

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

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Federal Board of Revenue VS M/s Zainab Automobiles

Subject: REPRESENTATION FILED BY FEDERAL BOARD OF REVENUE AGAINST THE FINDINGS / RECOMMENDATIONS DATED 17.11.2021 PASSED BY THE LEARNED FTO IN COMPLAINT NOS. 1818/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 17.12.2021 against the order of the learned Federal Tax Ombudsman (FTO) dated 17.11.2021, whereby it has been held that:

*"In view of supra, FBR to direct-*

- (i) *the Chief Commissioner-IR, CTO, Karachi to initiate disciplinary action under E&D Rules against the officer who issued first show cause notice and let it go as time barred despite conducting hearings;*
- (ii) *the Chief Commissioner-IR, CTO, Karachi to initiate disciplinary action against the officer who issued second Show Cause Notice and pass order in haste without recording the point of view of the Complainant despite the fact that -he had submitted reply to the Show Cause Notice wherein the reference to previous hearings and the record already submitted was mentioned;*
- (iii) *direct the Commissioner-IR, Zone-IV, RTO-I, Karachi to reopen the case under Section 45A and pass speaking order after granting hearing opportunity to the Complainant; and*
- (iv) *report compliance within 45 days."*

2. This complaint was filed against the Officer Inland Revenue, Unit-5, Enforcement-I, CTO, Karachi in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance), for passing Order of Tax Liability without recording his written as well as verbal contention submitted before him.

3. The background of the case is that M/s Zainab Automobiles bearing STRN 112299999728 was registered with the FBR as commercial importer of auto parts and accessories used in motor vehicles. On 23.06.2018, he received a Show Cause Notice (SCN) under Section 11(2) & 11(3) of the Sales Tax Act, 1990 (the Act) from Additional Commissioner-IR, I.I&P Cell, Zone-III, CRTO, Karachi for not paying extra Tax @2% on sale of goods during the period July 2013 to June 2015 valuing Rs.1,595,394/-. They submitted reply to the Show Cause Notice stating that they had not shown any kind of sale during the period in question and goods imported in that period were in their closing stock and accordingly shown as stock in hand in their Sales Tax and Income Tax Return filed for the years July 2013 to June 2015. On receipt of Hearing Notice on 20.08.2018, they attended hearing and were informed that they had not made any sale of the goods during the period in question, therefore extra Tax was not chargeable at that time. They again received another Hearing Notice on 07.01.2019, they again submitted Bank Statement showing no sale proceeds realized from sales of goods, Sales Tax Returns of the relevant period and proved that @2% extra Tax was charged when they had actually sold the goods and not the period under question. After seeing the record, he showed satisfaction and assured them that the SCN would be withdrawn. On 5<sup>th</sup> June 2021, after around 2.5 years, to their utter surprise they received a new SCN dated 05.06.2020 on the same issue and for the same period from the Unit-5, Enforcement-I, CTO, Karachi stating the same allegations for the same period as were alleged in the previous SCN without mentioning the contention of the complainant. They again submitted reply to the new SCN and attended hearing on 14.06.2021 as was directed in the SCN intimating that they had already submitted their Bank Statement, Stock Register and Sales Tax Returns to the Deptt in compliance of previous Notices providing that they had charged/deposited extra Tax on sale made in the tax period 2016 and not in 2015 as the goods were sold in the subsequent months. Despite attending all hearing and submission of the record, the Officer passed Order-in-Original No.2 of 2021 on 11.08.2021 without referring to their record and recording their contention. They 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 FBR submitted the parawise comments of the Chief Commissioner-IR, CTO, Karachi's informing that the jurisdiction of the complainant had been transferred from CTO to RTO-I, Karachi. Whereas, the Commissioner-IR, Zone-IV, RTO-I, Karachi vide letter dated 28.09.2021 informed that they had not yet received the record from the

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CTO. However, on 14.10.2021 CTO Office, Karachi submitted comments on the complaint vide letter dated 13.10.2021 wherein it was averred that the officer who issued new Show Cause Notice (SCN) and passed Order-in-Original was not aware of the issuance of previous SCN and since the second SCN was issued within the period of five years of the offence and Order also passed thereon, so it was valid. If the complainant was aggrieved of the Order, he may file appeal against the Order.

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

6. The hearing of the case was fixed for 19.04.2022. Both parties have 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 recommendations of the learned FTO are merely to the extent of directing "(i) the Chief Commissioner-IR, CTO, Karachi to initiate disciplinary action under E&D Rules against the officer who issued first show cause notice and let it go as time barred despite conducting hearings; and (ii) the Chief Commissioner-IR, CTO, Karachi to initiate disciplinary action against the officer who issued second Show Cause Notice and pass order in haste without recording the point of view of the Complainant despite the fact that -he had submitted reply to the Show Cause Notice wherein the reference to previous hearings and the record already submitted was mentioned." It may be observed that further actions have been left to be taken by the Department itself as per law. However, in case, any departmental action is proposed against any official, he/she will be afforded due opportunity of show causing and defence which will satisfy the requirement of due process of natural justice. However, direction "(iii) direct the Commissioner-IR, Zone-IV, RTO-1, Karachi to reopen the case under Section 45A and pass speaking order after granting hearing opportunity to the complainant; and report compliance within 45 days," is unassailable in the circumstances of the case. Suffice it to observe that it is merely a reiteration about the duty of the Departmental Authority to decide the matter as per law. The Agency has lawful authority to decide the matter on its merits in accordance with law. There is, thus, no valid justification to interfere with the orders of the learned FTO. In such circumstances, this representation is liable to be rejected accordingly.

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

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


The Chairman,  
Federal Board of Revenue,  
Islamabad.

M/s. Zainab Automobiles,  
36-Fikree Building, Murad Khan Road,  
Garden East, Karachi.  
0321-2569502

No.131/FTO/2021 dated 27.04.2022

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, Corporate Tax Office, Karachi.
- (4) The Proprietor, Zainab Automobiles, FIKREE Building, 36-Murad Khan road, Garden, Karachi-74400.  
021-32777173
- (5) Master file.

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