

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

0003/OM/2022

Dated 20.01.2022R.O Lahore*

**NEGLECT, INATTENTION, DELAY, INCOMPETENCE, INEFFICIENCY,
EXERCISE OF POWER FOR IMPROPER MOTIVES LIKE FAVOURITISM,
NEPOTISM AND INEPTITUDE ETC IN DISCHARGE OF DUTIES AND
RESPONSIBILITIES:- M/S CHINA NATIONAL ELECTRIC WIRE & CABLE
IMPORT & EXPORT CORPORATION AND ALLIED CONCERNS**

(TAX YEAR 2013 AND ONWARDS)

1. The Secretary,
Revenue Division,
Islamabad.
2. The Chief Commissioner-IR,
Regional Tax Office,
Lahore.

...Respondent's

Dealing Officer	:	Mr. Abdur Rehman Dogar, Advisor
Appraisal by	:	Mr. Muhammad Tanvir Akhtar, Advisor
Departmental Representative	:	Mr. Noman Malik, CIR RTO Lahore

FINDINGS/RECOMMENDATIONS

While investigating issuance of bogus refund amounting to **Rs.123.364 million** for Tax Year 2007 to 2009 & 2011 in an own motion case (0200/OM/2019) some additional irregularities were unearthed warranting authorization of instant investigation. Moreover in order to ascertain whether the irregularities committed in aforementioned TYs continued in the cases of M/s China National Electric Wire & Cable Import & Export Corporation and its associates (M/s Sinotec Co. and Mr. Song Shuangping) in the subsequent TYs, an own motion investigation was initiated under Section 9(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance). Suspected neglect, inattention, delay, incompetence, inefficiency, exercise of power by FBR functionaries for improper motives like favoritism, nepotism and ineptitude constitute the basis for the instant proceedings.

2. During earlier proceedings it was revealed that M/s China National Electric Wire & Cable Import & Export Corporation did not file returns for Tax Year 2013 and onwards. Instead, a sister AOP namely M/s Sinotec Co. was registered on FBR portal on 01.11.2011, with Mr. Song Shuangping (common member in both AOPs), holding 99% share and Mr. Fateh Muhammad with 1% share. Therefore, in order to ascertain whether;

- i. the irregularities committed by M/s China National Electric Wire & Cable Import & Export Corporation are being continued by its sister AOP i.e. M/s Sinotec Co or not; and
- ii. the glaring discrepancies in the case of M/s China National Electric Wire & Cable Import & Export Corporation, pointed out by this earlier (0200/OM/2019) are being properly pursued by the department or not;

3. The specific issues, reflecting maladministration were referred for comments to the Secretary Revenue Division in terms of section 10(4) of the FTO Ordinance read with sub section (1) of the Federal Tax Ombudsman Institutional Reforms Act, 2013 as under:

"NOW THEREFORE, in terms of Section 10(4) of the FTO Ordinance, 2000, read with Section 9(1) of the FOIR Act 2013, you are required to submit reply to the following specific issues, entailing suspected maladministration:

- i. *In the subject case (M/s China National Electric Wire & Cable Import & Export Corporation) FBR's internal order dated 05.06.2013, passed u/s 122(5A) of the Income Tax Ordinance, 2001 (the Ordinance), for Tax Years 2007 to 2009 & 2011 envisaged initiation of penalty proceedings u/s 182, 184 & 187 of the Ordinance. During last over 08 years no such action has been initiated.*
- ii. *Similarly it was also directed vide order u/s 122(5A) of the Ordinance for Tax Year 2012 dated 13.06.2018 to initiate penalty proceedings u/s 182 of the Ordinance for making false and misleading statement but same has not been initiated till date.*

In both the above scenario Section 2(3) (ii) of FTO Ordinance, 2000 is attracted i.e. "neglect, inattention, delay, incompetence, inefficiency and ineptitude, in the administration or discharge of duties and responsibilities;"

- iii. Assessment record of the subject case was transferred from CTO Lahore to RTO Lahore vide letter No.15950 dated 18.02.2021 on the point of jurisdiction, but the demand raised amounting to Rs.205.397 million as a result of orders dated 05.06.2013, 13.06.2018 passed u/s 122(5A) of the Ordinance, was neither transferred nor incorporation certificate was requisitioned. It needs to be ascertained that at what stage this demand was deleted from the record / arrear registers.

