

FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE
LAHORE

Review Application No.39/2010

in

COMPLAINT NO.1104/2008

Dated: 03.4.2010*

Saleh Enterprises
Faisalabad

... Applicant

Versus

The Secretary
Revenue Division
Islamabad

... Respondent

FINDINGS / RECOMMENDATIONS

Dealing Officer : Muhammad Munir Qureshi
Advisor
Authorized Representative : Noor Ahmed Khokhar, ITP
Departmental Representative : Safdar Hussain, ACIR

An Application for Review of FTO's Recommendations in Order dated 27.10.2008 disposing of Complaint No.1104/2008 has been filed in which the Applicant contends that the pertinent documentation pertaining to refund claim for Tax Years 2006 and 2007 was inadvertently not placed before the FTO when cited complaint was heard. It is requested that the earlier order passed by the FTO be reviewed in the light of pertinent documentation now being brought to the Hon'ble FTO's

* Date of filing Review Application in FTO Sectt.

attention to substantiate the Applicant's claim for refund in Tax Years 2006 and 2007.

2. When confronted, the Department filed reply and opposed the Review Application on the ground that the documentation being referred to by the Applicant did not substantiate the refund claims in Tax Years 2006 and 2007 and these claims were rightly rejected by the Hon'ble FTO in his order dated 27.10.2008.

3. The facts in this case are that the Applicant originally filed Statements for Tax Years 2006 and 2007 under Section 115(4) of the Income Tax Ordinance, 2001. These were later withdrawn and substituted by Returns of Income under Section 114 of the Ordinance declaring Net Income at Rs.131,990/- and Rs.358,940/- in Tax Years 2006 and 2007 respectively. Refund applications for both the years were filed on 20.03.2008. The Taxation Officer processed the refund applications and a draft refund order was sent to the Additional Commissioner Enforcement-II, RTO, Faisalabad on 30.7.2008. The Taxation Officer's refund proposal was returned unapproved by the Additional Commissioner vide his letter No.27 dated 02.8.2008 with the observation that the Complainant having filed Statements under Section 115(4) of the Ordinance for Tax Years 2006 and 2007, fell in the Final Tax Regime and no refund therefore arose in these years. Furthermore, the Complainant's attempt to withdraw Statements filed under Section 115(4) and substitute the same with Returns of Income under Section 114 was futile as the law did not permit revision/substitution of Statements filed under Section 115(4) of the Ordinance.

4. In the complaint filed earlier, it was submitted that the taxpayer was a manufacturer and supplier of leather shoes and income tax deductions

made at source under Section 153 of the Ordinance on supplies of manufactured goods in Tax Years 2006 and 2007 were adjustable against tax demand, if any, and excess amount so deducted was refundable to the taxpayer. It was explained that Statements filed under Section 115(4) for Tax Years 2006 and 2007 had been submitted inadvertently and were later substituted by Returns filed under Section 114 of the Ordinance once the mistake was discovered by the Complainant.

5. The Department opposed the Complainant's submissions before the FTO Office when the complaint was argued, and it was pointed out that Statements once filed under Section 115(4) of the Ordinance could not subsequently be revised/withdrawn as there was no specific provision in the Ordinance that would permit such a course of action. That being so, the Statements filed under Section 115(4) of the Ordinance were deemed to be assessment orders under Section 120 of the Ordinance and the tax deductions made were held to constitute final discharge of the Complainant's tax liabilities in the two years.

6. The Hon'ble FTO in his Order dated 27.10.2008 disposing of the complaint had endorsed the Departmental view point and had held that the Complainant had not placed on record any "solid proof" of being a manufacturer.

7. Arguing the Review Application, the Applicant has now produced a copy of Certificate of Registration under Sales Tax Act, 1990, issued by the (then) Central Board of Revenue, Islamabad on 24th September, 2005, and bearing sales tax registration No.08-02-6405-007-37 in which the Complainant had been assigned the status of a "manufacturer". It is the Complainant's contention that this Certificate was conclusive proof

that the Applicant was a manufacturer since September, 2005 and being a manufacturer, income tax deductions made under Section 153 of the Ordinance were not to be treated as final discharge of tax liability as per provisions of Section 153(6A) of the Ordinance and resultantly the tax deducted was liable to be set off against tax demand and the balance refunded to the taxpayer.

8. The AR of the Applicant also referred to decision of the President of Pakistan in Representation filed against the Hon'ble FTO's order in C.No.1076/2006 and disposed of vide [(F.No.10/07-Law(FTO)] dated 29.02.2007 in which it was held that if the Taxation Officer did not believe in the veracity of evidence adduced by a taxpayer regarding the nature of goods supplied by him, he should make an independent enquiry and requisition the required information from the deducting authority himself. It is argued that if the Department was not satisfied that the Complainant was indeed a manufacturer, it should have conducted an enquiry itself and recorded findings in the light of the withholding agent's response.

9. The AR of the Applicant also submitted supporting evidence viz Sales Tax Returns filed during 2005 - 2010 in which supplies of manufactured goods (leather shoe uppers) were shown to have been made and income tax deducted thereon. He also placed on record original copy of acknowledgment issued by the Taxation Officer Enforcement-05, RTO, Faisalabad, that showed that documents called for in connection with the taxpayer's refund claims for 2006 and 2007 through Taxation Officer's letter No.14 dated 09.7.2008 had been received.

10. According to the AR of the Applicant, the documents referred to supra establish beyond any doubt that the Applicant is a manufacturer of leather parts of shoes and is borne on the Sales Tax record of the Department as a manufacturer since September, 2005. That being so, credit for tax deducted under Section 153 of the Ordinance was required to be given.

11. The Departmental Representative opposed the AR's arguments and reiterated the Departmental position that Statements having been filed under Section 115(4) of the Ordinance, the Applicant was placed in the Final Tax Regime and all tax deducted at source constituted final discharge of tax liability and hence no refund arose. The DR also stated that Statements once filed under Section 115(4) could not subsequently be withdrawn or revised.

12. The Departmental contention that Statements once filed under Section 115(4) of the Ordinance could not subsequently be withdrawn/revised or substituted by Returns of Income under Section 114 of the Ordinance cannot be used to deny refund due to the Applicant provided the claim was otherwise in order. As the Applicant has established that he is a manufacturer, tax deducted at source under Section 153 is required to be adjusted against demand and any excess of tax so deducted required to be refunded. The Departmental objection is purely technical in nature and such like technicalities cannot override the substantive requirement of law that excess tax paid by a taxpayer was required to be refunded back and could not be held by the Government when there was no sanction in law to do so.

Findings:

13. The evidence submitted by the Applicant discussed supra establishes that he is a manufacturer of leather parts of shoes and has been borne on the Sales Tax record of the Federal Board of Revenue since September, 2005.

14. In view of the discussion supra, the Applicant's prayer for review of Hon'ble FTO's Recommendations in order dated 27.10.2008 and acceptance of Applicant's status as a manufacturer in Tax Years 2006 and 2007 is accepted.

Recommendations:

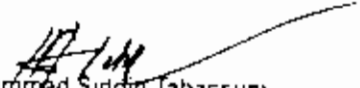
15. FBR to direct the Chief Commissioner to –

- (i) issue refund due alongwith admissible compensation for delayed disbursement of refund, as per law, within 15 days; and
- (ii) submit compliance report within 07 days thereafter.

(Dr. Muhammad Shoaib Suddle)
Federal Tax Ombudsman

Dated: 27.10.2008
S.A./my

ATTESTED


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