

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

Mr. Muhammad Shoukat, Hyderabad
Versus
Federal Board of Revenue

REPRESENTATION PREFERRED BY MR. MUHAMMAD SHOUKAT, HYDERABAD AGAINST FINDINGS / RECOMMENDATIONS DATED 02.03.2017.2017 PASSED BY THE FTO IN REVIEW PETITION COMPLAINT NO. FTO-KHI/0000700/ST/2016

I am directed to refer to your representation No. Nil, dated 10.05.2017 on the above subject and to say that the President has been to pass the following order:

2. This Representation dated 10.05.2017 has been filed by the complainant - M/s Al Madina Packages against the revised findings of the FTO dated 02.03.2017, whereby it has been held that:

"In view of the foregoing discussion, the Petitioner has failed to make out case for review against the impugned findings dated 10.10.2016. The RP is, hereby, rejected and case filed consigned to record."

Original findings dated 10.10.2016 of Wafaqi Mohtasib provides as follows:-

"The averments of both the parties have been given due consideration and record perused. As the complainant has availed legal remedy under Section 45B of the Act and the matter is now sub judice before the CIR (Appeals), the complaint is hit by bar of jurisdiction under Section 9(2)(b) of the Ordinance.

In view of the foregoing discussion, the complaint is closed and filed consigned to record."

3. The Brief facts of the case are that the complaint is filed against the Department (deptt) in terms of Section 10(1) of Federal Tax Ombudsman Ordinance, 2000 (the Ordinance) against Order-in-Original (O-in-O) No.07/2016 dated 15.08.2016.

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(700)TO-II/2016 dated 27.09.2016 submitted parawise comments of the Commissioner-IR (CIR), RTO, Hyderabad dated 22.09.2016. At the outset preliminary objection of ba. was raised in terms of Section 9(2)(b) of the Ordinance. On merits, it was contended that on the basis of contravention report dated 29.08.2014 prepared by the Director Intelligence and Investigation (I&I) Lahore, proceedings were initiated by serving on the Complainant Show Cause Notice (SCN) under Section 11 of the Sales Tax Act, 1990 (the Act). Against this SCN, the Complainant lodged a complaint vide C.No.FTO-KHI/531/2016. As maladministration could not be established, the complaint was closed vide order 15.06.2016. It was further contended that after providing adequate opportunities to the Complainant to produce records/ documents, the proceedings were completed under Section 11(3) read with Section 34 of the Act vide impugned O-in-O dated 15.08.2016. The complainant has, however, preferred appeal against the impugned O-in-O under Section 45B of the Act.

5. According to the AR, the contravention report prepared by I&I Lahore was without verification of the documents and payment of sales tax made through proper banking channel. He contended that the contravention report was also not finalized within 90 days from the issuance of notice under Section 37 of the Act. The Adjudicating Officer (AO) RTO, Hyderabad, also issued a SCN dated 01.04.2016 on the basis of alleged false/ baseless contravention report dated 29.08.2014 and without examining the Officer of I&I Lahore and considering reply of the Complainant furnished on 11.04.2016 passed ex-parte O-in-O dated 15.08.2016.

6. During hearing, the AR, however, confirmed that after lodging the instant complaint, the Complainant has also availed legal remedy by filing appeal before the CIR (Appeals) in terms of Section 45B of the Act. The FTO has issued aforementioned findings.

7. The instant Representation has been filed by the Complainant. The Complainant has taken ground that the D(I&I) – Inland Revenue, Lahore have failed to comply the Hon'able FTO's decision/ findings and not verified the relevant documents regarding purchases of goods for the tax period in question; duly filed by the Purchaser, as per findings dated 05.06.2012, in complaint No.139/KHI/ST(66)-419/2012 – Mr. Muhammad Shoukat, M/s Al-Madina Packages, Hyderabad. As such, the I/O, D(I&I) – I/R, Lahore could not finalize the verification of the relevant documents and not completed the said Enquiry, in 90-days, as prevailing in the law and procedures. The D(I&I)-I/R, Lahore prepared false/ baseless C/Report on 29.08.2014. As such, the purchaser taken input against the goods, during the tax-periods, the amount and tax-periods are not tallied with the C/Report. Thus, the negligency committed by the I/O, the negligency comes under the definition of Mal-administration. The FTO not properly made investigation and not called the said Agency at the time of hearings and not properly obtained the parawise comments against the allegations contained in the Complaint/ R-Application. The D(I&I) I/R, Lahore – also a

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Respondent, in this case. Therefore, the FTO's decision is not maintainable, in this case. As such, the documentary evidences are available and copies of the same already been furnished to the said Agency, but no result came out and they given mental torture to Appellant, un-lawfully/ illegally.

