

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

M/s AZM Chemical Company, Versus FBR

**REPRESENTATION PREFERRED BY M/S AZM CHEMICAL COMPANY, KARACHI
AGAINST FINDINGS / RECOMMENDATIONS DATED 08.12.2015 PASSED BY THE FTO
REVIEW PETITION IN COMPLAINT NO. 16/KHI/CUST/(2)47/2016**

I am directed to refer to your representation no. NIL, dated 09.01.2017 on the above subject and to say that the President has been to pass the following order:

2. This Representation dated 09.01.2017 has been filed by the Complainant against the findings of the FTO dated 08.12.2015, whereby it has been held that:

“In view of the facts and the legal position discussed supra, mere disagreement with the findings cannot made a ground for review. As no mistake or error apparent on the face of record has been pointed out by the petitioner, no case for review of findings dated 22.3.2016 is made out. The R.P is accordingly rejected and case file consigned to record.”

Original findings of FTO dated 22.03.2016 indicted as follows:

“The investigation of complaint being time-barred and bereft of merits is, therefore, closed and case filed consigned to record.”

3. The brief facts of the case are that the complainant has sought indulgence of FTO against refusal of the FBR to extend utilization period for DTRE approval granted to the complainant on 21.11.2011 allowing duty/tax free import of 225 MT of Ethyl Acetate, 150 MT of ISO Propyle Alcohol and 25 MT of Solvesso. The complainant was required to export output goods within stipulated period of two years but he failed to do so. Subsequently he approached FBR for extension of utilization period but his request was regretted by FBR vide letter dated 10.12.2014. The complainant repeated his request on 16.12.2014 which was again turned down vide letter dated 10.03.2015. The complainant has now filed complaint alleging maladministration on the part of FBR for not extending his utilization period which has been allowed to M/s Abdullah Industries, Karachi, M/s Bulk Management Pakistan (Pvt) Ltd and M/s Kulachi Industries, Karachi. The complainant prayed that direction may be issued for grant for extension in utilization period of DTRE Approval.

4. The department responding o the notice of complaint issued under section 10(4) of the FTO Ordinance, 2000 filed parawise comments resisting extension in utilization period contending that the complainant was granted DTRE facility vide DTRE approval No. KEXP/4756/2011/2011 dated 21.11.2011. The complainant was required to use imported materials and export output goods i.e. IPA TECH (500MT) and Thinner (500MT) within period of two years. But the complainant of thinner. Therefore, FBR was justified in refusing to allow further extension in the DTRE approval.

5. The Deptt further contended that case of extension for utilization of DTRE approval is examined on the basis of export performance of the manufacturing unit and the rationale of exceptional circumstances, if any. It was explained that presently DTRE utilization period 1 year whereas in year 2011 this period was 2 years. The complainant had advantage of having 2 years at his disposal to utilize duty/tax free imports but he failed to meet the obligation. After refusal of the Board to grant extension in utilization period, the complainant voluntarily agreed to pay the amount of duty/taxes vide letter dated 19.05.2015 stating his inability to export the goods. Later on, the complainant changed his stance and came up with “law and order” plea only to avoid payment of duty and taxes for the imported goods.

6. The complainant on being supplied a copy of parawise comment did not opt to file a rejoinder. During hearing on 04.02.2016, the parties reiterated averments of their pleading and relied on documents filed in support thereof. The AR was confronted with issue of limitation as FBR extension in the utilization period initially on 10.12.2014 and again on 10.03.2015 whereas the complaint has been filed on 12.01.2016 which is hit by limitation provided in Section 10(3) of the FTO Ordinance, 2000. The AR contended that the complainant was pursuing the matter in the FBR.

FBR e-Box No. 75706-
Received in Chief (Legal) Office
on 14-06-17

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7. After hearing held on 08.02.2016, the AR submitted application that on 18.11.2015 he received recovery notice dated 17.11.2015 along with a back dated order No. SI/MISC/09/2011/DTRE-APPR/PQ/EXP/140 dated 22.05.2015. According to the AR, the complaint has been filed within two months of receiving of recovery notice with refusal order dated 22.05.2016. Therefore, the complaint was within time.

