

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

Federal Board of Revenue
Vs

M/s. Kamran Associates, Karachi

Subject: REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS / RECOMMENDATIONS DATED 02.06.2021 PASSED BY THE FTO IN COMPLAINT NO. 0588/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 Federal Board of Revenue (FBR) on 01.07.2021 against the order of the learned Federal Tax Ombudsman (FTO) dated 02.06.2021, whereby it has been held that:

"FBR to-

- (i) to examine legality and propriety of O-in-A dated 22.10.2019, passed by the CIR (Appeals-V), Karachi in exercise of powers conferred under Section 45-A, and pass speaking order after providing opportunity of hearing, as per law;
- (ii) initiate disciplinary proceedings against the CIR (Appeals-V), Karachi for passing O-in-A dated 22.10.2019 beyond the powers conferred upon him under the law;
- (iii) call for explanation of the Zonal CIR for failure to take legal remedial measures available in the Act; and
- (iv) report compliance within 45 days."

2. The above mentioned complaint was filed against the Commissioner-IR, Zone-I, RTO-II, Karachi in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) for failing to de-block the complainant's status pursuant to the judgment of the Commissioner-IR, (Appeals) vide Order-in-Appeal No.102/2019 dated 22.10.2019.

3. M/s Kamran Associates.(the complainant) a manufacturer registered under the Sales Tax Act, 1990 (the Act) alleged that the Department (Deptt) without providing the complainant opportunity of hearing blacklisted its Sales Tax Registration (STR) under Section 21(2) of the Act read with Rules 12 of the Sales Tax Rules, 2006 (the Rules) vide order dated 19.07.2019 on account of alleged adjustment of inadmissible input tax claimed amounting to Rs.0.635 million. The issue was adjudged vide Order-in-Original (O-in-O) dated 16.07.2019 against which the complainant preferred an appeal. The CIR (Appeals), Karachi vide Order-in-Appeal (O-in-A) No.102 of 2019 dated 22.10.2019 vacated both the O-in-O dated 16.07.2019 as well as suspension/blacklisting order framed under Section 21(2) of the Act read with Rules 12 of the Rules dated 19.07.2019. The complainant thereafter repeatedly approached the Deptt for appeal effect but failed to get any response. 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 CIR, Zone-I, RTO-II, Karachi submitted comments vide letter dated 15.04.2021. It was averred that on the recommendations of the Directorate of Intelligence and Investigation-IR (Dte I&I-IR), Karachi, monthly Sales Tax Returns of the complainant were scrutinized for various tax periods covering from September 2013 to January 2018. It was observed that the complainant had continuously declared negative balance of unadjusted credit available for the purpose of refund; which resulted in excess carry forward in the next tax periods. Thus, the complainant fraudulently adjusted the amount and declared fake supplies to adjust the tax. Further contended that the O-in-O dated 16.07.2019 culminated into Sale Tax Demand amounting to Rs.0.635 million. The Zonal CIR, after issuing Show Cause Notice (SCN) and providing opportunity of hearing, suspended and thereafter blacklisted the STR of the complainant under Section 21(2) of the Act read with Rules 12 of the Rules vide Order dated 19.07.2019. Additionally, the appeal against the blacklisting order passed by the Zonal CIR, had to be file before the Appellate Tribunal Inland Revenue (ATIR) and not the CIR (Appeals). Thus, the O-in-A dated 22.10.2020 framed by the CIR, (Appeals-V) Karachi being without lawful jurisdiction, could not be implemented.

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

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6. The hearing of the case was fixed for 11.01.2022. Mr. Naveed Dost Chandio, Additional Commissioner-IR, RTO, Karachi has represented the FBR, whereas, complainant has not appeared despite notice.

7. The learned Federal Tax Ombudsman thrashed the matter vide paras 5 to 9 of the order, i.e.:-

"5 It is observed that under circumstances reproduced below any Sales Tax appeal lies before the CIR, (Appeals) under Section 45B(1) of the Act:

"Any person, other than the Sale Tax Department, aggrieved by any decision or order passed under Section 10, 11, 25, 36, or 66, by an officer of Inland Revenue may, within thirty days of the receipt of such decision or order, prefer appeal to the Commissioner Inland Revenue (Appeals)."

