

**BEFORE  
THE FEDERAL TAX OMBUDSMAN  
ISLAMABAD**

**0015/OM/2020**

Dated: 21.08.2020 R.O. Karachi

The Secretary,  
Revenue Division,  
Islamabad

... Respondent

Dealing Officer : Mr. Shahid Ahmad, Advisor

Departmental Representatives : Mr. Amir Amin Bhatti,  
Chief-IR, ST-Operations, FBR

**FINDINGS / RECOMMENDATIONS**

This is an own motion investigation initiated while exercising powers conferred under Section 9(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) to investigate irregularities committed by the FBR field formations, while processing and sanctioning of bogus sales tax refunds, involving preparation of fake and flying invoices, the instances of which came to the notice, while investigating cases of fake sales tax registrations and issuance of dubious refunds on the basis of fake/flying invoices under the Sales Tax Act, 1990 (the Act). The fraudulent entities obtained sales tax registration for the purpose of issuing fake sales tax invoices without any actual transaction of goods, which were subsequently obtained by suppliers, registered under the sales tax regime to claim bogus refund, input tax credit and reduce their tax liability. Due to lack of credible institutional mechanism to verify transactional details, uploaded by buyers and sellers, cases of tax evasion and colossal loss to national exchequer were reported. Preparation of forged documents for getting

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<sup>\*</sup> Date of registration in FTO Secretariat

registration, for the purpose of cheating, using of forged documents as genuine and dishonestly inducing delivery of property, are criminal offences which are required to be dealt under the relevant provisions of Pakistan Penal Code (PPC).

4 2. In response to the notice issued to the Secretary, Revenue Division in terms of Section 10(4) of the FTO Ordinance read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act, 2013, the FBR submitted comments vide letters dated 22.09.2020 and 05.11.2020. It was contended that the matter of fake sales tax registrations and issuance of dubious refunds based on fake and flying invoices was rampant in the years 2012 to 2015. However, after the launch of Sales Tax Real-time Invoice Verification System (STRIVE) in July 2016, the issue of fake invoices had been addressed at large. This system requires all Registered Persons to submit the Annex-C of the monthly return (details of supplies) by 10<sup>th</sup> of next month and input tax to the buyers is allowed only against those invoices which have duly been declared by the suppliers in Annex-C and output tax thereof had been accounted for. Besides, the registration procedure was changed requiring the applicant for biometric verification, which minimized the possibility of fake registration. It was further contended that various measures i.e. suspension/blacklisting, issuance of show cause notices, detection/recoveries and registration of FIRs/criminal proceedings in multiple cases were taken keeping in view the nature and severity of offence. It was averred that field formations were directed to conduct post registration audit, physical verification, and post refund audit, flagging of dormant units as inactive, system checks by PRAL besides initiating prosecution proceedings against the fraudsters and their

beneficiaries under Section 37A of the Sales Tax Act, 1990 (the Act). It was highlighted that login and password of the registered persons who apply for deregistration on the basis of closure of business, are more prone to be hacked. To counter the said hazard, PRAL is being engaged to disable all the tabs/options except 'Null filer' at the time of filing of sales tax return.

3. It was further averred that the Deptt took various measures over the years to address the issue. These include introduction of invoice summary in sales tax return to cross match Annex-A and Annex-C, filed by buyers and suppliers respectively. Subsequently, zero rating facility for five export-oriented sectors was also introduced to restrain registered persons from issuing and claiming fake/flying invoices. Moreover, to deal with the issue of fake registration, the existing process requires the applicant to appear in person for biometric verification, besides verification of declared business/manufacturing premise.

4. Evidently, during the investigation of cases of fake sales tax registrations and issuance of dubious refunds based on fake and flying invoices, identified by the Director General, I&I, invariably in every case, preparation of fake and flying invoices was established. These invoices were found to be used by racketeers who do not actually make any taxable supply and such paper transactions deprive legitimate revenue to the government, while the users earn substantial profit. ***Falsifying of sales tax invoices to understate the tax liability or overstate the entitlement to tax credit or tax refund or cause loss of tax had been defined as 'tax fraud' under Section 2(37) of the Act.*** However, in none of the cases, penal and punitive actions were initiated by the Deptt, except suspending/blacklisting the

Sales Tax Registration of the culprit. ***Notwithstanding, Section 21 of the Act, provides that where the Deptt had reasons to believe that a registered person is engaged in issuing fake or flying invoices, claiming fraudulent input tax or refunds, does not physically exist or conduct actual business, or is committing any other fraudulent activity, refunds or input tax adjustments of such person should be blocked and "appropriate legal action" be taken.*** The phrase "appropriate legal action" means that action is not only confined to punitive measures under the Act, but it also embraces penal laws of the land which deal with fabrication, preparation of false documents and using the same dishonestly with an intention to defraud any person including government for wrong gain.

5. Preparation and use of fake documents is a serious criminal offence and such fraudulent activity deserves to be dealt with harsher provisions of the Act. The Deptt instead of invoking the provisions of PPC, regarding preparation of forged documents (Section 468), using the same as genuine (Section 471) and cheating and dishonestly receiving the refund (Section 420) restricted themselves to the extent of stopping further payments and suspending the registrations, which are incomplete actions and against the provisions of Section 21 of the Act, and thus, incomplete actions do not have a deterrent effect on those involved in committing tax fraud.

#### **FINDINGS:**

6. Non-application of above-mentioned provisions of law is a serious negligence and inefficiency on part of the Deptt, which does tantamount to maladministration, in terms of Section 2(3)(i)(d) & (ii) of the FTO Ordinance.

[REDACTED]

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[REDACTED]

Chief Security Officer is [REDACTED]

[REDACTED]

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[REDACTED]

