

**THE FEDERAL TAX OMBUDSMAN  
ISLAMABAD**

**C. NOs.3186 TO 3203/GWL/ST/2023**

Dated: 05.06.2023\* RO, Gujranwala

**Mr. Naveed Iqbal,**  
Managing Partner,  
M/s. Chattan Metal Works,  
Khursheed Alam Estate, Street No.6,  
Sheikhupura Road, Gujranwala.

...Complainant


**Versus**

The Secretary,  
Revenue Division,  
Islamabad.

...Respondent

Dealing Officer	:	Mr. Abdur Rehman Dogar, Advisor
Appraised by	:	Dr. Arslan Subuctageen, Advisor
Authorized Representative	:	Mr. HM Usman Mughal, Advocate
Departmental Representative	:	Syed Qambar Ali, ACIR

**FINDINGS/RECOMMENDATIONS**

 The above-mentioned complaints were filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against Second Secretary (ST-Operations), FBR regarding rejection of request for condonation of delay in filing of sales tax returns for tax periods July-2019 to December-2020 and not carrying forward sales tax amount from the previous manual system to *Fully Automated Sales Tax e-Refund System* "FASTER" introduced since 1<sup>st</sup> July, 2019. All these complaints are of identical nature and decided through this single consolidated order.

2. Brief facts of the case are that from 1<sup>st</sup> July, 2019, sales tax refund procedure was changed and a new system, FASTER, was introduced to process and sanction exporters' refund expeditiously that requires completely different approach than the previously adopted manual system. The sales tax returns filed under the FASTER was facing different problems as data of previously filed returns were not being

matched. The major issue observed is that the refund claimed in previous returns before introduction of FASTER was not being carried forward for processing in the FASTER. The Complainant approached the RTO for resolution of the issue and revealed that revision of returns / Annexure-H were required for matching the data. To resolve the issue, the Complainant applied for condonation of delay in filing of sales tax returns but FBR has refused to condone the delay in filing of sales tax returns. The Complainant has prayed for issuance of necessary directions to Secretary (ST-Operations), FBR to allow for condonation of delay in filing of sales tax returns.

3. In response to the notice issued under Section 10(4) of the FTO Ordinance, read with Section 9(1) of Federal Ombudsmen Institutional Reforms Act, 2013, the Chief Commissioner-IR, RTO Gujranwala submitted parawise comments dated 19.06.2023, wherein it is stated that the FBR has introduced refund processing system namely FASTER for all the registered persons. The Complainant has not mentioned the issue / problem being faced in the system. Later on, applied for condonation of delay for revision of sales tax returns for various periods and FBR rejected the same on the following grounds:-

*"As the delay has not substantiated with plausible reason/ explanation and relying on the judgment of the Hon'ble FTO that substantive reasons of each and every day must be given before delay can be condoned, the request for condonation under Section 74 of the Act is hereby rejected".*

The CIR further stated that he has no jurisdiction to condone the delay and it is only FBR who can condone such delay.

4. Averments of both sides heard and record examined.

5. During course of hearing, both the AR and DR were present and both reiterated the stance taken in the complaint and parawise comments respectively. Factual position is that from 1<sup>st</sup> July, 2019, sales



tax refund procedure was changed and new system, FASTER was introduced that required completely different approach from the previously adopted system. While switching over from the previous system to the new one Complainant faced different problems specially carry forward of sales tax refund from the previous system to the new one. As credit of refund could not be claimed unless previous returns / Annexure-H was revised, hence applications were made to FBR for condoning the delay for revision of returns. FBR did not condone the delay without realizing that delay was not because of any fault of the Complainant but it was because of systemic problems. *It is pertinent to mention that before disallowing condonation of delay, report was called from RTO Gujranwala and the CCIR, RTO Gujranwala forwarded the report of concerned CIR bearing C.No.J-53/2021-22/313/J dated 10.08.2021 through its letter No.J-3(ST-Condonation)/2019-20/519/J dated 31.08.2021, wherein issues resulting into delay for condonation were highlighted and it was proposed that before July 2019, during processing of sales tax refund through RCPS, the carry forward of the previous RPO has to be incorporated in processing next sales tax refund. Since the introduction of FASTER Module lodged by FBR and implementation of Annexure-H from July-2019 onward, the carry forward amounting to Rs.2,772,863/- as per RPO No.20886/2020 dated 14.04.2020 for the tax period June-2019 should have been incorporated in sales tax return of July-2019 so as the same may be incorporated in Annexure-H as opening balance to claim correct sales tax refund on consumption basis in subsequent sales tax returns from July-2019 to February-2021. The applicant could not manually consider the carry forward on RPO to June-2019 in Annexure-H of sales tax return of the July-2019. Therefore, without opening carry forward of RPO of June-2019, the applicant could not properly be claimed sales tax refund in sales tax returns from July-2019 to February-2021. Therefore,*



requested that carry forward of above mentioned RPO of June-2019 may be incorporated in sales tax return of the July-2019 alongwith permission to revise the sales tax return for tax period July-2019 to February-2021 in order to claim correct sales tax refund". But the Board has disallowed the condonation statedly on the recommendations of the CCIR/CIR, which is mis-statement.

Hence, the observation of the Board is totally misconceived and against the report of the CCIR/CIR. In fact the CCIR / CIR has clearly explained the reason and have given justification for condonation of delay which has not only been ignored but facts have been mis-reported by the Board.

