

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

Federal Board of Revenue
Versus
M/s Aslam Autos, Multan

REPRESENTATION PREFERRED BY FBR AGAINST FINDINGS / RECOMMENDATIONS
DATED 15.02.2016 PASSED BY THE FTO IN COMPLAINT NO. 10/MLN/ST/(05)/1113/2015

I am directed to refer to your representation No.1 (1113)S(TO-II)/2015 dated 04.03.2016 on the above subject and to say that the President has been pleased to pass the following orders:

2. This representation dated 4.3.2016 has been filed by the Agency/FBR against the findings of FTO dated 15.2.2016 whereby it has been recommended that:

"FBR to-

- i. Revisit the blacklisting order under Section 45-A of the Sales Tax Act, 1990 and order passing of an appealable Assessment Order for non-filing after issue of SCN to the Complainant, affording him hearing and considering his view point; and
- ii. Report compliance within 30 days."

3. The brief fact of the case are that the complaint has been filed before FTO against blacklisting the complainant's Sales Tax Registration (STR) despite payment of penalty of Rs.30,000/-. FBR has informed that the registered person (RP) was consecutive non-filer for more than three years. The RP was issued hearing notice vide letter No.12452 dated 27.5.2015 to deposit the penalty for non-filing/late-filing and was provided another opportunity of hearing on 4.6.2015. The RP submitted reply vide letter No.ST/SP/78/01/15 dated 27.4.2015 along with deposit challan of Rs.30,000/-. The RP was requested vide letter No.383 dated 15.7.2015 to deposit the total amount of penalty for non-filing/late-filing of sales tax returns. But the registered person did not make payment of default of non-filing / late filing of sales tax returns.

4. During hearing, the Authorized Representative (AR) stated that no returns were filed for July 2014 to Dec 2014. Notices were received, the returns were filed and penalty of Rs.30,000/- was paid on 27.4.2015. In spite of this, the deptt blacklisted the complainant vide order No.177 dated 7.7.2015. Earlier the complainant had been suspended on 16.4.2015. However, show cause notice for it, was issued on 31.8.2015 fixing the case for 25.9.2015 after blacklisting and after the complainant had filed the instant complaint. All this involves allegedly gross violation of law, cognizance whereof has to be taken by FTO office, he vehemently argued.

5. The contentions of both sides have been considered along with examination of relevant record by FTO. Accordingly, FTO has issued the aforementioned findings.

6. The instant representation has been filed by the Agency-FBR. Agency has argued that the jurisdiction to investigate or inquire into matters which relate to assessment of income, interpretation of law, rules and regulations relating to such assessment in respect of which legal remedies of appeal are available under the relevant legislation is not vested with the office of the Honorable Federal Tax Ombudsman, Ordinance (XXXV-2000) and held by the President of Pakistan while deciding departmental representation in C. No. 1096-L/2005 vide the Law, Justice & Human Rights Division vide No. 178/205-Law (FTO) dated 26.05.2006.

7. Agency has pleaded that as the registered person admitted the default of non filing of return after the issuance of show cause notice "that why sales tax registration should not be blacklisted if you do not file sales tax return and make payment of penalty for the period of default." Hence, blacklisting order issued vide order No. 177 dated 07.07.2015 was according to the provisions of law.

8. Agency has contended that according to the provision of Section 26 of the sales Tax Act, 1990, "Every registered person shall furnish not late than the due date a true and correct return in the

PTO

FBR & DOX Cy. No. 111575-R
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on 19 AUG 2016

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prescribed form..... Therefore, show cause notice u/s 11(1) & 11(5) was issued to the registered person for imposition of penalty u/s 33(1) separately and culminated vide appealable Order in Original No. 11/69/2015.

9. Agency has further pleaded that as the appealable order has already been issued for non/late filing of sales tax returns therefore, recommendations of the FTO are against the facts of the case.

10. On the contrary, the complainant – Mr. Muhammad Aslam through Mubasher Ali Aashar, Advocate has filed his comments against the representation of the Agency on 15.3.2016 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. The FTO has limited scope to identify the mal-administration while remedy of appeal was more exhaustive. It was established that the procedure had been properly adopted before passing of amendment of assessment order. No illegality has been committed by the Agency.

14. 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.

15. 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)

The Chairman,
Federal Board of Revenue,

No.42/FTO/2016 dated 16.08.2016

Copy for information to:

1. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
2. Mr. Muhammad Aslam, Prop: Aslam Autos, Near Naz Cinema, Vehari road, Multan
3. Mr. Mubasher Ali Ashar, Advocate, 3-C, Block-A, Near Tana Chowk, Shah Rukne Alam Colony, Multan
4. Director to Secretary to the President.
5. Master file

Zulfiqar Hussain Awan
Director (Legal-II)

