

**THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

Review Petitions

Dated: 09.06.2023* R.O Gujranwala

in

**Complaint Nos.1356 TO 1361 &
1363 TO 1368/GWL/ST/2023**

The Secretary,
Revenue Division,
Islamabad.

...Petitioner

Versus

Mr. Muhammad Saleem,
Prop: M/s. Saba Kitchen Ware,
Link Mian Sansi, Sheikhpura Road,
Gujranwala.

...Respondent

Dealing Officer	:	Mr. Abdur Rehman Dogar, Advisor
Appraising Officer	:	Dr. Arslan Subuctageen, Advisor
Authorized Representative	:	Mr. HM Usman, Advocate
Departmental Representative	:	i) Mr. Arshad Cheena, Chief (Ops-Wing)
		ii) Ms. Naila Ashraf, Secretary-ST

ORDER-IN-REVIEW

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The Review Petitions (RPs) were filed by the Deptt under Section 14(8) of the Federal Tax Ombudsmen Ordinance, 2000 (FTO Ordinance) read with Section 13(1) of the Federal Ombudsmen Institutional Reforms Act, 2013 against Recommendations dated 05.05.2023 in C.Nos.1356 to 1361 and 1363 to 1368/GWL/ST/2023, which are reproduced as under:-

"12. FBR to-

(i) direct Member-IR (Operations) to revisit condonation order and condone the delay and to settle the issue of sales tax refund/ credit claimed resultantly becoming due, if any, for the relevant tax periods expeditiously; and

(ii) report compliance within 45 days."

2. The RPs were filed on the following grounds:

- a) The order in its para-05 states that the concerned CIR recommended the case for condonation of delay. In fact, the letter of the CIR dated: 30-09-2022 is on record which has unequivocally recommended the case for rejection. The said letter has neither been mentioned nor considered by the Hon'ble FTO during the proceedings.
- b) Article 189 of the Constitution of the Islamic Republic of Pakistan lays down that order of the Supreme Court of Pakistan is binding on all the subordinate courts. The Hon'ble FTO overlooked this vital aspect of the case that the Board's rejection letter was passed in pursuance of the said binding judgment of the Hon'ble Supreme Court of Pakistan.
- c) If the recommendation of the Hon'ble FTO is implemented; this shall render the provisions of Section 74 of the Act as redundant and superfluous. And superior courts of the country have, on numerous occasions, held that redundancy cannot be attributed to law.
- d) The Board had passed the order u/s 74 of the Act after due care & diligence and no maladministration could be attributed to such an order.
- e) The registered person had remedy of appeal in terms of Section 45B of the Act which he did not opt. The registered person has bypassed the available statutory appellate framework which courts always deprecate and it also falls outside the domain of FTO's jurisdiction.

3. The RPs were referred to the Respondent 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, AR of the Respondent submitted parawise comments dated 05.07.2023, wherein it is stated that the FBR had previously called a report in accordance with Circular No.02 of 2020 vide letter No. 2(9)ST&FERev2014/64440-R dated 21.05.2021 which instructed field formations to process Respondents' request for condonation of time limit under Section 74 of the Act. In compliance thereof, the CCIR/CIR forwarded a report vide letter bearing No. J-3(ST-Condonation)/2019-

20/483/J dated 27-07-2021 and C.No. ST-14(2021-22)Cond.Return/ Borad/ 92/Zone-II dated 14.07.2021 recommending the condonation of delay. The CCIR/CIR has attributed the necessity of the revision of sales tax returns to the legal glitches which were beyond the control of Respondent. While passing of order regarding rejection of condonation and filing RPs, the FBR ignored the said report / letter and has passed rejection order based on some subsequent report which was submitted by CCIR, RTO Gujranwala without confronting the Respondent.

