

**THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

Complaint No.6757/KHI/ST/2023

Dated: 20.11.2023* R.O. Karachi

M/s. GlaxoSmithKline Pakistan Ltd

Complainant

NTN: 0710501

35, Dockyard Road, West Wharf, Karachi.

Versus

The Secretary,
Revenue Division,
Islamabad.

Respondent

Dealing Officer	:	Mr. Badruddin Ahmad Quraishi, Advisor
Appraising Officer	:	Mr. Muhammad Nazim Saleem, Advisor
Authorized Representative	:	Mr. Hasham Babar, CFO, GSK Pakistan
		Mst. Syeda Roshan, Head of Taxation
		Mr. Zeeshan Zafar Khan, KPMG
Departmental Representative	:	Mr. Talha Masood, DCIR, LTO, Khi
		Syed Tahir Hassan, Sr. Manager, PRAL

FINDINGS/RECOMMENDATIONS

The above-mentioned complaint was filed in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) for not processing:

- i) deferred sales tax refund claims for the tax periods February 2022 to June 2022 amounting to Rs 756.736 million;
- ii) missing sales tax refund claims for the tax periods February 2022 to June 2022 amounting to 408.782 million.

2. Briefly, M/s GlaxoSmithKline Pakistan Limited is listed on the Pakistan Stock Exchange and engaged in the manufacturing and marketing of pharmaceutical products. The complainant filed sales tax refund claims for the tax periods from February 2022 to June 2022 through the FASTER PHARMA module. The computerized module

* Date of registration in FTO Sectt

processed, sectioned Rs 1,115.736 million, deferred Rs 756.736 million, and an amount of Rs. Rs 408.782 went missing as per details given below:

Particulars	Feb-22	Mar-22	Apr-22	May-22	Jun-22	Total
Refund claimed as per return	291,416,984	447,843,841	130,449,176	275,752,346	1,135,791,687	2,281,254,034
Refund sanctioned	1	332,372,747	94,536,198	241,956,037	446,871,556	1,115,736,539
Amount Deferred	1,859,371	729,822	34,387,130	32,690,198	687,069,197	756,735,718
Amount Missing	289,557,612	114,741,272	1,525,848	1,106,111	1,850,934	408,781,777
Accumulated – Missing	-	404,298,884	405,824,732	406,930,843	408,781,777	

The Complainant approached the Deptt vide letters dated 05.09.2022, 21.09.2022, 10.07.2023, and 21.09.2023 for processing of deferred and missing amount but without any response; hence this complaint.

3. The complaint was referred to the Secretary of Revenue Division for comments in terms of Section 10(4) of the FTO Ordinance Reforms Act, 2013. The Second Secretary (Refunds / CSTRO) vide letter 30.11.2023 has referred to PRAL letter no. PRAL.CM(Ops)/161349851 dated 27.11.2023 stated that the opening and closing of Annexure H did not match with sales tax returns therefore it was not a missing case. The Second Secretary also mentioned that rollback of RPOs/Claims, re-opening of Annexure H, and revision of ST&FE returns would be required to resolve the issue of missing refunds. The Chief Commissioner (CCIR), LTO, Khi vide letter dated 23.12.2023 has also submitted a response whereby reproduced findings of the PRAL and recommended that to roll back the refund claims the claimant would be required to deposit already sanctioned sales tax refunds amounts to arrive at its original positions. However, the CCIR LTO, Khi did not offer any comments with regards to the deferred refund claim of Rs 756.736 million which was also part of the complaint.

4. Arguments heard and records perused.

5. Admittedly, the complainant is a listed company engaged in the manufacturing and marketing of pharmaceutical products. The complainant filed sales tax refund claims for tax periods of February 2022 to June 2022 through the FASTER Pharma module amounting to Rs 2,281.254 million. The computerized module processed and sanctioned a refund amounting to Rs 1,115.736 million and a deferred sales tax refund to the tune of Rs 756.736 million. The balance amount of Rs 408.782 million was missed by the FASTER and was marked as carry forward though no such amount was available in the return from February 2022 to June 2022.

6. The refund claim under the FASTER Pharma module is required to be processed within seventy-two hours of submission of a claim, for onward advice to the respective bank for credit into the notified account of the claimant in terms of Rule 39L of Sales Tax Rules 2006 which states:

"39L. Processing in FASTER module.- The claims routed to FASTER Pharma module shall be electronically processed. The data in the refund claim shall be scrutinized and verified by the system and the payable refund amount shall be determined on the basis of RMS quality check of input consumed in respect of supplies. The refund payment order (RPO) of the amount found admissible shall be generated and the same shall be electronically communicated direct to the State Bank of Pakistan, within seventy-two hours of submission of claim, for onward advice to the respective banks for credit into the notified account of the claimant."

According to Rule 39L of Sales Tax Rules 2006, deferred as well as missing amounts were also required to be processed within the prescribed time. However, the complainant has been deprived of its legitimate right of refund.

7. With regards to the issue of deferred claims of Rs.756,735,718 for tax periods February to June 2022, these deferred outstanding sales tax refund claims are required to be processed in terms of

'Chapter V (REFUND)' of Sales Tax Rule 2006 read with Circular 01 of 2020 dated 08.04.2020 for issuance of RPOs on it's merit in accordance with law as the complainant has already submitted the requisite documents for the purpose of overruling of STARR objections in terms of Circular 01 of 2020 dated 08.04.2020.

