

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

Federal Board of Revenue
Versus
M/s. Sidduq Sons Ltd, Karachi

REPRESENTATION PREFERRED BY FBR AGAINST FINDINGS / RECOMMENDATIONS DATED 22.03.2016 PASSED BY THE FTO IN COMPLAINT NO. 473/KHI/ST/(211)/1486/2015

I am directed to refer to your representation No.1(1486)S (TO-II)/2015 dated 28.04.2016 on the above subject and to say that the President has been pleased to pass the following orders:

2. This representation dated 28.4.2016 has been filed by the Agency/FBR against the findings of FTO dated 22.3.2016 whereby it has been recommended that:

"FBR is to direct the Chief (CSTRO):-

- i. To issue refund cheques to the Complainant for already issued RPOs within a week and also pay compensation to the Complainant for the period exceeding 7 working days between the dates of issue of RPOs and refund cheques; and
- ii. Report compliance within 15 days."

3. The brief fact of the case are that the complaint was filed against the Chief Centralized Sales Tax Refund Office (CSTRO), Islamabad in terms of Section 10(1) of FTO Ordinance, 2000 for delay in issuance of cheques in respect of Refund Payment Orders (RPOs) No.8053053 dated 20.6.2015, 8053188, dated 30.6.2015, 8057762 dated 10.9.2015 and 8057851 dated 3.11.2015.

4. The complaint was referred to the Secretary, Revenue Division for comments in terms of Section 10(4) of the Ordinance by FTO. In response the Chief CSTRO FBR Islamabad submitted comments vide his letter dated 8.1.2016 contending that RPOs No. 8053053 dated 20.06.2015, 8053188, dated 30.06.2015, 8057762, dated 10.9.2015 and 8057851 dated 3.11.2015 were in queue and the cheques against the afore-stated RPOs would be issued in due course of time. It was informed that after sanctioning of refund claim, cheques for RPOs were issued on first come first served basis as per date of RPOs. The system of following the queue has been put in place by management of FBR to bring uniformity and transparency in the refund payments. Now no one in the hierarchy of FBR was authorized to make payment of refund to anyone on pick and choose basis, rather ever RPOs issued for refund payment is placed in line and cheques were issued strictly following the queue. The office of FTO may kindly appreciate that the FBR has improved the administration of refund payment by introducing this system.

5. The Authorized Representative (AR) controverted the deptt's submissions informing that although RPOs were issued months ago since lapse of considerable time but the complainant has yet to receive the cheques required to be issued within 7 days under Rule 26A(7) of the Sales Tax Rules, 2006 (the Rules). Further that the queue was for the period of seven days, and FBR is bound to clear the cheques within that time. The failure to issue cheques within 7 days entitles the complainant to compensation u/s 67 of the Sales Tax Act, 1990.

6. The averments of both the parties have been given due consideration and record perused by FTO. Thus FTO has issued aforementioned findings.

7. The instant representation has been filed by the Agency-FBR. The Agency has argued that the refund claims of the complainant were processed by the system as and when they filed their claims without any further delay. After processing the refund claims of the complainant, system automatically generates RPOs against the admissible amount.

8. Agency has pleaded that after sanctioning of refund claim, cheques for RPOs were issued on first come first served basis as per date of RPOs as per standard policy in issuance of cheque and no one the hierarchy of FBR was authorized to make payment of refund to anyone on pock and choose basis. That rather every RPO issued for refund payment is placed in line and cheques were issued strictly following the queue.

9. Agency has contended that the manner of issuance of cheques by CSTRO and related functions have been prescribed under rule 30(4) to 30(7) of the Sales Tax Rules,2006 which doesn't bind the office of CSTRO to issue cheques in terms of number of days and thus the findings/recommendations of the FTO is based on incorrect of reading of law.

10. Agency has contested that because of policy of issuing cheques on queue basis, there is practical difficulty in implementing the order of FTO in terms of Section 23 of the Federal Ombudsman Institutional Reforms Act, 2013, and therefore the said order may not be implemented.

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11. Agency has prayed that the President may annul the findings/recommendations of the FTO and allow office of the CSTRO to issue cheque to the complainant as per standard policy and discourage issuance of cheques on priority basis.

12. On the contrary, the complainant has filed comments against the instant representation of FBR/Agency on 27.5.2016 through Imran Iqbal Law Associates and supported the impugned recommendations/findings of learned FTO.

13. 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.

14. It has already been held vide order No. 88/FTO/2013 dated 05.06.2013 (corresponding Law Division's Summary No.73/2011-Law(FTO) dated 12.06.2013 in Complaint No. 90/LHR/IT(79)/204/2011), that: "matter pertained to assessment of income and determination of liability of tax as also interpretation of law and there is no dispute that legal remedy of appeal as well as revision was available under the Income Tax Ordinance 2001. Findings and recommendations of FTO are not sustainable." In another case No. 384/FTO/2013 dated 09.09.2013(corresponding Law Division's summary No.50/2012-Law (FTO) dated 24.07.2013 in Complaint No. 181/LHR/IT (128)/ 355/ 2012), it has been held that: "there is no manner of doubt that the matter pertained to determination of liability of tax also involving interpretation of law/ rules relating to such determination and legal remedies of appeal are available under the said Ordinance 2001. . . . Findings do disclose that FTO has assumed unto himself the jurisdiction of appellate authority which is not permissible under the provisions of FTO Ordinance 2000. Findings and recommendations of FTO are therefore not sustainable."

15. It is an admitted position that the matter involves the determination of tax liability and refundable amount on account of tax. Such matters are appealable before the Commissioner (Appeal), Appellate Tribunal (IR), the High Court and the Supreme Court. Where remedy of appeal is provided under the law the FTO has no jurisdiction to investigate the matter in the name of maladministration. In case the complainant was aggrieved of any action or non action on the part of official(s) of the Agency, it has the remedy to file an appeal at appropriate forum under the relevant law.

16. In such circumstances, where remedy of appeal was available FTO could not interfere with the matter of assessment of tax and interpretation of law. Thus FTO having gone beyond the scope and powers, the impugned findings are not sustainable. Consequently, the Agency's representation is liable to be accepted. However, the complainant can seek remedy available to him from the relevant forums under the law.

17. Accordingly, the President has been pleased to accept the representation of the Agency/FBR and set aside the impugned recommendations of learned FTO.



Zulfiqar Hussain Awan
Director (Legal-II)

The Chairman,
Federal Board of Revenue,
Islamabad.

No.75/FTO/2016 dated 31.08.2016

Copy for information to:

1. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
2. Mr. Muhammad Ahmed, CEO, M/s Siddiqsons Ltd, 7th Floor Siddiqsons Tower, J.C.H, Society, 7 & 8, Main Shahrah-e-Faisal, Karachi.
3. Mr. Imran Iqbal, Advocate, M/s Imran Law Associates, Room No.410, 4th floor, Commerce Centre, Hasrat Mohani Road, Karachi.
4. Director to Secretary to the President.
5. Master file

Zulfiqar Hussain Awan
Director (Legal-II)