

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

Federal Board of Revenue
Versus
M/s Allied Automation Engineers, Faisalabad

REPRESENTATION PREFERRED BY FBR AGAINST FINDINGS / RECOMMENDATIONS
DATED 15.7.2015 PASSED BY THE FTO IN COMPLAINT NO. 249/FSD/ST(88)/1609/2014

I am directed to refer to your representation No.1(1609)TO-II/2014 dated 10.8.2015 on the above subject and to say that the President has been pleased to pass the following orders:

2. This representation dated 10.08.2015 has been filed by the Agency/FBR against the findings of FTO dated 13.07.2015, whereby it has been recommended that;

"The FBR to direct the concerned Commissioner to_

- (i) revoke O-in-O No.335/2013 dated 7.3.2014 under Section 45A being violative of Section 11 of the Act within 30 days; and
- (ii) report compliance within 07 days thereafter."

3. Brief facts of the case are that the complainant - M/S Allied Automation Engineers, Faisalabad filed a Complaint on 29.12.2014 for cancellation of time barred order-in-original No.335/2013 dated 07.03.2014 as the same was served on 30.09.2014. The Agency/FBR replied on 07.04.2015 raising preliminary objection that the jurisdiction of the FTO was barred under Section 9(2)(b) of the FTO Ordinance 2000, to entertain the complaint as the same related to assessment and determination of tax liability in which legal remedy of appeal was available to the Complainant. On merits, it was contended that the O-in-O was passed in accordance with law after serving show cause notice, affording opportunity of hearing and after condonation of time limit of 90 days from the Commissioner IR vide approval on order sheet dated 30.09.2013.

4. During hearing before FTO, the complainant through Authorised Representative (AR) reiterated that since O-in-O was served on 30.09.2014, it was time barred as it was served beyond the mandatory time limit of 120 days as provided under Section 11 of the Sales Tax Act, 1990 (the Act). The passing of order within stipulated time frame as mentioned in Section 11 ibid means order passed and delivered within such time.

5. FTO, after hearing the parties and perusal of record found that O-I-O was not served within specified time in Section 11 of the Act and same was depicted as per UMS stamp and made above recommendations. The Agency in its representation has taken the stance that the FTO has the impugned recommendations without jurisdiction in light of Section 11(5) of the Sales Tax Act 1990 and Section 9(2)(b) of the FTO Ordinance 2000.

6. It is admitted position that the matter involves determination of liability of tax against which legal remedy of appeal is available under the law. No reason has been stated as to why the said remedy was not availed by the complainant. In view of the facts of the matter, bar stipulated in Section 9(2)(b) of FTO Ordinance 2001 is attracted. The complainant could avail remedy of appeal from the relevant forums under the law if so advised. In terms of Section 9(2)(b) of the FTO Ordinance 2000, the FTO has no jurisdiction to investigate or inquire into the matters which relate to the assessment of income, determination of liability of tax, interpretation of law, rules and regulations relating to the said assessment/ determination in respect of which legal remedies of an appeal, review or revision are available under the relevant legislation.


P.T.O.

POF
h
18/16
ASH

119

7. In the circumstances, the impugned recommendations of FTO are, not sustainable and liable to be set aside having been made by the FTO without jurisdiction.

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



Zulfiqar Hussain Awan
Director (Legal-II)

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

No.58/FTO/2015 dated 30.5.2016

Copy for information to:

1. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
2. M/s Allied Automation Engineers, P-285, Jhumra Road, Mansoorabad, Faisalabad
3. M/s Allied Automation Engineers, C/o Mr. Nasir Jamal, FCMA, C/o Nasir Jamal & Co. 552-A, Gulistan Colony No.2, Sheikhpura road, Faisalabad
4. Director to Secretary to the President.
5. Master file.

↗
Zulfiqar Hussain Awan
Director (Legal-II)