

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

Federal Board of Revenue
Versus

M/s Global Trading Services, Islamabad

REPRESENTATION PREFERRED BY FBR AGAINST FINDINGS / RECOMMENDATIONS DATED 9.4.2015
PASSED BY THE FTO REVIEW ORDER DATED 4.12.2015 IN COMPLAINT NO. 13/ISD/ST(04)/215/2015

I am directed to refer to your representation No.1 (215) S (TO-II)/2015 dated 04.01.2016 on the above subject and to say that the President has been pleased to pass the following orders:

2. This representation dated 4.1.2015 has been filed by the Agency/FBR against the review findings of FTO dated 4.12.2015 whereby it has been recommended that the FTO has as such **rejected the review petition in limine.**

3. Original findings of FTO dated 9.4.2015 provide as under:-

"FBR to direct:-

- (i) the concerned commissioner IR to process refund claims of the complainant on the computerized system and treat CREST cleared tax invoices and payment of tax by supplier as genuine one instead of written verification from RTO Sargodha.
- (ii) Other objections (if any) regarding refund claims may be intimated by the Incharge Refund Section of the RTO to the complainant in writing within 7 days and
- (iii) Report compliance within 30 days of the issue of these recommendations or the receipt of reply from the complainant to the objections in (ii) above whichever is later."

4. The brief fact of the case are that the complaint has been filed u/s 9 of the FTO Ordinance, 2000 alleging delay in processing of sales tax refund claims of the complainant on account of the verification of documents by RTO Islamabad by writing letters to RTO Sargodha as maladministration.

5. In response, deptt has informed that M/s Global Trading Services, Islamabad have applied for refund of sales tax for the tax periods from Nov 2013 to April 2014 on the basis of sales tax invoices issued by M/s Punjab Mineral Development Corporation (PUNJMIN), registered in RTO, Sargodha. Further that the claimant is registered as commercial exporter and the Sales Tax Refund Rules, 2006, (The Rules) notified vide SRO 555(1)/2006 dated 5.6.2006 differentiate scrutiny and processing of refund claims relating to commercial exporters from those of manufacturers-cum-exporters. The refund claims of manufacturers-cum-exporters are processed on the basis of electronic verification as provided under rule 29 of the Rules whereas sanctioning of sales tax refund to commercial exporters requires verification of supportive documents (which includes, inter alia, description of items purchased and exported, proofs of payment made through banking channel from declared bank account) as well as electronic verification through CREST under rule 32. It was also informed that Wagha Customs have verified the exports. Further stated that the terms of sales as mentioned on the sales tax invoices of PUNJMIN appear to be cash, which is not admissible under Section 7 read with 73 of the Sales Tax Act, 1990. Further that the complainant had also not furnished the proofs of payments made through banking channel from declared bank account in terms of Section 73 of the Sales Tax Act, 1990.

6. During the hearing the DRs of RTO Islamabad reiterated their view point about verification of tax invoices and deposit of sales tax by RTO Sargodha. It would be pertinent to mention that RTO Islamabad had approached RTO Sargodha for verification of sales tax invoices issued by M/s PUNJMIN to the complainant and the deposit of sales tax by the company. IRO Jauharabad of RTO Sargodha had advised RTO Islamabad to verify tax invoices and deposit of tax from computer system but still RTO Islamabad wants verification report from RTO Sargodha. During the hearing it also transpired that this was the first time that the complainant was claiming refund on exports. The Departmental Representatives also appeared to be handling their first case of sales tax refund by a commercial exporter as during the hearing they took the plea that copies of Bank Credit Advices (BCAs) have not been furnished while the complainant stated that he had furnished the copies of the Proceeds Realization Certificates to the RTO. Insistence of RTO Islamabad on the verification of tax invoices and payment of sales tax by RTO Sargodha instead of electronic verification through CREST appears covered under the language of the Rules, 2006 but shows the lack of understanding on the part of the refund handling staff of RTO Islamabad about the verification capabilities of CREST.

7. Both parties were heard and record examined by FTO. Thus FTO has issued the aforementioned recommendations.

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8. The instant representation has been filed by the Agency-FBR. Agency has mentioned that the recommendation at (i) of para 1 is contrary to the substantive law and in future can be quoted as precedent. The said recommendation of honorable FTO cannot override the substantive law and is therefore in violation of Section 9(2) of the Federal Tax Ombudsman Ordinance 2000.

9. Agency has argued that the said recommendation is in contradiction to the FTO's own findings (quoted in para 2) that the verification of supportive documents undertaken by RTO Islamabad is as per law.

10. Agency has pleaded that the FTO has rejected the review petition of the deptt merely on time limitation as computed by FTO Sectt without going through the legal provisions and merits of the case, which are crucial due to very nature of having potential of establishing a parallel system for refund processing.

11. Agency has prayed that the recommendations of FTO mentioned at (i) of para 1 above may be annulled / cancelled for being in violation of substantive legal provisions and tantamount to bypassing the procedure prescribed through substantive law. The interpretation of Law Rules and Regulations have been excluded from the jurisdiction of FTO vide Section 9(2)(b) of the FTO Ordinance 2000. The said recommendation will nullify the existing mechanism of verification of refund claims by establishing a precedent of an alternative mechanism of verification of refund claims.

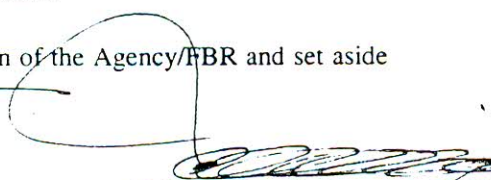
12. On the other hand, the complainant has filed comments against the representation of FBR on 25.1.2016 and supported the impugned recommendations of learned FTO.

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 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.

15. 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.

16. 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.05/FTO/2016 dated 16.08.2016

Copy for information to:

1. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
2. M/s Global Trading Services, Office No. 111, ISE Tower, 55-B, Jinnah Avenue, Blue Area Islamabad.
3. Qazi Ghulam Dastgir, Advocate, House No.409, Street No.4, Sector G-9/3, Islamabad
4. Director to Secretary to the President.
5. Master file

Zulfiqar Hussain Awan
Director (Legal-II)