

**THE FEDERAL TAX OMBUDSMAN  
ISLAMABAD**

**COMPLAINT NO.4965/LHR/ST/2022**

Dated: 11.11.2022 \* RO Lahore

**M/s Agritech Limited,**  
2<sup>nd</sup> Floor Asia Center, 8-Baber Block, ... Complainant  
New Garden Town, Lahore.

**Versus**

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

Dealing Officer	:	Ms. Adila Rehman, Advisor
Appraising Officer	:	Dr. Arslan Subuctageen, Advisor
Authorized Representatives	:	Syed Hammad Raza Zaidi, Advocate Ms. Irha Khalid
Departmental Representatives	:	Mr. Amjad Hussain Zada, Second Secretary (ST-Ops), FBR Mr. Abdullah Zulfqar, DCIR, LTO Lahore

**FINDINGS/RECOMMENDATIONS**

This Complaint was filed against the Second Secretary (ST-Operations), FBR Islamabad and Chief Commissioner-IR, LTO Lahore, in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance), for delay in disposal of Complainant's refund claims for the period July 2016 to November 2017 and December 2017 and subsequently rejection of condonation under Section 74 of the Sales Tax Act, 1990.

2. Precisely, facts of case, as narrated in Complaint, are that Complainant filed its sales tax returns for the tax periods mentioned above and claimed refund amounting to Rs.305.592 million (289.989 million and 15.602 million). As per Rule 28(1) of the Chapter V of the Sales Tax Rules, 2006 (the Rules), the time period specified under the Rules for submission of the requisite documents for refund claims was 120 days from the date of claiming of sales tax refunds in the tax return submitted through electronic portal of FBR. Above-mentioned claims were filed well in time,

\*Date of registration in FTO Sectt.

as evident from FBR portal and electronic claim receipts issued by the Department. Upon deliberate/intentional failure to process sales tax refunds, the Complainant approached the Hon'ble FTO for redressal of grievances through Complaint No. 2072/LHR/ST/2021 for processing of pending sales tax refund claims. The Hon'ble FTO issued directions to Department for processing of both refund claims within 45 days. After receipt of Findings/Recommendations from Hon'ble FTO, the FBR, in haste, rejected application of condonation for delay in filing of refund claims vide rejection letter dated 02.12.2021. Aggrieved with rejection, the Complainant filed review, vide letter dated 04.03.2022, to Member IR (Operations), requesting to withdraw rejection order issued u/s 74 of the Act by agitating the facts that the refund claims were timely filed electronically along with all supporting documents as per the Rule 28. Thereafter, the learned Advisor to FTO, vide letter dated 11.08.2022, addressed to Member-IR (Operations) to consider Complainant's contentions after providing the opportunity of being heard. It was regretfully submitted that the FBR, without providing an opportunity of being heard, once again rejected the so-called condonation application without giving due consideration to the facts, directions issued by learned Advisor to FTO and contentions of the Complainant that the refund claims had been timely filed within stipulated time available under the law. It was pertinent to mention here that the refund claims for the above-mentioned periods were filed on time, therefore, holding the complainant responsible for delay and not processing its lawful refund claims was tantamount to maladministration and injustice. In support thereof, Complainant was pleased to state that Superior Courts held that "a substantive right cannot be denied on technicalities. Complainant prayed that Second Secretary (ST-Operations) to withdraw un-warranted rejection letter issued in haste to meet revenue targets as refund claims were timely filed electronically along with all the supporting documents as per the rules well before 120

days. Further prayed that CCIR, LTO Lahore be directed to process/sanction the due refund to Complainant.

3. The Complaint was referred to 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. Member-IR (Operations) and Second Secretary did not submit their parawise comments. However, CCIR, LTO Lahore, vide letter dated 20.12.2022, submitted parawise comments, stating therein that for normal processing, first step was filing of refund claim as prescribed under Rule 28 of the Sales Tax Rules, 2006. RCPS data of claims was received through IT System, however, Complainant failed to submit the supportive documents as required under first proviso to Rule 28 read with Rule 38 of Rules within prescribed time period of 120 days which was extendable to further 60 days by CIR as per Rule 28(2) of the Rules. The time limit for filing of supportive documents in the subject refund claims and delay therein in tabulated form as under:

Tax period	Date of filing of ST return	Due date for filing of supportive documents	Delay till date of application to FBR for condonation i.e. 05.03.2019	Delay in filing of supportive documents till 19.12.2022
Nov-17	20.12.2017	19.04.2018	321 days	1833 days
Dec-17	18.01.2018	18.05.2018	292 days	1804 days

