

# THE FEDERAL TAX OMBUDSMAN ISLAMABAD

## COMPLAINT NO.4264/KHI/IT/2022

Dated: 29.09.2022\* R.O, Karachi.

**Mr. Kamran Afzal.**

...Complainant

**M/s. Hazara Efficient Gas,**

D-23, Block-1, Shireen Jinnah  
Colony, Karachi.

### **Versus**

The Secretary,  
Revenue Division,  
Islamabad.

...Respondent

Dealing Officer	:	Mr. Badruddin Ahmad Quraishi Advisor
Appraised by	:	Mr. Muhammad Tanvir Akhtar Advisor
Authorized Representative	:	Mr. Abid Shaban, Advocate.
Departmental Representative	:	Mr. Govind Kumar DCIR LTO

## FINDINGS/RECOMMENDATIONS

The above-mentioned complaint has been filed in terms of Section 10(1) of the Federal Tax Ombudsman (FTO Ordinance) against non-issuance of appeal effect order in compliance to ATIR decision dated 13.12.2017 and subsequent issuance of income tax refund and additional compensation.

2. Briefly, the Complainant is an AOP engaged in the business of import and sale of liquefied Petroleum Gas (LPG). The Complainant e-filed Return of Income for Tax Year 2016 along with refund application on 08.11.2016 claiming refund at Rs 271,430,856/- based on deductions under Section 148 of the Income Tax Ordinance (the Ordinance) as adjustable. The Additional Commissioner-IR (ADCIR) amended the deemed assessment order under Section 122(5A) of the Ordinance holding the complainant as commercial importer (FTR) and not manufacturer vide order dated 03.03.2017. On appeal, the

Commissioner Appeals -1 Karachi vide order dated 08.03.2017 directed the Deptt to consider the status of the complainant as an industrial undertaking and accept the return of income under normal law. The decision of the Commissioner (Appeals-1) was also confirmed by the Appellate Tribunal Inland Revenue (ATIR) vide order dated 13.12.2017 in ITA No.487/KB/2017. The Deptt filed reference before High Court of Sindh vide ITRA No.77/2018 which is still pending. The complainant requested the Deptt for appeal effect order under Section 124(4) of the Ordinance vide letters dated 29.01.2018, 19.03.2018, 28.06.2020, 14.04.2022, 16.06.2022, 25.06.2022 & 22.09.2022 but without any success; hence this complaint. The Complainant in addition to appeal effect order for Tax year 2016; also prayed for income tax refund and compensation under section 171 of the Ordinance & under section 22 of the FTO Ordinance.

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 thereto, the Chief Commissioner-IR, LTO Karachi vide letters dated 12.10.2022 & 21.10.2022 forwarded comments of Commissioner Audit-III and Commissioner Enforcement-I, LTO Karachi. The Commissioner Audit-III vide letter dated 10.10.2022 submitted that appeal effect order under section 124 of the Ordinance in compliance to decision of ATIR dated 13.12.2017 had already been given determining income tax refund of Rs. 270,511,998 vide order dated 10.10.2022. On the other hand, the Commissioner Enforcement-1 raised objection against issuance of refund contending that the legal issue whether complainant was a manufacturer or commercial importer had been pending before Honorable Sindh High Court(SHC) in CP



No. 3039 of 2019. In addition, the Deptt challenged the order of ATIR dated 13.12.2017 before SHC vide ITRA no. 77/2018 which is still pending. Hence, the issue being subjudice, is barred on the point of jurisdiction under Section 9(2)(b) of the FTO Ordinance. However, it was concluded that since the matter of treating income tax collected on import stage as adjustable or final tax is sub-judice before the Hon'ble Sindh High Court, hence any refund application filed by the complainant will be processed as per law upon final decision of the Hon'ble High Court of Sindh.

4. During hearing, the AR submitted evidence of date of receipt of order of ATIR by LTO Karachi on 09.01.2018 and evidence of e-filing of refund application dated 08.11.2016 which remains pending till date. Further the AR also stressed for compensation against delayed refund in terms of section 171(2)(a) of the Ordinance read with decision of SHC in case of CIR Vs Pakistan Services Ltd reported as 2013 PTD 368.

5. Both the parties were heard and record perused.

#### **FINDINGS:**

6. The preliminary objection regarding bar of jurisdiction raised under Section 9(2)(a) of the FTO Ordinance has been examined and observed that Oil & Gas sector being a highly regulated segment of national economy is strictly governed by the designated regulator i.e. Oil & Gas Regulatory Authority.(OGRA) All activities in this sensitive sector are properly regulated. Licensed and monitored by OGRA.

Official website of OGRA (<https://www.ogra.org.pk>) specifically reflects updated position of the following categories of LPG businesses:

- i. Detail of Licenses for Construction of LPG Storage and Filling Plants Dated September 15, 2022
- ii. Detail of LPG Marketing Companies Dated September 15, 2022
- iii. Detail of Licenses Granted for Transportation of LPG Through Road Browsers Dated September 15, 2022

**Study of aforementioned updated position reveals that while the name of complainant company is missing in the list of Storage & Filing Plants(Sub-para, I above), it appears at S.N. 76 of LPG Marketing Companies (Sub-para, ii, above).**

Moreover, Departmental argument that a reference against the order of ITAT vide ITRA No. 77/2018 is pending before Hon'ble SHC and additionally, the issue of the **complainant's status of manufacture** is also pending vide CP no. 3039 of 2019 before SHC; is quite valid because both subjudice cases involve adjudication of the material most issue which will ultimately either determine or deny the refund in subject case.

**In view of above in terms of section 9(2)(a) of FTO Ordinance, 2000 no further investigation is mandated. Case files assigned to record.**

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

Dated: 14 : 11: 2022

*Approved for reporting*