

**FEDERAL TAX OMBUDSMAN SECRETARIAT
ISLAMABAD**

Complaint No.149/lrd/IT(128)/790/2010

Dated: 11.06.2010

Messrs Saba Power Company (Pvt) Limited
House No.2C, Street No.35
9th Avenue, F-8/1, Islamabad

... Complainant

Versus

Secretary
Revenue Division
Islamabad

.. Respondent

FINDINGS/RECOMMENDATIONS

Dealing Officer : Mr. Yasin Tahir, Senior Advisor
Authorized Representative : Mr. Mohammad Zaheer, Tax Consultant
Departmental Representatives : Sardar Zafar Mahmood, Addl. Commissioner
LTU, Islamabad
Syed Imran Shah, Staff Officer to
Commissioner (Legal), LTU, Islamabad

✓ The complaint under reference is directed against FBR and LTU Islamabad for arbitrary shifting of jurisdiction of Messrs Saba Power Company (Pvt) Ltd from Islamabad to Lahore. It is claimed that the Complainant Company is registered with SECP since 1994 at Islamabad address and so it has all along been assessed to Income Tax at Islamabad. The Sales Tax Registration of the Company was also shifted on their request from Lahore to Islamabad in the year 2005. Despite the Company's 16 years of registration with Income Tax authorities and five years registration with the Sales Tax authorities of Islamabad, the Chief Commissioner LTU Islamabad misled the FBR to unilaterally and arbitrarily shift the Company's jurisdiction to LTU Lahore in violation of the Sales

* Date of registration in FTO Secretariat

Tax Registration Rules, 2006 and without providing opportunity of hearing to the affected Company before taking such a decision.

2. The reason for such an unwarranted action is said to be the Lahore High Court (Rawalpindi Bench) Judgment dated 23.06.2010 in WP No.3228 of 2008 directing the FBR and the authorities at LTU Islamabad to decide and finalize the Complainant's refund claims worth about Rs.552 million preferably within 60 days but not later than 90 days. It is alleged that the LTU Islamabad used the shifting of jurisdiction and the Company's records from LTU Islamabad to LTU Lahore for gaining further time in respect of their refund claims which were held-up since 2001. In view of the above submissions, the Complainant prayed that the maladministration committed by the LTU and the FBR by unilaterally shifting the Company from the jurisdiction of LTU Islamabad to the jurisdiction of LTU Lahore be adequately punished and orders be issued to restore jurisdiction of LTU Islamabad instead of LTU Lahore.

3. The complaint was referred under Section 10(4) of the FTO Ordinance, 2000 to Secretary Revenue Division for comments of LTU Islamabad. In response thereto the Commissioner (Legal), LTU Islamabad, filed para-wise comments stating that the jurisdiction of the Company had been shifted to LTU Lahore by exercising powers under Section 8 of Registration of the Sales Tax Rules notified vide SRO 555(I)/2006 dated 05.06.2006 as the company was operating a dummy address (73-G.D Arcade, Blue Area, Islamabad) whereas its regular business office was at 10-Ali Block, New Garden Town, Lahore.

4. After receipt of parawise comments from LTU Islamabad, opportunity of personal hearing was provided to the parties. Both the parties attended the hearing and reiterated the averments of their written contentions. The AR contended that the action of LTU Islamabad was basically motivated to deny them their refund claims. He stated that the Complainant had been filing the refund claims in accordance with the rules and prescribed procedure since 2001 but the Sales Tax authorities at Islamabad neither sanctioned the claims nor rejected them. As a result they had to file a Writ Petition in the Hon'ble Lahore High Court [Rawalpindi Bench] which directed the FBR and other concerned authorities vide its judgment dated 23.06.2010 to decide the refund claims of the

Complainant within a specified period of 60 days but not later than 90 days. The AR alleged that the arbitrary shifting of the Company's assessment records from the jurisdiction of LTU Islamabad to LTU Lahore was aimed at creating a justification to further delay the payment of refund as directed by the High Court and thus, it was not only unlawful but also based on malafide intentions.

