

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

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Federal Board of Revenue  
Versus  
M/s Libra International, Karachi

REPRESENTATION PREFERRED BY FBR AGAINST FINDINGS / RECOMMENDATIONS DATED 19.1.2016 AND 5.8.2015 PASSED BY THE FTO REVIEW APPLICATION NO.49/2015 IN COMPLAINT NO. 154/KHI/ST(66)/527/2015

I am directed to refer to your representation No.1 (527) S (TO-II)/2015 dated 19.02.2016 on the above subject and to say that the President has been pleased to pass the following orders:

2. This representation dated 19.2.2016 has been filed by the Agency/FBR against the Order-in-Review of FTO dated 19.1.2016 whereby it has been recommended that:

"In view of the above position, RP is allowed. FBR is advised to direct RTO to re-consider application of the petitioner for revision of impugned returns within 04 weeks and report compliance within one week thereafter."

3. The brief facts of the case are that the Review Petition has been filed u/s 14(8) of the FTO Ordinance 2000 against FTO findings on the ground that sales tax returns, filed at his own by ex-consultant of the petitioner, have created mismatch in the figures of Income Tax return and Sales Tax returns need to be corrected. Further that the petitioner has lodged FIR against his ex-consultant and original returns would remain in the system as proof of wrong doing on the part of the ex-consultant. Department in its comments have opposed the Review Petition on the ground that the matter of Review Petition was sub judice before the Special Judge (Customs and Taxation) and CIR (Appeals) and thus barred FTO's jurisdiction in terms of Section 9(2)(a) of the Ordinance.

4. During hearing both sides re-iterated their written positions. The DR also stated that allowing the revision request would weaken the case of deptt before the Special Judge (Customs and Taxation). The contentions of both sides have been considered and relevant records perused by FTO. It is evident that impugned original sales tax returns were filed by ex-consultant of the petitioner reportedly at his own with ulterior motives and the petitioner has lodged an FIR against his ex-consultant. It is apparent that the petitioner has lost the opportunity to challenge decision of Commissioner of not allowing his requests for revision of impugned returns by filing appeal within 60 days of their receipt before ATIR u/s 46(1) of the STA, 1990. It is evident that the matter of revision of impugned sales tax returns is neither subject matter of case before the Court of Special Judge (Customs and Taxation) nor of appeal pending before Commissioner (Appeals) against O-in-O passed on 21.2.2015 by OIR, Inspection and Collection Unit-4, Zone-IV, RTO-II, Karachi. Rather both these fora are dealing with impugned original sales tax returns. By lodging FIR against his ex-consultant the petitioner has tried to absolve himself from his wrong doing unless the deptt proves his connivance with his ex-consultant in the court of Special Judge (customs and taxation). Thus deptt needs to reconsider his requests for revision of impugned returns which may fully shift the burden of tax on the buyers who had claimed input on fake invoices mentioned in the original returns.

5. The perspective of the matter is that the complaint was filed against the Commissioner-IR (CIR) Zone-IV, RTO-II, Karachi for failure to accord approval in terms of 26(3) of the STA 1990 to revise sales tax returns for the month of Nov 2013 and March to May 2014.

6. The Directorate I&I-IR dated 11.5.2015 and the CIR Zone-IV, RTO-II, Karachi dated 20.5.2015. DI&I at the outset raised preliminary objection of jurisdiction bar u/s 9(2)(a) of the Ordinance on the ground that the matter was subjudice before the High Court of Sindh vide CP No.4546 of 2014 as well as before the Special Court Customs and Taxation, Karachi. On merits, the DI&I contended that on the receipt of a complaint against M/s Tripick Trading International, Karachi investigations were initiated and it was revealed that fraudulent transactions of sales tax were carried out by one Sajid Hussain s/o Abdul Karim, a Tax consultant who had also filed sales tax returns of the complainant as a consultant besides being owner of M/s Tripick Trading International. The deptt arrested Mr. Sajid Hussain u/s 38 of the Act. Subsequent investigations revealed that the complainant's unit had also issued fake and flying invoices for the months of Nov 2013 and March to May 2014 in favour of M/s Tripick Trading International. On this basis the complainant was arrested by the deptt and produced before the trial magistrate on

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21.6.2014. During the course of investigations, the complainant deposited a pay order of Rs.500,000 each equal to revenue loss caused to the national exchequer. The complainant was subsequently allowed bail by the trial court on 24.6.2014. It was further informed that the complainant had filed CP No.4546/2014 before the High Court of Sindh against the deptt where he has got stay order against encashment of 3 post dated cheques furnished by him to deptt allegedly under coercion.

7. The CIR did not allow revision of sales tax returns to the Complainant as issue was pending before Special Judge Customs. Moreover Complainant's appeal before Commissioner (Appeals) against Order-in-Original (O-in-O) dated 21.05.2015 was also pending.

