

No.31/2010-Law (FTO)
Government of Pakistan
Ministry of Law and Justice

Islamabad, the ^{21st} August, 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. 510-L/09 (FBR VS M/S FLYING CEMENT
COMPANY LIMITED LAHORE)**

I am directed to refer to your representation No.1(510)S(TO-II)/2009 dated 11.02.2010 on the subject noted above and to say that the President has been pleased to pass the following orders..

2. Feeling aggrieved of Order-in-Original No.37/2007 dated 10.12.2007 allowing input tax credit subject to verification of actual use to taxable activities, complainant filed a representation under Section 45A of the Sales Tax Act 1990. Matter was adjudicated upon and complainant was directed to pay input tax alongwith default surcharge and penalty vide Order-in-Original No.13/2009 dated 10.06.2009. Against this order complainant approached FTO praying for setting aside of the said orders. Agency supported the impugned orders as having been passed in accordance with law. FTO found non examination by the adjudicating officer of the relevance of case law referred and non consideration of Auditor's findings to be maladministration. Following recommendations were made by FTO:

“Revenue Division to reopen the Order-in-Original No.13/2009 dated 10.06.2009 under the provisions of Section 45A of the Sales Tax Act, 1990 and decide the matter afresh in accordance with the law considering the referred case law and providing opportunity of hearing to the complainant.”

3. This representation has been filed by Agency objecting to the jurisdiction of FTO. It has informed that against the impugned Order-in-Original complainant has filed an appeal which is pending before Appellate Tribunal. The said fact has not been denied by complainant in his comments. This was a case relating to determination of liability of tax against which legal remedy of appeal was not only provided in the Sales Tax Act 1990 but infact was availed; besides Agency would not be having any jurisdiction to exercise powers under Section 45A of the said Act as the appeal is pending. Findings and recommendations of FTO are not sustainable.

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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.245/FTO/2013, dated 7th August, 2013.
3. M/S Flying Cement Company Limited through Rana Muhammad Afzal, Advocate Supreme Court, Suit No. 13, 1st Floor, SAF Centre 8-Fane Road, Lahore.

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