

**BEFORE  
THE FEDERAL TAX OMBUDSMAN  
ISLAMABAD**

**Complaint No.1064/KHI/ST/2022**

Dated: 24.03.2022 R.O. Karachi

**Mr. Nadeem Asrar,**

Plot No.150, Sector-15, Korangi Industrial Area,  
Karachi.

...*Complainant*

***Versus***

The Secretary,  
Revenue Division,  
Islamabad.

...*Respondent*

Dealing Officer

:

Mr. Manzoor Hussain Memon, Advisor

Appraising Officer

:

Mrs. Sarwat Tahira Habib, Sr. Advisor

Authorized Representative

:

Mr. M. Amir, AR

Departmental Representative

:

Mr. Tanweer Siddii, AD  
RTO-II, Karachi

**FINDINGS / RECOMMENDATIONS**

The above mentioned complaint is filed against the Commissioner-IR, Zone-III, RTO-II, Karachi in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance), for not allowing condonation in time period required for filing of refund claims of Rs.18,664,233/- for the years 2019-20 and 2020-21.

2. Precisely, M/s Clyde Chemicals, Plot No.150, Sector 15 Korangi Industrial Area, Karachi bearing STRN 1200350600419 is a sole proprietor engaged in manufacturing of adhesive solution and selling them in local market. It is averred that since their input tax was higher than output tax, therefore, they claimed refund for the tax year 2019-20 in terms of Section 8B of the Sales Tax Act, 1990 under which if input tax each month exceeds 90% of the output tax, the taxpayer has to pay 10% of the input tax which is required to be claimed as refund within three months i.e July to

September after closing of the financial year. Accordingly, they had to file refund claim for the financial year 2019-20 during the period July-September 2020 for the amount of 10% input tax paid each month; but unfortunately their tax dealing employee died in the month of March, 2020, therefore, their whole record of tax matters was in disarray.

3. After sorting the record the complainants vide letter dated 17.02.2021 requested to the Commissioner for condoning the delay in time and allowing filing of refund claim. The request was followed by the personal visits. Finally, it was informed vide letter dated 30.03.2021 that the Commissioner has condoned the delay in filing refund claims for the tax period ending on June, 2020 and have accepted the reason for the delay pleaded by the Complainant. It was also directed to submit the refund claim by 15.04.2021. Another letter dated 28.04.2021 was received by them from the Deputy Commissioner-IR, Zone-II, RTO-II, Karachi directing to file again condonation request online in addition to manual filing for its processing in the system; as prescribed under the law which was also done by him on the same day i.e 28.04.2021. He kept on waiting for online condonation permission for filing of refund claims through system but to his shock, the request was rejected on 28.06.2021 and on top of it, the jurisdiction of the case was transferred by FBR from RTO-II to LTO, Karachi. Since the jurisdiction was wrongly changed, they approached LTO by filing application in October, 2021 for transferring back their case to RTO-II. LTO, Karachi recommended their request to FBR who transferred back their case to RTO-II in March, 2022 ie after nine months.



4. Since in intervening period their claim for the year 2020-21 had also become time barred, therefore, in anticipation of transfer back of their case to RTO-II, they again applied to the Commissioner-IR, Zone-III, RTO-II, Karachi in February, 2022 for reconsideration of their request of condonation of the year 2019-20 and fresh request for condonation of delay in time for the year 2020-21. In response thereto, RTO-II vide letter dated 03.03.2022 directed him to clarify the nature of the business and why huge input adjustments was being claimed. They submitted clarification on 07.03.2022 explaining the whole position including the reasons for delay in filing the claims. Instead of condoning the delay in period, the Commissioner -IR, Zone-III, RTO-II rejected their request for both years vide letter dated 24.03.2022. Hence, the instant complaint with prayer to direct the Commissioner to forward their request to FBR to condoning the delay in filing of refund claims; as the period of delay now has become beyond the jurisdiction of the commissioner.

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5. The complaint was referred to the Secretary, Revenue Division for comments in terms of Section 10(4) of the FTO Ordinance read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act, 2013. In response thereto, the Chief Commissioner-IR, RTO-II vide letter dated 06.04.2022 forwarded the comments of the Commissioner-IR, Zone-IV, RTO-II, Karachi. It was averred that the condonation application for the period 2019-20 was rejected by the Commissioner-IR, Zone-III, RTO-II vide order dated 28.06.2021; whereas the application for condonation for the period 2020-21 was rejected vide order dated 29.03.2022. He further averred that for condonation of any period, the applicant has to justify delay on day to day basis. He relied his contention on

the Hon'ble Supreme Court of Pakistan's judgment in the case reported as (1980) 42 Tax 140 (S.C.Pak.) titled Commissioner of Sales Tax, Zone-A Lahore vs. Chenab Textile Mills Ltd., Lahore wherein it was held that where the matter is barred by limitation, each and every day's delay must be explained before it can be condoned.

6. Hearing was held on 12.04.2022. DR had no explanation/answer on the issue as to when the Commissioner had already granted condonation vide letter dated 30.03.2021, why the said permission was withdrawn vide letter dated 28.06.2021, he simply stated that it was done because the Complainant had not applied online in the computerised system. On the other hand, AR averred that their situation was beyond their control, firstly, due to death of their employee dealing with tax matters and then the transfer of their jurisdiction from RTO-II to LTO and then back to RTO-II which consumed their 9 months in addition to their numerous personal visits to RTO-II office to meet every relevant person to get their issue resolved, expecting more than that from them is unreasonable.

7. Averments of both sides heard and the record examined. Keeping in view the situation and circumstances as explained by AR, rejection of the request for condonation of delay on the ground that it was not done online is a flimsy excuse and not understandable particularly when the permission was granted on manual application in March, 2021 and the applicant was asked to file application online too in April, 2021 which was done by him on the same day. The judgment of Hon'ble Supreme Court of Pakistan is irrelevant in this case keeping in the facts of the case as narrated in para 3 and 4 above. Factual position is that the



Commissioner after due consideration of the reasons for delay had granted condonation for the year 2019-20 which was subsequently withdrawn by his successor on transfer of the predecessor without plausible reason which is tantamount to maladministration. Since the period of condonation has now crossed beyond the jurisdiction of the Commissioner, therefore, it needs to be considered at the level of FBR under Section 74 of the Sales Tax Act, 1990.

**RECOMMENDATIONS:**

8. In view of *supra*, FBR to direct-

- i) the Chief Commissioner-IR, RTO-II, Karachi to forward the case of the Complainant to FBR explaining the whole issue as narrated by the Complainant ( including delay of 9 months in unnecessary transfer of the case by FBR from RTO-II to LTO and back to RTO-II) for consideration of condonation in time for filing the refund claims by the complainant;
- ii) process the refund claim as per law; and
- iii) report compliance within 45 days.

*Approved for reporting  
and press release*

(Dr. Asif Mahmood Jah)  
(Hilal-i-Imtiaz)(Sitara-i-Imtiaz)  
Federal Tax Ombudsman

Dated: 09/05/2022  
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Certified to be True Copy  
9/5/22  
Registrar  
FTO Secretariat  
Islamabad