

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

Federal Board of Revenue
Versus

M/s Mustaqim Dyeing & Printing Industries (Pvt) Ltd, Karachi

REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS / RECOMMENDATIONS DATED 07.05.2018 PASSED BY THE FTO IN COMPLAINT NO. 475/KHI/ST/2018

I am directed to refer to your representation No. 1(475)S(TO-II)/2018, dated 07.06.2018 on the above subject and to say that **the President has been pleased to pass the following order:**

2. This Representation dated 07.06.2018 has been filed by the FBR—the Agency against the findings of the FTO dated 07.05.2018 whereby it has been held:

“FBR to:

- i. The Commissioner-IR, Zone-VI, Corporate RTO, Karachi to settle pending 10 fresh and 22 deferred sales tax refund claims of the complainant expeditiously, as per law; and
- ii. Report compliance within 45 days”.

3. Brief facts of the case are that the complaint has been filed against the Commissioner-IR, Zone-VI, Corporate RTO, Karachi (the department) in terms of Section 10(1) of the FTO Ordinance, 2000 for failing to process ten fresh sales tax refund claims of Rs. 113.427 million and twenty two deferred claims of Rs. 11.292 million filed by the complainant for various tax periods from September 2016 to June 2017 and from December 2013 to December 2017 respectively.

4. The complaint was referred to the Secretary, Revenue Division for comments in terms of Section 10(4) of the FTO Ordinance read with Section 9(1) of the Federal Ombudsman Institutional Reforms Act, 2013. The FBR forwarded parwise comments submitted by Commissioner-IR, Zone-VI, Corporate RTO, Karachi vide letter dated 16.04.2018. At the outset preliminary objection was raised regarding admissibility of complaint under Section 10(3) of the FTO Ordinance. On merit, it has been contended that due to changes in jurisdiction and transfer of electronic as well as physical record, the refund claims could not be processed and settled.

5. The complainant, as manufacturer of textile goods, is registered with the department under the Sales tax Act, 1990 (the Act). During hearing, the AR averred that ten fresh claims and 22 deferred claims are pending with the department despite request vide letters dated 18.12.2017, 01.01.2018 and 18.01.2018. The AR argued that the complainant could not be deprived of its genuine claims of refund. The preliminary objection raised in terms of Section 10(3) of the FTO Ordinance is *ipso facto* misconceived as after filing of the claims, the complainant has repeatedly approached the department but failed to get any response. Moreover, the department in parwise comment has conceded that refund claims could not be processed due to frequent transfer of the complainant's jurisdiction. Thus on one hand the department has alleged inaction and delay on transfer of jurisdiction, which obviously is not the complainant's doing, and on the other hand tried to deny his legitimate right on the point of limitation. These facts speak eloquently the departmental negative attitude to conceal its negligence. The AR averred that claims files have been submitted to the department and provided copies of acknowledgment slips to the DR, the DR undertook to settle the claims expeditiously, as per law. Thus, FTO has issued aforementioned findings.

6. The instant representation has been filed by the Agency. The Agency has stated that this is the case of a company registered person is engaged in manufacturing and exports of textile made ups. The Registered Person has filed complaint on 19.03.2018 for no processing of following ERS rejected refund claims.

**Refund claims filed under Section 10 of the
Sales Tax Act, 1990**

Sr. No.	Claim month	Claim submission date
1.	September, 2016	06.02.2017
2.	October, 2016	28.02.2017
3.	November, 2016	31.03.2017
4.	December, 2016	16.05.2017
5.	January, 2017	27.10.2017
6.	February, 2017	12.07.2017
7.	March, 2017	13.07.2017
8.	April, 2017	24.08.2017
9.	May, 2017	11.09.2017
10.	June, 2017	11.09.2017

97

Compliant in serial numbers 1,2,3,4,6&7 regarding refund claims filed under Section 10 of the Sales Tax act, 1990 has been entertained after six months.

7. The Agency has pleaded that no delay or violation of Section 10(1) of the Sales Tax Act, 1990 occurred while all refund claims for the tax period September 2016 to June 2017 are processed through ERS (Expeditious Refund System) if any due refunds are issued accordingly. Claims are deferred or rejected through ERS due to shortcomings on the part of the Registered Persons. Hence, mischief of Section 10(1) of the Sales Tax Act is not attracted in cases where department has not done any act of omission. It was further argued by the department that rejected claims have been agitated before FTO after lapse of six months which stands time barred in view of Section 10(3) of FTO Ordinance, 2000.

8. The Agency has taken ground that the order of FTO is bad on facts as well as law. The FTO has violated Section 10(3) by entertaining application of claims beyond six months. FTO cannot entertain application after lapse of six months on the ground that Registered Person has approached department but failed to get response. FTO cannot hold the department responsible for omission or legal violation on part of Registered Person due to which claims are rejected or deferred during ERS processing.

