

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

COMPLAINT NO.3029 & 3030/KHI/ST/2022

Dated: 07.07.2022 R.O. Karachi

M/s Agar Textile (Pvt.) Ltd.,
House No.41/10 Hussaini Co-operative Housing, ... *Complainant*
Society, Alamgir Road,
Karachi

V e r s u s

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

Dealing Officer	:	Mr. Manzoor Hussain Memon, Advisor
Appraising Officer	:	Dr. Sarfraz Ahmad Warraich, Advisor
Authorized Representative	:	Mr. Hamid Bashir, AR
Departmental Representative	:	Mr. Ajaz Ali Channa, Sr. Auditor, MTO, Karachi

FINDINGS/RECOMMENDATIONS

These two Complaints were filed against Commissioner-IR, Enforcement-I, MTO, Karachi, in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance), for not refunding the amount recovered from Complainant. Since both Complaints are filed by one Complainant and are identical in nature having facts, legal issues and grounds similar, therefore, both are disposed of with single Order.

2. Precisely, M/s Agar Textile (Pvt.) Ltd, Karachi, having STRN 11-00-520-50-4882, dealing in import and sale of yarn, stated that Deputy Commissioner-IR Unit-1, Range-II, RTO-II, Karachi passed Order-in-Original No.184 of 2017 dated 25.04.2017, on the basis of report of Directorate of I&I, under Section 11(2) of the Sales Tax

* Date of registration in FTO Secretariat

Act, 1990, for recovery of adjudged amount of Rs.3,478,000/-. Adjudged amount not only contained sales tax amount but also value of goods alongwith default surcharge, under Section 34 ibid and penalty under Section 33(5) ibid. Being aggrieved with Order, they filed appeal before Commissioner-IR (Appeals-III), Karachi, who upheld the Order vide Appeal Order No.22/2017 dated 03.10.2017. Meanwhile, jurisdiction over the case was shifted from RTO-II to Deputy Commissioner-IR, Unit-1, CTO, Karachi who recovered the amount adjudged by attaching bank account of Complainant, by invoking provisions of Section 48, read with Section 11A of the Sales Tax Act, 1990. Complainant, being aggrieved with Order-in-Original, preferred second appeal before Appellate Tribunal Inland Revenue (ATIR), Karachi. Tribunal remanded back the case vide Appellate Order STA No.517/KB/2017 dated 27.06.2019, with direction to confront Complainant by affording hearing opportunity to him.

3. The officer of IR was required to pass new assessment order within one year from the date of financial year in which order of ATIR is served upon Commissioner-IR, in terms of Section 11B(2) of the Act, but concerned unit officer neither initiated new proceedings nor passed any assessment order. Since officer failed to do so, amount of Rs.3,478,000/-, recovered vide CPR No.ST-20171108-0085-106459, through attachment of bank account of Complainant, is refundable. After expiry of limitation, as provided under Section 11B(2) ibid, Complainant approached Commissioner-IR, Zone-IV, CTO, Karachi to either refund amount of sales tax, totaling Rs.3,478,000/-, or change above mentioned CPR so that Complainant may adjust sales tax against further tax liability. Commissioner-IR, Zone-IV, CTO had taken no action in response to above mentioned request of Complainant.

Complainant approached second time to Commissioner through their AR vide letter dated 10.03.2020 and made the same request. He was approached time and again vide letters dated 11.01.2020, 10.03.2020, 11.04.2020 and 29.04.2020 for the same request, but no action was taken, hence, instant Complaint with prayer to direct Commissioner to issue refund of sales tax, amounting to Rs.3,478,000/-, alongwith mark up, under Section 67 of the Sales Tax Act, 1990.

4. 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. In response thereto, Chief Commissioner-IR, MTO, Karachi, vide letter dated 27.07.2022, forwarded comments of Commissioner-IR, Enforcement-I, MTO, Karachi, wherein it was stated that his office was not aware of any proceedings in the case after remand by ATIR, as jurisdiction over the case was transferred from CTO to Enforcement-I, MTO, Karachi vide Notification dated 04.10.2021, but record of the case has not yet been transferred by Enforcement-I, CTO, Karachi to them despite their request for the same.

5. Hearings were held on 28.07.2022, 10.08.2022 and 16.08.2022. On last hearing, held on 16.08.2022, AR submitted rejoinder wherein it was averred that, while adjudicating the case, adjudicating officer had not only passed order for recovery of sales tax amount, but also value of goods without any basis/legal ground and he had no right to do so and the same was also recovered from them by attaching their bank account. Commissioner-IR (Appeal) also did not bother to look into the matter despite raising the issue by them and simply upheld the order. Due to this blunder, case was remanded back by Appellate Tribunal to original authority

for denovo consideration and passing fresh order which was not done within permissible time and the case has now become time barred, in terms of Section 11B(2) of the Act. He further averred that presently no order is in field, therefore, amount recovered from them is refundable. DR confirmed that order passed, contained value of goods also which seems mistake on part of the adjudicating authority. He reiterated that record of the goods is still not transferred by Enforcement Division, CTO, Karachi to Enforcement Division MTO, Karachi, therefore, they are not in a position to do anything in this case.

7 6. Averments of both sides heard and record examined. This is a glaring case of maladministration on part of the officers as at initial stage, adjudicating officer passed order in casual manner which proves from the fact that he included value of the goods into amount of tax as recoverable. Secondly, the officer of CTO kept sleeping after remand of case from Appellate Tribunal and let the prescribed limitation period passed. Resultantly, case time barred, in terms of Section 11B(2) of the Act. It seems that record of the cases, remanded back by Appellate fora, is not maintained properly, resultantly there are chances that cases of fraud may also be receiving the same fate after remand. Now withholding of Complainant's money, without any legal order in field, has become illegal and, therefore, refundable.

RECOMMENDATIONS:

7. FBR to direct:-

- i) Member (HR/Admn) FBR to constitute a fact finding committee to examine the issue, fix responsibility against delinquent officers/officials and initiate disciplinary proceedings against them, under law, on following grounds:

- a) how adjudicating officer passed order where amount of value was also included for recovery;
 - b) how Commissioner-IR (Appeals) Karachi upheld order so bad in law? Was contention of Complainant recorded and examined by him in his order;
 - c) why concerned officer failed to initiate fresh proceedings on remanded case and pass fresh assessment order; and
 - d) why record of the case has not been transferred by Enforcement Division, CTO to MTO, Karachi after change in jurisdiction.
- ii) Chief Commissioner-IR, CTO, Karachi to ensure transfer of record from Enforcement-I CTO, Karachi to Enforcement-I, MTO, Karachi immediately;
 - iii) Commissioner-IR, Enf-I, MTO, Karachi to require concerned officer to process refund of Complainant, filed under Section 66 of the Act, alongwith compensation charges, in terms of Section 67 of the Act; and
 - iv) report compliance within 45 days.

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

Dated: 8/09/ 2022
U.f

Approved for reporting and
press release