

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

Federal Board of Revenue
Versus
M/s Al-Faisal, Karachi

**REPRESENTATION REFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS
/ RECOMMENDATIONS DATED 07.07.2017 PASSED BY THE FTO IN COMPLAINT NO.
99/KHI/ST/2017**

I am directed to refer to your representation No. 1(90)S(TO-II)/2017, dated 22.08.2017 on the above subject and to say that the President has been to pass the following order:

2. This Representation dated 22.08.2017 has been filed by the Agency—Federal Board of Revenue against the findings of the FTO dated 07.07.2017 whereby it has been held that:

“FBR to-

- (i) Consider recalling under Section 45A of the Act suspension Order/ SCN dated 24.02.2017 and restoring STR of the Complainant;
- (ii) Order Chief Commissioner-IR to refund amount of Rs.0.832 million recovered from the bank account of the Complainant; and
- (iii) Report compliance within 45 days”.

3. Brief facts of the case are that this complaint is filed against the Commissioner IR (CIR), Zone-III, RTO-II, Karachi in terms of Section 10(1) of the FTO Ordinance, 2000 against:

- (i) Suspension of Sales Tax Registration Number (STRN) video order dated 24.02.2017;
- (ii) Initiating proceedings for blacklisting by issuing Show Cause Notice dated 24.02.2017 under Section 21(1) of Sales Tax Act, 1990 (the Act) and;
- (iii) Forced recovery by attaching bank account.
- (iv)

4. The complaint was referred to the Secretary Revenue Division for comments in terms of Section 10(4) of the Ordinance. In response, CIR Zone-III, RTO-II, Karachi submitted parawise comments dated 07.04.2017. It was contended that the Complainant had claimed inadmissible input tax amounting to Rs. 0.832 million on account of blacklisted suppliers involved in fraudulent activities thus, the Complainant was confronted vide Show Cause Notice dated 10.11.2016. On failure to explain the discrepancies pointed out in the Show Cause Notice. Order in Original No. 109/11 dated 03.01.2017 for tax period 2016-17 was passed whereby demand amounting to Rs.0.832 million was created against the Complainant. Against the said Order in Original the Complainant filed appeal under Section 45B of the Act. The CIR (Appeal-IV) Karachi vide Order No.13 dated 30.01.2017 annulled the above Order in Original which was not served through online. It was further contended that annulment of the Order in Original, however, did not bar the deptt to initiate blacklisting proceedings in terms of Section 21 of the Act. As per provision of Rule 12(a)(i)(D), the CIR may suspend a registered person who was found involved in purchases from or supplies to other blacklisted or suspended person.

5. The Complainant is registered with the department under the Act. The AR contended that sales tax amounting to Rs. 0.832 million was assessed by the department under Section 11(2) of the Act by disallowing input tax claimed during the tax period from December 2001 to November 2012 vide Order in Original dated 03.01.2017. Subsequently, the Complainant filed an appeal before the CIR (Appeal-IV) Karachi. However, without waiting for the outcome of appeal, the deptt. suspended STR of the Complainant vide order dated 24.02.2017 and on the same day Show Cause Notice under Section 21 of the Act was issued and also recovery was enforced amounting to Rs. 0.044 million by attaching bank account of the Complainant. Although, the CIR, (Appeals-IV) Karachi vide his Order dated 30.01.2017 had already annulled the Order in Original thus entire demand stood deleted before suspension of STR, issuance of Show Cause Notice and attachment of bank account. The AR averred that the Complainant approached the CIR Zone-III, RTO-II, Karachi vide his letter received by the department on 02.03.2017 requesting for restoration of STRN, withdrawal of Show Cause Notice dated 24.02.2017 for blacklisting and refund the amount which was illegally withdrawn from the bank by attaching his account. The Complainant repeatedly approached the department but no action was taken on his requests. Arguments of both the parties have been given the consideration and record perused. Thus, the FTO has issued aforementioned findings.

6. The instant Representation has been filed by the Agency. The Agency has taken ground that the FTO passed the impugned order in spite of the fact that the FTO under Section 9(2)(b) of FTO Ordinance, 2000 shall not have jurisdiction to investigate or inquire matters which relate to assessment of tax. Furthermore, no maladministration is

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involved as assessment proceeding under Section 11 and Suspension/ Blacklisting provision under Section 21 of the Sales Tax Act, 1990 are independent Section and are also mutually exclusive.

7. The Agency has pointed out that the FTO was not justified to entertain the complaint when the remedy of appeal is available to the Complainant under Section 45B of the Sales Tax Act, 1990.

8. The Agency has stated that the FTO has failed to appreciate that order was annulled, hence proceedings under Section 11 of the Sales Tax Act, 1990 could start afresh, hence have not attained finality.

9. The Agency has pleaded that the FTO has entertained complaint where taxpayer had committed payment of tax in installments.

10. The Agency has contended that the FTO was not justified to entertain complaint when the complaint stands resolved as the sales tax registration number of the Complainant was restored vide order dated 21.03.2017.

11. The Agency has submitted that the FTO agrees with the views of the Commissioner IR. Accordingly, the President may be requested to vacate the Order in Review dated 10.07.2017 of the FTO which is barred by jurisdiction in terms of Section 9(2)(b) of the FTO Ordinance, 2000. The proposed Representation may be filed before the President of Pakistan through Member (Legal) FBR as per SOP.

12. On the other hand, the complainant has filed his written comments against the instant representation of FBR on 31.08.2017 and supported the impugned recommendations/findings of learned FTO with the request that the representation of Agency may be rejected.

13. 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.

14. It has already been held vide order No. 88/FTO/2013 dated 05.06.2013 (corresponding Law Division's Summary No.73/2011-Law(FTO) dated 12.06.2013 in Complaint No. 90/LHR/IT(79)/204/2011), that: "matter pertained to assessment of income and determination of liability of tax as also interpretation of law and there is no dispute that legal remedy of appeal as well as revision was available under the Income Tax Ordinance 2001. Findings and recommendations of FTO are not sustainable." In another case No. 384/FTO/2013 dated 09.09.2013 (corresponding Law Division's summary No.50/2012-Law(FTO) dated 24.07.2013 in Complaint No. 181/LHR/IT (128)/355/2012), it has been held that: "there is no manner of doubt that the matter pertained to determination of liability of tax also involving interpretation of law/ rules relating to such determination and legal remedies of appeal are available under the said Ordinance 2001. . . . Findings do disclose that FTO has assumed unto himself the jurisdiction of appellate authority which is not permissible under the provisions of FTO Ordinance 2000. Findings and recommendations of FTO are therefore not sustainable."

15. 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.

16. 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.

17. The issuance of Show Cause Notice is not a negative inference as the Complainant has an opportunity to file reply and put forward its case. In case of an adverse order, the Complainant has remedy to file appeals as a matter of right to the Commissioner (Appeals), Appellate Tribunal, High Court and the Supreme Court. In case the impugned SCNs are asked to be withdrawn then there will be no remedy available with the Department to check the irregularity, if any, in the matter.

18. 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.

19. Accordingly, the President has been pleased to accept the instant representation of FBR-Agency and to set aside the impugned recommendations/findings of FTO.

(Zulfiqar Hussain Awan)
Director General (Legal Affairs)

The Chairman,
Federal Board of Revenue,
Islamabad.

No. 149/FTO/2017 dated 18.12.2017

Copy for information to:

1. Mr. Muhammad Banaras Nasim, M/s Al-Faisal, 408, Park Avenue, Shabrah-e-Faisal, Karachi.
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)

For