Section 3 (2) (i) of FTO Ordinance, 2000 applies;

- (i) **A decision, process recommendation, act of omission or commission which-**

(a) is contrary to law, rules or regulations or is a departure from established practice or procedure, unless it is bona fide and for valid reasons;

- iv. It was reported that recovery could not be affected from Mr. Song Shuangping, Member of AOP because he left Pakistan long ago and matter was reportedly taken up with Govt. of China for recovery due to non-traceability of the said person. However the facts need recheck:

- a. Order u/s 122(5A) of the Ordinance for Tax Year 2012 was passed on **30.06.2018** and **Mr. Song Shuangping joined the proceedings through his Authorized Representative.**
- b. As per FIA report/Travel History, Mr. Song Shuangping was using three passports for travelling and **he lastly flew from Lahore to China on 10.10.2019.**
- c. Mr. Song Shuangping is running another AOP namely M/s Sinotech Co. (NTN No.3822083-7) with 99%share which is on 'Active Taxpayer's List' meaning thereby the taxpayer is filing returns and doing business.
- d. As per ITMS registration profile besides being Member of two AOPs i.e. M/s Chinese National Electric Wire & Cable Import and Export Corporation and M/s Sinotech Co. Mr. Song Shuangping has also shown a Pvt Ltd Co. namely M/s Sinotec Energy Ltd (NTN 3148240-6) in his tax profile.
- e. Recovery proceedings against successor AOP in view of provisions of section 98C(2)(3) of the Ordinance has not been launched despite having heavy outstanding tax demand.
- f. Further one of the member of successor AOP namely Mr. Muhammad Aslam (CNIC No.35102-0666227-9) is a Pakistani National and as per 'Taxpayer Registration Profile' is also the AR and as per provisions of section

139(5) of the Ordinance recovery could have been made from him.

In the above scenario Section 2(3) (ii) of FTO Ordinance, 2000 is attracted i.e. neglect, inattention, delay, incompetence, inefficiency and ineptitude, in the administration or discharge of duties and responsibilities;

- v. Tax record reflects that A/C Nos. 0060101060624 & 6660101049009 claimed to be maintained by the subject entity at Askari Bank were not traceable. Thus the destination of alleged bogus refund amounting to Rs.123.364 million is shrouded in mystery.
- vi. Online tax profile shows three businesses in the name of Mr. Song Shuangping as under:

Sr. No.	Business Name	Status
1	Sinotec Co.	AOP
2	Sinotech Energy Ltd	Pvt Ltd
3	China National Wire & Cable	AOP

Perusal of record reveals that M/s China National Electric Wire Cable Import & Export Corporation and M/s Sinotech Energy Ltd are not filing returns:

- vii. M/s Sinotech Co. appears to have been assigned the status of Non-Resident as is apparent from following:
 - a. While passing orders u/s 161 of the Ordinance for Tax Year 2017 the taxpayer had again been assigned the status of Non-Resident against the declared status of Resident.
 - b. As per order u/s 177 of the Ordinance for Tax Year 2014 the AOP has filed return instead of Statement u/s 115(4) of the Ordinance meaning thereby again status of Non-Resident has been claimed."

4. In response thereto, FBR submitted comments of the CIR Zone-II RTO Lahore dated 02.03.2022, 01.04.2022 and 18.04.2022. During hearing proceedings, CIR Zone-II RTO Lahore appeared and reiterated the stance taken in the Dept'l comments/reply. Comparative position of allegations/issues raised by this office, comments filed by the department and on ground position is elaborated hereunder:

ISSUES RAISED (M/s China National Electric Wire & Cable Import & Export Corporation)	ON GROUND POSITION AFTER FILING OF DEPARTMENTAL COMMENTS
<p><i>Action u/s 182, 184 & 187 for Tax Years 2007 to 2009 & 2011 & 2012 could not be taken earlier and has been taken now raising demand of Rs.569.989 million which however is still to be recovered.</i></p>	<p>FBR's internal order dated 05.06.2013, passed u/s 122(5A) of the Income Tax Ordinance, 2001 (the Ordinance), for Tax Years 2007 to 2009 & 2011 had envisaged initiation of penalty proceedings u/s 182, 184 & 187 of the Ordinance. Similarly it was also directed vide order u/s 122(5A) of the Ordinance for Tax Year 2012 dated 13.06.2018 to initiate penalty proceedings u/s 182 of the Ordinance for making false and misleading statement. The actions were delayed without any cogent reason. <u>Observations raised have been admitted. Orders u/s 184, 187 of the Ordinance for Tax Year 2007 to 2009 and orders u/s 182 of the Ordinance for Tax Years 2011 & 2012 are passed now vide orders No.350 to 357 on 31.03.2022.</u> <u>Default identified by this office stands established.</u></p>
<p><i>Although Mr. Song Shuangping, main partner of M/s China National Electric Wire & Cable Import & Export Corporation & M/s Sinotec Co was available in Pakistan till 2019, but no demand notice was served upon him.</i></p>	<p>The department conceded the default.</p>
<p><i>Arrear registers in respect of demand raised in the years 2007 to 2009, 2011 & 2012 u/s 122(5A) of the Ordinance could not be traced.</i></p>	<p>Assessment record of the subject case was transferred from CTO Lahore to RTO Lahore vide letter No.15950 dated 18.02.2021 on the point of jurisdiction, but the demand raised amounting to Rs.205.397 million as a result of orders dated 05.06.2013, 13.06.2018 passed u/s 122(5A) of the Ordinance, was neither transferred nor incorporation certificate was requisitioned. <u>Reportedly now RTO Lahore is requisitioning arrear register/ledger from CTO Lahore but same is not being provided. Last notice/reminder was issued on 31.03.2022 vide letter No.11721/J12.</u></p>
<p><i>Counterfoils of refund vouchers are not traceable</i></p>	<p>-Tax record reflects that A/C Nos. 0060101060624 & 6660101049009 claimed to be maintained by the subject entity at Askari Bank are not traceable. -Statedly, counterfoil of refund vouchers were requisitioned by the RTO Lahore from the CTO Lahore which could not be traced/provided.</p>

