

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

Federal Board of Revenue  
Versus  
M/s A. Essak and Sons, Karachi

**REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS  
/ RECOMMENDATIONS DATED 22.03.2018 PASSED BY THE FTO IN COMPLAINT NO.  
0263/KH/ST/1018**

I am directed to refer to your representation No. 4(263)S(TO-I)/2018, dated 23.04.018 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 pending fresh and deferred sales tax refund 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), for delay in processing 14 fresh sales tax refund claims of Rs. 4.945 million and 32 deferred claims of Rs. 3.760 million, filed by the Complainant for tax periods of December 2011 to December 2017 and January 2013 to August 2017 respectively.

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. 4(263)TO-I/208 dated 12.03.2018 submitted parawise comments of the CIR Zone-VI, CRTO, Karachi dated 02.03.2018. It was contended that pending fresh and deferred sales tax transferred vide FBR's Notification dated 21.07.2016. It was further contended that all the fresh and deferred Sales Tax refund claims could not be processed as jurisdiction of the case was transferred vide FBR's notifications dated 21.07.2016. It was further contended that all the fresh and deferred refund claims have now been transferred electronically in the folder of processing Officer (PO) except one fresh refund claim for the tax period November, 2016. The Deputy Director MIS had been requested to transfer the claim to the folder of (PO). As soon as the claim is transferred, the same would be processed alongwith remaining fresh claims expeditiously, as per law.

5. The Complainant is registered with department under the Sales Tax Act, 1990 (the Act). It is uttered that 14 sales tax refund claims were duly filed with the department after fulfilling all the legal formalities, as required under the Sales Tax Rules, 2006 but were still pending. Similarly, 32 deferred claims of the Complainant were also pending despite repeated efforts of the Complainant. The department has neither processed the fresh claims nor issued any Objection Memos (OMs) or Show Cause Notices (SCNs) against deferred claims. He alleged that failure of the department to process fresh and deferred refund claims within the stipulated time limits in terms of Section 10 of the act tantamount to maladministration under Section 2(3)(i)(a) of the FTO Ordinance.

6. During hearing, the DR contended that files of all claims have been procured and the same are under verification. He undertook to complete the verification and settle fresh refund claims within 30 days, as per law. He also undertook to issue OMs in respect of deferred claims and ager receipt of required replies, settle the same also 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 it was contended that 14 fresh and 32 deferred refund claims were pending for sanction and honorable FTO has passed findings/recommendations on the grounds that inordinate delay in settling fresh and deferred Sales Tax refund claims within time limits stipulated under Section 10 of the Act tantamount to maladministration in terms of 2(3)(ii)(a) of the FTO Ordinance.

9. The Agency has pointed out 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".*

10. The Agency has pleaded that it is submitted that Complainant was contended 14 fresh refund claims for the tax period December 2011 to December 2017 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.	December 2011	20.03.2012
2.	February 2012	12.07.2012
3.	July 2012	19.12.2012
4.	August 2012	12.03.2013
5.	October 2012	25.02.2013
6.	November 2012	25.05.2013
7.	December 2012	12.05.2013
8.	May 2016	14.10.2016
9.	June 2016	16.11.2016
10.	November 2016	27.03.2017
11.	September 2017	04.01.2018
12.	October 2017	24.01.2018
13.	November 2017	25.01.2018
14.	December 2017	01.12.2018

11. The Agency has asserted that the subject complaint was filed after lapse of 6 to 7 years 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.

12. 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.

13. The Agency has prayed that honorable President may vacate findings/recommendations in Complaint No. FTO-102/KHI/ST/32/263/2018 dated 28.03.2018.

14. On the other hand, the Complainant has filed his comments on 4.5.2018 against the instant representation of FBR and supported the impugned recommendations/findings of learned FTO.

15. 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 CRTQ, Karachi to complete the verification process and settle 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.

16. 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.

17. Accordingly, the President has been pleased to reject the instant 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. 19/FTO/2018 dated 19.07.2018

Copy for information to:

1. Mr. Muhammad Yousuf, Prop: M/s A. Essak and Sons, Plot No. 24-1, Sector – 6-A, North Karachi.
1. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
2. ✓ The Chief (Legal-I), Federal Board of Revenue, Islamabad.
3. Director to Secretary to the President.
4. Master file.



(Zulfiqar Hussain Awan)  
Director General (Legal Affairs)

on file for n/actn.

 23/7/18

Sec(TOI)  
Sec TO(I)