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

M/s Qasim Industries, Gujranwala
Versus
Federal Board of Revenue

REPRESENTATION PREFERRED BY FBR AGAINST FINDINGS / RECOMMENDATIONS
DATED 17.3.2015 PASSED BY THE FTO IN COMPLAINT NO. 453/LHR/ST(118)/807/2013

I am directed to refer to your representation No.1(807)S(TO-II)/2013 dated 22nd April, 2015 on the above subject and to say that the President has been pleased to pass the following orders:

2. The Representation dated 22.4.2015 has been filed by the Agency/FBR against the findings of FTO dated 17.3.2015 wherein following recommendations have been made:-

"FBR to direct Chief Commissioner RTO Gujranwala to-

- (i) not to take any adverse action for non-filing against the complainant from 29.12.2004 to Feb, 2015;
- (ii) direct CRO to change complainant's registration category from manufacturer and importer to manufacturer w.e.f. 1.3.2015; and
- (iii) report compliance within one month of issue of these finding/recommendations."

3. Brief facts of the case are that complainant was registered in the sales tax department with the status of importer cum manufacturer, who applied for de-registration as per C.No.3(11)ST-L&P 32004, dated 30.6.2004 as its turnover was less than Rs.5.0 million. Agency denied the de-registration as this was available only towards Retailers or Manufacturers. Complainant approached FTO, who recommended to allow sales tax de-registration to the complaint from 2004 vide order dated 30.7.2013. Representation was filed by the Agency before Hon'ble President on the grounds that importer/manufacturer cannot be deregistered as per law. The case was remanded back to FTO with the following observation that:

"The President has been pleased to partly accept the above referred representation and to send back the case to FTO with direction to record findings on the said contention of Agency after hearing both parties as to whether provisions of letter dated 30.6.2004 relied upon by complainant would be applicable to the case of importer / manufacturer and to decide complaint afresh accordingly."

4. During fresh hearing complainant contended that he had never imported any-thing even so to categorize him as an importer was a misnomer. Agency in its stance contended that complainant made request for deregistration on 29.12.2004 and until 16.1.2013 complainant kept informing the department that his request for deregistration is pending since 17.1.2013 when department asked the complainant to file sales tax return from July 2007 to June 2010, he filed instant complaint before FTO on 6.5.2013.

5. It is an admitted fact that electricity and gas bills of the complainant for the tax period 05/2012 to 04/2013, amounting to Rs.2,139,150/- against threshold of Rs.0.7 (M) make the complainant liable for registration as manufacturer irrespective of his registration as importer.

6. The Agency in its Representation has pleaded that FTO cannot recommend for not to take any adverse action on non filing of sales tax return against the complainant from 29.12.2004 to February 2015, whereas Section 26 of Sales Tax Act 1990 requires every registered person to file sales tax return and non filing of sales tax return attracts penalty provision under Section 33(1) of the Sales Tax Act, 1990.

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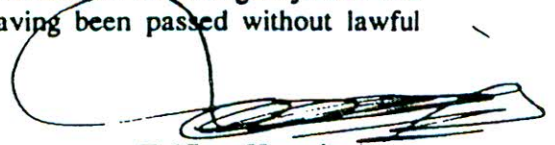
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7. The perusal of record indicates that FTO cannot pass the order of not imposing any statutory penalty. Hence FTO intervened which was beyond the scope of power and such order is not sustainable. Since the department / Agency has prayed to reduce the period from 29.12.2004 to 31.12.2011 instead of the period from 29.12.2004 to February, 2015 for not to take the legal action against the tax payer on non-filing and non-payment of due tax, hence the same is being allowed.

8. Accordingly, the President has been pleased to accept the Representation of the Agency/FBR and set aside the impugned recommendations of the learned FTO as having been passed without lawful jurisdiction.



Zulfiqar Hussain Awan
Director (Legal-II)

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The Chief (Legal),
Federal Board of Revenue,
Islamabad

No.33/FTO/2015 dated 30.5.2016

Copy for information to:

1. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
2. M/s Qasim Industries, 5-6/B, Small Industrial Estate No.1, Gujranwala.
3. Ch. Hafeez Ullah Gujjar, Advocate High Court, Chaudhry Tax Law Associates, Opposite Railway Station, Khan Plaz, G.T. road, Gujranwala.
4. Director to Secretary to the President.
5. Master file.

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Zulfiqar Hussain Awan
Director (Legal-II)

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