6. The issues in the instant case relate to passing of O-in-O by the IRO and blacklisting order by the Zonal CIR, which are different legal actions by two different authorities in the tax hierarchy. Thus, both the issues should have been treated differently in accordance with the relevant provisions of law. In terms of Section 46 of the Act, an appeal against the blacklisting order passed against by the Zonal CIR, lay before the ATIR in terms of Section 46(1) of the Act, which is reproduced below:

"Any person including an officer of [Inland Revenue] not below the rank of an (Additional Commissioner) aggrieved by an order passed by-

- a. The (Commissioner Inland Revenue (Appeals) under Section 458.*
- b. The Commissioner Inland Revenue through the adjudication or under any of the provisions of this Act or rules made thereafter.*

The Board under Section 45-A.

7. From the above explicit and unequivocal provisions of law, it is manifest that the CIR, (Appeals-V) Karachi, either due to lack of understanding of law or sheer enthusiasm, acted beyond his jurisdiction and vacated the blacklisting order, an action coram non judice. As the impugned O-in-A dated 22.10.2019 passed by the CIR (Appeals-V) Karachi was beyond lawful jurisdiction in respect of 'Blacklisting order' being nullity in the eyes of law cannot be implemented, hence, the complaint stands rejected.

8. However, unfortunate aspect, which is reflective of overall apathy of the Deptt is, that in this case the Zonal CIR, did neither prefer an appeal against the unlawful O-in-A under Section 46 nor reverted back to the CIR (Appeals) for rectification under Section 57 or approached the FBR for recalling the O-in-A by exercising powers conferred under Section 45-A of the Act. The Zonal CIR is, thus, equally responsible for mishmash created in the matter. Thus, it is evident that in the present case, the CIR (Appeals-V), Karachi exercised his powers in a bizarre manner, while the Zonal CIR remained sleeping over the matter and failed to adopt remedial measures available under the law. Therefore, neglect, inaction, inefficiency and ineptitude in discharge of duties and responsibilities on the part of the CIR, (Appeals-V) Karachi and Zonal CIR, is, thus, evident.

9. Neglect, inaction, inefficiency and ineptitude of the CIR (Appeals) in passing O-in-A dated 22.10.2019 and failure of the Zonal CIR to adopt legal remedial measures is tantamount to maladministration under Section 2(3)(i)(a) and (d) of the FTO Ordinance."

Thus, he concluded that neglect, inefficiency and inaction in discharging of duties by CIR (Appeals-V) and failure of Zonal CIR to adopt legal remedial measures amount to maladministration.

8. Be that as it may, the recommendations of the learned Federal Tax Ombudsman are merely to the extent directing "(i) FBR to examine legality and propriety of O-in-A dated 22.10.2019, passed by the CIR (Appeals-V), Karachi in exercise of powers conferred under Section 45-A, and pass speaking order after providing opportunity of hearing, as per law; (ii) initiate disciplinary proceedings against the CIR (Appeals-V), Karachi for passing O-in-A dated 22.10.2019 beyond the powers conferred upon him under the law; (iii) call for explanation of the Zonal CIR for failure to take legal remedial measures available in the Act and report compliance within 45 days". The Agency has the lawful authority to decide the matter on its merits in accordance with the law on consideration of all aspects taking a holistic except the matters pending before any court of law. Suffice it to state that a statutory body is duty bound under the law to perform its functions/duties in accordance with law and unless restrained to proceed in a matter by a competent forum go ahead as per mandate of law. There is thus no valid justification to interfere with the order of the learned Federal Tax Ombudsman. So far as direction (ii) is concerned, suffice it to observe that taking of disciplinary action is a matter falling within the domain of the competent Departmental Authority. In such circumstances, this representation is liable to be rejected with these observations.

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

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

M/s. The Chairman,
Federal Board of Revenue,
Islamabad

M/s. Kamran Associates,
House No. 5/2, Area 5E,
New Karachi. 0312.9243664

No.58/FTO/2021 dated.20.01.2022

Copy for information to:

1. The Registrar, Federal Tax Ombudsman, Islamabad.
2. The Chief (Legal-III), Federal Board of Revenue, Islamabad.
3. The Chief Commissioner-IR, Zone-I, RTO-II, Karachi.
4. M/s Kamran Associate, A-56, Shop No.2, Roshan Bagh, Block-19, F.B. Area, Karachi. 0300.9234664
5. Master file.

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