

**THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

Complaint No.3172/ISB/ST/2023

Dated: 02.06.2023* HQ Islamabad

Mr. Muhammad Mudasser ... Complainant
Office # 1, 3rd Floor, Islamabad Arcade,
G-11, Markaz, Islamabad

V e r s u s

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

Dealing Officer	: Mr. Muhammad Nazim Saleem, Advisor
Appraising Officer	: Dr. Arslan Subuctageen, Advisor
Authorized Representative	: Nemo
Departmental Representative	: Mr. Zahid Baig, SS (ST&FE-Policy), FBR, Isd Mr. Khalid Mehmood, (ST-L&P), IR-Ops, FBR, Isd Ms. Ayesha Saleem, Law Officer, PRAL, Isd. Mr. Ehsan Ullah Khan, Secretary, BDT-IT, FBR, Islamabad

FINDINGS/RECOMMENDATIONS

The above-mentioned complaint was filed in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against non-provision in the sales tax return to take care of the excess amount of sales tax paid inadvertently.

2. Briefly, as per Complainant, this is a general grievance regarding tax payers right. It has been observed that if any sales tax payment is paid in excess of the liability determined in the sales tax return; the excess amount is not shown as a refundable amount in the same return; (similar to what happens in the income tax return). Keeping on the same track, the excess payment is not shown as an adjustment in the subsequent period. Furthermore, there is no mechanism to correct the CPR amount if any excess amount is paid.

3. The complaint was referred to Secretary, Revenue Division, Islamabad, Member-IR (Policy), FBR, Islamabad and CEO, PRAL,

* Date of registration in FTO Sectt

Islamabad 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, Chief Manager-IR (Operations), PRAL Islamabad vide letters dated 19.05.2023 and 03.07.2023 has sent the report reproduced below:-

As per response received from Sales Tax Development Team, the sales tax return is working according to the formulas and business rules approved by FBR. The adjustment/refund of excessive paid amount within the sales tax return is not available. Furthermore, amendment in the CPR up to the extent mentioned in the Circular issued vide No. 1(2)-SS(BDT)18-CPR/280845-R dated December 30, 2019. All legal matters may be taken up with policy wing of FBR, P1.

As per response received from System Analysis & Design Team of PRAL, the automation of Refund adjustment u/s 66 of the Sales Tax Act, 1990 in the sales tax return, a ORE (CRF-IRIS-STRETM-99) was approved and developed. Copy of the approved GRE is enclosed for reference. However, during UAT, the domain team of EBR (ST-Operations) advised that the requirements need to be revised. The SA&D team is currently waiting for their response/guidance for how to allow refund adjustment u/s 66 in the ST & FE Return.

4. Second Secretary (ST-L&P) FBR, Islamabad vide letter dated 23.06.2023 has sent the following report:-

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In this regard it is submitted that, any amount of tax paid in excess of the amount actually payable can be claimed through refund u/s 66 of the Sales Tax Act 1990. Section 66 of the Act is reproduced for ready reference;

66. Refund to be claimed within one year.— No refund of tax claimed to have been paid or overpaid through inadvertence, error or misconstruction or refund on account of input adjustment not claimed within the relevant tax period, shall be allowed, unless the claim is made within one year of the date of payment Provided that in a case where a registered person did not deduct input tax within the relevant tax period, the commissioner may after satisfying himself that input tax adjustment is due and admissible, allow the registered person

to take such adjustment in the tax period as specified by the Commissioner

Keeping in view the above, taxpayer/complainant may be directed to apply for filing of refund u/s 66 of the Sales Tax Act, 1990 for excess payment, if any. However, the issue raised by the complainant regarding depicting of excessive payment in sale tax return is forwarded to IT Wing for consideration.

5. Hearing in the case was conducted on 05.07.2023 attended by Law Officer, PRAL, Islamabad, SS(ST-L&P), IR-Ops, FBR, Islamabad, SS (ST&FE-Policy), FBR Islamabad and Secretary (BDT-IT), FBR, Islamabad.

