

President's Secretariat (Public)
Aiwan-e-Sadr
ISLAMABAD

Federal Board of Revenue
Versus
M/s .Hamza Khan, Hyderabad

REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS / RECOMMENDATIONS DATED 23.05.2019 PASSED BY THE FTO IN COMPLAINT NO. 0063/KHI/ST/2019

Kindly refer to your representation dated 26.06.2019 on the above subject addressed to the President in the background mentioned below:-

1. This Representation has been filed by the FBR on 26.6.2019 against the directions of the learned FTO dated 23.05.2019, conveyed through covering letter dated 24.05.2019 and received by the petitioner on 27.05.2019, it is thus within limitation. It has been directed by the learned FTO that:

"The FBR to:

- i. Direct the Commissioner-IR Zonal RTO Hyderabad to refund the amount of Rs.2.529 million unlawfully recovered from the Complainant under duress, as per law; and
- ii. Report compliance within 45 days."

2. The background of the matter is that the complaint was filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) alleging recovery of sales tax amounting to Rs.2.529 million. The Complainant is a private limited concern engaged in coal mining business. According to the Complainant on the similar issue complaint No. 1359/KHI/ST/2018 was filed, which was dismissed as withdrawn, vide order dated 28.11.2018, as the Department (Deptt) stated that the matter was sub-judice before the Hon'ble High Court Sindh. He averred that Ref. No. 155/2016 was filed by the Deptt against the Appellate Tribunal Inland Revenue (ATIR) Karachi's order 22.08.2016, passed in Appeal No. 45/KB-2016. The subject matter of the appeal was Order-in-Original (O-in-O) No. 07/2015 dated 11.03.2015 passed under Section 11(5), whereby the Deptt after scrutiny of sales tax returns for the Tax period July 2012 to June 2013 levied sales tax alongwith further tax under Section 3(1A) of the Sales Tax Act, 1990. It was against the above O-in-O where in the Complainant got the relief and the department has filed Reference before the Hon'ble High Court of Sindh. But in the instant case, neither any notice nor O-in-O had been passed. The department by establishing a check post at Habibullah More District Jamshoro, under Section 40-B is collecting further tax under Section 31(1A) of the Act. Thus, without issuing any notice and passing any O-in-O the department had forcibly recovered Sales Tax amounting to Rs. 2.529 million. He pleaded that the amount mentioned above illegally recovered from the Complainant may be refunded.

3. The complaint was sent for comments to Secretary Revenue Division. In response thereto, the Chief Commissioner-IR RTO, Hyderabad vide letter dated 21.01.2019 submitted parawise comments. It was contended that on the same issue earlier filed complaint was withdrawn, by the Complainant as the department had already filed Reference before the Hon'ble High Court of Sindh, Karachi. On merits, it was contended that the Complainant was involved in manufacturing activities. His supplies to the unregistered parties were subjected to tax under Section 3(1A) of the Act. Hence, the complaint was without any basis which may be rejected.

4. The learned FTO has made the aforementioned directions accordingly.

5. During the hearing of the case Mr. M. Shamim Addl Commissioner and Mr. Mumtaz Hussain Memon DCIR have represented the FBR. On the other hand, Mr. Osama Majeed and Abdul Majeed Khan have appeared on behalf of the complainant. Both sides have been afforded opportunity of hearing.

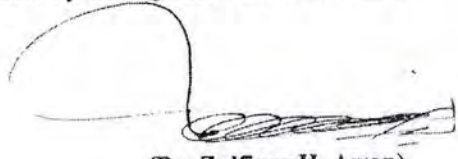
6. A thorough perusal of record and examination of all documents on record has been undertaken.

7. Section 9(2)(a) of the FTO Ordinance 2000 provides that *FTO shall not have jurisdiction to investigate or inquire into matters which are subjudice before a court of competent jurisdiction...* Further, 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.* The law is absolutely clear as to in what matters the FTO can assume jurisdiction and undertake investigation and which matters stand excluded from its purview.

8. There is no denial of the fact that a Reference is pending before the Hon'ble High Court Sindh about the taxability of sales tax and further tax. That matter is *subjudice* before the learned Sindh High Court. Thus the assumption of jurisdiction by the FTO in this matter was unwarranted. As and when the matter is decided by the Hon'ble High Court

Sindh, the determination made therein will bind the parties. In such view of the matter, the order passed by the learned FTO in the circumstances was unsustainable and is liable to be set aside.

9. Accordingly, Hon'ble President has been pleased to accept the representation by setting aside the order dated 23.05.2019 passed by the learned FTO in the case.



(Dr. Zulfiqar H. Awan)
Director General (Legal)

✓ The Chairman,
Federal Board of Revenue,
Islamabad.

No.54/FTO/2019 dated 04.11.2019

Copy for information to:

1. Mr . Hamza Khan, Director M/s Muhammad Jamil & Co (Pvt) Ltd, Bungalow No. 86-B, Block 'A', Unit No. 4, Latifabad, Hyderabad.
2. The Registrar, Federal Tax Ombudsman's, Islamabad
3. The Chief (Legal-I), Federal Board of Revenue, Islamabad.
4. The Commissioner, Inland Revenue, Zone-II, Regional Tax Office, A-49, Old Custom House Site, Hyderabad.
5. Abdul Majeed Khan, Advocate, High Court of Sindh, Office A/04-B, Block-D/1, Unit No.11, Latifabad, Hyderabad.
6. Master file.


(Dr. Zulfiqar H. Awan)
Director General (Legal)

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