

**FEDERAL TAX OMBUDSMAN SECRETARIAT**  
Islamabad

**Diary No.7983/2012**

Dated: 25.09-2012\*

M/s. Transparency International  
Pakistan,  
5-C, 2<sup>nd</sup> Floor, Khayaban-e-Ittehad,  
Phase VIII, DHA,  
Karachi.

... Complainant

**Versus**

The Secretary  
Revenue Division  
Islamabad

... Respondent

Dealing Officer	:	Sardar Irshad Shaheen, Advisor
Authorized Representative	:	M/s Transparency International
Departmental Representatives	:	Mr. Zulifqar Hussain Khan, (Chief Sales Tax/FE-Policy) FBR Mr. Fahad Ali Chaudhary, Secretary, Sales Tax (L&P), FBR

**FINDINGS/RECOMMENDATIONS**

This complaint was filed by Mr. Adil Gilani, Advisor Transparency International Pakistan (TIP), alleging that FBR allowed the sales tax law to be misused in the cases of contracts for International Tenders causing huge loss to the public exchequer.

2. According to the Complainant, FBR was requested by TIP vide letter dated 07-09-2012 to take action for recovery of over Rs. 12 billion from contractors who were allowed relief by misusing rules/law of zero rating sales tax on supplies of International Tendered Contracts, but no action was taken by the FBR. It has been claimed that zero rating facility of sales tax has been allowed to the contractors of International Tenders in connivance with some officials of FBR causing loss of over Rs.12 billion to the national exchequer. The Complainant further claimed that two reminders were issued to the Chairman, FBR on 20-11-2011 and 09-12-2011, but no action had been taken despite the fact that Additional Commissioner (IR) RTO-II Karachi had already passed Order-in-Original dated 28-08-2012, wherein M/s Ssangyone and Usmani Joint Ventures was refused facility of zero rating sales tax and demand was raised against that taxpayer. It has been prayed that FBR be directed to recover the amount of sales tax from such taxpayers.

3. Notices were issued to the both the parties, but TIP made no compliance during various hearings, nor any intimation was received. The issue raised by TIP will, therefore, be decided on merits.

4. The DRs claimed that a letter, addressed by TIP to the Chairman, FBR on the subject, was responded and detailed clarification was issued to the TIP vide C.No.1(45)STT/2001 (Pt)/164810-R dated 01-12-2011. In this letter it was explained that local supplies made against International Tenders were zero rated. It was also explained in the said letter that Serial No.4 of the 5<sup>th</sup>

Schedule of Sales Tax Act 1990 (the Act) was inserted through Finance Supplementary (Amendment) Act, 1997 and thereafter instructions were also issued by FBR through letter C.No.1/43-STB/96 dated 28-03-1997, explaining that "The scope of deemed export goods is being enlarged. A new entry has been added in the Fifth Schedule to incorporate local supplies made against International Tenders. Such supplies shall be treated zero-rated." The DRs contended that under the said legal provisions, as explained by FBR, all supplies, including local supplies, in cases of International Tenders were covered for zero rating, but cars/vehicles and machinery, not supplied against these tenders but were used for completion of the project, were not covered under the zero rating provision. The DRs further submitted that all supplies against International Tenders were zero rated in general terms, in which local supplies were made for such tenders also qualified for zero rating up to 01-06-2012. This fact was further clarified through FBR's SRO 167(I) of 2012, dated 22-02-2012, inserting Chapter VIIA in Sales Tax Rules 2006; wherein detailed procedure was prescribed for zero rated supplies against International Tenders. In this Chapter some conditions and qualifications were prescribed for zero rated supplies w.e.f.02-06-2012. The DRs explained that after insertion of Chapter VIIA in the Sales Tax Rules, general relief to all suppliers was allowed in respect of sales tax in the form of zero rating up to 01-06-2012 and thereafter such relief was allowed under certain qualifications up to 12-06-2013; but w.e.f 13-06-2013 supplies against International Tenders have been made chargeable to sales tax.

5. During the hearing, this office pointed out that information submitted by various LTUs/RTOs indicated that no uniform treatment was being followed in respect of supplies against International Tenders. The DRs submitted that due to issuance of letters by the FTO's office on the issue raised in the complaint, some officers passed Orders-in-Original under pressure without appreciating the legal position. They submitted copy of an order of ATIR, Karachi, vide STA No.208/KB/12 dated 23-01-2013, wherein the order passed by the Additional Commissioner RTO, Karachi, referred to supra, was held unlawful and this order was not contested by FBR. The DRs were asked to issue clarification to the field formations to remove confusion among the officers and to follow a uniform treatment in accordance with the provisions of law. They averred that as some field formations had initiated action during the pendency of the proceedings in FTO office, so it would be appropriate if directions are finally issued by this office for the guidance of the field formations through FBR.

6. The argument of both the parties have been considered and record perused.

7. The field formations appeared to be confused despite the fact that sales tax was zero rated on supplies in international tendered contracts under S.No.4 of the 5<sup>th</sup> Schedule to Sales Tax Act, 1990 during the period from 1997 to 01-06-2012. This fact was clarified by the FBR to the Complainant, the Transparency International Pakistan, vide letter dated 22-02-2012 (referred to supra), wherein it was

elaborated that local supplies against international tendered contracts shall be charged to tax at zero percent, so that in-put tax could be claimed as refund by the suppliers. However, no attempt was made to issue clarification to the field formations who remained confused due to pendency of complaint of the TIP in FTO Office. The DRs admitted that law was clear and through the above mentioned letter the FBR had clarified the issue to TIP and no objection was raised thereafter (by the TIP).

8. In para 9 of the order of the Appellate Tribunal referred to supra, it has been stated that zero rating facility was allowed to the suppliers in International Tenders Contracts cases on the basis of FBR's letter dated 13-04-2010 which was endorsed to all the suppliers. In this para another order of the Tribunal (STB 95 & 96/IB/2006) has also been referred on the issue. It is, therefore, evident that all supplies, including local supplies, were provided facility of zero rating sales tax in terms of Section 4 of Sales Tax Act 1990 read with S.No.4 of the 5<sup>th</sup> Schedule to the Sales Tax Act and no loss was caused to the national exchequer on this account as alleged in the complaint. However, FBR failed to clarify the legal position on the issue which tantamounted to maladministration.

9. In view of the discussion in preceding paras, FBR needs to clarify the legal position to its field formations so that uniform treatment is afforded in all such cases.

10. As no element of maladministration has been established the complaint is filed with the above observation.

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

Dated: -2014  
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