

PRESIDENT'S SECRETARIAT (PUBLIC)
AIWAN-E-SADR, ISLAMABAD

27

FBR, Versus Mr. Farid Noor Ali Fazal

**REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE, ISLAMABAD
AGAINST FINDINGS / RECOMMENDATIONS DATED 25.04.2017 PASSED BY THE FTO IN
COMPLAINT NO. FTO-LHR/0000105/2017**

I am directed to refer to your representation No. 1(105)S(TO-II) 2017 dated 17.05.2017 on the above subject and to say that the President has been to pass the following order:

2. This Representation dated 17.05.2017 has been filed by the Agency - FBR against the findings of the FTO dated 26.04.2017, whereby it has been held that:

"FBR to direct the Collector MCC (Preventive), Lahore to-

- i. Issue cheque in already sanctioned 4420 cases immediately;**
- ii. Process the pending duty drawback claims as per law expeditiously; and**
- iii. Report compliance within 45 days."**

3. The brief facts of the case are that the complaint has been filed under section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (the Ordinance) against Model Customs Collectorate (MCC) (Preventive) Lahore, for not sanctioning 6382 Duty Drawback claims amounting to Rs.11,616,837 - filed by the Complainant in the WeBOC system and not issuing cheques for Rs.7,861,642 - in 4420 cases already sanctioned by the deptt.

4. In terms of Section 10(4) of the Ordinance, the complaint was sent to the Secretary, Revenue Division, and the MCC (Preventive), Customs House, Lahore for comments. In response, the deptt informed that the cheques of customs duty drawback are issued to claimants on first come first served basis by maintaining date wise queue and 2,478 claims of the Complainant have already been disposed paid during 2016-17 involving an amount of Rs.3,842,821/- pertaining to the period of Feb. 2016 onward were pending for issuance of cheques. It has also been informed that cement sector has already been granted preference over other sectors and payment to M/s DG Khan Cement Company Limited would be made on their turn.

5. During hearing, both sides reiterated their written position by FTO. Thus FTO has issued aforementioned findings.

6. The instant Representation has been filed by FBR. The Agency has taken ground that M/s D.G. Khan Cement is regular exporter of cement to India through LFY Wagha. The exporter files claims for rebate on export on cement. Earlier the claims were being filed in One-customs system and then the process shifted to WeBOC. The department has been regularly making payments of rebate to the exporter. The total payment of rebate made to the claimant during the year 2016-17 is Rs.3,482,821 -. The rebate claims filed till July 2016 have been paid to the claimant.

7. The Agency has apprised that a complaint was filed by Mr. Farid Noor Ali Fazal, Manager Exports Finance of M/s D.G. Khan Cement Company Ltd, 53-A, Lawrence Road, Lahore requesting therein to issue rebate cheques of 4420 cases already sanctioned by the department and processing of their pending cases. The department filed para-wise comments.

8. The Agency has underscored that being aggrieved and dissatisfied with the finding decisions dated 25.04.2017 passed by the Honorable Federal Tax Ombudsman Regional Office, Lahore in Complaint No. FTO/LHR/00000105 2017 by filed Mr. Farid Noor Ali Fazal, M/s D.G. Khan Cement Khan Company Lahore, the appellant prefers this representation.

9. The Agency has contended that Honorable FTO did not highlight any specific mal-administration on part of the department regarding non issuance of the cheques of customs duty drawback keeping in view the fact that an amount of Rs.3,482,821 - had already disbursed during the current financial year 2016-17 and last payment was made in March 2017 and the rest will be paid on their turn.

10. The Agency has pleaded that currently the WeBOC system is not based on the processing of rebate claims as per categories given envisaged in the rules for payment of duty drawback claims under sub-chapter (2) of Chapter XII of the Customs Rules, 2001. Hence the rebate claims are processed and cheques are issued to the claimants on first come first serve basis by maintaining date wise queue.

11. The Agency has mentioned that the Honorable FTO in its decision, did not appreciate the department's policy of issuing rebates to claimants after thorough scrutiny and maintenance of date wise queue.

12. The Agency has prayed that the order passed by the Hon'able Federal Tax Ombudsman may be set aside.

13. On the other hand, the complainant has filed his comments against the instant representation of FBR on 29.5.2017 and supported the impugned recommendations findings of learned FTO with request that the representation of Agency may be rejected.

Mr
25.07.2017

24 JUL 2017
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Chief(L-II)
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FBR, Islamabad
The Director, Chief (Legal) Office
28/7/17

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14. After perusal of record and examination of all documents, it has been observed that there is no question on the facts that the jurisdiction of the FTO is barred u s 9(2)(b) to investigate or inquire into the matter which relate to assessment of income or wealth, determination of liability of tax, interpretation of law, rules and regulations relating to such assessment determination in respect of which legal remedy of appeal or review or revision is available under the relevant legislation. In case the complainant was aggrieved of any action or inaction of the Agency, the complainant has the remedy to file an appeal to the Commissioner Appeals, Income Tax Tribunal, the High Court and the Supreme Court of Pakistan. Hence the matter was not within the jurisdiction of FTO, which is not an appellate forum. In such circumstances, where remedy of appeal was available, FTO could not interfere with and could not pass orders under garb of maladministration.

15. It is as clear as the crystal that FTO has made recommendations which are only to the extent to direct the Collector MCC (Preventive), Lahore to issue cheque in already sanctioned 4420 cases immediately; process the pending duty drawback claims as per law expeditiously within 45 days. It is just a harmless order and only the Agency has to decide the issue as per law which was never denied in its written reply even by the Agency. The Agency has full powers to decide the issue either way, on merits and in accordance with the provisions of law. Thus the findings of the learned FTO are quite sustainable and the Agency has unnecessarily filed this representation. In such circumstances, this representation is liable to be rejected having no merits and the recommendations are sustainable and unexceptional in the eyes of law.

16. Accordingly, the President has been pleased to reject the instant representation of FBR-Agency and the impugned recommendations findings of FTO are upheld.

(Zulfiqar Hussain Awan)
Director General (Legal Affairs)

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The Chairman,
Federal Board of Revenue,
Islamabad.

No. 102/FTO/2017 dated 17.07.2017

Copy for information to:

1. Mr. Farid Noor Ali Fazal, M s D.G Khan Cement Company Limited, 53-A, Lawrence Road, Lahore.
2. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad
3. The Chief (Legal-I), Federal Board of Revenue, Islamabad.
4. Director to Secretary to the President.
5. Master file

(Zulfiqar Hussain Awan)
Director General (Legal Affairs)

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