8. Submission of the parties and documents available on record evidently show the DTRE approval of the complainant expired on 20.11.2013. The complainant applied for extension of utilization period which was refused by FBR on 10.12.2014. The complainant repeated his request again which too was turned down on 10.03.2015.

9. In such view of the facts, the complainant was first aggrieved on 10.12.2014 when his request for extension in utilization period of DTRE approval was turned down by the FBR. Therefore period of filing of complaint under section 10(3) of the FTO Ordinance, 2000 is to be reckoned from 10.12.2014. Besides, if the limitation is reckoned from the date of second refusal i.e. 10.03.2015, then too, the complaint filed on 12.01.2016 is hit by the bar of limitation. Adverting to the plea of the complaint about receiving o recovery notice dated 17.11.2015 with back dated order, it would suffice to observe that letter dated 22.05.2015 is information provided to FBR about willingness of the complainant to pay duty and taxes whereas rejection of his request for extension of DTRE approval are dated 10.12.2014 and 10.03.2015. The explanation advanced in letter dated 08.02.2016 is of no help to the complainant to condone the delay. The complaint is obviously time barred. Thus FTO has issued aforementioned findings.

10. The instant representation has been filed by Complainant. The Complainant has taken ground that our case is not time-barred and bereft of the facts as we approached the learned FTO Regional Tax Office Karachi within six months of the order of the FBR alongwith recovery notice received by the applicant under section 10(3) of FTO ordinance 2000. That discrimination was made in our case as there are several instances in similar types of cases who have been approved DTRE for 02 years then extended approval for one year or one and half year. (Annexure-I)

11. The complainant mentioned that it is vehemently ignored by the FBR authorities and learned FTO in order to extension our DTRE approval that due to awful law and order conditions and threats of dire consequences/murder we were unable to continue our business of import and export smoothly, although the authorities have been provided concrete evidences of issuance of threats (copy of complaint is enclosed as Annexure-J). While it is fundamental right of Islamic Republic of Pakistan that in to save the life from the notoriousness, hence the existing principle of law provide lenient view to every citizen who suffers from dangerous situation should be provided relief at his end. That the aforesaid orders have put us under heavy financial pressure besides distracting us from fulfillment of export orders.

12. The Complainant has expressed that not exporting goods within the stipulated period was beyond our control and the circumstances created by in-ethnic and sectarian riots operated as force majeure which was beyond our estimation. We assure your honor that an immediate advance payment/L.C will reach as soon as we get the extension of DTRE approval for export purposes.

13. The complainant has made prayer for sympathetic consideration and favorable orders in the interest of justice as well as purely on humanitarian grounds:-

- i) to direct the Customs Authorities to allow extension of time to Exports the goods,
- ii) the earlier impugned orders issued by the learned FBR may be revoked.
- iii) the complainant may be allowed extension in utilization period of DTRE Approvals No. KEXP/4756/21112011 dated 21.11.2011 under consideration till December 31st, 2017 enabling to bring attractive foreign exchange in the homeland.

14. On the other hand, the Agency has filed comments against the instant representation of Complainant on 23.01.2017 and supported the impugned recommendations/findings of learned FTO with request that the representation of Complainant may be rejected.

15. After perusal of record and examination of all documents it has been observed that 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.

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16. 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.

17. This representation has been filed by 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 learned 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/ court of the competent jurisdiction.

18. Accordingly, the President has been pleased to reject the instant representation of Complainant and impugned findings/recommendations of learned FTO are upheld.

(Zulfiqar Hussain Awan)
Director General (Legal Affairs)

M/s AZM Chemical Company,
Room No. 27, 2nd Floor, Rehman Trade Centre,
Timber Pond, Kemari, Karachi.

No.21/FTO/2017 dated 05.06.2017

Copy for information to:

1. The Chairman, Federal Board of Revenue, Islamabad.
2. Mr. Mir Afzal, Advocate, M/s Revenue Advisory Service, C-20, Block-5, Gulistan-e-Iqbal, Karachi. .
3. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
4. ✓ The Chief (Legal-1), Federal Board of Revenue, Islamabad.
5. Director to Secretary to the President.
6. Master file.

(Zulfiqar Hussain Awan)
Director General (Legal Affairs)

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