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No.60/2012-Law (FTO)  
Government of Pakistan  
Ministry of Law ,Justice and Human Rights

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Islamabad, the <sup>4/5</sup> October, 2013

From :- Arshad Ali Siddiqui  
Section Officer (Law-I)

✓ To:- The Second Secretary (TO-II),  
Federal Board of Revenue,  
**ISLAMABAD.**

**Sub: REPRESENTATION UNDER SECTION 32 OF THE ESTABLISHMENT OF THE OFFICE OF THE FEDERAL TAX OMBUDSMAN ORDINANCE (XXXV OF 2000) IN COMPLAINT NO. 132/LHR/ST(35)/234/2012 (FBR VS M/S SEFAM (PVT) LTD LAHORE )**

I am directed to refer to your representation No.1(234)S(TO-II)/2012 dated 19.7.2012 on the subject noted above and to say that the President has been pleased to pass the following orders.

2. Feeling aggrieved of O-in-O No 16/2012 dated 08.02.2012 raising a Sales Tax demand of Rs.561,457/-, complainant approached FTO contending that ACIR who had issued the show cause notice ultimately leading to passing of the said order had no pecuniary jurisdiction and pointing out some *prima facie* mistakes in the said notice. Agency (Revenue Division) replied that FTO had no jurisdiction while the said O-in-O was pleaded to have been passed in accordance with law. It was further stated that the mistakes pointed out stood corrected in the course of proceedings. FTO conducted hearing, rejected Agency's objection, merits of the case were discussed. Complainant's objection to ACIR's jurisdiction was upheld and following findings were recorded:

"Looking at the treatment accorded to Complainant in its totality, the Departmental action would appear to be bereft of proper objective basis, and in conflict both with the statute and the applicable case law. The Complaint doesn't appear to have taken irregular input tax credit in the period January to June 2011."

Following recommendations were made by FTO:

"FBR to direct the Commissioner to-

Recall cited O-i-O under Section 45A of the Sales Tax Act 1990, as per law."

3. This representation has been filed by Agency reiterating objections to FTO's jurisdiction and urging that the impugned findings and recommendations are illegal. Complaint in its comments has supported the impugned findings and recommendations. Reliance on Notification No.555 (1)/1996 dated 01.07.1996 was not apt in view of the admitted position that the statutory provision i.e. Section 11(3) of the Sales Tax Act, 1990 under which it was issued, stood omitted

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vide Finance Ordinance, 2000. Needless to state that a conflict between provisions of a parent statute and a notification purported to have been issued under the same is to be resolved in favour of statute. Be that as it may the matter pertained to determination of liability to pay tax and the order was subject to remedy of appeal under the Sales Tax Act, 1990, Section 9(2) (b) of FTO Ordinance, 2000 clearly bars FTO's jurisdiction. Findings and recommendations of FTO are, therefore, not sustainable.

4. Accordingly, the President has been pleased to accept representation of Agency and to set aside findings and recommendations of FTO.

  
**(ARSHAD ALI SIDDIQUI)**  
Section Officer (Law-I)

Copy to:-

- 1 The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad,
- 2 Director (Legal Affairs-II), President's Secretariat (Public), Islamabad with reference to their No.457/FTO/2013,dated 1<sup>st</sup> October, 2013.
3. M/S Sefam (Pvt) Ltd through Waseem Ahmed Malik, Advocate High Court 808- Eden Heights 6-Main Gulberg, Lahore.

**(ARSHAD ALI SIDDIQUI)**  
Section Officer (Law-I)