

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

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Federal Board of Revenue  
Versus  
M/s Phoenix Armour (Pvt) Ltd

**REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS/RECOMMENDATIONS PASSED BY THE FTO IN COMPLAINT NO. 701-K/2003-H/C OF SINDH ORDER DATED 11.04.2017 IN CP NO. D-171/2004, D-640/2004, D-1202/2004 D-517/2005 AND D-1446/2005**

I am directed to refer to constitutional petition referred by the Honourable High Court of Sindh vide their order dated 11.04.2017 on the above mentioned subject and to say that the President of Pakistan in pursuance of the orders of the High Court dated 11.04.2017 has been pleased to pass the following order:

2. The High Court of Sindh vide their order dated 11.04.2017 has communicated in C.P.Nos. D-171 of 2004, D-640 of 2004, D-1202 of 2004, D-517 of 2005 & D-1446 of 2005 as under:

"These are a bunch of the Petitions wherein a common question of law is involved in all the instant Petitions. The Petitioners have agitated that the President of Pakistan, while passing the impugned orders on the Representations decided by the Federal Tax Ombudsman in favour of the Respondent Department, has not given opportunity of hearing to the respective Petitioners. Learned counsel for the Petitioners, in this behalf, have placed reliance on the decision given in the case of Messrs. Siddiqsons Weaving Mills (Pvt.) Limited through Director vs. Federation of Pakistan through Secretary Law, Justice and Human Rights, Islamabad (PLD 2005 Karachi 656) and have stated that since the Petitioners were not given an opportunity of hearing, which is violation of the principle of "audi alterum partum", therefore, the order passed by the President of Pakistan is not in accordance with law and needs to be vacated. It is further contended that the issue involved in these Petitions has since been laid down at rest in the above-referred decision, therefore, the instant Petitions may be disposed of in the light of the above-referred decision.

Learned counsel for the Respondents have conceded that no opportunity of hearing was provided to the Petitioners by the President of Pakistan, while passing the impugned orders. They have, however, stated that this is not a fatal defect and the same can be cured if the matters are remanded back to the President of Pakistan to pass a fresh order after providing an opportunity of hearing to the Petitioners in accordance with law.

We, after hearing the learned counsel for the parties at some length, decide the instant Petitions with their consent as under:-

1. *That the matters of the Petitioners may be heard afresh by the President of Pakistan in accordance with law after providing opportunity of hearing to them.*
2. *That the issue with regard to the limitation or other issues would also be considered and decided by the President of Pakistan in accordance with law while deciding the Representations.*

The instant Petitions stand disposed of in the above terms."

3. The particular Representation dated 12.11.2003 was filed by the Federal Board of Revenue (FBR) against the findings of the FTO dated 09.09.2003, whereby it was held that:

- (i) C.B.R re-open Order-in-Original No.019/2003 dated 28.02.2003 under Section 45A of the Sales Tax Act, 1990 and cancel the same.
- (ii) Compliance be reported within 30 days of the receipt of this Order.

4. The President of Pakistan was pleased to pass on 17<sup>th</sup> September 2004 the following order:-

"Section 9(2) of 2000 Ordinance provides that the Federal Tax Ombudsman shall not have jurisdiction to investigate or inquire into matters which relate 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. The role of the FTO is to identify mal administration and not to provide appeal on merits against an unfavorable decision of tax employee. Mal administration connotes some misbehavior such as inattention or corrupt motives. Neither there is any such allegation in the complaint nor has the FTO so found. The only question debated before the FTO and attended to by him in his findings relates to taxability of certain supplies made by the complainant, and

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such a question relates to assessment of tax referred to in Section 9(2) *ibid*. The FTO's findings have all the earmarks of an appellate order. The Ombudsman's order plainly is without jurisdiction. And, the question of limitation does not arise where an order is without jurisdiction. Further, the recommendation of the FTO is not binding judgment. It becomes binding only when it is affirmed by the President [Shafaatullah Qureshi v Federation of Pakistan PLD 2001 SC 142]. The President may, at his discretion, direct implementation of the recommendation or refuse implementation.

