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

FBR, Versus M/s Al-Front Log Pack Service, Islamabad

74 JUN 2017
M(L)

**REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE, ISLAMABAD
AGAINST FINDINGS / RECOMMENDATIONS DATED 08.02.2017 PASSED BY THE FTO IN
COMPLAINT NO. FTO-HQR/0000695/2016**

I am directed to refer to your representation No. 1(695)S(TO-II)/2016 dated 08.03.2017 on the above subject and to say that the President has been to pass the following order:

2. This Representation dated 08.03.2017 has been filed by the Agency/FBR against the findings of the FTO dated 08.02.2017, whereby it has been held that:

"FBR to direct:-

- i. **CCIR, RTO-II, Karachi to withdraw suspension of the STR of the complainant and consider request of the complainant for restoration on ATL; and**
- ii. **Report compliance within 45 days thereafter."**

3. The brief facts of the case are that the complaint has been filed under section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against the Chief Commissioner-IR, RTO-II, Karachi for blocking/suspending Sales Tax Registration (STR) of the complainant without proceedings under Rule 12 of the Sales Tax Rules 2006 (the Rules) read with Sales Tax General Order No. 03/2004.

4. The complaint was sent for comments to Secretary Revenue Division and Commissioner-IR, RTO-II, Karachi in terms of Section 10(4) of the Ordinance. The Commissioner-IR, RTO-II, Karachi did not furnish parawise comments on the complaint within due date so hearing was fixed for 17.01.2017 with the direction to furnish parawise comments at the time of hearing. However, the deptt failed to furnish parawise comments or attend the hearing. When informed telephonically about non-attendance of hearing, the deptt sought three days time for furnishing parawise comments vide its letter dated 17.01.2017. The deptt submitted comments on 19.01.2017 informing that the complainant was suspended by the FBR for consecutive non-filing on the recommendation of Chief Commissioner-IR, RTO, Karachi. Further that no petition has been received from the complainant in the office of Commissioner-IR, Zone-III, RTO-II, Karachi.

5. The deptt was informed telephonically that the complainant had requested for restoration of his STR on active Taxpayers List (ATL) vide his letters dated 05.09.2016 and 09.09.2016 received with the complaint. The same were also faxed to CCIR, RTO-II, Karachi. The Deptt furnished advance copy of comments dated 01.02.2017 informing that it has received complainant's letter dated 05.09.2016 on which proceedings were underway. It was also informed that since the complainant has neither filed any reply nor application for restoration since 30.06.2013, therefore, it attracts doctrine of lapses and is past and closed transaction warranting no action. Further added that he said application was also barred by time as per Section 10(3) of the Ordinance.

6. The profile the complainant obtained for PRAL shows that it has remained suspended from 1st July, 2013 onwards except on 03.07.2013. During telephonic discussion with the CCIR, RTO-II, Karachi and the dealing Commissioner Mr. Imtiaz Ahmed Solangi, both conceded that the deptt did not issue any show cause notice within 7 days of suspension as required under para-37 of then prevalent Sales Tax General Order (STGO) No. 3/2004.

7. The view points of both sides have been examined by FTO. Thus FTO has issued aforementioned findings.

8. The instant Representation has been filed by FBR. The Agency has taken stated that brief facts of the case are that M/s Al-Front Log Pak Services, Karachi, (respondent No. 2) filed complaint against the respondents for unlawfully and illegality blacklisting their firm and Blocking its Sales Tax Registration No. 17-50-9805-024-82 before FTO Advisor Islamabad. After analyzing the merits of the application and after obtaining comments from the field formation, the board in exercise of powers conferred u/s 74 of the Sales Tax Act, 1990, suspended the Sales Tax Registration of the complainant, dated 30.06.2013.

9. The Agency has mentioned that being aggrieved the taxpayer filed complaint before the FTO on 26.12.2017. The complaint contained the prayer that Complaint against the respondent for unlawfully and illegally Black Listing their firm and blocking it Sales Tax Registration Number 17-50-9805-024-82". The case was heard at

Chief(L-I)
S(LI-SC)
S(LI-SQ)
S(LI-T)
S(LI-ID)
Chief(L-II)
S(LI-BC)
S(LI-A&A)
Chief(L-III)
S(LI-DT)
S(LI-DT)
SPS

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the Islamabad by the FTO office, Islamabad by the advisor to FTO and the FTO made following findings/recommendations:-

Findings:

Continuous suspension of the STTR of the complainant in absence of issuance of any SCN within 7 days being violative of para-37 of then prevalent STGO No. 3/2004 tantamount to maladministration under Section 3(2)(i)(a) of the Ordinance.

Recommendations:

FBR to direct:-

- i. **CCIR, RTO-II, Karachi to withdraw suspension of the STR of the complainant and consider request of the complainant for restoration on ATL; and**
- ii. **Report compliance within 45 days thereafter**

10. The Agency has contended that the applicant being aggrieved and dissatisfied with the findings of the FTO begs to prefer representation before the President of Islamic Republic of Pakistan under section 32 of the Establishment of Federal Tax Ombudsman Ordinance, 2000 on the under mentioned grounds.

11. The Agency has taken ground that as per provisions of Section 10(3) of the Federal Tax Ombudsman Ordinance, 2000 a complaint should be filed within six months from the day on which aggrieved person had the notice of matter / grievance. STRN of the taxpayer was suspended on 30.06.2013 and the instant complaint has been filed on 26.12.2016. It is to be noted that the subject complaint has been lodged after the time limit of six months as stipulated under section 10(3) of the Federal Tax Ombudsman Ordinance, 2000. The said section reproduced below for ready reference.

“10(3)...A complaint shall be made not later than six months from the day on which the person aggrieved first had the notice of the matter alleged in the complaint, but the Federal Tax Ombudsman may conduct any investigation pursuant to a complaint which is not within time if he considers that there are special circumstances which he deems proper in the interest of justice to entertain the complaint”.

Taxpayer was sleeping over his rights, if any, is not entitled for remedy for inaction on his part.

12. The Agency has prayed that the President of Pakistan may be pleased to accept the representation of the Federal Board of Revenue, Islamabad and set aside the findings of the FTO vide order dated 08.02.2017, in Complaint No. FTO-HQR /0000695/.

13. On the other hand, the complainant has filed his comments against the instant representation of FBR on 12.4.2017 and supported the impugned recommendations/findings of learned FTO.

14. 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.

15. 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 not sustainable and the representation is liable to be accepted.

16. 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.

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17. 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 General (Legal Affairs)

✓ The Chairman,
Federal Board of Revenue,
Islamabad.

No.69/FTO/2017 dated 05.06.2017

Copy for information to:

1. Mr. Muzaffar-ul-Mulk, M/s Front Log Pack Services, Apartment No. 696, Street No. 47, G-9/1, 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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