

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

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Federal Board of Revenue  
Versus  
M/s S.M Traders, Karachi

179 JUN 2018

**REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS / RECOMMENDATIONS DATED 16.03.2018 PASSED BY THE FTO IN COMPLAINT NO. 90/KHI/ST(54)/245/2018**

I am directed to refer to your representation No. 4(245)S(TO-I)/2018, dated 20.04.2018 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 16.03.2018, whereby it has been held that:

"FBR to direct:-

- i. **The Commissioner-IR, Zone-VI, CRTO, Karachi to complete the verification process and settle 13 fresh claims 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), against delay in processing 13 fresh sales tax refund claims of Rs. 35.165 million filed by the Complainant for various tax periods from July 2016 to August 2017.

4. The complaint was sent for comments 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(245)TO-II/208 dated 06.03.2018 submitted parawise comments of the CIR Zone-VI, CRTO, Karachi dated 28.02.2018. It was informed that 13 fresh claims could not be processed as jurisdiction of the case was transferred vide FBR's Notification dated 21.01.2016. It was further informed that all fresh claims except for tax period December, 2016 have been transferred electronically in the folder of Processing Officer (PO) and are under process. Further that the Deputy Director MIS has been approached vide letter dated 24.02.2018 for transfer of claim of December 2016 to the folder of PO. As soon as this claim is transferred, the same would also be processed expeditiously, as per law.

5. The Complainant is registered with department under the Sales Tax Act, 1990 (the Act). During hearing, the AR argued that 13 fresh claims were file after fulfilling all the legal formalities, as required under the Sales Tax Rules, 2006 but have not been processed by the department so far. He alleged that failure of the department to process fresh refund claims within the stipulated time in terms of Section 10 of the Act tantamount to maladministration under Section 2(3)(i)(a) of the FTO Ordinance. The AR averred that the Complainant is facing great hardship to meet his client's orders and proceed with the production as huge refunds are pending with department since long.

6. During hearing, the DR contended that he entire fresh claims discussed supra have been received in the folder of the PO. The physical claims files have also been obtained. He undertook to complete the verification can settle above claims 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 13 fresh refund claims were pending for sanction and honorable FTO has passed findings / recommendations on the grounds that inordinate delay in settling fresh deferred 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. In this regard, it is humbly submitted 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 alter 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 notification in the official Gazette".*

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9. The Agency has argued that Complainant was contended 13 fresh claims for the tax period July 2016 to August 2017 were pending for sanction. In this regard the following submissions are being made.
- Complaint has been entertained after lapse of 6 months hence inadmissible u/s 10(3) of FTO Ordinance.
  - Complaint pertain to the tax period as under:

Sr. No.	Claim Month	Claim Submission Date
1.	July 2016	28.11.2016
2.	September 2016	04.02.2017
3.	October 2016	04.03.2017
4.	November 2016	10.03.2017
5.	December 2016	28.03.2017
6.	January 2017	16.06.2017
7.	February 2017	15.07.2017
8.	March 2017	15.08.2017
9.	April 2017	14.09.2017
10.	May 2017	13.10.2017
11.	June 2017	15.11.2017
12.	July 2017	15.12.2017
13.	August 2017	10.01.2018

10. The Agency has submitted 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 form suspended / blacklisted, and irrelevant purchases etc.
  - 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 10of the Sales Tax Act, 1990.
  - Therefore there is no element of maladministration declared by honorable FTO.


11. The FBR has prayed that honorable President may vacate findings /recommendations in Complaint No. FTO-90/KHI/ST/54/245/2018 dated 16.03.2018.

12. 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, CRTO, Karachi to complete the verification process and settle 13 fresh claims, 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.

13. 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.

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. 21/FTO/2018 dated 13.06.2018**

Copy for information to:

1. Mr. Irfan Merchant, Prop: M/s S.M Traders, D-11, South Avenue, 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)