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No.12/2013-Law (FTO)
Government of Pakistan
Ministry of Law, Justice and Human Rights

Islamabad, the ^{4th} October, 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. 742/LHR/ST(159)/1291/2012
(FBR VS M/S KASHMIR SUGAR MILLS LTD LAHORE)**

I am directed to refer to your representation No.1(1291)S(TO-II)/2012 dated 29.01.2013 on the subject noted above and to say that the President has been pleased to pass the following orders.

2. Refund claim for 1% further Sales Tax in the tax period 1998-99 due to 2000-01 was rejected vide O-i-O No. 1 of 2010 dated 17.06.2010. An appeal against the said Order was accepted by Appellate Tribunal Inland Revenue (ATIR) on 11.10.2011 and the said O-i-O was vacated. Feeling aggrieved of inaction on the part of Agency (Revenue Division) in the matter of refund after the said Appellate Order, complainant approached FTO. Agency replied that reference has been filed in the Lahore High Court against the said Order which is pending. FTO conducted hearing and found that failure to give appeal effect to the said Order was tantamount to maladministration. Following recommendations were made:

“FBR to-

- (i) give appeal effect to the order of the ATIR, without prejudice to the final outcome of the Departmental reference in the High Court.

3. This representation has been filed by Agency questioning jurisdiction of FTO and further stating some specific facts with reference to a later Order passed on 14.05.2012 by Appellate Tribunal remanding back the matter to the concerned officer to ascertain at the assessment level the fact of passing on of the incidence of further tax to the consumer. It has been further stated that proceedings will be finalized on receipt of documentary evidence. Comments filed by complainant are silent as to the said factual contentions of Agency. The matter pertains to liability to pay tax. Reference filed by Agency against the order was pending before the Lahore High Court on the date of receipt of complaint in the office of FTO and further as per later judgment of Tribunal complainant has been directed to produce documentary evidence as to whether incidence of tax has not been passed on to the consumer in terms of Section 3B of Sales Act 1990. A case of

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maladministration is not made out. Findings and recommendations of FTO are not sustainable.

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.443/FTO/2013,dated 1st October, 2013.
3. M/S Kashmir Sugar Mills Ltd through Faisal Naseer Rana, Advocate High Court, 1st Floor, Room No. 3 Majeed Centre Link Fareed Kot Road, Lahore.

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