

THE FEDERAL TAX OMBUDSMAN SECRETARIAT
ISLAMABAD

Complaint No.164/ISD/ST(14)/863/2010

Dated: 25.06.2010*

Messrs Saba Power Company
(Pvt.) Ltd., Islamabad

...Complainant

V E R S U S

The Secretary
Revenue Division
Islamabad

...Respondent

FINDINGS/RECOMMENDATIONS

Dealing Officer : Mr. Yasin Tahir, Senior Advisor
Authorized Representative : Mr. Mohammad Zaheer, Senior Manager Tax
Departmental Representative : Mr. M. Imran Shah, Staff Officer (CIR)

The Complainant, an Independent Power Producer (IPP) registered with Securities Exchange Commission since year 1994, has invoked the jurisdiction of Hon'ble Federal Tax Ombudsman against alleged maladministration of tax functionaries of Large Taxpayer's Unit (LTU) of Islamabad. The main allegations are:

- (i) Tax functionaries of LTU, Islamabad, failed to issue system generated acknowledgement of receipt of its Sales Tax refund claims;
- (ii) They also failed to decide its claims within the time limitation of 45 days as prescribed under Section 10(1) of the Sales Tax Act, 1990;
- (iii) A different application of the Complainant Company for revision of some Sales Tax Returns was not decided by LTU, Islamabad, despite the fact that extensions in time limit were thrice obtained from the FBR.

2. According to the Complainant, it filed sales tax refund claims on 30.01.2010 for tax period from July, 2009 to December, 2009. The AR of the Company met the concerned officials of LTU for more than thirty five times to obtain the system generated acknowledgement of its refund claims as per the

refund procedure. He also called on Commissioner Enforcement and Chief Commissioner LTU Islamabad a number of times yet the requisite acknowledgement was not issued. As a result the refund claims were not even posted in the computerized refund system for automated processing for settlement.

3. The Complainant Company had filed another application for approval of revision of Sales Tax Returns for the period from July 2007 to March 2008. However, no action was taken by the Sales Tax authorities within the time limit prescribed for the purpose. The Company was verbally advised by the tax functionaries of RTO, Islamabad, to approach the FBR for obtaining the requisite approval, which was granted by FBR on July 07, 2009. As the RTO, Islamabad, failed to take the required action, the extension expired on July 25, 2009. In October, 2009, the jurisdiction over the Company was shifted from the RTO, Islamabad, to LTU, Islamabad, when it was advised to approach the FBR to obtain fresh extension which was granted by FBR on February 24, 2010. That extension also expired on March 25, 2010 without any decision by LTU Islamabad. Consequently, the Complainant Company had to request the FBR for another extension for the third time, which though was granted, but still the LTU staff did not decide the revision request. The Company has thus been suffering on account of wilful inaction and delay on the part of tax functionaries.

4. The complaint was referred for comments under Section 10(4) of the FTO Ordinance, 2000, to the Secretary Revenue Division. In parawise comments, the Commissioner (Legal), LTU, Islamabad, stated that the Complainant had filed refund claims for Rs.33,106,743/- for the tax period July 2009 to December 2009. The receiving officer had tried many times to upload the data in the computer system which raised the objection "No return Filed for the tax period (December 2009)". Therefore, the claims could not be processed by the computer system. After removal of the above discrepancy, the receiving officer again tried to upload the data on 11.06.2010 but the system raised new discrepancy "PRA00900 (Synonym translation is no longer valid)" which was discussed with the Database Administrator who told that this error occurred due to submission of data in old version of RCPS by the

Company. Therefore, the AR of the Company was verbally advised to provide data in latest version of RCPS. But in the freshly provided data too, the invoices provided in hard copies and data provided in RCPS soft copy did not reconcile. The AR was verbally informed of the discrepancies.

5. As per the parawise comments, the AR again provided new data for uploading. On submission of fresh data the receiving officer tried to upload the data in the computer system but it was found that the data had not been provided in RCPS for the tax period September 2009. Instead, he twice provided back-up for the tax period October 2009, due to which claim could not be received by the computer system. For the remaining months also the computer system raised discrepancy during data converting ORA-00917: "Missing comma" and "Not a valid file" in the tax period of August 2009, September 2009 and October 2009. All above errors and discrepancies occurred in the presence of Mr. Touqeer representing the Complainant Company. Due to above reasons/discrepancies of data provided by the AR, the claim could not be received through the computer system and therefore could not be processed further. Besides, during this period an investigation audit was initiated to ascertain the genuineness of the refund claims of the applicant due to which the instant claim was kept pending till the submission of audit findings.

6. As regards revision application, it is stated in the parawise comments that the LTU neither received record in respect of revision of Returns from RTO Islamabad, nor the Complainant Company informed the LTU about their request for revision. The Complainant Company's AR visiting the LTU pursued only the matter of refund claims. On 24th February, 2010, however, the LTU came to know about the revision application through FBR's letter as stated by the applicant and started the initial process and found that no revision application of the Complainant Company was available on web portal, (Effective July 2007, FBR made rules for electronic filing and thus request for revision was required to be done through official web portal.)

