

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

M/s Himalaya Trading Company VS *Federal Board of Revenue*

Subject: REPRESENTATION FILED BY M/S HIMALAYA TRADING COMPANY AGAINST THE FINDINGS / RECOMMENDATIONS DATED 25.01.2022 PASSED BY THE LEARNED FTO IN COMPLAINT NO.2250/LHR/ST/2021.

Kindly refer to your representation on the above subject addressed to the President in the background mentioned below:-

2. This representation has been filed by M/s Himalaya Trading Company, Lahore on 09.02.2022 against the order of the learned Federal Tax Ombudsman (FTO) dated 25.01.2022, whereby it has been held that:

"In view of above, complaint is rejected for want of jurisdiction. File be consigned to record."

3. The complaint was filed against the Chief Commissioner-IR, RTO Lahore, in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance), against Show Cause Notice dated 04.10.2021 issued by the Assistant Commissioner-IR, Unit-07, Zone-IV, RTO Lahore.

4. M/s Himalaya Trading Company (the complainant) alleged that the Assistant Commissioner Inland Revenue (ACIR), Unit-07, Zone-IV, RTO Lahore issued Show Cause Notice to the complainant, charging with contravention of provisions of Sections 3, 4, 6, 22, 23 and 26 of the Sales Tax Act, 1990, read with SRO.283(1)/2011 dated 01.04.2011, SRO.1058(1)/2011 dated 23.11.2011 and SRO.1125(1)/2011 dated 31.12.2011 and calling upon to show cause as to "why Sales Tax amounting to Rs.22.988 million, might not be recovered from the complainant under sub-Section (2) of Section 11 of the Sales Tax Act, 1990 alongwith default surcharge U/S 34(1) ibid and as to why penalty might not be imposed for violations of aforesaid provisions of the Sales Tax law." Further, at least three Notices had to be given before issuance of final Show Cause Notice. The complainant relied on the Appellate Tribunal's Order dated 31.01.2018, stating that "all zero rated imported items are treated zero rated in all types of sales as per SRO.1125(1)/2011 dated 31.12.2011", which was also upheld by the Hon'ble Lahore High Court as well as Hon'ble Supreme Court of Pakistan. The complainant, therefore, took up the matter with the learned FTO by filing the complaint U/S 10(1) of the Ordinance for directing the Department to withdraw Show Cause Notice dated 04.10.2021.

5. The learned FTO called for comments of the Secretary Revenue Division, Islamabad. In response thereto, the FBR forwarded the parawise comments of the Commissioner-IR, Zone-IV, RTO, Lahore stating therein that as per profile retrieved from Integrated Tax Management System (ITMS), the complainant was registered with the Department as Distributor/Exporter/Importer since 1997. He, being an importer, imported raw material in the shape of dyestuff and chemicals from abroad and claimed that supplies were made to zero-rated sector which needed to be verified in view of Computerised Risk Based Evaluation of Sales Tax (CREST) objections. Furthermore, the complainant had to justify that his father, late Mr. Jan Muhammad died on 02.01.2016 but import was made by the complainant in his name upto March 2019, followed by claimed supply to zero rated Textile Sector. Thus, a Show Cause Notice was issued to the complainant within the ambit of law on the basis of data retrieved from CREST/ITMS to verify that imported zero rated raw material was supplied to zero rated Textile Sector during the period under consideration. The complainant neither submitted reply to the Show Cause Notice nor provided any judgments of the Lahore High Court and the Supreme Court of Pakistan in support of his contention.

6. Considering the respective stances, the learned FTO proceeded to pass the above mentioned order. Hence, the representation by the complainant.

7. The hearing of the case was fixed for 19.07.2022. Mr. Muhammad Shahid complainant himself has appeared, whereas, Hafiz Abdul Waris, IRAO, RTO, Lahore has represented the FBR.

8. The learned Federal Tax Ombudsman thrashed the matter vide Para 6 of the order as follows:

"6. As regards issuance of Show Cause Notice dated 04.10.2021, it is well settled that mere issuance of Notice does not amount to maladministration. Reliance is placed on the decision of Hon'ble Islamabad High Court in W.P. No.1238/ 2013 (Auditor General of Pakistan Vs FTO) wherein it is held that the challenge to a Show

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Cause Notice is not different than filing a petition on the basis of an apprehension or a speculation. In this case, however, instead of making compliance to Notice issued under various provisions of the Sales Tax Act, 1990 and waiting for some order, Complainant filed the instant complaint. The matter is subjudice before Department as the Show Cause Notice dated 04.10.2021 has been issued which needs to be taken to its logical conclusion, therefore, matter falls outside the ambit of this forum. The Complainant is advised to pursue his point of view before the Department."

Thus, these are findings arrived at on due consideration of the record and no cavil could be found with such approach to the matter.

9. In the circumstances of the case, suffice it to observe that the complainant acted on misapprehension of law as if the forum of FTO was akin to appellate authority. Whereas, under the law, he had a remedy against any assessment order to file an appeal before the Commissioner-IR (Appeals) as indicated in the assessment order itself. He is now prepared to avail a remedy of appeal, he may do so despite the bar of limitation period. In such circumstances, the order of the learned FTO is based on sound legal footings and there is no valid justification to interfere with the same. Thus, the representation of the complainant deserves to be rejected accordingly.

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

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

Mr. Muhammad Shahid,
s/o Late Haji Jan Muhammad,
Himalaya Trading Company,
16 Noorani Centre, 543-Adamjee Dawood Road,
Near Khori Garden Masjid,
Jodia Bazar, Karachi 0300-2526340

The Chairman,
Federal Board of Revenue,
Islamabad.

No.36/FTO/2022 dated 02.08.2022

Copy for information to:

- (1) The Registrar, Federal Tax Ombudsman, Islamabad.
- (2) The Chief (Legal-III), Federal Board of Revenue, Islamabad.
- (3) The Assistant Commissioner-IR, Unit-07, Zone-IV, Regional Tax Office, Old Income Tax Building, Nabha Road, Lahore.
- (4) Master file.


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