

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

Federal Board of Revenue  
Versus  
M/s. Popular Juice Industries, Karachi

REPRESENTATION PREFERRED BY FBR AGAINST FINDINGS / RECOMMENDATIONS DATED  
08.04.2016 PASSED BY THE FTO IN COMPLAINT NO. 09/KHI/ST/(07)/09/2016

I am directed to refer to your representation No.1(109)S(TO-II)/2016 dated 04.05.2016 on the above subject and to say that the President has been pleased to pass the following orders:

2. This representation dated 4.5.2016 has been filed by the Agency/FBR against the findings of FTO dated 8.4.2016 whereby it has been recommended that:

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

- i. To issue refund cheque to the Complainant for already issued RPO within a week and also pay compensation to the Complainant for the period exceeding 7 working days between the dates of issue of RPO and refund cheque; 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 cheque in respect of Refund Payment Order (RPO) No.8031761 dated 8.7.2015.

4. The complaint was referred to the Secretary, Revenue Division for comments in terms of Section 10(4) of the Ordinance. In response the Chief (CSTRO), FBR Islamabad submitted comments vide his letter dated 19.2.2016 contending that RPO No. 8031761 dated 08.07.2015, was in queue and the required cheque against the afore-stated RPO would be issued in due course of time. It was also informed that after sanctioning of refund claim, cheque for RPO is issued on first come first served basis as per date of RPO. The system of following the queue has been but in place by management of FBR to bring uniformity and transparency in the refund payments. Now on one in hierarchy of FBR was authorized to make payment of refund to anyone on pick and choose basis, rather every RPO issued for refund payment is placed in line and cheques are issued strictly following the queue. The office of Federal Tax Ombudsman may appreciate that the FBR improved the administration of refund payment by introducing this system.

5. The Authorized Representative (AR) controverted the deptt's contentions stating that RPO No.8031761 dated 8.7.2015 was issued long time ago but the complainant has not yet received the cheque. The cheque was required to be issued within 7 days under Rule 26A(7) of the Sales Tax Rules 2006. Further that the complainant was suffering from liquidity problems due to non issuance of cheque he has been deprived from his legal right for uncertain period of time.

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.

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 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 in the hierarchy of FBR was authorized to make payment 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.

10. The Agency has contested 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 Rules on issuance of cheque by office of CSTRO is Rule 30(5)7 of 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.

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

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13. On the contrary, the complainant has filed comments against the instant representation of FBR/Agency on 24.5.2016 and supported the impugned recommendations/findings of learned FTO.

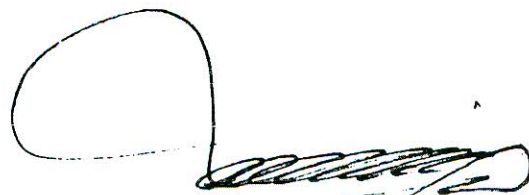
14. There is no question on the facts that the jurisdiction of the FTO is barred u/s 9(2)(b) to investigate or inquire into the matter which relate to assessment of income or wealth, determination of liability of tax, interpretation of law, rules and regulations relating to such assessment / determination 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 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. It has been settled by the Supreme Court of Pakistan in case of Mst. Kaniz Fatima reported in 2001 SCMR 1493, that where a particular statute provides self contained machinery for determination of questions arising under the statute and law provides a remedy by appeal or revision to another forum fully competent to give any relief, any indulgence to the contrary by any other forum is bound to produce a sense of distrust in statutory forums and writ petition will not be maintainable without first availing the alternate statutory legal remedy. The FTO has no jurisdiction to set aside the order where the forum of appeal is available to the complainant. Thus the impugned findings are not sustainable and the representation is liable to be accepted.

17. 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. The Agency has assured that Rule 34(4) to 30(7) as well as Rule 30(5)7 of Sales Tax Rules 2006 are being followed in letter and spirit in the matter. 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.

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



Zulfiqar Hussain Awan  
Director (Legal-II)

The Chairman,  
Federal Board of Revenue,  
Islamabad.

No.79 /FTO/2016 dated 31.08.2016

Copy for information to:

1. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
2. Mr.Naseer Ahmed Baig, M/s Popular Juice Industries (Pvt) Ltd,311-Chappal Plaza, Hazrat Mohani Road, I.I. Chundrigar Road, Karachi.
3. Mr. Muhammad Fahim Bhayo, Advocate, M/s M.F. Law Associates. F.No. Saba Commercial Wadhu Road, Near Abdullah Town, Qasimabad, Hyderabad.
4. The Chief (Legal-I), Federal Board of Revenue, Islamabad
5. Director to Secretary to the President.
6. Master file

Zulfiqar Hussain Awan  
Director (Legal-II)