8. The Complainant has argued that the RTO Hyderabad issued SCN on 01.04.2016 and O-in-O issued on 15.08.2016, not taken action within the period 120 days, hence, the said decision is not maintainable under the law. This is exparte decision. As such, the abnormal delay lies on the part of RTO Hyderabad, but FTO not properly investigated the captioned subject/ matter.

9. The Complainant has contended that on demand/ request, the RTO, Hyderabad have failed to supply copies of letters No.05-CCIR/I&I/RTO/Hyd/2015-2016/2883 dated 24.02.2016 and letter dated 22.12.2014 on the subject matter. As the Department is bound to supply any information, under the information Act and Rules made thereunder, on request by any citizen of Pakistan. The said documents are still awaited from RTO Hyderabad. The FTO not given any direction, in writing, at the time of hearing, in this case. The said issue is also comes under the purview of FTO.

10. The Complainant has pleaded that the Adjudicating Officer, RTO Hyderabad not called the DR or Reporting Officer/I.O of the D(I&I)-K/R, Lahore, at the time of hearings at Hyderabad, in the said case, knowingly & deliberately having malafide intention and ulterior motive. As such, the Complainant has fundamental rights to argue the case, during the course of hearings on the subject matter, if any.

11. The Complainant has expressed that the aforesaid case pertains to the verification of documents, regarding purchases, input adjustment/ taken and proof of payment made under the provisions of section 73 of the Sales Tax Act 1990, but the I/O of the D(I&I) - I/R, Lahore failed to finalize the said work, within the stipulated period of 90-days, Mal-administration proved, against the said Agency, but no properly investigation made out by the Hon'able FTO, in time.

12. The Complainant has narrated that the said matter is not, fallen within the assessment and determination of tax liability, because the matter has been decided, at the Forum of Adjudication (i.e. Quasi Judicial Forum). As such, the concerned officer has misused the powers, in this case. The misuse of powers comes under the definition of maladministration. The I/O FTO Karachi not taken appropriate action and not investigated properly and made favored to the Agency, reasons best known to him. As such, the FTO is fully empowered to investigate the delay, misuse of powers, including negligency, which comes under the purview of maladministration. The said findings is not maintainable.

13. The Complainant has pointed out that the complainant filed an appeal before the Commissioner - IR/ (Appeals), Hyderabad for sought of legal relief only. As such, the said appeal has not yet been decided, although the stipulated period of 120 days has already been expired. No result, as yet. The Commissioner (Appeals) has no jurisdiction to initiate any action, against the maladministration committed by the Department. Only FTO is empowered to dispose of the complaint filed, against the maladministration committed by the Agency/ Respondents/ Deptt. However, copies of the Rejoinders/ Reply of the Agencies are sent herewith:-

- (i) Rejoinder dated 10.12.2016, against comments filed by the D(I&I)-I/R, Lhr vide letter 05.12.2016 & RTO Hyd's letter dated 05.12.2016 (Both Respondents).
- (ii) Rejoinder dated 29.12.2016, against the comments filed by RTO Hyderabad, vide his letter dated 19.12.2016.
- (iii) Copy of C/Report dated 29.08.2014, SCN dated 01.04.2016, Complainant's letter dated 25.07.2016, alongwith relevant references.

14. The Complainant has requested to direct the Hon'able Mohtasib, FTO, Islamabad for proper investigation and redressal of real grievances of the complainant.

15. On the other hand, the Agency has filed comments against the instant representation of Complainant on 12.6.2017 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 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. 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.

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18. 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.

19. 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 sustainable and the representation is liable to be rejected.

20. 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.

21. Accordingly, the President has been pleased to reject the instant representation of the Complainant - M/s Al Madina Packages and the impugned recommendations/findings of FTO are upheld.

(Zulfiqar Hussain Awan)
Director General (Legal Affairs)

Mr. Muhammad Shoukat,
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No. 100/FTO/2017 dated 07.08.2017

Copy for information to:

1. The Chairman, Federal Board of Revenue, Islamabad.
2. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
3. The Chief (Legal-I), Federal Board of Revenue, Islamabad.
4. Director to Secretary to the President.
5. Master file.

(Zulfiqar Hussain Awan)
Director General (Legal Affairs)

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