

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

Federal Board of Revenue
Versus
M/s Metrotex Industries, Karachi

REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS
/ RECOMMENDATIONS DATED 16.03.2018 PASSED BY THE FTO IN COMPLAINT NO.
40/KHI/ST(23)101/2018

I am directed to refer to your representation No. 4(101)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 20.04.2018 has been filed by the Agency-FBR against the findings of the FTO dated 16.03.2018 whereby it has been held:

"FBR to direct:-

- (i) the Commissioner-IR, Zone-VI, CRTO, Karachi to complete the verification process and settle the pending fresh and deferred sales tax refund claims discussed supra, 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 (CIR), Corporate (CRTO), Karachi in terms of Section 10(1) of the FTO Ordinance, 2000 for failing to process 05 fresh sales tax claims of Rs. 2.958 million and 24 deferred sales tax refund claims of Rs. 2.020 million filed by the Complainant for various tax periods of April 2016 to May 2017 and January 2014 to April 2017 respectively. Inordinate delay on part of the Department in disposing condonation request of the Complainant for filing refund claim of tax period May 2016 has also been alleged.

4. The complaint was referred to the Secretary, Revenue Division for comments in terms of Section 10(4) of FTO Ordinance read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act No. XIV of 2013. In response thereto, the Chief Commissioner-IR, CRTO Karachi dated 01.02.2018. It was informed that five fresh and twenty four deferred claims of the Complainant could not be processed due to frequent changes in jurisdiction and non availability of data in the refund folder of the RTO. Moreover, physical refund claim files were also not available and have been requisitioned from the Information Processing (IP) and Tax Facilitation Desk (TFD) Divisions. After receipt of the files and acknowledgment receipts of the claims, the same would be processed and settled expeditiously, as per law. It was further informed that application of the Complainant for condonation of time limit for tax period May 2016 was under process.

5. The complainant, a manufacturer and exporter of textile goods, is registered with the Department under the Sales Tax Act, 1990. During hearing, the AR averred that five fresh claims were filed after fulfilling all the legal formalities, as required under the Sales Tax Rules, 2006 but are still pending. Similarly, none of the twenty four deferred claims has either been processed through issuance of Refund Payment Order (RPO) or Show Cause Notice/ Objection Memo. He alleged that failure of the Department to process fresh and deferred 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. He further argued that the Complainant e-filed request under Section 74 of the Act for condonation of delay vide letter dated 11.09.2017 for filing sales tax refund claim for tax period May 2016, which was delayed as carry forward amount was not made available on STARR data due to transfer of jurisdiction from RTO-I (now the CRTO) to RTO-II, Karachi. He contended that in terms of Para (ii) of SRO 394(i)/2009 dated 21.05.2009, the Department was required to have disposed of request for condonation within thirty days from the date of receipt or if further information was required from the Complainant within 45 days in terms of Para (iii) of the SRO ibid.

6. During hearing, the DR informed that the Zonal CIR has rejected request of the Complainant for condonation of delay vide letter dated 07.03.2018. He further contended that fresh as well as deferred claims are, however, under process and would be settled within 30 days, as per law. The AR after getting copy of the rejection order vide letter dated 07.03.2018 uttered that request of the Complainant has been rejected without providing him opportunity of hearing and in contravention of SRO 394(1)2009 dated 21.05.2009. The averments of both the parties have been given the consideration and available record perused. Thus, FTO has issued aforementioned findings.

7. The instant representation has been filed by the Agency. The Agency has pointed out that five fresh and twenty four deferred claims were pending for sanction and FTO has passed findings/ recommendations on the grounds that inordinate delay in setting fresh and 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.

8. The Agency has pointed out that the 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 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 by notification in the official Gazette".

9. The Agency has expressed that the complainant was contended that five fresh refund claims for the tax period April 2016 to May 2017 were pending for sanction. Complaint has been entertained after lapse of six months hence inadmissible under Section 10(3) of the FTO Ordinance. Complaint pertains to the tax period as under:

Sr. No.	Claim Month
1)	April 2016
2)	November 2016
3)	December 2016
4)	January 2016
5)	May 2017

10. The Agency has illustrated that 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 expressed 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 forty five days as provided under Section 10 of the Sales Tax Act, 1990. Therefore, there is no element of maladministration declared by the FTO.

12. The Agency has prayed that the President may vacate the findings/recommendations in Complaint No. FTO/40/KHI/ST/23/101/2018 dated 16.03.2018

13. On the other hand, the Complainant has filed his comments on 2.5.2018 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 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, CRTO, Karachi to complete the verification process and settle the pending fresh and deferred sales tax refund 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 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 instant representation of FBR and the impugned recommendations/findings of FTO are upheld.

(Zulfiqar Hussain Awan)
Director General (Legal Affairs)

The Chairman,
Federal Board of Revenue,
Islamabad.

No. 22/FTO/2018 dated 19.07.2018

Copy for information to:

1. Mr. Sarfaraz Khan Qaimkhani, Prop: M/s METROTEX Industries, Plot No. F-61-C, 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 n/a act

23/7/18

S. Sec (TOI)
S. Sec (TOI)

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