THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

COMPLAINT NO. 0025/OM/2024
Dated: 19.07.2024* R.O. Mianwali

HARDSHIPS CAUSED TO STR PERSONS IN SUBMISSION OF SALES TAX RETURNS

Versus

The Secretary,
Revenue Division,
Islamabad. ... Respondent

Dealing Officer	:	Mr. Khalid Javed, Advisor
Appraising Officer	:	Mr. Muhammad Nazim Saleem, Advisor
Authorized Representative	:	i. Mian Abdul Ghaffar, Advocate Supreme Court, President Pakistan Tax Advisors Association & Rahim Yar Khan Tax Bar Association. ii. Mr. Muhammad Imran Ghazi, Advocate High Court, General Secretary, Multan Tax Bar Association (MTBA). iii. Mr. Hussain Siddique & Mr. Atif Siddique, Advocates, PTAA/GTBA. iv. Mr. Haroon, Director, KPMG, Karachi.
Departmental Representatives	:	i. Mr. Izhar Zuberi, Second Secretary(IR-Policy), FBR, Islamabad ii. Mr. Zahid Baig, Second Secretary (ST-Ops-II), FBR.

FINDINGS/RECOMMENDATIONS

The above-mentioned Own Motion (OM) investigation was initiated through exercise of jurisdiction under Section 9(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) based on various complaints received from President, Multan Tax Bar Association,

* Date of registration in FTO Sectt.

President of Sialkot Tax Bar Association, President of Rahim Yar Khan, Tax Bar Association, Mr. Nadeem Butt, Chartered Accountant, Lahore, President Pakistan Tax Advisors Association, Gujranwala and M/s KPMG Taseer Hadi & Co., Karachi etc.

2. **BACKGROUND OF THE OWN MOTION**:

The complaints on the subject matter were received from Multan, Sialkot, Rahim Yar Khan Tax Bar Associations, Pakistan Tax Advisors Association, Gujranwala and Nadeem & Co., Chartered Accountants, Lahore vide their complaints dated 02.07.2024, 03.07.2024, 04.07.2024, 06.07.2024 & 19.07.2024 and other stakeholders pertaining to the difficulties being faced by the STRN holders/taxpayers in filing their sales tax returns. The SRO 350(I)/2024 dictates that input tax can be claimed by a taxpayer in their sales tax return only, if the corresponding supplier has also submitted its return. The Tax Bar Associations, Chartered Accountant and other stakeholders have highlighted that taxpayers cannot force their suppliers who are independent in filing their returns. This situation further aggravates when two sales tax registered entities (persons) function as supplier and purchaser to each other. Resultantly it has disrupted the whole supply chain with a huge backlog of sales tax returns stuck up in the pipeline causing undue Financial and Operational inefficiencies. Further added that the taxpayers/complainants approached their local Tax Offices for the resolution of this abnormal situation but were met with unsatisfactory responses and were advised to pay the fictitious sales tax liability generated by IRIS. Further, Statedly, a major portion of taxpayers' products (approximately 70%) are Third schedule products on which manufacturers have already collected and paid the sales tax at the end consumer's price. In this scenario, to pay the fictitious demands generated by IRIS becomes extremely unfeasible. The taxpayers have requested to resolve this issue at the earliest possible. The innocent taxpayers are suffering due to non-compliance in submission of returns committed by others, which is against the provisions of law and the spirit of justice.

3. The complaints were sent for comments to the Secretary, Revenue Division, vide Notice dated 25.07.2024 in terms of Section 10(4) of the FTO Ordinance read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act, 2013. In response thereto, the Deptt submitted parawise comments vide letter dated 20.08.2024, which is reproduced as under:-

I. ***Under the first proviso to section 7(2)(i) of the Sales Tax Act, 1990, read with Rule 18(2) of the Sales Tax Rules, 2006, from July, 2016 onwards, a registered person shall not be entitled to deduct input tax from output tax if the supplier has not declared such supply in his return or he has not paid amount of tax due as indicated in his return. Furthermore, under Section 8(l) of the Sales Tax Act, 1990, read with Rule 18(2) of the Sales Tax Rules, 2006, from July, 2016 onwards, a registered person shall not be entitled to reclaim or deduct input tax paid on such goods and services which, at the time of filing of return by the buyer, have not been declared by the supplier in his return or he has not paid. Therefore, the amendments made by SRO. 350(I)/2024 dated 07.03.2024 in Rule 18(3) of the Sales Tax Rules, 2006, whereby invoices of the non-filer suppliers are deleted from the provisional return of the buyers and tax liability for the buyers is created, are in accordance with the said provision of the Sales Tax Act, 1990.***

