

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

Federal Board of Revenue

Vs

M/s. Millat Tractors Limited

Subject: REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST THE FINDINGS / RECOMMENDATIONS DATED 21.09.2021 PASSED BY THE LEARNED FTO IN COMPLAINT NO. 1293/LHR/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 22.10.2021 against the order of the learned Federal Tax Ombudsman (FTO) dated 21.09.2021, whereby it has been held that:

"FBR to direct the Chief Commissioner-IR, LTO, Lahore to-

- (i) *process and settle the due refund to the Complainant as contained in the Refund Claims of Recognized Agricultural Tractors Manufacturers Rules, 2012 notified vide SRO 363(1)/2012 dated 13.04.2012, as per law;*
- (ii) *for future application, FBR may recommend to the Government to define the term "Agricultural Tractors" in column 5 of Table-1 of Eighth Schedule to the Sales Tax Act, 1990, against S. No. 25, in case it intends to restrict the exemption beyond 5 percent to some other use of tractors (agriculture purpose); and*
- (iii) *report compliance within 45 days."*

2. The above mentioned complaint was filed against the Commissioner-IR, Enforcement Zone, LTO, Lahore in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) for failing to settle two refund claims amounting to Rs.613.033 million for the tax period March 2021 and April 2021.

3. M/s Millat Tractors Ltd (the complainant) a manufacturer of Agricultural Tractors filed refund claims for the Tax period March and April, 2021, as per procedure laid down in the Refund Claims of Recognized Agricultural Tractors Manufacturers (RATM) Rules, 2012 issued vide SRO 363(1)/2012 dated 13.04.2012. The complainant submitted refund applications alongwith prescribed documents according to the RATM Rules, 2012. Whereas, the Deptt was required to allow refund within three days of the receipt of refund application under Rule 2 of the RATM Rules, 2012 which was not done and the claim was still pending with the Department.

4. The learned Federal Tax Ombudsman called the comments of the Secretary, Revenue Division, Islamabad. In response thereto, the Chief Commissioner-IR, LTO, Lahore vide letter dated 14.07.2021 forwarded para-wise comments of the Commissioner-IR, Legal Zone, LTO Lahore. It was averred that the complainant had joined post sanction audit of disbursed refunds initiated under Rule 36 of Chapter-V of Sales Tax Rules, 2006, and in-line with those provisions of law, pre-refund audit of the complainant was initiated in order to determine the admissibility of claimed refund. A letter dated 29.06.2021 had been written to the complainant for seeking evidence of reduced rate supplies to buyers who were actually entitled to that reduced rate of Sales Tax. Whereas, in the instant case, the CORE reason for the creation of Sales Tax refund included taxable supplies to be made the conditions that the Agriculture Tractors would only be used exclusively for agriculture purposes. However, from the record available with the Department, it revealed that the said provision had not been followed. No concrete evidence was available that the said supply of Tractors was actually made to the persons exclusively involved in agriculture. It was also contented that the Tractors supplied by the complainant were being used for transporting Bricks, Sand and Soil (Mitti) across the country. Thus, being a mass supplier of taxable Tractors at a reduced rate of 5% to sectors other than Agriculture created an illegal claim of excess input Tax against supplies which had to be made @ 17% under Section 3(1) of the Sales Tax Act (the Act), along-with further Tax under Section 3(1A) of the Act. Further, through SRO.1248(1)/2020 dated 23.11.2020, that granted subsidy to the farmers for purchase of Tractors, the manufacturers had been directed to follow a due verification process before the supply of Tractors to actual growers/farmers in order to extend the benefit of subsidy to them. Conversely, a preliminary analysis of the Sales Tax record of the taxpayer revealed that it had claimed 100% supplies of its Tractors at reduced rates of 5%, resulting in creation of huge refunds. The excess Input Tax in those refund claims against supplies of Tractors for other than Agricultural purposes was prima facie inadmissible. Therefore, before sanctioning the claims, a pre-refund audit as per law, was considered necessary. The contention of the Complainant that claims were to be processed under SRO 363(1)/2012 dated 13.04.2012, was misconceived as the claims were filed under Section 10 of the Sales Tax Act, 1990 (the Act). It was further contented that serious violations were observed in the refund claims, therefore, the same could only be detected and rectified after conducting investigative audit as required under the provisions of Section 10 of the Act, read with Rule 30(3) of the Rules, thus, no maladministration was committed by the Deptt.

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 08.03.2022. Mr. Muhammad Majeed Ch., Commissioner-IR, LTO, Lahore, Mr. Usman Ijaz, DCIR and Mr. Ali Noor, ACIR have represented the FBR, whereas, Mr. Shaharyar Kasuri, Advocate, Mr. Muhammad Humzah Sheikh, Advocate, Mr. Sohail A. Nisar and Mr. Akhtar Ali Naem have appeared on behalf of the complainant.

7. The learned FTO has dealt with the matter vide para 6&7 of the order, as follows:-

"6. It is clear from record that SRC/363(1)/2012 dated 13.04.2012, notifies specific rules for the processing of "Refund Claims of Recognized Agricultural Tractor Manufacturers Rules, 2012". The procedure has been simplified, in which three documents as detailed in clause 2 of the SRO referred to above and rule 2 of the Rules, 2021 had been specified to be filed by the refund claimant along with the refund application, based on which, the refund of admissible excess input tax shall be allowed within three days. The SRO also contains provisions for post refund audit in the later rules.

