

Federal Board of Revenue
Versus
M/s Peshawar Particleboard Industires (Pvt) Ltd, Peshawar

REPRESENTATION PREFERRED BY FBR AGAINST FINDINGS / RECOMMENDATIONS DATED
25.04.2016 IN COMPLAINT NO. 05/PWR/ST(01)/98/2016

I am directed to refer to your representation No.1(98)S(TO-II)/2016 dated 26th May, 2016 on the above subject and to say that the President has been pleased to pass the following orders:

2. This Representation dated 26.5.2016 has been filed by the Federal Board of Revenue - Agency against the findings of the FTO dated 25.4.2016, whereby it has been held that:

"The FBR to-

- (i) Direct the Chief (CSTRO) FBR to issue the cheques for already issued RPOs in favor of Complainant and also pay compensation to the Complainant for the period exceeding 7 working days between the dates of issuance of RPOs and cheques; and
(ii) Furnish compliance report within 30 days."

3. The brief facts of the particular case are that the complaint has been filed against non issuance of refund cheques by Chief (CSTRO) FBR. The complaint was referred to Secretary, Revenue Division for comments. In response, Chief (CSTRO), FBR forwarded comments contending that as per government policy announced by Hon'ble Finance Minister, the RPOs are being processed for issuance of cheques up to the tune of Rs.5.00 millions till RPOs dated 12.2.2016. All the six RPOs as mentioned in the complaint are above Rs.5.00 millions and in queue and the cheques against said RPOs would be issued in due course of time.

4. During hearing, the Authorized Representative (AR) contended that the Complainant filed refund claims for Rs.72.47 million on account of locally supplied/exported goods for the period October, 2014 to February, 2015. All documents regarding export were provided to the quarters concerned. After scrutiny of documents the claims were found admissible and RPOs were issued but no cheque has been so far, which has increased the financial burden of the Complainant in doing business. The Complainant approached the relevant quarters but of no avail. The Authorized Representative (AR) referred to an identical case in Complaint No.29/PWR/ST/(05)/498/2014 wherein the FTO had issued direction for compensation. RPOs have been issued by RTO concerned but issuance of cheques has been centralized and are issued by Chief (CSTRO) FBR.

5. The Departmental Representative (DR) admitted the delay in issuance of cheques. He, however, stated that issuance of cheques has been centralized and cheques were being issued by CSTRO, FBR. The RTO has issued the RPOs, therefore nothing is pending on their part.

6. The contentions of both sides have been considered alongwith examination of relevant record. Under Section 10(1) of the Sales Tax Act, 1990 (the Act) the department is required to pay admissible refunds within 45 days. Further under Rule 26-A(7) of the Sales Tax Rules, 2006 (the Rules) the department is required to issues cheques within 07 days of issued of RPO. Departmental contention that it would pay amounts exceeding Rs. 5.00 million in due course is against the provisions of Section 10 of the Act and Rule 26-A(7) of the Rules. It is evident that department is violating the above mentioned provisions of law/Rule. Thus, FTO has issued the aforementioned findings.

7. The instant Representation has been filed by Federal Board of Revenue. The Agency has taken ground that the refund claims of the Complainant were processed by the system as and when they filed their claims without any further delay.

8. The Agency has pleaded that after processing the refund claims of the complainant, system automatically generates RPOs against the admissible amount.

9. The Agency has contended that after sanctioning of refund claim, cheques for RPO 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 payments of refund to anyone on pick and choose basis. That rather every RPO issued for refund payment is placed in line and cheques were issued strictly following the queue.

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10. The Agency has pointed out that the manner of issuance of cheques by CSTRO and related functions have been prescribed under Rule 30(4) to 30(7) of Sales Tax Rules, 2006. The Rule on issuance of cheque by Office of CSTRO is Rule 30(6) of Sales Tax Rules, 2006 which does not 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.

11. The Agency has mentioned 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.

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

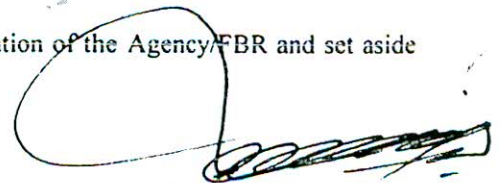
13. On the contrary, the Complainant has filed essential comments against the instant representation of FBR-Agency through Ishtiaq Ahmad, Advocate and supported the impugned recommendations of learned FTO.

14. In terms of Section 9(2)(b) of the FTO Ordinance 2000, the FTO has no jurisdiction to investigate or inquire into the matters which relate to the assessment of income, determination of liability of tax, interpretation of law, rules and regulations relating to the said assessment/ determination in respect of which legal remedies of an appeal, review or revision are available under the relevant legislation.

15. 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."

16. The Agency has assured that Rule 30(4) and Rule 30(7) of Sales Tax Rules, 2006 are being followed in letter and spirit and cheques are being issued in line strictly following the queue as per standard policy. 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.

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



Zulfiqar Hussain Awan
Director (Legal-II)

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The Chairman,
Federal Board of Revenue,
Islamabad.

No.96/FTO/2016 dated 29.9.2016

Copy for information to:

1. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
2. M/s Peshawar Particleboard Industries (Pvt) Ltd, Plot No. 16-17, Industrial Estate, Jamrud Road, Peshawar.
3. Director to Secretary to the President.
4. Master file.

Zulfiqar Hussain Awan
Director (Legal-II)