

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 11.02.2020  
IN COMPLAINT NO. 0041/OM/2019

Kindly refer to your representation received in this Secretariat on 24.03.2020 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 24.03.2020 against the recommendations of the learned Federal Tax Ombudsman (FTO) dated 11.02.2020, 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 fake RP and initiate disciplinary/criminal action against those found involved;
- (ii) identify the officials involved in de-blocking the STRN of the RP and processing bogus sales tax refund claimed against fake exports and fake local sales in one day and take appropriate criminal/disciplinary action against them;
- (iii) initiate appropriate action including criminal proceedings leading to prosecution of the RP for retrieval of loss of revenue 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-JR 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 Friends Enterprises, Karachi STRNo.1700363714115, NTNNo.3637141-6, a Registered Person (RP), engaged in the manufacturing of other textile NEC, the investigation conducted by the I&I-IR, Karachi revealed that:

- i. the claim of sales tax refund of Rs.13.631 million was bogus as it was initially rejected by the ERS and the RP was de-blocked on 11.04.2012 to process bogus refunds;
- ii. the refunds were sanctioned against exports and local sales but upon examination of the data of exports maintained in "One Customs" and "PACCS" it was revealed that no exports were made by the RP during the period 01.06.2010 to 31.11.2011 which includes the tax periods related to sanctioned refunds;
- iii. details of "buyer declaration vs seller declaration" of the RP during the relevant period showed that the total purchases of Rs.14.919 million were bogus since these purchases do not match with the sellers' account;
- iv. Five refund claims of Rs. 13.631 million were sanctioned in one day and for this purpose STRN of the RP was de-blocked.

4. Thus Red Alert was accordingly issued by the Directorate General of I&I-IR, Karachi vide letter dated 16.04.2012 for withholding the sanctioned refunds till the RTO gave comments on the aforementioned observations and directed that all other refunds should not be processed till resolution of the matter.

5. Comments of the Secretary, Revenue Division Islamabad were requisitioned. In response thereto, the FBR furnished para-wise comments of the Commissioner-IR, Zone-VI, Corporate RTO, Karachi vide letter dated 17.12.2019. It was averred that at the time of issuance of Red Alert, the jurisdiction over the case was with defunct Regional Tax Office, Karachi and on receipt of Red Alert, necessary action was taken by the Commissioner Inland Revenue (CIR), Zone-I, of (defunct) RTO, Karachi by sending request to the Chief-IR Automation, FBR Islamabad for roll back of eight RPOs relating to various periods from May 2011 to January 2012, vide letter dated 12.10.2012. The FBR in response rolled back six RPOs but cheques relating to the tax period May and June 2011 had already been issued on 16.08.2011 and 23.09.2011, before the issuance of the Red Alert. However, on receipt of Red Alert the STRN of the RP was blacklisted vide Order dated 08.11.2012 and no refund was sanctioned.

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.

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7. In the case of RP on the basis of investigation, Red Alert was issued by the Director I&I-IR FBR vide letter dated 16.04.2012. The Deptt did not grasp gravity of the state of affairs, and except blacklisting the RP, no serious effort appears to had been made for retrieving loss of revenue incurred on account of inadmissible input claimed or adjusted. 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.

8. On consideration of the matter, the learned FTO issued aforementioned recommendations on 11.02.2020. Hence, the present Representation by the FBR.

9. 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.

10. 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 blacklisting the RP more than six months of receipt of Red Alert no substantial action was initiated. 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.

11. 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.

12. 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.

13. 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.

14. 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) identify the officials involved in de-blocking the STRN of the RP and processing bogus sales tax refund claimed against fake exports and fake local sales in one day and take appropriate criminal/disciplinary action against them; (iii) initiate appropriate action including criminal proceedings leading to prosecution of the RP for retrieval of loss of revenue 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.

15. 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.50/FTO/2020, dated 01.12.2020

Copy for information to:

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

M. Saleem  
(Muhammad Saleem)  
Director General(Legal)