



FEDERAL TAX OMBUDSMAN SECRETARIAT

C.No.0945/LHR/ST/2021

Dated: 26-07-2021

To,

The MIS Manager,
FTO, Secretariat,
Islamabad.

Copy of Findings/Recommendations in C.No.0945/LHR/ST/2021 is enclosed for uploading the same on the website.


(Arshad Mahmood Cheema)

Registrar

Federal Tax Ombudsman Secretariat
Islamabad
051-9214348

Encl: As above

Copy to:

1. Secretary to FTO
2. Office copy

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

Complaint No.0945/LHR/ST/2021

Dated: 20.05.2021 * R.O Lahore

M/s Millat Tractors Limited,
8.8 KM, Sheikhpura Road,
Shahdara, Lahore.

... Complainant

Versus

The Secretary,
Revenue Division,
Islamabad.

... Respondent

Dealing Officer	:	Mr. Fazal Yazdani Khan, Advisor
Appraisal Officer	:	Mr. Shahid Ahmad, Advisor
Authorized Representative	:	Mr. Barrister Hassan Akhtar, Advocate
Departmental Representatives	:	Mr. Aftab Alam, CIR, LTO, Lahore
	:	Mr. Hassan Mabroor, DCIR, LTO Lahore

FINDINGS / RECOMMENDATIONS

The above-mentioned complaint was filed against the Commissioner-IR, Enforcement Zone, LTO, Lahore in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) for failing to settle eight refund claims amounting to Rs.3027.676 million, for various tax periods from May 2020 to February 2021 and illegal initiation of pre-refund audit under Rule 30 of the Sales Tax Rules, 2006 (the Rules).

2. Precisely, the Complainant a manufacturer of agricultural tractors, filed refund claims for various tax periods from May 2020 to February 2021, as per procedure laid down in the Refund Claims of Recognized Agricultural Tractors Manufacturers Rules, 2012 (RATM Rules) issued vide SRO 363(I)/2012 dated 13.04.2012. The Complainant submitted refund applications along with prescribed documents according to the RATM Rules. The Deptt was required to allow refund within three days of the receipt of refund application

under Rule 2 of the RATM Rules. However, the said claims were forwarded to the Audit Zone to conduct a pre-refund audit under Rule 30 of the Rules, hence, the instant complaint.

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. In response thereto, the Chief Commissioner-IR, LTO, Lahore vide letter dated 03.06.2021 forwarded Para-wise comments of the Commissioner-IR, Enforcement Zone-II, CTO, Lahore dated 03.06.2021. It was contended that during processing of refund claims on the basis of the available record, various violations were observed i.e. the Complainant was involved in making supplies other than zero to the next period whereas he claimed refund for April-2020, May-2020, July-2020, August-2020, Oct-2020 Nove-2020 Dec-2020 and Feb-2021, which was never carried forward to the next period. The Complainant had not filed Annexure-H, as required under the law.

4. In the instant case, the CORE reason for the creation of sales tax refund includes taxable supplies to be made on the conditions that the agriculture tractors would only be used exclusively for agriculture purposes. However, from the record available with the department, it revealed that the said provision had not been followed. No concrete evidence was available that the said supply of tractors was actually made to the persons exclusively involved in agriculture. It was added that the tractors supplied by the complainant are being used for transporting bricks, sand and soil (Mitti) across the country. Thus, being a mass supplier of taxable tractors at a reduced rate of 5% to sectors other than agriculture created an illegal claim of excess input tax against supplies which have to be supplied 17% under Section 3(1) of the Sales Tax Act, along-with further tax under Section 3(1A) of

the Act. Further, this aspect of the use of tractors for commercial purposes other than agricultural had never been subjected to any audit before, due to which refund claims could not be sanctioned. As the excess input tax in those refund claims was prima facie inadmissible, therefore, before sanctioning the claims, a pre-refund audit as per law, was considered necessary. The contention of the Complainant that claims were to be processed under SRO 363(I)/2012 dated 13.04.2012, was misconceived as the claims were filed under Section 10 of the Sales Tax Act, 1990 (the Act). It was further contended that serious violations were observed in the refund claims, therefore, the same could only be detected and rectified after conducting investigative audit as required under the provisions of Section 10 of the Act, read with Rule 30(3) of the Rules, thus, no maladministration was committed by the Deptt.

