

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

FBR, Versus Malik Ghulam Mustaf Ali, D.G. Khan

06 JUN 2017

M(L)

**REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS  
/RECOMMENDATIONS DATED 23.12.2016 PASSED BY THE FTO IN COMPLAINT NO.  
FTO-MLN/0000776/2016**

I am directed to refer to your representation No. 1(776)S(TO-II)/2016 dated 23.01.2017 on the above subject and to say that the President has been to pass the following order:

2. This Representation dated 23.01.2017 has been filed by the Agency/FBR against the revised findings of the FTO dated 23.12.2016, whereby it has been held that:

"The FBR:-

- i. To direct the Chief CSTRO to issue cheque and ensure its delivery to the Complainant within 21 days; and
- ii. Report compliance within 07 days thereafter."

3. The brief facts of the case are that this complaint has been filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against delay in issuance of cheque against Refund Payment Order (RPO) No. 15976/2015 dated 30.01.2015 amounting to Rs. 0.045 million.

4. According to the Complainant, the DCIR, Refund Division, RTO, Multan processed the claim and after due verification sanctioned refund amounting to Rs. 0.0456 million vide RPO dated 31.01.2015 and sent the same to the Chief CSTRO for issuance of cheque. Despite visits of the office time and again, cheque has not been received by the Complainant so far. Whereas, as per provisions of Section 66 of the Sales Tax Act, 1999 (the Act), the Deptt had to dispose of refund claim within the period not exceeding ninety days from the date of filing of application.

5. The complaint was sent for comments to Secretary Revenue Division, in terms of Section 10(4) of the FTO Ordinance. In response, CCIR, RTO, Multan vide letter No. CCIR/SO-FTO-0000776/F-76/4685 dated 17.11.2016 forwarded comments of the Commissioner IR, Multan Zone bearing No. Cir/Multan-Zone/RTO/2016-17/3127 dated 13.10.2016. The Deptt contended that matter of issuance of cheque was pending with the Chief CSTRO who had been requested to process the cheque on priority basis. When confronted, the Chief CSTRO vide letter dated 14.12.2016 stated that cheque was issued against the RPO and dispatched through Leopards Courier Service as detailed below:

S.No.	RPO No.	RPO Date	Cheque No.	Cheque Date	Amount (Rs.)
1	15976	30.01.2015	A241803	21.05.2015	0.045 million

However, the cheque was returned undelivered due to incomplete address of the Complainant. The process of reissuing the returned cheque has been initiated and is likely to be issued shortly. The Complainant was, however, not entitled to compensation under Section 67 as the claim was made under Section 66 and not under Section 10 of the Act.

6. Both sides heard and available record perused by FTO. Thus FTO has issued aforementioned findings.

7. The instant representation has been filed by FBR. The Agency has taken ground that the Honourable Federal Tax Ombudsman is not justified to give the aforementioned findings / recommendations on account of grounds that no mal-administration is involved because the cheque was delivered to the complainant through Courier Service on available registered address of the complainant.

8. The Agency has pointed out that FTO's order physical verification of the address was made and it is found that registered person has changed its last known address without intimation to the RTO which is as under:

Address as per record / Tax Profile	Present Status
Head Bakaini Multan Road, Near Chowk Qurishi Muzaffar Garh	Amjad Mustafa Cotton Industries D.G. Khan Road Ghazi Ghaat, Tehsil: Kot Adu, District: Muzaffar Garh

9. The Agency has stated that according to sub rule 1 of rule 7, it was legal obligation of the complainant to notify the change in address or other particular as stated in registration certificate within 15 days of such change.

10. The Agency has elaborated that the complainant failed to get the change in address incorporated (if any) as per requirement of sub rule 1 of rule 7 of Sales Tax Rules, 2006. Hence, there is no maladministration on the part of department.

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11. The Agency has prayed that the findings/recommendations of the Honourable Federal Tax Ombudsman in complaint No. FTO/MLN/0000776/2016 may be set aside.

12. On the other hand, the Complainant has filed comments against the instant representation of Agency on 6.3.2017 through Imran Jamil & Company and supported the impugned recommendations/findings of learned FTO with request that the representation of Agency may be rejected.

13. After perusal of record and examination of all documents, it has been observed that it is as clear as the crystal that FTO has made recommendations which are only to the extent to direct Chief CSTRO to issue cheque and ensure its delivery to the complainant within 21 days. It is pointed out that the Agency has confirmed that the cheque was sent to the complainant through Courier service on the available registered address of the complainant, which could not be delivered to him owing to essential change of postal/office address. 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 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 /findings of learned FTO are sustainable/maintainable being unexceptional in nature.

14. Accordingly, the President has been pleased to reject the instant representation of FBR and findings/recommendations of learned FTO are upheld.




**(Zulfiqar Hussain Awan)**  
**Director General (Legal Affairs)**

✓The Chairman,  
Federal Board of Revenue,  
Islamabad

No.45/FTO/2017 dated 31.05.2017

Copy for information to:

1. Malik Ghulam Mustafa Ali, Amjad Mustafa Cotton Industries, Head Baqani, Dera Ghazi Khan.
2. Mr. Muhammad Jamil, Advocate, Imran Jamil & Company, Public Accountants, Feista Garden, Nawwan Shaher, Multan.
3. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
4. The Chief (Legal-I), Federal Board of Revenue, Islamabad.
5. Director to Secretary to the President.
6. Master file

  
**(Zulfiqar Hussain Awan)**  
**Director General (Legal Affairs)**

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