

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

COMPLAINT NOS. 2763 & 2764/KHI/IT/2021

Dated: 28.12.2021 R.O. Karachi

Mr. Muhammad Kashif, Managing Partner,
M/s. Artistic Apparels (Pvt) Ltd,
Plot No. 04, Sector-25, Korangi Industrial Area,
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. Mohsin Raza, AR
Departmental Representative	: Mr. Zeeshan, DCIR CTO, Karachi.

FINDINGS / RECOMMENDATIONS

The above mentioned complaints were filed against the Commissioner-IR, Enforcement-I, CTO, Karachi in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance). Since the two complaints have issue of identical nature, the same are disposed off through a single consolidated order.

2. The Complainant is a private limited company, engaged in manufacturing/export of textile, wearing apparels. The returns of income were filed with refund claims as tax deductions exceeded the admitted tax liability. Where after the deemed assessment order u/s 120 of the Income Tax Ordinance, 2001 (the Ordinance) were amended by the Additional Commissioner Audit-II u/s 122(5A) of the Ordinance. Complainant applied for refund which was created by Additional Commissioner Audit-II after passing the

amended order u/s 122(5A) of the Ordinance. In response, partial refund for both the years were issued as tabulated below.

Year	Refund claim	Refund issued	Balance/outstanding
2016	16,115,616/-	8,091,608/-	8,024,008/-
2017	23,641,747/-	10,515,890/-	13,125,857/-

The complainant approached the department for issuance of balance refund through various reminders. As the outstanding refund is not issued, hence this complaint.

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, CTO, Karachi submitted reply of CIR Enforcement-I, CTO, Karachi vide letter dated 20.01.2022. It is contended that the outstanding refund has not been issued for want of verification of tax credit u/s 65B of the Ordinance. This requires physical verification for which letter has been sent to complainant & he has asked for time of 07 days. Refund claims will be settled only after verification of tax credit. The complainant on the other hand is aggrieved as the tax credit was allowed by audit officer through amended order u/s 122(5A) of the Ordinance.

4. Both the parties were heard & record perused.

5. Perusal of order u/s 122(5A) of the Ordinance clearly show that issue of tax credit u/s 65(B) of the Ordinance has been thrashed out by audit officer during the proceedings u/s 122(5A) of the Ordinance. Copy of relevant extract of orders u/s 122(5A) of the Ordinance is reproduced for reference.

“In order to claim tax credit @ 10% of investment made in purchase of plant & machinery as provided in Section 65B(1) of the Income Tax Ordinance 2001, installation of plant, machinery & equipments is also required to be

verified. You are requested to explain the position supported by relevant details and documentary evidence so that the issue of the tax credit u/s 65-B of the Income Tax Ordinance, 2001 may be decided, accordingly. The reply furnished by the taxpayer has been examined in the light of details and documents provided including copies of G.D's, Bank LC and financial statement and found that taxpayer imported/purchased plant and machinery at Rs.76,398,278/-, which also tallied with the addition in plant & machinery shown in Depreciation schedule in audited financial statements. The taxpayer claimed tax credit at Rs.7,639,828/- u/s 65B of the Income Tax Ordinance, 2001 during the year on import/purchased of plant & machinery installed for the manufacturing purposes in its premises found tenable, hence no adverse inference drawn in this respect."

It is abundantly clear that one of the reasons for initiating proceedings u/s 122(5A) of the Ordinance by the Additional Commissioner Audit-II was verification of tax credit claimed u/s 65(B) of the Ordinance. It is also clear that the officer recorded his satisfaction regarding the taxpayer's claim when he gave the finding that the claim is tenable & no adverse inference is drawn. Now the enforcement officer processing the refund claim created by audit officer need physical verification for ascertaining the admissibility of tax credit u/s 65(B) of the Ordinance. If physical verification of installation of machinery was required as per law, then why the same was not done by the audit officer when he specifically dealt with the issue of tax credit.

FINDINGS:

- (i) The case was selected by Additional Commissioner Audit for audit/verification u/s 122(5A) of the Ordinance and he has finalized the proceedings without proper verification required as per law which is negligence, inefficiency & ineptitude.
- (ii) Subjecting the complainant to the drill of verification of the same issue twice tantamounts to maladministration

in terms of Section 2(3)(i)(a)(b)&(ii) of the FTO Ordinance.

RECOMMENDATIONS:

6. FBR to:-

- i) direct the Commissioner-IR, Enforcement-I, CTO, Karachi to dispose of the claim of outstanding refund as per law and after granting proper hearing;
- ii) inquire into the action of audit officer who through his **desk findings** practically blocked the material step in all such cases i.e. **Physical Verification** by Enforcement wing. This ineptitude in addition to exposing interest of revenue to ground hazards, has rather handed a cause of grievance to the taxpayer; and
- iii) report compliance within 45 days.

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

Dated: 8/3/2022
U.f

Certified to be True Copy
3/22
Registrar
FTO Secretariat
Islamabad