

PC 7/10/07

No.91/2011-Law- (FTO)
GOVERNMENT OF PAKISTAN
MINISTRY OF LAW JUSTICE AND HUMAN RIGHTS

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Islamabad, the 2nd December, 2014

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

To: - The Second Secretary (TO-II),
Federal Board of Revenue,
Revenue Division,
Islamabad.

SUB: REPRESENTATION UNDER SECTION 32 OF THE ESTABLISHMENT OF THE OFFICE OF THE FEDERAL TAX OMBUDSMAN ORDINANCE (XXXV OF 2000) IN COMPLAINT NO. 197/LHR/ST(23)/407/11 (M/S FATIMA ENTERPRISES LIMITED, MULTAN VS FBR)

I am directed to refer to your representation No. 1(407)S(TO-II)/2011 dated 21st July, 2011 on the subject noted above and to say that the President has been pleased to pass the following orders in the subject case:

“Pursuant to an audit, Sales Tax amounting to Rs.20,967,127/- was found to be recoverable vide Order-in-Original No.474/2007 dated 13.09.2007. Appeal filed by complainant was rejected by Collector (Appeals) vide Order-in-Appeal No. 631/2008 dated 15.05.2008. Said amount was deposited and second appeal was filed by complainant. While the said appeal was pending a committee was constituted by F.B.R, which devised parameters for calculating tax liability of solvent extraction units. In accordance with recommendations of committee STGO No. 32/2008 dated 08.07.2008 was issued. Complainant's liability was determined under the said STGO for the year 2004-2005, which was deposited. Committee also calculated refund for the year 2003-2004. However, no refund was admissible in view of Para-5 of STGO No. 32/2008. Somehow or the other in the said appeal pertaining to assessment for the year 2004-2005, issue of matter pertaining to year 2003-2004 was raised and Appellate Tribunal directed Agency to issue refund amounting to Rs.39,086,492/- calculated by committee but clearly inadmissible under the same STGO. Complainant accordingly sought refund in accordance with judgment dated 18.05.2010 of the Appellate Tribunal. Claim was refused. Complainant accordingly approached F.T.O. Agency replied with reference to the facts noted above that no refund was admissible as the incidence of tax had been passed on to buyers and complainant had carried forwarded its input, which was adjusted against output tax. F.T.O conducted hearing during the course whereof, Agency informed that a reference had been filed against


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judgment of Appellate Tribunal and is pending in Lahore High Court Multan Bench. On query made by F.T.O, Agency informed that no stay order has been issued by High Court. F.T.O concluded that the delay in processing of refund is established which is tantamount to maladministration. Following recommendations were made by F.T.O:

“FBR to direct the concerned officials to-
implement the Appellate Tribunal’s order and sanction admissible refund, as per law, without prejudice to the outcome of the pending decision of the Lahore High Court”.

This representation has been filed by Agency, praying for setting aside of the impugned recommendations stating that entire tax amount, which was subject matter of the appeal before Appellate Tribunal had been refunded. This fact had not been denied by complainant. It, however, insists that the refund as calculated under STGO No. 32/2008 be paid. However, there is no dispute that as per Para-5 of the same STGO no refund was admissible. Claim has been duly processed and rejected and the decision conveyed to complainant. Case of maladministration *prima facie* is not made out. Findings and recommendations of F.T.O are, therefore, not sustainable.”

2. Accordingly, the President has been pleased to accept of the above referred representation and to set aside findings and recommendations of F.T.O.


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

Copy to:-

1. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
- 2 The Director (Legal Affairs-II), President’s Secretariat (Public), Islamabad with reference to their No.617/FTO/2013, dated 11th November, 2014.
3. M/s. Fatima Enterprises Limited, (Solvent Unit), 487-A, Mumtazabad, Multan.


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

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