

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

*Federal Board of Revenue VS M/s. Millan Foods*

**Subject: REPRESENTATION FILED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS / RECOMMENDATIONS DATED 09.02.2022 PASSED BY THE LEARNED FTO IN COMPLAINT NO. 2607/ISB/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 14.03.2022 against the order of the learned Federal Tax Ombudsman (FTO) dated 09.02.2022, whereby it has been held that:

*"In view of supra, FBR is directed to:*

- 193728  
9-9-2022
- SS (TO-11)
- (i) *constitute a fact-finding committee to examine the facts and legal issues involved, fix responsibility on account of inefficiency and misconduct on the part of the commissioner, and initiate disciplinary action under the E & D Rules against him;*
  - (ii) *require the adjudicating officer to dispose of the case on merit and as per law by passing speaking appealable order after affording hearing opportunity to the Complainant to defend his case; and*
  - (iii) *Compliance report may be submitted within 45 days."*

2. The above mentioned complaint was filed against the Commissioner-IR, Zone-I, RTO-I, Karachi in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance), for inordinate delay in deciding application dated 5-10-2021 for allowing revision of Sales Tax Returns for the months of June, July and August 2021.

3. M/s Millan Foods (the complainant), a manufacturer-cum-exporter bearing STRN 17003602918190 submitted Sales Tax Return for the month of June, July and August 2021 through e-FBR Web-Portal but later sought its reversion. Under Section 26(3) of the Sales Tax Act, 1990, a Registered Person with the approval of the concerned Commissioner may file a revised return within 4 months. In terms of the said provision of law, they filed application with the Commissioner within time for allowing revision but despite passing of more than two months period, the complainant's request remained unattended. 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 of the Secretary Revenue Division, Islamabad. In response thereto, the Commissioner-IR, Zone-I, RTO-I, Karachi submitted para-wise comments vide letter dated 31-12-2021. It was averred that since the Registered Person failed to provide any evidence alongwith the application proving their claim was based on the facts that such an amount had been transferred in the declared Bank account; as required under Section 73 of the Act and stock inward/outward gate passes or delivery documents or transportation documents. Hence, their request for permission to revise the returns was rejected vide letter dated 17-12-2021. It was further averred that the

Federal Government enhanced the rate of Sales Tax from 10% to 17% on milk and withdrew exemption vide Entry No.53 of the Sixth Schedule of the Act vide Finance Bill, 2021-22. Due to these changes in tariff, the complainant intended to include exempt supplies in the month of June, 2021 for the value of Rs 63,487,275/- to escape from payment of Sales Tax in the following months of July and August, 2021. Thus, Show Cause Notice was issued under Section 11(2) of the Act on 22-12-2021 for recovery of Sales Tax Liability where proper opportunity of hearing would be provided to the complainant to defend the case. It was prayed that since a Show Cause Notice had been issued, the complaint was liable to be rejected.

5. Considering the respective stances, the learned Federal Tax Ombudsman proceeded to pass the above-mentioned orders. Hence, the representations by the FBR, which is being heard and decided.

6. The hearing of the case was fixed for 30.08.2022. Representative of the FBR has not appeared despite notice, whereas, Mr. Tariq Mehmood Siddiq has appeared on behalf of the M/s Millan Foods. 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. The learned Federal Tax Ombudsman thrashed the matter vide Paras 6& 7 of the order as follows:-

*"6. Averments of both sides heard and the record examined. Proposed changes in Tariff introduced through Finance Bill remain proposals till bill is passed and converted into Act which takes effect from 1st July of the new financial year and not from the date of tabling the bill. In this case changes in tariff proposed in Finance Bill 2021-22 were effective from 1st July, 2021 i.e. after passing of the Bill and its conversion into the Act. It has no relevance with the revision of sales tax return for the month of June, 2021. Secondly allegation of an attempt to manipulate the record by showing taxable supplies of July and August, 2021 as exempted supplies in the month of June, 2021, while revising the returns is also baseless. DR's statement that department apprehended, that the complainant intended to show taxable supplies which remained undeclared in the return of June 2021 by entering them in there and pay tax thereon so that he can avail their carry forward in the months of July and August, 2021, does not carry weight. As if he intended to show taxable supplies of July and August as exempted supplies in the month of June, 20 to avoid payment of tax, how could he carry forward the amount; as no tax is paid on exempted supplies, hence this apprehension is found baseless and subject argument rather shows lack of basic understanding of sales tax law.*

*7. The application for permission for revision of return for the month of June, 2021 was filed on 5th Oct, 2021 within the permissible limit of 4 months. It remained pending till the instant 'complaint was filed with this Forum on 9<sup>th</sup> December, 2021 and received by the commissioner for comments on 14<sup>th</sup> December, 2021. On receipt of the complaint, he immediately rejected the application on 17<sup>th</sup> December, 2021 and got the show cause notice issued to the complainant on 22<sup>nd</sup> December, 2021 i.e before filing of the comments to this forum, due on 24<sup>th</sup> December 2021, prima facie to cover the mal-administration. Therefore this is a clear case of maladministration."*

The crux of the matter has duly been dealt with on due consideration of the record and no cavil could be found with such approach to the matter. The challenge to the order of FTO directed in the representation is mainly qua the merits of the matter which as per direction(ii) is left to be adjudicated by the relevant quarter and rightly so.

8. The recommendation (ii) of the learned FTO directing the "FBR to require the adjudicating officer to dispose of the case on merit and as per law by passing speaking appealable order after affording hearing opportunity to the complainant to defend his case; is unassailable in the circumstances of the case. It is merely a reiteration about the duty of the Departmental Authority to decide the matter on its merit as per law. However, as to recommendation(i), suffice it to observe that the learned FTO vide recommendation (ii) has required the Adjudicating Officer to dispose of the case on merit and as per law by passing speaking appealable order after affording an opportunity of hearing. Conversely, he has attributed maladministration to the officials concerned, as the matter is still to be decided by the authority, the direction to initiate disciplinary actions against the officials concerned appears to be based on assumptions and premature. Such observations made without solid basis and proof may have farreaching effects and consequences for the person concerned and their careers. Therefore, maximum care and restraint is expected before doing so and it should be left for the Departmental Authority to look into any such matter at the appropriate stage.

9. In such a view of the matter, the representation of the FBR deserves to be disposed of in terms of para-8 above.

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

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

The Chairman,  
Federal Board of Revenue,  
Islamabad

M/s. Millan Foods,  
WSA-07, Block-14, FB Area,  
Water Pump, Karachi.0334-43889793

No.60/FTO/2022 dated 07.09.2022

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-I, Karachi.
- (4) Kibra Asspcoates, Office No.506, 5<sup>th</sup> floor, Asia Pacific Trade Centre, Rashid Minhas road, Near Askari-IV, Block No.19, Gulistan-e-Jauhar, Karachi. (021-3417734 – 336 – 337)
- (5) Master file.

9/9/22

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