

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

*Mr. Rashed Siddique, Peshawar Cantt
Versus
Federal Board of Revenue*

REPRESENTATION PREFERRED BY MR. RASHED SIDDIQUE, PESHAWAR CANTT AGAINST FINDINGS / RECOMMENDATIONS DATED 26.02.2019 PASSED BY THE FTO IN REVIEW PETITION IN COMPLAINT NO. 0021/PWR/ST/2019

Kindly refer to your representation dated 26.07.2019 on the above subject addressed to the President in the background mentioned below:-

1. This Representation dated 26.07.2019 has been filed by the Complainant namely Rashad Siddique, Peshawar against the revised recommendations of the learned FTO dated 24.05.2019, whereby it has been held that:

"It is evident that remedy of appeal available under the relevant law has been availed and now the matter is subjudice before the Commissioner-IR (Appeals), Peshawar. No legal infirmity or mistake/error apparent on the face of the record has been pointed out by the petitioner, hence no case of review is made out. For what has been discussed above, the Review Petition (RP) stands rejected having no merit. Case file be consigned to record."

Original recommendations dated 26.02.2019 of the learned FTO provides as under:

"It is evident that Syed Ahmad Hussain, Sr. Auditor, I&I, conducted audit of the sales tax returns filed by the Complainant and forwarded Contravention Report to the competent authority to proceed further in the matter. The Deputy Commissioner concerned issued SCN vide letter C. No. ST&FE/Unit-24/Zor to Alam Trading Co/652 dated 15.06.2017 under Section 11(3) of the Act and after giving the opportunity of hearing to the Complainant issued Assessment Order No. 10/2017, for which the law provides remedy of appeal. Reportedly, the Complainant has a belatedly filed appeal against the said order. In such a situation the complaint cannot sustain. In view of above, no case of maladministration is made out. The complaint stands rejected having no merit. The case file be consigned to record."

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) against the Directorate of Intelligence and Investigation, Peshawar alleging maladministration, while conducting audit of sale tax returns filed by M/s Zor Alam, Trading Company. The complainant had alleged that sale tax demand was created against him without proper enquiries and issuance of Show Cause Notices (SCNs).

3. The complaint was sent for comments to the Secretary, Revenue Division. In response thereto, the Chief Commissioner-IR RTO, Peshawar as well as the Director, (Intelligence & Investigation) Peshawar, furnished parawise comments. They raised the point of limitation as according to them, the instant complaint had been filed almost after 21 months of the accrual of the alleged grievance hence, it was not maintainable under Section 10(3) of the FTO Ordinance. They maintained that the allegations leveled in the complaint were based on mere surmises and conjectures. It was further stated that the issue of cancellation of sale tax registration of M/s Zor Alam Trading Company had already been decided by the relevant forum in Complaint No. 1320/PWR/ST/2018.

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4. After due consideration, the learned FTO issued aforementioned orders.
5. The instant representation has been made by the Complainant. Mr. Rashid Siddique Complainant himself has appeared. On the other hand, Syed Ahmad Hussain, Senior Auditor I&I IR Peshawar and Syed Abidullah Jan IRAO-I&I, Peshawar have represented the FBR. Both sides have been afforded opportunity of hearing.
6. A thorough perusal of record and examination of all documents on record has been undertaken. 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 or tribunal or board of authority on the date of the receipt of a complaint, reference or motion by him.* Not only the remedy qua the order complained of was available, the same infact has been availed by filing appeal. Thus, the terms of Section 9(2)(a) are fully applicable to the case of the complainant and the directions of the learned FTO are justified.
7. It is not out of place to mention that the representation has been filed on 26.7.2019 against the order of learned FTO dated 24.5.2019, which is hopelessly time barred. Complainant has made belated move for representation after an inexplicable delay of one month. It has been held by the learned Lahore High Court in *Shahib Jee Vs Commissioner Income Tax and others* [(2009)100 TAX 274(H.C.)Lahore], that a time barred Representation is not competent. No ground is made out for interference with the impugned order of the learned FTO. The representation is devoid of any merit and is liable to be rejected.
8. Accordingly, Hon'ble President has been pleased to (a) reject the instant Representation of the complainant and to (b) uphold the impugned directions of the learned FTO.

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

Mr. Rashed Siddique,
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86/f Saddar road, Peshawar Cantt.
(0300-5902779).

No.58/FTO/2019 dated 18.10.2019

Copy for information to:

1. The Chairman, Federal Board of Revenue, Islamabad.
2. The Registrar, Federal Tax Ombudsman's, Islamabad
3. The Second Secretary (TO-II), Federal Board of Revenue, Islamabad.
4. The Director, Federal Board of Revenue, Intelligence & Investigation (I&I - IR), 39-E, Jamal-ul-Din Aghani Road University Town, Peshawar.
5. Master file.

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