

**THE FEDERAL TAX OMBUDSMAN SECRETARIAT
ISLAMABAD**

COMPLAINT NO. 143/ISD/ST(12)/728/2010

Dated: 28.05.2010*

Mr. Aslam Pervaiz
Prop. Messrs Unique Enterprises
Rawalpindi

...Complainant

VERSUS

The Secretary
Revenue Division
Islamabad

...Respondent

FINDINGS/RECOMMENDATIONS

Dealing Officer : Mr. Yasin Tahir, Senior Adviser

Authorized Representative : Syed Tauqeer Bokhari, Advocate
Mr. Aslam Pervaiz, Complainant

Departmental Representatives : Sardar Zafar Mahmood Khan
Addl. Commissioner, LTU, Islamabad
Mr. Ehsan Ullah, Assistant
Commissioner, LTU, Islamabad and
Syed Imran Shah, SO (Legal) LTU
Islamabad.

The complaint under reference is directed against LTU Islamabad mainly for unlawful blocking of refunds on the Sales Tax Invoices issued by the Complainants and suspension of Sales Tax Registration before audit and without providing opportunity of hearing. It is alleged that during audit of the Complainant's Sales Tax record, the Auditor, Mr. Tariq Iqbal Khan, started blackmailing him and made him to pay Rs. 700,000/- as bribe for his help in deblocking of refunds and restoration of the Complainants Sales Tax Registration. Also, the Auditor raised frivolous objections to pressurize the Complainant.

2. The complaint was referred under Section 10(4) of the FTO Ordinance, 2000, to the Secretary Revenue Division for comments. In the reply submitted by the Commissioner (Legal), it was stated that Collector Sales Tax Lahore had triggered verification of the Complainant's record which revealed major

*Date of registration in FTO Secretariat

discrepancies and so the unit was selected for investigative audit. Manager PRAL (FBR Headquarter) was also accordingly asked to block the input adjustment/refund on invoices issued by the Complainant. However, suspension of Registration had not been recommended. With regard to the allegation of bribery by Auditor, Mr. Tariq Iqbal Khan, it was informed that much before filing complaint in the FTO Secretariat, the registered person had sent a separate complaint in this regard to the Chief Commissioner in pursuance of which the Auditor was suspended, and an Inquiry Committee was already investigating the matter.

3. After receipt of parawise comments, the parties were heard in the FTO Secretariat, Islamabad. Both the parties reiterated the averments of their pleadings in writing.

4. It is observed that Collector Sales Tax Lahore, vide his letter No.LTU/ST/Ref/F-2395/09/333 dated 26.07.2009, had asked for following information from Collector Sakes Tax Islamabad:

- (i) whether the unit existed at the registered address;
- (ii) the unit-wise total purchases and supplies made by the unit during tax period January-December 2008.

In response to the aforesaid letter, the Collector Sales Tax, Islamabad, confirmed existence of the unit in his jurisdiction vide letter No.ST/LTU/VER/LHR/06/2009/ 3639 dated 26.10.2009. He, however, did not respond to the second issue of total purchases and supplies made by the unit during 2008 to enable the Collector Sales Tax, Lahore, to decide refund claims filed by the Registered Persons in Lahore who claimed to have got their supplies from the Complainant's unit. The DR admitted during the hearing that no action was taken by the Sales Tax authorities at Islamabad to meet the second requirement of Collector Sales Tax, Lahore. When asked whether the Collector Lahore was asked to supply specific information about the Registered Persons who were claiming huge refunds against the Sales Tax Invoices of the Complainant, it was revealed that LTU Islamabad had neither asked for the names of the Registered Persons claiming huge refunds in Lahore against the Sales Tax Invoices issued by the Complainant nor the invoice numbers against which the refund was being claimed were obtained from Lahore to ascertain their genuineness. Indeed, it is inconceivable to handle such an investigation with this level of inefficiency and gross neglect. Resultantly, the refunds due to the



Registered Persons in Lahore were held up on account of the failure of Collector Sales Tax Islamabad to supply the specific information required by Collector Sales Tax Lahore to settle the refund claims.

