

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

Federal Tax Ombudsman Suo Moto Action

Rep. No.71/FTO/2020

REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE
ON SUO MOTO NOTICE THROUGH OWN MOTION BY THE HONOURABLE FEDERAL
TAX OMBUDSMAN, AGAINST FINDINGS / RECOMMENDATIONS DATED 27.04.2020
PASSED BY THE FTO IN COMPLAINT NO. 0181/OM/2019

Kindly refer to your representation dated 28.05.2020 on the above subject addressed to the President in the background mentioned below:-

This Representation has been filed by the Federal Board of Revenue (FBR) on 28.05.2020 against the recommendations of the learned Federal Tax Ombudsman (FTO) dated 24.04.2020, 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 fake RP and initiate disciplinary/criminal action against those found involved;*
- (ii) *investigate and identify the officers/officials involved in processing refund claims on the basis of fake/ flying invoices and issuing refund of sales tax pertaining to tax period April 2012 to January 2013 amounting to Rs.14.421 million and take appropriate criminal/ disciplinary action against them;*
- (iii) *to initiate appropriate action including criminal proceedings leading to recovery of amount swindled from public exchequer through claiming inadmissible input tax/ bogus refund; 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. This was identified by the Directorate General I&I-IR of FBR and "Red Alerts" were issued to the field formations concerned but no action was initiated against fake claimants.

3. In the case of M/s Z. A. Exports, a Registered Person (RP) STRN.1700390824418 with principal activity as manufacturer of basic iron and steel, the investigation conducted by I&I-IR, Karachi revealed that:

- i. *the RP had filed bogus refund claim of Rs. 18.519 million for tax period August , October, November 2012 and February 2013 against irrelevant invoices as there was no relation between input and output goods;*

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- ii. *the RP claimed input tax against invoices issued by steel sector, whereas refund could be created if manufactured goods were surgical items, medical equipment and wheel chairs; and*
- iii. *the RP declared all supplies to M/s Popular Impex and M/s Prime International whereas these registered persons did not declare such purchases.*

4. Thus Red Alert was accordingly issued by the Directorate of I&I-IR, Karachi vide letter dated 25.03.2013 for suspension/blacklisting Sales Tax Registration (STR) of the RP and conducting investigative audit to recover Rs. 14.421 Million, besides concomitant criminal proceedings against the person(s)/official(s) involved in this nefarious and unlawful activity to recover the Government Revenue.

5. Comments of the Secretary, Revenue Division, Islamabad were called. In response thereto, the Chief Commissioner-IR, Corporate RTO, Karachi forwarded para-wise comments of the Commissioner-IR, Zone-I, Corporate RTO, Karachi vide letter dated 14.01.2020 and averred that at the time of issuance of Red Alert, the jurisdiction of the case rested with RTO-II, Karachi and prior to the issuance of Red Alert refund claim of Rs.5.251 million, for Tax period August 2012 was sanctioned and cheque issued, while refund claim of Rs.1.967 million, for tax period November 2012 was sanctioned but cheque was not issued to the RP. It was also averred that after the creation of Corporate RTO, the cases of steel manufacturers were transferred to Zone-I, Corporate RTO but the case record of the RP was not transferred to its present jurisdiction. It was also informed that a letter dated 20.11.2019 was issued to the RTO-II, Karachi but the required documents were not received so far. Further stated that status of the RP was blacklisted on 27.02.2017, on account of consecutive non-filing of the monthly Sales Tax returns.

6. In the case of RP on the basis of investigation, Red Alert was issued by the Director I&I-IR, Karachi vide letter dated 25.03.2013, pointing out certain discrepancies and inconsistencies requiring the Deptt for further investigation. Perusal of the Order-in-Original No. 45/2015 dated 06.02.2015 revealed that the RP was non-existent and no manufacturing activity was carried out at the declared premises. The RP filed refund claims of Rs. 21.626 million during the tax period April 2012 to January 2013 and an amount of Rs.14.421 million was sanctioned. Unfortunately, the Deptt did not realize the gravity of the situation and no serious effort appears to have been made for retrieving loss of revenue incurred on account of claim of inadmissible input and legitimacy of refund claim of Rs.21.626 million. No investigative audit was conducted against the RP nor any action initiated to recover Rs.14.421 million sanctioned to the RP for various tax periods from April 2012 to January 2013, prior to the issuance of Red Alert. The studied silence on the part of Corporate RTO, Karachi regarding failure to retrieve huge loss of revenue and not initiating action against the culprits is also very strange.

7. On consideration of the matter, the learned FTO made the aforementioned recommendations on 27.04.2020. Hence, the present Representation by the FBR.

8. The hearing of the case has been held on 25.11.2020. Mr. Tariq Nadeem Durrani, Senior Advisor and Malik Waqas Nawaz, Commissioner-IR 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. This is evidently a case of gross maladministration where the Deptt has failed to initiate any proceedings for retrieval of bogus refund/input adjustment claimed by the RP. Even after initiation of investigation by the learned FTO, the Deptt seemed disinclined to take any action to retrieve the amount involved and initiation of any proceedings against the RP. 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-II, Corporate Regional Tax Office, 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 fake RP and initiate disciplinary/criminal action against those found involved; (ii) investigate and identify the officers/officials involved in processing refund claims on the basis of fake/flying invoices and issuing refund of sales tax pertaining to tax period April 2012 to January 2013 amounting to Rs.14.421 million and take appropriate criminal/ disciplinary action against them; (iii) to initiate appropriate action including criminal proceedings leading to recovery of amount swindled from public exchequer through claiming inadmissible input tax/ bogus refund; as per law; within 45 days”. It is merely an awakening call/reminder about 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 could be legitimately aggrieved, the Hon’ble President has therefore been pleased to reject the instant Representation of the Agency-FBR with directions that it is surprising and shocking that the department fails to investigate fake refund cases where refund has already been made in full connivance of FBR officials. It refuses to investigate and recover the amount disbursed in this scam and in similar scams. It is appreciated that D.G. I&I-IR of FBR uncovered this scam and issued red alerts, however, the department is slow or resisting recoveries process including in this case, among various cases identified total refund claims by fake Registered Persons (RPs) is estimated to be as high as Rs.875 millions. How can we afford not to recover and criminally charge the fraudsters. So instead of resistance of FBR to suo moto prompting of the FTO, they should recover the precious money of the people of Pakistan.

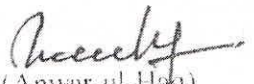
(Anwar-ul-Haq)
Director (Legal-II)
Ph: 051-9103571

The Chairman,
Federal Board of Revenue,
Islamabad.

No.71/FTO/2020, dated 04.02.2021

Copy for information to:

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


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