Reference made by the department to SRO.1248(1)/2020 dated 23.11.2020 is misleading as that is for the purpose of subsidy granted to the agriculturists for purchase of tractors and not for the application of reduced rate of 5% under the Sales Tax law. In an identical case vide complaint No.0945/LHR/ST/2021, hearing was attended by the Commissioner-IR personally, who while referring to clause-3 of SRO contented that sanctioning of refund was subject to its admissibility. Added that refunds on account of concessionary rate of 5% in terms of S.No 25 of the eighth schedule to Sales Tax Act, 1990 were subject to condition that the tractors were used exclusively for agricultural purposes and that pre-refund audit was necessary in order to confirm this fact which was not found to be correct. It was held that no such

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condition had been mentioned in the said SRO. Further, definition of Agricultural Tractor had neither been provided in the Rules nor in the SRO. Before the instant case, since the issuance of Rules of 2012, this objection regarding definition of Agricultural Tractor had neither been raised nor explained afterwards by the FBR.

The purpose of said Rules was to provide expeditious and prompt sanctioning of refunds to the Tractor Industry, subject to the provisions of revolving bank guarantee and strict compliance of clause 4 of the said SRO. The law did not create any distinction with regard to end use of the tractors once supplied by the manufacturer. The contention of CIR was found to have no force as clauses 4 & 5 of the said SRO made everything clear and left no room for any delay in disposal of refund application filed under clause-2 of the SRO. The said SRO also made it abundantly clear that there could be "no pre-refund audit" in such cases. There is, however, a provision for "post-refund audit" only.

One of the reasons behind this relaxation to the manufacturers of the Agri-Tractors is that the refund can only be issued subject to the filing of "revolving bank guarantee" as required in clause 2(c) of the SRO referred to above, securing the amount in case it was found inadmissible at a subsequent stage. The Dept'l contention that as the SRO does not override the general refund rules, therefore, it could delay payments on account of conducting pre-refund audits, in the cases filed under the said SRO does not hold force for the reason that by doing so, it would cause "Refund Claims of Recognized Agricultural Tractor Manufacturers Rules, 2012" redundant. Moreover, the special rules framed for the purpose take precedence over the general rules. The Rules allow the department to conduct post-refund audit, rather than pre-refund audits. It is thus, clear that conducting of pre-refund audit and delay in settlement of refunds beyond 3 days of filing of claim, by the Deptt, is against the rules and procedure, and amounts to maladministration.

7. Delay in settlement of refund within three days of refund application, filed under SR0.363(1)/2012 dated 13.04.2012, being violative of substantive provisions of the rules and procedure is tantamount to maladministration, in terms of Section 2(3)(i)(a) & (ii) of the FTO Ordinance."

Thus, he concluded that delay in settlement of refund claim within three days as prescribed under the Rules amounts to maladministration.

8. An identical matter earlier came up in Rep.No.70/FTO/2021 and the same was decided vide paras 8,9&10 of the Order dated 26.10.2021 as follows:-

"8. Thus, it concluded that the rules allow the department to conduct a post-refund rather than pre-audit. By reaching such a conclusion that delay in settling their refund claim is tantamount to mal-administration, hence issued the directions mentioned above. Though the FBR is not represented yet the representation filed by it has been perused which does not advance the case of the department nor any justifiable ground for assailing the order of the learned FTO. The FTO indeed has directed the Agency to process and settle the due refund as per law contained in the refund claim recognizing the validity of Refund Claims of Recognized Agricultural Tractor Manufacturers Rules, 2012 notified on 13.04.2012. There can be no cavil that these Rules of 2012 are specific and special in nature applicable to Tractor Manufacturers and have precedence over other general rules dealing generally the refund claims.

9. No valid justification therefore exists to ignore the specific rules and rely upon some other rules. There is no denial of the fact that Refund Claims of Recognized Agricultural Tractor Manufacturers Rules, 2012 have been framed under the Sales Tax Act, 1990 vide SRO No.363(1)/2012 dated 13.04.2012 and are intact. These cover the field of Tractor Manufacturing units whereas the Sales Tax Rules, 2006 are of general application. The legal position is well-settled that in presence of a special law dealing with specific subject the general law become inapplicable, further the Rules of Tractor Manufacturing 2012 are of later in time than the Rules of 2006 and will have precedence. It has so been held authoritatively by the Hon'ble Supreme Court of Pakistan in *Inspector General of Police, Punjab Lahore and others Vs Mushtaq Ahmad Warraich and others* [PLD 1985 SC159].

10. The order of the learned FTO in the circumstances admits of no exceptions and the representations is liable to be rejected."

9. There is no cavil that the instant matter is of similar nature. Both parties are alone that the Deptt has already allowed refund in pursuance of the Hon'ble President's Order dated 26.10.2021. Moreover, the refund application for March and April, 2021 is under process and it would be finalized soon. The instant refund claim is also of same nature as had already been settled. Thus, it would also be sanctioned accordingly. Suffice it to observe that the decision of earlier Representation is absolutely clear and unambiguous in the context of the controversy.

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

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

The Chairman,
Federal Board of Revenue, Islamabad

M/s. Millat Tractors Limited,
8.8 km, Sheikhpura Road, Shahdara, Lahore.

No.94/FTO/2021 dated 25.03.2022

Copy for information to:

1. The Registrar, Federal Tax Ombudsman, Islamabad.
2. The Chief (Legal-III), Federal Board of Revenue, Islamabad.
3. Mr. Imtiaz Rashid Siddiqui, Advocate Supreme Court, 179/180-A Scotch Corner, Upper Mall, Lahore.0333-4218091
4. Barrister Hassaan Akhtar, 3rd floor LCCI Building Near China Chowk, Lahore.
5. Master file.

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