

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

Complaint No.1408/KHI/ST/2022

Dated: 13.04.2022^{*} R.O. Karachi

Mr. Muhammad Khalid,

Proprietor: M/s J.F.K International,

Suit No.31, 5th Floor, Textile Plaza, M.A. Jinnah Road,
Karachi.

...*Complainant*

V e r s u s

The Secretary,
Revenue Division,
Islamabad.

...*Respondent*

Dealing Officer	:	Mr. Manzoor Hussain Memon, Advisor
Appraising Officer	:	Mrs. Sarwat Tahira Habib, Sr. Advisor
Authorized Representative	:	Mr. Obayedullah Mirza, AR
Departmental Representative	:	Mr. Humayun Farooq, Senior Auditor, CTO, Karachi

FINDINGS/RECOMMENDATIONS

The above mentioned complaint was filed against the Chief Commissioner-IR, CTO, Karachi in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance), for not refunding the amount of tax claimed in the year 2003.

2. Precisely, Mr. Muhammad Khalid owner of M/s J.F.K International, Karachi is a commercial exporter of textile goods and was duly registered with the Sales Tax Deptt on 20.09.2002 bearing STRN 12-03-9999-413-28. During the course of business activity, he received orders from his buyers for export of blended bed sheets and polyester garments valuing USD 599,705/-. On receipt of orders, he placed the same on the local suppliers namely M/s Woven Point, Karachi, M/s Pearl Tex International, Karachi and M/s Weaving Knot, Karachi duly registered with

^{*} Date of registration in FTO Secretariat

respective Collectorates of Sales Tax of their jurisdictions. After getting the goods manufactured as per specifications, he got delivery of the goods from the supplier, shipped them to the buyer who after receipt of goods, transferred the amount of payment through banking channel. In monthly sales tax returns filed for the month of July, 2003, he showed export sales (zero rated supplies) of Rs.33,516,659/- and taxable purchases of Rs.37,615,695/- on which input tax of Rs.4,906,395/- was paid, the refund of which was required to be filed within one month in terms of Rule 9 notified vide SRO No.575(I)/2002 dated 31.08.2022 and the Deptt was required to sanction it within one month after submission of supportive documents in terms of Rule 7 of Sales Tax Refund Rules, 2002.

3. After a lapse of about one year from the date of submission of supportive documents, they received a letter dated 12.08.2004 from the Deputy Collector (II & P), Sales Tax House, Karachi stating therein that the enquiry was being conducted against some exporters/wholesalers on account of claiming refund against fake/flying invoices. It was further stated that he had claimed refund on the fake invoices issued by Mr. Abu Bakar to M/s Woven Point, Karachi (one of his supplier) and he was asked to surrender the refund amount already obtained. On receipt of the letter, they immediately responded vide letter dated 24.08.2004 intimating the Deptt that they were not familiar with the name of Mr. Abu Bakar and they had not entered into any contract for purchase of goods through him, rather they had purchased the same from the registered persons after verifying their profile on the FBR's portal; which was found satisfactory; as the suppliers were filing returns

regularly and on time. Their Taxpayer Profile was also active and not suspended or blacklisted. They had also made payment against banking channel in terms of Section 73 of the Sales Tax Act, 1990. In case, the supplier had done anything contrary to the provisions of the Act, the action should be taken against him and not to the exporter. To satisfy the Deptt, he submitted all the record to them; which was audited by Mr. Shakeel Ahmed and Mr. Abdul Jabbar, Auditors and found it satisfactory. Subsequent to the completion of audit, he submitted a letter dated 16.06.2005 to the Assistant Collector (Audit) Sales Tax House, Karachi intimating him that the audit was completed and since nothing illegal was found on audit, therefore, the amount claimed by him as refund may be sanctioned.

4. Since despite various visits to the officers and issuing letters, the claim was not being sanctioned, he filed complaint with the FTO office; which was registered with No. 68/KHI/ST(15)/391/2010. The FTO issued its findings vide order dated 08.07.2010 wherein the following recommendations were made:

"4. For the past 7 years, the department has not been able to finally determine the exact modus operandi of the suppliers and of the Complainant. No concrete evidence has been produced to show that either it was a case of fake and flying invoices or that the export had not taken place. If such evidence is in the possession of the Department, the Complainant is yet to be confronted with it. On 20.05.2010, a communication to the Complainant was sent that his refund could not be accepted. However, this was done without affording him opportunity of being heard.

