

AIWAN-E-SADR, ISLAMABAD

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	2,411,012

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 1st 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

been decided by the Ombudsman”.

14. The Complainant has underlined that none of the cheques for the sanctioned have been issued to them. The direction of the FTO was to issue refund/ compensation due. The Respondents have only processed the refund claims but not issued the same as no amounts have so far been refunded to the Complainant. As per Section 10 of the Sales Tax Act, 1990 the excess amount of input tax shall be refunded to the registered person within the stipulated time. The upshot of the discussion is that the Respondents have not yet refunded a single penny to the Complainant and issued refunds and compensation. Mere processing of the refund claims is just an eye wash.

15. The Complainant has drawn attention that the issuance of impugned order C.No. 432/ST dated 10.03.2017 by Assistant Commissioner IR, Unit-05, RTO-II, Lahore amounts to contempt proceedings under Section 16 of the FTO Ordinance and under Section 12 of the Federal Ombudsman Institutional Reforms Act, 2013. The impugned Order in Original was passed against the principle of natural justice ‘Audi Alterm Patern’. The Appellant has been deprived of precious right of hearing and consequently the impugned order is liable to be set aside (Reliance is placed upon PTCL).

16. The Complainant has explained that there is a general principle of law that one should not be condemned unheard as laid down in (Maxim audi alterm partem). Expeditious trial and disposal of case are appreciable but it should not happen at the expense of justice. Court must take proper care to afford proper opportunity and should not give any impression of undue haste or rush up, such disposal will be at the expense of their fair name as it has been held in PLD 1995 LHR 1985. The maxim ‘audi alterm partem’ should be deemed to be part of every statute which affects rights of citizens unless its application was excluded by express words or by necessary implication in statute as it has been held in 1995 MLD 2886. No court should adjudicate upon a right of party who was not before it or to whom no notice was given. Such conduct violates principles of natural justice which vitiates all proceedings (Reliance is placed upon 1988 CLC Karachi High Court 318, PLD 1995 LHR 1985, 1995 MLD 2886 & PTCL 2004 CL 265).

17. The Complainant has emphasized that the Respondent No. 5 has taken the stance in his impugned order that there was no time limitation at that time for processing of sales tax refund under Section 10 of the Sales Tax Act, 1990 read with Sales Tax Refund Rules, 2000 notified vide SRO 417(1) 2000 dated 20.06.2000. Whereas, in fact at that time as per subsection (2) of Section 10 of Sales Tax Act, 1990 the time limit for processing of refund claims was 30 days and as per sub rule (2) of Rules 7 of Sales Tax Refund Rules, 2000 notified vide SRO 417(1)/2000 dated 20.06.2000 the time limit for processing of refund claims was 20 days.

18. The Complainant has stated that the FTO order communicated vide Registrar FTO’s letter dated 03.04.2017 and 11.05.2017 may be set aside as being contrary to his earlier recommendation dated 07.01.2013 upheld by your Lordship Order dated 25.03.2014 in the case. The Respondents may be directed to reopen the impugned order dated 10.03.2017 under Section 45A of the Sales Tax Act, 1990 and issue the compensation to the Complainant immediately.

19. On the other hand, the Agency has argued that the above recommendation is very clear that the refund/compensation due be issued in accordance with law. The refund claims of the registered person were processed as per applicable rules and the admissible refund was sanctioned/paid to the registered person. So far as the compensation is concerned it was also to be considered /given if due as per law. The legitimacy of compensation was also decided in pursuance of the FTO’s letter dated 13.2.2017 and finally order dated 10.3.2017 was passed by the competent authority holding that compensation regarding the refund claims of the registered person is not admissible as per law. This is wrong presumption of the registered person that the department has denied to issue compensation in said case. Rather, the department has decided the issue of compensation in accordance with law.

20. The Agency has pointed out that the order No.432/ST dated 10.03.2017 was issued in pursuance of FTO’s letter dated 13.02.2017. It is pointed out that there is no provision in the law which requires that the issue of compensation must be decided after issuance of show cause notice. So far as opportunity of hearing is concerned it is stated that the version of the registered person available on record was duly considered while passing order dated 10.03.2017. The contempt application filed by the registered person was rejected by the FTO stating that the recommendation issued in the complaint of the registered person have been fully implemented by the department and the order of the department regarding rejection of compensation is appealable. The FTO further advised the registered person to file an appeal before the appropriate forum against the said order if the registered person desired so.

above, the issue of compensation was decided through order dated 10.03.2017 by the competent authority as per direction of FTO. This representation is neither warranted nor attracted in this case. Since an appealable order has been passed by the authority and the registered person was also advised by the FTO to file an appeal against the said order if he desires so.

