

GOVERNMENT OF PAKISTAN
REVENUE DIVISION
FEDERAL BOARD OF REVENUE

F.No.3(1) 2013-STJ/IR

Islamabad, the 22nd February 2013

To:-

✓ Syed Adil Gilani

Advisor Transparency International

5-C, 2nd Floor, Khayaba-e-Ittehad, Phase VII,

Defence Housing Authority, Karachi

Subject: **Subject Complaint of Approximately over Rs.6 billion fraud in CED/FED due to allegation of collusion between officers of FBR and 16 manufacturing units operating in District swat under annual agreement between the group of Cosmetics manufacturers' of a tariff zone and member FBR.**

I am directed to refer to your letter dated 23/11/2012 on the subject noted above and state as follows:

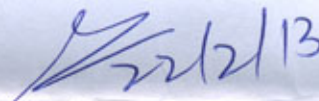
1. Since 1992 FED is charged from the units operating in District Swat under an agreement between the Group of Cosmetics Manufacturers and Toiletries, Mingora (Swat) and FBR. Normally any closure of a member unit of the Group does not affect payment of FED. PATA including Malakand Division/Swat was a non-tariff area under the Central Excises Act, 1944 and is also a non-tariff area under the Federal Excise Act, 2005, therefore, FED from this non-tariff area is collected in pursuance of Section 3(1)(c) of the Federal Excise Act, 2005. Accordingly, when fixed amount of FED is agreed upon by the manufacturers and FBR under Section 3(1)(c) of the Federal Excise Act, 2005 read with clause (2) of SRO 649(I)/2005 dated 01-07-2005, the question of collusion or illegality does not arise. In absence of any such arrangement the units located in Swat would have remained out of tax net and no CED/FED could be legally collected from them. The collection of CED/FED under an agreement was a measure by CBR/FBR to safeguard government revenue and no question of granting concessions arises in this case.

2. SRO 649(I)/2005 dated 01-07-2005 specify the goods on which duty is to be charged upon entry from non-tariff areas to tariff area and Clause 2 of the said SRO states that this duty is to be collected in the manner prescribed by the Central Board of Revenue. The agreement between the Group of Cosmetics Manufacturers and Toiletries, Mingora (Swat) and FBR prescribes the manner in which the duty is to be collected from the goods produced/manufactured in the non-tariff areas.
3. The agreement between the Group of Cosmetics Manufacturers and Cosmetics, Mingora (Swat) and FBR was only for the FED. Transparency International's objection that these units were not paying FED @ 10% and 7.5%, is baseless as the units were already paying the FED under the said agreement in line with the law. Once this agreement was in place and the units were discharging their liabilities in accordance with the said agreement, the question of evasion of FED does not arise.
4. The reference to declaring miscellaneous income in the audited statements of accounts in the income tax returns/assessment as Royalty Income, License Fee, Share of Advertising Expenses and additional receipts on account of their operations in Mingora, Swat has no nexus with the said agreement. The Income Tax returns/assessments can be audited and questioned under the relevant provisions of Income Tax Ordinance, 2001.
5. Closure of any member unit of the Group does not affect the arrangement of payment of fixed FED under the said agreement, however, the group claimed partial waiver of FED for the calendar year 2009 at the time when actual army operation was taking place in the Swat on grounds that no manufacturing/production activity could be undertaken during this period due to army operation. This situation was not close down of any member unit of the Group but all the member units of the Group along with entire commercial activity in the area were closed down. The last agreement between the Group and FBR took place in 2006, but as no new agreement was signed between the Group and FBR, the same arrangement continued till 2009, when the activity of the Group shut down due to army operation in the area. With effect from 1st January, 2010, the area of Swat is covered in the Prime Minister Package namely 'Fiscal Relief to Rehabilitate the Economic Life in Kyber Pakhtunkhwa, FATA and PATA' as the 'most affected area' entitled to the benefit of complete exemption of FED. During the currency of the said Prime Minister's package, no FED is required to be paid by any unit in Swat. The said package is still active and prevalent.
6. The Federal Government as a conscious policy has decided to abolish Federal Excise Duty and in line with this policy, FED was abolished on 15 (fifteen) items in Budget 2011-12 and 10 (ten) items in Budget 2012-13. The list of 10 (ten) items on which FED was abolished in Budget 2012-13 included cosmetics as well. In pursuance of this

decision of the Federal Government and the deletion of these items from Table-I of First Schedule to the Federal Excise Act, 2005, amendment in SRO 649(I)/2005 dated 01-07-2005 was affected vide SRO 598(I)/2012 dated 01-06-2012 (effective from 02-06-2012). With effect from 02-06-2012, FED is not chargeable on cosmetics in any part of Pakistan due to deletion of these items from First Schedule to the Federal Excise Act, 2005 vide Finance Act, 2005, therefore, the amendment in SRO 649(I)/2005 dated 01-07-2005 was also undertaken. ~~The objection of fraudulently exempting FED on cosmetics is superfluous as the amendment in Table-I of First Schedule of the Federal Excise Act, 2005 was approved by the Parliament in the Finance Act, 2012.~~

7. In addition to the reply above, in presence of collection of fixed amount of FED between the Group and FBR, any allegation of evasion is superfluous.

2. It stated that in line with the conscious policy of Federal Government to abolish Federal Excise Duty, with effect from 02-06-2012 ten items including cosmetics are not chargeable to FED. Hence it is evident from the above that FBR is taking steps and measures for maximization of revenue as per law and under prescribed rules and regulations. Hope the points raised in your letter are duly addressed.


(ANWAR ZEB)

Secretary Inland Revenue Judicial

Federal Board of Revenue, Islamabad