

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

Federal Board of Revenue
Versus
Mr. Muhammad Ramzan, Hyderabad

REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS / RECOMMENDATIONS DATED 30.05.2018 PASSED BY THE FTO IN COMPLAINT NO. 659/KHI/ST/2018

I am directed to refer to your representation No.1(659)S(TO-II)/2018, dated 29.06.2018 on the above subject and to say that **the President has been pleased to pass the following order:**

2. This Representation dated 29.06.2018 has been filed by the FBR—the Agency against the findings of the FTO dated 30.05.2018 whereby it has been held:

“FBR to:

- i. **Direct the Chief Commissioner-IR RTO Hyderabad to decide balance 07 pending cases of ST Rewards as per law; and**
- ii. **Report compliance within 45 days”.**

3. Brief facts of the case are that the complaint has been filed in terms of Section 10(1) of the FTO Ordinance, 2000 against the RTO, Hyderabad for delay in sanctioning Sales Tax Reward. The complaint was referred to the Secretary, Revenue Division for comments in terms of Section 10(4) of the FTO Ordinance read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act, 2013. In response thereto, the FBR vide letter C.No. 1(659)TO-II/2018 forwarded parawise comments of the Chief Commissioner-IR (CCIR) RTO, Hyderabad dated 09.05.2018. At the outset preliminary objection on bar of jurisdiction in terms of Section 9(3) of the FTO ordinance was raised on the ground that issue in the instant complaint was of personal grievance of the complainant relating to his service. On merits, it was contended that the complainant was Superintendent Sales Tax (ST) and Federal Excise (FE) who retired from service on 14.04.2006. During the period under reference, he was posted at the Collectorate of ST & FE Hyderabad. It was further contended that subsequently in the year 2007, the ST and FE were merged with the Inland Revenue Services (IRS). Thus, admissibility or eligibility of his reward relevant to the period 2006 had to be decided by the then competent authority, the Collector MCC Hyderabad. The Collector Customs MCC Hyderabad submitted comments vide letter dated 15.05.2008 contending that the complainant retired from ST&FE Hyderabad with effect from 15.01.2006. It was further contended that after merger of ST&FE with the IRS, the entire ST&FE record was transferred to the RTO Hyderabad. Thus the pending reward claims of the complainant pertaining to tax years 2000-2001 could be processed by the RTO Hyderabad.

4. The complainant reiterated that as a Superintendent posted at ST&FE Hyderabad, he detected 08 cases of tax fraud and on the basis of contravention report prepared by him huge tax revenue was recovered during the period 2000-2001. According to FBR's Order C.No. 7(2)STC/98 dated 30.11.1998 he was entitled to reward. However, except reward shown at S.No. 3 of the list, which the Collector Customs, ST&FE Hyderabad sanctioned vide order dated 27.06.2001 amounting to Rs. 6,555/- the remaining 07 claims were left unattended. He contended after his repeated efforts, the CCIR RTO Hyderabad instead of processing the ST Reward case, directed him vide letter dated 25.08.2017 to either approach the Collector Customs MCC Hyderabad for pending rewards or process list of case reward approved by the defunct Collector ST&FE Hyderabad for processing the same, as per rules. He contended that as the matter was not properly dealt with by the department he again approached the CCIR vide letter dated 16.09.2017 followed by reminder dated 13.11.2017 but since then failed to get any response.

5. During hearing, the DRs from the Customs and IRS attended. The DR from Customs contended that after merger of services, entire ST&FE record was transferred to the RTO Hyderabad. Thus it is the RTO Hyderabad to decide the pending matters relevant to ST&FE. The DR IRS contended that as the matter is very old, time is required to trace out the record. He, however, undertook to trace out the relevant record, process and settle the remaining 07 pending ST Reward cases in accordance with law. The arguments of both the parties have been considered and available case record perused by FTO. Thus FTO has issued aforementioned findings.

6. The instant representation has been filed by the Agency. The Agency has taken ground that the FTO has no jurisdiction in terms of Section 9(3) of FTO Ordinance, 2000 as the complaint has been made by the ex-tax employee. FTO has overlooked the submissions made by the department and has misdirected the complaint against the department.

