

# Reformed authority of FBR

In the Finance Bill, amendments have been proposed to delegate powers of the cabinet to “Minister-in-charge of FBR for granting exemption from duty and taxes.” This is fundamental change and should be a matter of public concern thus merits analysis. Besides, appeal filed by aggrieved tax person has been made conditional with 25% advance payment of the impugned order. This act too is contrary to the vested right and breach of it must not go unnoticed. Thirdly, Finance Minister Ishaq Dar has again promised to pay refunds in July and August pending for the last few years whereas law provides for the payment within 45 days. Is delaying tax refunds paid on the export, intended to accomplish \$35 billion target? This is yet another serious question.

In 2015, the Parliament passed an amendment returning power of the FBR to the federal government. It was a step in the right direction as the cabinet alone runs government in a parliamentary system. However, the government might have felt irksome to seek approval from the cabinet for granting exemption of duty or taxes. There has been so much resentment against SROs culture as the same has been used for gaining undue benefits or for victimising the opponents. A certain group, for example, was allowed through SROs to relocate its sugar empire in Southern Punjab.

When this issue was agitated before the Supreme Court of Pakistan, Justice Saqib Nisar inter alia observed; “.....ruled that the prime minister is not above the cabinet and he cannot take decisions on financial matters and make statutory regulatory orders (SROs) without the federal cabinet’s scrutiny and approval.”

A three-member bench of the apex court, headed by Justice Saqib Nisar, struck down the impugned notifications for withdrawing exemption of sales tax to the companies, importing cellular phones and textile goods. “The impugned notifications are declared ultra vires and are struck down,” the court announced in its judgment with the ruling that fiscal notifications enhancing the levy of tax issued by the secretary, Revenue Division, or the minister, are ultra vires.....”

“Once again, it would be noted that the power has been conferred not on the prime minister but the federal government i.e. the cabinet. Similarly, Article 85 confers power, not even on the federal government, but on the National Assembly to make a grant in advance for a period not exceeding four months pending completion of the budgetary procedure laid down in Article 82 and Article 86 confers a similar power on the federal government but only during the period when the National Assembly stands dissolved.....”

A bare reading of the above observation makes it clear that replacing cabinet with Minister-in-charge is violative of the SC decision. Another reason behind the proposed amendment is the fact there is a lot of import by Chinese companies for

CPEC projects. Instead of granting exemption on case-to-case basis, blanket permission has been granted for China Overseas Ports Holding Company Limited (COPHCL) and its operating companies by making it a part of law.

But no such kindness has been shown to local companies working on CPEC projects. As this is still in the form of a proposal, it would be interesting to see if the opposition or truthful members of the treasury bench assail such blanket permission.

It has also been proposed through the finance bill to create different directorates such as for CPEC matters and broadening of the tax net etc. FBR is already operating through more than 35 full-fledged field departments. Creating new departments will only erode the writ of the field formations of FBR as they are already performing such functions. If we look at FBR 2016 Yearly book it will transpire that more than 90% revenue is collected at source and if existing offices could not plug the leakage what few more organisation can do except creating more posts and wasting tax payers money on office paraphernalia.

FBR officers detect the cases of tax evasion and adjudicate them as well. Will a detecting officer decide against himself? Before the creation of Inland Revenue Service, there used to be separate adjudication set-ups. Whether their performance was better is not within the scope of this analysis but it is suffice to state that detection and adjudication by same authority is simply the clash of interest. One prominent business leader pointed out that FBR institutes cases on flimsy grounds which don't stand test of scrutiny at the level of appellate forum. Now any person can get stay on filing of the first appeal subject to the payment of 25% of impugned demand though previously no recovery was made before disposal of the first appeal. Another tax practitioner termed such proposal as crude way of collecting tax even if it's not due.

FBR since 2013 has played havoc with exporters by blocking their refunds. Under the law, refund of sales tax is paid within 45 days. But the minister claimed that these huge refunds were inherited from the previous govt. Nothing could be further from truth as FBR has paid ST refund filed after 2013. Plea is taken by FBR that funds are not available for timely payment.

This argument makes sense if refunds are included in collection to show growth. But achieving such growth at what cost? Holding back refunds creates liquidity crunch for exporters who are barely surviving due to high cost of energy. Government has resolved to boost export but how will it be done? One leading exporter said that the approach of government towards exports is like putting somebody on ventilators and suddenly plugging it off.

Apparently reformed SROs culture is back. If budget in the present form is passed, it will create a monster-like organisation as if already one does not exist. So budget is

not good news neither for business community nor for FBR for nurturing tax compliance culture.

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The News – 07<sup>th</sup> June, 2017