8. Both parties were heard by FTO. Thus FTO has issued order in original dated 5.8.2015 and order in review dated 19.1.2016.

9. The instant representation has been filed by the Agency-FBR. The Agency has argued that the FTO erred in law and has given findings against the applicant inspite of the fact that the entire case is based on the impugned sales tax returns for the tax period Nov, 2013, March, 2014 & April, 2014 wherein the entries of the fake and flying invoices exists and FIR was lodged against the respondent and he was arrested and produced before the court of special judge. During the course of hearing Maqsood Yar Khan (respondent) submitted pay order for Rs.500,000/ and three post dated cheques amounting to Rs.500000/- equal to the principal amount of revenue loss caused by the accused which was received by the complainant. The court granted one day remand of the accused Maqsood Yar Khan with consent whereas the main accused Sajid Hussain has also been remanded in IO custody till 25.6.2014 with the direction to produce before the court on 26.6.2014. Consequent upon the submission of interim challan on 24.6.2014 the accused Maqsood Yar Khan (respondent) was granted bail by the court of Customs & Taxation Karachi vide release order No.314/2014 dated 24.6.2014. On receipt of the said order the accused Maqsood Yar Khan was released.

10. Agency has pointed out that the FTO erred in law and passed the impugned order inspite of the fact that the FTO under section 9(2)(b) of FTO Ordinance, 2000 shall not have jurisdiction to investigate or inquire into matters which relates to assessment of income or wealth, determination of liability of tax or duty, classification or valuation of goods, interpretation of law, rules and regulations relating to such assessment, determination, classification or valuation in respect of which legal remedies of appeal, review or revision are available under the Relevant Legislation.

11. Agency has pleaded that the FTO erred in law and passed the impugned order on review application despite the fact that this is not the case of mal-administration. The fact is that an FIR was lodged against the petitioner for issuing fake and flying invoices during the tax period November, 2013, March, 2014 & April, 2014 and he caused loss to the public exchequer of 2 million and the matter is still subjudice before the Special Court (Customs & Taxation), Karachi. It is pertinent to mention here that the order under section 11 has already been passed vide order in original of 02/21/2015. If the returns are revised and the order of FTO is implemented then departmental stance before various courts will be jeopardized.

12. Agency has taken ground that the said revision application was re-examined by the RTO-II Karachi with the applicable provisions of the Sales Tax Act, 1990 and found not tenable as per law on the grounds that as per rule 150E and rule 150N of the Chapter XII and Chapter-XIII of the Sales Tax Rules, 2006 the registered person intermediary is responsible for security and confidentiality of the "Uniq User Identifier" allotted to him and where any information is transmitted to the computerized system using a "Uniq Identifier", the transmission of that information shall be sufficient evidence.

13. Agency has contended that besides above there are various representations of Federal Board of Revenue, are of similar nature which had been accepted by the President (in Compliant No. 173/2002(Prime Chorium (Pvt)Ltd. vs CBR/Sales Tax Haripur) Complaint No. 429/2001(Adnan Fabrics (Pvt)Ltd vs Revenue Division.).

14. On the other hand, the complainant has filed his comments against the representation of Agency/FBR on 19.2.2016 with prayer to reject the representation and supported the impugned recommendations of learned FTO.

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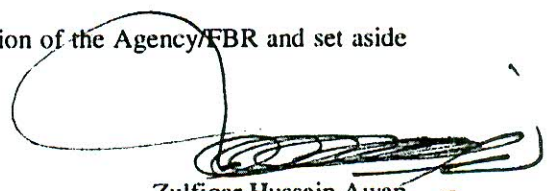
15. Section 9(2)(a) of the FTO Ordinance 2000 provides that FTO shall not have jurisdiction to investigate or inquire into matters which are subjudice before a court of competent jurisdiction or tribunal or board of authority on the date of the receipt of a complaint, reference or motion by him.

16. 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.

17. It is an admitted position that the matter involves the determination of tax liability and refundable amount on account of tax. Such matters are appealable before the Commissioner (Appeal), Appellate Tribunal (IR), the High Court and the Supreme Court. Where remedy of appeal is provided under the law the FTO has no jurisdiction to investigate the matter in the name of maladministration. In case the complainant was aggrieved of any action or non action on the part of official(s) of the Agency, it has the remedy to file an appeal at appropriate forum under the relevant law.

18. 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.

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

  
Zulfiqar Hussain Awan  
Director (Legal-II)

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The Chairman,  
Federal Board of Revenue,  
Islamabad.

No.30/FTO/2016 dated 16.08.2016

Copy for information to:

1. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
2. Mr. Maqsood Yar Khan, Partner of M/s Libra International, 1<sup>st</sup> floor, LS-10, Commercial Area, Sharifabad, Block-1, Federal 'B' Area Karachi.
3. Director to Secretary to the President.
4. Master file

  
Zulfiqar Hussain Awan  
Director (Legal-II)

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