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5. Explaining the reason for shifting the jurisdiction from Islamabad to Lahore, the DR stated that the LTU Islamabad had selected the Complainant Company for normal audit. The Auditors visited the given address of the Company at 73, GD Arcade, Blue Area, Islamabad but found that nobody was available on the premises. The Chowkidar informed the visiting Auditors that Messrs Saba Power Company had shifted to a new address. He, however, expressed his inability to indicate the new address of the Company as he was not privy to the Company's internal affairs. He also told that the existing premises belonged to Messrs Coastal Technologies (Pvt) Ltd. In absence of the Company's address in Islamabad, the Chief Commissioner recommended to FBR to shift the Company's records to the jurisdiction of LTU Lahore where they had business address as 10-Ali Block, New Garden Town, Lahore as also indicated by the Company's website. The AR, however, explained that although the Company did have a business office in Lahore, the Sales Tax registration under Rule 5(a) of the Registration Rules, 2006 notified vide SRO 555(I)/2006 required registration at the registered address of the Company located at Islamabad as per the registration of the Company by the SECP in 1994.

6. As regards non-availability of the Company on the old address, the AR explained that the Company had applied to the Central Registration Office (CRO) of FBR for change of address as per the Rule 7 of the aforesaid Registration Rules, which was approved by the FBR. The new address of the company was available in the STARR system. Besides, an Auditor of LTU Islamabad namely Syed Ishrat Hussain had recently conducted audit of the company at its new address. Therefore, the DR's contention that the Company's new address was not known to the LTU authorities was factually incorrect.

7. According to the AR, the contention of the Department that they made informal inquiry from the Chowkidar at the old premises about the new address of

the Company which he could not indicate was a flimsy argument because Chowkidar could not be expected to be privy to the Company's affairs. Besides, the staff of their sister Company namely Messrs Coastal Technologies (Pvt) Ltd. was available at the Complainant's old address. Therefore, instead of asking the Chowkidar, the staff of Messrs Coastal Technologies should have been asked to provide the Complainant's new address. The AR therefore contended that shifting the Company from Islamabad to Lahore on this flimsy ground was unjustifiable and arbitrary. He insisted that the Complainant Company would like to be assessed to Income Tax and Sales Tax etc at Islamabad because the Company's registered office was located at Islamabad. In support of his contention, he produced the Company's Registration Certificate issued by the SECP showing its registered address at Islamabad since 1994. He also confirmed that they had placed their new address on the Company's website.

8. The AR further stated that manufacturing unit of HUBCO was located at Balochistan with head office at Karachi and registered office at Islamabad and it was being assessed at Islamabad because it had the registered office at Islamabad. Similarly, the unit of Mari Gas was located in Sindh while it was being assessed in Islamabad. He questioned the discrimination involved in shifting their assessment to the jurisdiction of LTU Lahore. The DR could not plausibly explain this discrimination. Moreover, the Member Sales Tax, FBR vide letter No.1(33)SM/2009/ dated 20.04.2010 had allowed the Company to continue in the jurisdiction of LTU Islamabad (copy of order placed in the file), but despite that their jurisdiction was shifted to Lahore.

9. The DR, however, reiterated that their jurisdiction was shifted to Lahore because their business office was located in Lahore and that they had no physical presence of the Company in Islamabad. He further stated that both the old and new premises at Islamabad being claimed as the registered offices of the Complainant belonged to other companies namely Messrs Coastal Technologies (Pvt) Ltd. and Messrs Orient Operating Company (Pvt) Ltd. The AR replied that other companies occupying these offices were sister concerns of the Complainant Company. When asked whether the Complainant Company had regularly employed staff and its normal business records at the new premises,

the AR replied in the affirmative. The DR contested it and proposed to visit the premises to confirm the facts. The AR immediately agreed and asked for a representative of FTO to also accompany them as a neutral person. However, when the FTO Secretariat's representative was nominated, the AR desired that only the representative of FTO Secretariat should go with him, without the DR, to find out the facts. Be that as it may, as the Registration of the Company with SECP was at the Islamabad address and the Company had been admittedly audited twice at their Registered business addresses, new and old, at Islamabad, the Sales Tax Registration of the Company at its registered office in Islamabad was lawful in accordance with Rule 5(a) of the Sales Tax Registration Rules. The DR then stated that Company was not paying any taxes at Islamabad. The AR, however, replied that input tax was being paid/deducted by the Company at Islamabad. Besides, the excess input tax was also treated as tax paid.

