

PRESIDENT'S SECRETARIAT (PUBLIC)  
AIWAN-E-SADR  
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*Federal Board of Revenue* VS *Muhammad Rafiq Afzal*

**Subject: REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS / RECOMMENDATIONS DATED 27.10.2021 PASSED BY THE LEARNED FTO IN COMPLAINT NO. 1520/GWL/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 24.11.2021 against the order of the learned Federal Tax Ombudsman (FTO) dated 27.10.2021, whereby it has been held that:

*"FBR to direct-*

- (i) *the Chief Commissioner-IR, Gujrat Zone, RTO, Sialkot to conduct inquiry and take appropriate action against the delinquent officer/official responsible for delay in disposal of application filed by the Complainant;*
- (ii) *the Commissioner-IR, Gujrat Zone, RTO Sialkot to dispose of the application dated 04.09.2019, filed by the Complainant, expeditiously as per law; and*
- (iii) *report compliance within 45 days."*

2. The complaint was filed against the Commissioner-IR, Gujrat Zone, RTO, Sialkot in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) for compulsory registration and blacklisting the Sales Tax Registration (STR) of the complainant.

3. Mr. Muhammad Rafiq Afzal (the complainant) alleged, he was compulsorily registered in Sales Tax on 24.05.2011 without issuance of Statutory Notices and thereafter blacklisted w.e.f December, 2017 without service of Show Cause Notice and providing opportunity of being heard. Although, he had filed application dated 04.09.2019 for supply of duplicate Assessment Order, but did not receive 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 to the FBR forwarded parawise comments of the Commissioner-IR, Gujrat Zone, RTO, Sialkot. It was averred that as per record, the complainant was registered for the purpose of Sales Tax on 24.05.2011 as per law and STR was suspended vide Order dated 02.10.2017 due to consecutive non-filing of Sales Tax Returns for tax period from January 2017 to August 2017 and subsequently blacklisted vide order dated 08.12.2017. However, the STR was blacklisted after using suspension order and providing opportunity of hearing to the complainant. Further, the application filed by the complainant for cancellation of his blacklisting status was being examined and the matter would be decided on merit, as per law.

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

6. The hearing of the case was fixed for 19.04.2022. Mr. Muhammad Ayaz Nawaz, Deputy Commissioner-IR RTO, Sialkot 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 5 & 6 of the order as follows:-

*"5. Evidently, the application filed by the Complainant seeking duplicate copy of Assessment Order is pending with the Deptt since September 2019 for which the Deptt failed to advance any justification and it was only after filing of the complaint, the Deptt awoke from deep slumber to take some action. Although there is no time limit prescribed for disposal of such application of the Complainant, but it is settled that where no time limit is prescribed under the law for taking any action by the Deptt, the same should be taken and completed within reasonable time. Negligence and delay on the part of the Deptt is, thus, evident.*

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6. *Negligence and Inordinate delay in disposal of application dated 04.09.2019, filed by the Complainant for providing attested copy of Assessment Order, is tantamount to maladministration in terms of Section 2(3)(ii) of the FTO Ordinance."*

Thus, he concluded that delay in disposal of application and providing of duplicate copy of Assessment Order amount to maladministration.

8. The recommendations of the learned Federal Tax Ombudsman are merely to the extent of directing "(i) the Chief Commissioner-IR, Gujrat Zone, RTO, Sialkot to conduct inquiry and take appropriate action against the delinquent officer/official responsible for delay in disposal of application filed by the complainant;" it may be observed that further action has been left to be taken by the Department itself. Needless to mention that 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, as to direction "(ii) the Commissioner-IR, Gujrat Zone, RTO Sialkot to dispose of the application dated 04.09.2019, filed by the complainant, expeditiously as per law, and report compliance within 45 day," suffice it to observe that as per the Departmental Representative (DR), the order of the learned FTO has already been implemented and the complainant's Counsel also affirms this position on phone. In the circumstances of the case, the representation has become infructuous and deserves to be disposed of accordingly.

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

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

The Chairman,  
Federal Board of Revenue,  
Islamabad.

Muhammad Rafiq Afza,  
R/o Gulzar-e-Madina Road,  
Timble Bazar, District: Gujrat. 0321-6235804

No.110/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, Retional Tax Office, Sialkot.
- (4) Mr. Ahsan Raza Tarar, A.R. Advocate High Court, Mehboob Qadir Block, Chamber No.22, District Courts, Sialkot. 03225914426 / 0332-1423782
- (5) Master file.

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