

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

Federal Board of Revenue
Versus
M/s Knitwear Textile Processing, Karachi

**REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS
/ RECOMMENDATIONS DATED 22.03.2018 PASSED BY THE FTO IN COMPLAINT NO.
0260/KHI/ST/2018**

I am directed to refer to your representation No. 1(260)S(TO-II)/2018, dated 23.04.2018 on the above subject and to say that **the President has been pleased to pass the following order:**

2. This Representation dated 23.04.2018 has been filed by the FBR/Agency, against the findings of the FTO dated 22.03.2018, whereby it has been held that:

“RECOMMENDATIONS:

FBR to direct:-

- i. **The Commissioner-IR, Zone-VI, CRTO, Karachi to complete the verification process and settle the pending fresh, deferred and claim filed under Section 66 of the Act, discussed supra, , as per law; and**
- ii. **Report compliance within 45 days.”**

3. The brief facts of the case are that the complaint has been filed against Commissioner-IR (CIR) Zone-VI, CRTO Karachi, in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance), for delay in processing 16 fresh sales tax refund claims of Rs. 18.140 million and 2 deferred claims of Rs. 1.762 million, filed by the Complainant for tax periods of June 2016 to September, 2017 and June to December 2015 respectively. Delay on part of the Department is also alleged in 01 Sales Tax refund claim of Rs. 0.113 million filed under Section 66 of the Sales Tax Act, 1990 (the Act).

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. In response, thereto, the FBR vide letter C. NO. 1(260)TO-II/208 dated 12.03.2018 submitted parawise comments of the CIR Zone-VI, CRTO, Karachi dated 06.03.2018. It was contended pending Sales Tax refund claims could not be processed as jurisdiction of the case was transferred vide FBR's Notification dated 21.07.2016. It was contended that all claims have now been transferred electronically in the folder of processing Officer (PO). It was averred for physical claims files that the Deputy Director MIS had been requested to transfer the same. As soon as the claims files were transferred, the same would be processed expeditiously, as per law.

5. The Complainant, a manufacturer and exporter of textile goods, is registered with department under the Act. The AR argued that 16 fresh claims were duly filed with the department after fulfilling all the legal formalities, as required under the Sales Tax Rules, 2006 but the same are still pending. Similarly, 02 deferred and 01 claim filed under Section 66 of the Act have unduly been delayed by the department despite repeated efforts of the Complainant. He alleged that failure of the department to process fresh and deferred refund claims within the stipulated time limits in terms of Section 10 and 01 claim under Section 66 of the Act within 90 days tantamount to maladministration under Section 2(3)(i)(a) of the FTO Ordinance.

6. During hearing, the DR contended that claim files have been received and the same are under process. He undertook to complete the verification and settle fresh, deferred and the claim under Section 66 of the Act, within 30 days, as per law.

7. The averments of both the parties have been given due consideration and available record perused by FTO. Thus FTO has issued aforementioned findings.

8. The instant representation has been made by the FBR. The Agency has stated that the above order passed by the honorable FTO is contrary of 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 the 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 processed under the provisions of Chapter V of the Sales Tax Rules, 2006. The said provision is reproduced as below:-

"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 of filing the refund claim in such manner and subject to such conditions as the Board may be notified in the official Gazette".

9. The Agency has argued that Complainant was contended 16 fresh refund claims for the tax period June 2016 to September 2017 and refund claim u/s 66 were pending for sanction. In this regard the following submissions are being made.

- i. Complaint has been entertained after lapse of 6 months hence inadmissible u/s 10(3) of FTO Ordinance.
- ii. Complaint pertain to the tax period as under:

Sr. No.	Claim Month	Claim Submission Date
1.	June 2016	01.12.2016
2.	July 2016	20.01.2017
3.	August 2016	07.02.2017
4.	September 2016	07.02.2017
5.	October 2016	21.07.2017
6.	November 2016	28.03.2017
7.	December 2016	27.04.2017
8.	January 2017	28.08.2017
9.	February 2017	28.08.2017
10.	March 2017	28.08.2017
11.	April 2017	06.11.2017
12.	May 2017	26.10.2017
13.	June 2017	04.12.2017
14.	July 2017	04.12.2017
15.	August 2017	24.01.2018
16.	September 2017	22.01.2018
17.	Claim u/s 66	13.12.2017

10. The Agency has pointed out that the subject complaint was filed after lapse of more than one year of refund claims submission. The Honorable 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. 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.

11. The Agency has pleaded that in those cases onus lies on registered person to produce additional information or evidence to remove the objections raised by system. Such cases falls outside the limitation of 45 days as provided u/s 10 of the Sales Tax Act, 1990. Therefore there is no element of maladministration declared by honorable FTO.

12. The Complainant has prayed that honorable President may vacate findings / recommendations in Complaint No. FTO-99/KHI/ST/60/260ff/2018 dated 22.03.2018.

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13. On the other hand, the Complainant has filed his comments on 7.5.2018 against the instant representation of FBR and supported the impugned recommendations/findings of learned FTO.

14. After perusal of record and examination of all documents, it has been noted 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, CRTO, Karachi to complete the verification process and settle the pending fresh, deferred claims filed under Section 66 of the Act, 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 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 representation of FBR and impugned recommendations/findings of FTO are upheld.

(Zulfiqar Hussain Awan)
Director General (Legal Affairs)

The Chairman,
Federal Board of Revenue,
Islamabad.

No. 20/FTO/2018 dated 19.07.2018

Copy for information to:

1. Mr. Ahsan-ul-Haq, Prop: M/s Knitwear Textile Processing, D-149/D, Manghopir Road, 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)

on file for r/actor
S. Sec (TO 1)
S. Sec (TO 2)
23/7/18

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