

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

**Rep.Nos.265 & 283/FTO/2022**

**Date of Decision: 12.01.2023**

*Federal Tax Ombudsman Suo Moto Action*

Subject: **02 EPRESENTATIONS FILED BY CH. MUHAMMAD TARIQUE, MEMBER FBR & FEDERAL BOARD OF REVENUE AGAINST THE FINDINGS / RECOMMENDATIONS DATED 28.04.2022 PASSED BY THE LEARNED FTO IN COMPLAINT NO. 0003/OM/2022**

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

1. No.265/FTO/2022 Complaint No.0003/OM/2022
2. No.283/FTO/2022 Complaint No.0003/OM/2022

These two representations have been filed by the Federal Board of Revenue and Ch. Muhammad Tarique, Member FBR against the order of the learned Federal Tax Ombudsman (FTO), dated 28.04.2022, whereby it has been held that:

**Recommendations:**

*“FBR is directed to constitute a high powered committee to identify the responsible officers/officials for above referred irregularities, fix the respective responsibilities and to take remedial action on the following issues:*

- i. ***M/s China National Electric Wire & Cable Import & Export Corporation:***
  - I. *Non-recovery of demand of Rs.205.397 million raised w/s 122(5A) for Tax Years 2007 to 2009, 2011 & 2012 at the relevant time from the relevant persons;*
  - II. *Non-traceability of arrear registers/non-transfer of arrear demand amounting to Rs.205.397 million from CTO Lahore to RTO Lahore;*
  - III. *Non-levy of penalty w/s 184 & 187 of the Ordinance for Tax Years 2007 to 2009, w/s 182 for Tax Years 2011 & 2012 at the relevant time which was later on imposed vide orders No.350 to 357 dated 31.03.2022, aggregating to Rs.569.989 million;*
  - IV. *Non-production of counterfoils of refund vouchers earlier issued for Tax Years 2007 to 2009 & 2011 and subsequent destination of refund voucher i.e., relevant Bank account details;*
- ii. ***M/s Sinotec Co.***

*Acceptance of declared version and treating the tax deducted as adjustable instead of final discharge of tax liability being a Non-Resident person in the case of M/s Sinotec Co. from Tax Year 2014 to onwards without obtaining any detail regarding nature of contract, nature of tax deduction, name of person in whose name contract was awarded / tax was deducted etc especially for Tax Year 2014 when case was selected for Audit w/s 177 of the Ordinance;*

iii. **Mr. Song Shuangping**

*Inaction on non-filing of returns by Mr. Song Shuangping and non-declaration of share income from AOP (M/s Sinotec Co) in the return filed by Mr. Fateh Muhammad; and*

iv. *report compliance within 90 days”.*

2. The matter which has somewhat chequered background and history is that; earlier in an Own Motion matter (C.No.0200/OM/2019), the learned FTO issued the directions to the FBR on 17.12.2020 to the effect that:

**“FBR to-**

- i. *initiate proceedings for recovery of tax demand created for Tax Years 2007, 2008, 2009 and 2011 vide consolidated order dated 05.06.2013, as per law;*
- ii. *initiate disciplinary proceedings against the Chief Commissioner-IR, Corporate RTO, Lahore and Commissioner-IR, Zone-IV, Corporate RTO, Lahore who willfully and maliciously submitted misleading comments/reports (dated 24.09.2019 and 27.08.2019);*
- iii. *direct the Chief Commissioner-IR, Corporate Tax employee(s) RTO, Lahore to investigate and identify the tax employee(s) involved in preparation/approval/issuance of refund for Tax Years 2007 to 2009 and 2011 and initiate disciplinary and criminal actions against those found involved in the said fraudulent activity; and*
- iv. *report compliance within 45 days.”*

On representations filed by the FBR and the affected persons i.e. officials of the FBR, the order of the FTO was set aside by the Hon’ble President and the matter was remanded for decision afresh in the light of the observations contained in that order.

