

PRESIDENT'S SECRETARIAT (PUBLIC)  
AIWAN-E-SADR, ISLAMABAD  
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Mr. Barkat Ali, Karachi  
Versus  
Federal Board of Revenue

**REPRESENTATION PREFERRED BY MR. BARKAT ALI, KARACHI AGAINST FINDINGS /  
RECOMMENDATIONS DATED 18.09.2017 PASSED BY THE FTO IN COMPLAINT NO.  
270/KHI/ST/2017**

I am directed to refer to your representation No. NIL, dated 07.10.2017 on the above subject and to say that the President has been to pass the following order:

2. This Representation dated 07.10.2017 has been filed by the Complainant—Mr. Barkat Ali against the findings of the FTO dated 18.09.2017 whereby it has been held:

“Departmental contention about bar on FTO’s jurisdiction in terms of Section 9(2)(b) of the Ordinance appears valid as the impugned order relates to assessment of tax liabilities against which legal remedy of appeal is available to the Complainant. Thus instant complaint being beyond jurisdiction is rejected and case file consigned to record.”

3. Brief facts of the case are that this complaint was filed against the Commissioner-IR, Zone-V, RTO-III, Karachi in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 against passing ex-parte Assessment Order No. 289/2017 dated 22.06.2017 under Section 11(4) of the Sales Tax Act 1990.

4. The complaint was referred for comments to the Secretary, Revenue Division in terms of Section 10(4) of the FTO Ordinance. In response, the Commissioner-IR, Zone-V, RTO-III, Karachi submitted parawise comments dated 08.08.2017 raising preliminary objection of bar under Section 9(2)(b) of the FTO Ordinance as the complaint relates to assessment of tax liabilities and the Complainant has remedy of appeal before the Commissioner-IR (Appeal), Karachi under Section 45B of the Act. On merits, it was contended that the Complainant made short payment of withholding tax in terms of Section 7 of the Act read with Sales Tax Special Procedure (Withholding) Rules, 2007 notified vide SRO 660(I)(2017) dated 30.06.2007. A Show Cause Notice was issued vide letter dated 13.03.2017 requiring the Complainant to explain its position by 20.03.2017. As compliance of Show Cause Notice was passed against which the Complainant has legal remedy of appeal under Section 45B of the Act.

5. The AR filed rejoinder dated 09.08.2017 reiterating that the Complainant had responded to the notice dated 13.03.2007 vide letter dated 16.03.2017 whereby 15 days extension was requested. This letter was duly received by Withholding Zone RTO-III, Karachi and on the same date, time for submission of details was allowed upto 02.04.2017. Another letter dated 18.03.2017 was submitted to the Deptt whereby its legal actions were agitated. He further reiterated that the impugned AO is based on incorrect and imaginary values of purchases and various rates of tax have been applied randomly/ whimsically without properly appreciating the facts of the case, hence the issues raised in the complaint were cognizable under Section 2(3)(1)(c) of the FTO Ordinance. The averments of both the parties have been given due consideration and case record perused by the FTO. Thus, FTO has issued aforementioned findings.

6. The instant Representation has been filed by the Complainant. The Complainant has stated that FTO’s recommendations are being contrary to law, rules/ regulations and is cognizable under Section 2(3)(i)(a) of FTO Ordinance, 2000 passed without giving any consideration to Complainant’s explanation dated 20.03.2017 hence is perverse, arbitrary, unreasonable and discriminatory and is cognizable under Section 2(3)(i)(b) of FTO Ordinance, 2000.

7. The Complainant has underscored that order is full of mistake involving incorrect values of purchases and tax, randomly applied varied rate of tax (as mentioned in the Table at page 3 of complaint) and non appreciation of correct facts/ law hence contains grounds which are irrelevant and out of context and is cognizable under Section 2(3)(i)(c) of FTO Ordinance, 2000. The order amounts to administrative excesses and is cognizable under Section 2(3)(i)(d) of FTO Ordinance. The order demonstrate incompetence, inefficiency and ineptitude on the part of Respondent and is cognizable under Section 2(3)(ii) of FTO Ordinance, 2000.