5. The DR was asked to explain the legality and propriety of blocking the refund against the Sales Tax Invoices issued by the Complainant before establishing any offence under the Sales Tax Act, 1990 and without affording opportunity of hearing to the Complainant. Explaining the reasons, the DR stated that in response to Collector Lahore's letter dated 28.07.2009, the Sales Tax record of the Complainant was checked and following discrepancies were found:

- (i) The unit had shown large number of sales tax invoices as "cancelled" in the Supply Register, during the tax period from January, 2008, to September, 2008, but no record provided for examination.
- (ii) Sales tax invoices were issued with same serial Nos., adding "A" and "B". For instance, 5112(A), 5112(B) and 5185, 5185(B) and 5185(A), 5185(B) in January and February, 2008 respectively.
- (iii) Some sales tax invoices were not issued in chronological order i.e. date-wise and serial-wise.
- (iv) Sales/supply register indicated sales as "local supplies" but no date or quantity was mentioned.
- (v) Some sales tax invoices indicated "commission charges" on certain supplies, but no sales tax had been charged in respect of such invoices.
- (vi) With regard to purchases, the registered person had claimed that they were maintaining their purchase register treating the vehicle number as invoice number, which made it extremely difficult to ascertain the actual quantity or purchases made by the unit, during the period under audit, particularly when the registered person had not provided complete record.
- (vii) Scrutiny had further revealed that purchases were made by the R/P mainly from Messrs CHEVRON, Messrs PARCO AND Messrs Apt. However, the same were not reflected in the "Summary of supplies" for the relevant tax period furnished by the respective suppliers, which made the entire transactions suspicious.

6. On the basis of these observations, the Collector Sales Tax, Islamabad deemed it appropriate to block input adjustment/refund against the Sales Tax Invoices issued by the Complainant under Rule 12 of Sales Tax Rules, 2006. He, however, denied having recommended suspension of Sales Tax Registration. However, the Complainant produced a print out dated 07.12.2009 of FBR Website showing the unit as suspended. When told that the said Rule 12

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dated 26.10.2009 was apparently unfair, unjust and unlawful. Suspension of the

empowered either suspension or black listing; it did not enable blocking of refunds, the DR could not indicate any provision enabling blocking of refunds in such cases. It was also observed that blocking of refunds and suspension of Registration was not uniformly done in all cases suspected of similar irregularities. Complaint No.136/Khi/ST(40)/471/2010 against PTCL was a case in point where Registration was not suspended despite allegation of evasion of duty amounting to Rs. 542 million. It therefore amounted to discrimination between different taxpayers while dealing with identical issues.

7. According to the Complainant, he buys furnace oil from reputable companies like PARCO, Chevron and Attock Oil and supplies the same directly to well established IPPs in the country. According to him, it is a neat, clean and transparent business without any irregularities. As the amounts of Sales Tax involved in these supplies were huge, refunds were also substantial. And, therefore, there should be no cause for concern merely on the ground of hugeness of refunds involved in this business. He insisted that no bogus claim in Lahore Collectorate had been identified against the invoices issued by him. He alleged that the staff of Sales Tax at Islamabad used Collector Lahore's letter to block refunds against the invoices issued by him to harass him and to extort bribe. He also alleged that he was made to pay Rs. 700,000/- to the Auditor, Mr. Tariq Iqbal Khan, for his promise to help deblock his refunds and restore his Registration.

8. The AR also explained the audit observations of the Sales Tax authorities one by one in detail. He, however, stated that the allegations against his unit were sub-judice before the adjudication authority.

