

FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE
LAHORE

COMPLAINT NO.482/LHR/ST(63)/864/2010

¹Dated:25.06.2010

Messers Faisal Textile
Industries (Pvt.) Ltd
B-35-37, SIE-1
Gujranwala

...Complainant

V E R S U S

The Secretary
Revenue Division
Islamabad

...Respondent

FINDINGS/RECOMMENDATIONS

Dealing Officer : Mr. Saeed Akhtar, Advisor
Authorized Representative : Mr. Muhammad Arif Butt, ITP
Departmental Representative : Mr. Muhammad Anwar, DCIR

The grievance of the Complainant is against rejection of his application submitted for condonation of delay in the filing of documents and required data on the prescribed software (RCPS) in connection with Sales Tax refund claim for the period June 2005 to September 2006. The Complainant has alleged discrimination and stated that FBR has been allowing condonation of delay in the submission of refund documents in other identical cases.

2. Brief facts of the case are that the Complainant was registered as a manufacturer whose products being zero-rated were not chargeable to

¹ Date of Registration in FTO Sectt:

output tax. The input tax paid on purchases was refundable. The Complainant filed refund claims amounting to Rs.921,425/- for the period June 2005 to September 2006 on 30.12.2006 alongwith supportive documents and required data on the prescribed software. He was informed that as the information provided was not acceptable on software version 3.1, he should resubmit claim on the revised version of software. The Complainant submitted the required information on the revised software on 03.01.2007 but by that time the claim was late by 3 days.

3. The Complainant sent number of letters to the Collector Gujranwala requesting condonation of three days delay in the filing of refund. All Pakistan Textile Processing Mills Association vide letters dated 09.08.2007 and 26.11.2007 requested the FBR for condonation of delay in the filing of refund claim by the Complainant. The FBR rather than considering the request for condonation of delay, forwarded the letters of APTPMA to the Collector Gujranwala for disposal on merit. It may be noted that the Collector Sales Tax and Federal Excise had recommended condonation of delay in different identical cases to the FBR including the case of Complainant vide letter C.No.ST/Ref/ CBR/56(05)/03/315 dated 06.05.2007.

4. The Federal Board of Revenue vide notification SRO 1204(I)/2007 dated 11.12.2007 empowered the Collector to allow extension of time on filing of refund claims upto 31.01.2008 pertaining to the period July 2006 to September 2007. The Collectorate of Sales Tax and Federal Excise informed the Chairman All Pakistan Textile Processing Mills Association vide letter C.No.ST/Ref/56(05)/03/885 dated 23.02.2008 that refund claims of Complainant Messers Faisal Textile Industries (Pvt.) Limited Gujranwala for the period June 2005 to September 2006 were not filed within time, but the unit could avail the benefit of condonation allowed

vide SRO 1204(I)/2007 dated 11.12.2007 for the period June 2006 to September 2006. The Collectorate issued this letter on 23.02.2008 when the SRO 1204(I)/2007 dated 11.12.2007 had already expired on 31.01.2008. The Complainant alleged that no appealable order was passed by the refund sanctioning authority inspite of reminder dated 09.06.2010 sent to expedite the matter.

5. The complaint was sent to the Secretary Revenue Division for comments in terms of Section 10(4) of the Establishment of the Office of the Federal Tax Ombudsman Ordinance, 2000. The Regional Tax Office, Gujranwala, informed that the registered person was required to submit refund claim upto 31.12.2006 whereas the refund claim was filed on revised version software on 03.01.2007 and so it was late by 3 days. Consequently, the refund claim was rejected vide letter C.No.ST/Ref/56(05)/03/885 dated 23.02.2008. The taxpayer could not avail the opportunity of condonation for the period July 2006 to September 2006 vide SRO 1204(I)/2007 dated 11.12.2007.

6. During the course of hearing, both the parties reiterated the same arguments as contained in the complaint and reply submitted by the RTO Gujranwala. The complaint was examined in the light of written and oral submissions of the parties, and the position that emerged was as follows:

- (i) The Complainant was required to file refund claim on or before 31.12.2006, but the claim filed on 30.12.2006 was not accepted on the plea that required data was submitted on old version software and so the claimant was advised to resubmit claim on revised version software. The claim was resubmitted on the revised version on 03.01.2007 which was treated barred by time for 3 days.
- (ii) No appealable order was passed to enable the registered person to file appeal against the decision. The Department contended that refund claim was disposed of vide letter C.No.ST/Ref/

56(05)/03/885 dated 23.02.2008. The Collectorate letter dated 23.02.2008 was addressed to the All Pakistan Textile Processing Mills Association and not to the registered person who was to file appeal against the adverse decision. Even in the letter dated 23.02.2008 addressed to the Association, it was stated that taxpayer could avail the benefit of condonation vide SRO 1204(I)/2007 dated 11.12.2007 for the period from July 2006 to September 2006. The Complainant could not avail the benefit as the notification had already expired on 31.01.2008.

- (iii) The FBR and the Collector had been allowing condonation of delays in the submission of refund applications or in filing of support documents in connection with refund claims. Besides, the superior judiciary is increasingly deprecating rejection of refund claims merely due to the technicality of time limitation. FBR in the cases of Messers Al-Janat Processing Mills (Pvt.) Ltd Lahore vide FBR letter C.No.3(1)/ST-L&P 2008 dated 12.11.2008, Messers Anmol Textile Mills (Pvt.) Ltd Lahore vide FBR letter C.No.3(1)/ST-L&P/2008 dated 22.01.2009, Messers Arshad Usman Mills Lahore vide FBR letter C.No.3(1)/ST-L&P/2008 dated 21.01.2009, Messers Riaz Fabrics (Pvt.) Ltd Lahore vide FBR letter C.No.3(1)/ST-L&P/2008 dated 22.02.2009 and Messers Asiates Lahore vide FBR letter C.No.3(1)/ST-L&P/2008 dated 21.02.2009 had allowed condonation of delay during the period from September 2005 to May 2008.
- (iv) The Sindh High Court (case 2003 PTD 593 titled Saleem Haji Rehmat Dada Karachi vs CIT Karachi) had ruled that relief available to a person in law could not be denied on account of technicality. The Supreme Court of Pakistan (case PLD 1998 SC 64 titled Messers Pfizer Laboratories Ltd vs. The Federation of Pakistan) had also held that the Government functionaries had no right to withhold citizen's money on grounds of limitation or technical reasons.

7. The FTO Secretariat in identical complaints No.573-L/2009, 574-L/2009 and 304/Lhr/ST(40)/535/2010 had also recommended condonation of delay, which was duly complied with by the FBR.

Findings:

8. The Complainant was allowed to file refund claim on or before 31.12.2006 and claim filed on 30.12.2006 was not accepted on the plea that it was submitted on the old version software. The claim was resubmitted on 03.01.2007 on the new version software but by that time it was late by 3 days. No appealable order regarding rejection of claim on grounds of limitation was issued by the Department. The FBR had allowed condonation of delay in a number of identical cases, and so the treatment given to Complainant was unjust, unfair and discriminatory which tantamount to maladministration in terms of Section 2(3) of the FTO Ordinance, 2000.

Recommendations:

9. FBR to-

- (i) condone delay involved in the filing of refund claim;
- (ii) direct the concerned officials to decide the pending refund claim in accordance with law within 30 days, after providing opportunity of hearing to the Complainant; and
- (iii) report compliance within 7 days thereafter.

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(Dr. MUHAMMAD SHOAIB SUDDLE)
Federal Tax Ombudsman

Dated: _____-2010
Khalil Ahmad/F.A.