

Input tax, SED refund and audit notices

# Apparel Forum takes up crucial issues with FTO

**RECORDER REPORT**

ISLAMABAD: Pakistan Apparel Forum, Karachi has raised crucial issues with the Federal Tax Ombudsman (FTO), ie, illegal import blockage by customs, input tax adjustment between Federal Board of Revenue (FBR) and provinces, pending refunds of special excise duty (SED) claims, audit notices, transfer/change of ownership under SRO 589/2012 and post-refund audit notices prior to 3-5 years.

Industry sources said on Monday that the issues were raised by the Karachi-based exporters with Federal Tax Ombudsman Dr. Muhammad Shoaib Suddle to apprise him about irritants and problems faced by exporters involving or leading towards mal-administration. The FTO promptly took action on the issues raised by association to resolve them during last meeting at Karachi.

The first issue is that plant and machinery were exempted by the FBR through SRO.727(I)/2011 in consultation with trade and industry. The notification issued under section 13 of Sales Tax Act 1990 provides sales tax exemption on import by registered manufacturer and importers upon submission of post dated cheque. Customs authorities are required to release the surety in shape of post dated cheques

within one month after filing of sales tax return by importer. However, it was reported that Customs Authorities are putting blocking against all the importers who did not have reported imported consignment within one month in their sales tax return in spite of the fact that under section 7 of the Sales Tax Act imports/purchase could be reported within six months.

Sources said that FTO observed that the time period 120 days of surety / post dated cheque is in consistent with the time period of 180 days for reporting of purchase/import under section 7 of the Sales Tax Act. The notification does contain a prima facie infirmities leading towards unnecessary misinterpretation of law. The import blocking, even considering any lapse is of course a harsh approach and against the policy of taxpayer's facilitation. Particularly any such action without notice or opportunity of being heard is against the basic norms of natural justice.

The FTO, taking note of this general problem has instructed relevant advisor to write a letter to the FBR direct them to issue proper instructions to Customs field formation to not block import consignment on mere objection of reporting of import G/D's in other than first month. Since the Sales Tax Law allow reporting of purchase and import within six months under section 7 of the said

Act. The details of all such cases of pending surety since inception of SRO 727(I)/2012 shall also be sent to the FTO secretariat.

The second issue is related to the sales tax on services- input tax adjustment issue between FBR and Sindh revenue Board (SRB). It has been observed that due to some technical/administrative issues and lack of co-ordination between federal and provincial government the sales tax on services deposited with provincial government is remain un-verified through electronic verification system. Therefore, recipient of services dealing in supplies of goods and registered with FBR has declined to claim their input tax adjustment / refunds. The issue is systemic nature and causes problem in general. The lackluster attitude between the revenue collecting agencies resulted in undue hassle for genuine taxpayers. It is suggested by the delegates that appropriate instructions should be issued to the FBR to formulate modalities for input tax adjustment on services with provinces to avoid general complaints.

Sources said that the taxpayers should not be burdened if the Federal and Provincial government has failed to worked out appropriate modalities. The FTO, taking note of this general problem has instructed their advisors to

incorporate the points of the delegates in a letter already been under process to be written in this regard for an immediate resolution to the FBR.

Sources said SED was introduced by the FBR vide notification 655(I)/2007 on sales of certain item. The exporters were allowed to get refund of SED paid on procurement of raw material. The FBR did not work out any modalities to process refunds of exporters against SED. The issue was subsequent resolved by FBR and procedure for submission and processing of SED refund claims was placed in the relevant tax office, where exporters has submitted all their refund claims. The claims already submitted after hectic efforts of almost 4-5 years were now stuck up with FBR. Therefore, exporters suggested passing any suitable single order for processing and release of such pending claims.

The FTO, taking note of this general problem instructed the advisors to issue instructions to the FBR to provide a list of all SED pending refund claims and direct their field formation to process and release these cases on priority since it pertains with last 4-5 years.

Sources said that the issuance of notice if any by Commissioner/field formation without selection/endorsement by the Board is suggested to be held illegal particularly in the absence

of any decision in their favour from Supreme Court of Pakistan.

According to sources, the FTO observed that transparent and fair selection based on certain risk based criteria is the essence of audit selection in all the developed countries. The provisions for audit strictly require to be used as a tool to keep check and balance in fair possible way. The guidance passed by the Courts of the law needs to be followed and any divergence from settled law be avoided. In this regard, FBR Member Audit was required to issue clear-cut policy, keeping in front latest decisions of the judicial fora in order to restrain their field formation to issue audit notices on flimsy grounds in any divergence of settled intendment of the law.

On the issue of SRO 589(I)/2012, sources said that there are cases where Central Registration Office (CRO) FBR had not allowing sales tax change of particulars application in cases of proprietorship or A.O.P concern. The CRO office are asking such applicants to apply for de-registration and then fresh application on such scenario. In spite of the fact that a procedure under SRO 589/2012 was specifically been issued during current fiscal beside section 49 of the Sales Tax Act provides concept of transfer of ownership of the firms as an ongoing concern. The issue

needs to be addressed by taking any suitable manner to address the grievance in general.

The FTO said that in the presence of notification and prevailed guideline there is no justification for not accepting such request of change in registration. A notice was instructed to be issued to Central Registration office, requiring them to improve their system to process such application to address the grievance of the taxpayers on this account and made compliance within 30 days.

Sources said that notices for production of record for post-refund audit pertaining prior to the tax period of 3 to 5 years were issued by the field formation to exporters, whereas under section 24 of the Sales Tax Act the taxpayer requires to retain the sales tax record till 3 years up-till 2007 the time limit was extended till 5 years after 2007. Hence, issuance of notice for any period beyond the time limit provided u/s 24 is contrary to the law. The association would provide a list of their members who had served such notices.

The association has also taken up the issue of omission of adjudication powers in sales tax law, sales tax withholding provisions on commercial importers and provisions of revision of sales tax returns in line with the provisions available in income tax law.