

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

Federal Board of Revenue
Versus
M/s Firdous Supplier & Printing Works, Karachi

**REPRESENTATION PREFERRED BY FBR AGAINST FINDINGS / RECOMMENDATIONS
DATED 08.06.2016 IN COMPLAINT NO. 114/KHI/ST(53)/366/2016**

I am directed to refer to your representation No.1(366)S(TO-II)/2016 dated 20th July, 2016 on the above subject and to say that the President has been pleased to pass the following orders:

2. This representation dated 20.7.2016 has been filed by the Agency/FBR against the findings of FTO dated 8.6.2016 whereby it has been recommended that:

"FBR is to direct the Chief Commissioner to:-

- i. **Restore the complainant's STR within 15 days; and**
- ii. **Report compliance within 7 days thereafter."**

3. The brief fact of the case are that the complaint is filed against the Chief Commissioner IR (CCIR), RTO Karachi and the Commissioner IR, Zone-III, RTO-III, Karachi in terms of Section 10(1) of the FTO Ordinance 2000 for suspending the Complainant's Sales Tax Registration (STR) w.e.f. 14.2.2014 without any written order and not restoring it despite failure to issue show cause notice within 07 days of suspension.

4. The complaint was referred to the Secretary, Revenue Division for comments in terms of Section 10(4) of the Ordinance in response the FBR vide letter C.No.1(366) TO-II/2016 dated 27.4.2016 submitted comments of the Commissioner IR Zone-IV, RTO-III, Karachi dated 25.4.2016. It was contended that the Directorate of Intelligence and Investigation (I&I), Karachi, reported vide 24.12.2013 that the complainant had illegally adjusted inadmissible input tax on the basis of fake and flying invoices issued by the parties nominated in FIRs No. 693/2010 dated 19.01.2011 and 04/2011 dated 26.03.2011. Thus under Rule 12(a)(viii) of the Sales Tax Rules, 2006, the STR of the complainant was suspended with effect from 14.04.2014. It was averred that the suspension of the complainant had been in place for around two years. The complainant had not communicated any problem to the tax authorities arising out of the suspension.

5. The Complainant, a wholesaler/retailer with principal activity as non-specialized wholesale trade is registered with the deptt under the Sales Tax Act 1990. According to Authorized Representative (AR) the Complainant came to know from his buyers that his STR was suspended since 14.4.2014. The Complainant approached the Commissioner IR RTO-III vide letter dated 29.4.2014 to know the reason of suspension. After the change of jurisdiction the Complainant approached the CCIR RTO Karachi with the similar request vide letter dated 22.2.2016. However, no response was made and STR of the Complainant continued to remain suspended. It was reiterated that the deptt has failed to follow due process as stipulated under Para 38 of General Order 35/2012 and Rule 12(a)(viii) of the Rules hence STR is liable to be restored.

6. Arguments of both the parties have been given due consideration and record perused by FTO. Thus FTO has issued aforementioned findings.

7. The instant representation has been filed by the Agency-FBR. The Agency has taken ground that there is incontrovertible reason to believe that M/s Firdous Supplies & Printing Works is involved in the evasion of Sales Tax and Tax fraud in terms of Section 2(37) of the Sales Tax Act 1990. Therefore M/s Firdous Supplies & Printing Works bearing STRNO.11-22-9999-342-19 was suspended vide order No.4003 dated 8.4.2014 U/s 21(2) of the Sales Tax Act 1990.

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8. The Agency has contended that the Registered Person was granted opportunity of being heard and he failed to provide any documentary evidence in his defense as evident that the registered person was well aware about the suspension of their registration. It is clearly mentioned in Section sub-Section (3) of Section 21 of Sales Tax Act, 1990, that:

“During the period of suspension of registration, the invoices issued by such person shall not be entertained for the purposes of Sales Tax refund or input tax credit and once such person is blacklisted, the refund or input tax credit claimed against invoice issued by him, whether prior or after such blacklisting shall be rejected.”

