

## AIWAN-E-SADR, ISLAMABAD

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M/s Muskazar Knitwear (Pvt) Ltd, Lahore  
Versus  
Federal Board of Revenue

**REPRESENTATION PREFERRED BY M/S MUSKAZAR KNITWEAR (PVT) LTD LAHORE  
AGAINST FINDINGS / RECOMMENDATIONS DATED 07.01.2013 PASSED BY THE FTO IN  
COMPLAINT NO. 776/LHR/ST(169)/1360/2012**

I am directed to refer to your representation No. Nil, dated 20.06.2017 on the above subject and to say that the President has been to pass the following order:

2. This Representation dated 20.06.2017 has been filed by the Complainant—M/s Muskazar Knitwear (Pvt) Ltd. against the revised findings of the FTO dated 11.05.2017, whereby it has been held:

“Reference your review petition dated 02.05.2017, it is informed that a review petition can be filed against findings, recommendations, order or decision as enunciated in Section 13(1) of the Federal Ombudsman Institutional Reforms Act, 2013. The impugned letter dated 03.04.2017 does not fall, in any of the categories of orders mentioned above. It is merely an informatory letter which cannot be impugned through a review petition. The Federal Tax Ombudsman has, therefore, rejected the above mentioned R.P at limine stage as being non maintainable”.

Original findings of FTO dated 07.01.2013 provides as follows:

“FBR to direct the Chief Commissioner to-

- i. issue refund/ compensation due, in accordance with law; and
- ii. report compliance within 30 days.”

3. The brief facts of the case are that this complaint is against non issuance of refund. The complainant has claimed sales tax refunds as under:

S.No	Month	Refund Claimed	Refund Sanctioned	Refund Pending (in Rs)	Refund deferred (in Rs)
01	02/2001	1,493,117	493,779	618,290	381,048
02	03/2001	1,351,054	741,972		609,082
03	04/2001	633,824	443,976		189,848
04	05/2001	2,613,903	1,482,873		1,131,030
05	06/2001	2,601,604	1,471,106	1,030,494	100,004
06	07/2001	2,522,318	1,687,114	835,204	0
07	08/2001	5,087,577	3,078,582	2,008,995	0
08	09/2001	4,968,451	2,174,334	2,794,117	0
09	10/2001	3,980,459	0	3,980,459	0
10	11/2001	3,947,663	0	3,947,663	0
11	12/2001	4,671,603	0	4,671,603	0
12	01/2002	6,157,000	0	6,157,000	0
13	02/2002	4,596,800	0	4,596,800	0
14	03/2002	212,400	0	212,400	0
15	08/2003	1,250,200	0	1,250,200	0
Total:		46,087,973	11,573,736	32,103,225	<del>2,411,012</del>

4. The Complainant contends that the Company received sales tax refunds aggregating to Rs.35,965,253 for the tax periods Jan 2001 to Sept 2001: The Deptt held that the refunds had been claimed fraudulently as the sales tax invoices emanated from blacklisted suppliers. Order in Original (O-i-O) No.37/2006 dated 19.08.2006 was passed, raising tax demand of Rs.35,965,253. The 1<sup>st</sup> appellate authority vide order in appeal (O-i-A) No.99/ST/2007 dated 17.03.2007 confirmed the assessment. On second appeal, the ATIR vide STA No.443/LB.2009 dated 25.08.2010 vacated both and O-i-A.

5. When confronted, the Deptt filed a reply contending that the delay in issuance of reply was due to the reason that the claims remained under adjudication and the Complainant's registration was suspended. Moreover, the refund claims were filed manually and were now required to be processed electronically

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S.No	Claim No	Claim Date	Month	Amount (in Rs)
01	T030102100989	30.01.2003	01/2002	6,167,000
02	T030202101798	31.12.2006	02/2002	4,596,813
03	T030302101836	31.12.2006	03/2002	212,418
04	030803100326	31.12.2006	08-2003	1,250,298

6. Both sides have been heard and the record examined by FTO. Thus, the FTO has issued aforementioned recommendations. Now this is a second round of litigation initiated by the complainant.

7. The instant Representation has been filed by the complainant who has taken ground that the Respondent No. 5 in a sheer defiance of the Order of the FTO and its office letter dated rejected their claim for compensation vide his order C.No. 432/ST dated 10.03.2017 without even issuing show cause notice or even giving them any opportunity of hearing by stating that:

"It is concluded that delay in processing of refund claims was due to lengthy litigation and as such there is no negligence on the part of the department so the compensation against refund is not admissible".

8. The Complainant has stated that whereas the FTO has taken cognizance of this issue in his order and it is mentioned in the para 6 of the order of the FTO that:

"The delay in disposal of the refund claims not occurred for any fault of the Complainant. It was the Department that forced the Company into litigation when it sought to recover the refund already approved and disbursed".

9. The Complainant has apprised that the FTO has recommended FBR to direct the Chief Commissioner to issue refund/ compensation due.

10. The Complainant has narrated that the Respondents filed the representation before the President of Pakistan against the above said order of FTO which was rejected by the President vide Order No. 19/2013-Law-I(FTO) dated 25.03.2014. The Department cannot deny compensation. They have to implement the order of the FTO in its true spirit. The Respondent No. 5 has rejected their claim for compensation vide his order C.No. 432/ST dated 10.03.2017 without even issuing show cause notice or even giving us any opportunity of hearing.

11. The Complainant has underscored that aggrieved by the above treatment the Complainant filed contempt application on 20.03.2017 before the FTO which was not entertained vide Registrar FTO's letter dated 03.04.2017 stating that the recommendations issued in the subject matter have fully been implemented. Order of the department regarding rejection of claim of compensation is appealable.

12. The Complainant has pointed out that the Complainant filed a review application on 03.05.2017 before the FTO against rejection of its contempt application which was also rejected vide Registrar FTO's letter dated 11.05.2017. Feeling aggrieved, this representation is being submitted in terms of Section 32 of the Establishment of FTO Ordinance, 2000.

13. The Complainant has illustrated that as per Section 29 of FTO Ordinance, 2000 and Section 18 of Federal Ombudsman Institutional Reforms Act, 2013 no forum was competent to take an adjudication in a matter where any ombudsman had assumed jurisdiction and after he has passed order and made recommendations. Section 18 of Federal Ombudsman Institutional Reforms Act, 2013 further stops all fora from adjudication of a matter which the FTO has disposed of. The order of the FTO in their case has attained finality after rejection of departmental representation. Reliance in this regard is placed to a judgment of the Karachi High Court cited as (2007 YLR Karachi High Court) and (2005 CLD 314 Lahore High Court) that fully supports the viewpoints expressed supra. Relevant extracts from the judgment is reproduced below:

"Establishment of Office of Wafaqi Mohtasib (Ombudsman Order (1 of 1983)---

-----Arts. 9 & 29 ---- Proceedings before Wafaqi Mohtasib—jurisdiction of High Court—Order of Ombudsman had attained finality after rejection of appeal by the President of Pakistan---Article 29 of Establishment of Office of Wafaqi Mohtasib (Ombudsman) Order, 1983 having barred jurisdiction of the