9. The Agency has pointed out that filing of application with department for processing of refund does not grant suo moto condonation to Registered Person to lodge complaint after six months. Order of FTO to process claims within forty five days violates the principle of first come first serve. FTO has ignored the contention of department that Registered Person's request for refund claim for the month of January 2017 is appearing at serial number 1101 and early processing will cause prejudice to 1100 refund claims before him. Order of FTO amounts to jumping of queue. Multiple orders from FTO for processing within 45 days create confusion in order of processing of refund claims. Entertaining complaint of Registered Person by FTO after limitation is against the judgment of Supreme Court of Pakistan in following reported cases:

- i. 2013 SCMR 587
- ii. PLD 2015 SC 2012
- iii. PLD 1997 SC 397

10. The Agency has mentioned that recommendations of FTO are in contravention of decision of President in case of FBR Vs M/s H.S.M Packages (Pvt) Ltd in FTO Complaint No.738/KHI/ST/2016.

11. The Agency has prayed that President may vacate findings/ recommendations dated 07.05.2018 in C.No. 475/KHI/ST/2018 and pass order to:

- a) FTO has acted beyond powers to entertain time barred complaint;
- b) Refund claims may be process on first come first serve basis.

12. On the other hand, the Complainant has filed his written comments on 25.6.2018 against the instant representation of FBR and supported the impugned recommendations/findings of learned FTO.

Analysis/Conclusion

13. After perusal of record and examination of all documents, it has been noted that FBR issued SOPs vide letter No.1(11)/CSTRO/FBR/2013, dated 25th September 2013 indicating on the subject "Following Queue in the processing and payment of sales tax refund.

The sales tax refund rules 2006 notified under SRO 555(1)/2006 dated 5th June 2006 prescribe procedure for processing and sanctioning of sales tax refund. Presently, sales tax refund claims are processed through ERS where these are filed by the manufacturers cum exporters (zero rated sectors) against export sales whereas claims of other claimants are processed in respective LTUs/RTOs instances have come to notice that propriety of refund processing has left much to the desired in order to fortify equity and transparency in the whole process following instructions are issued for proper implementation of the Refund Rules 2006:

- i. In the ERS, the claim shall be processed through sequence and the cheques shall be issued against refund payment order (RPO) on first come first served basis as per dates of RPOs. Unverified amounts shall be referred to respective LTU/RTOs for disposal as per law/rules.
- ii. The refund claims that are filed in RTOs/LTUs shall be replicated immediately when the same are received. Objection memo shall be issued where any information is required from the claimant.
- iii. The claims shall be processed on first come first served basis. For this purpose, the queue shall be maintained on the basis of receipt of the refund claims. However, the claim lacking and document/information shall be blocked by the system and next claim in the line shall be processed with the approval of the refund sanctioning authority. Similarly, claim warranting immediate processing on account of court/FTO orders shall be given priority in the queue with the approval of the refund sanctioning authority.

Blocked claim shall retain its position in the queue in the computer system and shall processed after documents/information are furnished.

MIS report in respect of claims processed by breaking the queue shall be available to the concerned officers of LTUs/RTOs for proper management and monitoring.

Chief CSTRO in respect of RPOs of ERS claims and the concerned Chief Commissioner in case of claims processed in RTOs/LTUs shall be responsible for ensuring the settlement and disposal of the claims in above stated manner.

Sd/-
(Fahad Ali Chaudhary)
Secretary (ST-L&P)"

Needless to be mentioned that SOPs mentioned supra regarding essentiality of following queue in the processing and payment of RPOs in Sales Tax Refund are required to be followed by the Agency (FBR).

14. As far as findings of learned FTO are concerned, it is as clear as the crystal that FTO has made recommendations which are only to the extent to the Commissioner-IR, Zone-VI, Corporate RTO, Karachi to settle pending 10 fresh and 22 deferred sales tax refund claims of the complainant expeditiously, as per law within 45 days. It is just a harmless order and only the Agency has to decide the issue as per law which was never denied in its written reply even by the Agency. The Agency has full powers to decide the issue either way, on merits and in accordance with the provisions of law. Thus the findings of the learned FTO are quite sustainable and the Agency has unnecessarily filed this representation. In such circumstances, this representation is liable to be rejected having no merits and the recommendations/findings of FTO are sustainable and maintainable being unexceptional in the eyes of law.

15. This representation has been filed by Agency 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 learned 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's 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/recommendations do not warrant any interference. Consequently FTO findings are sustainable and unexceptional having no illegality or improbability.

16. Accordingly, the President has been pleased to reject the instant representation of FBR-Agency and the impugned recommendations/findings of FTO are upheld with the essential observations mentioned in Para 13 (supra).

(Zulfiqar Hussain Awan)
Director General (Legal Affairs)

The Chairman,
Federal Board of Revenue,
Islamabad.

No. 31/FTO/2018 dated 27.08.2018

Copy for information to:

1. M/s Mustaqim Dyeing & Printing Industries (Pvt) Ltd, D-14/A, Bada Board, SITE, Karachi.
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)

101