

## **ST refunds: FTO recommendation still remains unimplemented**

Despite confirmation by the Lahore High Court (LHC), a key recommendation issued by Federal Tax Ombudsman (FTO) still remains unimplemented wherein FTO ordered Federal Board of Revenue (FBR) to refund the sales tax amount deposited by a taxpayer under protest and launch an investigation why Directorate of Investigation & Intelligence (I&I) did not file an appeal against the light sentences awarded to mastermind of tax fraud scam.

It is reliably learnt that the LHC has recorded its findings that the act of the FBR to recover sale tax from a taxpayer without proving that he was involved in a tax fraud was tantamount to maladministration in terms of Section 2(3) of the FTO Ordinance, 2000. A constitutional petition was moved by a Gujranwala based taxpayer through Waheed Shahzad Butt, Advocate, challenging the action of FBR wing "I&I" to file representation before the President of Pakistan against the order passed by the FTO. Order passed by the President in favour of the FBR and against the FTO has been reversed by the LHC while deciding constitutional petition against President of Pakistan.

Sources told this correspondent that in this case following recommendations were issued by the FTO to FBR to (i) direct the Chief Commissioner to refund the amount deposited by complainant, under protest, as there was no legal order in the field at the relevant time (ii) direct the commissioner to cancel the Order-in-Original (iii) conduct an enquiry to identify if any PRAL officials were involved in the scheme and to proceed against the defaulters, as per law (iv) to launch an investigation into the circumstances why the officials of the Directorate of Investigation and Intelligence did not file an appeal against the apparently light sentences awarded to those who seemingly masterminded the scam.

The LHC order states "The petitioner is a registered person under the provisions of Sales Tax Act, 1990. A notice was issued by the respondent (Intelligence & Investigation) by which the petitioner was confronted with certain amounts which were claimed as input tax. The said amounts were deposited under protest by the petitioner.

During December, it was reported that a tax fraud scam had been busted by the I&I and in which the officials of CREST were involved. Be that as it may, the petitioner requested for the return of amounts deposited under protest. However, the respondents set in motion another proceedings against the petitioner and a show cause notice was issued for the payment of an alleged penalty in respect of the amount of sales tax which had already been deposited by the petitioner. The order in original was passed against the petitioner by which the petitioner was saddled with a liability for the payment of penalty and additional tax. The petitioner was therefore, constrained to file a complaint with the FTO for the maladministration on the part of the respondents and after hearing the parties the final recommendations were made by the FTO. The respondents filed a representation to the President of Pakistan which was accepted and the recommendations rendered by the FTO were set aside and it was held that no case for maladministration was made out. From a perusal of the order passed by the FTO as well as the findings rendered by the President on representation filed by the respondents, it is clear that the recommendations made by the FTO was done after due regard for the entire facts and circumstances as well as by taking

into account the legal proposition that no recovery of tax could be made otherwise by due process of law and by following procedural formalities. It was under these circumstances that the FTO returned the findings that the act of the department to recover sale tax from the petitioner without proving that he was involved in a tax fraud was tantamount to maladministration in terms of Section 2(3) of the FTO Ordinance, 2000.

Having returned the said findings, it was as a consequence that further direction was issued for refund of the amounts deposited by the petitioner. It is indeed highhandedness on the part of the respondents to have transgressed the petitioner into submissions and to have compelled him to imburse a substantial amount purportedly by way of sales tax due from the petitioner.

There is no evidence or any other document on record which would show that subsequent the petitioner was found involved in a tax fraud and was thus liable for the payment of such amount. In view of the above, this petition is allowed and the order passed by the President is set aside with the result of the findings rendered by the FTO, shall stand revived, the LHC ordered.

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