

**THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

Complaint No.5265/ISB/ST/2022

Dated: 30.11.2022* R.O. Karachi

M/s Mehran Spice & Food Industries

Plot No.14,15 &47, Sector 24,
Korangi Industrial Area,
Karachi

... *Complainant*

V e r s u s

The Secretary,
Revenue Division,
Islamabad.

... *Respondent*

Dealing Officer	:	Mr. Badruddin Ahmad Quraishi, Advisor
Appraising Officer	:	Mr. Muhammad Nazim Saleem, Advisor
Authorized Representative	:	Mr. Raja Aamir
Departmental Representative	:	Mr. Kamran Hussain, DCIR LTO, Karachi

FINDINGS/RECOMMENDATIONS

The above mentioned complaint was filed against the Commissioner-IR, Enf-I, LTO, Karachi in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance), for not refunding the amount of Rs.885,804/- for the tax periods July, 2011 to June 2012, pursuant to the Order-in-Appeal No.12 dated 30.09.2015 passed by the Commissioner-IR (Appeals-IV), Karachi.

2. Precisely, M/s Mehran Spice & Food Industries bearing STRN 0201090400791 is registered in Sales Tax as manufacturer-cum-exporter of spices & food products. The Officer Inland Revenue, Unit-1, E&C Zone-II RTO-II, Karachi passed Order-in-Original No.03/2014 dated 10.02.2014 for tax periods July 2011 to June 2012 creating tax liability of Rs. 885,804 and recovered the said amount from RPO # 8044507 dated 20.10.2015 vide CPR # ST-20160512-0085-1087712

* Date of registration in FTO Secretariat


dated 12.05.2016. Being aggrieved with the said order, they filed appeal under Section 45B of the Sales Tax Act, 1990 before the Commissioner-IR (Appeals-IV) Karachi, who vide Order-in-Appeal No.12 dated 30.09.2015 remanded back to the Officer for a speaking order after verification and allowing opportunity of being heard. As per complaint, the complainant sent letters to CCIR / CIR, LTO Karachi on 16.11.2015 followed by reminders dated 02.07.2021, 15.07.2021, 12.08.2021 and 18.10.2021 for refund of recovered amount in compliance to CIR (Appeals) order but without any success hence this complaint.

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, FBR vide letter dated 16.12.2022 forwarded the comments of the Commissioner-IR, Enf-I, LTO, Karachi dated 12.12.2022. It was averred that the jurisdiction was transferred from MTO to LTO, Karachi vide Board's notification No.57(2)Jurisdiction/2017-105315-R dated 19.07.2021. However they had not received original record of the recovery proceedings and original appeal order referred by the Complainant, therefore, they had written a letter to the MTO for provision of original record. As per copies of record furnished by the Complainant; order in original was issued creating sales tax demand including penalty of Rs.885,804/- and recovered through pending sales tax refund claims of the complainant. The CIR(A) remanded back the case vide order dated 30.09.2015. The remand back proceedings were initiated and hearing notice was issued on 02.11.2022 and finally assessment order was passed on 12.12.2022 creating tax liability of Rs.843,623 and penalty of Rs.42,181. Hence there is no refund pending as claimed by the complainant.

4. The AR filed a rejoinder dated 27.12.2022 stating that the Deptt initiated remand back proceedings after seven years when this complaint was filed clearly violating Section 11B of Sales Tax Act 1990 which allows only one year to complete remand back proceedings.

5. Both the parties heard and record perused.

6. Evidently, the Commissioner-IR (Appeals-IV) Karachi vide Order-in-Appeal No.12 dated 30.09.2015 remanded back the Order-in-Original to the Officer for issuing a speaking order after verification of transactions & payments of tax and after allowing proper opportunity of being heard to the complainant. In compliance of order of Commissioner-IR (Appeals-IV) Karachi, the Deptt have must conclude remand back proceedings within one year from the end of the financial year in which the order of the Commissioner (Appeals), was served upon the Commissioner or Officer of Inland Revenue in terms of provision of section 11B(1) of Sales Tax Act 1990 which states:

 "11B. Assessment giving effect to an order.— (1) Except where subsection (2) applies, where, in consequence of, or to give effect to, any finding or direction in any order made under Chapter-VIII by the Commissioner (Appeals), Appellate Tribunal, High Court or Supreme Court an order of assessment of tax is to be issued to any registered person, the Commissioner or an officer of Inland Revenue empowered in this behalf shall issue the order within one year from the end of the financial year in which the order of the Commissioner (Appeals), Appellate Tribunal, High Court or Supreme Court, as the case may be, was served on the Commissioner or officer of Inland Revenue.

(2) Where, by an order made under Chapter-VIII by the Appellate Tribunal, High Court or Supreme Court, an order of assessment is remanded wholly or partly and the Commissioner or Commissioner (Appeals) or officer of Inland Revenue, as the case may be, is directed to pass a new order of assessment, the Commissioner or Commissioner (Appeals) or officer of Inland Revenue, as the case may be, shall pass the new order within one year from the end of the financial year in which the Commissioner or Commissioner (Appeals) or officer of Inland Revenue, as the case may be, is served with the order:

Provided that limitation under this sub-section shall not apply, if an appeal or reference has been preferred against the order passed by Appellate Tribunal or a High Court."

The order of Commissioner Appeals was passed on 30.09.2015 and the Deptt failed to conclude remand back proceedings under section 11B(1) of Sales Tax Act within the stipulated period. The Deptt slept

over the issue for more than seven years and woke up from deep slumber when this instant complaint was filed. Thus, the remand back impugned order dated 12.12.2022 violating Section 11B(1) of Sales Tax Act 1990 is hopelessly time-barred and hence abinitio void.

FINDINGS:

7. Issuance of impugned remand back time-barred order dated 12.12.2022 clearly violating the provision of section 11B(1) of Sales Tax Act and illegally blocking the claim of refund of the complainant tantamounts to maladministration in terms of section 2(3)(i) (a),(b),(c) & (ii) of the FTO Ordinance, 2000.

RECOMMENDATIONS:

8. FBR to direct:-

- (i) the Commissioner-IR Enforcement- 1, LTO Karachi to issue refund under section 66 of Sales Tax Act 1990 against recovery of Rs.885,804;
- (ii) Member Admn FBR to initiate inquiry for loss of revenue in view of time barred assessment; and
- (iii) report compliance within 45 days

(Dr. Asir mahmood Jah)
(Hilal-i-Imtiaz)(Sitara-i-Imtiaz)
Federal Tax Ombudsman

Dated: 27.12/2023

GQ

Approved for reporting