

599/2016  
Subjudice

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

Federal Board of Revenue  
Versus  
M/s Nafecs Trading Company, Faisalabad

26 DEC 2017  
M(L)

**REPRESENTATION REFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS / RECOMMENDATIONS DATED 27.07.2017 PASSED BY THE FTO IN REVIEW PETITION IN COMPLAINT NO. FTO-FSD/599/2016**

I am directed to refer to your representation No. 1(599)S(TO-II)/2016, dated 24.08.2017 on the above subject and to say that the President has been to pass the following order:

2. This Representation dated 24.08.2017 has been filed by the Agency-FBR against the findings of the FTO dated 27.07.2017 whereby it has been held:

"In view of supra, findings dated 15.03.2017 are recalled. The RP is accepted and it is recommended to FBR to direct the concerned Commissioner-IR to return the seized goods of the petitioner and report compliance within 60 days".

Original recommendations of FTO dated 15.03.2017 provides as under:

"It has been found that after filing of the complaint, the deptt in October, 2016 has submitted formal contravention report to the concerned Adjudicating Officer. The issues raised in the complaint have thus become *subjudice* barring FTO's jurisdiction in terms of Section 9(2)(c) of the Ordinance. The deptt is, however, advised to process the case strictly in accordance with law/rules after giving opportunity of hearing to the Complainant.

In view of supra, further investigation in this complaint is stopped 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 unauthorized raid on the business premises, taking into custody the stock & cash of Rs.0.055 million and harassment of the ladies under threat of arrest.

4. The complaint was referred for comments to the Secretary Revenue Division in terms of Section 10(4) of the Ordinance. In response, the FBR vide letter No. C.No.1(599)TO-II/2016 dated 14.10.2016 forwarded comments of the Director, Intelligence and Investigation (IR) bearing No. DIR/I&I/IR/FSD/2016/803 dated 14.10.2016 contending that raiding staff was duly authorized under Section 62 of the Federal Excise Act, 2005/ the Act by the competent authority i.e. Director I&I vide letter C.No.DIR/I&I/IR/FSD/2016/DD-III/571 dated 26.09.2016. The authorized team visited the business premises in presence of the Complainant and his son Mr. Naeem by serving order upon him who allowed free excess to the business premises. The team seized the stock of cigarettes and record of sales as per provisions of Sections 26 & 27 of the Act and Rules 18, 62, 63 and 64 of the Federal Excise Rules, 2005 as the Complainant failed to provide proof of tax payment in respect of stock available at the business premises. No residential house, as alleged by the Complainant was visited and hence question of search warrant or the lady police did not arise.

5. Further stated that the business premises i.e. P-41, Faiq Hussain Town, Sumandari Road, Faisalabad was also visited by serving order upon the employees of the Complainant namely M/s Nisar Ahmad and Muhammad Illiyas because son of the Complainant escaped from the premises on seeing the raiding team. The authorized staff inspected the building and stocks as per provisions of Rule 62 of the Rules and Section 38 of the Act, but the Complainant deliberately falsified the facts regarding search of premises. Drawers and locks were not broke open by the authorized staff. The Complainant has unnecessarily attributed false allegation of taking away Rs. 0.055 million with the purpose to conceal his evasion of tax and duty. The Complainant was reportedly maintaining stock of non duty paid cigarettes in peripheral area of old Central Jail District Faisalabad and the exact address could not be properly marked due to sanctity of secrecy of information. The deptt prayed that the complaint being frivolous, misleading and devoid of any merit be rejected.

6. In rebuttal the AR contended that Rule 62 of the Rules is subservient to Section 25 of the Act whereby all search/ arrest shall be carried out in accordance with Section 103 of the Code of Criminal Procedure 1898 which makes mandatory the presence of two or more witnesses from the locality near the place of search but it was not followed by the raiding team. Search under Section 40(2) of the Act can be made with prior approval of the Magistrate which was not obtained in the instant case. Similarly, raiding party had no search warrant under Section 25 of the Act. No independent witnesses from the inhabitants of the locality near the place of the search were present. The raiding party violated the provisions of Section 52 of CrPC regarding mode of search of a woman as no lady police accompanied the team when they raided residence of the Complainant. Rule 62 of the Rules was not

Chief(L-7)  
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Chief(L-II)  
S(Lt-HC)  
SS(L-A&A)  
Chief(L-III)  
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*[Handwritten signature]*

FBR e-BOX Dy. No. 134/14-R  
Received in /Ch.C. on 26 DEC 2017  
M(2)/26/17

SSC(TO-21)  
Fr. Mr. R. also  
indicate in  
upload on FBR  
website accordingly.  
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27/12/17  
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