

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

Federal Tax Ombudsman Suo Moto Action

REPRESENTATION ORDER OF	FILED THE	BY FEDERAL	FEDERAL TAX	BOARD OF	REVENUE DATED	AGAINST 05.03.2020
<u>IN COMPLAINT NO. 0084/OM/2019</u>						

Kindly refer to your representation received in this Secretariat on 03.04.2020 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 03.04.2020 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 involved in registration of fake RP and initiate disciplinary/criminal action against those found involved;
- (ii) to investigate and identify officials/officers who failed to initiate recovery proceedings to recover inadmissible input tax claims on base the of fake invoices and take appropriate criminal/disciplinary action against them;
- (iii) initiate appropriate action including criminal proceedings leading to prosecution of RP and recovery of amount, swindled from public exchequer through claiming inadmissible input tax/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 identified by Directorate General I&I-IR of the 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 Branches concerned and Pakistan Revenue Automation (Pvt.) Ltd. (PRAL) Management.

3. In the case of M/s KZ Industries, STRN.1700396767817, a Registered Person (RP), engaged in the manufacturing of other chemical products, the investigation conducted by the Directorate of I&I-IR, FBR, Islamabad revealed that:
"i. the RP got registered on 24.08.2012 and filed refund for the month of October 2012; and
ii. the RP had filed refund claim of Rs.2.997 million for Tax period October 2012 on the basis of input tax on purchases from suppliers whose business activities/goods are not relevant to the business of the RP."

4. Thus Red Alert was accordingly issued by the Directorate of I&I-IR, Islamabad vide letter dated 23.01.2013 for rolling back of refund claims already in pipeline, immediate suspension and blacklisting of the RP and concomitant necessary action against the person(s)/official(s) involved in this nefarious and unlawful activity.

5. The Deptt remained unconcerned over such an important anti Tax evasion exercise carried out by Directorate of 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 Commissioner-IR, Zone-I, RTO-II, Karachi furnished para-wise comments and was averred that STR of the RP was suspended w.e.f. 16.02.2017 while refund claims for the period from September 2012 to November 2012 of Rs. 9.036 million, was not processed and RPO not issued.

7. After considering the Deptt's contentions and perusing the record, it was observed that a country wide investigation against issuance of huge bogus refunds was carried out by the Directorate of I&I-IR, Karachi. After painstaking exercise, the I&I-IR 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 invoices, bogus refund and in most of the cases go 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 23.01.2013 pointing out certain discrepancies and inconsistencies requiring the Deptt for verification of registration, immediate suspension/blacklisting of RP and roll back of refund claims. It was further recommended that in case of failure of the concerned RTO to take remedial measures, the Directorate I&I, Karachi to initiate criminal proceedings against those involved. Unfortunately, the Deptt did not grasp gravity of the state of affairs, and except suspension of STR of the RP after delay of more than "four years", no

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serious effort appeared to have been made to unearth the culprits from within and without, who were involved in Sales Tax Registration of a fake RP and for retrieving loss of revenue incurred on claiming bogus refund of Rs.9.036 million for Tax period September to November 2012 including inadmissible input Tax adjustment by the RP. Obviously, the registration of unit and processing and sanctioning 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.

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 03.11.2020. Mr. Abdul Hameed Anjum, Commissioner-IR Zone-III RTO-I has represented the FBR.

11. A thorough perusal and examination of all documents on record show 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 STR of the RP after delay of more than four years, the Deptt had failed to initiate any proceedings for retrieval of bogus refund of Rs.9.036 million 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 I&I-IR FBR and its field offices, after putting such laudable efforts of detecting fraudulent activities whereby national exchequer was made to suffer colossal loss of revenue, and issued letters of Red Alerts to the field formations but did not pursue the matter to its fruition. No criminal proceedings were initiated by the Directorate, Regional Office.

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. 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 involved in registration of fake RP and initiate disciplinary/criminal action against those found involved; (ii) to investigate and identify officials/officers who failed to initiate recovery proceedings to recover inadmissible input tax claims the on base of fake invoices and take appropriate criminal/disciplinary action against them; (iii) initiate appropriate action including criminal proceedings leading to prosecution of RP and recovery of amount, swindled from public exchequer through claiming inadmissible input tax/refund 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. In such circumstances, this Representation is liable to be rejected.

14. Accordingly, the Hon'ble President has been pleased to reject the instant Representation of Agency-FBR.

The Chairman,
Federal Board of Revenue,
Islamabad.

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

No.62/FTO/2020, dated 23.11.2020

Copy for information to:

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

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