

FEDERAL TAX OMBUDSMAN SECRETARIAT
Regional Office, Lahore

Complaint No.234/LHR/ST(50)/712/2015

Dated: 02.06.2015 *

M/s Descon Oxychem Ltd,
18-Km, Sheikhupura Road,
Lahore.

... Complainant

Versus

The Secretary,
Revenue Division,
Islamabad.

... Respondent

Dealing Officer : Mr. Muhammad Munir Qureshi, Advisor
Authorized Representative : Ch. Wasim Ismail, Advocate
Departmental Representative : Mr. Khurram Fakhar, ACIR

FINDINGS/RECOMMENDATIONS

This complaint was filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (the Ordinance) against non- issuance of sales tax refund for tax periods July to Oct, 2014 (originally due to error year 2015 was mentioned in the complaint but was subsequently corrected as 2014 through corrigendum). These refunds were processed through FBR's Expeditious Refund Processing System (E.R.S) but the same were not cleared by the Risk Management System (RMS) of FBR IT system and were forwarded to concerned RTO for normal processing. It was alleged that deptt was using RMS based on wrong criteria of fixing input values below 3.5% of export value to divert refund claims from ERS to normal processing where these were delayed deliberately in violation of Section 10 of the Sales Tax Act, 1990 (the Act), being processed in queue in terms of FBR's letter

*Date of registration in FTO Sect II

C.No.1(11)CSTRO/FBR/2013 dated 25.09.2013. It was requested that deptt may be directed to pay additional payment (compensation) for delay in payment of refund claims in terms of Section 67 of the Act.

2. When confronted the dept filed a reply under Section 10(4) of the Ordinance to intimate that Complainant Company's sales tax refund claims, filed through Expeditious Refund System (ERS), were not cleared by the RMS of FBR IT System and were under process under normal system. Further that the Company first filed the complaint prematurely on 4.06.2015 and then lodged the refund claims on 12.06.2015. The Deptt contended that the Company actually had no grievance to report when it filed the complaint. The present complaint was statedly a pressure tactic to get its subsequently lodged refund claims cleared early.

3. The Complainant responded to the Dept'l comments stating that the tax periods pertaining to 2015 were mentioned inadvertently but were corrected through corrigendum. The Company assailed Dep'l decision to process the refund though STARR instead of ERS, as a deliberate attempt to delay finalization of the refund claims. It said that the objection/reason given to take the refund claims out of ERS for normal processing under STARR was vaguely worded viz: 'Scrutiny for verification of input tax is required B' and made compliance problematic. The Company further pointed out that earlier refund claims pertaining to tax periods in 2012, filed under the ERS, were also delayed deliberately and were got cleared after the FTO's intervention.

4. Both sides heard and available record examined.

5. As per Rule 26-A(2) of the Sales Tax Rules, 2006 (the Rules) refund claims not cleared by the ERS are to be processed normally. Thus forwarding of refund claims by ERS for normal processing is covered under the existing Rules. In the present case after rejection from ERS, the Complainant filed refund claims under STARR/Crest for tax periods July, August, September and October, 2014 on 13.01.2015, 29.05.2015, 12.06.2015 and 12.06.2015 respectively.

6. Crucial question is the delay which occurs due to normal processing of refund claims due to so called queue introduced by the FBR through its letter C.No.1(11)CSTRO/FBR/2013 dated 25.09.2013. This delay can only be eliminated if FBR and its field offices are compelled to pay compensation under Section 67 of the Act if they fail to pay admissible refund claims, filed under Section 10 of the Act, within 45 days.

7. Careful examination of the Rules shows that refund claims filed under ERS under Rule 26A(2) of the Rules are to be processed within two working days of their filing and as soon as these are processed, system generates Refund Payment Order (RPO) for cleared amount and communicates it to the Registered Person (R.P) electronically. Amounts in disputes are also communicated to the R.P by the system. Refund claims filed under normal processing require submission of soft data and hard copies of the documents at refund counters of RTO/LTU. R.P gets computer receipt showing number for his claim. These refund claims are then processed by the dealing staff at their discretion. One major cause of delay in settlement of refund claims is late processing by the delaying staff on the pretext of the queue introduced through FBR letter



No.1(11)CSTRO/FBR/2013 dated 25.09.2013. As Under Rule 26A(7) of the Rules, refund cheques are required to be issued within 7 working days of issue of R.P.O, the balance time out of 45 days specified in Section 10 of the Act for zero rated and export refunds left for processing by STARR/Crest is 38 days. Thus normal refund cases filed under STARR/Crest system need to be processed by the relevant staff within 38 days. If these claims are processed late, then the deptt needs to pay additional amount (compensation) under Section 67 of the Act. Similarly cases where Chief (CSTRO) fails to issue cheques within 7 working days of issue of RPOs, RPs are entitled to addition amount under Section 67 of the Act.

8. It is evident that in the instant complaint deptt has failed to process refund claims filed through STARR by the Complainant for tax periods July and August, 2014 on 13.01.2015 and 29.05.2015 respectively within 38 days of their filing. It is also evident that Complainant filed refund claims for tax periods September and October, 2014 on 12.06.2015 after filing of the complaint.

Findings:

9. Delay in processing of refund claims of the Complainant, filed through STARR, for tax periods July and August, 2014 on 13.01.2015 and 29.05.2015 respectively beyond 38 days being against Section 10 of the Act/Rules tantamount to maladministration in terms of Section 2(3)(i)(a)&(ii) of the Ordinance.