Accordingly, the President has been pleased to direct that the Ombudsman's recommendation shall not be implemented."

5. The Brief facts of the case are that all this complaint has been filed by a Company alleging "maladministration" and harassment by way of levy of Sales Tax by mis-interpreting the word "Services" understood in common parlance.

6. The complainant provides Secured Cash Transportation Service, which is not liable to Sales Tax. They have been filing returns, as required by Section 26 of the Sales Tax Act, since their 'registration' under the Sales Tax Act in July, 1998. The complainants were then known as Brinks Pakistan (Pvt.) Ltd. For the period July, 1998 to September, 2001 the Collector of Sales Tax (Adj.) Karachi has vide his Order-in-Original No.019/03 dated 28.02.2003, held them liable to Sales Tax for:

(a) Sales of Plastic, Scales and Bags (consumed in providing secured Transmission Service).	= Rs.50,141,899
(b) Sales of Containers Seals of Transportation	-- Rs.40,502,450
(c) Sale of Scrap	- Rs.145,675
(d) Sale of Fixed Assets	Rs.24,538,630

7. Thus on aggregated Sales of Rs.115,388,654, Sales Tax liability of Rs.17,468,715 and Additional Tax liability at Rs.12,559,965 has been created which is the cause of grievance.

8. The Respondents have forwarded parawise comments by Collector of Custom, Sales Tax and Central Excise (Adjudication), Karachi-III which deny "mal-administration". The levy has been justified contending that:

- Complainant is not the "end user" of taxable goods liked Seals/ Bags which were supplied to the clients by adding the value of these items in the Bills.
- Complainant violated Section 26 of Sales Tax by not reflecting all sales in the Monthly Returns.

9. It is stressed the huge amount of tax should "not be allowed to go down the drain just for the sake of entertaining the flimsy grounds put forth by the complainants in his appeal / complaint."

10. Mr. Aminuddin Ansari (Advocate) appearing for the Complainant explained that controversy concerns levy of Sales Tax on (i) alleged sale of Seals and Bags, (ii) Sale of scraps, and (iii) disposal of discarded assets. Of these, according to learned Counsel, the principal issue relates to the first item of Seals and Bags. The learned Counsel admitted that Complainant's own financial auditors, for purpose of accounting, though it prudent to mention on the Invoices (issued to the customers) the break-up of items consumed in the process of providing the Service for Transportation of Cash from the point of dispatch to the point of delivery. This according to the AR, may have been either a mistake of procedure as respects recording the consumption of consumable stores, but it is clearly was not the Complainant's intention (or practice) to make sales of consumable store to the clients. Therefore, the 'tax functionaries' labouring with undue enthusiasm treated the consumption of Seals and Bags as transactions of sale. The Counsel was at pains to explain that when delivery is taken from the dispatch point, a memo is prepared recording denominations and value of currency, which are then placed in a Bag to be sealed in the presence of the Cashier who notes down on the Memo the engraved serial number of the Seal. At the delivery point the receiving Cashier checks that the Seal of the same number is secured and properly locked. The seal is then broken to open the bag and contents tallied with the details on the Memo. The "seal" thus becomes waste but the lock and the Bag is retained by the Complainant. The bags and locks are repeatedly used till these become worn out. Thus for the Seals/ Bags / Locks the complaint is the "end user" and hence these were not liable to Sales Tax especially when undeniably the service provided by the Complainant is not a taxable activity. As respects the sale of Scrap, the standby the learned Counsel was that levy was uncalled for as sale of Scrap was not the principal source of business hence not liable to Sales Tax. Similar position was adopted with respect to the sale of discarded Assets. For these assertions, the learned Counsel relied on decisions reported as 1999-PTD-1982 and 2000-PTD-976.

11. Mr. Saeed Khan Jadoon (DC, Sales Tax) submitted that there was no 'mal-administration' and hence the complaint is not competent for admission. He explained that the complainant admits that their own Auditors (by

