

(53)

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

Federal Board of Revenue
Versus
M/s Nayer Industries (Pvt) Ltd, Gujrat

REPRESENTATION PREFERRED BY FBR AGAINST FINDINGS / RECOMMENDATIONS
DATED 7.10.2015 PASSED BY THE FTO IN COMPLAINT NO. 344/LHR/ST(74)/1051/2015

I am directed to refer to your representation No.1(1051)S(TO-II)/2015 dated 9TH Nov 2015 on the above subject and to say that the President has been pleased to pass the following orders:

2. This representation dated 09.11.2015 has been filed by the Agency/FBR against the findings of FTO dated 07.10.2015, whereby it has been recommended that:-

"FBR to direct Chief Commissioner, RTO-II, Lahore to-

- (i) give appeal effect to the order of the ATIR within three weeks; and
- (ii) report compliance within seven days thereafter."

3. Brief facts of the case are that the complainant - M/s Nayer Industries (Pvt) Ltd, Gujrat, being aggrieved by non-issuance of sales tax refund amounting to Rs.20,340,396/- for tax period April, 2005 despite rejection of appeal of the department by ATIR. The Agency replied that department has filed reference in Lahore High Court against the order of ATIR dated 21.05.2012.

4. During proceedings FTO observed that reference filed by the department in Lahore High Court stood dismissed w.e.f. 11.02.2015, so department was required to allow appeal effect to ATIR order dated 21.05.2012.

5. Through the instant representation, the Agency has assailed the FTO's findings dated 07.10.2015 on the grounds of jurisdiction for the matter being subjudice before the Lahore High Court as Misc. Application filed by the department against Diary No.60495 dated 8.6.2015 has been taken up and the case was fixed for hearing on 7.10.2015. After hearing the counsel of department, the Hon'ble Court has directed to issue notices to the respondent registered person. On the other hand, complainant did not provide categorical rebuttal that the matter was not subjudice in the Hon'ble Lahore High Court, Lahore on the date of filing the initial complaint i.e. 25.08.2015.

6. It is an admitted fact that Misc. Application filed by Deptt against Diary No.60495 dated 8.6.2015 which was taken up and the case was fixed for hearing on 7.10.2015 wherein the Lahore High Court directed to issue notices to the respondent registered person. As matter of record initial complaint was filed with FTO on 25.8.2015, which categorically indicates that the matter was subjudice on the date of filing of initial complaint before the learned FTO.

7. In terms of Section 9(2)(a) of the FTO Ordinance 2000, FTO shall not have jurisdiction to investigate or inquire into matters which are subjudice before a court of competent jurisdiction or tribunal or board or authority on the date of receipt of a complainant, reference or motion by him.

8. In view of the forgoing it is proved without any iota of doubt that Misc. Application was filed on 8.6.2015 in Hon'ble Lahore High Court Lahore which was taken up and fixed for hearing by the court of law on 7.10.2015 whereas the initial complaint was filed on 25.8.2015 before the learned FTO. Thus FTO has no jurisdiction to investigate any issue which is subjudice before a court of competent jurisdiction or tribunal or board of authority on the date of receipt of complaint. In the particular case, undoubtedly Misc application filed in Lahore High Court in the month of June, 2015 while initial complaint filed before the learned FTO in August, 2015 and hearing of Lahore High Court Lahore was fixed in October, 2015.

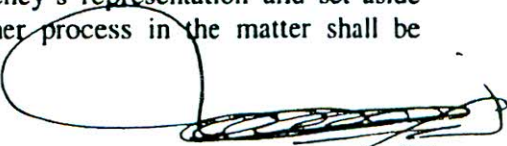
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9. In view of the circumstances, the impugned findings of FTO are not sustainable and are liable to be set aside having been recorded without lawful jurisdiction. In the instant matter, FTO jurisdiction was barred in terms of Section 9(2)(a) of the FTO Ordinance, 2000.

10. Accordingly, the President has been pleased to accept Agency's representation and set aside impugned findings and recommendations of FTO. However, further process in the matter shall be initiated and completed as per decision in pending reference.



Zulfiqar Hussain Awan
Director (Legal-II)

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

No.82/FTO/2015 dated 30.5.2016

Copy for information to:

1. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
2. M/s Nayer Industries (Pvt) Ltd, G.T. road, Gujrat.
3. Hashim Aslam Butt, Hashim Law Associates, Suit No.302, 3rd floor, Eden Centre, Jail road, Lahore.
4. Director to Secretary to the President.
5. Master file.


Zulfiqar Hussain Awan
Director (Legal-II)

(146)