5. Maladministration is established on account of inattention and delay in giving response and not passing a speaking order.

6. and it was recommended to the respondent subordinates and its subordinate to:

“ensure proper examination of record, including report of investigation audit, and process the claim on merit, after affording opportunity of being heard to the complainant.”

5. It was further averred that instead of relying on the audit already conducted, they again started reinvestigating the case and called the documents. He again complied with the requirement and submitted the documents; but instead of processing the refund claim, Deputy Commissioner-IR issued show cause notice dated 14.10.2010 on the allegation that the claim of refund is based on fake/flying invoices issued by the persons whose sales tax registrations were either suspended or blacklisted. They submitted application in the office of the Adjudicating Officer with the request to provide them incriminating documents in support of the allegations leveled in the show cause notice so that reply be prepared accordingly. It was also requested to adjourn the case till the return of their consultant from Saudi Arabia who had gone to perform Umrah. Despite their request for adjournment, the Deputy Commissioner decided the case ex parte and passed Order-in-Original No.1/2010 rejecting the claim under the provision of Section 11(2) of the Sales Tax Act, 1990 read with Rule 37 of Sales Tax Rules, 2006 while holding the charges in the show cause notice as correct.

6. Since the Order-in-Original (ONO) No.1/2010 was contrary to the findings/decision of the FTO's office, they submitted application with FTO's office for initiating defiance proceedings against IR Officer. Since no defiance proceedings were initiated and the case was getting time barred, therefore, they filed appeal

against the ONO before the Commissioner-IR (Appeals-II), Karachi. The Commissioner (Appeals) after hearing the case annulled the impugned order being without lawful authority and not sustainable in the eyes of law on account of failure of the officer to ensure service of the show cause notice and hearing notice. Besides the show cause notice was time barred in terms of sub-section (4) of Section 11 of the Sales Tax Act, 1990; as the prescribed limit of time of five years had already passed to the case. The Deptt neither filed second appeal before the income tax appellate tribunal against the order passed by the Commissioner-IR (Appeals), Karachi nor sanctioned them the refund amount, hence, again filed another complaint No.131/KHI/ST(61)/360/2012; which was disposed of vide Findings/Recommendations as below:

"12. FBR to-

- i) direct the Chief Commissioner to allow effect to appellate order dated 04.11.2011 and issue refund/compensation due as per law without prejudice to the outcome of any appeal(s) that the department might file in the instant case;**
- ii) direct the field formations to ensure veracity of facts while submitting parawise comments before the Hon'ble FTO; and**
- iii) report compliance within 30 days."**

7. The Deptt., however, preferred representation before the Hon'ble President of Pakistan against the Findings which was also rejected by passing the following order on 23.08.2013:

"Accordingly, the President has been pleased to reject representation of agency compliance now to be reported to FTO Secretariat within 30 days with the receipt of the copy of this order."

8. In pursuance of the President's order, they approached the FTO's office for implementation of its recommendations. After issuance of two reminders to the Deptt for compliance, a show

cause notice was issued by the Regional Office Karachi on 12.03.2014 to the Deptt and thereafter the Defiance Notice on 04.04.2014 with the direction to furnish compliance report. In response thereto, the Deptt averred that the STRN of the Complainant was also blacklisted, and for its restoration, he has to apply for the same. The matter remained pending for more than three years. Thereafter, the Hon'ble FTO vide order dated 11.12.2017 directed the Deptt to restore the Complainant's STRN for issuing refund alongwith compensation. Finally, the Commissioner-IR, RTO-I restored his STRN in October, 2021, however, the issue of refund remained pending with the deptt and they did not given appeal effect to the order passed by the Commissioner-IR (Appeals), Karachi. Hence, the instant complaint with prayer to direct the Deptt to immediately refund him the claimed amount of Rs.4,906,395/- alongwith markup in terms of Section 67 of the Sales Tax Act, 1990.

