

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

Federal Board of Revenue
Versus

M/s Shakargang Food Products Ltd, Lahore

REPRESENTATION PREFERRED BY FBR AGAINST FINDINGS / RECOMMENDATIONS DATED
27.04.2016 PASSED BY THE FTO IN COMPLAINT NO. 132/LHR/ST(28)/392/16

I am directed to refer to your representation No.1(392)S(TO-II/2016 dated 26.05.2016 on the above subject and to say that the President has been pleased to pass the following orders:

This representation dated 26.05.2016 has been filed by the Agency/FBR against the findings of FTO dated 27.04.2016 whereby it has been recommended that:

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

(i) Issue cheques in remaining RPOs of the Complainant immediately and also pay compensation under Section 67 of the act for the period exceeding 7 working days between the dates of issue of RPOs and cheques; and

(ii) report compliance within 21 days."

3. The Complaint was filed for non-issuance of cheques despite issuance of 5 Refund Payment Orders (RPOs) during November 2015 and February 2016. When confronted under Section 10(4) of the Ordinance, the Chief (CSTRO) FBR, submitted parawise comments intimating that as per Government policy announced by Finance Minister the RPOs are being processed for issuance of cheques upto the tune of Rs. 5 million for RPOs till dated 12th February, 2016. However, RPO No. 8041456 dated 04.02.2016, RPO No. 8041458 dated 04.02.2016, RPO No. 93822 dated 20.11.2015 and RPO No. 8041457 dated 04.02.2016 (all above Rs. 5 million) are in the queue, and the cheques against the said RPOs would be issued in due course of time as per directions of FBR. It was also informed that after sanctioning of refund claims, cheques for RPOs are issued on "first come first served basis" as per dates of RPOs. The systems 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 is 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 has improved the administration of refund payment by introducing this system.

4. Both sides were heard and the case record has been examined by FTO under Section 10 of the Sales Tax Act, 1990 (the Act) admissible refunds are payable to refund claimants within 45 days of their filing. Further under Rule 26A(7) of the Sales Tax Rules 2006 (the Rules) refund cheque is required to be issued within 7 working days of issuance of an RPO. Withholding of refund cheques for RPOs exceeding Rs. 5.0 million under the so called Government policy is clear violation of above provisions of law/Rules. Thus FTO has issued aforementioned findings.

5. The instant representation has been filed by the Agency-FBR. The Agency has pleaded 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.

6. 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 the 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 were issued strictly following the queue.

7. The Agency has emphasized that the manner of issuance of cheques by CSTRO and related functions have been prescribed under rule 30(4) of Sale Tax Rules, 2006. The Rule on issuance of cheque by office of CSTRO is Rule 30(6) of Sale 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.

8. 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.

9. The Agency has prayed that President of Islamic Republic of Pakistan may annul the findings/recommendations of the Federal Tax Ombudsman 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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FBR BOX NO. 116874-R
Ref. Ch. Sect. II

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10. 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.

11. 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."

12. 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.

13. 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 30(4) and Rule 30(6) 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. Consequently, the Agency's representation is liable to be accepted.

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



Zulfikar Hussain Awan
Director (Legal-II)

The Chairman,
Federal Board of Revenue,
Islamabad.

No.94 /FTO/2016 dated 31.08.2016

Copy for information to:

1. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
2. M/s Shakargang Food Products Ltd, 10th Floor the Bank of Punjab Tower, Main Boulevard, Gulberg-III, Lahore .
3. Director to Secretary to the President.
4. Master file

Zulfikar Hussain Awan
Director (Legal-II)