

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

Federal Board of Revenue Versus M/s. Union Apparel, Karachi

Subject: REPRESENTATION PREFERRED BY THE FEDERAL BOARD OF REVENUE AGAINST REVIEW FINDINGS / RECOMMENDATIONS DATED 23.08.2021 PASSED BY THE FTO IN COMPLAINT NO. 0341/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 22.09.2021 against the Order-in-Review of the learned Federal Tax Ombudsman dated 23.08.2021, whereby it has been held that:

"FBR to direct-

- (i) *the Commissioner-IR, Enforcement-I, LTO, Karachi to call for and examine the record of departmental proceedings by exercising powers conferred under Section 45A of the Act and pass speaking order after providing opportunity of being heard to the Petitioner, as per law; and*
- (ii) *report compliance within 45 days."*

2. The Hon'ble Federal Tax Ombudsman vide Order-in-Original dated 21.05.2021 has been pleased to observe as under:

"It is evident that the refund claim submitted by the Complainant under Section 66 of the Act was disposed of vide O-in-O No.08/2021 dated 17.03.2021, after providing opportunity of hearing to the Complainant. The said order is appealable before the Commissioner-IR (Appeals) under Section 45B of the Act, against which the Complainant has the option to avail remedy of appeal under the Relevant Legislation. Accordingly, the complaint stands rejected for want of jurisdiction in terms of Section 9(2)(b) of the FTO Ordinance. The Complainant may, however, prefer appeal against the impugned O-in-O or file a separate complaint before this forum if the impugned order is contrary to law and procedure.

File be consigned to record."

3. The above mentioned Review Petition (RP) was filed by the complainant before the learned Federal Tax Ombudsman under Section 14(8) of the FTO Ordinance, 2000 read with Section 13(1) of the FTO, Institutional Reforms Act, 2013 for review of findings dated 21.05.2021 whereby the complaint was rejected for want of jurisdiction as the claim filed by the petitioner was disposed of vide Order-in-Original No.08.2021 dated 17.03.2021 by Adjudicating Officer without providing opportunity of being heard to the petitioner against which the petitioner had availed remedy of filing appeal as provided under Section 45B of the Sales Tax Act, 1990.

4. M/s Union Apparel (Pvt) Ltd, (the complainant), a registered manufacturer/importer/exporter, filed refund claim of Rs.0.775 million under Section 66 of the Act on 25.11.2020 which was required to be disposed of within ninety days. Although, the complainant approached the Deptt vide letter dated 21.12.202, 01.01.2021 and 10.02.2021 respectively for issuance of their legitimate refund claim but failed to evoke any response from the Dept. He, therefore, took up the matter with the learned Federal Tax Ombudsman by filing complaint under Section 10(1) of the FTO Ordinance, 2000.

5. The learned Federal Tax Ombudsman called the comments of the Secretary, Revenue Division, Islamabad. In response thereto, the FBR forwarded parawise comments of the Commissioner-IR, Enforcement-I, LTO, Karachi vide letter dated 06.07.2021. It was averred that the refund claim filed by the petitioner under Section 66 of the Act was processed through STARR System and Show Cause Notice was issued to the petitioner on the basis of objection raised by STARR System. Further, upon receipt of reply from the complainant, the claim was rejected vide O-in-O dated 17.03.2021 against which the petitioner may prefer appeal before the Commissioner-IR (Appeals) as provided under the Relevant Legislation.

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6. Considering the relevant stances, the learned Federal Tax Ombudsman proceeded to pass the above mentioned Order-in-Review. Hence, the representation by the FBR.

7. Hearing of the case was fixed for 17.02.2022. Mr. Said Iqbal, Additional Commissioner has represented the FBR; whereas Mr. Tariq Mehmood Siddiqui, Counsel has appeared on behalf of the complainant.

8. The learned Federal Tax Ombudsman has thrashed the matter vide para 5 of the Order-in-Review, i.e.:
"5. Evidently, the adjudication authority finalized the proceedings without providing opportunity of hearing to the Petitioner which is against the principle of audi alteram partem and is tantamount to maladministration in terms of Section 2(3)(i)(a) of the FTO Ordinance. In view of the above, the RP stands accepted and while recalling impugned findings dated 21.05.2021."

Thus, he concluded that finalization of proceedings without providing opportunity of hearing to the complainant tantamounts in maladministration.

9. Be that as it may, the recommendations of the learned Federal Tax Ombudsman are only to the extent directing *"the Commissioner-IR, Enforcement-I, LTO, Karachi to call for and examine the record of departmental proceedings by exercising powers conferred under Section 45A of the Act and pass speaking order after providing opportunity of being heard to the Petitioner, as per law; within 45 days"*. The Agency has the lawful authority to decide the matter on its merits in accordance with the law. There is thus no valid justification to assail the order of the learned Federal Tax Ombudsman. In such circumstances, this representation is liable to be rejected.

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

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


The Chairman,
 Federal Board of Revenue,
Islamabad

M/s. Union Apparel,
 F-526/A-2, S.I.T.E,
Karachi.

No.81/FTO/2021 dated 01.03.2022

Copy for information to:

1. The Registrar, Federal Tax Ombudsman, Islamabad.
2. The Second Secretary (TO-II), Federal Board of Revenue, Islamabad
3. Kibra Asspcoates, AR of M/s Union Apparel (Pvt) Ltd, Office No.506, 5th floor, Asia Pacific Trade Centre, Rashid Minhas road, Near Askari-IV, Block No.19, Gulistan-e-Jauhar, Karachi. (021-3417734 – 336 – 337)
4. Master file.


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