

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

*M/s Care Plastic Industries (AOP), Lahore
Versus
Federal Board of Revenue*

REPRESENTATION REFERRED BY M/S CARE PLASTIC INDUSTRIES (AOP), LAHORE
AGAINST FINDINGS / RECOMMENDATIONS DATED 28.11.2019 PASSED BY THE FTO IN
REVIEW PETITION IN COMPLAINT NO. 1401/LHR/ST/2019.

Kindly refer to your representation dated Nil (received in this Secretariat on 30.12.2019) on the above subject addressed to the President in the background mentioned below:-

This Representation dated Nil (received in this Secretariat on 30.12.2019) has been filed by the complainant, namely M/s Care Plastic Industries, Lahore against the Findings of the Honourable FTO dated 28.11.2019, passed in Review Petition, whereby it has been held that:-

"It is to inform that the subject review petition was received in this office on 21.11.2019, seeking review of Findings dated 15.10.2019. In view of Section 13(1) of the Federal Ombudsmen Institutional Reforms Act, 2013, a review petition can be filed within 30 days of the Findings but the said review petition was received in this Secretariat on 32nd day. The same has, therefore, been found to be time barred. The Honourable Federal Tax Ombudsman has as such rejected the review petition in limine."

Honourable Federal Tax Ombudsman vide Order-in-Original dated 15.10.2019 has been pleased to observe as under:

"Facts of the complaint reported as 2009 PTD 1163 are different from the proposition under discussion. No matter was pending before any Tribunal in the above mentioned reported case, whereas at the time of filing of the instant complaint, the matter was subjudice before the ATIR. The second distinction is that in the reported case, the complainant had no legal remedy available under the law, therefore, it was held that where no remedy had been provided in respect of process employed in the conduct of assessment or related proceedings, provisions of Section 9(2)(b) of the Ordinance, do not stand in the way of investigation, by this office. This is not the issue in the instant complaint. It is clear that at the time of filing of complaint, the matter was subjudice before the ATIR. Therefore, the complaint is hit by Section 9(2)(a) of the FTO Ordinance. Accordingly, the complaint stands rejected for want of jurisdiction. File be consigned to record."

2. The background of matter is that the complaint was filed against passing Assessment Order No.34/ST/19 dated 16.05.2019 allegedly in violation of the Stay Order issued by the Appellate Tribunal Inland Revenue (ATIR) on 13.05.2019. Precisely, the Sales Tax Registration Number (STRN) of the complainant was suspended vide Order dated 14.12.2018, without providing any opportunity of hearing. A team of FBR officials visited the business premises on 14.02.2019, inspected the manufacturing facility and requisitioned the record. Thereafter, the STRN was restored on 22.02.2019, upon payment of Sales Tax of Rs.0.500 million. Thereafter, Show Cause Notice (SCN) dated 18.03.2019 was issued and complainant's STRN was again suspended for failure to provide record requisitioned earlier vide letter dated 14.02.2019 and non-declaration of production & supplies regarding machines installed in the business premises. Consequently, the complainant filed an appeal before ATIR. The Tribunal granted Stay Order on 13.05.2019, for a period of sixty days or till the disposal of appeal by the Tribunal, whichever is earlier. In compliance to ATIR Stay Order, the suspension order dated 30.03.2019 was revoked by the CIR, Zone-I, RTO-II Lahore vide order dated 29.05.2019, but ACIR Sheikhpura passed Assessment Order No.34/ST/19 dated 16.05.2019.

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3. The complaint was referred for comments to the Secretary Revenue Division. In response thereto, the Chief Commissioner-IR, RTO-II, Lahore forwarded parawise comments of the Commissioner-IR, Zone-I, RTO-II, Lahore. It had been contended that in compliance to ATIR's Stay Order, the Suspension Order dated 30.03.2019 was revoked by CIR, Zone-I, RTO-II Lahore vide Order dated 29.05.2019. However, ATIR's Order was related to the stay of complainant's Sales Tax suspension and it did not bar the Deptt from carrying on separate proceedings initiated under Section 38 of the Sales Tax Act, 1990 for assessment and recovery of evaded Sales Tax. Further, the complainant did not provide complete record at any stage rather it kept on producing record in bits and pieces to delay investigation. Whereas, invoking the jurisdiction of learned FTO is premature and unwarranted as the complainant has already availed remedy of filing of appeal before ATIR.

4. After due consideration, the learned FTO passed the aforementioned Original Order on 15.10.2019 and Order-in-Review on 28.11.2020. The instant representation has been made by the complainant.

5. The hearing of the case was notified for 25.08.2020. Despite notice and intimation sent to both the parties for hearing of the matter, none is present to prosecute and pursue the case. Hence the matter is being considered and decided on its merits.

6. A thorough perusal of record and examination of all documents on record has been undertaken. It is evident that the complainant had filed appeal before the ATIR on 08.05.2019 and the Stay Order was issued on 13.05.2019. The present complaint was filed on 19.07.2019, when the matter was subjudice before the ATIR and a remedy was still available to the complainant. It has been observed that at the time of filing of complaint, the matter was sub-judice before the Appellate Tribunal Inland Revenue (ATIR), therefore the complaint is hit by Section 9(2)(a) of the FTO Ordinance. It is worth mentioning that 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.*

7. If the plea of the complainant that days have not correctly been calculated by the learned FTO pertaining to filing of review, is considered as genuine, even then no material effect existed as the issue falls within the purview of Section 9(2)(a) of Federal Ombudsmen Institutional Reforms Act 2013. There is no justification to upset the 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 recommendations of the learned FTO.

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

M/s Care Plastic Industries (AOP),
26-KM, Muridke Road, Sheikhpura,
Lahore. (0300-9462171)

No.84/FTO/2019 dated 07.09.2020

Copy for information to:

1. The Chairman, Federal Board of Revenue, Islamabad.
2. The Registrar, Federal Tax Ombudsman's, Islamabad
3. The Commissioner Inland Revenue, Zone-I, Regional Tax Office-II, Lahore.
4. Second Secretary (TO-I), Federal Board of Revenue, Islamabad.
5. Mr. Hassan Kamran Bashir, LL.M (Harvard), Dejure Law Chambers, Advocates, Solicitors, Tax Corporate Consultants, House No. 8, St No. 38, Sector F-6/1, Islamabad. (0300-9462171) (051-8311961)
6. Master file.

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