

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

Federal Board of Revenue **VS** *Mr. Muhammad Kaukab Jameel*

Subject: **REPRESENTATION FILED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS / RECOMMENDATIONS DATED 09.02.2022 PASSED BY THE LEARNED FTO IN COMPLAINT NO. 2776/LHR/ST/2021.**

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

This representation has been filed by Federal Board of Revenue (FBR) on 11.03.2022 against the Order of the learned Federal Tax Ombudsman (FTO) dated 09.02.2022, whereby it has been held that:

"in view of above, FBR to direct the Commissioner-IR, RTO Lahore to re-visit Assessment Order dated 22.11.2021 under Section 45A(4) of Sales Tax Act, 1990 and pass a fresh speaking appealable order after affording the opportunity of hearing to the Complainant and submit compliance report within 45-days of the receipt of this order."

2. The complaint was filed against the Chief Commissioner-IR, RTO, Lahore in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) for passing Assessment Order dated 22.11.2021 imposing penalty of Rs.0.500 million U/S 33(25A), which was found recoverable U/S 11(2) of Sales Tax Act, 1990.

3. Mr. Muhammad Kaukab Jameel (the complainant) alleged that Assessment Order passed by the Department was illegal, harsh and against facts of the case. Further, he had not received any prior notice including Show Cause Notice, thus, the Assessment Order was passed ex-parte against him. Whereas, he was registered as Commercial Importer but the Department treated him as Retailer and imposed fine for non-registration with integrated Point of Sale (POS) System. He, therefore took up the matter with the learned Federal Tax Ombudsman by filing complaint under Section 10(1) of the FTO Ordinance 2000.

4. The learned Federal Tax Ombudsman called the comments of the Secretary Revenue Division, Islamabad. In response thereto, the Chief Commissioner-R, RTO Lahore, vide letter dated 24.01.2022, forwarded parawise comments of the CIR, Zone-III, RTO Lahore raising preliminary objection with regard to lack of jurisdiction of the FTO in terms of Sections 9(2)(b) of the FTO Ordinance, 2000 on the ground that issue related to determination of liability of tax and interpretation of laws, rules and regulations with respect to which legal remedies were available. On merits, it was averred that the complainant may have filed appeal against the Assessment Order before the Appellate Forum. All Notices and Assessment Order were properly served on the complainant.

5. Considering the respective stance, the learned Federal Tax Ombudsman proceeded to pass the above mentioned order. Thus, the representation by the FBR.

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6. The hearing of the case was fixed for 11.10.2022. Mr. Zahid Mahmood, Additional Commissioner, RTO, Lahore has represented the FBR, whereas, the complainant has not appeared despite notice. Needless to mention that Section 15 of the Federal Ombudsman Institutional Reforms Act, 2013 empowers the decision of a representation on the basis of available record without personal hearing of the parties.

7. The learned Federal Tax Ombudsman thrashed the matter vide paras 6 of the order as follows:

"6. Arguments of both sides hearing and record perused. As apparent from the Assessment Order dated 22.11.2021, pursuant to Show Cause Notice, the complainant had not attended hearing proceedings. The situation, as it may be, it was clear from record that Complainant was not able to/did not attend hearing proceedings and a unilateral Assessment Order was issued. It would be in the interest of justice that Complainant be given another opportunity to present his viewpoint before the Department through revisiting the earlier Assessment Order dated 22.11.2021 under Section 45A(4) of Sales Tax Act, 1990.

8. In the circumstances of the case, the recommendations of the learned FTO directing the FBR to "direct the Commissioner-IR, RTO Lahore to re-visit Assessment Order dated 22.11.2021 under Section 45A(4) of Sales Tax Act, 1990 and pass a fresh speaking appealable order after affording the opportunity of hearing to the complainant and submit compliance report within 45-days of the receipt of this order" are unassailable. Suffice it to observe that the recommendations are merely to pass a fresh speaking order after providing opportunity of hearing. The Agency has the lawful powers to decide the matter as per law and there is no justification to assail the order of the learned FTO. Thus, the representation deserves to be rejected accordingly.

9. Accordingly, the Hon'ble President, as per his decision above, has been pleased to reject the representation of FBR.

(Anwar-ul-Haq)
Director General (Legal)


The Chairman,
Federal Board of Revenue,
Islamabad.

Mr. Muhammad Kaukab Jameel,
1486-C,III, Nagi Road, Lahore.0321-8081313

No.59/FTO/2022 dated 18.10.2022

Copy for information to:

1. The Registrar, Federal Tax Ombudsman, Islamabad.
2. The Chief (Legal-III), Federal Board of Revenue, Islamabad.
3. The Commissioner-IR, RTO, Lahore.
4. Mr. Muhammad Tayyab Farooq, 244-UET Housing Society, Lahore 0333-4044218.
5. Master file.


(Anwar-ul-Haq)
Director General (Legal)