

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

Federal Tax Ombudsman Suo Moto Action

Rep. No.51/FTO/2020

REPRESENTATION FILED BY FEDERAL BOARD OF REVENUE AGAINST
ORDER OF THE FEDERAL TAX OMBUDSMAN DATED 27.02.2020
IN COMPLAINT NO. 0069/OM/2019

Kindly refer to your representation dated 24.03.2020 on the above subject addressed to the President in the background mentioned below:-

2. This Representation has been filed by the Federal Board of Revenue (FBR) on 24.03.2020 against the recommendations of the learned Federal Tax Ombudsman (FTO) dated 27.02.2020, whereby it has been held that:

"FBR to-

- (i) direct the Chief Commissioner-IR, Corporate RTO, Karachi to investigate and identify the officials involved in registration of RP and initiate disciplinary /criminal action against those found involved;
- (ii) identify the officers/officials who were involved in processing and issuing sales tax refund of Rs.42.928 million and take appropriate criminal/disciplinary action against them;
- (iii) initiate appropriate action including criminal proceedings leading to prosecution of RP and recovery of amount of Rs. 42.928 million, swindled from public exchequer; and
- (iv) report compliance within 45 days."

2. It was an Own Motion Investigation initiated by the learned FTO while exercising powers conferred under Section 9(1) of the Federal Tax Ombudsman Ordinance, 2000 to investigate irregularities committed by the FBR field formations in processing and sanctioning of bogus Sales Tax Refunds (STR) during the period 2011-14 identified by the Directorate General I&I-IR of FBR. The "Red Alerts" were issued to the field formations concerned but neither any action was initiated against fake claimants nor their connivers within the Deptt, who were involved in bogus registration, processing and sanctioning of fraudulent refunds and issuance of refund cheques, nor was any action proposed against the related officers/officials of the Bank's Branches, Pakistan Revenue Automation (Pvt.) Ltd (PRAL) Management.

3. In the case of M/s Steel Corporation, a Registered Person (RP) vide STRN 1700381640010, a Registered Person (RP), engaged in the manufacturing of steel products, the investigation conducted by the I&I-IR, Karachi revealed that:

- i. the RP got registered on 16.01.2012 and claimed refund of Rs. 49.831 million for the tax period March to August 2012 against which Rs. 15.353 million was sanctioned and cheques issued;
- ii. the RP never filed income tax return despite huge turnover;

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- iii. *the RP declared entire zero rated sales of Rs. 75.803 million for the month of July 2012 to M/s Popular Impex whereas the latter has not filed sales tax return since June 2012. M/s Popular Impex is a fake unit as it is declaring zero rated purchases from all zero rated sectors including textile, plastic and paper.*
- iv. *the return profile of M/s Popular Impex revealed that huge purchases of Rs. 256.387 million and Rs. 157.951 million for the month of May and April 2012 were made respectively, yet no sales were declared which is indicative of the fact that stock of millions of rupees was held just on papers without actual business transactions. Moreover, no income tax return is filed by M/s Popular Impex;*
- v. *during the tax period August 2012, the RP had declared input of Rs. 6.988 million from M/s Adil Trading Company whereas the latter has not declared any output to the former.*
- vi. *the RP claimed input of Rs. 2.574 million from M/s Sheikh Steel Pvt Ltd., whereas the latter has not declared any sales to the former.*

4. Thus, Red Alert was issued by the Directorate of I&I-IR Karachi vide letter dated 07.11.2012, for scrutiny of bogus sales tax refunds and concomitant necessary action against the person(s)/official(s) involved in the registration and processing of refunds to the RP.

5. Comments of the Secretary, Revenue Division Islamabad were requisitioned. In response thereto, the FBR furnished para-wise comments of the Commissioner-IR, CRTO, Karachi vide letter dated 30.12.2019. It was averred that at the time of receipt of the Red Alert, the jurisdiction of the case was with the RTO-II, Karachi and the Commissioner-IR, Zone-IV, RTO-II, Karachi suspended the Sales Tax registration of the RP vide order dated 30.05.2013, but was restored on 07.06.2013, as per directives of the Hon'ble High Court of Sindh. It was averred that all the sales tax refund claims were processed and sanctioned by RTO-II, Karachi prior to issuance of Red Alert, but the case record had not yet been transferred to its present jurisdiction despite follow-up. It was further informed that refund claims for the tax period March to September 2012, were processed, sanctioned and cheques against Refund Processing Orders were issued except for the months of June and August 2012. It was informed that the Show Cause Notice (SCN) dated 27.01.2015, was issued for committing tax fraud and claiming illegal input tax fraudulently and claiming to be a manufacturer of zero-rated items. The proceedings were completed by passing an Order-in-Original dated 06.02.2015. Subsequently, the Commissioner-IR, Zone-I, Corporate RTO suspended STR of the RP vide order dated 23.01.2017 and blacklisting proceedings were finalized vide order dated 27.02.2017.

6. After considering the Department's contention and perusing the record, it was observed that a country wide investigation against issuance of huge bogus refunds was carried out by the Directorate General I&I-IR, FBR. After painstaking exercise, the Directorate of I&I-IR (Directorate) unearthed number of cases, where fake RPs were registered with the connivance of the staff. The fake RPs claimed on the basis of fake and flying vouchers, bogus refund and in most of the cases get away with fraudulent refund, causing colossal loss to already cash starved exchequer.

7. On consideration of the matter, the learned FTO issued aforementioned recommendations on 27.02.2020. Hence, the present Representation by the FBR.

8. The hearing of the case has been held on 10.11.2020. Malik Waqas Nawaz, Additional Commissioner, Malik Ghulam Abbas, AC-IR, CTO, Karachi and Mr. Tariq Nadeem Durrani, Senior Auditor, CTO, Karachi have represented the FBR.