5. Argument heard and record perused.

6. It is clear from record that SRO.363(I)/2012 dated 13.04.2012, notifies specific rules for the processing of "*Refund Claims of Recognized Agricultural Tractor Manufacturers Rules, 2012*". The procedure has been simplified, in which three documents as detailed in clause 2 of the SRO referred to above and rule 2 of the Rules, 2021 have been specified to be filed by the refund claimant, along with the refund application, based on which, the refund of admissible excess input tax shall be allowed within three days. The SRO also contains provisions for post refund audit in the later rules.

While referring to clause-3 of SRO, the CIR contended that sanctioning of refund was subject to its admissibility. Added that refunds on account of concessionary rate of 5% in terms of entry at S. No 25 of the eighth schedule to Sales Tax Act, 1990 were subject to the condition that the tractors were used exclusively for agricultural

purposes and that pre-refund audit was necessary in order to confirm this fact. No such condition has been mentioned in the said SRO. Further definition of Agricultural Tractor has neither been provided in the Rules nor in the SRO. Before the instant case, since the issuance of Rules of 2012, this objection regarding definition of Agricultural Tractor had neither been raised nor explained afterwards by the FBR. The purpose of the said Rules is to provide expeditious and prompt sanctioning of refunds to the Tractor Industry, subject to provision of revolving bank guarantee and strict compliance of clause 4 of the said SRO. The law does not create any distinction with regard to end use of the tractors, once supplied by the manufacturer. The contention of CIR has no force as clauses 4 & 5 of the said SRO, make everything clear and leave no room for any delay in disposal of refund application filed under clause-2 of the SRO. The said SRO also makes it abundantly clear that there can be no pre-refund audit in such cases. There is a provision for post-refund audit only.

One of the reasons behind this relaxation to the manufacturers of the Agri-Tractors is that the refund can be issued subject to the filing of "revolving bank guarantee" as required in clause 2(c) of the SRO referred to above. The Dept'l contention that as the SRO does not override the general refund rules, therefore, it could delay payments on account of conducting pre-refund audits, in the cases filed under the said SRO. The said contention does not hold force for the reason that by doing so, it would cause "*Refund Claims of Recognized Agricultural Tractor Manufacturers Rules, 2012*" redundant.

Moreover, the special rules framed for the purpose shall take precedence over the general rules. The Rules allow the department to conduct post-refund, rather than pre-refund audits. It is thus, clear that conduct of pre-refund audit and delay in settlement of refund within 3

days of filing of claim, by the Deptt, is against the rules and procedure, amounting to maladministration.

Findings:

7. Delay in settlement of refund within three days of refund application, filed under SRO.363(I)/2012 dated 13.04.2012, being violative of substantive provisions of the rules and procedure is tantamount to maladministration, in terms of Section 2(3)(i)(a) &(ii) of the FTO Ordinance.

Recommendations:

8. FBR to direct the Chief Commissioner-IR, LTO, Lahore to-
- (i) process and settle the due refund to the Complainant as per law as contained in the Refund Claims of Recognized Agricultural Tractors Manufacturers Rules, 2012 notified vide SRO 363(I)2012 dated 13.04.2012;
 - (ii) for future application, FBR may recommend to the Govt. to define the term "Agricultural Tractors" in column 5 of Table-1 of Eighth Schedule to the Sales Tax Act, 1990, against S. No. 25, in case it intends to restrict the exemption beyond 5% to some specific use of tractors (agriculture purpose); and
 - (iii) report compliance within 45 days.

Dated: 16/7/2021
K.A/HUK

(Mushtaq Ahmad Sukhera)
Federal Tax Ombudsman

Certified to be True Copy

Registrar
FTO Secretariat
Islamabad