10. The complaint has been examined in the light of aforesaid submissions of the parties. The DR contended that the jurisdiction of any Registered Person could be shifted by CRO of FBR to any place in Pakistan where he was doing normal business. He referred to Rule 8 of the Sales Tax Registration Rules, 2006, notified vide SRO 555(I)/2006 dated 05.06.2006. This contention does not appear to be correct because Rule 8 of the Sales Tax Registration Rules, 2006, cannot be implemented in isolation. Rather it has to be read with Rule 5(a) of the aforesaid Rules which stipulates Sales Tax registration at the registered address of the Company. Even if there was any discretion allowed by the Rules, it could not be used unreasonably or arbitrarily. The Supreme Court of Pakistan has ruled vide their Judgment reported as PLD 1991 SC 14 enjoining on the public agencies to use discretion according to standard rules and procedure and if there were none, these should be framed before exercising the discretion. The relevant part of the Supreme Court decision is reproduced below:

"Wherever wide-worded powers conferring discretion are found in a statute, there remains always the need and the desirability to structure the discretion. Structuring discretion means regularizing it, organizing it, producing order in it, so that decisions will achieve a higher quality of justice. The instruments that are most useful in the structuring of discretionary power are open precedents, and fair informal procedure. When legislative bodies delegate discretionary power without meaningful standards, administrators should develop standards at the earliest feasible time, and then, as circumstances permit, should further confine their own

discretion through principles and rules. The movement from vague standards to definite standards to broad principles to rules may be accomplished by policy statements in any form, by adjudicatory opinions, or by exercise of the rule-making power. When legislative bodies delegate discretionary power without meaningful standards, administrators should develop standards at the earliest feasible time, and then, as circumstances permit, should further confine their own discretion through principles and rules".

11. In view of the above judgment of the Supreme Court of Pakistan, the discretion, if any, available under the Sales Tax Registration Rules, 2006, is to be exercised according to some pre-determined parameters forestalling the chances of arbitrariness, willfulness, injustice and decisions contrary to the bonafide interests of the affected parties. As the DR admitted that no such parameters had been framed to exercise the aforesaid discretion, therefore, an appropriate course for the LTU authorities at Islamabad was first to confront the registered person with their contention about their business address and registered address etc. Had the Complainant failed to satisfy the competent authority, it could have taken any action deemed proper. As this had not been done in this case, it lends a lot of credence to the AR's contention that the FBR and the authorities of LTU have committed an arbitrary and oppressive act to unilaterally, unjustifiably and unreasonably shift their records to the jurisdiction of LTU Lahore to buy time for implementation of the High Court's directive about the refund claims of the Company within the prescribed time limit of 60 to 90 days.

Findings:

12. In view of the above discussion, it is evident that the LTU Islamabad had unjustifiably, unreasonably and arbitrarily shifted the Complainant Company to the jurisdiction of LTU Lahore in misexercise of their authority and in violation not only of the basic right of the Complainant to be heard before taking any such drastic action but also in violation of Rule 5(a) of the Sales Tax Registration Rules, 2006. The main argument of the Department that their officers had not found the Complainant Company at its given address and its new address was also not known is not maintainable because conduct of two audits of the Complainant Company by the Sales Tax Auditors during the last few years at

their Islamabad address (one each with new and old address) belies the departmental contention that the Company's new address was not known.

Recommendations:


13. FBR to-

- (i) take steps to restore the jurisdiction of the Complainant's Company to LTU Islamabad;
- (ii) suitably structure the system of making changes of address etc in the Registration of a person in such a way that while requesting the required changes, a copy of the application for change of particulars is also forwarded to the LTU or RTO concerned so that it also knows that a Registered Person has applied for the change of address etc;
- (iii) structure the use of discretion, if any, under the Rules of Sales Tax Registration in the light of the Hon'ble Supreme Court's Judgment cited in para 09 supra in order to avoid arbitrariness; and
- (iv) report compliance within 30 days.

(DR. MUHAMMAD SHOAB SUDDLE)
Federal Tax Ombudsman

Dated: 13/07/2010
AHM/R./A.H.

ATTESTED


Ch. Muhammad Siddiq Tabassum
Advisor (Implementation & Monitoring)
Federal Tax Ombudsman Secretariat
Islamabad