

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

Complaint No.1144/KHI/ST/2022

Dated: 30.03.2022 R.O. Karachi

M/s Unilever Pakistan Foods Ltd.,
Avari Plaza Fatima Jinnah Road,
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. Atiq ur Rehman, AR
Departmental Representative	:	Mr. Umair Akbar Soomro, DCIR LTO, Karachi

FINDINGS/RECOMMENDATIONS

The above mentioned complaint was filed against the Member-IR (Operations) FBR, Islamabad in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance), for not allowing condonation of delay under Section 74 of the Sales Act, 1990 for filing refund claims relating to the periods 2012 to 2016.

2. Precisely, M/s Unilever Pakistan Foods Ltd., Karachi bearing NTN 1143539-9 has averred that they requested LTO, Karachi in 2020 for condonation in delay under Section 74 of the Sales Tax Act, 1990 for filing refund claims relating to the period 2012 to 2016. A long delay of 5 to 8 years in making request for condonation was due to the reason that the construction work was being made in

Unilever head office Karachi during the period in question and new ERP (SAP) system was installed during the said period in which Unilever transferred all data from old ERP to new ERP (SAP). During the transaction period, it was observed that few data/transactions were not transferred/picked up by the new system due to voluminous record. Once they realized that some transactions/data were missing out during transition, they immediately took up the action and engaged their auditors for identifying the missing data. After detailed exercise conducted in this regard, they identified some unclaimed GDs (FED in sales tax mode) sales tax amount of Rs.88,501,852/- were not claimed/adjusted in their previous sales tax returns. Knowing this, they approached to FBR for condonation of the delay. FBR forwarded their request to LTO, Karachi for their comments who after examining the same, recommended their case for condonation, however FBR did not accept the recommendation and rejected the request vide letter dated 08.06.2021. The Complainant filed application for review with Member-IR (Operations) FBR vide letter dated 02.07.2021 which was again rejected by FBR vide letter dated 28.09.2021, hence, the instant complaint with prayer to direct the FBR to condone the delay; as requested by them on the grounds mentioned above.

3. 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, FBR vide letter dated 12.04.2022 forwarded the comments of LTO, Karachi submitted vide their letter dated 07.04.2022. It was averred that

Section 74 of the Sales Tax Act, 1990 empowers the Board to allow relaxation of time limit prescribed for any act or thing to be done within such time period as they may consider appropriate. By exercising aforesaid powers, the application of the complainant was examined in the Board and the same was rejected on merit and as per law. The operative part of the Board's letter dated 08-06-2021 is reproduced as under:

“You applied for condonation of time limit for filing sales tax revised returns for the aforesaid period on 29-10-2019 after lapse of over seven years with the flimsy reason that (during the transfer of data from old ERP to new ERP (SAP), it was observed that few transactions have not be transferred/ picked up due to voluminous transactions and record. Moreover, head office of M/s Unilever Pakistan was under construction and renovation was going on, hence the relevant record was not completely available due to construction/renovation work.” The reasoning is generic in nature and without any substance. The Hon'able Supreme Court of Pakistan in the case reported as (1980) 42 Tax 140 (S.C.Pak.) titled Commissioner of Sales Tax, Zone-A, Lahore Vs Chenab Textile Mills Limited, Lahore has held that “where a matter is barred by limitation, each and every day's delay must be explained before it can be condoned”. Also the Hon'ble FTO in complaint No.326/LHR/ST(71)1627/2012 has been pleased to hold that the delay should not be unduly protracted and some plausible explanation should be offered for the delay.” In the complainant's case, there was considerable delay in approaching the Commissioner, Inland Revenue and then when the delay was not condoned by him, there was a further period of inexplicable

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extended delay in approaching FBR for condonation. Reliance is also placed on the ratio of judgments in the cases of M/s Shahtaj Sugar Mills Limited Vs Additional Secretary, Government of Pakistan, Ministry of Finance, Karachi (2009 PTD 1544) and Complaint No. 359/KHI/ST(177)1242/2013 decided by the Hon'ble FTO".

4. It was further averred that on filing application for review with FBR, the matter was again examined by FBR but since it could not find any plausible reason for such long delay, therefore, the review application was rejected. The decision was made by FBR on its merit and as per law and keeping in view the Hon'ble Supreme Court of Pakistan's judgments and FTO's findings in the cases quoted above.

FINDINGS:-

5. Arguments heard and record perused. The departmental plea that the refund applications filed by the Complainant could not be entertained being time-barred has been examined in detail. The Hon'ble Supreme Court of Pakistan in its judgment reported as PLD 1998 SC 64 and this forum in a case reported as 2012 PTD 309, has held that the genuine refund could not be refused, even if, refund applications were filed late. Moreover, the fundamental rights as enshrined in Article 24 (1) of the Constitution of Islamic Republic of Pakistan, 1973 postulate that:

"No person shall be compulsorily deprived of his property save in accordance with Law".

In view whereof, the objection raised by the Deptt regarding limitation stands overruled, being misconceived.

RECOMMENDATIONS:-

6. FBR to:-

- (i). direct the concerned Commissioner-IR to dispose of the refund application of the Complainant, after providing him opportunity of hearing, as per law; and
- (ii) report compliance within 45 days.

*Approved for reporting
and press release*

Dated: 29 / 4 / 2022
gqSatti


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

Certified to be True Copy


Deputy Registrar
FTO Secretariat
Islamabad