

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

Mr. Muhammad Sarfraz, Versus FBR

**REPRESENTATION PREFERRED BY MR. MUAHMMAD SARFRAZ, KARACHI AGAINST FINDINGS/ RECOMMENDATIONS DATED 28.09.2016 PASSED BY THE FTO REVIEW PETITION IN COMPLAINT NO. 638/KHI/ST/2016**

I am directed to refer to your representation dated 22.03.2017 on the above subject and to say that the President has been to pass the following order:

2. This Representation dated 22.03.2017 has been filed by the M/s C.R.T (Pvt) Ltd against the orders of the FTO dated 22.02.2017 whereby it has been held that:

**"In view of above discussions, and legal position supra, mere disagreement with the findings cannot be made a ground for review. As no mistake or error apparent on face of record has been pointed out by the petitioner hence no case of review of findings dated 28.9.2016 is made out. The AR has however agreed to furnish specific reply to SCN issued to the petitioner on 25.5.2016 and the DR has assured to pass an appealable order as per law on the basis of such reply. In view of this position there are hardly any grounds to review the impugned order.**

**The RP is accordingly disposed of and case file consigned to record."**

Original findings of FTO dated 28.9.2016 provides as follows:-

**"It is, therefore, incumbent upon the complainant to cooperate with the department and make compliance of SCN dated 25.05.2016 so that matter could be settled, as per law. The department is also required to settle the issue of STR and pass necessary order within 15 days after receipt of reply to SCN from the complainant taking into consideration the provisions of Section 21(4) of the Act read with Rule 5 and 12(i)(A) of the Rules with reference to non availability of the complainant at the given address.**

**As the complainant has failed to make out case of maladministration against the department, the complaint is rejected and case file consigned to record."**

3. The Complainant preferred representation dated 24.03.2017 against order dated 28.09.2017 of the Federal Tax Ombudsman.

4. The brief facts of the case are that the complaint is filed against the Commissioner-IR, Zone-III, RTO, Karachi in terms of Section 10(1) of FTO Ordinance 2000 (the Ordinance) against arbitrary suspension of the Complainant's Sales Tax Registration (STR). 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(638)TO-II/2016 dated 28.07.2016 submitted comments of the Commissioner-IR Zone-III, RTO, Karachi dated 21.07.2016. It was contended that on physical verification the Complainant was found no-existent on the given address. Accordingly in terms of Section 21 of the Sales Tax Act 1990 (the Act) its status was placed under suspension vide order dated 20.05.2016. The suspension was followed by Show Cause Notice (SCN) UNDER Section 21(2) & (3) OF THE READ WITH Rule 12(A) (iv) of Sales Tax Rules, 2006 (the Rules) as notified vide SRO No. 555(1)/2006 dated 05.06.2006. In compliance to the SCN, the Complainant appeared before the department (deptt) along with written submission and requested for revisiting the registered premises and a separate letter was submitted for review for restoration of STR simultaneously. The team comprising Deputy Superintendent-IR and Inspector-IR was constituted vide letter dated 21.06.2016, which visited the registered premises on 23.06.2016, and reported that the Complainant was non-existent. It was averred that representative of M/s Awan Law Associates attended on 01.07.2016, without any authority, with a written request for restoration of STR. Keeping in view the fact that no reply to SCN was submitted, the matter was put off requiring the Complainant to appear in person or through some representative duly authorized and submit relevant evidence by 15.07.2016 positively. The status of Complainant was suspended on the basis of non availability of the Complainant at the registered address in view of the physical verification reports.

5. The complainant, a private limited company is registered with the deptt under the Act. According to the AR, the deptt has not proved that any fake invoice was ever issued by the Complainant who is regular filer of sales tax returns. It was further contended that the request made vide letter 30.06.2016 for supply of evidence in support of the above SCN, but the deptt has failed to supply any evidence. Thus the order of suspension was passed illegally and arbitrarily, it was argued. The Complainant had repeatedly approached the deptt vide his letters dated 01.07.2016 and 30.06.2016 but in vain.

6. During hearing, the DR contended that team constituted by the Commissioner-IR vide authorization letter dated 28.07.2016 conducted physical verification of the premises in the presence of company secretary on

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Received in Chief (Legal) Office

on 24-7-17

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23.08.2016 and submitted report dated 24.08.2016. According to the Physical Verification Report (PVR) M/s Nova Leather) Pvt) Ltd has provided a small room measuring 10X10 square feet to the Complainant. The electric and gas meters installed in the premises were not in the name of the Complainant. No. telephone facility was available in the name of the Complainant. The Committee suggested further verification regarding electric and gas consumption as well as physical verification of the godown purportedly in use of the Complainant. 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 Complainant. The complainant has taken ground that the impugned Order in Review is bad in law, time barred, it is not based on deliberate escape on true facts of the case. The learned FTO has failed to appreciate the contents of the documents on record, in fact the judgment has been framed by the dealing officer whose earlier finding was impugned. The impugned judgment is based upon misreading, non-reading or deliberately ignoring the true facts on the following points.

i. At the time of fresh physical verification dated 24.8.2016 following documents were produced to the Respondent Inspector:

- a. NOC of the Land lord (Nova Leathers (Pvt) Ltd)
- b. Proof of ownership of Nova Leather & Property tax paid by them.
- c. Copy of paid Electric and Gas bills

(ii) Falsely alleged that the Applicant has not made the compliance of SCN vide page 6 para (i) of the Review Order of FTO. Whereas the applicant has submitted the evidence of compliance of SCN page 6 of Review petition.

