

PRESIDENT'S SECRETARIAT (PUBLIC)  
AIWAN-E-SADR, ISLAMABAD

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Federal Board of Revenue  
Versus  
M/S Moosa Textile (Pvt) Ltd, Faisalabad ✓

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**REPRESENTATION PREFERRED BY FBR AGAINST FINDINGS / RECOMMENDATIONS  
DATED 16.10.2015 PASSED BY THE FTO IN COMPLAINT NO. 139/FSD/ST(42)/955/2014**

I am directed to refer to your representation No.1 (955)S(TO-II)/2014 dated 11.11.2015 on the above subject and to say that the President has been pleased to pass the following orders:

2. This Representation dated 12.11.2015 has been filed by the Agency/FBR against the findings of FTO dated 16.10.2015, whereby it has recommended that:

"FBR to-

- (i) take decision on the condonation request of the complainant afresh after examining apparently valid reasons for delay mentioned in his application dated 14.3.2014 and after obtaining report from RTO particularly about Commissioner's failure to take decision on the condonation requests of the complainant within one year; and
- (ii) report compliance within 45 days."

3. Brief facts of the case that M/s Moosa Textile (Pvt) Ltd, Faisalabad being aggrieved by rejection of condonation application by FBR for submission of sales tax refund claim amounting to Rs.0.147(m) and Rs.0.144 (m) for Tax period 12/2011 and 05/2012 respectively, filed a complaint on 17.7.2014. The Agency replied that since no plausible reason for justification of delay were provided by the Complainant so request for condonation dated 18.12.2012 and 16.1.2013 under SRO 394(1)/2009 applied to CIR-RTO, Faisalabad was not approved within one year and FBR has rejected condonation application dated 13.3.2014.

4. Perusal of record indicates that complainant could not file relevant documents as FBR web portal showed them registered in RTO, Lahore instead of RTO, Faisalabad. Besides, the complainant's bank account was needed to be updated in the system and otherwise there was strike of the FBR employees in those days. It is evident that CIR failed to take decision on the condonation requests made by the complainant within stipulated period of one year and then in decision on the part of CIR wasted the sole legal opportunity available to the complainant to get relief from Appellate fora by filing appeals. FBR, too, failed to appreciate the reasons given by the complainant.

5. The representation against the impugned order of FTO on the ground of jurisdiction barred and no plausible justifications for delay were presented by the complainant. Agency mentioned grounds of appeal under Section 74 of the Sales Tax, 1990 wherein FBR is competent to decide the request for condonation of delay on merit. Moreover reliance is placed on Supreme Court of Pakistan judgment cited as 42 Tax 140 (CST Zone-A Lahore Vs Chenab Textile Mills Ltd) wherein it has been observed that "we have repeatedly held that where a matter is barred by limitation, each and every day's delay must be explained before it can be condoned." Further, reliance placed on the Judgment of Hon'ble President in Complaint No. 243/LHR/ST/(25)/496/2011 (M/s Fine Industries (Pvt)Ltd Vs FBR) indicating that:-

"FTO would not be having jurisdiction to substitute his finding in the matter of condonation of delay for those of the competent authority under the law or to pre-empt the exercise of revisional/appellate powers of the authorities appointed under Sales Tax Act, 1990."

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6. The Complainant had an opportunity of filing of appeal against the said orders before appellate fora. Section 9(2)(b) of FTO Ordinance clearly provides that FTO will have no jurisdiction to entertain such complaint and could not set aside the order of the competent forum in exercise of the powers of FTO hence findings of FTO dated 16.10.2015 are not sustainable. The complainant can avail an alternate remedy, if so advised.

7. Accordingly, the President has been pleased to accept the representation of the Agency/FBR and set aside the impugned recommendation of FTO as having been passed without lawful jurisdiction.




Zulfiqar Hussain Awan  
Director (Legal-II)

The Chief (Legal),  
Federal Board of Revenue,  
Islamabad

No.83/FTO/2015 dated 30.5.2016

Copy for information to:

1. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
2. M/s Moosa Textile (Pvt) Ltd, P-1355, Ayub Colony, Rehmania Mills Chowk Street, Jhang road, Faisalabad
3. Muhammad Bashir Malik , Advocate High Court/A.R. Behind Govt. M.C. Girls High School, Near New Khawaja Cold Store, Chenab Chowk, Partab Nagar, Jhang Road, Faislaabad.
4. Director to Secretary to the President.
5. Master file.



Zulfiqar Hussain Awan  
Director (Legal-II)

