

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

0008/OM/2022

Dated: 15.02.2022* HQ, Islamabad

**SALES TAX EXEMPTION ON IMPORT BY DIPLOMATIC MISSIONS AND
PRIVILEGED PERSONS**

The Secretary,
Revenue Division,
Islamabad.

... Respondent

Dealing officer : Mr. Muhammad Tanvir Akhtar, Advisor
Departmental Representative : Mr. Zahid Baig, Second Secretary,
(ST & FE) FBR,

FINDINGS/RECOMMENDATIONS

This Own Motion investigation is based on Federal Tax Ombudsman, OWN MOTION jurisdiction / powers under section 9(1) of the Federal Tax Ombudsman Ordinance, 2000, taking cognizance of **FBR's U.O No. 4/I-STB/2022, dated 4th February, 2022,** whereby exemption on imports by Diplomatic missions and privileged persons has been restored by FBR without any legal authority. In the instant case it has been observed and FBR was accordingly confronted u/s 10(4) of FTO Ordinance, 2000 that;

“Aforementioned U.O confirms that through omission of S. NO.46 of the Sixth Schedule to the Sales Tax Act, 1990, through Finance (Supplementary) Act 2022, the imports by diplomats, diplomatic missions and other privileged persons were rendered taxable. This later Act having sanction of the parliament was applicable with immediate effect. However, vide an internal UO, as referred above, FBR has unilaterally rendered the aforesaid omission inapplicable without reverting to the same forum i.e. parliament or availing the window of Presidential Ordinance.

Plain reading of the said UO's reveals that FBR on its own has assumed the **Review Jurisdiction** of an act of Parliament unilaterally undid the said omission and once again granted exemption from the tax, levied by the legislature. While doing so apparently FBR has trespassed its legal domain. Thus on the face of it issuance of this UO tantamount to maladministration in terms of section 2(3) i.e. "**maladministration**", which includes,-

- (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;*
 - (b) *is perverse, arbitrary or unreasonable, unjust, biased, oppressive, or discriminatory;*
 - (c) *is based on irrelevant grounds;*

The UO in question contains an oblique clue to FBR's **volte-face**. Admittedly, the Ministry of Foreign affairs has raised certain reservations that the said omission could trigger an adverse reaction from other foreign states & international organizations. Such a situation further exposes FBR's maladministration i.e. "*neglect, inattention, incompetence and ineptitude, in the administration or discharge of duties and responsibilities;* attracting section 2(3) (ii) of FTO Ordinance, 2000, at the stage of hurriedly inserted omission, without any homework, while drafting proposals for Finance (Supplementary) Act 2022."

2. FBR submitted its response on 4th April, 2022 vide letter NO. C.No.3(18)ST-L&P/2013(pt)/76671-R dated 31st March, 2022. Salient features of FBR's reply are summarized hereunder;

- i. Omission of S. NO.46 of the Sixth Schedule to the Sales Tax Act, 1990, enacted through Finance (Supplementary) Act 2022 was admitted.
- ii. Consequent upon above enactment Ministry of Foreign Affairs (MOFA) vide its letter dated 1st February, 2022 had raised an alert that;

- a. Pakistan is signatory to Vienna Convention on Diplomatic Relations 1961(VCDR), which has force of law in Pakistan under Diplomatic and Consular Privileges Act, 1972.
- b. Apart from being labelled as non compliant of VCDR, Pakistan may face intervention by International Court of Justice on this unilateral withdrawal of concession granted through a multilateral treaty.
- c. Financial impact of this enactment would be disastrous if other nations invoke reciprocity.
- d. Imposition of taxes on UN agencies (WFP, UNICEF, WHO etc.) will be detrimental to humanitarian organizations operations in Pakistan.

In view of above MOFA requested for an immediate remedial measure enforceable through some SRO.

- iii. PCT Heading 9901, 9902, 9903 and 9906 of Chapter 99 of 1st Schedule to the Custom act, 1969 were restored as an interim arrangement after getting approval from Minister of Finance and Revenue.
- iv. FBR's U.O No. 4/I-STB/2022, dated 4th February, 2022, was issued, whereby exemption on imports by Diplomatic missions and privileged persons was restored with immediate effect.
- v. Subsequently on 24th February, 2022 Chairman FBR moved a summary for the Federal Cabinet for grant of exemption (withdrawn through Finance Supplementary Act 2022) from Sales Tax effective from 15th January, 2022 in exercise of powers vested in the Federal Government under section 13(2)(a) of the sales Tax Act, 1990.

FINDINGS:

3. FBR's response has been examined and following observations are noteworthy;

- i. *The Omission in question, hurriedly enacted through Finance (Supplementary) Act 2022 falls in the ambit of maladministration under FTO Ordinance, 2000 in terms*

of section 2(3) (i) (b) i.e. a “**perverse, arbitrary or unreasonable, unjust, discriminatory decision**” and (c) i.e. “**based on irrelevant grounds.**”

- ii. FBR’s unilateral withdrawal through a UO dated 4th February, 2022 reveals that FBR on its own has assumed the Review Jurisdiction of an act of Parliament unilaterally. While doing so FBR has clearly overstepped its legal domain and its decision is an act of maladministration being **contrary to law** in terms of section 2(3)(i)(a) of FTO Ordinance, 2000.
- iii. MOFA had raised its alarm on 31st January, 2022 and 1st February, 2022, yet the summary for the Federal cabinet was moved on 24th February, 2022 and that too only after the intervention of this office dated 16th February, 2022. Delay, ineptitude in terms of section 2(3)(ii) of FTO Ordinance, 2000 is visible.

RECOMMENDATIONS:

4. FBR is directed to ensure that;
 - i. in order to avoid any such recurrence, identify the officers responsible for this faux pas, resulting in an embarrassing position for MOFA;
 - ii. proper legal cover is arranged in place of UO dated 4th February, 2022; and
 - iii. compliance is reported within 60 days.

Approved for Reporting

Dated: *19th May, 2022*
U.f

(Dr. Asif Mahmood Jah)
(Hilal-i-Imtiaz) (Sitara-i-Imtiaz)
Federal Tax Ombudsman

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Registry
FTO Secretariat
Islamabad