II. ***It is incorrect to suggest that taxpayers cannot force their suppliers who are independent in filing their returns. The buyer and supplier in a supply chain have joint and several liability as per section 8A of the Sales Tax Act, 1990. A buyer cannot be absolved from the liability of tax payment if his supplier has not filed the return and has not paid the due tax on the supply made to him.***

III. ***In order to mitigate the hardships faced by registered persons in filing of returns, SRO.1130(I)/2024 dated 01.08.2024 has been issued, whereby the following invoices and registered persons have been excluded from the purview of second proviso to Rule 18(3) of the Sales Tax Rules, 2006, which was inserted by SRO.350(I)/2024 dated 07.03.2024. Therefore, now no tax liabilities for the buyers will be created by deletion of these invoices from their provisional returns and if their suppliers have paid the re-computed tax liability under the second proviso to Rule 18(3) within***

six days from the end of the month in which the returns were taken as provisional.

a. ***invoices issued to the registered persons by the Gas transmission and distribution companies w.e.f. 07.03.2024;***

b. ***invoices issued to the registered persons by the Electricity Distribution Companies w.e.f. 07.03.2024;***

c. ***invoices issued to the registered persons by the Independent Power Producers or WAPDA w.e.f. 07.03.2024, if the sales tax liability has been paid by the independent power producers or WAPDA;***

d. ***invoices to the extent of items pertaining to the Third Schedule to the Sales Tax Act, 1990, issued to a distributor, or a wholesaler, or a retailer, by a manufacturer or a trader of such items w.e.f. 07.03.2024, if***

   i. ***the sales tax liability has been paid by the manufacturer to the extent of items as per return; and***

   ii. ***none of the distributors, or wholesalers, or retailers, other than the manufacturers, have been the ultimate supplier of the items;***

e. ***invoices issued to the registered persons by the petroleum exploration and production companies w.e.f 07.03.2024, if the sales tax liability has been paid by the petroleum exploration and production companies; and***

f. ***registered persons as buyers, if their suppliers have paid their sales tax liability as re-computed by application of the second proviso to sub-rule (3) of rule 18 after deletion of invoices along with corresponding input tax, within six days from the end of the month in which their returns were taken as provisional.***

4. Hearing notice u/s 9(2) of the Federal Ombudsmen Institutional Reforms Act, 2013 was issued on 07.08.2024 and subsequently, the hearings were conducted on 15.08.2024, 22.08.2024 and 29.08.2024.

5. During hearing, the ARs/Complainants and the DRs reiterated their respective stance taken in the complaint and parawise comments. The Deptt further stated that the role of IR-Operations Wing of FBR is restricted only to implementation of both the SROs i.e. SRO. 350 and SRO 1130. Furthermore, the DRs stated that changes introduced through SRO.1130(I)/2024 dated 01.08.2024 have been communicated to PRAL vide CRF 147 dated 08.08.2024 for implementation in the Iris system.

6. The perusal of record reveals that the Complainants vide different complaints mainly raised the following problems stemming out of implementation of SRO.350(I)/2024.

i. ***The buyers cannot make input tax adjustments in their sales tax returns if the sellers do not file their returns by reflecting respective sales;***

ii. ***Operation of SRO. 350(I)/2024 has disrupted the whole supply chain causing a huge backlog of sales tax returns;***

iii. ***Deptt orders for payment of fictitious sales tax demand due to non-adjustability of the input tax claim;***

iv. ***A major portion of Complainant's products are third schedule items on which sales tax have already been paid on consumers price, yet fictitious demands are being raised by FBR.***

7. In order to have proper appreciation of facts, the relevant part i.e. Para-2 of FBR's Notification (Sales Tax) vide SRO. 350(I)/2024 dated 7th March, 2024 is reproduced here under:-

"(2) in rule 18, -

(b) in sub-rule (3), in the proviso at the end for full stop a colon shall be substituted and thereafter the following new proviso shall be added, namely: -

"Provided further that the return filed by the buyer for a tax period shall be taken as provisional return in IRIS, until the respective seller files his return for the same tax period up to the last day of the month in which the due date of filing of return falls, and in case, -

(a) where the seller fails to file his return by the last day of the month in which the due date of filing of return falls, IRIS shall compute the sales tax liability of the buyer, after deleting the invoices issued by the non-filer seller and the corresponding input tax in the provisional return of the buyer, and such provisional return shall be taken as valid by IRIS, after payment of the sales tax liability, so computed; and

(b) where the seller files his return accompanied with payment of sales tax liability, by the last day of the month in

which the due date of filing of return falls, the provisional return of the buyer shall be taken as valid by IRIS with the claim of invoices from the seller and corresponding input tax and after payment of the sales tax liability."

