

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

Mr. Naveed Shah, Torkham
 Versus
 Federal Board of Revenue

REPRESENTATION PREFERRED BY MR. NAVEED SHAH, TORKHAM AGAINST FINDINGS / RECOMMENDATIONS DATED 22.11.2017 PASSED BY THE FTO IN COMPLAINT NO. 586/PWR/IT/2017, 590/PWR/IT/2017, 592/PWR/IT/2017, 595/PWR/IT/2017

I am directed to refer to your representation No. NIL, dated 29.12.2017 on the above subject and to say that the President has been pleased to pass the following order:

2. This Representation dated 29.12.2017 has been filed by the Complainant- Mr. Naveed Shah against the findings of the FTO dated 22.11.2017 whereby it has been held:

“In the light of the above and respectfully following the decision of the Apex court, it is crystal clear that the portion of income derived from non taxable areas is exempt from tax, and the portion of income derived from settled areas is taxable but it needs thorough investigation. The huge transactions which ranged in several billions however are vividly suggestive that the same were beyond the consumption capacity of the local non taxable area. The onus to prove those earnings, like sale of imported goods or purchase of exported goods were from exempt area, lies with the complainant. Only using a point of import or export located in non taxable areas does not entitle the complainant to claim exemption. The complaints are thus devoid of merit. Hence the same are rejected. Case files be consigned to record”.

3. Brief facts of the case are that these four identical complaints have been filed by the same Complainant under Section 10(1) of the FTO Ordinance, 2000 against Regional Tax Office (RTO), Peshawar alleging maladministration of the department for not issue failing to claim refund for tax years 2013 to 2016. In all the four complaints common question of law and facts is involved, hence shall be disposed of by a single consolidated order.

4. The complaints were forwarded to the Secretary, Revenue Division, Islamabad and Chief Commissioner Inland Revenue (CCIR), Peshawar for departmental reply/ comments in terms of Section 10(4) of the FTO Ordinance, 2000. Departmental para wise comments were received on 04.10.2017 vide diary numbers 61/777, 62/778, 63/779 and 64/780 mainly stating that the Complainant has not proved his right to a refund. It has further been averred that the case being of legal nature, it should have been assailed before the Commissioner Appeals (CIR-A) Peshawar instead of approaching this Forum.

5. The ARs argued that being the resident of FATA, the Complainant is entitled to get back his money collected by the Customs authorities at Torkham border on import/ export of fruits and vegetables alongwith certain other goods like furniture and advertising material etc. because the income tax law has not been extended to the FATA under Articles 246/247 of the Constitution of Pakistan. The ARs relied upon a judgment of the Apex Court, reported as Commissioner of Income tax, Peshawar Vs M/s Gul Cooking Oil and Vegetable Ghee (Pvt) Ltd,(2008 PTD 169).

6. The DR on the other hand has taken the stance that certain conditions were to be fulfilled before the exemption could be claimed. He pointed out that the Complainant purchased goods and maintained bank accounts in the settled area (taxable area). Similarly, his sales are also related to said areas. He argued that making purchases/ sales and maintain bank accounts in taxable areas clearly indicated that business was not being carried out in non taxable area. Only the export/ import point was utilized which happened to be in non taxable area. He further argued that it is a legal point which does not come within the jurisdiction of this Forum. The DR relied inter alia upon the same case law titled as Commissioner of Income Tax, Peshawar Vs M/s Gui Cooking Oil and Vegetable Ghee (Pvt) Ltd (2008 PTD 169). He also submitted written arguments in favor of the departmental view.

7. The Complainant is a permanent and certified resident of FATA and deals in business of import and export of various goods like fresh fruits, vegetables, furniture, advertising material, coal and certain other items. The Customs Authorities at Torkham Dry Port/ Border collected advance income tax at import and export stage under Sections 148 and 154 of the Income Tax Ordinance, 2001. The Complainant submitted returns under Section 114 of the Ordinance and claimed refund of tax collected at import/ export stage on the plea that he lives and does business in FATA which is exempt from tax under Article 246/247 of the Constitution of Pakistan. The tax authorities at

AS/TO [Signature] [Signature] [Signature] [Signature]

61/21/12

