DG I&I-IR STARTS SEPARATING CASES OF TAX EVASION AND MONEY LAUNDERING

ISLAMABAD: Directorate General of Intelligence and Investigation Inland Revenue (DG I&I-IR) has started separating cases of tax evasion and money laundering to stop prosecuting business community under Anti-Money Laundering Act, who were only involved in tax frauds.

A senior Federal Board of Revenue (FBR) official told Business Recorder on Saturday that the agency has realised the fact that every case of tax evasion is not a case of money laundering. There is a difference between the case of tax evasion and money laundering. The cases of tax evasion cannot be prosecuted under the Anti-Money Laundering Act. We fully understand that tax evasion and money laundering are different cases. The Anti-Money Laundering Act is an evolving law and the benefit of the doubt would be given to the business community. The suspicious transaction reports generated by the financial monitoring unit (FMU) do not specify whether it is a case of tax evasion or money laundering; however, 50 per cent of the AML cases framed by the DG I&I-IR are in courts, sources added.

A report of the Directorate General of Intelligence and Investigation Inland Revenue revealed that notices are being sent by the FBR to business persons under the Anti-Money Laundering Act.

The report stated that the Directorate General of Intelligence and Investigation Inland Revenue (DG I&I-IR) is a designated investigation and prosecution agency under Anti-Money Laundering Act, 2010 (AMLA, 2010) DG-I&I-IR is mandated to investigate and prosecute under AMLA, 2010 for the predicate tax offences mentioned vide section VIIA (Sales Tax Act, 1990), XIIA (Income Tax Ordinance, 2001 and XIV (Federal Excise Duty Act, 2005) in Schedule-I to AMLA, 2010.

The mandate to investigate and prosecute the tax offences under Income Tax Ordinance 2001 was given to DG-I&I-IR and for Sales Tax Act, 1990 and Federal Excise Duty Act, 2005 was given vide SRO 104(1)/ 2016. The M/s PEB Industries is a private limited company incorporated on April 14, 2010 under the Companies' Ordinance 1984. As per audited accounts of the company, it is engaged in various business activities, mainly relating to the construction sector and registered in CTO, Islamabad.

As per SECP, the company has two directors namely, Muhammad Aslam Malik and Ramla Malik. Huge tax evasion was detected during the inquiry and in the light of information received from the Financial Monitoring Unit (FMU). The accused was provided ample opportunities during inquiry proceedings under the Income Tax Ordinance, 2001, to explain its contention, but it failed to attend office and provide any satisfactory explanation documentary evidences.

Resultantly, income tax investigation report was sent to Corporate Tax Office (CTO) Islamabad for assessment proceedings under the Income Tax Ordinance 2001 on apparent concealment of income during the assessment proceedings, CTO Islamabad further provided various opportunities to the accused; however, it again failed to provide any document in support of its contention, and despite repeated requests neither attended the office nor filed any adjournment CTO passed assessment orders for concealment of income/ assets and un-explained credit, etc., for tax years, 2015, 2016, and 2017 and created tax demands of Rs140,531,05; Rs353,685.392 and Rs84,195,826, respectively vide orders dated 30th March 2021. Amended assessments orders were challenged before the Commissioner Inland Revenue (appeal) by the accused. CIR (A) remanded back the same for re-assessment proceedings and the same currently were pending for adjudication.
Sufficient opportunities were provided during inquiry by I&I-IR and assessee proceedings before CTO; however, the accused failed to submit the relevant documents in his support.

Accordingly, the Directorate of Intelligence and Investigation-IR, Islamabad initiated proceedings under AML Act, 2010 on commission of predicate offence, i.e., (Prosecution for Concealment of Income) and (Prosecution for False Statement Verification) of the ITO, 2001 vide section XIIA of the Schedule-I of the Anti-Money Laundering Act, 2010. FIR No. 08/2021 dated 13-09-2021 was filed.

Proceedings on the criminal side (under AMLA 2010) are under investigation of the AMLA 2010. It is the fundamental right of the accused to submit the evidence in support of its contention, accordingly sufficient opportunities will be provided to the accused. The accused has requested for submission of documents. This issue will be decided in the light of the submitted document, the report of the directorate added.

