

29 DEC 2022  
M(h)  
No.54/FTO/2022

M-Intimate  
for

PRESIDENT'S SECRETARIAT (PUBLIC)  
AIWAN-E-SADR  
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Dated: 26.12.2022

30 DEC 2022  
C(L-III)

M/s Ahmad Metals Vs Federal Board of Revenue

CM

Subject: REPRESENTATION FILED BY M/S AHMAD METALS AGAINST THE REVIEW FINDINGS / RECOMMENDATIONS DATED 02.02.2022 PASSED BY THE LEARNED FTO IN REVIEW COMPLAINT NO. 1735/KHI/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 M/s Ahmad Metals on 08.03.2022 against the Order-in-Review of the learned Federal Tax Ombudsman (FTO) dated 02.02.2022, whereby it has been held that:

*"In view of the facts discussed supra, and, since the petitioner has failed to point out any mistake in the impugned findings 2.11.2021, no case of review is made out. The RP is rejected and file is consigned to the record."*

2. The learned Federal Tax Ombudsman vide Order-in-Original dated 02.11.2021 observed vide paras 6&7 of the order as follows:

*"6. It is observed that action was recommended against the complainant in Own Motion case No.0119/0M/2019, which was upheld by the Hon'ble President of Pakistan vide order dated 06.07.2021 while the STR of the complainant was already blacklisted by the Deptt: on account of being non-filer of Sales Tax and Income Tax Returns and involvement in claiming bogus Sales Tax Refund and committing tax fraud. As far as, complaint bearing No.471/KHUST(235)1549/2013 is concerned, it is observed that the said complaint was closed as not pressed upon undertaking of the Deptt to revisit the blacklisting order. The complainant never approached the Deptt with supporting documents and in the meantime, Own Motion Investigation was initiated against the complainant due to Red Alert by the Directorate of I&I on charge of tax fraud. After filing of instant complaint, the Deptt requested the complainant to furnish supporting documents to revisit the blacklisting order, which is still awaited. It was also observed that the complainant did not take any action and woke up after eight years and filed the instant complaint, therefore, the complaint is hit by time limitation in terms of Section 10(3) of the FTO Ordinance. However, the Deptt is at liberty to decide application of the complainant for restoration of STR upon receipt of requisite supporting documents, as per law.*

*7. The complaint stands disposed of in above terms. File be consigned to the record."*

3. Without reference to the merits of the case, it may be noted that under Section 14 of the Federal Ombudsmen Institutional Reforms Act 2013, any person aggrieved by an order of the Mohtasib may, within 30-days, file a representation before the Honourable President of Pakistan. The remedy of representation, being a Statutory remedy is available to an aggrieved person within the prescribed period of limitation i.e. 30-days.

4. It has been held by the Hon'ble Supreme Court of Pakistan in Federation of Pakistan through Secretary Revenue Division Vs Messrs Sahib Jee and others (PLD 2017 SC 139) that "when the Revenue Division or any person is aggrieved of a recommendation made by the Federal Tax Ombudsman in terms of S.11 of the Establishment of Office of Federal Tax Ombudsman Ordinance, 2000, it/he may file a representation to the President of Pakistan within 30 days of such recommendation. This remedy of representation, though not stricto sensu akin to an appeal, is nevertheless a statutory remedy and therefore, the provision must be strictly construed and applied, meaning thereby that a representation is only available to either the Revenue Division or any aggrieved person as against a recommendation of the Federal Tax Ombudsman within 30 days' time...If, whilst exercising the power of review,

CC (To)

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*the Federal Tax Ombudsman sets aside his earlier decision, irrespective of whether it was a recommendation or not, and passes a new recommendation in the order of review, then this (new recommendation) shall have been passed pursuant to Section 11(1) ibid and a representation would be competent against it. Conversely, where a recommendation earlier made by the Federal Tax Ombudsman is not set aside while exercising the power of review, the order dismissing the review petition would not tantamount to a fresh recommendation in terms of Sections 11 & 32 of the Ordinance against which a representation could be competently filed."*

5. In the instant case, the impugned order on the complaint was passed by the learned Federal Tax Ombudsman against Agency on 02.11.2021, where against the Review Petition was also rejected by the learned Federal Tax Ombudsman on 02.02.2022. In terms of the decision of the Apex Court, no representation can be competent when the Original Order is maintained in Review by the learned Federal Tax Ombudsman. The representation qua the Original Order dated 02.11.2021 became time barred on expiry of 30 days limitation. It is, thus, liable to be rejected.

6. Section 15 of the Federal Ombudsman Institutional Reforms Act, 2013 is as follows:-  
*"It shall not be necessary for the President or the Ombudsman to give personal hearing to the parties and the matter may be decided on the basis of available record and written comments filed by the Agency."*

The law thus empowers the decision of a representation on the basis of available record without personal hearing of the parties.

7. Accordingly, the Hon'ble President, as per his decision above, has been pleased to reject the representation of FBR as incompetent and time barred.

*M. Saleem*  
(Muhammad Saleem)  
Director (Legal)

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The Chairman,  
Federal Board of Revenue,  
Islamabad.

Copy for information to:

- 1. The Registrar, Federal Tax Ombudsman, Islamabad.
- 2. Master file

(Muhammad Saleem)  
Director (Legal)