Refund claims could not be processed unless supportive documents were submitted after seeking condonation of delay in filing of such documents. The Complainant had requested the FBR vide its representative's (KPMG) letter No.LT-0592-19 dated 05.03.2019 that the concerned Commissioner-IR may be directed to condone the delay under Section 74 of the Sales Tax Act, 1990 read with SRO 394(1)/ 2009 dated 21.05.2009 as delay till its date of application was within one year (365) days. Whereas the Department had been of the view that the powers of Commissioner-IR for granting condonation of delay upto one year under SRO 394(1)/2009 were general in nature which was applicable in all cases except where powers

of CIR were specified to a certain number of days under the relevant provision of law & rules. Regarding filing refund claims, the provisions of Rule 28(2) of the Sales Tax Rules, 2006 endow/specify power of CIR to condone delay upto only 60 days. Therefore, instant matter of condonation fell under the jurisdiction of FBR. The Complainant had filed RCPS data of the subject refund claims within the prescribed time limit, however, it failed to file supportive documents (both in soft and hard form) within the prescribed time limit. The Complainant through AR's letter dated 04.11.2020 submitted the reason for the delay as "that omission was due to an inadvertent error and the applicant had no malafide with it". Furthermore, on this very issue, the Complainant filed complaint before the hon'ble FTO Lahore bearing Complaint No.0209/LHR/ST/2019 against the department for not processing the refund claims for the aforementioned tax periods. Interestingly, the Complainant later withdrew its complaint from the hon'ble FTO Lahore which was conveyed to the Department vide it's A.R.'s letter No. LT-1054-19 dated 12.03.2019. The hon'ble FTO, vide its order dated 21.03.2019, confirmed that the Complainant had withdrawn its complaint No.0209/LHR/ST/2019 from FTO. Later on, upon filing of another Complaint No. 2072/LHR/ST/2021 for processing of refund claims, the Department processed and sanctioned sales tax refunds amounting to Rs.475.215 million to the Complainant which had already been credited into the bank account of the Complainant. The instant Complaint i.e. 4965/LHR/ST/2022 had no nexus with the previous complaint i.e. 2072/LHR/ST/2021 since the instant complaint had been filed on the issue of rejection of condonation application for tax periods Nov 2017 & Dec 2017 by FBR whereas the previous complaint was filed on the issue of processing of sales tax refund claims. The Department had already processed and sanctioned refund claims in compliance of previous complaint i.e. 2072/LHR/ST/2021. The FBR, vide a speaking order dated 02.12.2021, had rightly rejected



condonation application of the Complainant since the Complainant had failed to provide cogent reasons for each and every day of delay in the light of directions of the hon'ble Supreme Court of Pakistan in case law reported as (1980) 42 Tax 140 (S.C. Pak) titled Commissioner of Sales Tax, Zone-A, Lahore vs Chenab Textile Mills Limited, Lahore wherein it held that "where a matter is barred by limitation, each and every day's delay must be explained before it can be condoned". Not only did the Complainant failed to file refund claims for tax periods Nov, 2017 & Dec, 2017 alongwith supportive documents both in soft as well as hard form within the statutory time period as given in Rule 28 of the Sales Tax Rules, 2006 but also completely failed to provide cogent reasons justifying the delay in filing of the said documents, which was clear negation of the directions of the hon'ble Supreme Court of Pakistan in case law mentioned supra. Department prayed for rejection of Complaint.

4. Both Complainant/DR attended hearing on 12.12.2022 and reiterated what had been mentioned in Complaint and parawise comments. DR further stated that complete documents were not submitted within due date whereas AR reiterated his stance that all documents had been submitted well in time and proof had already been furnished in this regard. Further, the Complainant had been pursuing the case with LTO Lahore and Member-IR (Operations) but did not receive any response. It was also pointed out that as per directions of learned Advisor to Hon'ble FTO dated 11.08.2022 the Member-IR was required to consider Complainant's submissions and provide them a hearing opportunity. As no one appeared from FBR's side, therefore, case was adjourned till 21.12.2022.

