

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

Complaint No.1408/KHI/ST/2022

Dated: 13.04.2022^{*} R.O. Karachi

Mr. Muhammad Khalid,
Proprietor: M/s J.F.K International, ...Complainant
Suit No.31, 5th Floor, Textile Plaza, M.A. Jinnah Road,
Karachi.

V e r s u s

The Secretary,
Revenue Division, ...Respondent
Islamabad.

Dealing Officer	:	Mr. Manzoor Hussain Memon, Advisor
Appraising Officer	:	Mrs. Sarwat Tahira Habib, Sr. Advisor
Authorized Representative	:	Mr. Obayedullah Mirza, AR
Departmental Representative	:	Mr. Humayun Farooq, Senior Auditor, CTO, Karachi

FINDINGS/RECOMMENDATIONS

The above mentioned complaint was filed against the Chief Commissioner-IR, CTO, Karachi in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance), for not refunding the amount of tax claimed in the year 2003.

2. Precisely, Mr. Muhammad Khalid owner of M/s J.F.K International, Karachi is a commercial exporter of textile goods and was duly registered with the Sales Tax Deptt on 20.09.2002 bearing STRN 12-03-9999-413-28. During the course of business activity, he received orders from his buyers for export of blended bed sheets and polyester garments valuing USD 599,705/-. On receipt of orders, he placed the same on the local suppliers namely M/s Woven Point, Karachi, M/s Pearl Tex International, Karachi and M/s Weaving Knot, Karachi duly registered with

^{*} Date of registration in FTO Secretariat

respective Collectorates of Sales Tax of their jurisdictions. After getting the goods manufactured as per specifications, he got delivery of the goods from the supplier, shipped them to the buyer who after receipt of goods, transferred the amount of payment through banking channel. In monthly sales tax returns filed for the month of July, 2003, he showed export sales (zero rated supplies) of Rs.33,516,659/- and taxable purchases of Rs.37,615,695/- on which input tax of Rs.4,906,395/- was paid, the refund of which was required to be filed within one month in terms of Rule 9 notified vide SRO No.575(I)/2002 dated 31.08.2022 and the Deptt was required to sanction it within one month after submission of supportive documents in terms of Rule 7 of Sales Tax Refund Rules, 2002.

3. After a lapse of about one year from the date of submission of supportive documents, they received a letter dated 12.08.2004 from the Deputy Collector (II &P), Sales Tax House, Karachi stating therein that the enquiry was being conducted against some exporters/wholesalers on account of claiming refund against fake/flying invoices. It was further stated that he had claimed refund on the fake invoices issued by Mr. Abu Bakar to M/s Woven Point , Karachi (one of his supplier) and he was asked to surrender the refund amount already obtained. On receipt of the letter, they immediately responded vide letter dated 24.08.2004 intimating the Deptt that they were not familiar with the name of Mr. Abu Bakar and they had not entered into any contract for purchase of goods through him, rather they had purchased the same from the registered persons after verifying their profile on the FBR's portal; which was found satisfactory; as the suppliers were filing returns

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regularly and on time. Their Taxpayer Profile was also active and not suspended or blacklisted. They had also made payment against banking channel in terms of Section 73 of the Sales Tax Act, 1990. In case, the supplier had done anything contrary to the provisions of the Act, the action should be taken against him and not to the exporter. To satisfy the Deptt, he submitted all the record to them; which was audited by Mr. Shakeel Ahmed and Mr. Abdul Jabbar, Auditors and found it satisfactory. Subsequent to the completion of audit, he submitted a letter dated 16.06.2005 to the Assistant Collector (Audit) Sales Tax House, Karachi intimating him that the audit was completed and since nothing illegal was found on audit, therefore, the amount claimed by him as refund may be sanctioned.

4. Since despite various visits to the officers and issuing letters, the claim was not being sanctioned, he filed complaint with the FTO office; which was registered with No. 68/KHI/ST(15)/391/2010. The FTO issued its findings vide order dated 08.07.2010 wherein the following recommendations were made:

“4. For the past 7 years, the department has not been able to finally determine the exact modus operandi of the suppliers and of the Complainant. No concrete evidence has been produced to show that either it was a case of fake and flying invoices or that the export had not taken place. If such evidence is in the possession of the Department, the Complainant is yet to be confronted with it. On 20.05.2010, a communication to the Complainant was sent that his refund could not be accepted. However, this was done without affording him opportunity of being heard.

5. Maladministration is established on account of inattention and delay in giving response and not passing a speaking order.

6. and it was recommended to the respondent subordinates and its subordinate to:

“ensure proper examination of record, including report of investigation audit, and process the claim on merit, after affording opportunity of being heard to the complainant.”

5. It was further averred that instead of relying on the audit already conducted, they again started reinvestigating the case and called the documents. He again complied with the requirement and submitted the documents; but instead of processing the refund claim, Deputy Commissioner-IR issued show cause notice dated 14.10.2010 on the allegation that the claim of refund is based on fake/flying invoices issued by the persons whose sales tax registrations were either suspended or blacklisted. They submitted application in the office of the Adjudicating Officer with the request to provide them incriminating documents in support of the allegations leveled in the show cause notice so that reply be prepared accordingly. It was also requested to adjourn the case till the return of their consultant from Saudi Arabia who had gone to perform Umrah. Despite their request for adjournment, the Deputy Commissioner decided the case ex parte and passed Order-in-Original No.1/2010 rejecting the claim under the provision of Section 11(2) of the Sales Tax Act, 1990 read with Rule 37 of Sales Tax Rules, 2006 while holding the charges in the show cause notice as correct.

6. Since the Order-in-Original (ONO) No.1/2010 was contrary to the findings/decision of the FTO's office, they submitted application with FTO's office for initiating defiance proceedings against IR Officer. Since no defiance proceedings were initiated and the case was getting time barred, therefore, they filed appeal

