complainants imported certain goods. While clearing the goods the Collector of Customs collected certain amount from the complainants as advance income tax under section 148 of the Income Tax Ordinance 2001. In the complainants' view the Collector had collected the amount in excess of the tax, which was properly chargeable from them. The complainants applied to the taxation officer for the refund of the excess amount. In support of the refund claim the complainants relied on the judgment of the Supreme Court reported 2005 PTD 194 and of the Lahore High Court reported 1994 PTD 848. The taxation officer however rejected the refund application. The complainants appealed the taxation officer's order and the Commissioner (Appeals) relying on the judgments of the Supreme Court and of the Lahore High Court referred to him by the complainants vide his order dated 14.02.2006 accepted the appeal and directed the taxation officer to issue the refund. The department appealed the Commissioner (Appeals)'s order before the Income Tax Appellate Tribunal and the Tribunal vide its order dated 01.08.2007 dismissed the department's appeal. The department did not make refund of the excess amount to the complainants in compliance with the decision/direction of the Commissioner (Appeals) as affirmed by the Tribunal. They made complaint to the FTO. The department resisted the complaint on two grounds. One, the High Court and the Supreme Court wrongly decided the cases, and two, the department has sought review by the Supreme Court of its decision 2005 PTD 194. After considering the matter the FTO recommended that the department should either obtain stay from the Supreme Court or implement the decision of the Tribunal within 60 days of the receipt of his order. The recommendation followed the findings that in the absence of any stay order by the Supreme Court where review application of the department was pending there was no justification in not giving effect to the decision of the Tribunal.

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

4. The order of the Tribunal is based on the decisions of the Supreme Court and the Lahore High Court. An order or decision cannot be ignored on the ground that it is based on wrongly decided precedent. Even if the Supreme Court reverses its decision in 2005 PTD 194 the reversal of the precedent would not automatically reverse or affect the force/operation of, the Tribunal's order. It is trite law that the precedents do not operate retrospectively. Two authorities may be referred to in support of the above view. In Pir Bux v Chairman Allotment Committee PLD 1987 SC 145 a number of persons including 'A' had filed petitions in the High Court challenging various orders of similar nature. One of them was accepted by the High Court. Against the decision of the High Court 'H' filed an appeal in the Supreme Court.



