

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

0123/OM/2021

Dated: 20.09.2021* HQ, Islamabad

The Secretary,
Revenue Division,
Islamabad.

... Respondent

Dealing Officer : Mr. Muhammad Tanvir Akhtar, Advisor
Departmental Representatives : Mr. Akhtar Abbas,
ADCIR, CTO Lahore
Mrs. Baseerat Mamraiz,
Secretary-IR, HRM, FBR

FINDINGS/RECOMMENDATIONS

7 This Own Motion investigation is based on an in-house "**Sector Analysis Exercise**", initiated through exercise of jurisdiction conferred under Section 9(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance). The Hon'ble Federal Tax Ombudsman, exercising OWN MOTION jurisdiction/powers under section 9(1) of the Federal Tax Ombudsman Ordinance, 2000 has taken cognizance of connivance and gross misuse of Sub-Rule 3(A) of Rule 58H of Sales Tax Special Procedure Rules, 2007, introduced on 04.06.2014, vide SRO 421(I)/2014. This in-house analysis also unearthed specific instances of misuse of powers, negligence, inattention, delay, incompetence, inefficiency and ineptitude, of FBR officers, in the administration of duties and responsibilities in the cases of steel melters at Lahore, assigned to CTO Lahore. Following glaring instances of glaring misuse of powers were observed:

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- i. During 2014-19, the whole scheme of "Adjustment/Exclusion Certificates" (SRO 421(I)/2014) was grossly misused by Commissioners-IR, in collusion with IRAOs/Auditors and steel melters.
 - ii. Commissioners IR, especially at Lahore have been issuing Adjustment Certificates to registered persons. All these certificates confirm that the registered person had deposited / paid sales tax to the Commissioner / treasury before issuance of said Certificate: factually a clear misstatement.
 - iii. Adjustment Certificates were issued not against actual payments deposited in the treasury, rather against Cheques/Pay orders only.
 - iv. Subsequent to the issuance of certificates such cheques/pay orders were even returned to the registered persons in certain cases.
 - v. In some cases alleged Cheques / Pay orders were deposited in treasury against some later tax period in order to achieve revenue targets.
 - vi. In some cases cheques when presented got bounced but were left unattended. In some cases bounced cheques were even declared as lost.
 - vii. Even if not bounced, cheques gave space to registered persons as no payment was actually made by them for the time being; whereas law required payment before the issuance of certificate.
 - viii. In some cases, pay orders/cheques of one party were deposited against STRN of some other registered person, a trick to hoodwink the treasury: if a cheque obtained from "A" was deposited against STRN of "B", as a matter of fact both were obliged, by issuing certificates to both.
 - ix. In a few cases, Certificates were even issued to unregistered persons; whereas, registration was one of the prerequisites for issuance of such certificates.
 - x. Despite the fact that the above issue was raised by office of Auditor General Pakistan, thus far no concrete steps have been taken by the department to address this hemorrhage.

2. Department's comments were requisitioned and on 1st November, a summary of departmental actions in the instant case was submitted by CCIR, CTO Lahore, (advance copy already received on 22nd October, 2021) without any details, supporting evidence or related papers. Hearing was fixed on 2nd November, 2021 and simultaneously the missing details were also requisitioned. On the given date DRs from CTO Lahore and FBR HQs attended and case was discussed threadbare. DRs furnished the details of actions undertaken by FBR thus far. On 18th November, 2021 FBR HQs filed additional comments whereby it was asserted that the subject matter is already being taken up by FBR, PAC and judicial fora. FBR's record shared thus far reveals the following:

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- (i) DG Audit Inland Revenue & Customs (North), vide Draft Audit Report and Audit Para No. 5.2.2, (Audit Report 2019-20), titled **Sectoral Audit: taxes paid by Steel sector during July, 2016 to June 2019**, had identified loss of revenue amount to Rs. 819.766 million, on account of misuse of SRO 421(I)/2014, in 39 cases of steel melters of CTO Lahore.
 - (ii) Fact Finding Committee was notified by FBR on 14th January, 2020 and this three members committee furnished its report on 14th July, 2020.
 - (iii) On 11th September, 2020 FBR ordered another Fact Finding Inquiry to be conducted by CIR-Enforcement-Zone-I, CTO Lahore. Scope of this inquiry was limited to the extent of role of BS-19 and below in this scam. The report was completed by 19th October, 2020.
 - (iv) On 23rd November, 2020 FBR approached DG Internal Audit-IR seeking his advice on the responsibility and culpability of the officers/officials in the matter. He submitted his views on 11th January, 2021.

- (v) In January, 2021 FBR assigned yet another Fact Finding Inquiry to CCIR CTO, LHR to determine the role of BS 19 officers in the subject scam.
- (vi) In addition to the above it has been gathered from record that early 2019, CTO LHR had ordered a formal inquiry after receipt of external audit observations.

