

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

COMPLAINT NOS.1587 to 1593/KHI/IT/2022

Dated: 23.04.2022¹ R.O. Karachi

Mr. Zeeshan Qureshi,

Tax Manager,

M/s. Diamond Fabrics Ltd,

Room No.173, Cotton Exchange Building,

Off I.I. Chundrigar Road,

Karachi.

... *Complainant*

Versus

The Secretary,

Revenue Division,

Islamabad.

... *Respondent*

Dealing Officer

: Ms. Seema Shakil, Advisor

Appraisal by

: Mr. Muhammad Tanvir Akhtar, Advisor

Authorized Representative

: Mr. Muhammad Siddiq counsel

Departmental Representative

: Mr. waqas Masood, DCIR, CTO, Karachi

FINDINGS / RECOMMENDATIONS

The above mentioned complaints were filed against the Commissioner-IR, Enforcement-I, LTO, Karachi in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance). Since issue involved is same in all the years, all 7 complaints are disposed of through a single consolidated order.

2. The Complainant is a private limited company engaged in the business of export of textiles. Returns of income were filed with refund claim on account of excess tax deductions. Complainant also paid WWF alongwith return. Based on the judgment of Supreme Court of Pakistan dated Oct 10, 2016 in Civil Appeal No. 1049 to 1055/2011 and complainant's Civil Appeal No. 935/2013, WWF become refundable. Therefore, complainant applied for rectification of order & refund of WWF already paid. The year wise

¹ Date of registration in FTO sect.

position of total refund applied, issued and balance outstanding is given hereunder;

Tax Year	Refund Amount	Refund issued/ Adjustment	Balance/Refundable
2009	7,893,870/-		7,893,870/-
2010	14,015,783/-		14,015,783/-
2011	15,274,460/-		15,274,460/-
2012	8,627,427/-	7,124,947/-	1,502,480/-
2013	56,451,360/-	46,591,744/-	9,859,616/-
2015	142,681,539/-	57,922,945/-	84,758,594/-
2016	110,951,153/-	48,947,649/-	62,003,504/-

Since the complainant failed to get any response of the department on his refund as well as, rectification applications, the instant complaints are filed.

3. The complaint was referred to the Secretary, Revenue Division for comments in terms of the FTO Ordinance read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act, 2013. In response, the Chief Commissioner-IR, LTO, Karachi submitted reply of CIR Enforcement-I, LTO Karachi vide letter dated 28.05.2022. It is submitted that partial refunds have already been issued to the complainant. Balance amounts are on account of WWF which will be issued after rectification by audit.

4. Both the parties were heard & record perused. The core issue in the instant complaint relates to Workers Welfare Fund. In a recent decision by this office it has already been held that WWF is a non-tax levy covered under The Workers Welfare Fund, Ordinance, 1971, and this levy is collected by FBR on behalf of Ministry of Labour. The said Ordinance clearly spells out its mode of payment, recovery and refund. This levy is rather an admissible business expense of the industrial establishment in terms of section 4(7) of WWF Ordinance, 1971. As far as refund of this

levy is concerned the Ordinance in question clearly spells out the following provision:

“Section 4 Mode of payment by, and recovery from, industrial establishments.—provides;

- (6) *Any amount paid by an industrial establishment under sub-section (3) which is found, on the basis of an order in appeal or revision under the Ordinance, to have been paid in excess shall be refunded to it by the Taxation Officer.”*

In view of above FBR and its field formations will have to consider the following;

- i. Record of all refunds of WWF and WWPF need to be separately maintained by IR field formations. While furnishing final MPR for the month of June of each FY, IR field formations must reflect the overall refund amount of WWF, if any, paid by them during the year,
- ii. This overall amount of refund of WWF communicated by IR field formations must be separately summed up by Secretary Revenue Budget, IR, FBR HQs.
- iii. The aforesaid accumulative amount of refunds of a non tax levy/WWF paid from revenue collection need to be adjusted at the time of final yearly adjustment of Federal Accounts.
- iv. In a recent decision this office has already held that any liability of WWF cannot be adjusted against determined tax refunds because only inter-tax/intra tax adjustment is covered under the law. FBR’s letter NO. 1(10)ST-L&PE/2020/64665-R dated 2th March, 2022 also holds the same view.
- v. Refund order u/s 170(4) of Income Tax Ordinance, 2001 covers only issuance of Tax refunds. Section 170(1) categorically states;

“A taxpayer who has paid tax in excess of the amount which the taxpayer is **properly chargeable under this Ordinance** may apply to the Commissioner for a refund of the excess”

Apparently refund of any non tax levy is not covered under the said section. If any such refund is to be issued than the order will have to be passed u/s 4(6) of WWF Ordinance, 1971.

FINDINGS:

5. Inordinate delay in disposing rectification applications tantamount to maladministration in terms of Section 2(3)(i)(a)(b)&(ii) of the FTO Ordinance.

RECOMMENDATIONS:

6. "FBR to direct-
- i) IR's Policy Wing to issue necessary clarification for all concerned;
 - ii) IR-Operations to develop SOP for WWF refunds;
 - iii) Commissioner-IR, Audit-I, LTO Karachi to dispose of complainant's rectification application expeditiously;
 - iv) Commissioner Enforcement-I, LTO Karachi to dispose of WWF refund after providing opportunity of hearing as per law; and
 - v) report compliance within 45 days.

Approved for reporting

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

Dated: *6th June* 2022
Akif
6.6.2022