

No.44/2012-Law (FTO)
Government of Pakistan
Ministry of Law ,Justice and Human Rights

Islamabad, the 4th October, 2013

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

✓ To:- The Second Secretary (TO),
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. 105/LHR/ST(22)/200/2012
(FBR VS MR. AMJAD FAROOQ M/S BATA PAKISTAN LTD LAHORE)**

I am directed to refer to your representation No.1(200)S(TO-II)/2012 dated 5.6.2012 on the subject noted above and to say that the President has been pleased to pass the following orders.

2. Feeling aggrieved of an assessment order No.05/2012 dated 25.01.2012 holding a sum of Rs.2,453,450/- recoverable as Sales Tax having been claimed as input tax by the registered person, complainant approached FTO contending that the Show Cause Notice did not mention the relevant Sections of Sales Tax Act, 1990 and that the officer passing the order had no pecuniary jurisdiction. Reliance was placed on SRO 555(1)/96 dated 01.07.1996. Agency (Revenue Division) replied that Section 8 of the said Act was duly cited in the Show Cause Notice while SRO ceased to have legal effect after omission of Section 11(3) of the said Act vide Finance Ordinance, 2000. FTO conducted hearing. Whereas it was found that non-citation of sub-sections and sub-clauses of Section 8 was not fatal, contention of complainant regarding absence of pecuniary jurisdiction was upheld. Following findings were recorded:

“The assessment order No. 05/2012 dated 25.01.2012 being void ab-initio and a nullity in the eye of law amounts to maladministration.”

Following recommendations were made by FTO:

“FBR to direct the Commissioner to-

“Invoke revisionary jurisdiction under Section 45A(4) of the Act and recall Order No. 05/2012 dated 25.01.2012, as per law.”

3. This representation has been filed by Agency inter-alia specifically stating that an appeal filed by complainant against assessment order was pending when complaint was filed and further that the said appeal has been dismissed on 26.04.2012. Complainant in its comments explained in details its case on merits. However, has opted to remain completely silent *qua* the said specific facts stated by Agency. Matter pertains to assessment and determination of liability to tax

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141

Against which remedy of appeal was not only provided but was availed and appeal was pending when complaint was filed and has since been decided, jurisdiction of FTO was barred under Section 9(a) as also Section 9(b) of FTO Ordinance, 2000. Findings and recommendations are, therefore, not sustainable.

4. Accordingly, the President has been pleased to accept representation of Agency and to set aside findings and recommendation 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.460/FTO/2013,dated 1st October, 2013.
- 3. M/S Bata Pakistan Ltd through Mehmood Arif, Advocate High Court 808- Eden Heights 6-Main Gulberg, Lahore.

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

(140)