

Islamabad, the 9th Dec 2014

No. 312/FTO/2013

OFFICE MEMORANDUM

**SUB: REPRESENTATION AGAINST DECISION/ ORDER/ FINDINGS/
RECOMMENDATION OF THE FEDERAL TAX OMBUDSMAN DATED 31.5.2013
IN COMPLAINT NO. 01/ISD/ST(01)02/2013 [M/S INTERACTIVE
COMMUNICATIONS (PVT) LTD, ISLAMABAD VS FBR]**

The undersigned is directed to refer to FBR's Representation No.1(02)S(TO-II)/2013 dated 1st July, 2013 on the subject noted above and to convey that the President has been pleased to pass the following orders in the subject case:

"Feeling aggrieved of attachment of its bank accounts vide attachment notice No. 380 dated 04.12.2012, complainant approached F.T.O primarily on the ground that as per terms of the service agreement dated 29.11.2002 between complainant /M/s Asia-Sat and M/s PTV all taxes and duties were to be paid by PTV. Reference was also made to an order raising a demand of Rs.27,176,409/- as Federal Excise Duty and rejection of appeals filed by the said parties to the agreement by Commissioner (Appeals) as also by Appellate Tribunal and pendency of references filed by the said parties in the High Court. Agency (Revenue Division) gave details of the amount recoverable from the said parties in terms of the decision of Appellate Tribunal. According to Agency's representatives the said term in the service agreement did not absolve any of the parties from operation of tax laws in Pakistan. F.T.O conducted hearing, discussed the matter in some detail, referred to some portions of the judgment of the Tribunal as also pendency of the references and recorded following findings:

"arbitrary attachment of bank accounts in the instant case after clear decision of the Tribunal being an unlawful act on the part of the Department is tantamount to maladministration".

Following recommendation was made by F.T.O:

"FBR to direct the Chief Commissioner to-

release the bank accounts of the Complainant and keep the recovery proceedings pending till the decision on the Departmental reference filed in the High Court".

This representation has been filed by Agency urging that F.T.O had no jurisdiction in the matter while proceeding to grant a stay order suspending recovery proceedings. Complainant in its comments has supported impugned recommendations by reiterating contentions raised before F.T.O. Admittedly matter is subjudice before High Court where judgment of Tribunal will be examined and questions of law arising in the case shall be answered by the High Court. F.T.O had no jurisdiction to comment upon judgment of Tribunal. Suffice it to say that orders raising demands for excise duty against all the concerned parties including complainant were upheld by Tribunal while discussing the appeals. It was nobody's case that some

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departmental references are pending (as mentioned in the recommendations). It is in the findings itself Para-3 [v-(iii)] that references have been filed by the said parties to the service contract. This office has noted that invariably F.T.O had been of the opinion that in the absence of a stay order by Appeal/Reference court impugned order is to be implemented. No case of maladministration stood made out. Impugned findings and recommendations being without jurisdiction and against law are not sustainable.”

2. Accordingly, the President has been pleased to accept of the above referred representation and to set aside impugned findings and recommendations of F.T.O.

(Arshad Farid Khan)
Director (Legal-II)

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

Copy to:

1. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
2. M/s Interactive Communications (Pvt) Ltd, House No.11, St. No.29, F-7/1, Islamabad
3. Mr. Tariq Mahmood & Arif Mehmood, Advocates, Office No.2, 1st Floor, Abbas Centre, Blue Area, Islamabad

(Arshad Farid Khan)
Director (Legal-II)

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