7. Though the ARs attended LTU, Islamabad, many times for refund purpose as they were asked to provide the acknowledgement of request for revision of Return by the RTO Islamabad, but they failed to provide the same.

As merely the approval of FBR for extension of time limit was not the complete process to allow revision of any Return, the aforesaid ARs were guided in this regard to file the request electronically as per procedure through web portal by logging on web through their ID and passwords but they failed to do so. Hence, no request for revision reached the LTU, Islamabad. The AR vide his letter dated 21.05.2010 initially informed this office about the issue of revision of Returns. Subsequently, the Board transferred the jurisdiction of the Complainant Company from LTU Islamabad to LTU Lahore with effect from 01.07.2010 and thus record of the Company was shifted from Islamabad to Lahore.

8. A copy of the parawise comments was handed over to the AR of the Complainant Company who filed the following counter-comments:

“In his comments, the Commissioner Inland Revenue has tacitly admitted that AR made numerous visits to the LTU, Islamabad, and provided the requisite information and assistance, as and when required. However, it may be noted that discrepancy was rectified and updated data was uploaded but again there was no action on the part of the LTU. It is also incorrect that concerned officers tried to upload the data on June 11, 2010 because, in May 2010, they clearly informed the AR that the case was being transferred to LTU Lahore and therefore, they were not taking any further action in the matter. Similarly it is incorrect that investigative audit was carried out, as no such investigative audit was carried out according to our information. The delay on the part of LTU was motivated to debar the timely processing of the refund claim and this fact is evident from the observations filed by Commissioner (Legal), LTU, Islamabad.

The observation of the Commissioner (Legal) is also misleading. We can produce the documentary evidence that request for revision of sales tax returns were timely made through official web portal and, therefore, there was no reason/justification for not processing the case. It is admitted by the Commissioner that AR of the company visited the concerned office again and again but to no avail. It is admitted in the comments that LTU knew about the matter relating to revision of sales tax returns on Feb 24, 2010 and, despite lapse of more than 6 months, no approval has been accorded as yet for revision of Sales Tax Returns. FBR addressed the extension letters to the Chief Commissioner, LTU, Islamabad, but LTU did not pay any heed to the instructions of FBR. It is unassailable evidence of maladministration on the part of LTU. It is also incorrect allegation that AR did not provide acknowledgement of request for Revision of Sales Tax returns. The factual position is that not only the said acknowledgments but copies of all the correspondence were provided to LTU, Islamabad. The transfer of jurisdiction took place on July 2010 and thus it cannot be the reason or justification for lack of action on the part of LTU from July 2009. It

establishes the mala fide of the LTU to deprive the claimant of its refund claim by unnecessarily delaying the matters without any cogent reasons. This case is one of the instances of maladministration on the part of the LTU.”

9. The parties were heard in the FTO Secretariat, Islamabad. The DR informed during the hearing that non-acknowledgement of their refund claims was due to a technical problem with the computer system which had developed some malfunctioning. He further stated that the malfunctioning of computer system was for all refund claims received during the period and that it was not company or claim specific. Therefore, there was no discrimination involved. He also stated that he had spoken with Mr. Taqi, Database Administrator of PRAL, who confirmed that the computer problem affected all refund claims filed during the period and it was not merely limited to the Complainant’s Company.

10. The AR asked if the technical problem of the computer system was finally fixed in May 2010, why their claims could not be uploaded even thereafter, and the system-generated acknowledgements issued as was done for the claims of other companies.

11. The DR explained that after the computer system started operating normally in May, 2010, it was discovered that the Complainant had filed data on computer software version-5 instead of version 5.1. Some other faults were also observed in their data like the data of one month was missing and instead the data of another month had been duplicated. These defects and shortcomings were verbally pointed out to the Complainant. By the time, the data-related faults could be fully rectified by the Complainants, the jurisdiction of the Company was changed by the FBR from LTU Islamabad to LTU Lahore.

12. According to the AR, the Complainant Company’s representatives visited the sales tax authorities firstly at RTO Office, Islamabad, (when its jurisdiction was with RTO, Islamabad) and subsequently, LTU, Islamabad, when its jurisdiction was shifted to LTU, Islamabad after establishment of the Inland Revenue Service in 2009. Neither the officers of RTO Islamabad nor of LTU Islamabad ever informed the AR upto May 2010 that there was any thing wrong with the refund claims or revision applications. They rather kept telling

them that the needful would be done in due course. The AR informed that he had also met Commissioner Enforcement who promised to do the needful within a day or two. But nothing came of that promise and the Complainant kept running from pillar to post in vain. Finally, they had to file a Writ Petition No.3228 of 2008 with Lahore High Court (Rawalpindi Bench) in March 2010 in respect of previous pending refund claims. The High Court decided the matter on 23.06.2010 directing FBR and the concerned authorities to decide the refund claims of the Complainant preferably within a specified period of 60 days but not later than 90 days. Rather than deciding the claims as directed by the High Court, the LTU Islamabad in the meanwhile shifted the jurisdiction of the Complainant Company from Islamabad to Lahore. The AR also pointed out similar tactics aimed at causing willful and deliberate delays in deciding their request for the revision of Sales Tax Return for the period July 2007 to March 2008.

