

FEDERAL TAX OMBUDSMAN SECRETARIAT
Regional Office, Karachi

Complaint No.280/KHI/ST(132)/1002/2013

Dated: 13-6-2013

M/s Mima Knit (Private) Limited
Cavish Court, A-35, Block 7/8, KCHSU,
Shahtah-e-Faisal,
Karachi

... Complainant

Versus

The Secretary
Revenue Division
Islamabad

... Respondent

Dealing Officer : Mr. Manzoor Hussain Kureshi, Advisor
Authorized Representative : Mr. Imran Iqbal, Advocate
Departmental Representatives : Mr. Jameel Ahmed Brohi, DCIR
Mr. Zameer Khalid, Legal Consultant, SRB

FINDINGS/RECOMMENDATIONS

This complaint of mal-administration is against the Department for its failure to settle sales tax refund for tax period from July 2011 to January 2013, filed on account of input adjustment claimed under Section 7(1) read with Section 2(14) of the Sales Tax Act, 1990 (the Act).

2. According to the AR, the Complainant is a manufacturer-cum-exporter. The service providers deducted provincial sale tax amounting Rs670,202 on services rendered to the Complainant for the period from July 2011 to January 2013 under Section 26 of the Sindh Sales Tax on Services Act, 2011 (SSTS Act). The methodology of determining sales tax liability prescribed in Section

7 (1) of the Act was that input tax was to be deducted from the output tax and the resultant amount was required to be paid in terms of Section 2(14) of the Act. Accordingly the Complainant filed refund claims for the period from July 2011 to January 2013. The claims were duly supported with complete copies of invoices paid challans. The Department, however, deferred the claims without giving any cogent justification.

3. In response to the notice, issued to the Secretary, Revenue Division, the Department filed para-wise comments on 8.7.2013. It was stated that sales tax refund claim of the Complainant pertaining to the period from July 2011 to February 2013, was on account of sales tax paid on services to the Sindh Revenue Board (SRB) for providing services related to the suppliers. It was contended that Sales Tax paid to SRB under SSTS Act was claimed as an input tax in the relevant tax periods by the Complainant; however, the same was deferred by the STARR system for non verifiability. It was further contended that in terms of Section 2(22A) (e) of the Act 'provincial sales tax' means Sindh Sales Tax Ordinance (SSTO) 2000 (VIII of 2000) and not SSTS Act. Thus until and unless necessary amendment was not introduced in the above provision of the Act by substituting SSTO 2000 with SSTS Act and proper linkage was established between FBR database and SRB portal, adjustment of sales tax input could not be allowed to the taxpayer. It is pertinent to mention here that the same issue had already been taken up by Large Taxpayer Units (LTU), Karachi with FBR to resolve it. Nevertheless, keeping in view the hardship being faced by the Complainant as well as the other registered persons, the RTO would also approach FBR so as to resolve the issue on priority.

4. The AR rebutted the plea regarding amendment in the Sales Tax Act 1990 and linkage between data basis of FBR and SRB. It was contended that there is no difference in the intent of SSTO 2000 and SSTS Act. Furthermore, the taxpayer's legitimate money could not be withheld merely on account of FBR's inertia in getting the relevant provision of law amended. He referred FTO's judgment dated 2.5.2013 in complaint No. 19/KHI/ST (3)/56 2013, wherein under similar circumstances, he had held withholding of sales tax refund on services as maladministration on the part of FBR.

5. The averments of both the parties have been considered and record perused. It is evident that the issue involved in the instant case was about refund of input claimed on account of sales tax on services under SSTS Act. After 18th Amendment, the powers to collect sales tax on services were delegated to the provinces. In terms of Section 2(14)(e) read with Section 7(1) of the Act, FBR is required to have allowed adjustment/refund to the taxpayer in lieu of sales tax collected on services by the SRB. It is an admitted position that both the SRB and FBR, in order to provide access to their respective databases for the purpose of verification of input adjusted, have already issued such authorizations vide letters dated 26.10.2011 and 11.4.2012. The FBR vide letter dated 4.4.2012, addressed to the SRB, had categorically stated that input adjustment of sales tax would be allowed at the time of filing return in accordance with Section 7(1) of the Act. As FBR has failed to workout appropriate *modus operandi* for input tax adjustment in respect of provincial sales tax on services collected by the service providers assessed with SRB, this has led to inordinate delay, neglect, inattention and inefficiency in the

administration on discharge of duties and responsibility on the part of FBR which being systemic one needed to be addressed on priority basis.

Findings:

6. Inordinate delay on the part of FBR to devise modalities for settling sales tax adjustment claims of the taxpayers is tantamount to maladministration in terms of Section 2(3) of the FTO Ordinance, 2000.

Recommendations:

7. FBR to:

- (i) provide database linkage as mutually agreed between SRB and FBR so as to resolve the systemic issue;
- (ii) direct the Chief Commissioner concerned to process and settle the Complainant's claims; as per law; and
- (iii) report compliance within next 30 days.

~~(Abdur Rauf Chaudhry)~~
Federal Tax Ombudsman

Dated: 05-8-2013
MHK/my

Imad Ezzul
Advisor (Implementation & Monitoring)
Federal Tax Ombudsman Secretariat
Islamabad