

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

Federal Board of Revenue
Versus
Mr. Mahmood Ali Raza, Shujabad

32-29

SUB: REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE, ISLAMABAD AGAINST FINDINGS/RECOMMENDATIONS DATED 23.12.2016 PASSED BY THE FTO IN COMPLAINT NO. FTO-MLN/0000774/2016

I am directed to refer to your representation No. 1(774) S (TO-II) /2016 dated 27.01.2017 on the above subject and to say that the President has been pleased to pass the following orders:

2. This Representation dated 27.01.2017 has been filed by the Agency/FBR against the findings of the FTO dated 23.12.2016, whereby it has been held that:

"FBR to –

- i. To direct 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. 18109/2015 dated 28.08.2015 amounting to Rs. 0.296 million.

4. According to the Complainant, the DCIR, Refund Division, RTO, Multan processed the claim and after due verification sanctioned refund amounting to Rs. 0.296 million vide RPO dated 28.08.2015 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, FBR vide letter C. No. 1(774)TO-II/2016 dated 19.10.2016 forwarded comments of the Commissioner IR, Multan Zone bearing No. CIR/Multan-Zone/RTO/2016-17/3128 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 Services. 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 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 after receipt of 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
C/o Al-Noor Cotton Factory, Zafar Shaheed Raod, Shujabad	The office of Bismillah Cotton Factory does not exist in Al-Noor Cotton Ginning Factory Shujabad at present. (Written Statement enclosed)

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

10. The Agency has prayed that the findings/recommendations of the Honourable Federal Tax Ombudsman in complaint No. FTO/MLN/0000774/2016 may very be set aside.

09 MAY 2017.

M (L)
10.05.2017

Chief (L-I)
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

58989-R
09 MAY 2017
17/50
17/10

58989-R

Handwritten signature and initials.

88

11. 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.

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

(Zulfiqar Hussain Awan)
Director General (Legal)

The Chairman,
Federal Board of Revenue,
Islamabad.

No.52/FTO/2017 dated 02.05.2017

Copy for information to:

1. Mr. Mahmood Ali Raza. Bismillah Cotton Industries, C/o Al-Noor Cotton Factroy, Zafar Shaheed Raod, Shujabad.
2. Mr. Muhammad Jamil. Advocate, Imran Jamil & Company, Public Accountants, Feista Garden Nawam Shajer, 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)

(87)