	<u>Deptt is avoiding to furnish the said information for the apparent reason to avoid any further probe to trace out the destination of refund amount.</u>
<i>M/s Sino-Tec Co filed returns for various years declaring the status of Non-Resident in contrast to the status of Resident as per registration profile in ITMS.</i>	The same was done in the case of M/s China National Electric Wire & Cable Import & Export Corporation as well.
<i>Returns filed by M/s Sino-Tec Co, revealed that although it is declared that payments were received against certain contracts and tax was deducted, but it is not clear that in whose name contract was accorded, assessment and tax deduction was made and credit of tax was given.</i>	The same unattended loopholes were observed in the case of M/s China National Electric Wire & Cable Import & Export Corporation as well.
<i>Nature of receipt, rate/section of tax deduction is not available on record.</i>	The same unattended loopholes were observed in the case of M/s China National Electric Wire & Cable Import & Export Corporation as well.
<i>It was reported that recovery could not be effected from Mr. Song Shuangping, Member of AOP because he left Pakistan long ago and matter was reportedly taken up with Govt. of China for recovery due to non-traceability of the said person.</i>	Department didn't rebut the findings confronted by this office vide Notice u/s 10(4) Para iv above; that despite Mr. Song Shuangping was available/traceable in Pakistan and recovery could have been effected from successor AOP/partners of AOP, but no effort was made.

5. In addition to the above the findings/recommendations by the Hon'ble FTO dated 23.12.2021, in case No.0200/OM/2019 (M/s China National Electric Wire & Cable Import & Export Corporation) were sent to FBR for compliance. As a consequence of findings/recommendations FBR conducted an internal high powered inquiry. Conclusion / findings of which are hereby reproduced in verbatim:

- *"Based on what has been stated above, the Committee concluded that the required propriety before issuance of refunds has not been followed/adhered to in the instant case. None of the standards/procedures/SOPs as enumerated above have been followed.*
- *The refund claimed and issued was in excess of tax deposited in the name of the taxpayer.*

- The very basic fact that whether the taxpayer is an AOP (or an individual) or a company or a permanent establishment of a non-resident was not conclusively established/determined. In the same refund order, despite stating that taxpayer is an AOP, it was held that the taxpayer is PE of a non-resident corporation and member of the AOP which entitled it to refund and its issuance and that too when the taxpayer itself admitted in writing that it is not a PE of the non-resident and also declared itself in the returns as AOP.
- The nature of receipts is also disputed and no attempt was made to determine whether the same fall under technical services or other business income.
- Even the tax residential status was held to be otherwise what was stated in the Returns and taxpayer's own registration profile."

Thus FBR's internal inquiry also confirms the findings and conclusions of this office.

6. Further Investigations conducted by this office revealed that in the case of M/s Sinotec Co. (AOP) the irregularities were committed which were observed in the case of M/S China National Electric. Following instances are note worthy;

- Department conceded that although M/s Sinotec Co. (AOP) was registered as Resident in ITMS but except for the Year 2013 all the returns have been filed declaring status as Non-Resident and tax deducted has been treated as adjustable instead of final discharge. The position of assessments is as under:

S. No	Tax Year	Status as ITMS	Status as per return	Section of Assessment	Tax deducted (in Millions)	Treatment given	Refund claimed (in millions)
1.	2013	Resident	Resident	120 of Ord.	40.335	Final Tax	Nil
2.	2014	=	Not Available	177 of Ord. (Audit Closed)*	76.472	Final Tax	Nil
3.	2015	=	Non-Resident	120 of Ord.	125.379	Adjustable	125.379
4.	2016	=	=	120 of Ord.	174.000	=	174.000
5.	2017	=	=	120 of Ord.	72.280	=	72.280
6.	2018	=	=	120 of Ord.	41.242	=	41.242
7.	2019	=	=	120 of Ord.	18.802	Partly Adjustable, partly Final Tax	Nil
8.	2020	=	=	120 of Ord.	15.510	=	Nil
9.	2021	=	=	120 of Ord.	10.223	=	10.223

- Although case was picked up for audit u/s 177 of the Ordinance, but no audit was conducted and same was closed on the assurance of the AR that whatever has been declared in the

return is correct. Even status i.e. Resident or Non-Resident is not discussed. Further from perusal of assessment order, it revealed that some contracts were awarded / signed by the Sinotec Co and two other JV partners, but return has been filed in the name of M/s Sinotec Co. It is not clear that what type of contract was awarded and under which section and in whose name deduction of tax was made. Practically no audit has been conducted.