VEHICLE IMPORTERS: FTO TELLS FBR THAT MCCS MUST NOT SHOW ANY DISCRIMINATION

ISLAMABAD: The Federal Tax Ombudsman (FTO) has directed the Federal Board of Revenue (FBR) to ensure that the Model Customs Collectorates (MCCs) must not discriminate against competitors or any importer/exporter of vehicles specifically importers from China. The FTO has issued a very important order against the Customs department where a case of discrimination has been witnessed among the importers of vehicles. Discrimination has been created by the Customs department among the importers of vehicles.
The FTO order said that the complainant imported a consignment of ten buses. Out of these, four buses had been released on the basis of declared value, however, the remaining six buses had not been released.

No written explanation had been provided as to why these buses were not being released and no justification had been given. Despite lapse of 19 days and accrual of Rs 54,000 per day as demurrage without any reasons in writing, the department was refusing to release the complainant's buses despite repeated requests. The department was proceeding with mal-intent and bad faith against the Complainant at the behest of its competitor.

The FTO has termed the Customs department's action for assessing the Chinese buses at higher rates only relying on export documents are illegal.

The FTO stated that the department's actions for assessing the buses/goods at higher rates only relying on export documents and without any cogent proof/reasons are illegal and without lawful authority. It is observed that the department cannot rely upon export documents for assessment purposes especially when these documents are still subject to verification although such documents do not pertain to the current consignment, subject matter of instant case, but relate to previous consignment. Apparently, the complainant has genuine grievances particularly when exporter has verified the contents of invoice submitted to Customs department and four buses were assessed and released on declared transacted value after necessary verifications and inquiry by the Collectorate but remaining six buses were detained without any cogent/explicit reason and remained detained till the filing of instant complaint and released provisionally at higher rate on the basis of unverified export documents that is still in the process of authentication from exporter/Chinese authority which proved the malafide intention on part of the departmental officers/officials, the FTO declared. The final assessment in 13 buses is also time barred under Section 81 of the Customs Act, 1969. Departmental actions amount to maladministration in terms of Section 2(3) of the FTO Ordinance 2000. As delay in release of buses/goods was not on the part of the Complainant, the department should issue Delay and Detention Certificate to the complainant.

The FTO has directed the FBR to direct the chief collector, Collectorate of Customs (Appraisement)-South to issue instructions to the subordinate collectorates to adopt the procedure as laid down in Act/Rules/Regulations and not to discriminate against any importer/exporter on one pretext or the other.

The FBR will also direct the collector, Collectorate of Customs (Appraisement) East, Customs House, Karachi to revisit the assessment made in remaining six buses, without any cogent reasons! verification and assess the same afresh on the basis of declared value/import data, strictly in accordance with law.

FBR YET TO IMPLEMENT KEY ORDER OF PAKISTAN INFORMATION COMMISSION PIC - INFORMATION ABOUT THE INDIVIDUALS AND COMPANIES WHO AVAILED BENEFITS FROM THE TAX AMNESTY SCHEME GIVEN DURING THE TENURE OF FORMER PRIME MINISTER MIAN NAWAZ SHARIF

ISLAMABAD: A key order issued by the Pakistan Information Commission (PIC) remained unimplemented by the Federal Board of Revenue (FBR) despite the issuance of notice for imposing a penalty to the extent of 100 days' salary to Member Operations Inland Revenue, FBR. Details of the issue revealed that the PIC had summoned the official in person for not providing information about the individuals and companies who availed benefits from the tax amnesty scheme given during the tenure of former Prime Minister Mian Nawaz Sharif.

The landmark order came after tax lawyer Waheed Shahzad Butt lodged a complaint before the PIC against the FBR in terms of rights provided under Article 19A of the Constitution, alleging that the FBR was trying to hide crucial information for some unknown reasons.

The tax lawyer Waheed Shahzad Butt had also previously approached the Lahore High Court and the Federal Tax Ombudsman seeking disclosure of information pertaining to companies and persons who availed the Clause 86 of Second Schedule to the Income Tax Ordinance, 2001 and the amount introduced under this amnesty at zero percent (0%) income tax.