9. The Agency has pleaded that however instead of providing evidences in shape of invoices, carriage receipts, payment through banks, Registered Person contested case on legal plane only. Due opportunity of being heard i.e. letter to the Commissioner IR Zone-III, RTO-III, Karachi on 29.4.2014 and due time was also been available to the registered person to defend themselves. Brings proceedings at the original position as if no order is made.

10. The Agency has pointed out that tax on purchases of registered person from such registered person who are involved in the issuance of fake and flying invoices issued by units / accused persons nominated in the interim/supplementary Challan under FIR's remain unpaid in the Govt Treasury while registered person M/s Firdous Supplies & Printing Works has adjusted the same against its output tax.

11. The Agency has prayed that:

- i. Honorable President may vacate finding in Complaint No.114/KHI/ST(53)366/2016.
- ii. Recommendation No.(i)&(ii) may be recalled.

12. There is no question on the facts that the jurisdiction of the FTO is barred u/s 9(2)(b) to investigate or inquire into the matter which relate to assessment of income or wealth, determination of liability of tax, interpretation of law, rules and regulations relating to such assessment / determination in respect of which legal remedy of appeal or review or revision is available under the relevant legislation. In case the complainant was aggrieved of any action or inaction of the Agency, the complainant has the remedy to file an appeal to the Commissioner Appeals, Income Tax Tribunal, the High Court and the Supreme Court of Pakistan. Hence the matter was not within the jurisdiction of FTO, which is not an appellate forum. In such circumstances, where remedy of appeal was available, FTO could not interfere with and could not pass orders under garb of maladministration.

13. It has already been held vide order No. 88/FTO/2013 dated 05.06.2013 (corresponding Law Division's Summary No.73/2011-Law(FTO) dated 12.06.2013 in Complaint No. 90/LHR/IT(79)/204/2011), that: “matter pertained to assessment of income and determination of liability of tax as also interpretation of law and there is no dispute that legal remedy of appeal as well as revision was available under the Income Tax Ordinance 2001. Findings and recommendations of FTO are not sustainable.” In another case No. 384/FTO/2013 dated 09.09.2013 (corresponding Law Division's summary No.50/2012-Law(FTO) dated 24.07.2013 in Complaint No. 181/LHR/IT (128)/ 355/ 2012), it has been held that: “there is no manner of doubt that the matter pertained to determination of liability of tax also involving interpretation of law/ rules relating to such determination and legal remedies of appeal are available under the said Ordinance 2001. . . . Findings do disclose that FTO has assumed unto himself the jurisdiction of appellate authority which is not permissible under the provisions of FTO Ordinance 2000. Findings and recommendations of FTO are therefore not sustainable.”

14. It has been settled by the Supreme Court of Pakistan in case of Mst. Kaniz Fatima reported in 2001 SCMR 1493, that where a particular statute provides self contained machinery for determination of questions arising under the statute and law provides a remedy by appeal or revision to another forum fully competent to give any relief, any indulgence to the contrary by any other forum is bound to produce a sense of distrust in statutory forums and writ petition will not be maintainable without first availing the alternate statutory legal remedy. The FTO has no jurisdiction to set aside the order where the forum of appeal is available to the complainant. Thus the impugned findings are not sustainable and the representation is liable to be accepted.

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15. 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.

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



Zulfiqar Hussain Awan
Director (Legal-II)

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The Chairman,
Federal Board of Revenue,
Islamabad.

No.117/FTO/2016 dated 29.9.2016

Copy for information to:

1. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
2. Mr. Firdous Alam, M/s Firdous Supplier and Printing Works, 109-B-3, Faiza Avenue, F-1, St-11, C-1, North Karachi, Nagan Chowrangi. Karachi.
3. Mr. Muhammad Irshad Alam, Advocate, M-18, Mezzanine Floor, Panama Centre, Block-13-D/3, Gulshan-e-Iqbal, Karachi.
4. Director to Secretary to the President.
5. Master file.

Zulfiqar Hussain Awan
Director (Legal-II)

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