

Federal Board of Revenue
Versus

M/s Paramount Tarpaulin Industries, Karachi

REPRESENTATION PREFERRED BY FBR AGAINST FINDINGS / RECOMMENDATIONS
DATED 11.11.2015 AND 29.12.2015 PASSED BY THE FTO REVIEW PETITION IN COMPLAINT
NO. 262/KHI/ ST (124)/862/2015

I am directed to refer to your representation No.1 (862) S(TO-II)/2015 dated 25.01.2016 on the above subject and to say that the President has been pleased to pass the following orders:

2. This representation dated 25.1.2016 has been filed by the Agency/FBR against the findings of FTO dated 29.12.2015 whereby FTO has rejected the review petition in limine. Original findings of FTO dated 11.11.2015 indicated as follows:-

"FBR to direct the CIR to:-

- i. revisit the impugned O-in-O terms of Section 45A of the Act and pass order afresh after affording hearing to the Complainant and considering his view point; and
- ii. report compliance within 30 days."

3. The brief fact of the case are that raising preliminary objection of limitation in terms of sub-section(3) and bar in terms of sub-Section (2)(b) of Section 9 of the Ordinance. On merits, it was contended that the sales tax refund claims, duly verified by the system, had already been sanctioned to the complainant. The balance claims were deferred on account of objections raised by the STARR system. In order to prove genuineness/admissibility of the claims, legal notices including Show Cause Notice (SCN) in terms of Section 56 of the Sales Tax Act, 1990 and the Rules made there under were issued. The Complainant however, failed to provide evidence. Therefore Order-in-Original No.07/2015 as per available record was passed on merits. It was further contended that the complainant has legal remedy available to prefer appeal u/s 45-B of the Act before the CIR (Appeals) against the impugned O-in-O.

4. The Authorized Representative (AR) has contended that complainant filed refund claims which were partly sanctioned and partly deferred. According to him the deptt neither communicated any objections to the complainant nor replied to his letters dated 1.9.2014, 18.2.2015, 28.4.2015 and 6.5.2015. Further that the O-in-O was not served. Moreover, it was passed without serving any SCN. He further averred that impugned order was passed in biased manner ex-parte only to delay its genuine refunds. It was, however added that inspite of the impugned O-in-O the deptt has later cleared three deferred claims of the complainant.

5. During hearing, on 16.9.2015 the Departmental Representative (DR) averred that the refunds of the complainant would be processed and settled as per law. The averments of both the parties have been given due consideration and record perused by FTO. Thus FTO has issued aforementioned findings.

6. The instant representation has been filed by the Agency-FBR. Agency has pleaded that the Show Cause Notice dated 27.2.2015 was duly served to M/s Paramount Tarpoline, Karachi through registered courier under Sales Tax Rules, 2006 (Refund Rules) notified vide SRO 555(1)2006 dated 5.6.2006 and other provisions of the law. Besides the fact the learned FTO did not consider the view point of the deptt and held that the impugned O-in-O has been passed without issuance of SCN.

7. Agency has argued that the case was finalized vide Order -in- Original No.07/2015 as per available record on merits after affording ample opportunities of being heard to the complainant as the matter could not be kept pending for indefinite period. The copy of the impugned O-in-O has also been sent to the complainant on his registered address.

8. Agency has contended that if the registered person is dissatisfied with the impugned O-in-O he can prefer appeal to the Commissioner Inland Revenue (Appeals) U/S 45-B of the Sales Tax Act, 1990

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for remedy available as per law. It is further submitted that in parawise comments as well as during the course of hearing the departmental representative argued that the complainant is required to prefer appeal U/S 45-B of the Sales Tax Act, 1990, however, the Learned FTO did not consider the submissions of the department. The complaint should have been rejected under the provisions of FTO Ordinance 2000.

9. Agency has emphasized that the impugned O-in-O has been passed after issuance of SCN and providing opportunity of being heard to the complainant. The complainant company can prefer appeal before the Commissioner Inland Revenue (Appeals-III) U/S 45-B of the Sales Tax Act, 1990 for remedy available as per law.

10. On the contrary, the complainant has filed his comments against the representation of FBR on 10.2.2016 and supported the impugned recommendations of learned FTO.

11. There is no question on the facts that the jurisdiction of the FTO is barred u/s 9(2)(b) to investigate or inquire into the matter which relate to assessment of income or wealth, determination of liability of tax, interpretation of law, rules and regulations relating to such assessment / determination in respect of which legal remedy of appeal or review or revision is available under the relevant legislation. In case the complainant was aggrieved of any action or inaction of the Agency, the complainant has the remedy to file an appeal to the Commissioner Appeals, Income Tax Tribunal, the High Court and the Supreme Court of Pakistan. Hence the matter was not within the jurisdiction of FTO, which is not an appellate forum. In such circumstances, where remedy of appeal was available, FTO could not interfere with and could not pass orders under garb of maladministration.

12. It is an admitted position that the matter involves the determination of tax liability and refundable amount on account of tax. Such matters are appealable before the Commissioner (Appeal), Appellate Tribunal (IR), the High Court and the Supreme Court. Where remedy of appeal is provided under the law the FTO has no jurisdiction to investigate the matter in the name of maladministration. In case the complainant was aggrieved of any action or non action on the part of official(s) of the Agency, it has the remedy to file an appeal at appropriate forum under the relevant law.

13. In such circumstances, where remedy of appeal was available FTO could not interfere with the matter of assessment of tax and interpretation of law. Thus FTO having gone beyond the scope and powers, the impugned findings are not sustainable. Consequently, the Agency's representation is liable to be accepted. However, the complainant can seek remedy available to him from the relevant forums under the law.

14. Accordingly, the President has been pleased to accept the representation of the Agency/FBR and set aside the impugned recommendations of learned FTO.



Zulfiqar Hussain Awan
Director (Legal-II)

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The Chairman,
Federal Board of Revenue,
Islamabad.

No.19/FTO/2016 dated 16.08.2016

1. Copy for information to:
2. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
3. Mr. Muhammad Ali, Partner: M/s Paramount Tarpaulin Industries, D-169, S.I.T.E.Karachi
4. Director to Secretary to the President.
5. Master file

Zulfiqar Hussain Awan
Director (Legal-II)