8. The complainant has pointed out that it is alleged that various department officials conducted physical verifications of the Unit on 15.4.2016, 30.7.2016 and 24.8.2016. All of the reported to save the illegal action taken on first visit by suspending the Sales Tax Registration of a physically existed tax payer who has paid Rs. 26,950, 147 output tax into the national kitty since its registration on existing address. The Respondent erred to understand that the Applicant is "Trader/wholesaler" Mandate of physical verification was given vide letter dated 21.06.2016 by the then Commissioner IR as under:

1. Nature of business being carried out.
2. Godown
3. Registration documents of property.
4. Utility installation along with copies thereof,
5. List of machinery installed
6. Detail regarding office staff.

9. The Respondent erred to understand that above conditions are for a Manufacturing concern and not for a "Trader/wholesaler" After passing four year on existing address Respondent is asking unlawful documents.

10. The Complainant has apprised that the Respondent erred to understand para(iv) page6 of the Review order of FTO that condition of lease or rent agreement is applicable when the Applicant is using the rented premises, Premises are free of any charge/rent, However proof of ownership of Nova Leather was produced. The Respondent erred to understand at para(v) page 6 of the Review order of FTO that suspension order was issued u/s. 21 (2) and Show cause notice was issued by the Respondent u/s 21(2) &3. Respondent could not produce any evidence of fake invoices.

11. The complainant has expressed that the Respondent erred to understand that hearing of show cause was attended on due date. Reply to show cause notice is clearly addressed and acknowledged by the Respondent. Proper reference of show cause notice is given on 4th para on first page of reply letter dated 25.05.2016. The Respondent erred to understand the motives of physical verification by FBR officials when all the correspondence is being responded to different department from the existing address.

12. The Complainant has illustrated that the Respondent erred to understand that name plate of the Applicant is affixed on the main gate of the premises, Respondent Inspector reported that the Applicant has premises of 10x10 sq.ft. on the registered address. The Respondent erred to understand that after four years of registration at the given address, electric and gas meters installation is demanded contrary to allegation of show cause notice under section 21 (2) & (3) . There is no such requirement for business of Trader/ Wholesaler.

13. The Complainant has stated that the applicant craves leave as to highlight more and further grounds if arising out at the time of hearing. That the Respondent can't travel beyond the scope of show cause notice.

14. The Complainant has prayed that:

1. In view of above submission it is humbly requested to pass an order as to annual the Order-in Review dated 22.02,2017 and Recommendation at 28.09.206 passed by the Learned FTO.
2. It is further requested that to pass an order for eradication of mal-administration and Restoration of Sales Tax Registration of the applicant.

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3. It is worth consideration that in this case it is nothing but suspension of sales tax is prejudicial to the interest of revenue and misconduct and misuse of power for damaging the FBR and loss the national exchequer. The functionaries of the respondent played fraud with the facts and law of the case and have been injuring the national exchequer and causing serious stricture warrants in the cases of suspension of sales tax registration of registered persons having fair, clean and blameless past record.

15. On the other hand, the Agency has filed comments against the instant representation of Complainant on 19.4.2017 and supported the impugned recommendations/findings of learned FTO with request that the representation of Complainant may be rejected.

16. After perusal of record and examination of all documents, it has been observed 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.

17. The issuance of Show Cause Notice is not a negative inference as the Complainant has an opportunity to file reply and put forward its case. In case of an adverse order, the Complainant has remedy to file appeals as a matter of right to the Commissioner (Appeals), Appellate Tribunal, High Court and the Supreme Court. In case the impugned SCNs are asked to be withdrawn then there will be no remedy available with the Department to check the irregularity, if any, in the matter.

18. In the circumstances, this representation has been filed by the Complainant repeating the contents of the pleadings already made before the learned FTO. Nothing turns on the same as it fails to answer the reasoning of FTO and not even contain denial of the factual observations for his impugned decision. No grounds stand made out for interference with the decision of the FTO. Undoubtedly FTO decision is based on sound reasoning and supported by the law. Thus, the representation is devoid of any merits and is liable to be rejected. FTO impugned findings do not warrant any interference. Consequently FTO findings are sustainable and unexceptional having no illegality or improbability. However, the complainant can seek remedy available to him from the relevant forums under the law if so desired.

19. Accordingly, the President has been pleased to reject the instant representation of Complainant - M/s C.R.T (Pvt) Ltd and impugned recommendations/findings of learned FTO are upheld.

(Zulfiqar Hussain Awan)  
Director General (Legal Affairs)

Mr. Muhammad Sarfraz,  
Company Secretary: M/s C.R.T (Pvt) Ltd,  
Plot No. 30, Sector-15, Korangi Industrial Area,  
**Karachi.**

No. 74/FTO/2017 dated 17.07.2017

Copy for information to:

1. The Chairman, Federal Board of Revenue, Islamabad.
2. Mr. Adeel Awan, M/s Awan Law Associates, 314, Commerce Centre, Hasrat Mohani Road, Karachi.
3. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
- ✓ 4. The Chief (Legal-I), Federal Board of Revenue, Islamabad.
5. Director to Secretary to the President.
6. Master file.

(Zulfiqar Hussain Awan)  
Director General (Legal Affairs)