3. On remand, the learned FTO took up the matter and vide order dated 23.12.2021 directed the “FBR to-

- i. *initiate proceedings for recovery of tax demand created for Tax Years 2007, 2008 & 2009 vide consolidated order dated 05.06.2013, as per law and remove the officers involved from field postings;*
- ii. *initiate disciplinary and criminal action against Ch. Muhammad Tariq, the then Addl. CIR and Mr. Ashfaq Ahmad the then DCIR involved in the said fraudulent activity and in preparation/approval/issuance of refund for Tax Year 2007 to 2009;*
- iii. *initiate disciplinary proceedings against Syed Nadeem Hussain Rizvi, the then CCIR CRTO, Lahore and Dr. Muhammad Sarmad Qureshi, the then CIR, CRTO Lahore who willfully submitted misleading comments/reports (dated 24.09.2019 and 27.08.2019); and*
- iv. *report compliance within 45 days”*

4. Against these directions seven representations were filed by the FBR as also the affected officers named in the order. The said representations were accepted on 15.07.2022 observing in Para-17, 18, 19 and 21 as follows:-

*“17. Adverting to the latest order passed by the learned FTO on 23.12.2021 suffice it to mention that it proceeds with the reproduction of order dated 17.12.2020 which had already been set aside by this forum on 26.10.2021. There is a strong possibility that while passing the impugned order the learned FTO might have been swayed by the earlier findings and the outcome of the proceedings substantially been prejudiced. Indeed, it should not have at all been necessary to reproduce in extenso the order already having met the fate of its reversal by the higher forum. In the course of process of the matter nothing substantial has been brought on record to hold the aggrieved officers responsible for any illegality or mal-administration on their part. Moreover, it was the order passed by the Additional Commissioner u/s 122 (5A) of the Ordinance on 05.06.2013 that has over shadowed all other aspects of the matter and led to record findings as contained in Para-7 of the order and recommendations contained in Para-8 for initiation of disciplinary and criminal action against Ch. Muhammad Tariq (the then Addl. Commissioner (IR)) and Mr. Ashfaq Ahmad (the then Deputy Commissioner (IR)) attributing the alleged “fraudulent activity” is again the same i.e. 05.06.2013 which as mentioned above, has been set aside by the ATIR.*

*18. While remanding the matter to the learned FTO, vide Para-17, contention of the aggrieved officers as to the authority and competency of Addl. Commissioner who passed the order of 05.06.2013, had to be attended to but the order of the learned FTO is silent on this aspect. It may be observed that there is a statutory hierarchy of officers/ functionaries under the law. The refund had been ordered by the officer of a Commissioner level, a higher officer in the hierarchy, whose order was sought to be reversed by the Addl. Commissioner a junior officer in the hierarchy. S.208 of the Ordinance is as follows: -*

***“208. Appointment of income tax authorities.- (1) The Board may appoint as many Chief Commissioners Inland Revenue, Commissioners Inland Revenue, Commissioners Inland Revenue (Appeals), Additional Commissioners Inland Revenue, Deputy Commissioners Inland Revenue, Assistant Commissioners Inland Revenue, Inland Revenue Officers, Inland Revenue Audit Officers [District Taxation Officer Inland Revenue, Assistant Director Audit], Superintendents Inland Revenue, Inspectors Inland Revenue, Auditors Inland Revenue and such other executive or ministerial officers and staff as may be necessary.”***

*It sets out sequential order of functionaries in the hierarchy”.*

*19. Moreover, there is nothing on record to suggest how the Addl. Commissioner became seized of the mater to pass order u/s 122(5A) of the Ordinance. However, in case the Addl. Commissioner had any reservation about the legality of order of the Commissioner, he could have brought it to the notice of the Board for any lawful appropriate order, but could not have the authority to countermand and undo the order of his superior, by himself. It was against the statutory administrative discipline and norms of hierarchal functioning of the Department. This aspect has been over looked by the learned FTO while passing the impugned order. Thus recommendation 8(i)(ii) are liable to be reversed on this ground also.*

21. Needless to mention that the findings/ recommendations of the learned FTO may have the effect of influencing the proceedings now pending before the Commissioner IR (Appeals), Lahore and jeopardizing the rights of the company [the appellant before the Commissioner (Appeal)] or even nullifying the statutory right of appeal. Therefore, it is in the fitness of the matter that the order of FTO dated 21.12.2021 is set aside so that the Commissioner IR (Appeal), Lahore may decide the same in accordance with law on its merits uninfluenced by any observation or findings.” Suffice it to observe that the order of the President as per information and record from FBR has not been assailed any further which had attained finality.