- iii. The Deptt was specifically asked to intimate that in whose name contracts were awarded, assessment was made, tax was deducted, credit was given, nature of receipt, rate of tax deduction alongwith section of tax deduction. The Deptt informed that said information is not available on record meaning thereby whole of the assessments framed from Tax Year 2013 to 2021 are imaginary as not supported by relevant documents. The assessments framed even u/s 177 of the Ordinance under audit or 120 of the Ordinance as deemed assessments all are arbitrary and refund aggregating to Rs. 423.124 million for Tax Years 2015 to 2021 has been accepted without any evidence of contracts awarded/tax deducted or tax deposited. Hence, neglect, inattention, delay, incompetence, inefficiency and ineptitude, in the administration or discharge of duties and responsibilities established and tantamount to maladministration as defined in section 2(3) (ii) of FTO Ordinance, 2000.
- iv. As per declared version in the returns filed and deemed to be assessment order u/s 120 of the Ordinance, an amount of **Rs.423.124 million has been accepted as refund whereas being a Resident person no refund was due.** Further huge loss of revenue is expected as it is not clear that what type of contracts were awarded to which person, in whose name tax deduction was made and whether the person filing return is relevant or not because no such detail has ever been furnished/requisitioned by the Deptt.

7. Members of M/s Sinotec Co./M/s China National Electric Wire & Cable Import & Export Corporation:

It is intimated by the Deptt that Mr. Song Shuangping (common member in both AOPs) has not filed any return. Further returns filed by Mr. Fateh Muhammad Member of AOP M/s Sinotec Co, reveal that share of AOP income has not been shown rather only salary income was declared.

FINDINGS:

8. In view of above it is clear that;

- i. *In the subject cases Section 3 (2) (i) of FTO Ordinance, 2000 applies;*
 - (i) *A decision, process recommendation, act of omission or commission which-*
 - (a) *is contrary to law, rules or regulations or is a departure from established practice or procedure, unless it is bona fide and for valid reasons;*

- ii. In the subject cases Section 2(3) (ii) of FTO Ordinance, 2000 is also attracted i.e. "neglect, inattention, delay, incompetence, inefficiency and ineptitude, in the administration or discharge of duties and responsibilities;"

RECOMMENDATIONS:

9. FBR is directed to constitute a high powered committee to identify the responsible officers/officials for above referred irregularities, fix the respective responsibilities and to take remedial action on the following issues:

i. **M/s China National Electric Wire & Cable Import & Export Corporation:**

- (i) Non-recovery of demand of Rs.205.397 million raised u/s 122(5A) for Tax Years 2007 to 2009, 2011 & 2012 at the relevant time from the relevant persons;
- (ii) Non-traceability of arrear registers/non-transfer of arrear demand amounting to Rs.205.397 million from CTO Lahore to RTO Lahore;
- (iii) Non-levy of penalty u/s 184 & 187 of the Ordinance for Tax Years 2007 to 2009, u/s 182 for Tax Years 2011 & 2012 at the relevant time which was later on imposed vide orders No.350 to 357 dated 31.03.2022, aggregating to Rs.569.989 million;
- (iv) Non-production of counterfoils of refund vouchers earlier issued for Tax Years 2007 to 2009 & 2011 and subsequent destination of refund voucher i.e. relevant bank account details;

ii. **M/s Sinotec Co.**

Acceptance of declared version and treating the tax deducted as adjustable instead of final discharge of tax liability being a Non-Resident person in the case of M/s Sinotec Co. from Tax Year 2014 to onwards without obtaining any detail regarding nature of contract, nature of tax deduction, name of person in whose name contract was awarded / tax was deducted etc especially for Tax Year 2014 when case was selected for Audit u/s 177 of the Ordinance;

iii. **Mr. Song Shuangping**

Inaction on non-filing of returns by Mr. Song Shuangping and non-declaration of share income from AOP (M/s Sinotec Co) in the return filed by Mr. Fateh Muhammad; and

iv. report compliance within 90 days.

Approved for reporting and
Press release
Dated: 28/4/2022
U.f
Confirmed to be True Copy
Deputy Registrar
FTO Secretariat
Islamabad

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