

**FEDERAL TAX OMBUDSMAN SECRETARIAT
ISLAMABAD**

Complaint No.240/2010

Dated: 25.02.2010

Messrs Gadoon Textile Mills
Sawabi

Complainants

Versus

Secretary
Revenue Division
Islamabad

Respondent

FINDINGS/RECOMMENDATIONS

Dealing Officer : Mr. Yasín Tahir, Senior Advisor
Authorized Representative : Mr. Ishtiaq Ahmad, Advocate
Departmental Representative : Dr. Noman Khan, DC (Customs)
Mr. Saleem-ur-Rehman, DC (IR)

The complaint under reference is directed against Inland Revenue, Peshawar, and Peshawar Customs. It is alleged that the Inland Revenue authorities of Peshawar have deducted an amount of over Rs. 2.23 million on the directive of the Customs authorities despite the fact that their refund claim of Rs. 4.23 million was pending with Customs and on an average Rs. 42.00 million of refund generally remains pending with the Inland Revenue Service, Peshawar. Therefore, the Customs authorities should have sanctioned their refund claim of Rs. 4.23 million and deducted the amount of Rs. 2.23 million from that to settle their recovery action. But it was unjust according to the Complainants to pend the sanction of refund due to the taxpayers and coerce recovery of Government dues without first settlement of the pending refund claims of taxpayers.

2. The complaint was referred to the Revenue Division for comments. Replying to the allegation, the Revenue Division stated that the recovery of Rs. 2.23 million has been made by deduction of the Complainants Sales Tax refund available with the Inland Revenue Service as a part of recovery of an amount to Rs.28,608,947/- outstanding against the Complainants. It is

* Date of registration in FTO Secretariat

contended that the Customs action to direct the Sales Tax authorities to deduct the recoverable amount from the Complainants refund entitlement is lawful by virtue of the provisions of Section 202(a) of this Customs Act, 1969. As regards, the Complainants' contention that their refund claim of Rs. 4.23 million is pending with Peshawar Customs, it is not correct because the admissibility of that claim is yet to be established by the Customs in association with the Complainants in accordance with the Hon'ble FTO's Recommendations dated 14.05.2008 in Complaint No.287/2008 read with the President's Decision No.87/2008-Law-I (FTO) dated 13.02.2010. The exercise for ascertaining its admissibility is on and the time allowed for finalizing this exercise has not yet expired. Therefore, there is no finally determined refund claim of the Complainants pending with Customs for adjusting their liability.

3. Hearing of the parties was held on 13.04.2010. The oral and written submissions of the parties were discussed at length. The bottom line of the Complainants' argument is that since their claim of over Rs. 4.23 million was pending with the Customs authorities, the recovery of Rs. 2.23 million outstanding against the Complainants by adjustment of Sales Tax refund was not justified and it constituted maladministration under Section 2(3) of the FTO Ordinance, 2000. Judging by the touchstones of justice and fairness, if any amount of refund claim is due to the taxpayer from the FBR, it ought to be sanctioned at least as promptly as recoveries effected in favour of the Government. There is no justification for delaying the sanction of refunds in favour of the taxpayers and at the same time enforcing recoveries against them. There has to be an even-handed treatment both for the Government and the taxpayers.

Findings

4. The Peshawar Customs should have decided the refund claim of Rs. 4.23 million pending with them since 2008 and then effected recovery of Government dues from the Complainants. Inordinately delaying settlement of refund claims of a taxpayer and coercing recoveries of Government dues from him is obviously discriminatory, unfair and unjust besides being contrary to the well established concepts of equity and good governance.

Recommendations

5. FBR to-
- i. decide on merit the Complainants' refund claim of Rs. 4.23 million pending with Peshawar Customs since 2008 within fifteen days; and
 - ii. issue a policy directive to the field formations to simultaneously settle the pending refund claims of taxpayers and deduct the recoverables, if any, from the sanctioned amount of refund before resorting to coercive measures for recovery of Government dues from the same taxpayers.
6. Compliance be reported within twenty days.

Dated: 05-05-2010
mr

(DR. MUHAMMAD SHOAB SUDDLE)
Federal Tax Ombudsman

Approved for reporting

[Signature]

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