5. However, strange enough is the fact that while the above-mentioned representations were pending before the Worthy President, another Own Motion case (No.0003/OM/2022) was initiated by an Advisor of the learned FTO concerning the same parties and subject matter i.e. M/s China National Electric Wire & Cable Import & Export Corporation etc. and proposed to the learned FTO for taking cognizance under Section 9(1) of the FTO Ordinance. As a sequel thereto, the learned FTO authorized the investigation of the case, thus, a notice was issued to the FBR. Parawise comments were furnished by the FBR replying the queries in seriatim. However, neither the Companies/persons concerned were issued notice in the proceedings nor they were represented before the learned FTO. As the Companies/persons concerned having direct interest and nexus with the case and subject matter of the investigation were not before the FTO any comment/observation made in their absence or without affording an opportunity of hearing to them is not only unjust and unfair but also illegal. No law permits this kind of exercise of power condemning someone without notice/ hearing.

6. However, a representation has been filed by Ch. Muhammad Tarique, Member, FBR who feeling aggrieved of the recommendation contained in paragraph-9 i.e. “*FBR is directed to constitute a high powered committee to identify the responsible officers/officials for above referred irregularities, fix the responsibilities and take remedial action.....*” and that a Committee had been constituted by the FBR as a result thereof on 26.08.2022.

7. The grievance of the petitioner centers around his apprehension that once again he may be harassed and victimized despite the fact that he performed his duty in accordance with law and his position stood vindicated by the order of the Hon’ble President earlier; and that the instant direction of the learned FTO is likely to give rise to another round of litigation and agony, despite the fact that he has a clean record of long service.

8. While passing order dated 28.04.2022 and issuing directions to the FBR it has been over looked that such generalized observations and directions loose its value and significance if the party/ person concerned having direct nexus with the subject matter is not associated with the proceedings nor is heard in the matter. From the order impugned itself it is evidently clear that the persons likely to be affected by the order were not heard nor the officers who dealt with the matter. It has been left vaguely to be inquired into by the FBR. Such a direction for any such roving and hunting inquiry is hardly contemplated by law and cannot be countenanced. The Hon’ble Supreme Court in case of *Assistant Director, Intelligence & Investigation, Karachi v. M/s B.R. Herman and others (PLD 1992 Supreme Court 485)* had dealt with such an inquiry as follows:

*“It cannot make a roving inquiry or issue a notice by merely shooting in the dark in the hope that it will be able to find out some material out of those documents and then charge the party of irregularity or illegality. The authority has to state and disclose in the notice, the purpose for which the party is required to produce those documents or supply*

*information. Unless such purpose is specified in the notice, it will be a matter of anybody's guess and the accused party will be put to inquiry without and specific allegation or fact disclosed to him. It does not permit any authority to employ the provisions of section 26 to make indiscriminate, roving and fishing inquiry irrespective of the fact whether any determination of legality or illegality in import, export or funds with which the goods were acquired is to be determined."*

The instant matter is not a different one, on the touch stone of legal principles.

9. This appears to be the reason behind as to why for months no action was taken by the Board itself about constituting any such committee that such a fishing exercise remains in conclusive besides mere wastage of resources and valuable time. It was only when there was continuous insistence by the FTO Secretariat [vide letters No Nil dated 02.08.2022 and 23.08.2022], when it succumbed to such a pressure, and it constituted a High-Powered Committee on 26.08.2022 ignoring and overlooking the fact that the Representation No. 04,10,11,15,16,52 & 53/FTO/2022 had already been decided by the Hon'ble President on 15.07.2022. There was a clear finding of acceptance of representations filed by the Board itself as also its officers and order dated 23.12.2021 of the learned FTO had been set aside (in that order of 23.12.2021 direction to initiate disciplinary and criminal action against Ch. Muhammad Tarique the petitioner herein and other named officers had been issued). Suffice it to observe that order of the President who is at the apex of the hierarchy of Ombudsmen can neither be frustrated nor rendered nugatory nor made ineffective through any side wind by anyone. As the aggrieved party can have resort to approach a Court of competent jurisdiction i.e. the High Court or the Supreme Court. The FBR in presence of the order of the President dated 15.07.2022 could not have constituted any such committee nor the petitioner could be arrayed before it to face any such inquiry.

