

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

Federal Board of Revenue
Versus
M/s Olympia Fabrics Industries (Pvt) Ltd, Karachi

REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS / RECOMMENDATIONS DATED 30.03.2018 PASSED BY THE FTO IN COMPLAINT NO. 111/K/ST/(66)/301/2018

I am directed to refer to your representation No. 4(301)S(TO-I)/2018, dated 30.04.2018 on the above subject and to say that **the President has been pleased to pass the following order:**

2. This Representation dated 30.04.2018 has been filed by the Agency-FBR against the findings of the FTO dated 30.03.2018 whereby it has been held that:

"FBR to direct:-

- i. **The Commissioner-IR, Zone-VI, Corporate RTO Karachi to settle eleven fresh and one deferred claim 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 Commissioner-IR, Zone-VI, Corporate RTO Karachi in terms of Section 10(1) of the FTO Ordinance, 2000 for failing to process eleven fresh sales tax refund claims of Rs. 7.018 million for various tax periods from September 2016 to September 2017 and one deferred claim of Rs. 0.035 million for tax period June 2016 filed by the Complainant.

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, Chief Commissioner-IR, Corporate RTO, Karachi submitted parawise comments dated 07.03.2018. It has been informed that due to changes in jurisdiction and non-transfer of refund claim data from RTO-II, Karachi the claims could not be processed. It was informed that physical refund files have been requisitioned from Information Processing Division and Taxpayers Facilitation Desk (TFD) Branch. Further, informed that the claims have been transferred electronically into the folder of Processing Officer. The fresh claims shall be processed expeditiously upon receipt of original claim files, while deferred claim for June 2016 shall be processed after issuance of cheque against the claim.

5. The complainant, a manufacturer of textile goods, is registered with the department under the Sales Tax Act, 1990. During hearing, the AR contended that eleven fresh and one deferred sales tax refund claims were pending with the department despite repeated requests vide letters 10.01.2017, 11.12.2017, 29.12.2017, 09.01.2018, 19.01.2018 and 12.02.2018. The AR undertook to process and settled 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 eleven fresh claims were pending for sanction and FTO has passed the order on the grounds that inordinate delay in settling fresh sales tax refund claims within time limits stipulated under Section 10 of the Act tantamount to maladministration in terms of Section 2(3)(ii) of the FTO Ordinance.

7. The Agency has mentioned that the above order passed by the FTO is contrary to law. As per provision of Section 10(1) of the Sales Tax Act, 1990 if the input tax paid by the registered person on taxable purchases made during a tax period exceeds the output tax on account of zero rated local supplies or export made during that tax period the excess amount of input tax shall be refunded to the registered person not later than forty five days. Sales tax refund claims are being processes under the provisions of Chapter V of the Sales Tax Rules, 2006:

"If the input tax paid by the registered person on taxable purchases made during a tax period exceeds the output tax on account of zero rated local supplies or export made during that tax period the excess amount of input tax shall be refunded to the registered person not later that forty

(125)

five days of filing the refund claim in such manner and subject to such conditions as the Board may by notification in the official Gazette”.

8. The complainant was contended that eleven fresh refund claims for the tax period September 2016 to September 2017 were pending for sanction and the complaint has been entertained after lapse of six months hence inadmissible under Section 10(3) of the FTO Ordinance.

9. The Agency has underscored that the complaint pertained to the following tax period:

Sr. No.	Claim Month	Claim submission date
1)	September 2016	26.01.2017
2)	November 2016	28.03.2017
3)	January, 2017	26.05.2017
4)	February, 2017	15.06.2017
5)	March, 2017	18.07.2017
6)	April, 2017	18.08.2017
7)	May, 2017	08.09.2017
8)	June, 2017	16.10.2017
9)	July, 2017	02.11.2017
10)	August, 2017	06.12.2017
11)	September, 2017	08.01.2018

10. The Agency has contended that the subject complaint was filed on 23.02.2018 after lapse of more than six months of refund claim submission:

- i. The FTO has failed to understand the refund processing procedure. Where every case is processed electronically within stipulated time and excess payment are refunded in accordance with Section 10 of the Sales Tax Act, 1990;
- ii. Part of claims system does not allow refund are those invoices which are found to erroneous for reasons of date mismatch, purchases from suspended/ blacklisted, and irrelevant purchases etc.
- iii. In those cases onus lies on registered person to produce additional information or evidence to remove the objections raised by system;
- iv. Such cases falls outside the limitation of forty five days as provided under Section 10 of the Sales Tax Act, 1990;
- v. There is not element of maladministration as declared by FTO.

11. The Agency has prayed that the President may vacate findings/ recommendation in complaint number FTO-111/KHI/ST/66/201/2018 dated 30.03.2018.

12. On the other hand, the Complainant has filed his comments on 14.5.2018 through Tariq Mehmood Siddique Authorized Representative 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 Commissioner-IR, Zone-VI, Corporate RTO Karachi to settle eleven fresh and one deferred claim 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 nature.

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

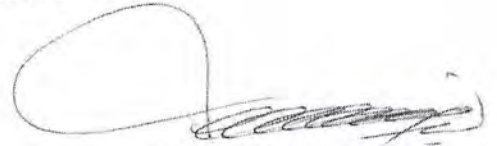
(Zulfiqar Hussain Awan)
Director General (Legal Affairs)

The Chairman,
Federal Board of Revenue,
Islamabad.

No. 25/FTO/2018 dated 19.07.2018

Copy for information to:

1. M/s Olympia Fabrics Industries (Pvt) Ltd, B/7, Block-A, SMCH Society, 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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S.Sec (TOJ)
S.Sec (TOJ)