

Spare  
Blacklisting

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

62

Federal Board of Revenue  
Versus  
M/s Yasin & Sons, Karachi.

REPRESENTATION PREFERRED BY FBR AGAINST FINDINGS / RECOMMENDATIONS  
DATED 2.11.2015 PASSED BY THE FTO IN COMPLAINT NO. 237/KHI/ST(111)/787/2015

I am directed to refer to your representation No.1(787)S(TO-II)/2015 dated 30<sup>th</sup> November, 2015 on the above subject and to say that the President has been pleased to pass the following orders:

2. This Representation dated 1.12.2015 has been filed by the Agency/FBR against the findings of FTO dated 2.11.2015, whereby it has recommended that:

"FBR to:

- i) revisit Commissioner's blacklisting order in terms of Section 45A of the act; and
- ii) report compliance within 30 days."

3. Brief facts of the case are that Mrs. Razia Shamim Prop: M/s Yasin & Sons, Karachi being aggrieved by suspension / blacklisting of her sales tax registration due to non verification of address vide order 5.6.2014 agitated. The Agency replied that complainant obtained NTN and STRN as manufacturer / importer / exporter at business address at plot No.140, Block-C, Sher Shah Road, Karachi. At the time of physical verification, no such thing was found there. Moreover, complainant had failed to declare purchase of natural gas or sale of CNG in her sales tax return and failed to pay sales tax with the returns.

4. The complainant contended that the stated discrepancy in the GD was duly corrected with the permission of DC, MCC, Karachi dated 21.5.2015. Similarly "commercial importer" was inadvertently mentioned whereas complainant is rightly registered as exporter / importer / manufacturer. Moreover, complainant was engaged in manufacturing activities from 1998 to 2002 and afterward their manufacturing activities were discontinued. GST on CNG purchasing was regularly being paid through deposition of monthly gas bills.

5. FTO found that in violation of Para 38E, blacklisting order has been passed after 90 days as Show Cause Notice was issued on 12.6.2014 while blacklisting order has been passed on 17.4.2015, whereas Para 38 of STGO No.3/2004 dated 12.6.2004 requires CIR to issue Show Cause Notice within 07 days of the order of suspension. Thus aforementioned recommendations of FTO were passed on 2.11.2015.

6. Through the Representation, Agency challenged the findings of FTO on the grounds that during the course of physical verification conducted on 30.8.2015 in the light of direction of FTO, it was observed that M/s Yasin Sons had no manufacturing facility at declared address at Plot. No.M-II-E-140, Block-C, Toorbaba Road, Sher Shah Road, Karachi. In fact the registered person was found conducting activity through a small office in a portion of 1<sup>st</sup> floor. It is also worth mentioning that other 2 or 3 manufacturing units were conducting manufacturing activity at the declared address without intimation to sales tax / income tax authorities. Further on line verification shows that complainant is registered as Manufacturer/Importers/Exporter showing business address. The fact that M/s Yasin Sons is a manufacturer was also concealed while filing instant complaint before FTO. Complainant has herself admitted that she has closed its manufacturing unit in 2002. However no application for change of particulars of registration (change of address) was submitted as required under Rule 7 of the Sales Tax Rules, 2006. In view of presence of substantive evidences against the Complainant and in order to prevent any misuse of registration and loss of govt revenue, the Complainant was blacklisted.

P.T.O.

*[Handwritten signature]*

2016

*[Handwritten initials]*

*[Handwritten initials]*

S(T-SC)

S(L&Auto)

SS(T-I)

SS(T-II)

Chief(L-II)

S(Lt-HC)

SS(Lt-HC)

S(LDI)

S(LIDT)

SPS

BR eDOX Dy. No. 806/34.R  
received in  
Ch. Sectt.  
13 JUN 2016  
Sec. Sec. 2016-16

POF  
*[Handwritten signature]*  
21/6/16

164



62

7. On the other hand Complainant vide her comments dated 20.1.2016 has endorsed the findings of FTO dated 2.11.2015 with prayer that the instant representation of FBR may be dismissed.

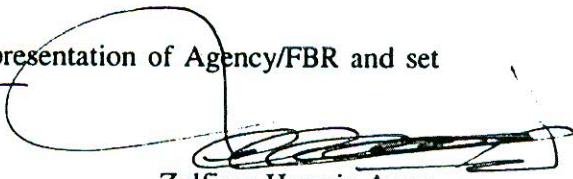
8. The examination of the record indicates that in terms of Section 9(2)(b) of the FTO Ordinance 2000, the FTO has no jurisdiction to investigate or inquire into the matters which relate to the assessment of income, determination of liability of tax, interpretation of law, rules and regulations relating to the said assessment/ determination in respect of which legal remedies of an appeal, review or revision are available under the relevant legislation.

9. It is an admitted position that the matter involves the determination of tax liability and thorny issue of blacklisting of a firm. Such matters are appealable before the Commissioner (Appeal), Appellate Tribunal (IR), the High Court and the Supreme Court. Where remedy of appeal is provided under the law the FTO has no jurisdiction to investigate the matter in the name of maladministration. In case the complainant was aggrieved of any action or non action on the part of official(s) of the Agency, it has the remedy to file an appeal at appropriate forum under the relevant law.

10. It is observed that M/s Yasin Sons was issued a final hearing notice on 9.4.2015 and the same was sent through courier service to the declared premises but no response was received at that time. According to Section 56 of the Sales Tax Act, 1990, a notice shall be treated as properly served if it is sent by registered post or courier service to the last known address in Pakistan. After providing ample opportunity of being heard, the order for blacklisting was issued by the Agency vide No.5389 dated 17.4.2015 u/s 21(2) of the Sales Tax Act, 1990 read with Rule 12 of Sales Tax Rules 2006 and para N of STGO #3 of 2004 dated 12.6.2004 (as amended by STGO 35 of 2012 dated 30.6.2012). However, to minutely examine thoroughly the thorny issue of the blacklisting of a firm, FTO is not an appropriate forum and the remedy of appeal in the matter is available with the Complainant.

11. In such circumstances, where remedy of appeal was available FTO could not interfere with the matter of assessment of tax and interpretation of law. Thus FTO having gone beyond the scope and powers, the impugned findings are not sustainable. Consequently, the Agency's representation is liable to be accepted. However, the complainant can seek remedy available to him from the relevant forums under the law.

12. Accordingly, the President has been pleased accept the representation of Agency/FBR and set aside the impugned findings of FTO.


  
Zulfiqar Hussain Awan  
Director (Legal-II)

✓  
The Chairman,  
Federal Board of Revenue, Islamabad

No.95/FTO/2015 dated 8<sup>th</sup> June, 2016

Copy for information to:

1. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
2. Mrs. Razia Shamim, Proprietor M/s Yasin Sons, Plot No.M-II-E-140, Block-C, Toorbaba road, Shershah, Karachi.
3. Syed Askari Haider Jaffri, Advocate, M/s Flowchart Associates, Office No.100, 1<sup>st</sup> floor, Rizvia Market, 1<sup>st</sup> Chowrangi Nazimaad, Karachi.
4. Director to Secretary to the President.
5. Master file

  
Zulfiqar Hussain Awan  
Director (Legal-II)

163