

FEDERAL TAX OMBUDSMAN SECRETARIAT
ISLAMABAD

Complainant No.59/ISD/ST(06)/138/2010

(Dated: 30-1-2010)

Messers Sana Traders,
Islamabad

Complainants

Versus

The Secretary
Revenue Division
Islamabad.

Respondent

FINDINGS/RECOMMEDATIONS

Dealing Officer: Mr.Yasin Tahir, Senior Advisor
Authorized Representative: Mr. Saqib Siddeq, ITP
Departmental Representative: Mr. Anwar Zeb, Deputy Commissioner
Sales Tax RTO Islamabad

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Messers Sana Traders made zero-rated export in tax period July and October 2008 and claimed input adjustment / refund of Rs. 276,672/- for the month of July 2008 and Rs. 138,336/- for the month of October 2008. The refund claims were submitted with the required supporting documents but the Sales Tax authorities did not sanction the refunds. Hence, the Complaint of maladministration was filed in the FTO Secretariat on 30-01-2010.

2. The Complaint was referred to the Revenue Division for comments. The Sales Tax Department informed that the claim of refund of Rs.276,672/- for the month of July 2008 was under process in the Auditor's Window waiting for it's turn for processing. However, the claim for the month of October 2008 was

received after the lapse of 120 days and thus it was barred by time under Rule 28 of Sales Tax Rules 2006. Show cause notice was accordingly served upon the Complainant vide this office letter No. RTO/ISB/STR/05/606/2009/677-78 dated 10.08.2009 on the issue of time limitation. Decision is still pending and the Member (Legal) FBR Islamabad has also been requested vide Chief Commissioner's letter C.NO.ST/Board/152/1999/P-2/19 dated 30.01.2010 for extension in time limit to adjudicate the case. Moreover, the input tax was deposited through a single invoice of Rs. 138,336/- and the same remained unverified as reported by RTO Abbottabad vide their C.No.01 (RTO-ST&FE-Verification)09/P-iv/1583 dated 10.11.2009. Therefore, no illegality has been committed by the Department and no malafide is involved on the part of any officer.

3. Hearing of the parties was held on 01.03.2010. The following attended;

- (i) Mr. Saqib Siddeq of Messers Sana Traders, Islamabad appeared on behalf of the Complainant;
- (ii) Mr. Anwar Zeb, Deputy Commissioner IR-Legal appeared on behalf of the Sales Tax, RTO Islamabad.

4. Mr. Saqib Siddeq, AR, explained that Assistant Collector (Refund) issued them a letter No.ST/RTO/ISB/2009/572 dated 06.07.2009 that their refund claim relating to the tax period of October, 2008 was time barred. Therefore, they should file application to the Collector, Sales Tax for condonation of delay. They accordingly applied for condonation on 29.07.2009. Instead of condoning the time limitation of only 26 days, the Sales Tax Authorities issued a Show Cause Notice No.RTO/ISB/ST/R/05/606/2009/677-78 dated 10.08.2009 for rejection of the claim. This was unfair and unjust as the Sales Tax authorities had the necessary enabling powers to condone the delay upto one year vide SRO

394(1)/2009 dated 21.05.2009 read with the Sales Tax General Order No.08 of 2009 dated 26th February 2009. Instead of condoning a delay of only 26 days, application for which was made on the instructions of the Sales Tax authorities, they issued a Show Cause Notice for rejection of the claim which ran counter to the provisions of the aforesaid Notification and the STGO. Besides, the latest judicial trend is to deprecate and discourage withholding citizen's money by public functionaries on technical grounds. Reference in this connection was made to the Hon'ble Supreme Court decision in the case of Messers Pfizer Laboratories Vs Federation of Pakistan reported vide PTCL 1998 CL 354. In this judgement, the Hon'ble Supreme Court has deprecated retention of citizen's money on account of the technical ground of time limitation.

5. The AR also contended that the Sales Tax authorities were under obligation to decide the application submitted by him for condonation of delay within thirty days. But, they did not do so, which is a clear violation of the time limit of 30 days prescribed for deciding requests for condonation of time bars.

6. Replying to the contentions of the AR, the DR stated that they had referred the matter to RTO Abbottabad to verify deposit of the amount of Sales ATax stated to have been paid by the Complainants. RTO Abbottabad has however replied actual deposit of the Sales Tax stated to have been paid by the Complainant for the tax period October 2008 is not verifiable from the suppliers' record. Therefore, whereas one of their claims relating to tax period July 2008 is under process, their second claim relating to tax period October may not qualify for sanction because of non-verification of the invoice and payment.

7. As regards the payment of Sales Tax, the AR contended that he had necessary proof of payment in terms of documents and transaction through

normal banking channels. He was ready to confront the suppliers with documentary evidence in the presence of Sales Tax authorities. He therefore suggested that if it is proved that the Complainants have paid the Sales Tax but the suppliers have not deposited it, the suppliers should be made to deposit the same in the Government Treasury and thereafter their refund claim should be paid instead of its rejection.

8. The complaint has been examined in the light of the written and oral submissions of the parties. It has been observed that non-deposit of Sales Tax by the suppliers is a systemic problem for which taxpayers unduly suffer. It would therefore be desirable that the RTO Islamabad undertakes verification of payment and deposit of Sales Tax in coordination with RTO Abbottabad as well as the Complainants and the suppliers in this case. Both the buyers and the suppliers should prove their respective contentions to the relevant Sales Tax authorities. If it is done to the satisfaction of the Sales Tax authorities, then there would be no justification for rejecting the refund claim of the Complainants relating to the tax period of October 2008 on account of delay of 26 days which should be condoned in accordance with the enabling provision of the SRO and the STGO referred to in Para 4 supra. If the Complainants fail to prove payment of the Sales Tax, RTO will be at liberty to take appropriate action against them under the law. If the suppliers fail to prove the deposit Sales Tax in Government Treasury, they should be made to deposit this amount and thereafter the refund claim be paid to the Complainants.

Findings:

9. The Complainants' claims of refund have been ineptly handled by the Sales Tax authorities. Besides, firstly advising them in writing to file application

for condonation of delay and then issuing a show cause notice for rejecting the claim on account of time bar is illogical. Also issuing a show cause notice for rejecting a claim for non-verification of deposit of Sales Tax without confronting the buyers and the suppliers both of whom are available for joint verification speaks of high-handedness on the part of authorities. All these acts of omission or commission constitute maladministration as defined under Section 2(3)(i) and (ii) of the FTO Ordinance, 2000.

Recommendations:

10. In view of the above discussion, following recommendations are made:
- (i) verification of payment and deposit of Sales Tax in Government Treasury be undertaken within 15 days and the refund claim for tax period October, 2008, decided within 15 days thereafter;
 - (ii) refund claim for July, 2008, which is stated to be under process be decided within a period of seven days; and
 - (iii) compliance be reported within 30 days.

(Dr. Muhammad Shoaib Suddle)
Federal Tax Ombudsman

Dated: 13-03-2010

M.I.

Approved for reporting

22-3-10

Mirza Rafi-uz-Zaman
(R) District & Sessions Judge
Advisor (Implementation & Monitoring)
Federal Tax Ombudsman Secretariat
Islamabad