THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

OM No.30/OM/2024
Dated: 13.08.2024* HQs Islamabad

The Secretary,
Revenue Division,
Islamabad

Member-IR (Ops) ...Respondent
Federal Board of Revenue
Islamabad

Dealing Officer	:	Mr. Muhammad Nazim Saleem, Advisor
Appraising Officer	:	Dr. Arslan Subuctageen, Advisor
Departmental Representative	:	Dr. Syed Ali Adnan Zaidi, Chief (ST) FBR, Islamabad

FINDINGS/RECOMMENDATIONS

This is an Own Motion investigation initiated while exercising power conferred under Section 9(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance).

2. Briefly, this forum has had been receiving a number of complaints on the issue of delay in granting permission to file sales tax returns by the concerned CIRs, adversely affecting business of the Complainants. Consequent to investigation, such inaction/delay has been established in these complaints including complaint No.3168/MLN/ST/2020. The brief facts of the complaint revealed that if a registered person fails to file his sales tax returns for six tax periods consecutively due to any reason, he cannot file his sales tax return for the next tax period and he has to seek prior permission from the concerned Commissioner-IR having jurisdiction. The request for permission to file sales tax return is applied electronically through system under section 26AB of the Sales Tax Act, 1990 read with rule 14(3) of chapter II of the Sales Tax Rules, 2006. These requests are kept pending in the Login of the

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* Date of registration in FTO Secretariat

Commissioners-IR due to their inaction and negligence in addressing such requests timely electronically which causes inordinate delay at the cost of 'Ease of doing business'. Consequently, the penalty for non-filing of sales tax return for each tax period keeps accumulating under section 33(1) of the Sales Tax Act, 1990. The aforementioned state of affairs falls within the ambit of Maladministration as defined in section 2(3)(ii) of the FTO Ordinance, 2000 on account of inordinate delay, incompetence and inefficiency.

3. The complaint was referred to Secretary, Revenue Division, Islamabad, for comments, in terms of Section 10(4) of the FTO Ordinance, read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act, 2013 vide this office Notice No. 30/OM/2024 dated 30.08.2024. In response, the Federal Board of Revenue submitted reply vide their letter No.1(6)/ST(Ops-II)/2024/234477-R dated 13.12.2024 and the same is reproduced as under:-

> "It is submitted that section 26AB of the Sales Tax Act, 1990 does not relate to Rule 14(3) of the Tax Rules, 2006. The former was inserted in the Act by the Finance Act, 2021, whereas the latter was inserted in the Rules by SR0.494(I)/2015 dated 30.06.2015 prior to the insertion of section 26AB in the Act. The former deals with the extension of time for furnishing of returns for which an application is to be made by a registered person !!Y the due date, whereas the latter deals with the granting approval for filing of returns not filed within a period of six months after the due date.
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> Under section 26AB ibid, it is not mandatory for Commissioner-IR or Chief Commissioner-IR to grant extension of time as the word "may" has been used therein. The opposite of the said word is "shall" as held by the Hon'ble Supreme Court in judgment in Civil Appeal No.733/2010 & 1507/2016 (copy enclosed). Since, the word "shall" has not been used in section 26AB ibid, granting extension of time for filing sales tax returns in each and every case is not mandatory. The Hon'ble Supreme Court in the said judgment held that "It is settled law that when the word 'shall' is used in a provision of law, it is to be construed in its ordinary grammatical meaning and normally the use of word 'shall' by the legislature brands a provision as mandatory." Furthermore, non-granting of extension under section 26AB does not bar a registered person from filing of a sales tax return after the due date. He can file it at any time within six months of the due date without the approval of the Commissioner-IR concerned.

As aforesaid, Rule 14(3) was inserted in the Sales Tax Rules, 2006 by SR0.494(1)/2015 dated 30.06.2015 after detection of cases of tax fraud in which belated sales tax returns were filed by registered persons to issue fake/ flying invoices. For ease of reference, the said Rule is reproduced as under:

> "(3) In case the return is not filed within a period of six months after the due date, the same shall be filed only after approval of the Commissioner Inland Revenue having jurisdiction."

In the notice, it has been alleged that if a registered person fails to file his sales tax returns for six consecutive tax periods due to any reason, he cannot file his sales tax return for the current tax period and he has to seek prior permission from the Commissioner-IR having jurisdiction. It has been further alleged that the requests seeking permission from the CIRs are kept pending in the Login of the CIRs due to their negligence of not addressing such requests timely electronically causing inordinate delay at the cost of "Ease of doing business". Consequently, the penalty for non-filing of sales tax return for each tax period keeps accumulating under section 33(1) of the Sales Tax Act, 1990.