The appellant Waheed Butt stated that he had submitted information requests to the FBR Chairman but all in vain. He added that the introduction of any tax amnesty scheme for tax evaders is fully sponsored by the state". The government, instead of entertaining any such scheme, should seriously consider introducing an "asset-seizure scheme to confiscate undeclared and untaxed assets created from black money," he contended and stressed the need for laws to bring back "looted money from tax cheaters".

The PIC notice stated, why, under Section 20(1) (f) of the Right of Access to Information Act, 2017; fine may not be imposed on you for wilfully delaying the disclosure of the information to the applicant, as directed in the order of PIC.

FBR TO ISSUE NEW LIST OF ACTIVE TAXPAYERS ON MARCH 01

KARACHI: Federal Board of Revenue (FBR) is set to issue new list of Active Taxpayers for the tax year 2022 on March 01, 2023.

The new list will carry the names of those persons who have file their income tax returns by due date or those names, who have filed their annual returns after the due date but with payment of surcharge. The last date for filing income tax return is September 30 for taxpayers including salaried persons, business individuals, association of persons and companies having special year. However, for the companies having normal accounting year are required to file their annual return by December 31.

For the tax year 2022 the last date was extended repeatedly and finally it was concluded by December 15, 2022. Therefore, all those who had filed their return by December 15, 2022 are eligible for the ATL. Meanwhile, those are also eligible, who filed after the due date but have paid the surcharge. Besides, the existing ATL for tax year 2021 is expiring on February 28, 2023.

According to FBR officials, taxpayers who had failed to file income tax return for tax year 2022 would not able to avail benefit of reduced rates of withholding tax from March 01, 2023.

The FBR will issue the new ATL on March 01, 2023 on the basis of income tax returns filed for the tax year 2022 till February 28, 2023. The officials said that the FBR had 4.2 million active taxpayers as of February 20, 2023.

According to the ATL is a central record of online Income Tax Return filers for the previous tax year. It further said ATL is published every financial year on March 01 and is valid up to the last day of February of the next financial year.

For example, Active Taxpayer List for Tax year 2020 was published on March 01, 2021 and will be valid till February 28, 2022. Similarly, Active Taxpayer List for Tax year 2021 will be published on March 01, 2022 and will be valid till February 28, 2023.

The FBR said that a person's name will be part of the current ATL, if the Tax Return filed pertains to the Tax year of the relevant ATL. For example, to be part of the ATL published on March 01, 2021, a person must have filed a Tax return for the Tax year 2020. Similarly, to be a part of the ATL published on March 01, 2022, a person must have filed a Tax Return for the Tax year 2021. Restriction on including a person's name on ATL, if the person has not filed Tax Return by the due date specified by Income Tax authorities was introduced through Finance Act, 2018. For example, to be part of the ATL published on 1st March 2022, a person must file a Tax Return by the specified due date for the Tax year 2021.

However, through Finance Act, 2019 a person's name can be part of ATL, even if the person has filed Tax Return after the due date specified by Income Tax authorities. Furthermore, a surcharge for placement on ATL after due date of filing of Tax Return will be charged as under:

Person	Surcharge (PKR)
Company	20,000
Association of Persons	10,000
Individuals	1,000

A company or an AOP shall be included in the ATL, whose return is not to be filed due to incorporation or formation after 30th day of June relevant to the Tax year pertaining to the ATL. Joint account holders as an entity shall be deemed to be part of ATL if any of the persons in the joint account have met the criteria of being included in the ATL.

Bank account held in the name of a minor shall be considered part of ATL if the parents, guardians of the minor or any person who has deposited money in minor's account are deemed to have met the criteria of being included in the ATL.

The late filers of Income Tax Return for Tax Year 2021 can pay "*Surcharge for ATL*" as defined under section 182(A) of Income Tax Ordinance 2001 by clicking on Tax Payment Nature "*Misc*" head in the PSID. Only after the payment of surcharge will the name of the late filer become part of ATL, the FBR added.

