# BEFORE THE FEDERAL TAX OMBUDSMAN ISLAMABAD

## COMPLAINT NOs. 2349 & 2350/KHI/IT/2022

Dated: 15.06.20221 R.O. Karachi

Mr. Muhammad Irfan, Partner

... Complainant

M/s. Hafiz Garments, Plot No. A-41/J, SITE, Karachi.

#### Versus

The Secretary, Revenue Division, Islamabad.

... Respondent

Dealing Officer

: Ms. Seema Shakil, Advisor

Appraisal Officer

: Mr. Muhammad Tanvir Akhtar, Advisor

Authorized Representative

: Mr. Wajid Hussain Advocate,

Departmental Representative

: Mr. Abdul Karim, DCIR, Enf-I CTO, Karachi

### **FINDINGS/RECOMMENDATIONS**

The above-mentioned complaint has been filed against the Commissioner-IR, Enforcement-I CTO Karachi in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance), for non-settling of refund claim. As contents of both the complaints are similar, the same are disposed of through a single consolidated order.

2. The Complainant is a manufacturer cum exporter of textile. Returns of income have been filed with refund claims as detailed below;

Tax Years	Refund
2015	4,228,919/-
2016	1,909,078/-
2017	4,118,096/-
2018	4,617,056/-
2019	4,111,218/-

Refund applications were filed on 4.4.2020 for all the years except 2015 which was filed on 27.6.2020. The applications were followed



<sup>&</sup>lt;sup>1</sup> Date of registration in FTO Sectt.

by reminders vide letter dated 31.5.2022 & 6.6.2022. The instant complaints were filed as no response was received in two years from the department.

- 3 The complaint was referred to the Secretary, Revenue Division for comments in terms of the FTO Ordinance read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act, 2013. In response, the Chief Commissioner-IR, CTO, Karachi submitted reply of CIR Enforcement-I, CTO Karachi vide letter dated 06.07.2022. It is contended that the complainant's refund applications for Tax Years 2016 & 2017 were late e-filed dated 04.04.2020, and for Tax Year 2015 it was e-filed on 27.6.2020; which is in violation of Section 170(2)(c) of the Income Tax Ordinance, 2001, which defines a time limit for filing the refund application. The complainant failed to e-file the refund applications within the prescribed time limit rendering his applications invalid and hence, cannot be processed as per law. Whereas refund applications for 2018 & 2019 were not accompanied with evidence for tax withholding. Therefore, there is no maladministration.
- 4. Both the parties were heard & record perused.

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### FINDINGS:

5. The stance of the department regarding time barred refund application is not acceptable in view of various pronouncements of superior courts & decision of Hon'ble President of Pakistan on departmental representations on similar issue. Reliance has been placed on reported judgments as PLD 1998 SC 64, LHC 2008 PTD 370, 2012 PTD 309 (FTO), (2008) 1997 Tax 16 (Trib.) (1999) 79 Tax 27 and PTD (Trib.) 2007, in which it is held as under:

"No person can be deprived of his property save in accordance with law. Refund claim cannot be declined on the basis of being time barred."

In other cases, reported as PLD 1998 SC 64 and 2008 PTD 320 (Trib.) in which it is held as under:

"genuine refund cannot be refused even if application for refund is filed late."

The objection is therefore overruled. Refund applications for all the years are to be disposed of as per law and after obtaining evidence of tax withheld.

#### **RECOMMENDATIONS:**

- 6. FBR to direct: -
  - i) Commissioner-IR, Enforcement-ICTO, Karachi to dispose of refund applications as per law & after providing opportunity of hearing; and
  - ii) report compliance within 45 days.

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

Dated: 3 : 8 ! 2022

Approved to reporting