

No.200/2010-Law (FTO)
Government of Pakistan
Ministry of Law and Justice

Islamabad, the 12th July, 2012

From :- Arshad Ali Siddiqui,
Section Officer (Law-I),

To:- Mr. Kaleem Arshad,
Second Secretary (To-II),
Federal Board of Revenue,
ISLAMABAD.

Sub: REPRESENTATION UNDER SECTION 32 OF THE ESTABLISHMENT OF THE OFFICE OF THE FEDERAL TAX OMBUDSMAN ORDINANCE (XXXV OF 2000) IN COMPLAINT NO.623/LHR/ST(80)/1115/2010 (M/S Z.A. PLASTIC INDUSTRIES LAHORE VS FBR)

I am directed to refer to your representation No. 1(1115)S(To-II)/2010 dated 23rd November, 2010 on the subject noted above and to say that the President has been pleased to pass the following orders.

2. The complainant filed a claim for refund of sales tax amounting to Rs.11,654,677/- for the tax period May 2009. This application was filed on 2.9.2009 but remained unattended despite a representation to the Chief Commissioner. The complainant filed W.P. No.962/2010 which was disposed off by the Lahore High Court on 19.10.2010 directing the Commissioner to decide the refund application within two weeks. Instead of deciding the application the case was forwarded to the Commissioner (Audit Division) on 8.2.2010. Feeling aggrieved of the said inaction the complainant filed the present complaint before the FTO. The Agency reported that the claim related to 22 tax periods and has been sent to Audit Division for necessary verification.

3. The FTO recorded the following findings:

"It is clear from the foregoing facts that refund claim remained pending with the Department for more than one year against the statutory requirement of 45 days under Section 10 of the Sales Tax Act, 1990. Delay in the settlement of refund and failure to respond to the Complainant's correspondence is tantamount to maladministration as defined under Section 9(3)(ii) of the FTO Ordinance, 2000."

Following recommendations were made by the FTO:

"FBR to-

(i) direct the concerned officials to sanction admissible refund as per law, alongwith compensation due, for delay within thirty days."

9/8/32
13/7/12


Immediate

13/7/2012
HSH

4. The present representation has been filed by the Agency.

5. The Agency has reiterated the stance taken before the FTO. It has also been urged that no maladministration can be attributed to the Agency. The facts are not disputed. An application filed on 2.9.2009 for refund has not been decided despite there being a statutory directive providing a time period of 45 days for the purpose. Rule 34 of the Refund Rules being relied upon by the Agency cannot override the provisions of the main enactment i.e. Sales Tax Act 1990. In the absence of any lawful justification for the delay, no grounds stand made out for interference with the findings and recommendations of the FTO which only require the Agency to act in accordance with law.

6. Accordingly, the President has been pleased to dismiss the representation of the Agency.


(ARSHAD ALI SIDDIQUI)
Section Officer (Law-I)

Copy to:-

1. The Registrar, Federal Tax Ombudsman Secretariat, Islamabad.
2. Director (Legal), President's Secretariat (Public), Islamabad with reference to their No.40/FTO/2012, dated 9th July, 2012.
3. M/s Z.A Plastic Industries, Lasani Road, Shafiqabad Bund Road, Lahore.

(ARSHAD ALI SIDDIQUI)
Section Officer (Law-I)