9. As these issues are already under adjudication at the appropriate fora, this office would not like to comment on their merits. However, the principal issue of alleged unlawful suspension of registration and blocking of input adjustment without appropriate order under Rule 12 of Sales Tax Rules, 2006, merely on suspicion, without proof of potential tax fraud and without giving due opportunity of hearing to the Complainant amounts to maladministration, and so the jurisdiction of the FTO is competent in terms of Section 9(1) of the FTO Ordinance, 2000. The Hon'ble President while rejecting the FBR's representation against FTO's Findings in Complaint No.1829-K/08 has held that "in case where the circumstances patently show maladministration the jurisdiction of the FTO to the extent of maladministration is competent in law".



10. As regards the allegation of corruption, though it falls in the jurisdiction of FTO Office under Section 2(3) of the FTO Ordinance, 2000, being already under formal inquiry in the LTU Islamabad and the complained against Auditor having been suspended, this office would expect that the matter would be decided on merit and its outcome reported to the Federal Tax Ombudsman Secretariat.

11. It is observed that the Sales Tax authorities at Islamabad failed to obtain information about the Sales Tax Invoices and the names of the Registered Persons who were reportedly claiming huge amounts of refund in Lahore Collectorate on the basis of Sales Tax Invoices issued by the Complainant. The Sales Tax authorities at Islamabad also failed to supply to Collector Lahore the unit-wise total purchases and supplies made by the Complainant during the period of January-December, 2008 as required vide Collector Lahore's letter referred to in para 4 supra. Without doing this exercise, Collector Sales Tax Islamabad recommended to Collector Lahore not to allow refund on invoices issued by the Complainant. As a result, the Registered Persons who sourced their supplies from the Complainant could not obtain refund of Sales Tax paid by them to the Complainant without the Department having established their lack of genuineness. This is unjust and unlawful.

12. Although it is stated in the parawise comments of LTU Islamabad that no instructions were issued for suspension of the Registration, yet the Complainant proved by documentary evidence in the form of print out of the relevant page of FBR Website showing the Complainant's unit as suspended and inactive. The Complainant contended that he met the Commissioner, LTU, Member Audit FBR and Member Operations [North] FBR requesting them to restore his Registration. He also wrote to the Chief Commissioner vide para 03 of his letter dated 19.05.2010 on record but to no avail. The question, therefore, is why did the LTU fail to restore Registration of the Complainant once it came to know of it? Suspending the Registration without appropriate orders of the Collector Sales Tax under Rule 12 of the Sales Tax Rules, 2006, is a worse kind of maladministration. But not rectifying such an injustice once it is brought to the notice of the competent authorities is even worse.

Findings

13. The upshot of the foregoing discussion is that Collector Sales Tax Islamabad's recommendation to Collector Lahore vide last para of his letter



Secretary
Implementation & Monitoring
Federal Tax Ombudsman Secretariat
Islamabad

dated 26.10.2009 was apparently unfair, unjust and unlawful. Suspension of the Complainant's Registration without Collector's specific order under Rule 12 of the Sales Tax Rules, 2006, is also illegal. Therefore blocking of refunds against the supplies made by the Complainant without proving that the invoices were fake tantamount to mis-exercise of powers by the Collector Sales Tax and is covered under maladministration as defined under Section 2(3) of the FTO ordinance, 2000.

Recommendations:

14. FBR to-


- (i) revisit the suspension of Sales Tax Registration of the Complainant forthwith;
- (ii) deblock the input adjustment against the Sales Tax Invoices issued by the Complainant;
- (iii) finalize the inquiry into the allegations of bribery against the Auditor, Tariq Iqbal Khan, and if found guilty, he ought to be proceeded against under the relevant disciplinary rules under intimation to the FTO Secretariat; and
- (iv) report compliance of the recommendations at (i) and (ii) within 15 days; and compliance of recommendation at (iii) within 30 days.



(Dr. MUHAMMAD SHOAIB SUDDLE)
Federal Tax Ombudsman

Dated: -2010
A.H./M.R./A.H.

ATTESTED


Muhammad Aodiq Tabassum
Advisor: Implementation & Monitoring;
Federal Tax Ombudsman Secretariat
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