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No.65/2011-Law (FTO) -
Government of Pakistan
Ministry of Law and Justice

Islamabad, the ^{20th} May, 2013

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

✓ To:- Mr. Kaleem Arshad,
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. 110/KHI/CUS/(42)/261/2011 (M/S DEWAN SALMAN FIBRE LTD KARACHI VS FBR)**

I am directed to refer to your representation No. 1(261)S(TO-II)/11 dated 1.6.2011 on the subject noted above and to say that the President has been pleased to pass the following orders.

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2. Feeling aggrieved of Order-in-Original dated 14.02.2011 whereby an Additional Collector Adjudication of Agency (Revenue Division) found that methyl acrylate is ester of acrylic acid and is classified under PCT heading 2916.1200 and consequently not entitled to benefit of exemption and customs duty, zero rating of sales tax and exemption of income tax as claimed and availed by complainant under SRO 567(I)/2005 dated 05.06.2005, SRO 567(I)/2006 and amending SRO507(I)/2007 dated 09.06.2007; Consequently complainant was called upon to pay Rs.55,921,363/- on account of customs duty, sales tax and income tax along with surcharge under Section 202A of Customs Act, 1969 and Section 34 of the Sales Tax Act 1990 till the time of payment and a penalty of Rs.2,097,158/- was also imposed under clauses 1, 10A and 14 of Section 156 (1) of the Customs Act, 1969 and clause 11(c) of Section 33 of the Sales Tax Act, 1990, complainant approached FTO. It was pleaded that Agency's refusal to allow exemption of customs duty and tax on methyl acrylate being in defiance of the decision of Federal Government was tantamount to maladministration. Agency contended that the said order is appealable under Section 193 of the Customs Act 1969. On merits it was stated that the relevant SRO did not cover methyl acrylate. FTO conducted hearing and came to the conclusion that the stance of Agency was correct. However, it was opined that imposition of personal plenty and fine appears to be oppressive and that this matter did not receive the due attention of the adjudicating officer and that the action of the Department to charge the complainant with mis-declaration and imposition of surcharge penalty and fine in addition to demand of duty and taxes was tantamount to maladministration. Following recommendations were made:

"FBR to-

A1. *Arshad*
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- (i) direct the Collector Customs to exercise powers under Section 195 of the Customs Act 1969, and, after affording opportunity of hearing to the complainant, to ascertain the legality/propriety of the Order-in-Original (13/2011) in so far as the imposition of personal penalty/fine is concerned.”

3. This representation has been filed by Agency stating that it was an adjudicating order which was subject to appeal under the law and as such FTO had no jurisdiction to investigate the matter. In its comments complainant has simply relied upon the contents of the complaint filed before FTO. The contents of the impugned O-in-O have apparently not been taken note of by FTO the adjudicating officer had recorded specific findings on all aspects of the matter and these could have been examined properly only in an appeal duly provided under the Customs Act 1969. Recommendations of FTO, therefore, are not sustainable in view of the bar contained in Section 9(2)(b) of FTO Ordinance 2000.

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


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

Copy to:-

- 1 The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad,
- 2 Director (Legal), President’s Secretariat (Public), Islamabad with reference to their No.45/FTO/2013, dated 6th May, 2013.
- 3. M/S Dewan Salman Fibre Ltd. 7th Floor, Block-A. Fiannce & Trade Centre Main Shahrah-e-Faisal,Karachi.

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