

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

*Federal Board of Revenue*  
Vs  
*M/s. Asadullah & Co, Karachi*

Subject: REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS / RECOMMENDATIONS DATED 31.05.2021 PASSED BY THE FTO IN COMPLAINT NO. 0428/KHI/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 Federal Board of Revenue (FBR) on 17.06.2021 against the order of the learned Federal Tax Ombudsman (FTO) dated 31.05.2021, whereby it has been held that:

*"FBR to:*

- i. *direct the concerned officer of Enforcement-I, CTO, Karachi to settle pending refund claim and decide compensation request of the Complainant expeditiously, as per law; and*
  - ii. *report compliance within 45 days."*
2. The above mentioned complaint was filed against the Commissioner-IR, Audit-II, CTO, Karachi in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) for failing to settle refund claim of Rs.8.994 million filed by the complainant in terms of Section 66 of the Sales Tax Act, 1990 (the Act). The complainant also demanded compensation in terms of Section 67 of the Act.
  3. M/s M.M International,(the complainant) a trading company made supplies of tiles and used clothing to the end consumer during the period from 2013-2014 to 2016-2017, on which further Tax was not applicable. Whereas, the Deptt vide Order-in-Original (O-in-O) No.49/2017 dated 25.09.2017 adjudged an amount of Rs.11.331 million as further Tax alongwith penalty to be recoverable from the complainant. The Deptt, without serving the O-in-O dated 25.09.2017 recovered an amount of Rs.8.994 million through attachment of the complainant's Bank account maintained with the Meezan Bank Ltd. The complainant after obtaining certified copy of the O-in-O preferred an appeal under Section 45-B of the Act before the Commissioner-IR, (Appeals-V), Karachi which was allowed and O-in-O was annulled vide Order-in-Appeal No.51 of 2018 dated 28.02.2018. In pursuant to the Order-in-Appeal the complainant approached the RTO-III, Karachi vide application dated 09.06.2020, for refunding of the amount recovered illegally but failed to evoke any response. 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, CTO, Karachi vide letter dated 26.03.2021 forwarded para-wise comments of the Commissioner-IR, Enforcement-I, CTO, Karachi. It was averred that the complainant had filed refund application under Section 66 of the Act in the defunct Zone-I, RTO-III, Karachi whereas the jurisdiction of the case was transferred to CTO, Karachi vide FBR Notification dated 15.12.2020, whereas record had not been transferred from RTO-III, Karachi so far. It was requested that the Complainant may be advised to file fresh application for processing of his refund claim.
  5. Considering the respective stances, the learned Federal Tax Ombudsman proceeded to pass the above mentioned order. Hence, the representation by the FBR.
  6. The hearing of the case was fixed for 28.12.2021. Malik Waqas Nawaz, Additional Commissioner (IR), CTO, Karachi has represented the FBR, whereas, Mr. Wasi Ullah Khan Sorrani, Advocate, has appeared on behalf of the complainant.
  7. The learned Federal Tax Ombudsman thrashed the matter vide paras 6 & 7 of the order, i.e.:-  
"6. It is observed that application under Section 66 of the Act was filed by Complainant on 09.06.2020 in defunct RTO-III, Karachi which was required to be disposed of by the Deptt within ninety days but due to jurisdictional changes in the field formations in December 2020 and non-transfer of record to the present jurisdiction, the same could not be disposed of within the stipulated period. However, the Complainant could not be penalized for delay in transfer of record as Deptt was bound to get the relevant record transferred to the present jurisdiction.
  7. In view of supra, it is evident that the Deptt has failed to finalize action on refund application of the Complainant within the limitation period of ninety days in terms of Section 66 of the Act. Delay on the part.

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Thus he concluded that failure of the Deptt to settle the refund claim within stipulated period amounts to maladministration.

8. Be that as it may, the recommendations of the learned Federal Tax Ombudsman are merely to the extent directing "the concerned officer of Enforcement-I, CTO, Karachi to settle pending refund claim and decide compensation request of the Complainant expeditiously, as per law, within 45 days". The Agency has the lawful authority to decide the matter on its merits in accordance with the law on consideration of all aspects taking a holistic view regarding pending proceedings except the matters pending before any court of law. Suffice it to state that a statutory body is duty bound under the law to perform its functions/duties in accordance with law and unless restrained to proceed in a matter by a competent forum go ahead as per mandate of law. There is thus no valid justification to interfere with the order of the learned Federal Tax Ombudsman. In such circumstances, this representation is liable to be rejected with these observations.

9. Accordingly, the Hon'ble President, as per his decision above, has been pleased to reject the representation of the FBR in terms of para-8 above.

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

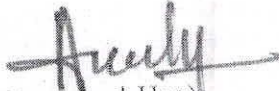
The Chairman,  
Federal Board of Revenue,  
Islamabad

M/s. M.M. International,  
Office No. 318, Floor Center,  
North Napier Road, Saddar Town,  
Karachi 0333.2138948

No. 48/FTO/2021 dated 20.01.2022

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, Enforcement-I, Corporate Tax Office, Karachi.
4. Mr. M.M. Treading, C/o Aqeel Ahmed, H. No. B-13, Block 13-A, Gulshah-e- Iqbal, behind Usmania Restaurant, University Road, Karachi.
5. Master file.

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