22. The Agency has asserted that there is no defiance to the findings/recommendations issued by the FTO in the complaint of the registered person. Rather the FTO has acknowledged through letter dated 03.04.2017 that the recommendations issued in the complaint of the registered person have fully been implemented by the department. So far order dated 10.03.2017 is concerned, the FTO has advised the complainant that it is an appealable order and he may file an appeal before appropriate forum if he desired so. The registered person appears to misleading this forum by repeatedly citing an observation of the FTO, whereas the facts, is that the recommendation of the FTO have been fully implemented by the department as acknowledged by the FTO through letter dated 03.04.2017.

23. The Agency has expressed that the recommendations of the FTO was clear that the refund/ compensation due be issued in accordance with law. The refund claims of the registered person were processed as per applicable Rules and the admissible refund was sanctioned/ paid to the registered person. So far as the compensation is concerned it was also to be considered given if due as per law. The legitimacy of compensation was also decided in pursuance of the FTO's letter dated 13.02.2017 and finally order dated 10.03.2017 was passed by the competent authority holding that compensation regarding the refund claims of the registered person is not admissible as per law. This is wrong presumption of the registered person that any adjudication proceedings were conducted after issuance of recommendations in the complaint of the registered person. The order of the FTO has been complied with in letter in spirit. The refund claims of the registered person have been processed as per applicable rules and the admissible amounts have been sanctioned as per law through RPOs. The Refund Payment Orders have also been issued by the competent authority. The cheques against the RPOs are issued by the centralized office i.e. CSTRO on the basis of que.

24. The Agency has mentioned that this is repetition by the registered person since the grievance of the registered person has already been resolved and the refund claims have been processed and due amount have been sanctioned as per law. This is concealment of facts by the registered person since the contempt application filed by the registered person has already been decided by the FTO and finally the FTO has acknowledged that the recommendation issued in the subject complaint have fully been implemented by the deptt.

25. The Agency has explained that the refund claims of the registered person had been filed under sales tax refund rules 2000, notified vide SRO 471 (1) 2000 dated 20.06.2000 and these claims were processed under the similar rules. The issue of time limitation has been explained in the order dated 10.03.2017 in detailed and it has been concluded that there is no legitimacy of the compensation as being claimed by the registered person. The FTO has also acknowledged and endorsed the stance of the department through its letters dated 03.04.2017 and 11.05.2017.

26. The Agency has prayed that this representation of the registered person may be rejected being unlawful, unwarranted, and devoid of merits. No such representation lies as per FTO Ordinance 2000 because the findings/recommendations were issued to the deptt and the complaint was decided against the deptt and not against the complainant. The findings/recommendations issued to the deptt have also been implemented as acknowledged by the FTO, hence this representation is illegal, unlawful and liable to be rejected by the appellat forum.

27. After perusal of record and examination of all documents it has been noted that FTO's findings/recommendations dated 07.01.2013 and the President's decision dated 25.3.2014 (mentioned supra) have already attained finality. The complainant has now started second round of litigation on the same subject and at the same forum.

28. 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 (IT), the High Court and the Supreme Court. Where remedy of appeal is provided under the law. 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.

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 of learned FTO are sustainable and the representation is liable to be rejected.

30. It is as clear as the crystal that FTO has communicated 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 informative 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". It may be mentioned that the complainant has tried to start second round of litigation at the same subject and at the same forum against findings/recommendations of FTO dated 07.01.2013 which have already attain finality. Thus the findings of the learned FTO are quite sustainable and the complainant has unnecessarily filed this representation. In such circumstances, this representation is liable to be rejected having no merits and the recommendations of FTO are sustainable and maintainable being unexceptional in nature.

31. This representation has been filed by the Complainant repeating the contents of the pleadings already made before the learned FTO. Nothing turns on the same as it fails to answer the reasoning of FTO and not even contain denial of the factual observations for his impugned decision. No grounds stand made out for interference with the decision of the FTO. Undoubtedly, FTO decision is based on sound reasoning and supported by the law. Thus, the representation is devoid of any merits and is liable to be rejected. FTO impugned findings do not warrant any interference. Consequently, FTO findings are sustainable and unexceptional having no illegality or improbability.

32. Accordingly, the President has been pleased to reject the instant representation of Complainant namely M/s Muskazar Knitwear (Pvt) Limited and the impugned recommendations'findings of learned FTO dated 11.5.2017 are upheld.

(Zulfiqar Hussain Awan)
Director General (Legal Affairs)

Mr. Zaka-ud-Din Yousaf,
Chief Executive,
M/s Muskazar Knit Wears (Pvt) Ltd,
9-B, Shadman-II, Lahore.

No.119/FTO/2017 dated 05.10.2017

Copy for information to:

1. The Chairman, Federal Board of Revenue, Islamabad.
2. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
3. The Chief (Legal-I), Federal Board of Revenue, Islamabad.
4. Director to Secretary to the President.
5. Master file.

(Zulfiqar Hussain Awan)
Director General (Legal Affairs)