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

Federal Board of Revenue
Vs
M/s Millat Tractor Limited, Lahore

REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS / RECOMMENDATIONS
DATED 16.07.2021 PASSED BY THE FTO IN COMPLAINT NO. 0945/LHR/ST/2021

Kindly refer to your representation 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 12.08.2021 against the order of the learned Federal Tax Ombudsman (FTO) dated 16.07.2021, whereby it has been directed that:

"FBR to direct the Chief Commissioner-IR, LTO, Lahore to-

- (i) *process and settle the due refund to the Complainant as per law as contained in the Refund Claims of Recognized Agricultural Tractors Manufacturers Rules, 2012 notified vide SRO 363(1)/2012 dated 13.04.2012;*
- (ii) *for future application, FBR may recommend to the Govt. to define the term "Agricultural Tractors" in column 5 of Table-1 of Eighth Schedule to the Sales Tax Act, 1990, against S. No. 25, in case it intends to restrict the exemption beyond 5% to some specific use of tractors (agriculture purpose); and*
- (iii) *report compliance within 45 days."*

2. A complaint was filed by Millat Tractors Ltd against the Commissioner-IR, Enforcement Zone, LTO, Lahore in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) for failing to settle eight refund claims amounting to Rs.3027.676 million for various tax periods from May 2020 to February 2021 and illegal initiation of pre-refund audit under Rule 30 of the Sales Tax Rules, 2006.

3. M/s Millat Tractors Ltd, (the complainant) a manufacturer of Agricultural Tractors, filed eight (8) refund claims for various tax periods from April 2020 to February 2021, as per procedure laid down in the Refund Claims of Recognized Agricultural Tractors Manufacturers Rules, 2012 (RATM Rules) issued vide SRO 363(1)/2012 dated 13.04.2012. The complainant submitted refund applications according to the RATM Rules. The Deptt was required to allow refund within three days of the receipt of refund application under Rule 2 of the RATM Rules, conversely, the said claims were forwarded to the Audit Zone to conduct a pre-refund audit under Rule 30 of the Rules. The complainant, therefore, took up the matter with the learned Federal Tax Ombudsman by filing complaint under Section 10(1) of the FTO Ordinance 2000.

4. The learned Federal Tax Ombudsman called the comments from the Secretary, Revenue Division, Islamabad. In response thereto, the Chief Commissioner-IR, LTO, Lahore vide letter dated 03.06.2021 forwarded para-wise comments of the Commissioner-IR, Enforcement Zone-II, CTO, Lahore, that there was no concrete evidence available to prove that the tractors were actually sold to the persons who exclusively used them for agriculture purposes and the tractors supplied by the complainant were being used for transporting bricks, sand, soil (Mitti) and other commercial usage across the country. Moreover, this aspect of the use of tractors for commercial purposes other than agricultural had never been subjected to any audit before due to which refund claims could not be sanctioned. As the excess input tax in those refund claims was prima facie inadmissible, therefore, before sanctioning the claims, a pre-refund audit as per law, was considered necessary. Hence, the contention of the complainant that claims were to be processed under SRO 363(1)/2012 dated 13.04.2012, was misconceived as the claims were filed under Section 10 of the Sales Tax Act, 1990 (the Act). Additionally, serious violations were observed in the refund claims, therefore, the same could only be detected and rectified after conducting investigative audit as required under the provisions of Section 10 of the Act read with Rule 30(3) of the Rules, thus, no maladministration was committed by the Deptt.

5. After considering the stance of both sides, the learned Federal Tax Ombudsman has passed the above-mentioned order. Thus, this representation by the FBR.

6. The hearing of the case has been fixed for 12.10.2021. The FBR despite notice and intimation is not represented, whereas Mr. Shahyar Kasuri, Advocate accompanied by Mr. Sohail A. Nisar appeared for the complainant company.

