

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

COMPLAINT NO.1974/ISB/ST/2022

Dated:24.05.2022* HQs ISD

M/S. Saya Weaving Mills,
Through **APTMA**
5th Floor, Evacuee Trust Complex,
F-5/1 Islamabad

... Complainant

Versus

The Secretary,
Revenue Division,
Islamabad.

... Respondent

Dealing officer	: Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representative	: Mr. Shahid Sattar, Secretary General, APTMA
	Mr. Azhar Raja, APTMA
Departmental Representative	: Ch. Muhammad Anwar, Chief (ST) IR, FBR Mr. Khalid Mehmood, SS (ST), FBR

FINDINGS/RECOMMENDATIONS

 The instant complaint has been filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) agitating delay, and highhandedness, arbitrary & unjust treatment of export concerns by Export Oriented Sector Registration Cell FBR; (ESRC), in processing of the cases of Export concerns for concessionary tariff regime.

BRIEF BACKGROUND:

2. The **Economic Coordination Committee (ECC)** of the Cabinet vide its decision in case No.ECC-434/59/2020 dated 02.12.2020, had directed Federal Board of Revenue, Ministry of Commerce and other stake-holders **to devise a standard operating procedure (SOP) for enrolment of Registered Persons under the export-oriented sectors (erstwhile zero-rated sectors) to qualify concessionary regime of electricity, RLNG and Gas tariff.** Accordingly, a meeting was held in FBR on 22.12.2020 and as a result through Circular NO 4 of 2020 a

detailed scheme was evolved for Export Oriented Sectors. Under this arrangement a designated cell i.e. Export-Oriented Sectors Registration Cell (ESRC) was established and mandated to examine the particulars and recommendations of the respective Associations and counter-verify particulars of the taxpayers including declarations in the registration profile etc.

ALLEGATIONS:


3. The said circular though provides that discrepancies spotted by ESRC during scrutiny/verification of data forwarded by concerned trade associations with the registration profile maintained by FBR, will be referred to field formation for ground check, report and recommendation, yet the complainant alleges that instead of expeditious processing of the claims of export concerns ESRC has indulged into an unauthorized exercise which tantamount to audit. The complainant's case was also delayed due to ESRC's extra legal letter dated 19th April, 2022, depriving the unit from its rightful under concessionary tariff regime. It was alleged that FBR has unilaterally and illegally extended the scope of ESRC to unauthorized desk audit in the applicant's units. It is alleged that ESRC instead of verifying particulars by concerned trade associations is acting as an audit forum, unnecessarily delaying the grant of concessionary tariff and creating harassment.

INVESTIGATION PROCEEDINGS:

4. In order to investigate the above referred allegations Notice u/s 10(4) was issued on 31st May, 2022 and FBR was asked to file reply/Para-wise comments by 15th June, 2022. FBR's reply/Para-wise comments were filed on 9th June, 2022 wherein the allegations were brushed aside and proceedings of ESRC were claimed to have been in line with letter and spirit of Circular NO. 4/2020 dated 30th December, 2020. In the light of complaint and Para-wise comments detailed queries were framed and shared with FBR to elicit their written response.

HEARINGS:

5. Detailed hearings have been conducted on 4th July, 18th July and 27th July, 2022. Both parties were fully represented and threadbare detailed discussions were held on the subject. During hearings the complainants vehemently reiterated their allegations and shared details of delay caused by ESRC in forwarding of their cases for to Ministry of Commerce, Government of Pakistan. They also agitated that during the time taken by ESRC they have to pay standard tariff which not only put an extra burden on exporters it reduces their competitiveness in the market as well. FBR's main contentions are summarized hereunder:

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- i. The Circular NO.4 binds the trade associations to forward the particulars after due verification along-with recommendations. However, cases generally as forwarded by the respective trade bodies/Association are not properly scrutinized.
 - ii. In order to ascertain the nature of business of applicants whether the taxpayer is engaged in manufacturing of goods falling under five export-oriented sectors or otherwise, registration profiles as well as tax profiles of applicants are scrutinized by ESRC on case-to-case basis. During scrutiny of sale/purchase data of goods, number of irregularities of wrong adjustment of input tax credit are identified and cases of such taxpayer are forwarded to respective field offices for initiation of proceedings under the law.
 - iii. That ESRC is not conducting any desk audit of applicants as the scope of desk audit is broader including verification of data from third party, bank statements etc. ESRC only scrutinizes the particulars as declared by the taxpayer with the FBR.
 - iv. There is no delay on the part of FBR in terms of cases where the taxpayer has been declaring his particulars accurately. The alleged delay being attributed to FBR is only in cases where out rightly inaccurate particulars/input tax credits are claimed by the taxpayer.

