

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

Federal Board of Revenue  
Versus  
M/s Adamjee Enterprises, Karachi

**REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS / RECOMMENDATIONS DATED 12.04.2018 PASSED BY THE FTO IN COMPLAINT NO. 0332/KHI/ST/2018**

I am directed to refer to your representation No. 1(332)S(TO-II)/2018, dated 08.05.2018 on the above subject and to say that **the President has been pleased to pass the following order:**

2. This Representation dated 08.05.2018 has been filed by the Agency-FBR against the findings of the FTO dated 12.04.2018 whereby it has been held:

"FBR to:-

- i. The Commissioner-IR, Zone-VI, Corporate RTO, Karachi to settle pending 8 fresh, 39 deferred and 08 claims filed under Section 66 of the Act, 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 in terms of Section 10(1) of FTO Ordinance, 2000 for failing to process eight fresh sales tax refund claims of Rs. 25.264 million and thirty nine deferred claims of Rs. 34.004 million filed by the complainant for various tax periods from October 2016 to September 2017 and from July 2012 to August 2016 respectively. Delay on the part of the department to process eight refund claims of Rs. 4.096 million filed by the complainant under Section 66 of the Sales Tax Act, 1990 (the Act) 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 Ombudsmen Institutional Reforms Act No. XIV of 2013. In response thereto, Commissioner-IR, Zone-VI, Corporate RTO, Karachi submitted parawise comments dated 26.03.2018. At the outset preliminary objection regarding admissibility of complaint under Section 10(3) of the FTO Ordinance was raised. It has been contended that due to charges in the jurisdiction of the complainant, the refund claims could not be processed and settled. It was informed that all the claims are appearing in the folder of the Processing Officer and physical files of refund claims have been requisitioned from Information Processing (IP) 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 pending deferred and fresh claims filed under Section 66 of the Act, would also be settled expeditiously.

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 sixteen claims (8 fresh and 8 under Section 66 of the Act) and 39 deferred claims were pending with the department despite repeated requests vide letters dated 06.11.2017, 20.11.2017, 30.01.2018 and 27.02.2018. The AR further averred that the complainant was continuously pursuing the matter but no action was taken by the department. The AR argued that the complainant could not be deprived of its genuine claim 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 response. Moreover, the department in parawise comments 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 ding, and on the other hand tried to deny his legitimate right on the point of limitation.

6. These facts speak eloquently the departmental negative attitude to conceal its negligence. During the hearing, the DR undertook to process and settle the pending claims upon receipt of physical claims files expeditiously, as per law.

7. In view of supra, it is apparent that the department has failed to settle pending refund claims of the complainant within the time limits stipulated under Section 10 and 66 of the Act. Thus, FTO has issued the aforementioned findings. Thus, FTO has issued aforementioned findings.

8. Hearing of the case was held on 03.07.2018. Mr. Shahid Rehman, Senior Auditor and Mr. Said Iqbal, ADC have represented the FBR. On the other hand, Mr. Shahid Ali Qureshi Advocate and Mr. Naeemuddin AR have appeared for the hearing on the particular issue.

9. The instant representation has been filed by the FBR. The representative of the Agency has stated that this case is the case of AOP. Registered Person is engaged in manufacturing and exports of textile made ups. The Registered Persons has filed complaint on 01.03.2018 for non 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)	October, 2016	14.03.2017
2)	November, 2016	13.04.2017
3)	December, 2016	16.05.2017
4)	January, 2017	13.06.2017
5)	February, 2017	17.07.2017
6)	May, 2017	09.10.2017
7)	July, 2017	05.12.2017
8)	September, 2017	13.01.2018

Complaint in serial number 1 to 4 regarding refund claims filed under Section 10 of the Sales Tax Act, 1990 has been entertained after six months.

**Refund claims filed under Section 66 of the  
Sales Tax Act, 1990**

Sr No	Claim Month	Claim Submission Date
1)	April, 2017	08.06.2017
2)	May, 2017	08.06.2017
3)	February, 2017	08.06.2017
4)	January, 2017	08.06.2017
5)	March, 2017	08.06.2017
6)	January, 2017	25.10.2017
7)	February, 2017	25.10.2017
8)	April, 2017	03.11.2017

Complaint in serial number 1 to 5 regarding refund claims filed under Section 66 of the Sales Tax Act, 1990 has been entertained after six months.

10. The representative of the Agency has pointed out that 39 deferred claims which were already processed, admissible amount issued and amounts were deferred to the extent of objections raised by STARR due to failure of Registered Person in furnishing of supportive documents.

11. The representative of the Agency has pleaded that no delay or violation of Section 10(1) of the Act occurred while all refund claims for the tax period October 2016 to September 2017 are processed through ERS (Expeditious Refund System) due refunds are issued accordingly. Claims are deferred or rejected through ERS due to shortcomings on the part of Registered Persons. Hence, mischief of Section 10(1) of the 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.

12. The representative of 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.

13. The representative of the Agency has underscored 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 45 days violates the principle of first come first serve. FTO has ignored the contention of department that Registered Persons request for refund claim for the month of September 2017 is appearing at serial number 1377 and early processing will cause prejudice to 1376 refund claims before him. Order of FTO amounts to jumping of queue.

14. The representative of the Agency has pleaded that 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:

- a) 2013 SCMR 587
- b) PLD 2015 SC 2012
- c) PLD 1997 SC 397

Recommendations by FTO are in contravention of decision of President of Pakistan in the case of FBR Vs M/s H.S.M Packages (Pvt) Ltd in FTO complaint number 738/KHI/ST/2016.

15. The representative of the Agency has prayed that the President may vacate findings/ recommendations in complaint number Section 82D of BCO 1962 read with Section 9 of the Federal Ombudsmen Institutional Reforms Act No. XIV of 2013-116/KHI/ST/70/332/2018 dated 12.04.2018 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.

16. On the other hand, the Complainant has filed his written comments on 28.5.2018 against the instant representation of FBR and supported the impugned recommendations/findings of learned FTO.

**Analysis/Conclusion**

17. After perusal of record, examination of all documents and detailed hearing, it has been noted that FBR issued SOPs vide letter No.1(11)/CSTRO/FBR/2013, dated 25<sup>th</sup> 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 5<sup>th</sup> 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)"

18. 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).

19. As far as recommendations/findings of 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 8 fresh, 39 deferred and 08 claims filed under Section 66 of the Act, 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.

20. 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.

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

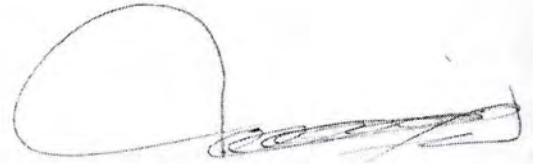
(Zulfiqar Hussain Awan)  
Director General (Legal Affairs)

The Chairman,  
Federal Board of Revenue,  
Islamabad.

No. 26/FTO/2018 dated 19.07.2018

Copy for information to:

1. M/s Adamjee Enterprises, E/17/A, S.I.T.E, 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)