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8. The Complainant has underlined that in pursuance of Show Cause Notice dated 13.03.2017 the Respondent has sought recovery of sales tax withholding to the tune of Rs. 2,696,476/- from the Complainant on the strength of SRO 660(i)/2007 dated 30.06.2007 for which the Complainant had first taken adjournment upto 02.04.2017 and finally submitted explanation on 20.03.2017 which clear assertion that:

- i. Appellant is predominantly a manufacturer and exporter of textile made-ups for which industrial inputs are rated as Zero percent in line with Sr. No. 1 of Table II of SRO 1125(i)/2011 dated 31.12.2011 read with Section 4 ibid, hence requirement of sale tax WH is inane;
- ii. Most of the appellant's suppliers are "commercial importers" who are excluded from the requirement of (sales tax) withholding in line with Sr.5(xi) of SRO 660/2007 dated 30.06.2007 (attached at page 16 to 20);
- iii. The Appellant however withheld and deposited sales tax in treasury where applicable; and
- iv. The values of purchase & rate of tax quoted in the SCN dated 13.03.2017 are incorrect/ erroneous and not relevant to the Appellant.

9. The Complainant has mentioned that FTO had passed the assessment order "exparte with the notion that on the date of hearing no one did appear nor any reply to Show Cause Notice was submitted from the Complainant" (as mentioned in para 4 and page 4 of the order) which however is incorrect in view of explanations submitted by the Complainant. Additional irregularity in the matter was surfaced when Respondent has filed its comments with claim that "order was passed after proper hearing to the Complainant". A rejoinder dated 09.08.2017 to the comments was separately filed by the Complainant is also attached which is self explanatory.

10. The Complainant has pleaded that he filed the instant complaint without disputing the issue of assessment thereby seeking intervention of FTO for maladministration involving multiple irregularities, administrative excess, omissions, neglect, incompetence & arbitrariness on the part of the Respondent which however was unjustly rejected without appreciating all facts taking defense of Section 9(2)(b) of FTO Ordinance hence this Representation to verify the propriety of FTO's findings with prayer to accept the Representation and set aside/ recall the impugned order in the interest of justice. Reliance is placed on reported complaints where issue of jurisdiction & maladministration was discussed by FTO at length. 2003 PTD 2260; 2008 PTD 642. Complaint No. 337-L/2009; Complaint No. 483-L/IT389/970/2011; FTO Own Motion N. 01/2014; Complaint No. 231/KHI/IT 73/769/2015; Complaint No. 206/KHI/ST(95)/674/2015.

11. On the other hand, the Agency has filed comments against the instant representation of Complainant on 30.10.2017 and supported the impugned recommendations/findings of learned FTO with the request that the representation of Complainant may be rejected.

12. After perusal of record and examination of all documents, it has been observed that in terms of Section 9(2)(b) of the FTO Ordinance 2000, the FTO has no jurisdiction to investigate or inquire into the matters which relate to the assessment of income, determination of liability of tax, interpretation of law, rules and regulations relating to the said assessment/ determination in respect of which legal remedies of an appeal, review or revision are available under the relevant legislation.

13. 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 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.

14. 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.

15. In such circumstances, where remedy of appeal was available FTO could not interfere with the matter of assessment of tax and interpretation of law. Consequently, the Complainant's representation is liable to be rejected. However, the complainant can seek remedy available to him from the relevant forums under the law.

16. Needless to be mentioned that this representation has been filed by the Complainant repeating the contents of the pleadings already made before the learned FTO. Nothing turns on the same as it fails to answer the reasoning of FTO and not even contain denial of the factual observations for his impugned decision. No grounds stand made out for interference with the decision of the FTO. Undoubtedly FTO decision is based on sound reasoning and supported by the law. Thus, the representation is devoid of any merits and is liable to be rejected. FTO impugned findings do not warrant any interference. Consequently FTO findings are sustainable and unexceptional having no illegality or improbability in the eyes of law.

17. Accordingly, the President has been pleased to reject the instant representation of Complainant—Mr. Barkat Ali and the impugned recommendations/findings of FTO are upheld.


  
(Zulfiqar Hussain Awan)  
Director General (Legal Affairs)

Mr. Barkat Ali,  
Proprietor: M/s B.K Textile, 25/9,  
Sector 12/C, North Karachi, Industrial Area,  
Karachi.

No. 162/FTO/2017 dated 05.01.2018

Copy for information to:

1. ✓ The Chairman, Federal Board of Revenue, Islamabad.
2. Syed Faiq Raza, Advocate, M/s Rizvi & Rizvi, M2A UK Square, F.B. Area Block, Karachi.
3. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
4. The Chief (Legal-I), Federal Board of Revenue, Islamabad.
5. Director to Secretary to the President.
6. Master file.

  
(Zulfiqar Hussain Awan)  
Director General (Legal Affairs)