

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

Malik Muhammad Bilal Akhtar Vs *Federal Board of Revenue*

Subject: REPRESENTATION PREFERRED BY MALIK MUHAMMAD BILAL AKHTAR, MULTAN AGAINST FINDINGS/RECOMMENDATIONS DATED 26.05.2021 PASSED BY THE FTO IN COMPLAINT NO. 0557/MLN/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 Malik Muhammad Bilal Akhtar on 17.06.2021 against the order of the learned Federal Tax Ombudsman (FTO) dated 26.05.2021, whereby it has been held that:

"Evidently, the subject matter of the complaint was sub judice before the ATIR at the time of filing of the complaint, therefore, the bar of jurisdiction under Section 9(2)(a) of the FTO Ordinance, is applicable.

In view of supra, the complaint stands rejected for want of jurisdiction in term of Section 9(2)(a) of the FTO Ordinance. File be consigned to record."

2. The above mentioned complaint was filed against the Commissioner-IR, Multan Zone, RTO, Multan in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) for failing to finalize refund application dated 09.12.2020, filed by the Complainant under Section 66 of the Sales Tax Act, 1990 (the Act) pursuant to the order of the Commissioner-IR, (Appeals), Multan dated 03.11.2020, in Appeal No. 114/2018.

3. Malik Muhammad Bilal Akhtar, (the Complainant), engaged in the business of supplying of Mango Pulp to manufacturers of Mango Juices. Allegedly, he was coerced into depositing Rs. 16.246 million as Sales Tax against supply of Mango Pulp during the tax period July 2012 to March 2013. The Deputy Commissioner-IR (DCIR) concerned vide Order-in-Original (O-in-O) No. 03-03/2015 dated 20.03.2015 created Sales Tax Demand of Rs.36.874 million besides default surcharge and penalty. Being aggrieved, he filed an appeal and subsequently, the Commissioner-IR (CIR) (Appeals), Multan vide order dated 30.12.2016 remanded the case for de-novo proceedings. Thereafter, the Assistant Commissioner-IR (ACIR) concerned vide O-in-O dated 13.08.2018, adjudged Sales Tax liability of Rs.24.431 million alongwith default surcharge. However, the complainant again preferred an appeal before the CIR (Appeals) Multan who vide Order dated 03.11.2020, annulled the O-in-O. Resultantly, he became entitled to get refund of Rs.16.246 million which was recovered by the Deptt. Accordingly, the Complainant filed refund application dated 09.12.2020, under Section 66 of the Act, which is pending despite expiry of ninety, days. 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 from the Secretary, Revenue Division, Islamabad. In response thereto, the Chief Commissioner-IR, RTO, Multan vide letter dated 02.04.2021 forwarded para-wise comments of the Commissioner-IR, Multan Zone. At the outset, preliminary objection regarding bar of jurisdiction in terms of Section 9(2)(a) and (b) of the FTO Ordinance was raised as the matter was related to determination of Tax Liability. Moreover, the Deptt had also preferred Second Appeal before the ATIR on 27.01.2021, which was pending for adjudication. Further, averred that the complainant made taxable supplies of Mango Pulp to M/s Nestle Pakistan Limited, Lahore who claimed Input Tax Adjustment of Rs. 36.874 million for tax periods from November 2011 to December 2012, whereas, the complainant filed Nil Sales Tax Returns upto March 2012. Accordingly, adjudication proceedings were initiated and vide O-in-O dated 13.08.2018 and Sales Tax Liability of Rs. 24.431 million alongwith default surcharge was adjudged against the complainant but was annulled by the CIR (Appeals) and thereafter Second Appeal was preferred before the learned ATIR by the Deptt which was still sub judice.

5. On considering the stance of both sides, the learned Federal Tax Ombudsman passed the above mentioned order. Hence, the instant representation by the complainant.

6. The hearing of the case was fixed for 18.01.2022. Mr. Ghulam Abbas and Mr. Akram Khan, Advocate have appeared on behalf of the complainant, whereas, Ms. Asma Humayun, Deputy Commissioner Inland Revenue has represented the FBR.

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7. The learned Federal Tax Ombudsman dealt with the matter vide para 6 of the order, i.e.:-

"6. Evidently, the subject matter of the complaint was sub judice before the ATIR at the time of filing of the complaint, therefore, the bar of jurisdiction under Section 9(2)(a) of the FTO Ordinance, is applicable."

8. After perusal of record and hearing proceedings, it is evident that although the Deptt has filed Second Appeal before the ATIR against the decision of the CIR (Appeals), Multan dated 03.11.2020 but there is no stay/restraining order and thus the order of the CIR (Appeals) holds the field and is liable to be implemented. However, in order to be just and fair and to secure the interest of the Deptt, the order of the CIR (Appeals) which is in the field, will be implemented subject to submission of a "Surety Bond" by the complainant to the satisfaction of the learned Federal Tax Ombudsman till the final outcome of the matter pending before the ATIR and in case, the order of the CIR (Appeals) is set aside by the ATIR, the Deptt will be entitled to make recovery forthwith. It is worth noting that various cases of same nature have earlier been decided and it is in line with the established practice.

9. As per law, this forum which partakes an appellate authority as held in Tariq Pirzada case [1999 SCMR 2189] can, on consideration of the matter, relevant material, confirm, set aside, vary or modify the decision/order. In the circumstances, it is just and fair to accept the representation of the complainant with the modification as indicates at para-8 above.

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

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


The Chairman,
Federal Board of Revenue,
Islamabad

Malik Muhammad Bilal Akhtar,
Chah Sharenwala, Akram Abad,
Tataypur, Multan

No.50/FTO/2021 dated 25.03.2022

Copy for information to:

1. The Registrar, Federal Tax Ombudsman, Islamabad.
- ✓ 2. The Second Secretary (TO-II), Federal Board of Revenue, Islamabad.
3. Mr. Muhammad Akram Khan, Advocate High Court, Fazal Center, Opp. UBL Bank, Hazoori Bagh Road, Chungi No.9, Multan.
4. Master file.


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