6. Second Secretary (ST-L&P), Federal Board of Revenue, Islamabad has sent second report dated 12.07.2023 reproduced below:-

I am directed to refer to Honorable FTO's letter C.No. 3 172/ISB/ST/2023 dated 21.06.2023 on the subject and to say that in the hearing dated 05.07.2023, FBR was directed to submit technical solution of the issue.

The main grievance as highlighted by the complainant is about non-appearance of excessive amount deposited against liability determined in the sales tax return. In this regard it is submitted that as per normal practice, after feeding data of sales in the sales tax return and uploading of input invoices, the system auto calculates the liability of the taxpayer for payment. The taxpayer can submit its return after depositing of due liability and uploading of CPR in the sales tax return. In case any overpayment is made, the same can be refunded through concerned field formation u/s 66 of the Act. Plea of the taxpayer that the excessive amount, if any, to be appeared in the sales tax return in a separate column is not practically possible. The sales tax return comprises various annexures and net effect of these annexures is reflected on the main page of return. The taxpayer has to fill the relevant annexure to calculate its actual liability in a particular tax period. The payment of due tax through CPRs are exhibited in the sales tax return for the purpose of record. So in normal practice, question of excessive payment of tax does not arises.

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Since the remedy is already available under the law for filing of refund of such overpayment, if any, giving an option of claiming excessive tax paid amount in return not only harm the spirit of law but also would open a window to the potential fraudsters to misuse the option by adjustment of amount paid/deposited in other field i.e. as arrears, penalties, default surcharge etc in the subsequent months. Besides, no such cases have been reported by field formations where excessive payment has been made.

Keeping in view the above, it is requested that the proposal of complainant may not be entertained and complaint may be rejected.

FINDINGS:

7. The policy Wing of Inland Revenue, FBR has taken contradictory position as detailed at para 4 and 6 supra. The Prevalent Sales Tax and Federal Excise online return form has following four parts;

- (a) Credits arising from Imports and domestic purchases
- (b) Debts on account of sales and exports
- (c) Calculation of liabilities and excess credit
- (d) Payments and Refunds

8. IT System automatically calculate tax payment liabilities in part (c) of return after adjustment of available credit in part (a) as per rules and regulations. Present return form provides breakup of Input Tax Credit in the form of

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- Adjustment against output tax liability,
 - Excess amount available for carry forward against unconsumed stocks and
 - Credit part available for refund against export/zero rate consumption.

9. However, as per the complainant there are instances of inadvertent excess payment when a taxpayer makes payment in bank through CPR in a process to settle the tax liability calculated by the automated system but meanwhile the tax liability in system is reduced either due to extra credit availability on account of compliance by his suppliers or buyers (ATL inclusion). Whereas, the return form will not

show this excess payment neither the CPR amount paid can be changed or sub divided. Hence this amount will not be available to adjust or claim. Thus, the taxpayer will be helpless even to prove and claim refund under section 66 as overpaid inadvertence or error or misconstruction case. FBR's failure to develop a system which should facilitate the common taxpayers in making tax compliance is tantamount to maladministration as defined in section 2(3)(i)(b) of the FTO Ordinance, 2000.

RECOMMENDATIONS:

10. FBR to direct;

- i) Member IT and PRAL to make necessary amendments in sales tax return form and add a calculation field for difference between Paid Amount and payable amount as "Excess Payment" in last empty column of return as illustrated below;

Head wise Payable			
Description	Code	Payable Amount	Paid Amount
B02341 - Sales Tax on Goods	100501	0	0
B02366 - Sales Tax on Services	100502	0	0
B02367 - FED in VAT Mode	100503	0	0
B02485 - FED Excluding Natural Gas	100504	0	0
B02501 - FED on Natural Gas	100505	0	0
B03085 - Petroleum Levy	100506	0	0
Total Amount Payable	100600	0	0
PCS Fee Payable	100507	0	0

- ii) The Excess Payment if any, shall be available for adjustment in subsequent tax period; and
- iii) report compliance within 45 days.

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

Dated: 8 : 8 : /2023

Approved for reporting