THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

COMPLAINT NO. 0051/OM/2022
Dated: 21/05/2022* R.O. Karachi

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

Dealing Officer : Dr. Faiz Illahi Memon, Advisor
Appraising Officer : Mr. Muhammad Tanvir Akhtar, Advisor

FINDINGS/RECOMMENDATIONS

While investigating complaints, it is being observed that the taxpayers/Complainants have to face wrath of the tax authorities, pursuant to filing of complaint before the FTO, in the form of multiple notices on frivolous grounds under various provisions of statute. Such treatment is meted out to discourage the Complainants from filing complaints before the FTO office. This adverse behavior erodes the confidence and negatively impact the trust of citizens on the institution of FTO. During investigation of Complaint No.0776/KHI/IT/2022, it was pointed out by the Complainant that after filing the said complaint, the taxpayer/Complainant had been receiving notices of penalty, although his request for allowing filing of sales tax return for earlier period were pending decision by the Deptt. for more than 4 months. On one hand, there is inordinate delay in required legal action by the Deptt. in enabling filing of sales tax return resulting in non-filing, and on the other hand, notices for penalty are being issued for already filed returns. Additionally, the concerned unit officer, during pendency of the complaint before this Forum, also passed the order of rejection of refund without affording opportunity of hearing to the Complainant. Such unreasonable attitude and victimization of Complainants erodes the trust of citizens on the efficacy of the institution of FTO in redressing the

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* Date of registration in FTO Secretariat

grievances of taxpayers.

2. Based on the above report of malpractices, this forum vide No.0051/OM/2022, initiated Own Motion investigation taking strength from Section 9(1) of the FTO Ordinance.

3. The comments of the Secretary, Revenue Division were requisitioned 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 Chief Commissioner IR, MTO, Karachi vide letter dated 30.05.2022 submitted reply as under:

> *"The Commissioner IR, Audit-II has reported that no proceedings were initiated against M/s Achtung Security (Pvt.) Ltd. subsequent to filing of complaint No. 0776/KHI/IT/2022 dated 03.03.2022 before the Honourable FTO. However, proceedings under section 122(5A) of the Income Tax Ordinance, 2001 for tax year 2016, had already been initiated on 13.11.2020, which were concluded on 31.03.2022.*
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> *The Commissioner IR, Enforcement-I, has reported that a list of non-filers/late filers of sales tax monthly returns including M/s Achtung Security (Pvt) Ltd was received from the Board with instructions to initiate proceedings u/s 11(1)/11(2) of the Sales Tax Act, 1990. Consequently, notice under section 11(1) of the said Act was issued in the case of M/s Achtung Security (Pvt) Ltd dated 10.03.2022 for compliance on 30.03.2022. As such no violation of law is involved in issuing the said notice since M/s Achtung Security (Pvt) Ltd has filed its sales tax returns for tax periods from July 2020 to November 2020 after the due date. Furthermore, action u/s 11(1) of the said Act was initiated in the case of a number of late filers and the case of M/s Achtung Security (Pvt) Ltd was never singled out for penal action. Hence, action u/s 11(1) of the said Act has no connection with the complaint filed by M/s Achtung Security (Pvt) Ltd before the Hounourable FTO.*

4. The respondent Deptt. also submitted additional comments vide letter dated 30.06.2022; which are reproduced below:

> *"It is humbly stated that only one show cause notice was issued by this office u/s 11(1) punishable u/s 33(1) of the Sales Tax Act, 1990 vide no. ACIR/ Unit-06/Enf-I/MTO/KHI/NF/2021-22/242 dated 10.03.2022 and sent to the address mentioned in the ITMS registration profile. The show cause notice was sent through TCS. As there was no compliance made by the taxpayer of the show cause notice issued, another hearing notice was issued on the other address also mentioned in the ITMS profile, in response to which the taxpayer wrongfully claimed that they do not have this address nor is it known by them. Had it not been known or owned by the taxpayer, then ITMS profile would not reflect so.*
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> *It is submitted that the DBA at the Chief Commissioner-IR secretariat to identifies no-filers and late filers of sales tax returns with comparison of*

income tax data. On the basis of the same, necessary action under the law is initiated. It follows that in the case of the Complainant taxpayer, the information was shared and communicated to this office on Z-Drive by the Chief Commissioner-Inland Revenue Secretariat, that the complainant has not filed sales tax return for the relevant period under review. The case of the taxpayer was among the list of taxpayers shared for the period under review. Therefore, show clause notice u/s 11(1) of the Sales Tax Act, 1990 was issued after analyzing the available data. The Complainant was never singled out for initiating proceedings u/s 11(1) of the Sales tax Act, 1990. The proceedings u/s 122(5A) of the ITO, 2001 come within the purview of the Audit Zone while refund u/s 170 of the ITO, 2001 is the purview of the Enforcement Zone. The refund order u/s 170 of the ITO, 2001 was, regrettably, passed without giving an opportunity of being heard to the taxpayer due to technical oversight. Consequently, the Commissioner issued Order u/s 122A of ITO, 2001 directing this office to initiate fresh proceedings so that proper opportunity to the taxpayer may be given. As per the directions of the Order u/s 122A of the Commissioner-IR, rectification proceedings have been initiated and reminder has also been issued to the taxpayer ensuring opportunity of being heard to the taxpayer."

6. The Deptt. in its subsequent written submissions concedes that the refund claim of the taxpayer was rejected without providing him an opportunity of being heard due to a technical oversight. Subsequently, the Zonal Commissioner IR, vide order passed u/s 122A of the ITO, 2001, directed to initiate fresh proceedings to rectify the error and ensure that the taxpayer is given a proper opportunity of being heard. Hence, the order passed u/s 170(4) has been revisited u/s 122A providing thereby an opportunity to the taxpayer to present his case and provide necessary documentation. Since following the Commissioner's order, rectification proceedings have been initiated, hence no further action is required in this regard.

<u>FINDINGS</u>:

7. Notwithstanding above chronology of events, the typical colonial mindset shall have to be changed whereby without application of mind, plethora of notices find their way to various taxpayers, the case of M/s Achtung Security (Pvt.) Ltd. including. Proper application of mind on part of officers is lacking and mechanical stance is therefore obvious. When any issue is highlighted, the carefree error is attributed to technical over sight or

system glitch.

8. Rejection of refund request has been attributed by the Deptt. to technical oversight, whereas, penalty notice issuance in haste has been regarded to list provided by the DBA. The request of taxpayer for allowing filing of ST return for earlier months has conveniently been ignored all the while. Lastly, culmination of proceedings u/s 122(5A) after time lag of nearly 16 months is another grey area which required proper oversight by the Zonal Commissioner IR. Professionalism becomes first casualty in such instances, whereas, the trust deficit gap between taxpayers and the Deptt., already at the lowest ebb, widens even further.

RECOMMENDATIONS:

9. The instant OM pronouncement should be read carefully by the FBR top management for the chances of slippages are now minimal. Chasing taxpayers without sound legal footing, tantamount to harassment and this impression needs to be dispelled at once. If any taxpayer is pursued subsequent to filing of complaint before this forum, in any unlawful manner, it shall be earnest endeavor to identify such authorities and give appropriate findings accordingly.

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

Dated: 07: 06: 2024
Akif

Approved for reporting