9. 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, CTO, Karachi vide letter dated 25.04.2022 forwarded the comments of the Commissioner-IR, Enforcement-I, CTO, Karachi, who had not made any comment on facts of the case and simply stated that in order to give appeal effect to the Order-in-Appeal No.7 of 2011, the concerned DCIR has issued a letter to the Complainant on 22.04.2022 for production of supporting documents against refund claim; which are necessarily required for determination of admissibility of refund claim.

10. Hearing was held on 09.05.2022. AR agitated on demand of the documents on the ground that he had provided the same to them at each stage i.e Commissioner-IR (Appeals), FTO and Hon'ble President's office on filing of representation by the Deptt., asking the same again is nothing but to linger on the issue. DR averred that the case was previously dealt with by RTO-I, Karachi and shifted to CTO by the end of year 2021. He requested the AR to provide a copy of documents; which were submitted by him earlier with RTO-I so that their refund claims can be processed to give effect to the Order in Appeal No.7 of 2011 dated 04.11.2011. AR assured that he would provide the same to DR before next date of hearing.

11. During hearing held on 14.05.2022, DR confirmed that the AR had submitted the requisite documents to them for processing the case to give effect to the order of Commissioner-IR (Appeals) in terms of Section 11(B) of the Sales Tax Act, 1990. He, however, added that the O-in-O was annulled by the Commissioner-IR (Appeals-II), Karachi without going into the facts of the case and simply on the grounds that the show cause notice was not served to the Complainant. He also pointed out that the claim pertains to the year 2003, when there was no computerization of sales tax refund claims and they were processed on the basis of hard copies of sales tax invoices; which had resulted in illegal sanctioning of refund claims based on fake and flying invoices; as there was no computerized cross verification system of invoices. Therefore, verification of invoices issued by the suppliers in this case is impossible. Nevertheless, the claim would be processed and in case the amount is not found admissible, the claim would be

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rejected by passing speaking order after issuing show cause notice and providing hearing opportunity to the claimant. AR averred that the Deptt never at any stage had provided them incriminating evidences/documents in support of their allegation that the claim was based on fake/flying invoices issued by his suppliers. Issuing of show cause notice at this belated stage would be badly time barred in terms of Section 11 of the Sales Tax Act, 1990. Secondly, the O-in-A passed by the Commissioner-IR (Appeals) has attained finality; as no second appeal against the O-in-A was filed by the Deptt with the Income Tax Appellate Tribunal. Thirdly, their representation filed with Hon'ble President of Pakistan against the Findings of this forum has also been rejected, wherein the Deptt was directed to give effect to the order of the Commissioner-IR (Appeals).

12. Averments of both sides heard and the record examined. The subject case is a classic example of neglect, inattention, delay, incompetence, inefficiency and ineptitude that constitutes maladministration in terms of Section 2(3)(ii) of the FTO Ordinance, 2000. Prima facie, the case has been mishandled badly by the Deptt due to, interalia, rapid changes in the jurisdiction and transfer/postings of the officers from one place to another. Now situation has reached where the Deptt has no choice other than to give effect to the Commissioner-IR (Appeals') order; as it has attained finality and their representation has also been rejected by the President of Pakistan. Issuing show cause notice again in the case relating to 19 years old and rejecting the claim on allegation of fake/flying invoices without having incriminating evidence/documents would be a blatant violation of the law and

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the orders passed. It is lamenting to note that during 19 years unfortunate trail, no serious and professional effort is on the record to show that the matter in hand was paid any prudent heed by the department.

RECOMMENDATIONS:

13. In view of supra, FBR to:

- i) direct the Commissioner-IR, Enf-I, CTO, Karachi to require the officer concerned to give effect to the Commissioner (Appeals') order and dispose of the claims as per law and on their merit; within **21 days**;
- ii) forward a copy of this order to the Director General, Directorate General of Training and Research, Inland Revenue to develop a "**Case Study**" on this case and henceforth, same is to be taught as an integral part of the Sales Tax syllabus for all the future batches of probationary officers of IRS who join DGTR(IR) in pursuit of their Specialized Training Program (STP) after Common Training Program (CTP) and;
- iii) report compliance within 45 days.

Approved for reporting

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

Dated: *31st May* 2022.
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