5. On 21.12.2022, ARs and DRs from FBR (Amjad Hussain Zada, Second Secretary) and LTO Lahore (Mr. Abdullah Zulfiqar, DCIR) attended hearing. The AR contended that after filing of claims alongwith

all supportive documents on 08.03.2018 in time, the Complainant, vide applications dated 05.07.2018, 31.07.2018, 27.08.2018, 12.09.2018 and 10.12.2018, approached CIR/DCIR, LTO Lahore for processing of refund claims but to no avail. The AR was questioned when claims were filed within time why the Complainant filed condonation application before CIR on 05.03.2019. The AR replied that there was no need for condonation on the ground that all claims were filed within time, however, condonation was applied on 05.03.2019 on instructions of the then concerned DCIR in meeting dated 05.03.2019 wherein it had been communicated to Complainant that application for sales tax refund had discrepancy due to non-provision of supportive documents as provided in Rule 28(1) of Chapter V of Sales Tax Rules 2006 it was further communicated that time period for filing of requisite documents for processing of sales tax refund had lapsed due to which it was necessary for Complainant to file application for condoning the delay under Section 74 of the Sales Tax Act, 1990. The CCIR, LTO Lahore, vide letter dated 21.07.2019, forwarded the report of CIR, Zone-II, LTO Lahore dated 20.07.2019 to FBR recommending therein that *“as the claimant had filed RCPS data of the subject refund claims within the prescribed time limit, therefore, the request for condonation of delay in filing of supportive documents seems plausible and the same is proposed to be acceded to if deemed appropriate”*, The AR requested that FBR may be directed to revisit rejection order dated 02.12.2021 and rejection order on review dated 02.11.2022 and condone delay, if required. The CIR, Enforcement-1, LTO Lahore be also directed to process/sanction Complainant’s long pending refund claims

6. The DR (Second Secretary) submitted that if there was no delay then why did the Complainant apply for condonation. The DR (DCIR) submitted that a number of documents were missing. DR was instructed to give a list of missing supportive documents, dates and relevant rules.

DR was questioned that, on receipt of Complainant's requests dated 05.07.2018, 31.07.2018, 27.08.2018, 12.09.2018 and 10.12.2018 for processing of refund claims, did the Department inform the Complainant about deficiency/discrepancies of documents. DR replied that no action was taken on Complainant's above-mentioned requests for refund and agreed that, on this aspect, the Complainant should have been informed regarding submission of incomplete documents/record. The DR further submitted that the Department cannot ignore the condonation issue, rejection and review rejection.

7. Arguments of both sides heard and record perused. Perusal of record reveals that the Complainant applied for sales tax refund alongwith supportive documents for the period July 2016 to November 2017 and December 2017 on 27.02.2018 and 08.03.2018. Later on, Complainant, vide applications dated 05.07.2018, 31.07.2018, 27.08.2018, 12.09.2018 and 10.12.2018, approached CIR/DCIR, LTO Lahore for processing of refund claims but neither the Department processed refund claims nor requisitioned any documents from Complainant. It is observed that when the Complainant approached the Department for processing of refund claims why was the Complainant not informed regarding missing documents. There was basically no need to apply for condonation. However, the Complainant applied for condonation of time limit but the FBR, vide Order dated 02.12.2021 and 02.11.2022, rejected condonation application of Complainant in view of Hon'ble Supreme Court of Pakistan's Order reported as (1980) 42 Tax 140 (S.C. Pak) by ignoring the facts that the Complainant continuously approached the Department for processing of refund claims to which there was no response from the Department.

8. Further, it is a settled principle of law that right of a taxpayer cannot be denied on the plea of limitation or on any other technical plea

as held by the Supreme Court of Pakistan in judgment **PTCL 1998 CL. 354** as under:

*“the denial of refund of the amount involved, would be violative of Article 24(1) of the Constitution which lays down that “no person shall be deprived of his property save in accordance with law”.*

*“latest judicial trend is to deprecate and to discourage withholding of a citizen’s money by a public functionary on the plea of limitation or on any other technical plea if it was not legally payable by him”.*

Considering the above, there is no justification for the Deptt. to withhold the refund. The CIR, Enforcement-1, LTO Lahore should have processed Complainant’s refund claims in time or requisitioned the missing documents from Complainant, if required but failed to do so.

### **FINDINGS:**

9. In view of supra, the findings are as under:
- (i) Inordinate delay on behalf of LTO Office in processing of Complainant’s refund claims for the periods mentioned above is tantamount to maladministration in terms of Section 2(3)(ii) of the FTO Ordinance, 2000;
  - (ii) Rejection of condonation by Second Secretary (ST-Operations), FBR Islamabad by ignoring the actual facts of the case is also tantamount to maladministration.

### **RECOMMENDATIONS:**

10. FBR to:-
- (i) direct Member-IR (Operations) to revisit condonation orders and condone the delay, and
  - (ii) direct CIR, Enforcement-1, LTO Lahore to process Complainant’s long pending refund claims, as per law; and
  - (iii) report compliance within 45 days.

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

Dated: 3/2/2023

KA

Approved for reporting