

**THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

COMPLAINT No.3739/QTA/IT/2023

Dated 03.07.2023 *R.O. Quetta

**M/s Quetta Electric Supply Company Limited
(Finance Director), QESCO,**

C/o Muhammad Muneeb, Advocate
Office 1-2, First Floor, Fateh Khan
Market, MA Jinnah Road, Quetta.

... Complainant

V e r s u s

The Secretary,
Revenue Division,
Islamabad.

... Respondent

Dealing Officer	: Mr. Tausif Ahmad Qureshi, Advisor
Appraisal Officer	: Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representative	: Mr. Muhammad Muneeb, Advocate
Departmental Representative	: Mr. Abdul Ghafoor, ACIR, RTO, Quetta

FINDINGS/RECOMMENDATIONS

The above complaint was filed in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 against the Chief Commissioner-IR, RTO, Quetta and other officers on account of failure to observe the conditions of Rule 210B(1) of the Income Tax Rules, 2002 with regard to recovery notices.

2. Briefly, the Complainant, QESCO, vide letter No. 5357/FD/QESCO dated 02.12.2021 sought refund/adjustment of the appeal effect of Rs. 572.481 million, but despite several reminders, the application is still pending for approval before the Commissioner-IR, RTO, Quetta. Despite pending application for refund/appeal effect, the Chief Commissioner-IR with malafide intent violated the mandatory requirements of sub rule (1) of Rule 210B and granted the approval for the issuance of the recovery notice under Section 140 of the ITO, 2001 and allowed the

Commissioner-IR and Assistant Commissioner-IR to initiate the coercive measures to attach their bank accounts without giving the appeal effect of the huge amount of Rs. 572.481 million. The Complainant has prayed that the Commissioner-IR may be directed to refund Rs. 572.481million, besides taking appropriate action against the Chief Commissioner-IR, Commissioner-IR and Assistant Commissioner-IR for violation of Rule 210B of the Income Tax Rules, 2002.

3. The complaint was referred for comments to the Secretary, Revenue Division, Islamabad in terms of Section 10(4) of the FTO Ordinance, 2000 read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act, 2013. The Commissioner-IR, RTO, Quetta submitted reply stating therein that the Appellate Tribunal-IR, Karachi vide Order No. STA/41/KB/2014, STA/42/KB/2014 and No. STA/42/KB/2014 dated 18.08.2014 remanded back the Sales Tax Orders-in-Original passed by the Deputy Commissioner-IR (Zone-I), RTO, Quetta vide Order-in-Original No. 03/2012 dated 03.01.2013, No. 02/2013 dated 25.10.2013 and No. 03/2013 dated 25.10.2013 for three tax periods for fresh consideration. Consequently, fresh Sales Tax Order-in-Original, after giving proper opportunity to the Complainant, was passed by the Deputy Commissioner-IR (Zone-I), RTO, Quetta vide Order-in-Original No. 02/2016 dated 01.12.2016 and the same was confirmed by the Commissioner-IR (Appeals). Consequently, the Complainant filed appeal before the Appellate Tribunal-IR, Karachi which vide Order No.STA/201/KB/2017dated 25.06.2018 annulled Order-in-Original No. 02/2016 passed by the Deputy Commissioner-IR (Zone-I), RTO, Quetta. Whereas, meanwhile the Department had recovered Sales Tax principal amount of Rs. 267.652 million adjudged vide Order-in-Original No. 03/2012 dated 03.01.2013 and Rs. 304.829 million vide

Order-in-Original No. 03/2013 dated 25.10.2013 (Aggregating to Rs. 572.481 million). The Department in compliance to the application of refund submitted by Complainant dated 03.02.2022 issued notice to the Complainant on 01.08.2023 for verification of refund, but the he failed to comply with the same. Refund of Sales Tax is not yet determined and that office has to give appeal effect order in compliance of ATIR, Karachi decision. For that, the Department has issued notice to the Complainant for provision of relevant documents vide notice No. ACIR/UNIT-VIII/ZONE-I/RTO/QTA/2023-24/1111 dated 01.08.2023. Further contended that pendency of refund is on the part of taxpayer now, as they have not complied with the notice dated 01.08.2023. Further recovery under Section 140 of ITO, 2001 was in consequence of Hon'ble Balochistan High Court decision dated 22.08.2022. The Commissioner prayed that the instant complaint being devoid of merit and substance may kindly be dismissed.

4. DR and Complainant attended hearing and averred to the same arguments given in their earlier statements. DR stated that the processing of refund is underway which would be finalized within two months.


FINDINGS:

5. From the available case record, contention of the Department and the arguments put forth during the course of hearing by both AR and DR, it has transpired as under:

- i. The order passed by the Department under Section 11 of the Sales Tax Act, 1990 vide No. 02/2016 dated 01.12.2016 had been annulled by the Appellate Tribunal Inland Revenue vide Order No. 201/KB/2017 dated 25.06.2018. Resultantly, the demand recovered of Rs. 572.481 million was refundable and the taxpayer had filed refund application vide No. 5357/FD/QESCO dated

02.12.2021 followed by reminder dated 03.02.2022 and 28.04.2023. As per Section 66 of the Sales Tax Act, 1990, the taxpayer was entitled to sales tax refund of Rs. 572.481 million within 90 days of the application filed by the registered person, which the Department has failed to do so. The relevant portion of Section 66 of the Sales Tax Act, 1990 is reproduced below:

"Provided further that the application or claim filed under this Section shall be disposed of within a period not exceeding ninety days from the date of filing of such application or claim."

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- ii. The Department has failed to process the refund application of the registered person within the stipulated time provided under Section 66 of the Sales Tax Act, 1990, which is tantamount to maladministration.
 - iii. In addition to above, the Department has also failed to fulfil its duties to pass appeal effect order within the stipulated time provided under Section 11B of the Sales Tax Act, 1990.
 - iv. The Department has proceeded to recover the income tax demand of Rs. 494.486 million through coercive measure under Section 140 of the Income Tax Ordinance, 2001 vide notice dated 07.06.2023, despite availability of sales tax refund in hand of Rs. 572.481 million. Rule 210B of the Income Tax Rules, 2002 clearly stipulates that the refund due to the defaulter is to be adjusted prior to approval being granted for action under Section 140 of the Income Tax Ordinance, 2001. Recovery through bank account attachment in violation of Rule 210B the Income Tax Rules, 2002 inserted vide S.R.O. 274(I)/2020 is also established as maladministration on the part of the Department in terms of Section 2(3)(i)(ii) of the FTO Ordinance, 2001.

RECOMMENDATIONS:

6. FBR to direct
 - (i) the Member (IR-Operations), FBR, Islamabad to take serious cognizance of violation of laws and rules mentioned in preceding para 6, and take necessary action accordingly;
 - (ii) the Chief Commissioner-IR, RTO, Quetta to ensure that the Commissioner-IR, RTO, Quetta allows appeal effect

and processes the sales tax refund application under Section 66 of the Sales Tax Act, 1990 as per law and after giving proper hearing within thirty days;

- (iii) the Chief Commissioner RTO Quetta to ensure that no further recovery is effected prior to settlement of aforesaid issues i.e. appeal effect and ST Refund; and
- (iv) report compliance within 45 days.


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

Dated: 5:9:2023

Approved for reporting