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No.42/2011-Law (FTO)
Government of Pakistan
Ministry of Law ,Justice and Human Rights

4/11
Islamabad, the 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. 62/KHI/CUS(20)/146/2011(FBR VS M/S IQBAL TRADERS KARACHI)

I am directed to refer to your representation No.1(146)S(TO-II)/2011 dated 21.04.2011 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 non-implementation of an order dated 29.04.2010 of the Appellate Tribunal allowing appeals of complainant against the O-in-O as well as O-in-A dated 24.04.2006 confirming the same, complainant approached FTO making a grievance that his refund application filed on 29.01.2010 is not being disposed of. Agency (Revenue Division) replied that against order of Appellate Tribunal a reference has been filed in the High Court which is pending. FTO conducted hearing and recorded following findings:

“In view of the settled law, there can be no cavil to the legal position that even after filing of reference application before the Hon’able High Court by the Department, in absence of any order of stay or suspension of the order of the Appellate Tribunal, the Department was under legal obligation to implement the order of the Appellate Tribunal. The Department would obviously reclaim any amount due if it won the case in the High Court.”

FTO made following recommendations:

“FBR to –


- (i) direct the Chief Collector Customs to implement the Appellate Tribunal’s orders dated 29.04.2010 in accordance with law.”

3. This representation has been filed by Agency contending that FTO had no jurisdiction in the matter. Complainant in its comments has supported findings and recommendations of FTO. It is a matter of record that complaint was registered on 10.02.2011 in FTO’s office while special Customs reference application No.145/2010 stood filed in July 2010 and was pending in the High Court of Sindh. This being so the bar spelled out in Section 9(2)(a) of FTO Ordinance 2000 is squarely applicable. Besides, FTO has also omitted to take

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notice of earlier findings recorded by the said office on 11.11.2005 while rejecting complaint against the same O-in-O. Findings and recommendations of FTO are not sustainable.

4. Accordingly, the President has been pleased to accept Agency's representation 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.418/FTO/2013,dated 1st October, 2013.
- 3. M/S Iqbal Traders through Nadeem & Company Custom & Tax Consultants/Advocates B-3, 2nd Floor, Pak Chamber, West Wharf, Karachi.

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