4. Both the parties heard and record perused.

5. During course of proceedings, both the DR and AR reiterated the stance taken in the RPs and parawise comments. The issues raised by DR have already been taken care of in the Findings/Recommendations. No new fact has been brought on record. Briefly speaking from 1st July, 2019, sales tax refund procedure was changed and a new system, FASTER, was introduced to process and sanction exporters' refund expeditiously that requires completely different approach than the previously adopted manual system. The sales tax returns filed under FASTER was facing different problems as data of previously filed returns were not being matched. The major issue observed is that the refund claimed in previous returns before introduction of FASTER was not carried forward for processing in the FASTER. The Respondent approached RTO for resolution of the issue and revealed that revision of returns / Annexure-H were required for matching the data. To resolve the issue, the Respondent applied for condonation of delay in filing of sales tax returns but FBR refused to condone the delay in filing of sales tax returns.

6. While filing review petitions, following vital points have been

ignored by the Petitioner.

- a) It is not a simple case of condonation of delay in filing of return but in fact it is a case of revision of Annexure-H and resultantly amending the return already filed enabling the FASTER to carry forward the tax credit claim in the return for which RPO already stood issued.
- b) The problem faced is not because of any fault of the Complainant but in fact it was due to failure / glitches in the FASTER which has been admitted by the Board itself in its Circulars dated 07.12.2020 and 15.03.2023.
- c) The field formation i.e CIR / CCIR, RTO Gujranwala after examining the claim of the Complainant and realizing that problem arose because of glitches in the system and not of any fault of the Complainant vide letter C. No. ST-14(2021-22)Cond.Return/Board/92/ Zone-II dated 14.07.2021 and letter C.No.J-3(ST-Condonation)/2019-20/483/J dated 27.07.2021 recommended to the Board to allow revision of return as under:-

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"Before July, 2019, during processing of sales tax refund through RCPS, the carry forward of the previous RPO has to be incorporated in processing next sales tax refund. Since the introduction of FASTER Module lodged by FBR and implementation of Annexure-H from July-2019 onward, the carry forward amounting to Rs.7,409,557/- as per RPO No.20971/2020 dated 16.04.2020 for the tax period June-2019 should have been incorporated in sales tax return of July-2019 so as the same may be incorporated in Annexure-H as opening balance to claim correct sales tax refund on consumption basis in subsequent sales tax returns from July-2019 to June-2020. The applicant could not manually consider the carry forward on RPO to June-2019 in Annexure-H of sales tax return of the July-2019. Therefore, without opening carry forward of RPO of June-2019, the applicant could not properly be claimed sales tax refund in sales tax returns from July-2019 to June-2020".

Based on above observation, recommendations were made as under:-


"It is, therefore, requested that Board may consider the request of the registered persons and allow him to incorporate the carry forward of above mentioned RPO of June-2019 as well as permission may be granted to revise the sales tax returns for the tax periods from July-2019 to June-2020 in order to claim correct sales tax refund."

- d) Ignoring the said report, the Petitioner raised certain queries and statedly based on some subsequent report of the RTO (which was submitted without confronting the Complainant) rejected the request of condonation / revision of sales tax returns.
- e) Further in certain cases as discussed in the FTO's Order dated 05.05.2023 on similar grounds and some of the cases revision / condonation of returns was allowed whereas in the present case was refused which is clear cut discrimination.

7. In view of above, the simplistic view of the issue taken by the Petitioner i.e explaining each and every day is not well founded because return already stood filed and revision of the same was necessitated because of glitches in the FASTER, as admitted by the Petitioner twice i.e vide Circulars dated 07.12.2020 and 15.03.2023 and was beyond the control of Complainant. In nutshell, RPO generated vide No. 20971/2020 dated 16.04.2020 for an amount of Rs.7,409,557/- for the tax period June, 2019 is unaccounted for which needs revision / amendment of already filed return / Annexure-H.

8. The Petitioner has, therefore, failed to point out any mistake/error floating on the face of the record or discovery of new facts. The impugned Findings are, therefore, quite within the legal framework. The RPs are, thus, devoid of merit, hence, dismissed. Record of RPs be annexed with the complaints.


Director
 FTO Secretariat
 Islamabad


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

Dated: 25.8.2023
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Approved for Reporting