PR 25-2-2023

FBR ASKS CUSTOMS TO DEPOSIT CONFISCATED FOREIGN CURRENCIES IN NBP

ISLAMABAD: The Federal Board of Revenue (FBR) has directed the customs authorities to deposit the confiscated foreign currencies into the relevant National Bank of Pakistan's (NBP) branches dealing in foreign exchange.

In this connection, the FBR has issued instructions to the customs Collectorates on the mechanism for the authentication of confiscated foreign currencies. According to the FBR's instructions, the FBR has referred to the letter of the State Bank of Pakistan (SBP) on the said issue.

The FBR's document stated that the Central bank has communicated to DG Customs Intelligence and Member Customs about the new mechanism devised by the SBP for authenticating confiscated foreign currencies. As per new mechanisms, foreign currencies confiscated by law enforcement agencies or other government departments should be surrendered directly to the branches of the NBP dealing in foreign exchange, for realization/ authentication and onward credit to appropriate accounts. The new process is aimed at streamlining the handling of these currencies and making the overall operation more efficient. Subsequently, Customs has directed its field formations to surrender confiscated foreign currencies to the branches of NBP dealing in foreign exchange, FBR referred to the SBP's instructions.

R 27-2-2023

SHC DECIDES SPECIAL CUSTOM REFERENCE APPLICATION AFTER 17 YEARS

KARACHI: A custom appellate bench of High Court of Sindh decided two Special Customs Reference Applications pertaining to year 2006 after 17 years of pendency.

Pakistan Customs impugned two separate orders dated 20.03.2006 passed in Customs Appeal No. K-603/2005 and order dated 08.05.2006 passed in Customs Appeal K-259/2000 by the then Customs, Central Excise & Sales Tax Appellate Tribunal Bench-III Karachi. Both these Reference Applications were admitted to regular hearing on the same question of law which reads as under:- "Whether in the facts and circumstances of the case, the learned Customs, Excise and Sales Tax Appellate Tribunal Karachi Bench-I, was justified in holding that the Respondents is entitled to the benefit of refund of the Customs duty and sales tax in terms of Notification No.1076(I)/95 dated 5th November, 1995?"

The counsel for the Applicant submits that the Tribunal erred in law while accepting the appeal(s) inasmuch as the Respondents were not entitled to the benefit of SRO 1076(I)95 dated 05.11.1995 as the goods of the Respondents were never released provisionally; nor the matter was pending in any court of law; and therefore, question be answered in favor of the department.

The counsel for the Respondents submits that CBR after various representations issued letter dated 20.05.1996, whereby, the condition of the goods being provisionally released; or by way of any orders of the court was done away with, and the benefit of SRO 1076(I)95 dated 05.11.1995 was extended to all concerned; hence the Tribunal was fully justified in passing the impugned orders. He further 1 2006 PTD 2726 Spl. Cust. Ref Application No. 87 & 176 of 2006 Page 2 of 5 submits that in Special Customs Reference Application No.176 of 2006, the Tribunal while allowing the appeal has also discussed and relied upon certain Special Exemption Orders issued by CBR in favor of similarly placed persons, and therefore, the said benefit was also available to the present Respondents; hence, both these Reference Applications do no merit any consideration and are liable to be dismissed.

The bench noted that Respondents had imported Ring Spinning Frames and got them cleared upon payment of leviable statutory duties and taxes and admittedly, never challenged such imposition of duties and taxes. It further appears that various other textile mills while importing the same machines had disputed the levy of duties and taxes upon denial of respective exemptions on the ground that Ring Spinning Frames were being manufactured locally; and ultimately approached various High Courts of the country and obtained ad-interim release orders.

Finally, the matters were decided against the Textile Mills, and thereafter, a settlement was reached between the Textile Mills and CBR and accordingly SRO 1076(I)/95 was issued, exempting ring spinning frames falling under PCT heading 8445.2000 imported during the period commencing from the 14th June, 1984, and ending on the 30 June, 1995, and release of which had been allowed provisionally either in terms of interim orders from various courts of law or by customs authorities from payment of so much of the customs duty and sales tax as is in excess of thirty percent of the leviable rates of customs duty and sales tax at the time of filing of home consumption or ex-bond bill of entry subject to the following conditions, namely: (emphasis supplied) The bench further on perusal of the aforesaid preamble of the said SRO, reached to the conclusion that the benefit of the same was only available to those persons who had imported the machines in-question between 14.06.1984 to 30.06.1995 and release of which had been allowed provisionally; either in terms of interim orders from various courts of law or by the Customs Authorities.