10. In a recent judgment while quoting the definition and scope of "*mal-administration*" as per S.2(3) FTO Ordinance, 2000, the Hon'ble High Court, Islamabad in Writ Petition No.2332 of 2021 decided on 07.03.2022 has observed that "*Section 9 of the Ordinance, focuses on individual grievances. Section 9(1) authorizes the learned FTO to investigate an allegation of maladministration on his own motion as well. Section 9(1) read together with Section 10(2) requires that an allegation of maladministration must not be anonymous or pseudonymous. The rationale for providing suo moto investigative power under Section 9(1) appears to be that while investigating a certain complaint filed by a complainant under Section 10, the learned FTO may come across other maladministration being practiced by tax officials which the Ombudsman is then authorized to take cognizance of on his own motion*" (Para-11 of the Judgment). Moreover, it was held that "*And where the learned FTO proposes to conduct an investigation in relation to such allegation, he is required to issue a notice to the Secretary of the Revenue Division and the official who is alleged to have indulged in maladministration, requiring such official to file a reply to the allegations to be investigated by the learned FTO*" (Para-12 of the Judgment).

It was further held that for initiation of own motion investigation there are two necessary pre-condition "*(i) there must be an allegation of maladministration against the tax official, and (ii) such tax official must be issued a notice identifying the allegations against him which the learned FTO purposes to investigate, providing such official with an opportunity to respond to such allegations*" (Para-13 of the Judgment).

11. Another aspect that needs attention is that the basis for Own Motion proceedings has been an order of the Additional Commissioner-IR dated 05.06.2013 which matter has been extensively dealt with in order of the President dated 15.07.2022 in particular paragraphs 18-19. That should have been the end of the matter.

12. Needles to observe that all organs of the State and its functionaries are bound by the law creating and constituting such offices/forum. It is absolutely necessary to observe the mandate of law as also to respect the orders of higher forum otherwise it can lead to chaos in the society. Any overstepping of confines of jurisdictional limits is assailable as an abuse of authority.

13. In view of the above, nothing more needs to be delved upon except to observe that the parameters for own motion investigation should be laid and to be strictly followed as also highlighted in the judgment of the Hon'ble High Court, Islamabad and also to follow faithfully the order of the apex authority in the hierarchy i.e. the President of Pakistan who decides the representations in exercise of his statutory power and authority vested in him u/s 14 of the Federal Ombudsman Institutional Reforms Act, 2013.

14. In view of the above, order and recommendation of the learned FTO dated 28.04.2022 is not sustainable on the face of it, being contrary to law and is liable to be set aside; likewise notification of FBR dated 26.08.2022 constituting a High-Powered Committee pursuant to the directions of the learned FTO is also unlawful and is liable to be set aside. The representations are thus liable to be accepted accordingly.

15. Accordingly, the Hon'ble President, as per his decision above, has been pleased to accept the representations.

-Sd-

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

The Chairman,  
Federal Board of Revenue,  
Islamabad.

Ch. Muhammad Tarique (Member),  
Federal Board of Revenue,  
Islamabad.

Copy for information to:

- (1) The Registrar, Federal Tax Ombudsman, Islamabad.
- (2) Barrister Nowsherwan Khan, Director I&I-IR (HQs), Directorate General Intelligence & Investigation-IR, Islamabad.
- (3) Syed Ali Imran Rizvi, Advocate Supreme Court, Authorized Representative, 186-New Anarkali Lahore. 03004287719
- (4) Master file.

-Sd-

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