3. All the above details/reports have been examined and analyzed.

FINDINGS:

4. Based on the reports, documents and details furnished by FBR and CTO Lahore the following can be inferred & concluded:

- i. Despite having extensive internal supervisory & oversight Control set ups i.e. supervisory officers, Directorate Generals I&I-IR and Internal Audit-IR, this glaring instance of fiscal fraud has been unearthed by an external department: External Audit. Effectiveness and efficiency of internal controls becomes questionable.
- ii. Thus far, in over two years time, in quick succession 5/6 Fact Finding Inquiries have been conducted one after the other, all without reaching at any conclusion or taking any concrete action.
- iii. At PAC and judicial fora FBR is attending only 39 cases (July 2016 to June 2019), involving loss of revenue of Rs.819 million, wherein Audit authorities had raised the issues. It is on record that the period June 2014 to June 2016 also witnessed 79 cases of Registered persons against whom an amount of Rs.400.984 million is outstanding on account of misuse of subject SRO. No remedial measures in these out of focus cases are visible from FBR's record & response.
- iv. While Audit Para 2.1 focuses 42 cases at Lahore, **Gujranwala** and **Islamabad**, FBR's reply/comments are completely silent about stations other than Lahore.

- v. Fact Finding Reports categorically confirm the following instances of an organized fiscal fraud;
- a. In 39 cases (during 2016-19) 881 **Exclusion Certificates** (ECs) were issued against Cheques and 347 cheques (out of 881) were found missing/not presented for clearance. Another 29 cheques were bounced/dishonoured. As the total number of steel cases is around 200 therefore the fate of other unattended cases can be well judged from this sample.
 - b. In some cases (Audit Para-2.3) ECs were issued even to unregistered persons i.e.: an outright bogus ECs.
 - c. In certain cases evidence on record proves that in addition to the issuance of ECs, original Cheques were returned to the Registered Persons allegedly after receipt of illegal gratification which is still rampant in the department.
 - d. In some cases cheques submitted by one taxpayer were credited to some others who thus availed ECs without paying any tax.
 - e. Despite having solid evidence of fraud in 39 cases only in 08 cases FIRs were ledged against the culprits.
- (vi) Despite the above documentary trail, only one formal inquiry was initiated by CRTO LHR in 2019 and state of affairs of this inquiry can be judged from the following:
- (a) This **hushed up inquiry** was initiated by an officer who himself was part of the team, alleged to have issued bogus ECs.
 - (b) This inquiry relying on fake documents and misstatements practically absolved all except a UDC.
 - (c) The said UDC was not only absolved from submission of **fake CPRs** but it is also strange that the alleged UDC who had remained posted

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in this Zone from **March, 2011 to July, 2019**, was charge sheeted only for the period **January, 2017 to January, 2019**.

- (d) As a matter of record the Inquiry Officer had recommended major penalty of **"Dismissal from Service"**, in the case of said UDC but Commissioner HRM imposed penalty of **"Reduction by three increments for a period of three years"**.
- (e) The alleged official was granted leave Ex-Pakistan and currently he is in Dubai.

Thus for the fraudulent issuance of ECs which is an exclusive domain of Commissioner-IR the department has held a UDC responsible: a mockery of internal accountability.

- (vii) Despite all above department is portraying the whole scam as a minor procedural lapse. FBR's latest correspondence dated 18th November, 2021 reads;

"Moreover, AGPR has also framed audit observations on the instant matter most of which got settled from time to time. Remaining Paras are either under process or are subjudice", This assertion is over simplistic when read with the case record, fact finding inquiries conducted thus far and the actual scope of instant Tax fraud".

In view of above the instant case reflects all the major ingredients of maladministration listed at section 2(3) of FTO Ordinance, 2000 i.e.

- (i) ***"(d) involves the exercise of powers, or the failure or refusal to do so, for corrupt or improper motives, such as bribery, jobbery, favouritism, nepotism, and administrative excesses;***
- (ii) ***neglect, inattention, delay, incompetence, inefficiency and ineptitude, in the administration or discharge of duties and responsibilities;"***

RECOMMENDATIONS:

5. FBR is directed to:-

- (i) **Conclude** the unending trail of Fact Finding Inquiries and some formal administrative proceedings, based on the valid observations made by external audit, internal inquiry officers, be initiated against the officers/officials who have been playing havoc with the state exchequer;
- (ii) **Conduct** Special Audit of all steel cases at Lahore and other stations to gauge the quantum of similar loss at other stations. This audit needs to be assigned to Directorate General I&I-IR so as to ensure an objective and independent exercise;
- (iii) **Lodge** FIRs in all cases wherein incidence of fraud is evident from the record;
- (iv) **Ensure** that all SROs in future must be accompanied by foolproof SOPs in order to avoid recurrence of such instances of misuse and abuse of this statutory regulatory regime; and
- (v) **Report** compliance within 90 days from the receipt of this order.

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

Dated: 24/11/2021
U.f

Certified to be True Copy
30/11/21
Registrar
FTO Secretariat
Islamabad

Approved for
Reporting

24/11/2021