7. The Agency has stated that the FTO has out rightly erred in perceiving the facts of the complainant that RTO Hyderabad was to decide the pending refund cases whereas the fact is that the complainant was not employee of RTO Hyderabad. The FTO has corroborated/ upheld the frivolous allegations of maladministration in terms of Section 2(3) of the FTO Ordinance without merits as the same are not covered under the said Section.

8. The Agency has underscored that FTO has wrongly assumed jurisdiction while rejecting the lawful reason of not entertaining the complaint, assumption of wrong jurisdiction is miscarriage of justice. The complainant was

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required to approach higher authorities of FBR for redressal of grievance as has been provided in Reward Rules issued by FBR time to time, but wrongly availed the forum of FTO. The FTO has erroneously assumed jurisdiction upon it.

9. The Agency has pointed out that in terms of Section 10(3) of FTO Ordinance a complaint shall be made not later than six months from the day on which the person aggrieved. The present case pertains to the year 2000-2001 whereas the complaint filed to the FTO in the year 2018 after lapse of 17 years which is time barred in terms of Section 10(3) of FTO Ordinance, 2000.

10. The Agency has asserted that the FTO has exceeded its mandated jurisdiction by violating the principle of coram non judge as per High Court decision given in CP No. D-2899 of 2010 in the case of Syed Nusrat Hussain versus Federation of Pakistan whereby Hon'ble Court has held that:

" In addition to hereinabove defects, we have also noted that before making any recommendation against the petitioner in the impugned order, the Federal Tax Ombudsman has failed to record any findings against the petitioner to the effect as to how and what maladministration has been committed by him. We are of the view that in the absence of any such findings regarding any maladministration against the petitioner, the findings made by the learned Federal Tax Ombudsman are of no legal effect and the same are liable to be set aside on this account as well".

11. The Agency has prayed that the judgment of FTO in this case vide order dated 30.05.2018 received in the Agency on 04.06.2018 may be reviewed and findings of FTO may graciously be vacated/ set aside as the findings of FTO without legal basis, grounds and beyond the jurisdiction.

12. On the other hand, the Complainant has filed his written comments on 9.7.2018 against the instant representation of FBR and supported the impugned recommendations/findings of learned FTO with the request that the instant representation of the Agency may be rejected by the appellant forum.

Analysis/Conclusion

13. After perusal of record, examination of all documents, it has been noted that it is as clear as the crystal that FTO has made recommendations which are only to the extent to direct the Chief Commissioner-IR RTO Hyderabad to decide balance 07 pending cases of ST Rewards as per law within 45 days. It is just a harmless order and only the Agency has to decide the issue as per law which was never denied in its written reply even by the Agency. The Agency has full powers to decide the issue either way, on merits and in accordance with the provisions of law. Thus the findings of the learned FTO are quite sustainable and the Agency has unnecessarily filed this representation. In such circumstances, this representation is liable to be rejected having no merits and the recommendations/findings of FTO are sustainable and maintainable being unexceptional in nature.

14. Needless to be mentioned that this representation has been filed by Agency 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 learned 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's 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/recommendations do not warrant any interference. Consequently FTO findings are sustainable and unexceptional having no illegality or improbability.

15. Accordingly, the President has been pleased to reject the instant representation of the FBR-Agency and impugned findings/recommendations of FTO are upheld.

(Zulfiqar Hussain Awan)
Director General (Legal Affairs)

The Chairman,
Federal Board of Revenue,
Islamabad.

No. 32/FTO/2018 dated 06.09.2018

Copy for information to:

1. Mr. Muhammad Ramzan, R/o House No. 13, Islam Nagar, Phuleli-Par, Hyderabad.
2. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
3. ✓ The Chief (Legal-1), Federal Board of Revenue, Islamabad.
4. Director to Secretary to the President.
5. Master file.

(111)

(Zulfiqar Hussain Awan)
Director General (Legal Affairs)