

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

M/s Multan Food Industries, Multan
Versus
Federal Board of Revenue

REPRESENTATION PREFERRED BY M/S MULTAN FOOD INDUSTRIES, MULTAN
AGAINST FINDINGS / RECOMMENDATIONS DATED 17.10.2017 PASSED BY THE FTO IN
COMPLAINT NO. FTO-MLN/0000133/2017

I am directed to refer to your representation No. NIL, dated 15.11.2017 on the above subject and to say that the President has been to pass the following order:

2. This Representation dated 15.11.2017 has been filed by the Complainant M/s Multan Food Industries, Multan against the findings of the FTO dated 17.10.2017 whereby it has been held:

“The contention of the Dett that the matter pertained to determination of tax liability appeared valid. However, since deptt has provided copy of authorization of audit by the Commissioner-IR to the Complainant who is co-operating with the deptt, further investigation in the complaint is closed and case file consigned to record”.

3. Brief facts of the case are that this complaint has been filed under Section 10(1) of the FTO Ordinance, 2000 against issuance of Show Cause Notice by the Deputy Commissioner-IR under Section 25 of the Sales Tax Act, 1990 bearing No. 183 dated 31.03.2017 without approval of the Commissioner-IR. The complaint was sent for comments to the Secretary, Revenue Division, Islamabad in terms of Section 10(4) of the FTO Ordinance. In response, the deptt submitted its comments vide letter dated 29.06.2017 raising preliminary objection regarding jurisdiction of the FTO in terms of Section 9(2)(b) of FTO Ordinance on the ground that the matter pertained to assessment/ determination of tax liability in respect of which legal remedy under the relevant legislation was available.

4. On merits, it was stated that proceeding were initiated by the DCIR on authorization of the Commissioner IR in terms of Section 25 read with Section 38 of the Act and as such were in accordance with the directions issued by the High Court and as per law. It was further stated that copy of authorization order of the Commissioner IR had been provided to the AR. The deptt intimated that the Complainant had participated in the audit proceedings and provided partial record with promise to produce the remaining documents. The audit proceedings are underway and would be finalized on merits after receiving the record. Arguments heard and record perused by FTO. Thus, FTO has issued aforementioned findings.

5. The instant Representation has been filed by the Complainant. The Complainant has stated that the Petitioner-M/s Multan Food Industries is an Association of Persons (AoP and is enrolled with income tax as well as sales tax authorities at NTN: 1363712-6 and STRN: 0407190506728 respectively. The Firm is furnishing its sales tax returns regularly and consecutively on FBR's Portal. A notice bearing No. 1133 for provision of record/ information for investigation under Section RW 25 of the STA-1990 dated 14.05.2014 endorsed by the Respondent No. 2 (Deputy Commissioner IR (I&P) U-01, Zone-Multan RTO Multan) was issued as disposed of with direction, “Learned counsel for the respondents, in instruction has undertaken that no proceedings u/s 38 of the Act shall be taken at the first instance. However, he requested that petitioner be directed to provide information as required and asked u/s 25 of the Act and detailed in the impugned notice. Learned counsel for the petitioner is directed accordingly”.

6. The Complainant has stated that despite of observing the undertaking/ directions of the Lahore High Court passed in W.P No. 10399/2014, an order u/s 38 bearing No. 1843 dated 02.09.2015 was issued by the Commissioner IR, Zone Multan, RTO Multan. The impugned order was also agitated unlawful and excess in jurisdiction through Writ Petition No. 13147/2015 which was decided on 02.03.2017 with the observation. “Upon perusal, the notice clearly offends the provision of Section 38 of the Act, 1990 by which it is required that reasons be delineated in the notice and a notice bereft of reasons cannot be issued. This runs counter to the judgment of this court inter alia in W.P No. 24062/2016. In this view of the matter, the impugned notice is clearly ultra vires and is set aside”. Again, a notice bearing No. 183 dated 31.03.2017 titled, Access to Sales Tax Record/ Documents under Section 25 of the Sales Tax Act, 1990 for the tax year 2013 issued from the office of the Deputy Commissioner IR (I&P), U-01, Multan to the Complainant. In response to the above notice, firstly the concerned officer was asked to provide “Audit Selection Order by Commissioner u/s 25(1) of the STA-1990”, and thereafter for non supply of the impugned order, an application dated 19.05.2017 was lodged in the office of the Commissioner IR, Zone-Multan, RTO Multan which is still pending adjudication.

7. The Complainant has taken ground that the findings of the FTO is bad in law and contrary to the facts of the case. The FTO failed to perceive that requisition of Audit Selection Order indispensable under Section 25(1) signed by Commissioner-IR does not fall into determination of tax liabilities. Moreover, the matter is not appealable.

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