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No.43/2012-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),
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. 95/LHR/ST(19)/175/2012 (FBR VS MR.
AMJAD FAROOQ M/S BATA PAKISTAN LTD, LAHORE**

I am directed to refer to your representation No.1(175)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.02/2012 dated 04.01.2012 disallowing input tax claim of registered person amounting to Rs.4,356,225/-, complainant approached FTO contending that the show cause notice did not mention the relevant Section 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. 02/2012 dated 04.01.2012 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. 002/2012 dated 04.01.2012, as per law.”

3. This representation has been filed by Agency objecting to FTO's jurisdiction and reiterating the plea that SRO relied upon in the findings ceased to have legal effect. Complainant in its comments has supported the findings and recommendations of FTO. Reliance on Notification No.555 (1)/1996 dated 01.07.1996 was not apt in view of the admitted position that the statutory provision i.e. Section 11(3) of the Sales Tax Act, 1990 under which it was issued, stood omitted vide Finance Ordinance, 2000. Needless to state that a conflict

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between provisions of a parent statute and a notification purported to have been issued under the same is to be resolved in favour of statute. Be that as it may the matter pertained to determination of liability to pay tax and the order was subject to remedy of appeal under the Sales Tax Act, 1990, Section 9(2) (b) of FTO Ordinance, 2000 clearly bars FTO's jurisdiction. Findings and recommendations of FTO are, therefore, 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.461/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)