

THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

Complaint No.1333/HUB/ST/2023

Dated: 10.03.2023* R.O. Karachi

Mr. Muhammad Hanif Shah, Proprietor,
M/s Sanabil Waxes Co.
Plot # C-85-91, Sector-C,
H.I.T.E Hub District Lasbella

... *Complainant*

V e r s u s

The Secretary,
Revenue Division,
Islamabad.

... *Respondent*

Dealing Officer	:	Mr. Badruddin Ahmad Quraishi, Advisor
Appraising Officer	:	Dr. Arslan Subuctageen, Advisor
Authorized Representative	:	Mr. Ghulam Abbas, ITP
Departmental Representative	:	Mr. S.M. Javed, IRAO, RTO-1 Karachi

FINDINGS/RECOMMENDATIONS

The above-mentioned complaint was filed in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against Commissioner-IR, RTO, Quetta, regarding failure of the Deptt to condone time limit for filing of sales tax refund claim for tax period July 2015 & April 2016.


2. Briefly, the complainant is an individual proprietorship engaged in manufacturing, local supplies and export of 'Slac Wax'. As per complaint, the complainant went to file sales tax refund claim for tax periods July 2015 & April 2016 (soft copy as well as hard copy) well in time but the concerned person was not available at his desk and his staff colleague took the data without giving any receipt. Meanwhile due to death of wife of the complainant, severe accident of his son and heart surgery of the complainant himself, the complainant could not follow the case properly and the department (Deptt) misplaced the refund claim files. At last, the

* Date of registration in FTO Sectt

complainant arranged new refund claim files but by that time, the Deptt raised the issue of condonation of delay in time for which the complainant filed an application for condonation on 16.10.2021 followed by reminders dated 06.12.2021, 20.01.2022, 08.06.2022 and 23.06.2022. However, getting no response from the Deptt, the complainant lodged complaint before this forum and the following recommendation was made vide order dated 04.11.2022 in complaint # 4093/KHI/ST/2022:

“FBR to direct:-

- i) Commissioner-IR, Zone-II, RTO Quetta to forward request of the complainant to FBR for condonation of delay in time in submission of claims on humanitarian and compassionate grounds as well as in the light of Hon’ble Supreme Court of Pakistan’s Judgment referred above;
- ii) Commissioner-IR, Zone-II, RTO Quetta to process and dispose of claims on merit and as per law, after receipt of condonation of delay in time from FBR; and
- iii) Report compliance within 45 days”


The Commissioner Zone-II, RTO Quetta vide letter dated 21.11.2022 in compliance to above said recommendation sent a report to FBR recommending condonation of time limit. FBR raised certain queries which was replied accordingly by the Commissioner vide letter dated 26.12.2022 concluding that the office had no objection if the Board granted approval for filing of documents. However, despite recommendation from the Commissioner, FBR vide letter dated 11.01.2023 rejected the condonation request; hence this complaint with the request to direct FBR to allow condonation in the light of Honorable Supreme Court decision reported as PTCL 354 of 1998 (M/s Pfizer Laboratories Ltd Vs Federation of Pakistan)

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, Commissioner IR, Zone-II, RTO Quetta vide letter dated 11.01.2023 submitted comments stating that the Board vide letter dated

11.01.2023 rejected the condonation of time limit for filing documents/ data for refund of sales tax under section 74 of the Sales Tax Act 1990, hence the refund claim could not be entertained by the field office.

4. Arguments heard and records perused.

5. It is observed that the Commissioner Zone-II, RTO Quetta vide letter dated 21.11.2022 & 26.12.2022 recommended condonation of time limit for filing of refund, stating in clear terms that the office had no objection if FBR grants approval for filing of documents. However, despite recommendation from the Commissioner, FBR vide letter dated 11.01.2023 rejected the condonation request. While rejecting the condonation request, the Second Secretary (ST-Operations) 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:

 "The RP applied for condonation on 16-10-2021 after lapse of over six years. As per his correspondences dated January 20th 2022 following reasons were shared such as receiving life threats from criminals, hospitalization of son and his own hospitalization due to corona positivity. 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 FTC 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"

6. The departmental plea that the condonation for delay in filing refund claims could not be entertained being time-barred has been examined in

detail. The case cited 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 dis-favour as it was in violation 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 cannot 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 thereof, the

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

FINDINGS:

7. Rejecting the request of condonation of time limit enabling the complainant to file sales tax refund claim for tax periods July 2015 & April 2016 in violation of Hon'ble Supreme Court of Pakistan's judgment reported as PLD 1998 SC 64 tantamount to maladministration in terms of section 2(3)(i)(a)(b) of FTO Ordinance.

Recommendations:

8. FBR to direct:
- (i) the Member-IR (Ops) to revisit the decision of rejection of condonation dated 11.01.2023 in the light of discussions held in para 6 supra; and
 - (ii) report compliance within 45 days.


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

Dated: 5.5 /2023

Approved for reporting