13. The DR, however, contended that as the refund claims involved in the complaint under reference were not included in the aforesaid Writ Petition, the High Court directive did not relate to them. He also pointed out that the mistakes made by the Complainant as pointed out in the foregoing paras had led to the problem of delay. He stated that although actually revision was required only for a period of 03 months, the complainants casually presented a case for 09 months. He stated that now that the jurisdiction of the Complainant Company had been shifted to Lahore, the authorities at Lahore would be sorting out these issues.

14. Although the AR accepted the deficiencies and shortcomings pointed out in parawise comments but stated that these deficiencies were rectified promptly. However, their refund claims were not loaded on the computer system even after the technical problem was removed in May, 2010. Similarly, their request for revision for January, February and March, 2008 filed through web-portal was not decided by the Department despite three extensions from FBR. He denied that the company representatives were ever guided properly. Had it been so, they would not have filed data on old version of RCPS.

15. The complaint has been examined in the light of written and oral submissions of the parties. It is evident from the handling of the Complainant

Company's refund claims and revision application that the dealing officials of LTU, Islamabad, acted neither efficiently nor in a taxpayer-friendly manner. First of all, their computer system meant for receiving, acknowledging and processing sales tax refund claims remained out of order for about four months. It is indeed disturbing to note that in this age and time a technical problem in the FBR's computer system remained unfixed for months to the disadvantage of the taxpayers across the country. It is also noted that whereas the DR attributed the Departmental failure to acknowledge receipt of refund claims from February to May, 2010 to technical problem of computer system, the Commissioner (Legal) in the parawise comments did not even mention this problem. He rather put all the blame on the ARs for providing data on old version, etc.

16. Similarly, the initiation of investigative audit does not justify non acknowledgment of receipt of refund claims. Prima facie, bureaucratic indifference, as also insensitivity and oppressive handling of the taxpayer's affairs, seem to be rampant in this case. The LTU administration not only failed to decide the Complainant's request for revision of Sales Tax Returns within the prescribed time limit, it claims to have instructed the AR only verbally to file a request to FBR for extension of the time limit. A highly undesirable aspect of this matter is that the Complainant was made to obtain extension from the FBR not once but three times. Each time the extension was granted, the FBR duly informed the administration of LTU, Islamabad, but the latter remained unmoved all through this period. Failing to settle the issue of revision of Returns even after three extensions also indicates wider aspects of tax maladministration than mere inefficiency or indifference.

17. It is also noted that even though the Chief Commissioner LTU directly received, in February 2010, the letter of FBR granting extension, the Department still contended - falsely - that the revision request could not be decided as the ARs did not inform the LTU office about its pendency. There is no justification for the LTU, Islamabad, to say that the revision application was not decided because RTO Islamabad had not transferred its record to LTU, Islamabad. It was the responsibility of LTU officials to get the RTO record transferred to them. The DR also could not show any evidence that LTU

Islamabad made any attempt to get the requisite record so transferred. The blame for non-transfer of record therefore cannot be put on the ARs. Nor can it be used as an excuse for inaction.

18. That the Department callously failed to consider the revision application even after correction of technical problems and grant of extensions in time limit can also be gauged by referring to the fact that the Complainant's refund claims worth over Rs.552 million had been kept unsettled since 2004 by the Sales Tax authorities of Islamabad.

19. The Complainant filed complaint No.149/Isd/IT(128)/790/2010 before the Hon'ble FTO for the alleged maladministration involved in arbitrary shifting of its jurisdiction to Lahore. That complaint was investigated by the FTO Office with the conclusion that the tax functionaries of LTU Islamabad were guilty of maladministration. It was interalia recommended that the jurisdiction over the Complainant Company be reverted back to LTU Islamabad. But although the jurisdiction was shifted back to LTU Islamabad and the computer problem fixed in May 2010, neither were the system-generated acknowledgements (the subject matter of the present complaint) issued nor the Complainant's revision application filed electronically was decided. And whereas the ARs had sent their applications in writing to the LTU Islamabad and kept visiting them for umpteen number of times (35 visits in seven months), the LTU administration did not respond to them in writing to explain the reasons or to provide them necessary guidance.

Findings:

20. Extreme oppressiveness, high handedness and arbitrariness apparent on the part of the LTU Islamabad is tantamount to maladministration in terms of Section 2(3) of the FTO Ordinance, 2000.

Recommendations:

21. FBR to -
- (i) fix responsibility for the gross maladministration involved in this case, and initiate necessary departmental proceedings against those found at fault;

- (ii) ensure that technical faults in the computer system effecting taxpayers across the country are promptly attended to, in days and not months;
- (iii) expedite acknowledgement of refund claims under reference and decision thereon as well as on the revision application, as per law; and
- (iv) report compliance within 30 days.

(DR. MUHAMMAD SHOAIB SUDDLE)
Federal Tax Ombudsman

Dated: 27-10-2010
M.R.