# THE FEDERAL TAX OMBUDSMAN SECRETARIAT REGIONAL OFFICE, LAHORE

### Complaint No. 164/LHR/ST(07)/281/2010

Dated: 05.03.2010

Messrs Riaz Sajjad Polypropylene (Pvt.) Ltd Old Timber Market Karkhana Bazar Faisalabad ...Complainants

VERSUS

The Secretary Revenue Division Islamabad

...Respondent

#### FINDINGS/RECOMMENDATIONS

Dealing Officer

Mr. Saeed Akhtar, Advisor

Authorized Representatives

Ch. Abdul Ghafoor, ITP

Mr. M. Imran Rashid, Advocate

Departmental Representative

Mr. Muhammad Asif, DCIR

This complaint has been filed against delay in the sanction of refund and neglect of letters sent by the Complainant to the Sales Tax authorities to expedite the matter.

- 2. It is alleged that Sales Tax staff visited the premises of the Complainants on 31.12.2002 to take action in terms of Section 38 of the Sales Tax Act, 1990. All the available Sales tax record, books of account and related documents were taken into custody and a criminal case registered against the Directors of the Company for evasion of Sales Tax by maintaining duplicate record. Depositing in the state exchequer an amount of Rs. 5 million, the Complainants promised to deposit Rs. 1 million per month till finalization of proceedings and paid the first installment in March, 2003. In return, the Sales Tax Department agreed not to oppose their bail application.
- 3. The Complainants filed a Writ Petition No.2957/2003 dated 08.03.2003 before Lahore High Court praying, inter alia, that the Department's raid may be declared illegal on the ground that premises were searched without a

<sup>\*</sup> Date of registration in FTO Secretariat

search warrant. On 11.03.2003, the Court in its interim order directed the Department not to take any coercive measures for recovery of 'evaded' amount of Sales Tax from the petitioner without proper adjudication proceedings, after serving a show cause notice. The Complainants stopped further payment of installment of Rs. 1 million per month to the Department. As a result, the Department moved the Special Judge Customs for cancellation of bail which was rejected. The Department then filed another application for cancellation of bail for alleged failure of the Complainants to join investigation which was also rejected by the Special Judge Customs.

- 4. The Lahore High Court on 22.09.2003 declared the action of Department illegal and void ab initio and directed it to return all the seized documents, record, account books and other materials to the Complainants, and also not to use the records, books of account etc against the petitioners in the adjudication proceedings. The Department filed an appeal in the Supreme Court which was dismissed on 27.10.2009. The Complainants approached the Department for refund of Rs.6 million already paid by them but the amount was not refunded on the plea that the payment was made on the basis that the Complainants would pay the agreed amount and the Department would not oppose the Complainants' bail application.
- 5. The Complainants however contend that the question of agreed basis was relevant only if the offence warranting the payment was established. Citing the Lahore High Court decision in case reported as PTCL 2010 CL 118, they further stated that as no body could be coerced to pay taxes without observing due process, the payment already made was illegal being without any adjudication order. In their complaint before the Hon'ble FTO, the Complainants have complained that refund along with compensation for delay had not been sanctioned by the Department despite their repeated requests dated 30.10.2003, 26.09.2009, 21.10.2009, 30.12.2009, 11.12.2009, 10.01.2010 and 12.02.2010.
- 6. The complaint was sent for comments to the Revenue Division in terms of Section 10(4) of the FTO Ordinance, 2000. The Regional Tax Office, Faisalabad, in its comments received through the Revenue Division, stated that the Complainants had themselves admitted on their bail application dated 06-02-2003 before the Special Judge Customs as follows:

- (i) that the above case happened due to the lapse of the accountant who kept the petitioner ignorant;
- that the Collector under Section 37A(4) had agreed to compound the offence and the petitioner has paid Rs. 5 million in the Government Treasury and agreed to pay in monthly installments rest of the amount due;

(On this bail application, the Special Judge Customs wrote in Urdu that "the petitioner has made an agreement with Sales Tax Department and deposited Rs.50/- Laks".)

- During the hearing, the DR argued that the amount of Rs. 6 million was deposited by the Complainants on account of admitted suppressed sales and as a result of compounding of their offence. Therefore, this amount was not refundable. As regards non-return of documents taken into custody, he contended that delay occurred due to large scale reorganisation of the field units of FBR. However, it was not denied that the record had to be returned to the Complainants as directed by the Lahore High Court. The DR also admitted that there was neither any adjudication order in the field in this case nor he could produce any order of the Collector compounding the offence under Section 37A(4) of the Sales Tax Act, 1990.
- The complaint has been examined in the light of written and oral 8. submissions of the parties. It is observed that the Lahore High Court had held in its interim order dated 11.03.2003 that no coercive measures would be taken for recovery of 'evaded' amount of Sales Tax from the Complainants without proper adjudication and then in its final judgment dated 27.09.2009 that the raid by the Sales Tax authorities was illegal and void ab initio. The Lahore High Court also decided that all evidence, material, documents, records or accounts taken into custody in the process would be returned to the Complainants, and none of the materials, records, books of accounts and articles etc. would directly or indirectly be used in the adjudication proceedings or to create any demand against the petitioners. The Departmental position that the deposit of Rs. 6 million was as a result of compounding of offence is also not supported by any relevant evidence, although even if there existed such a compounding, it was hit by the judgment of Lahore High Court in this case. Besides, the 'agreement' made by the Complainants in jail in exchange for their bail can not be treated as having been made in a free and non-coercive environment.

## Findings:

Non-return of documents etc. taken into custody by the Department 9. and non-refund of Rs. 6 million after the Department had lost its appeal in the Supreme Court, and neglecting to respond to the Complainants' repeated reminders tantamount to maladministration in terms of Section 2(3) of the FTO Ordinance, 2000.

## Recommendations:

- 10. FBR to
  - direct the Chief Commissioner, Faisalabad, to return the (i) seized records of the Complainants and decide the refund/ compensation claim on merit in the light of the decision of the Lahore High Court within 21 days; and
  - report compliance within 30 days. (ii)

(Dr. Muhammad Shoaib Suddle) Federal Tax Ombudsman

Dated: 25 - 06 - -2010

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