

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

*Hydr (To-IT),
M. Muzim imple,
as representation
accepted*

2/11

Federal Board of Revenue VS M/S M.B. Sizing Industries

Subject: REPRESENTATION FILED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS / RECOMMENDATIONS DATED 15.02.2022 PASSED BY THE LEARNED FTO IN COMPLAINT NO. 0058/FSD/ST/2022.

2/4

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

This representation has been filed by Federal Board of Revenue on 14.03.2022 against the order of the learned Federal Tax Ombudsman (FTO) dated 15.02.2022, whereby it has been held that:

"However, FBR, in view of the sanctity of the taxpayer's money condone the time limitation on one time basis and direct the Commissioner concerned to dispose of refund case as per law.

Compliance of the above to be reported in 45 days."

*224906-R
2-11-22*

2. The complaint was filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against the Commissioner-IR (CIR), Chenab Zone, RTO, Faisalabad for rejection of application for condonation of delay in filing of refund claims amounting to Rs.2.861 million and Rs.2.640 million for the months of 06-2016 & 08-2017.

3. M/s M.B. Sizing Industries (the complainant) stated that refund was claimed in the monthly returns at the relevant time. However, the complainant did not submit refund claims data within 120 days from the date of refund claimed due to unavoidable circumstances and did not apply to the Commissioner-IR (CIR), RTO, Faisalabad for condonation of delay within time. Subsequently, the complainant applied for condonation of the delay on 19.07.2019 and reminder on 14.10.2019 which was rejected by the FBR vide letter No.3(8)ST&FE/Cond/2014/111667- R dated 09.07.2020. Finally, the review application for condonation of delay moved on 05.11.2020 which was also rejected by the FBR on 20.01.2021. He 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 of the Secretary, Revenue Division, Islamabad. In response thereto, the Chief Commissioner-IR, RTO, Faisalabad, vide letter dated 20.01.2022 forwarded comments of the Commissioner IR, Chenab Zone, Faisalabad. The Deptt raised preliminary objection that the FTO was barred under Section 9(2)(b) of the Ordinance to entertain the instant complaint as it related to the determination of tax liability and interpretation of law and rules. Further, application for condonation of delay was rejected by the FBR on 20.01.2021 whereas, the complaint was filed on 01.01.2022 after the expiry of statutory limitation of six months as per Section 10(3) of the FTO Ordinance. Furthermore, there was a considerable delay in approaching the Commissioner-IR and when the delay was not condoned by him, there was

11. (T.O. II)

further delay in approaching the FBR. The Supreme Court of Pakistan in a case cited as (1980) 42 Tax 140 (S.C. Pak) Commissioner Sales Tax, Zone-A, Lahore vs Chenab Textile held that "*where the matter is held time barred, each & every day's delay must be explained before it can be condoned.*" It was also averred that refund could not be processed as the claims were not submitted on the prescribed software "Refund Claim Preparation Software (RCPS) as required under Rule 28 of the Sales Tax Rules, 2006 notified vide SRO 555(1)/2006 dated 05.06.2006. The relevant rule is reproduced as under:

"Monthly sales tax return filed by a claimant shall be treated as a refund claim once all the supportive documents including the requisite data in the format or software (RCPS), has been received. Provided that no claim shall be entertained if the claimant fails to furnish the claim on the prescribed software (RCPS) alongwith supportive documents within 120 days of the filing of return".

Further averred that firstly, the complainant filed condonation application on 19.07.2019 which was too protracted delay for the tax periods 06/2016 and 08/2017. Similarly, the complainant filed review application on 05.11.2020 and the same was also rejected by the Board on 20.01.2021. However, the contention of the complainant regarding unavoidable circumstances for delay remained unexplained without cogent reason for such a long period.

5. Considering the respective stances, the learned Federal Tax Ombudsman proceeded to pass the above referred order. Thus, the representation by the FBR.

6. The hearing of the case was fixed for 11.10.2022. Mr. Najmul Hassan Sial, Deputy Commissioner-IR has represented the FBR, whereas, the complainant has not appeared despite notice. Needless to mention that Section 15 of the Federal Ombudsman Institutional Reforms Act, 2013 empowers the decision of a representation on the basis of available record without personal hearing of the parties.

7. At the outset, the Departmental Representative has submitted that the claims cannot be processed which are not submitted on the prescribed software "Refund Claim Preparation Software (RCPS) as required under Rule 28 of the Sales Tax Rules, 2006 dated 05.06.2006. Moreover, the complainant filed the application for condonation of delay after the expiry of statutory limitation period. The learned FTO has also observed vide para 7 of the order as follows:-

"It is evident that the complainant failed to file refund claim on RCPS within time, seek condonation from Commissioner-IR within one year, to convince FBR for approaching late for condonation FBR rejected application for condonation of delay vide letter No.3(8)ST&FE/Cond/2014/ 111667-R dated. 09.07.2020 and review application for condonation vide order dated 20.01.2021."

In view of the above circumstances, it would not be advisable to grant exception to the complainant as it had miserably failed to abide by the relevant Rules. The learned FTO has also affirmed violations of Rules as mentioned above. Needless to mention that the Agency has put forth valid reasons supported by the relevant Rules to accept the representation. Thus, the representation deserves to be accepted accordingly.

8. Accordingly, the Hon'ble President, as per his decision above, has been pleased to accept the representation of FBR.

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

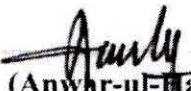
The Chairman,
Federal Board of Revenue,
Islamabad.

M/S M.B. Sizing Industries,
Chanchal Wala, Jhang Road,
Faisalabad.0322-9771073

No.63/FTO/2022 dated 31.10.2022

Copy for information to:

1. The Registrar, Federal Tax Ombudsman, Islamabad.
2. The Chief (Legal-III), Federal Board of Revenue, Islamabad.
3. The Commissioner-IR,RTO, Faisalabad
4. The AR, Talat Mehboob & Co, Chartered Accountants, 36-W-101, Madina Town, Faisalabad (041-8733564.
5. Master file.


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