

**BEFORE  
THE FEDERAL TAX OMBUDSMAN  
ISLAMABAD**

**Complaint No.2607/ISB/ST/2021**

Dated: 09.12.2021<sup>1</sup> R.O. Karachi

**M/s Millan Foods,**

WSA-07, Block-14, FB Area, Water Pump,  
Karachi

... *Complainant*

***Versus***

The Secretary,  
Revenue Division,  
Islamabad.

... *Respondent*

Dealing Officer	:	Mr. Manzoor Hussain Memon, Advisor
Appraising Officer	:	Mrs. Sarwat Tahira Habib, Advisor
Authorized Representative	:	Mr. Tariq Mehmmod Siddiqui, AR
Departmental Representative	:	Mr. Muhammad Hanif, AD RTO-I, Karachi

**FINDINGS / RECOMMENDATIONS**

The above mentioned complaint was filed against the Commissioner-IR, Zone-I, RTO-I, Karachi in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance), for inordinate delay in deciding application dated 5-10-2021 for allowing revision of sales tax returns for the months of June, July and August 2021.

2. Briefly, M/s Millan Foods Karachi, a manufacturer cum exporter bearing STRN 17003602918190 submitted sales tax return for the month of June, 2021 through e-FBR Web-portal but at the time of filing of the sale tax return, the complainant had feeding of unregistered exempt and taxable local sales invoices excluding value of exempt supplies of Rs 63487275 and taxable value of Rs 6,510,400/- sales tax Rs 651,040/- in Annexure-C. Due to its reason

<sup>1</sup> Date of registration in FTO Sectt

their sales tax return for the month of June, 2021 needed revision and with this revision their carry forward amount for the months of July and August, 2021 will be changed, therefore revision of returns for the months of June, July and August, 2021 was required. Under section 26(3) of the Sales Tax, 1990, a registered person with the approval of the concerned Commissioner may file a revised return within 4 months. In terms of the said provision of law, they filed application with the Commissioner within time for allowing revision but despite passing of more than two months period, they didn't respond to their request, hence the instant complaint with the prayer to direct the commissioner to allow them the requisite permission.

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, the Commissioner-IR, Zone-I, RTO-I, Karachi submitted comments vide letter dated 31-12-2021. It was averred that since the registered person failed to provide any evidence alongwith the application proving their claim based on the facts that such an amount has been transferred in the declared bank account; as required under section 73 of the Act and stock inward/outward gate passes or delivery documents or transportation documents, hence their request for permission to revise the returns was rejected vide letter dated 17-12-2021. It was further averred that the Federal Government enhanced the rate of sales tax from 10% to 17% on milk and withdrew exemption vide entry no.53 of the Sixth Schedule of the Act vide Finance Bill, 2021-22. Due to these changes in tariff, the complainant intended to include exempt supplies in the month of June, 2021 for the value of Rs 63,487,275/- to escape from

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payment of sales tax in the following months of July and August, 2021. They have issued him show cause notice under section 11(2) of the Act on 22-12-2021 for recovery of sales tax liability where proper opportunity of hearing would be provided to him to defend his case. It was prayed that since a show cause has been issued, the complaint may be rejected.

4. Hearings were held on 04.1.2022, 12.01.2022 and 19.01.2022. A.R. strongly agitated on rejection of their application by the Commissioner. He averred that the application was kept pending for ulterior motives, due to inordinate delay in deciding the matter, they filed the instant complaint. When the complaint was received from this Forum by the Commissioner, he immediately became active to punish them by rejecting their application on 17-12-2021 and issued them a show cause notice on 22-12-2021 which is based on presumptions and conjunctures without legal footings and not on facts. Further averred that all record required to be attached with the application was attached, stock inward/outward, gate passes etc are never required to be attached with the application, hence they didn't do so. Had they demanded, they would have provided the same to them. He also contended that they would defend their case by replying to the show cause notice and attending hearings before the adjudicating officer.

5. On the other hand DR averred that delay of 72 days in deciding the matter of permission was occurred due to the reason that since changes in tax rates were introduced and exemption withdrawn, there was apprehension of making changes in the sales tax record by the applicant, hence, the Deptt conducted their audit under section 38 of the Act after receipt of the application by visiting premises of the

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Complainant, conducted stock taking and scrutinized their sales tax record. Based on scrutiny, the complainant was prima facie found liable to recovery of Rs.95,340,123/- as a principal amount. Since the Complainant knew about their audit conducted under section 38 of the Act and was anticipating action for recovery of evaded/short paid amount of the tax, he filed complaint with this Forum to pressurize them. After completion of scrutiny of their record, the request for allowing revision of returns was rejected and a show cause notice under section 11 (2) of the Act was issued to the Complainant. He vehemently denied allegation of intentional delay for any motive.

6. Averments of both sides heard and the record examined. Proposed changes in Tariff introduced through Finance Bill remain proposals till bill is passed and converted into Act which takes effect from 1<sup>st</sup> July of the new financial year and not from the date of tabling the bill. In this case changes in tariff proposed in Finance Bill 2021-22 were effective from 1<sup>st</sup> July, 2021 i.e. after passing of the Bill and its conversion into the Act . It has no relevance with the revision of sales tax return for the month of June, 2021. Secondly allegation of an attempt to manipulate the record by showing taxable supplies of July and August, 2021 as exempted supplies in the month of June, 2021, while revising the returns is also baseless. DR's statement that department apprehended, that the complainant intended to show taxable supplies which remained undeclared in the return of June 2021 by entering them in there and pay tax thereon so that he can avail their carry forward in the months of July and August, 2021, does not carry weight. As if he intended to show taxable supplies of July and August as exempted supplies in the month of June, 20 to avoid payment of tax, how could he carry forward the amount; as no tax is

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paid on exempted supplies, hence this apprehension is found baseless and subject argument rather shows lack of basic understanding of sales tax law.

7. The application for permission for revision of return for the month of June, 2021 was filed on 5<sup>th</sup> Oct, 2021 within the permissible limit of 4 months. It remained pending till the instant complaint was filed with this Forum on 9<sup>th</sup> December, 2021 and received by the commissioner for comments on 14<sup>th</sup> December, 2021. On receipt of the complaint, he immediately rejected the application on 17<sup>th</sup> December, 2021 and got the show cause notice issued to the complainant on 22<sup>nd</sup> December, 2021 i.e before filing of the comments to this forum, due on 24<sup>th</sup> December 2021, prima facie to cover the mal-administration. Therefore this is a clear case of maladministration.

8. In view of supra, FBR is directed to:

- i). constitute a fact finding committee to examine the facts and legal issues involved, fix responsibility on account of inefficiency and misconduct on the part of the commissioner and initiate disciplinary action under the E & D Rules against him;
- ii). require the adjudicating officer to dispose of the case on merit and as per law by passing speaking appealable order after affording hearing opportunity to the Complainant to defend his case; and
- iii). Compliance report may be submitted within 45 days.

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

Dated: 9/2/2022  
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FTO Secretariat  
Islamabad

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