8. The above quoted proviso to sub Rule (3) of Rule 18 inserted through SRO. 350(I)/2024, clearly reflects that the returns filed by the buyers claiming input tax adjustments will remain provisional if the seller does not file the returns by showing corresponding sales and after expiry of the month in which those returns were due, the system will generate the sales tax liability by rejecting the claimed input tax through deletion of invoices issued by the non-filer seller etc. The real issue involved is the linking the acceptability of input tax claimed/adjusted by the buyer with the filling and declaration of those corresponding sales by the sellers. Thus non-filing of sales tax returns by the seller results into rejection of claims of input tax adjustment and creation of punitive sales tax liability.

9. Consequent to issuance of notices by this Forum, the FBR issued SRO. 1130/(I)/2024 dated 01.08.2024, whereby they have tried to address most of the difficulties being faced by the Complainants with reference to filing of sales tax returns. The DRs also highlighted that after receipt of these complaints, the FBR has resolved the above identified issues through above refereed SRO. The relevant part of SRO. 1130(I)/2024 is also reproduced below:-

"In the aforesaid Rules, after rule 18, the following new rule shall be inserted, namely: -

18A. The provisions of second proviso to sub-rule (3) of rule 18, shall not apply to the following namely:

(a) invoices issued to the registered persons by the gas transmission and distribution companies with effect from the 7th day of March, 2024;

(b) invoices issued to the registered persons by the

electricity distribution companies with effect from the 7th day of March, 2024;

(c) invoices issued to the registered persons by the independent power producers or W APDA with effect from the 7th March, 2024, if the sales tax liability has been paid by the independent power producers or WAPDA;

(d) invoices to the extent of items, issued to a distributor, or a wholesaler, or a retailer, by a manufacturer or a trader of such items with effect from the 7th day of March, 2024, if-

(i) the sales tax liability has been paid by the manufacturer to the extent of items as per return; and

(ii) none of the distributors, or wholesalers, or retailers, other than the manufacturers, have been the ultimate supplier of the items;

(e) invoices issued to the registered persons by the petroleum exploration and production companies with effect from the 7th day of March, 2024, if the sales tax liability has been paid by the petroleum exploration and production companies; and

(f) registered persons as buyers, if their suppliers have paid their sales tax liability as re-computed by application of the second proviso to sub-rule (3) of rule 18 after deletion of invoices along with corresponding input tax, within six days from the end of the month in which their returns were taken as provisional.

Explanation – *It is clarified that the term "items" used in this rule shall mean "items pertaining to the Third Schedule to the Act."*

FINDINGS:

10. The perusal of problems/difficulties faced by the Complainants in juxta position with the provisions subsequently inserted through SRO. 1130(I)/2024 reflects that most of the issues, discrepancies and difficulties have been resolved. It is also observed here that this Forum recognizes

the basic objective behind issuance of SRO. 350(I)/2024 i.e. to curb the menace of fake and flying invoices. However, the corrective measures should have not been done at a high cost in terms of inconvenience, inability to file the returns, disruption of supply chain mechanism and blockage of business operations. In this vain, FBR needs to further consider the issues emanating from operation of SRO. 350(I)/2024 and must extend facilitation and remove injustices caused to the sales tax taxpayers. During hearing, some of the Complainants stated that though purchases of 3rd Schedule items have been exempted but buyers of other items still suffer. They suggested that in such cases, the buyers should be made withholding agents of sellers. The ARs/Complainants further pleaded that FBR should make filing of sales tax returns more flexible to facilitate the taxpayers. They suggested that some mechanism should be developed which enables simultaneous filing of sales tax returns for entities engaged in mutual transactions as buyers and sellers. They also argued that under SRO.1130(I)/2024, a grace period of 6 days has been provided for filing of sales tax returns by the suppliers, which needs to be extended reasonably to provide further facilitation. Also FBR should develop and implement an automated system that can recognize and accommodate the reciprocal nature of transactions between entities that function as both suppliers and purchasers. They further stated that although FBR has notified SRO. 1130(I)/2024, however, Iris software has not been updated accordingly by the PRAL.

11. The above referred omissions and commissions in issuance of SRO. 350(I)/2024 dated 7th March, 2024 and subsequently in its operations constitute maladministration in terms of Section 2(3)(i)(b)&(ii) of the FTO Ordinance.

RECOMMENDATIONS:

12. In view of supra, FBR to direct-

(i) Member (IR-Operations), and Member (ST-Policy) to update Iris in line with SRO. 1130(I)/2024 without further delay;

(ii) to explore the possibility of further facilitation in filing of sales tax returns by the buyers as well as sellers so far as possible;

(iii) to examine the issue of extension in grace period of six days seriously as already allowed to the suppliers;

(iv) to issue guidelines and clarificatory instructions to the Registered Persons how to navigate the complexities arising out of SRO. 350(I)/2024; and

(v) report compliance within 45 days.

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

Dated: 21 / 10 /2024
Niazi

Approved for reporting