

President's Secretariat (Public)
 Aiwan-e-Sadr
 ISLAMABAD

*Federal Board of Revenue
 Versus
 M/s Kolachi International, Karachi*

REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS / RECOMMENDATIONS DATED 21.10.2019 PASSED BY THE FTO IN COMPLAINT NO 1519/KHI/ST/2019

Kindly refer to your representation dated 19.11.2019 (received in this Secretariat on 20.11.2019) on the above subject addressed to the President in the background mentioned below:-

1. This Representation dated 19.11.2019 (received in this Secretariat on 20.11.2019) has been filed by the FBR against the orders of the Honourable FTO dated 21.10.2019, whereby it has been held that:

"Findings:

- (i) *The Commissioner-IR, Zone-IV, LTU-II, Karachi to generate e-RPO in terms of FBR's letter dated 08.01.2018 within 10 days, as per law; and*
- (ii) *Report compliance within 45 days."*

2. The background of the matter is that the complaint was filed against the Commissioner-IR, Zone-IV, LTU-II, Karachi in term of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance), for failing to issue refund Rs.45.908 million pursuant to the Appellate Tribunal Inland Revenue (ATIR)'s Order dated 09.12.2016.

3. The Complainant, manufacturer-cum-exporter of the textile products, is registered with the Department under the Sales Tax Act, 1990 (the Act). According to the Authorized Representative (AR), Rs.45.908 million demand created through Order-in-Original No.83/2014 dated 20.08.2015 was recovered by the Department through attachment of the bank account of the Complainant. After failing in first appeal, the Complainant filed second appeal before the ATIR, Karachi. The ATIR, Karachi set aside the assessment vide order dated 09.12.2016. The Complainant filed application dated 26.01.2017, for refund of recovered amount. The Department in order to implement the judgment of ATIR, issued manual Refund Payment Order (RPO) dated 26.10.2017 and forwarded the same to the Chief (CSTRO), FBR for enabling of E-RPO, as per law, which was still pending. This had been construed as maladministration by the complainant.

4. The complaint was referred to the Secretary, Revenue Division for comments. In response thereto, FBR forwarded Para-wise comments of the Commissioner-IR, Zone-IV, LTU-II, Karachi vide letter dated 16.09.2019. At the outset, preliminary objection regarding jurisdiction of FTO in terms of Section 9(2)(a) of the FTO Ordinance, was raised by the department on the ground that the Agency had filed Special Sales Tax Reference against the order of the ATIR which is pending before the Honourable High Court of Sindh, at Karachi. However, it was admitted that Rs.45.908 million was recovered through the attachment of bank account under the provisions of Section 48 of the Act and also decision of the ATIR, Karachi against the Department vide Order dated 09.12.2016; and that the refund of the amount recovered could not be issued as the matter was subjudice before the Honourable High Court of Sindh, at Karachi. The Commissioner-IR, Zone-IV, LTU-II, Karachi filed additional comments vide letter dated 01.10.2019 contending that the case of the Complainant was under inquiry with NAB and FIA and that manual RPO of Rs. 45.908 million was sent to the Chief (CSTRO), FBR in the absence of knowledge of NAB and FIA proceedings pending against the Complainant. Further, reiterated that the Special Reference is subjudice before the High Court of Sindh.

5. On consideration of the matter, the learned FTO has passed the aforementioned order. The instant representation has been made by the Agency-FBR.

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6. The hearing of the case has been held on 18.02.2020. Dr. Sohail Ahmed Fazlani, DCIR and Aijaz Ali Channa S.A./RPO has represented the FBR. On the other hand, Mr. Rehan Mansoor Ghangi, Proprietor, Mehtab Khan, Advocate and M. Masroor Khan have appeared. Both sides have been afforded opportunity of hearing.

7. It is pointed out that the Department had filed Special Reference before the Honourable High Court of Sindh on 15.05.2017, while refund application was processed thereafter and manual RPO was issued and sent to the Chief (CSTRO) for generation of e-RPO vide Chief Commissioner-IR, LTU-II, Karachi's letter dated 03.11.2017. In spite of the fact that the FBR was fully aware of the pendency of the Special Reference Application it issued letter dated 08.01.2018, informing the Chief Commissioner-IR, LTU-II, Karachi that RPO had been enabled by the PRAL and e-RPO be generated. In such a situation, the Department was estopped to take a different stance. It is established that since January 2018, the matter was pending with the Department, despite FBR's approval for issuance of e-RPO. It has been observed that the refund claim relates to demand created which was subsequently set aside by the ATIR, which order is in the field. Hence, the Department was obliged to implement the same. In such circumstances the pendency of any proceedings before any other forum had hardly any relevance.

8. It has been noted that the order of the Appellate Tribunal Inland Revenue (ATIR) dated 09.12.2016, is now subject matter of the reference pending before the Hon'ble High Court Sindh but there is no stay/restraining order issued by the learned High Court. Since the order of the Appellate Tribunal is in the field, it is liable to be implemented. More so FBR vide letter No.11(4)CSTRO/FBR/2017 dated 08.01.2018 has already passed order that *"it is however, further intimated that the RPO has been enabled by PRAL against the actual amount to Rs.45,908,086/-. Therefore, necessary action for e-RPO generation may be taken accordingly."* However in order to be just and fair and to secure interest of the department, the order of the Appellate Tribunal which is intact will be implemented within a fortnight subject to final outcome of the matter pending before the Hon'ble High Court Sindh. In case the order of the Appellate Tribunal is set aside by the Hon'ble High Court, the department will be entitled to make recovery forthwith.

9. With the above modification of the order of the learned FTO the representation is liable to be disposed of accordingly.

10. Accordingly, Hon'ble President has been pleased to order the disposal of the representation of FBR in the above terms.

(Muhammad Saleem)
Director (Legal-I)

The Chairman,
Federal Board of Revenue,
Islamabad.

No.77/FTO/2019 dated 21.05.2020

Copy for information to:

1. M/s Kolachi International, C-79, Estate Avenue, S.I.T.E, Karachi.
2. The Registrar, Federal Tax Ombudsman's, Islamabad
3. The Chief (Legal-I), Federal Board of Revenue, Islamabad.
4. Master file.

(Muhammad Saleem)
Director (Legal-I)

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