9. A thorough perusal and examination of all documents on record shows that the concerned officials remained indolent regarding failure to retrieve huge loss of revenue by not initiating action against the culprits. In the case of RP on the basis of investigation, Red Alert was issued by the Director I&I-IR Karachi vide letter dated 07.11.2012 with specific recommendations. It is clear beyond any doubt that the RP was a fake Unit created for the sole purpose of claiming fraudulent sales tax refunds. The refund profile of the RP shows that illegal refund amount of Rs. 27.480 million, for the tax periods March, April, May and July 2012, were sanctioned and cheques issued while claim for tax period August 2012 of Rs. 15.446 million was sanctioned but cheque was not issued and the revenue so lost had not been retrieved since the RP was non-existent at the given address. It was also strange that the Directorate General of I&I-IR FBR and its field offices, after conducting such laudable effort of detecting fraudulent activities whereby national exchequer was made to suffer colossal loss of revenue, and issued letters of Red Alerts to the filed formations but did not pursue the matter to its fruition.

10. The objection as to the jurisdiction of the FTO is untenable in as much as a very restricted and narrow interpretation is being put as to the purposes, objects and real scope of the Ordinance XXXV/2000. Section 9 sub Section (1) empowers the FTO to "investigate any allegation of maladministration on the part of the Revenue Division" of his Own Motion. Section 14 of the Ordinance vests in the FTO further powers to order criminal /disciplinary proceedings against a Tax employee. Therefore the learned FTO has acted in accordance with Law in order to protect the interest of the exchequer and has done nothing wrong.

11. A strange stance of the Deptt is that red alert letters were interdepartmental correspondence to which the FTO could not have any access nor he could rely upon the same. But in raising such an objection it is being overlooked that the learned FTO is empowered under S.9 of the Ordinance (XXXV/2000) to investigate any allegation of maladministration and can lay hand on any document/ call for the production of any record/ correspondence in the process. The contention that in Suo moto action red alert letters could not be taken into consideration amounts to whittling down the authority of the learned FTO conferred by the law.

12. From the perusal of the representation signed by the Commissioner (Inland Revenue), Zone-IV, Regional Tax Office-II, Karachi filed with the approval or blessing of the Federal Board of Revenue, it is evident that utmost effort has been made to object to the jurisdiction of the learned FTO despite quoting the preamble of FTO Ordinance, 2000 and S.9(1) which empowers him to diagnose and investigate the allegations of mal-administration of the functionaries administering the tax laws. In taking notice of tax evasions and pointing out the bogus refunds/ claims in own motion investigations the learned FTO has acted within the domain of the law empowering him to perform such functions. He had indeed on taking notice of such alleged mal-administration directed the departmental authority to further proceed in the matter and to investigate and identify the officials involved. He has not taken any disciplinary or departmental action by himself. By no stretch of imagination such an action by him can be termed as an act in excess of jurisdiction. In **Capital Development Authority Vs Zahid Iqbal and another (PLD 2004 SC 99)** it was emphasized by the Honorable Supreme Court of Pakistan that "*According to Article 9 of the Establishment of the Office of the Wafaqi Mohtasib (Ombudsman) Order being President's Order No.1 of 1983 it is an obligation of the Mohtasib to undertake an investigation into an allegation of maladministration on the part of any Agency or any of its officers or employees*". Indeed, the learned FTO has acted in aid of the revenue collection body in pointing out such alleged mal-administration.

13. The recommendations of the learned FTO are merely to the extent to "(i)direct the Chief Commissioner-IR, Corporate RTO, Karachi to investigate and identify the officials involved in registration of RP and initiate disciplinary /criminal action against those found involved;(ii) identify the officers/officials who were involved in processing and issuing sales tax refund of Rs.42.928 million and take appropriate criminal/disciplinary action against them; (iii) initiate appropriate action including criminal proceedings leading to prosecution of RP and recovery of amount of Rs. 42.928 million, swindled from public exchequer; as per law; within 45 days". It is merely an awakening call reminder of the duty of the Departmental authority to proceed in the matter as per law. There is thus no valid justification to assail the Order of the learned FTO. The Representation is therefore liable to be rejected.

14. Accordingly, the Hon'ble President has been pleased to observe that as no order adversely affecting the rights of petitioner/ department has been made by which it would be legitimately aggrieved, the Hon'ble President has therefore been pleased to reject the instant Representation of the Agency-FBR with directions that all similar representations have been rejected and so is this one. FBR is directed to ensure compliance within 45 days on all rejected representations. Appropriate action must be taken against all officers involved including criminal prosecution. How can such huge amounts be swindled from the public exchequer without FBR officials collusion such fake claims cannot be passed. Bogus registrations were done of complainants, then processing of and sanctioning of fraudulent refunds – and cheques were issued. A fraud that has been perpetrated on the people of Pakistan – and this office sees reluctance infact great resistance by FBR to investigate and recover money as well as take action against its own officers involved in this criminal prosecution.

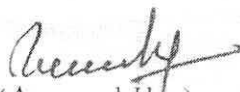
(Anwar-ul-Haq)
Director (Legal-II)

The Chairman,
Federal Board of Revenue,
Islamabad.

No.51/FTO/2020, dated 04.02.2021

Copy for information to:

1. The Registrar, Federal Tax Ombudsman, Islamabad.
2. The Commissioner Inland Revenue, CRTO, Karachi.
3. The Chief (Legal-I), Federal Board of Revenue, Islamabad
4. Master file.


(Anwar-ul-Haq)
Director (Legal-II)