From perusal of section 2(1) of the Sales Tax Act, 1990 and Rule 12A of the Sales Tax Act, 1990, it is evident that a registered person, who fails to file sales tax returns for two consecutive tax periods due to any reason, is removed from the active taxpayer list. After becoming non-active taxpayer, he is not allowed by Rule 12A ibid to make imports or exports, issue sales tax invoices, claim input tax or refund or avail any concession under the Sales Tax Act, 1990 or rules made thereunder. Furthermore, all persons including government departments, autonomous bodies and public sector organizations, have been barred from making any purchases from him. Therefore, when a registered person submits an online application to the Commissioner-IR concerned under Rule 14(3) of the Sales Tax Rules, 2006 for granting approval to file the return for tax period older than six months, he is already non-active taxpayer as his returns for the subsequent tax periods are also not filed. Hence, the aforesaid allegation has been leveled on the CIRs without referring to law. The non-filer registered persons for six consecutive tax periods seeking permission from the CIRs for filing of current sales tax returns are barred by the law and not the CIRs from conducting business. Under the law, it is the obligation of the registered person to file sales tax return by the due date. If he fails to file the same for two consecutive tax periods or more due to any reason and face difficulty in doing business due to non-active ATL status, any officer of the FBR cannot be blamed for it.

It is submitted that in compliance with the Board's direction, 19 out of 25 field formations of Inland Revenue, as detailed below, have submitted the information regarding applications filed under Rule 14(3) of the Sales Tax Rules, 2006.

No. of Field Formations	**No. of Applications**		
	Received	Disposed	Pending
19	10509	6640	3869

4. Hearing has been conducted on 25.02.2025 which was attended by Chief, Sales Tax (Ops) FBR. The DR contended that filing of sales tax returns were blocked as instances were reported wherein, some registered persons issued fake and flying invoices fraudulently to deceive the Exchequer. The DR also stated that the department has undertaken measures to curb the menace of fake and flying invoices through SRO 350(I)/2024 dated 07.03.2024. The DR was apprised that since permission to file sales tax returns (older than six months) keeps pending for long periods of time while the current sales tax returns, of the registered persons are blocked hence the amount of penalties keep accumulating which is currently Rs.10,000/- per month. After filing permission to file sales tax returns, the obligation of the registered person is fulfilled as per law and its timely disposal is the responsibility of Commissioner IR having jurisdiction. Therefore, the registered person should not be penalized for those sales tax returns which were not filed due to blocking of previous sales tax returns. The DR endorsed the aforesaid view point

FINDINGS:

5. According to FBR, section 26AB does not relate to rule 14(3) of the Sales Tax Rules, 2006 as amended vide SRO 494(I)/2015, whereas, Section 26AB was inserted vide Finance Act, 2021. It is true that section 26AB of the Sales Tax Act, 1990 deals with extension of filing of sales tax return, which may be granted by the Commissioner IR against the application of a registered person which must be filed before the due date of return. However, prior to introduction of Section 26AB, the subject matter was being dealt under rule 14(3) of the Sales Tax Rules, 2006. Any registered person can file his sales tax returns with the approval of the Commissioner IR which were not filed within a period of six months from the due date. It is not mandatory for Commissioner to grant extension of time to the Registered person. The filing of sales tax returns is the obligation and basic right of any

registered person. By not allowing filing of sales tax return, the state exchequer is being debarred from government revenue. As per FBR version, rule 14(3) was inserted after the detection of cases of tax fraud to curb the menace of fake and flying invoices in belated sales tax returns. The departmental stance is correct up to some extent, however, a registered person seeking approval for filing of sales tax returns also needs to submit draft return which is to be examined by the Commissioner IR. Not allowing permission to file sales tax returns, is against the basic rights of the registered person as being on the inactive taxpayers' list would cause financial losses for the taxpayers as their suppliers would hold payments. Moreover, when the Commissioner IR does not grant approval for filing of sales tax returns not filed within a period of six months, it creates hardships for the taxpayers as they cannot even file their sales tax return for the current tax period due to the reason that the IRIS system has linked the current period's sales tax return with the previous month and so on. There is no legal provision under the Sales Tax Act, 1990 or Sale Tax Rules, 2006 which stops a registered person from filing of sales tax return of the current period. To this end, every tax period under the Sales Tax Act, 1990 is independent of the other except in the cases where the registered person has accumulated credit to be brought forward. So filing of sales tax returns of the current period would always be beneficial for the department as the registered person would lose his sales tax credit.

RECOMMENDATIONS:

6. FBR to:

   i. issue direction to its field formations not to impose penalties on the registered persons in cases where returns were pending due to delay on the part of the department with effect from the date when permission to file sales tax returns (older than six months) is filed. The reason being that the penalty for filing of sales tax returns keeps accumulating due to the blockage of returns for the current period;

ii. where the registered person applies for permission for filing of sales tax returns older than six months under rule 14(3) of the Sales Tax Rules, 2006, he should be able to access his sales tax returns either null or otherwise and should be able to submit the same which would be treated as draft return with permission to file the same. This means the tab for permission to file sales tax returns be activated in the sales tax return which would enable the Commissioner to see whether any fraudulent or unusual activity is being declared by the registered person; and

iii. report compliance with a period of 45 days.

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

Dated: 15: 4: 2025

Approved for reporting