

**THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

Complaint No.4150/KHI/ST/2023

Dated: 21.07.2023* R.O. Karachi

M/s Vohra Safety Product (Pvt) Ltd,
STRN 3277876160775
Plot # 538, Sector 7A, Korangi Industrial Area,
Karachi.

... Complainant

V e r s u s

The Secretary,
Revenue Division,
Islamabad.

... Respondent

Dealing Officer	:	Mr. Badruddin Ahmad Quraishi, Advisor
Appraising Officer	:	Mr. Muhammad Nazim Saleem, Advisor
Authorized Representative	:	Syed Asim Shehzad, ITP
Departmental Representative	:	Mr. Adnan Jabbar, Second Secretary, FBR

FINDINGS/RECOMMENDATIONS

The above-mentioned complaint was filed in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against failure of the Deptt to condone time limit of filing of revised sales tax returns for tax periods May & June 2020 due to some omission to claim sales tax refund against export.

2. Precisely, the complainant is a private limited company registered as manufacturer of textiles products. As per complaint, the company did not claim sales tax refund claim against exports while filing sales tax returns for tax periods May & June 2020 due to mistake by non-technical staff. The complainant applied for revision of returns on 14.01.2022 under section 26(3) of Sales Tax Act 1990 (the Act). The Chief Commissioner CTO Karachi forwarded the request of the complainant to Board in terms of standard procedure laid down in Sales Tax Circular No.2 of 2020 / IR Operations dated 02.09.2020 read with section 74 of the Act being more than one year old. The Board vide letter dated 17.02.2022 rejected the condonation request

* Date of registration in FTO Sectt

due to alleged flimsy reason of non-technical staff. The Complainant submitted a review application which was forwarded by the Chief Commissioner but the Board vide letter dated 11.05.2023 rejected the review application stating that no review option is available under section 74 of the Act. As per complaint, the Board had earlier given approval for condonation of time limit to file annexure H for tax periods November 2019 to April 2020. The Complainant has received RPOs of Rs.1 against each tax period due to carry forward. But the rejection for condonation for revision of tax returns for May & June 2020 to incorporate sales tax refund claim against export and denying genuine eligible refund against exports by the Board was quite surprising, hence this complaint with the request to direct the Deptt to allow condonation to file the revised returns.

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. The Deptt failed to provide any written parawise comments.

4. Arguments heard and records perused.

5. It is observed that the complainant forgot to claim refund against export while filing sales tax returns for tax periods May & June 2020. This act of omission was due to ignorance of non-technical staff of the company engaged in filing of sales tax return. The complainant applied for revision of returns on 14.01.2022 under section 26(3) of Sales Tax Act 1990 (the Act) to correct the omission / wrong declaration which was forwarded to Board by the Chief Commissioner CTO Karachi being more than one year old in terms of standard procedure laid down in Sales Tax Circular No.2 of 2020 / IR Operations dated 02.09.2020 read with section 74 of the Act. The Board vide letter dated 17.02.2022 rejected the condonation request considering the reason of delay as

flimsy. The Complainant submitted a review application which was also rejected by the Board vide letter dated 11.05.2023 stating that no review option is available under section 74 of the Act.

6. The argument of the Board for not considering the review application is not based on legal ground in view of the section 21 of the General Clauses Act 1897 which states:

"21. Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules, or bye-laws - Where, by any (Central Act) or Regulations, a power to (issue notifications) orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and condition (if any), to add to, amend, vary or rescind any (notifications), orders, rules or bye-laws so (issued)."