8. The second issue relates to the missing refund amount from February 2022 to June 2022 amounting to Rs 408.782 million. The pharma sector was exempt from sales tax till 14.01.2022. However, through the Finance (Supplementary) Act 2022 effective from 15.01.2022, the pharmaceutical goods were made chargeable to sales tax zero percent under the Fifth Schedule resulting creation of a refund against excess input tax paid on local purchases and imports @17%. The complainant did not maintain any opening stock in the return during the exempt regime as input tax was not claimable during exempt regime. Accordingly, at the time of the change in regime from 'exempt to zero-rated' i.e after 15.01.2022, there was no opening balance in the return. However, pursuant to stock audit by LTO, Khi the complainant claimed the impact of "Opening Stock" in its Annex- H for February 2022. As the option was not available / activated in the sales tax return for insertion of the opening balance, therefore, the complainant was unable to match the opening of Annexure H with the sales tax return. Further, due to glitches in IRIS, the closing balance as per Annexure H for March 2022 was not correctly reflected as the opening of April 2022. As per the complainant, the amount in essence is 'missing' from the perspective of the amount claimed in the sales tax return and needs to be processed as per Circular No. 03 of 2020. The reply of the Second Secretary (CSTRO/ Refund) dated 30.11.2023 is conflicting with his letter dated 08.09.2023 whereby he had already acknowledged that the missing amount shall be linked to the relevant

refund claim of the company.

9. In short, both sides agree that there has been a short payment /missing refund amount from February 2022 to June 2022 amounting to Rs 408.782 million. Now the only issue is whether this missing amount is required to be processed through Circular No. 1 of 2020 by way of roll back of claims or through Circular No. 3 of 2020 by simple insertion of the missing amount. Both Circulars cater for the missing amount but in the case of Circular No. 1 of 2020, the taxpayer has to repay the whole amount of refund already sanctioned and transferred to the bank account of the complainant which is Rs.1.116 billion in the instant case before the refund claims are to be rolled back for reprocessing. In the case of Circular No.3 of 2020, the missing amount is required to be incorporated for processing of refund directly on the report of the Commissioner. The ultimate end or outcome / final result of both processes is the same i.e.; the processing of the short-paid missing amount arising due to system glitch / malfunctioning of FASTER as admitted by the Board in Circular No.03 of 2020 dated 07.12.2020. Therefore, it would be a very massive painful rigmarole, unfair and great injustice to the complainant if he is required to be processed through Circular No. 1 of 2020 and pay back the sanctioned amount of Rs. 1.116 billion to roll back the refund claims for further processing to obtain the missing amount of Rs 408.782 million especially when both the complainant and the FBR agree on short payment of refund.

10. As per Rule 27 read with Rules 31 & 39L of Sales Tax Rules 2006, the CSTRO office at the Board is the authority for disbursement of sales tax refund. The Job description & KPI issued by FBR on 28.02.2022 also supplemented this fact by stating the job description of the Chief CSTRO/ Refund on this issue which is reproduced below:

"To oversee the system of sales tax & FED refund disbursements. Issuance of refund summaries to State Bank of Pakistan after generations of RPOs through STARR, ERS and FASTER channels

To communicate with PRAL and help resolve genuine grievances of refund claimants"

In the instant case, the concerned DCIR, Unit 3& 4, Zone IV, LTO Karachi vide letter dated 29.08.2023 has acknowledged that the amount of Rs 408.781 million is short-sanctioned, missed, and not accounted for during the processing of refund claims through FASTER. The DCIR has also confirmed that the claimant has provided relevant documents, statements/calculations of missed amounts, copies of sales tax returns, copies of RPOs, and copies of Annexure H for processing of missing refund claims. The CIR Zone IV vide letter dated 31.08.2023 and the CCIR. LTO Karachi vide letter 04.09.2023 requested the Board / the Chief (CSTRO/ Refunds) after examining the detailed facts recommended for the addition of a missing amount of Rs. 408.782 million. On receipt of the report of recommendation for the missing amount, the CSTRO office vide letter dated 08.09.2023 addressed to the CEO PRAL Islamabad requested **to link the missing amount of Rs. 408,781,777 with respective tax periods** in the light of recommendations of the Commissioner. However, the CEO of PRAL failed to implement the direction of the CSTRO Office despite PRAL being a subordinate technical support team and not being the authority for the disbursement of sales tax refunds as per Sales Tax Rules 2006.

FINDINGS:

11. Non-processing of missing amounts and deferred sales tax refund for tax periods of February 2022 to June 2022 within the prescribed period of seventy-two hours of submission of claim in terms of Rule 39L of the Sales Tax Rules 2006 tantamount to maladministration in terms of section 2(3)(i)(a)(b) & (ii) of FTO Ordinance.

RECOMMENDATIONS:

12. FBR to direct:-

- i) the Chief (Refunds/CSTRO) to ensure linking the missing refund of February 2022 to June 2022 amounting to Rs 408.782 million with the respective refund claims in terms of Circular No.03 of 2020 dated 07.12.2020 for further processing on merit in accordance with the law;
- ii) the Commissioner, Zone III, LTO Khi to process the deferred sales tax refund claims for tax periods of February 2022 to June 2022 amounting to Rs 756.736 million through STARR on merit and in accordance with Chapter V (REFUND)' of Sales Tax Rule 2006 read with Circular 01 of 2020 dated 08.04.2020 for issuance of RPOs on its merit; and
- iii) report compliance within 45 days.


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

Dated: 12.2.2024

Approved for reporting