The bench find out that as to the period mentioned in the SRO there appears to be no dispute; however, insofar as the condition of provisional release is concerned, the respondents do not qualify. It further appears that pursuant to the above Notification, the Respondents then approached the department seeking benefit of SRO 1076 and filed refund claims which were dismissed against which their appeals were allowed by the learned Customs Tribunal through impugned orders.

The bench find that refund was applicable in case of Importers (i) who were subjected to statutory duty merely on the ground that ring spinning frames were being manufactured locally and (ii) who otherwise were eligible for concessions in accordance with SRO.1076(1)/95. (KHALID NASEEM) SECRETARY(MACHINERY) Ph: 215314"

7. From perusal of the above, it appears that it is kind of a clarification in respect of SRO 1076, whereby, it was clarified that (i) importers who had paid duty of Ring Spinning Frames; but had not entered into any litigation were entitled for refund on the condition that they were subjected to statutory duty merely on the ground that ring spinning frames were being manufactured locally and (ii) who otherwise were eligible for concession in accordance with SRO 1976(I)/95.

8. From perusal of the above clarification, it appears that it is partly in line with the SRO 1076 already issued, and partly beyond the scope of the said SRO. In fact, when read as a whole, it is against the Respondents case inasmuch as while extending benefit in para (i), it has been further stated in para (ii) that it will apply on those who otherwise Spl. Cust. Ref Appeal No. 87 & 176 of 2006 Page 4 of 5 were eligible for concession under SRO 1076. The Respondents admittedly, are not covered by the said SRO to the extent of provisional release of their consignments, and this fact has been admitted by their Counsel before us. Per settled law, CBR cannot issue any guidelines or clarification which are against the very spirit of a Notification or provisions of law. It is also settled that such clarifications are merely administrative and are not binding insofar as conduct of any judicial proceedings are concerned. The Board's views as to the interpretation of law do not have the force of law, the SHC bench held adding that "Even otherwise, the contents of this letter/clarification of C.B.R. in paragraph 2 is to be read as a whole and the portion of it cannot be separated for the wishful meaning to be taken by appellants. Nonetheless, it is to be appreciated that SRO 1076 by itself provides certain conditions to be fulfilled and the first and foremost is, that the consignments of ring spinning frames ought to have been released provisionally; either by way of ad-interim orders from the courts of law; or on its own by the Customs authority. Insofar as, the present Respondents are concerned, admittedly none of their consignment in question were released provisionally, rather they had accepted the levy of statutory duty and taxes without raising any objections, and therefore, in our considered view, they were not entitled for benefit under SRO 1076 notwithstanding any clarification from CBR as above. More so when the contents of S.R.O. No.1076/95 specifically makes mention of its applicability in particular circumstances, as detailed therein no other meaning of them can be taken". The bench allowed the SCRAs setting aside the impugned orders dated 20.03.2006 and 08.05.2006 passed by the Tribunal in both the Appeals.

CN 25-2-2023

SALES TAX, OTHER ISSUES: FBR INVITES TEXTILE EXPORTERS TO A MOOT

ISLAMABAD: The Federal Board of Revenue (FBR) has invited all textile exporters to a moot at FBR headquarters on March 1, 2023 to deliberate and resolve the sales tax and income tax refund-related issues.

According to a tweet of the FBR on Sunday, the FBR is committed to resolving problems of exporters to enable them to enhance the country's exports. The board has invited all textile exporters to resolve the refund issues to relieve the cash flow burden, FBR added. Additionally, FBR has not stopped short of taking care of exporters' liquidity problems and has issued refunds of Rs. 208 billion during the first seven months of the current financial year as against Rs. 183 billion during corresponding period of last year which is 14 percent more than the previous year's issued refunds.

R 27-2-2023