

FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE
LAHORE

COMPLAINT No.315/LHR/IT(261)/566/2010
Dated: 22.4.2010*

Naveed Ilyas
213/E Block-L
Model Town
Lahore

... Complainant

Versus

The Secretary
Revenue Division
Islamabad

... Respondent

FINDINGS / RECOMMENDATIONS

Dealing Office : Muhammad Munir Qureshi
Advisor
Authorized Representative : Aamir Naveed, Advocate
Departmental Representative : Azmat Elahi Ghuman, DCIR

This complaint is against alleged arbitrary assessment made under Section 122(5A) of the Income Tax Ordinance, 2001 (hereinafter the Ordinance).

2. Until Tax Year 2006, the Complainant was placed in Presumptive Tax Regime (PTR) being a "Trader" in automotive parts. In Tax Year 2007, his status changed to that of a manufacturer/supplier of automotive parts. This change in status was duly reflected in the Complainant's Return of income for the year. However, the Department did not accept it, and rejected Complainant's refund claim amounting to Rs.92,192/-.

*Date of registration in FTO Sectt.

3. The Complainant preferred a complaint before the Federal Tax Ombudsman (C.No.338-L/2009) which was disposed of on 17.10.2009. It was recommended that refund due be paid to the Complainant. The Department argued before the FTO that Complainant's case was under examination for possible audit and hence payment of refund had been deferred. This was rejected by the FTO with the observation that likely selection of case for audit did not absolve the Respondents from issuing refund.
4. The FTO's Findings/Decision in the complaint were contested before him in a Review Application filed by the Deptt. As the Review was rejected, payment of refund was made to the Complainant. In the meanwhile, the proceedings initiated earlier for selection for audit also came to a naught. However, an order under Section 122(5A) of the Ordinance was passed on 01.03.2010 in which it was held that the Complainant had not been able to establish that he was a manufacturer/supplier, and as a consequence a tax demand of Rs.92,191/- was raised against the Complainant thereby reversing the refund allowed earlier.
5. It is the Complainant's contention that the order amended under Section 122(5A) of the Ordinance for tax year 2007 is arbitrary and vindictive. According to him, the Complainant is a manufacturer/supplier of auto parts duly registered with the Sales Tax Department of the FBR vide registration No.0302843200555, that can be verified on the FBR website.
6. When confronted, the Department submitted a reply that amended order under Section 122(5A) was in accordance with law, and so the Departmental order could not be contested before the FTO because of the

bar laid down in Section 9(2)(b) of the Establishment of the Office of the Federal Tax Ombudsman Ordinance, 2000.

7. The ambient circumstances in this case strongly suggest that the Departmental action u/s 122(5A) is not only arbitrary but also vindictive in nature. When the complaint was filed in FTO office, the Deptt claimed that audit proceedings were being considered against the Complainant. However, finding no proper grounds for selection for audit, the Additional Commissioner u/s 122(5A) amended the order deemed to have been passed u/s 120, holding it erroneous and prejudicial to the interest of revenue. As the Additional Commissioner passed the order u/s 122(5A) without pointing out any patent error in the earlier order u/s 120, it is evident that certain Departmental functionaries had made up their mind at an early stage in the case to obstruct Complainant's refund claim. Such order being unlawful and arbitrary should have been vacated by the Commissioner u/s 122A of the Ordinance.

Findings:

8. The Complainant has contested the arbitrary treatment meted out to him by the Deptt insofar as his status as manufacturer/supplier has been rejected when he was duly registered with the FBR as a manufacturer. Such arbitrary and unlawful treatment amounts to maladministration as defined in Section 2(3)(ii) of the FTO Ordinance.

Recommendations:

9. FBR to direct the Chief Commissioner to –

- (i) ensure action as per law u/s 122A to correct the wrong done to the Complainant within 21 days;

- (ii) direct the official(s) responsible for unlawful and arbitrary conduct in the instant case, after the matter had already been duly decided by the FTO Office, to explain within 15 days as to why action u/s 16 of FTO Ordinance 2000 may not be initiated against them, and also whether they would like to be heard in person; and
- (iii) submit compliance report within 30 days.

(Dr. Muhammad Shoaib Suddle)
Federal Tax Ombudsman

Dated: 14-07-2010

S.A.Irfan

Approved for reporting

ATTESTED

[Signature]
Ch. Muhammad Siddiq Tabassum
Advisor (Implementation & Monitoring)
Federal Tax Ombudsman Secretariat
Islamabad