

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

Federal Tax Ombudsman Suo Moto Action

REPRESENTATION FILED BY FEDERAL BOARD OF REVENUE AGAINST
ORDER OF THE FEDERAL TAX OMBUDSMAN DATED 05.03.2020
IN COMPLAINT NO. 0075/OM/2019

Kindly refer to your representation received in this Secretariat on 26.03.2020 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 26.03.2020 against the recommendations of the learned Federal Tax Ombudsman (FTO) dated 05.03.2020, whereby it has been held that:

"FBR to-

- (i) direct the Chief Commissioner-IR, RTO-II, Karachi to investigate and identify the officials/officers involved in registration of fake RP and initiated disciplinary criminal action against them;
- (ii) identify the officers/officials involved in processing and sanctioning the refund claims of the RP and failed to initiate timely action for recovery of inadmissible input tax claimed by the RP 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.31.459 million, swindled from public exchequer through claiming inadmissible input tax/refunds; 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 Maham International, STR No. 1700378762617, a Registered Person (RP), engaged in the manufacturing of other articles of Paper and Paper Board, the investigation conducted by the I&I-IR, Karachi revealed that:

- i. the RP had claimed bogus/dubious sales tax refund of Rs.31.459 million during the tax period June to November 2012 due discrepancies in supply chain; and
- ii. the RP claimed refund on the basis of sales tax invoices of issued by M/s. Shayan Malik Enterprises who in turn claimed input from Kamran Industries. The suppliers of Kamran Industries did not declare output to the Kamran Industries or are non-filers or nominated in different cases of tax fraud.

4. Thus Red Alert was accordingly issued by the Directorate General of I&I-IR, Karachi vide letter dated 25.03.2013 for stopping the cheques issued against dubious refunds claimed by the RP on the basis of invoices of M/s, Kamran Industries and M/s. Shayan Malik Enterprises.

5. The Deptt remained unconcerned over such an important anti-Tax evasion exercise carried out by the Directorate I&I-IR which led to serious instances of maladministration on account of certain acts of omission and commission, reflecting improper motives, jeopardizing good governance and transparency in Tax Administration.

6. Comments of the Secretary, Revenue Division Islamabad were requisitioned. In response thereto, the FBR furnished para-wise comments of the Commissioner-IR, Zone-IV, RTO-II, Karachi vide letter dated 09.12.2019. It was contended that the Sales Tax Registration (STR) of the RP was suspended w.e.f. 26.06.2015 and no refund was sanctioned after the receipt of the Red Alert.

7. 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.

8. In the case of RP on the basis of investigation, Red Alert was issued by the Director I&I-IR Islamabad vide letter dated 25.03.2013 pointing out certain discrepancies and inconsistencies requiring the Deptt for further investigation and immediate action against the RP for claiming bogus refund of Rs.31.459 million. Unfortunately, the Deptt did not grasp gravity of the state of affairs, and except blacklisting the RP, no serious effort appeared to have been made for retrieving loss of revenue incurred on account of claim of refund/adjustment of Rs.31.459 million. Obviously, the registration of unit, processing, sanctioning and issuance of refund was not a simple task but required a team work, involving not only the main beneficiaries of fraudulent refund but also having connivers in the Deptt and Bank Officials who facilitated in opening the fake Bank accounts through which refund cheques were drawn.

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9. On consideration of the matter, the learned FTO issued aforementioned recommendations on 05.03.2020. Hence, the present Representation by the FBR.

10. The hearing of the case has been held on 10.11.2020. Mr. Abdul Hameed Anjum, Commissioner-IR, RTO-I and Mr. M. Aslam Sheikh, Additional Commissioner-IR, RTO-I, Karachi have represented the FBR.

11. 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, except suspending the RP the Deptt has failed to initiate any proceedings for retrieval of bogus refund/input adjustment of Rs.31.459 million. 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.

12. 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.

13. 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.

14. 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 on 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.

15. The recommendations of the learned FTO are merely to the extent to "(i) direct the Chief Commissioner-IR, RTO-II, Karachi to investigate and identify the officials/officers involved in registration of fake RP and initiated disciplinary criminal action against them; (ii) identify the officers/officials involved in processing and sanctioning the refund claims of the RP and failed to initiate timely action for recovery of inadmissible input tax claimed by the RP 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 31.459 million, swindled from public exchequer through claiming inadmissible input tax/refunds; 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.

16. As no order adversely affecting the rights of petitioner/ department has been made by which it would be legitimately aggrieved. Accordingly, the Hon'ble President has been pleased to reject the instant Representation of the Agency-FBR.


(Muhammad Saleem)
Director General(Legal)

The Chairman,
Federal Board of Revenue,
Islamabad.

No.48/FTO/2020, dated 01.12.2020

Copy for information to:

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


(Muhammad Saleem)
Director General(Legal)