

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

Federal Board of Revenue
Versus
M/s Reliance Textile Industries, Karachi

REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS / RECOMMENDATIONS DATED 08.05.2018 PASSED BY THE FTO IN COMPLAINT NO. 476/K/ST/2018

I am directed to refer to your representation No. 1(476)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 orders:

2. This Representation dated 07.06.2018 has been filed by the FBR the Agency against the findings of the FTO dated 08.05.2018 whereby it has been held:

"FBR to:

- i. Direct the Chief Commissioner-IR, Zone-VI, Corporate RTO, Karachi to finalize and transmit the recommendation of the Corporate RTO Karachi on the zero rating application of the complainant to FBR within 15 days;
- ii. Direct the concerned officers in FBR to finalize action, as per law, on the recommendation of Corporate RTO Karachi as soon as it is received;
- iii. direct the Commissioner-IR, Zone VI Corporate RTO Karachi to settle pending 29 fresh claims of the complainant expeditiously, as per law, and
- iv. 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 twenty nine fresh sales tax refund claims of Rs. 41.478 million filed by the complainant for various tax periods from April 2015 to October 2017. Delay on the part of the department in allowing zero rating facility to the complainant on supply of gas has also been alleged.

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 parawise comments submitted by Commissioner-IR, Zone-VI, Corporate RTO, Karachi vide letter dated 19.04.2018. At the outset preliminary objection was raised regarding admissibility of complaint under Section 10(3) of the FTO Ordinance was raised. It has been contended that due to changes in jurisdiction of the complainant, the refund claims could not be processed and settled. The jurisdiction of textile sector was transferred to RTO-II, Karachi and RTO-III, Karachi vide FBR jurisdiction order No. 57(2)jurisdiction/ 2016/95923-R dated 21.07.2016 and again it was transferred from RTO-II, Karachi to Corporate RTO, Karachi vide FBR's jurisdiction Order No.6(147)jurisdiction/ 2017/48775-R dated 18.04.2017. It was informed that three claims are appearing in the folder of the Processing Officer and pending refund claims have been requisitioned from Information Processing Division and Taxpayer Facilitation Desk (TFD) Branch). The claims would be processed expeditiously upon receipt of physical files of pending claims. It was also informed that the complainant is required to submit requisite documents, including removal of CREST discrepancies for grant of zero rating on utilities bills.

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 29 fresh claims and 22 deferred claims are pending with the department despite requests vide letters dated 06.04.2017, 23.08.2017, 12.01.2018, 27.01.2018, 29.01.2018, and 16.03.2018. The AR further averred that the complainant was continuously pursuing the matter but so far no action has been taken by the department. The AR argued that the complainant cannot 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. Conversely, the DR undertook to process and settle the pending claims expeditiously upon receipt of physical claims files. He also undertook to finalize the recommendation in respect of zero rating application filed by the complainant as per, at the earliest. Arguments heard and record perused by FTO. 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 an AOP. 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.

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

Sr. No.	Claim month	Claim submission date
1.	April, 2015	12.09.2015
2.	June, 2015	12.11.2015
3.	July, 2015	
4.	August, 2015	
5.	September, 2015	26.01.2016
6.	October, 2015	11.03.2016
7.	December, 2015	14.05.2016
8.	January, 2016	16.06.2016
9.	February, 2016	14.07.2016
10.	March, 2016	
11.	April, 2016	06.09.2016
12.	May, 2016	08.10.2016
13.	June, 2016	14.11.2016
14.	July, 2016	02.12.2016
15.	August, 2016	14.01.2017
16.	September, 2016	16.02.2017
17.	October, 2016	13.03.2017
18.	November, 2016	17.04.2017
19.	December, 2016	15.05.2017
20.	January, 2017	17.06.2017
21.	February, 2017	18.07.2017
22.	March, 2017	16.08.2017
23.	April, 2017	14.09.2017
24.	May, 2017	11.10.2017
25.	June, 2017	15.11.2017
26.	July, 2017	16.12.2017
27.	August, 2017	15.01.2018
28.	September, 2017	07.02.2018
29.	October, 2017	14.03.2018

Compliant in serial numbers 1 to 21 regarding refund claims filed under Section 10 of the Sales Tax act, 1990 has been entertained after six months.

7. The Agency has mentioned that no delay or violation of Section 10(1) of the Sales Tax Act, 1990 occurred while all refund claims for the tax period April 2015 to October 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.

13. The Agency has expressed that 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. Filing of application with department for processing of refund does not grant suo moto condonation to Registered Person to lodge complaint after six months.

9. The Agency has explained that 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 1384 and early processing will cause prejudice to

1383 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 expressed 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 08.05.2018 in C. No. 476/KHI/ST/2018 and pass order to:

- i. FTO has acted beyond powers to entertain time barred complaints;
- ii. Refund claims may be process on first come first serve basis.

12. On the other hand, the Complainant has filed his comments on 23.6.2018 against the instant representation of FBR and supported the impugned recommendations/findings of learned FTO.

13. After perusal of record and examination of all documents, it has been noted that it is as clear as the crystal that FTO has made recommendations which are only to the extent to direct the Chief Commissioner-IR, Zone-VI, Corporate RTO, Karachi to finalize and transmit the recommendation of the Corporate RTO Karachi on the zero rating application of the complainant to FBR within 15 days; direct the concerned officers in FBR to finalize action, as per law, on the recommendation of Corporate RTO Karachi as soon as it is received; direct the Commissioner-IR, Zone VI Corporate RTO Karachi to settle pending 29 fresh 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.

14. Accordingly, the President has been pleased to reject the instant representation of FBR-Agency and the impugned recommendations/findings of FTO are upheld.

(Zulfiqar Hussain Awan)
Director General (Legal Affairs)

The Chairman,
Federal Board of Revenue,
Islamabad.

No. 30/FTO/2018 dated 27.08.2018

Copy for information to:

1. M/s Reliance Textile Industries, Plot No. E-8, South Avenue, 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)

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