6. The perusal of record indicates that FBR had issued a Circular C.No.1(3)ST/P&R/Circular/2020/223265-R dated 07.12.2020 with the subject "STANDARD PROCEDURE FOR SANCTIONING OF MISSING AMOUNTS STUCK IN FASTER SYSTEM DUE TO SYSTEM GLITCHES", wherein a number of problems faced by FASTER were highlighted and its solution was also given. The FBR itself admitted in the said Circular that FASTER was a faulty system and extract from the said Circular is reproduced as under:-

*"In the wake of rollback of zero-rating extended vide SRO 1125 of 2011 issued under sections 3(2)(b) & (6); 4(c); 8(1)(b); and 71 of the Sales Tax Act, 1990, with effect from January 1, 2012, a Fully Automated Sales Tax e-Refund System (FASTER) was introduced to process and sanction exporters' refunds expeditiously. Although, FASTER was rolled out inside the very first quarter of T/Y 2020, yet it continued to malfunction on multiple counts producing suboptimal outcomes. One evidence of FASTER's malfunctioning was that the system would simply miss out on sales tax credits of various taxpayers stalling processing of their refund claims. This system glitch crated problems for exporting taxpayers in terms of uncertainty and stick-up liquidity, and for the tax administration in terms of credibility deficit.*

2(i) ..... Problem of missing amounts cropped up due to the very designing of the FASTER module plausibly on three counts namely;.....



3. *These design flaws resulted in wide-going anxiety amongst the exporters' community as large number of missing amounts claimed by them was not being reflected on their e-RPOs after processing by the system.....*

4. *The Chief Commissioner concerned would keep a complete log of the pending missing amount refund cases in their formations and ensure their disposal and processing in the shortest possible time as per law, and instructions.*

7. The issuance of said Circular could not resolve the issue of the taxpayers regarding carry forward / credit of refund from previous system to FASTER, hence FBR had to issue another Sales Tax General Order No.9/2023(Operations) vide C.No.1(1)Secy-ST-Ops/2023/42340-R dated 15.03.2023, wherein it is again admitted that FASTER system is still malfunctioning and detailed instructions have been issued to streamline the system. The upshot above discussion is that FASTER is malfunctioning till date and problems raised by Complainants is genuine and it is not simple case of condonation of delay of filing of returns.

8. As the root cause of this issue is malfunctioning of FASTER till date, admitted by FBR by issuing Circular No.03 of 2020 dated 07.12.2020 and STGO No.09 of 2023 dated 15.03.2023, so the Findings of the FBR that "as the delay has not substantiated with plausible reason/explanation and relying on the judgment of the Hon'ble FTO that substantive reasons of each and every day must be given before delay can be condoned, the rejection of request for condonation under Section 74 of the Act is not well founded. In fact, while giving above decision, FBR has ignored its own Circulars as discussed supra, wherein FBR itself admitted that FASTER is malfunctioning and is creating problems for genuine taxpayers rather than solving the same. On the other hand, the issue of allowing condonation of filing of revised sales tax returns on the same issue, the Board has already issued condonation letters in the following cases:-



S. No.	Taxpayers	NTN	Tax Period
1	M/s. Musa Metal Works	3281616-2	July-2019 to June-2021
2	M/s. Gaba Trading Company (Pvt) Ltd.	7244813-2	May-2020
3	M/s. Gaba Trading Company (Pvt) Ltd.	7244813-2	June-2019 to May-2020

9. The Complainant has filed application stating that condonation application has been rejected inspite of the fact that in similar cases, delay was condoned, thus discrimination is evident and the Complainant was deprived from his fundamental right as duly enshrined in the Constitution of Pakistan, 1973. Such discrimination is tantamount to maladministration and falls under the ambit of FTO. Reliance is placed on this office's decision reported as 2011 PTD 1286:

"13. The upshot of the above discussion is that as the motorcycles of OME brand are being manufactured throughout the country, the Department cannot treat the manufacturers of Hyderabad differently than the rest of the motorcycles manufacturers of the same brand in the country".

10. So far as the issue of limitation on condonation of delay is concerned, this office already in Complaint C.No.0060/LHR/ST/2023 has held as under:-

"6. It is settled principle of law that right of taxpayer cannot be denied on the plea of limitation or on any other technical plea as held by the Hon'ble Supreme Court of Pakistan in judgment PTCL 1988 CL. 354 as under:-

*"the denial of refund of the amount involved, would be violative of Article 24(1) of the Constitution which lays down that "no person shall be deprived of his property save in accordance with law".*

*"latest judicial trend is to depreciate and to discourage withholding of a citizen's money by a public functionary on the plea of limitation or on any other technical plea if it was not legally payable by him".*

Considering the above, there is no justification for the Deptt, to withhold the refund".

#### **FINDINGS:**

11. Refusing the requests of Complainant for revision of sales tax returns by the FBR on account of delay in the presence of its own Circulars bearing C.No.1(3)ST/P&R/Circular/2020/223265-R dated

07.12.2020 and 1(1)Secy-ST-Ops/2023/42340-R dated 15.03.2023, wherein it is admitted that FASTER is malfunctioning and condoning delay in some cases while rejecting others is discriminatory and is tantamount to maladministration in terms of Section 2(3) of the FTO Ordinance.

**RECOMMENDATIONS:**

12. FBR to-

- (i) direct Second Secretary (ST-Operations), FBR to revisit condonation order and condone the delay; and
- (ii) to settle the issue of sales tax refund / credit claimed resultantly becoming due, if any, for the relevant tax periods expeditiously; and
- (iii) report compliance within 45 days.



**(Dr. Asif Mahmood Jah)**

(Hilal-i-Imtiaz) (Sitara-i-Imtiaz)

Federal Tax Ombudsman

Dated: 7:8:2023

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*Approved for reporting*



**Director  
FTO Secretariat  
Islamabad**