7. The learned FTO before whom parties were present / represented considering their respective stance observed "it is clear from record that SRO.363(1)/2012 dated 13.04.2012, notifies specific rules for the processing of "Refund Claims of Recognized Agricultural Tractor Manufacturers Rules, 2012". The procedure has been simplified, in which three documents as detailed in clause 2 of the SRO referred to above and rule 2 of the Rules, 2012 have been specified to be filed by the refund claimant, along with the refund application, based on which, the refund of admissible excess input tax shall be allowed within three days. The SRO also contains provisions for post refund audit in the later rules". "The purpose of the said Rules is to provide expeditious and prompt sanctioning of refunds to the Tractor Industry, subject to provision of revolving bank guarantee and strict compliance of clause 4 of the said SRO.

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The law does not create any distinction with regard to end use of the tractors, once supplied by the manufacturer. The contention of CIR has no force as clauses 4 & 5 of the said SRO, make everything clear and leave no room for any delay in disposal of refund application filed under clause-2 of the SRO. The said SRO also makes it abundantly clear that there can be no pre-refund audit in such cases. There is a provision for post-refund audit only".

"One of the reasons behind this relaxation to the manufacturers of the Agri-Tractors is that the refund can be issued subject to the filing of "revolving bank guarantee" as required in clause 2(c) of the SRO referred to above. The Dept'l contention that as the SRO does not override the general refund rules, therefore, it could delay payments on account of conducting pre-refund audits, in the cases filed under the said SRO. The said contention does not hold force for the reason that by doing so, it would cause "Refund Claims of Recognized Agricultural Tractor Manufacturer Rules, 2012" redundant"

8. Thus, it concluded that the rules allow the department to conduct a post-refund rather than pre-audit. By reaching such a conclusion that delay in settling their refund claim is tantamount to mal-administration, hence issued the directions mentioned above. Though the FBR is not represented yet the representation filed by it has been perused which does not advance the case of the department nor any justifiable ground for assailing the order of the learned FTO. The FTO indeed has directed the Agency to process and settle the due refund as per law contained in the refund claim recognizing the validity of Refund Claims of Recognized Agricultural Tractor Manufacturers Rules, 2012 notified on 13.04.2012. There can be no cavil that these Rules of 2012 are specific and special in nature applicable to Tractor Manufacturers and have precedence over other general rules dealing generally the refund claims.

9. No valid justification therefore exists to ignore the specific rules and rely upon some other rules. There is no denial of the fact that Refund Claims of Recognized Agricultural Tractor Manufacturers Rules, 2012 have been framed under the Sales Tax Act, 1990 vide SRO No.363(I)/2012 dated 13.04.2012 and are intact. These rules cover the field of Tractor Manufacturing units whereas the Sales Tax Rules, 2006 are of general application. The legal position is well-settled that in presence of a special law dealing with specific subject the general law become inapplicable, further the Rules of Tractor Manufacturing 2012 are of later in time than the Rules of 2006 and will have precedence. It has so been held authoritatively by the Hon'ble Supreme Court of Pakistan in **Inspector General of Police, Punjab Lahore and others Vs Mushtaq Ahmad Warraich and others [PLD 1985 SC159]**.

10. The order of the learned FTO in the circumstances admits of no exceptions and the representations is liable to be rejected.

11. Accordingly, the Hon'ble President, as per his decision above, has been pleased to reject the representation.


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

The Chairman,
Federal Board of Revenue,
Islamabad.

No.70/FTO/2021 dated 26.10.2021

Copy for information to:

1. M/s Millat Tractors Ltd, 8.8 KM, Sheikhpura Road, Shahdara, Lahore.
2. The Registrar, Federal Tax Ombudsman, Islamabad.
3. The Chief (Legal-III), Federal Board of Revenue, Islamabad.
4. Mr. Imtiaz Rashid Siddiqui, Advocate Supreme Court, Imtiaz Siddiqui & Associates, Advocates and Solicitors, 179/180-A, Scotch Corner, Upper Mall, Lahore.
5. Master file.


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