FINDINGS:

6. After detailed discussions following consensus findings come to the surface;

- i. Intent and rationale behind **Concessionary Tariffs regime** for export sectors:

Economic Coordination Committee of the Cabinet, is the highest governmental forum on economic issues. It is

constituted in terms of rule 17(2) of the Rules of Business, 1973, and normally it is headed by Minister for Finance and Revenue, with Ministers for Commerce, Industries & Production, National Food Security and Research and Minister for Planning, Development and Special Initiatives as members. This committee after an exhaustive meeting in 2020 had decided to evolve & enforce **Concessionary Tariffs regime** for major export sectors so as to ensure their competitiveness in the international market. Resultantly for an expeditious processing of the cases of qualifying units a special cell (ESRC) was formed at FBR. While doing it FBR's field formations, holding jurisdiction over cases of export units, qualifying under this regime were intentionally kept outside the recommendatory process. Instead concerned trade associations were engaged for initial identification of qualifying cases and then at FBR HQs an exclusive & designated Cell was created for expeditious processing. This intent of the premier policy making committee needs to be translated into a workable model shedding all inertia and bureaucratic formalism. ESRC is bound to strictly follow ECC's decision both in letter and spirit. Delay in processing on any pretext or excuse would defeat the national policy on exports.

- ii. Chances of incomplete or lopsided recommendations from the trade associations cannot be ruled out but in such cases corrective measures need to be evolved in **Fast Lane** and not through routine & time consuming official correspondence.
- iii. It has been observed that in a number of cases after removal of objections raised by ESRC the cases were recommended for concessionary tariff but delay caused in such cases took heavy toll of exporters as they had to suffer the burden of standard tariff during the period of pendency of case at ESRC.
- iv. Understandably this regime is exposed to the threats of mis-statements, mis-declarations and even tax fraud but such risks must not overshadow the underlying priority of ECC i.e. **expeditious processing of genuine cases**. Cases suffering from some procedural lapses and other discrepancies in return profile need to be shared with concerned field formations having legal jurisdiction & powers to address the said hazards through legal ways & means.
- v. Export Sector being lifeline for Pakistan's economy merits highest attention, compassion and care. By no means should it be hostage to any delay due to routine official rigmarole.

- vi. The instant case facts clearly indicates that while processing the case of Complainant ESRC has failed to conduct the proceedings in the spirit envisaged by ECC. ESRC instead of forwarding the case to Ministry of Commerce had referred the case of complainant to LTO Karachi on 19th April, 2022 and till 8th June, 2022 (date of filing of FBR's Para-wise comments) there was unabated delay. Ultimately this case was forwarded onwards on 22nd June, 2022 only after the intervention of this office. **Such a delay, inattention and ineptitude tantamounts to maladministration in terms of section 2(3)(ii) of FTO Ordinance, 2000.**

RECOMMENDATIONS:

7. FBR is directed to ensure that;
- (i) All cases, received by ESRC from trade bodies/associations are processed on **FAST TRACK**, conducting proceedings on **day-to-day** basis;
 - (ii) ESRC strictly confines itself to the dictates of Circular NO 4 of 2020, and processes the cases without any delay, forestalling any irretrievable loss to the exporters;
 - (iii) Discrepancies, if any observed by ESRC during the processing may be shared with the concerned field formations without delaying the process;
 - (iv) Cases of glaring Tax fraud may be shared with the concerned Trade bodies, IR field formations in a transparent and fair manner;
 - (v) Instead of indulging in time consuming correspondence ESRC must hold frequent consultative sessions & meetings with concerned Trade associations for expeditious processing; and
 - (vi) **Report compliance on monthly basis, on first Monday of each month.**

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

Dated: 29 - 7 - 2022

*Approved for reporting and
file*

Certified to be True Copy

Registrar
FTO Secretariat
Islamabad