7. While rejecting the condonation request, the Board relied on the judgment of honorable Supreme Court of Pakistan reported as (1980) 42 Tax 140 whereby it was stated that where a matter is barred by limitation, each and every day's delay must be explained before it can be condoned. The operative part of the Board's letter dated 11.01.2023 is reproduced as under:

" You applied for condonation of time limit for the aforesaid period on 30.12.2021 after lapse of over one year with the flimsy reason that "due to non-technical staff who has not enough knowledge they could not file the refund claim" which is not found plausible and generic in nature and without any substance. The Hon'able Supreme Court of Pakistan in the case reported as (1980)42 Tax 140 (S.C.Pak.) titled Commissioner of Sales Tax, Zone-A, Lahore Vs Chenab Textile Mills Limited, Lahore has held that "where a matter is barred by limitation, each and every day's delay must be explained before it can be condoned". Also the Hon'ble FTO in complaint No.326/LHR/ST(71)/627/2012 has been pleased to hold that the delay should not be unduly protracted and some plausible explanation should be offered for the delay." In the complainant's case, there was considerable delay in approaching the Commissioner, Inland Revenue and then when the delay was not condoned by him, there was a further period of inexplicable extended delay in approaching FBR for condonation. Reliance is also placed on the ratio of judgments in the cases of M/s Shahtaj Sugar Mills Limited Vs Additional Secretary, Government of Pakistan, Ministry of Finance, Karachi (2009 PTD 1544) and Complaint No. 359/KHIIST(177)1242/2013 decided by the Hon'ble FTO"

8. The departmental plea that the condonation for delay could not be entertained being time-barred has been examined in detail. The case quoted by the Deptt is distinguishable and it is in fact a decision

against the Deptt being a public servant organization for whom each and every day must be explained for condonation. Moreover, the Hon'ble Supreme Court of Pakistan in its judgment reported as PLD 1998 SC 64 and this forum in a case reported as 2012 PTD 309, has held that the genuine refund could not be refused, even if, refund applications were filed late. If one party under a mistake, whether of fact or law, paid some money to another party (which included a government department) which was not due by law or contract or otherwise, that must be repaid in view of section 72 of the Contract Act 1872. Where some money was received by the government not lawfully due, the plea of limitation by its departments was one which the court always looked upon with disfavor as it was violative of the principles of morality and justice. There might not be a legal liability on the part of the government functionary to refund any amount received by it as a Tax or other levy by virtue of certain special provisions under the special law but keeping in view that we lived in a democratic society governed by rule of law and every government which claimed to have ethical and moral values, must do what is fair and just to the citizens regardless of legal technicalities. As per Indo-Pak laws the fact that the amount of tax of which refund is claimed was voluntarily paid, does not preclude the right to claim refund, if it was not lawfully paid. Moreover, the fundamental rights as enshrined in Article 24 (1) of the Constitution of Islamic Republic of Pakistan, 1973 postulate that: "No person shall be compulsorily deprived of his property save in accordance with Law". It is the duty of the State to return what had been taken erroneously or wrongly and a democratic government can not take a plea of limitation to deny what is due to a citizen. These principles have been held recently by the Honouable President of Pakistan in a representation filed by the FBR in an identical situation in complaint # 1144/KHI/ST/0222 in the case of M/s Unilever Pakistan Foods Limited.



In view whereof, the objection raised by the Deptt regarding limitation stands overruled, being misconceived.

9. Further, it is interesting to note that the Board in the instant case had earlier given approval for condonation of time limit to file annexure H for tax periods November 2019 to April 2020. The Complainant has received RPOs of Rs.1 against each tax period due to carry forward. On the contrary, Board is now rejecting condonation for subsequent tax periods of May & June 2020 against its own principles set for earlier tax periods.

FINDINGS:

10. Rejecting the request of condonation of time limit for enabling the complainant to revise sales tax return for tax periods May & June 2020 in order to claim sales tax refund against export, in violation of Hon'ble Supreme Court of Pakistan in its judgment reported as PLD 1998 SC 64 tantamounts to maladministration in terms of section 2(3)(i)(a)(b) of FTO Ordinance.

Recommendations:

11. FBR to direct:

- (i) the Member (Ops) to revisit the decision of rejection of condonation in the light of discussions held in para 6 -10; and
- (ii) report compliance within 45 days.


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

Dated: 25-8-2023

Approved for reporting


Director
FTO Secretariat
Islamabad