THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

COMPLAINT No. 0149/OM/2023

Dated: 20.12.2023[1] HQ, Islamabad

The Secretary,
Revenue Division,
Islamabad. ... Respondent 1

M/s. Peshawar Electric Supply Company,
Head Office, Shami Road, Peshawar. ...Respondent 2

Dealing Officer	:	Mr. Sardar Ali Khawaja, Advisor
Appraised by	:	Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representatives from PESCO	:	Mr. Zulfiqar Ali, Rafaqat Babar & Co Chartered Accountants
Departmental Representative	:	Mr. Usman Asif DCIR, RTO, Peshawar

FINDINGS/RECOMMENDATIONS

An Own Motion investigation under section 9(1) of the FTO Ordinance, 2000 was initiated against illegal tax withholding u/s 235 of the Income Tax Ordinance, 2001 by DISCOS and FBR's apathy. The comments of the Secretary, Revenue Division and the Director Finance, PESCO were requisitioned in terms of Section 10(4) and 23 of the FTO Ordinance read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act, 2013. Comments were received from RTO, Peshawar and PESCO vide letter dated 23.04.2025, which were examined and placed on file.

2. This forum had received a complaint wherein a consumer of PESCO Mr. Israruddin agitated the unjust charging of taxes in his monthly electricity bill for the month of August, 2023, with a request that being a poor man he may be exempted from the charge of Income Tax & other related taxes. The complaint papers were examined and cross matched with legal provisions as well as

[1] Date of registration in FTO Sectt.,

withholding tax chart uploaded on FBR's official website. It was observed that PESCO has been charging and collecting tax various taxes and levies for which the rationale and legal cover of the same needs to be looked into.

3. The Complaint was referred to the Secretary Revenue Division for departmental reply/comments 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, RTO, Peshawar submitted report the contents of which are reproduced as under:-

> "contents of the Own Motion case No.0149/2023 were examined and it has been observed that no specific discrepancy has been pointed out therein. Moreover, PESCO is under legal obligation to collect/deduct taxes u/s 235 and 3(1)(a) of Income Tax Ordinance, 2001 and Sales Tax Act 1990, respectively. However, if your good office has any definite information of illegal tax deduction, the same may be shared with this office for appropriate remedial action.
>
> 2. Furthermore, complaint filed by Mr. Israr Ud Din has been examined vis a vis electricity bill attached with the notice which revealed that no income tax has been charged by withholding agent i.e PESCO as the bill is below the threshold of Rs. 25000/- whereas GST has been charged as per law, therefore, no discrepancies have been observed. Furthermore the levies, duties and TV fee charged and collected do not pertain to the jurisdiction of Inland Revenue department. Therefore, the complainant may be directed to approach concerned quarter for redersal of his grievances and the subject OM No.0149-2023 may be consigned to record."

4. The concerned DISCO M/s Peshawar Electricity Supply Company (PESCO) was also confronted with the discrepancies observed through a legal notice u/s 23, which is also reproduced as under;

> *"This forum has received a complaint wherein a poor lady/domestic consumer of PESCO has agitated against unjust charging of taxes in her monthly bill for the month of August, 2023. (Copy of Bill is attached Flag-A). Worthy FTO has taken cognizance of instant complaint and authorized Own Motion Investigation in terms of section 9(1) of FTO Ordinance, 2000.*

2. Preliminary examination of complaint revealed some legal inconsistencies and FBR is being confronted accordingly. This office has downloaded applicable rates of different taxes from the website of Power Division, Government of Pakistan. (Flag-B).

3. In the backdrop of above facts and documents your assistance is required on the following issues:

TAX / DUTY/ FEE/ SURCHARGES	DETAIL	Query
Electricity Duty	Electricity Duty, a provincial duty, is levied to the all consumers ranging from 1.0% to 1.5% of Variable Charges (Punjab Electricity (Duty) Act 1958)	**Whether IESCO is charging this provincial levy to its consumers residing in ICT or not?**
Implementation of Decision of National Tax Council on Electricity Transmission Services.	National Tax Council (NTC) decided that "transmission" of electricity is a "service" and the same may be excluded from the purview of GST under the STA. Therefore, in order to harmonize the federal and provincial tax laws the words "production, transmission and distribution of electricity" have been omitted from the definition of 'goods' and 'supply' under clause (12) and sub-clause (e) of clause (33) of section 2 respectively, the effect of which is that only "transmission" of electricity will be excluded from the charging of GST under the STA, however, the electricity itself being a "good" will continue to be chargeable to GSM," under the STA.	What action has been initiated by IESCO with reference to FBR's C. No. 3(1)ST-L&P/2015 (Vol-III) Islamabad, the 21stJuly, 2023 Circular No. 02 of 2023-24 Sales Tax, Federal Excise and ICT (Tax on Services)
All FBR related taxes	Details as above	**FBR's concurrence has been solicited or obtained while charging aforesaid taxes?**

4. The above information is being sought in terms of section 23 of FTO, Ordinance, 2000 which reads as under;

"23. Assistance and advice to Federal Tax Ombudsman. -

(1) The Federal Tax Ombudsman may seek the assistance of any person, officer or authority for the performance of his functions under this Ordinance."

5. The above referred information may please be provided by post or through special representative by 23rd April, 2025 positively."

5. The PESCO accordingly filed written response through a letter bearing No. Ref:RBC/318/2025 dated 23.04.2025. The details contents of which are reproduced as under:-

> "The queries raised by your esteemed office through letter No: C.No.0149/OM/2023 dated 15 April 2025 appear to be based on a complaint submitted by a valued consumer, seeking waiver of taxes charged in their electricity bill. In this regard, it is respectfully submitted that **as a distribution company, PESCO is legally bound to ensure full compliance with all applicable laws and regulations.** We are not authorized to grant any tax exemption or waiver independently, unless **specifically directed by the Federal Board of Revenue (FBR)** or other competent authorities.
>
> With respect to the operational aspects and the mechanism of taxation in electricity billing, our detailed response to the queries is provided below for your kind consideration.
>
> **Query No.1: Whether PESCO is charging Electricity Duty (ED) from consumers residing in the province of Khyber Pakhutnkhwa (KPK)?**
>
> **Response:**
>
> Yes, Electricity Duty (ED) is levied on all consumers residing in the province of Khyber Pakhtunkhwa in accordance with Section 13 of the West Pakistan Finance Act, 1964(Now referred to as the Punjab Finance Act), read with Article 157(2)(b) of the Constitution of the Islamic Republic of Pakistan. For your ready reference section 13 and article 157 is reproduced below:
>
> **13. Electricity Duty:** (1) from the first day of July, 1964, there shall be levied and paid to Government on the units of energy consumed for the purposes specified in the first column of the fifth Schedule, excluding losses of energy in transmission and transformation, a duty (hereinafter referred to as Electricity Duty") at the rates specified in the second column of that Schedule:
>
> **ARTICLE 157(2)(b):** levy tax on consumption of electricity within the province
>
> The aforementioned provisions empowers provincial governments to impose duty on the consumption of electricity as a means to generate revenue for investment in future power generation projects. The rates for this duty are prescribed in the Fifth Schedule of the aforementioned Act and re applicable uniformly across the board.
>
> **Query:2 what Actions has been initiated by PESCO In reference to C.No.3(1)ST-L&P/2015 Circular No.02 of 2023-24**
>
> Response:
>
> As per the relevant circular, the **transmission of electricity** has been excluded from the scope of Sales Tax under the **Sales Tax Act, 1990**, being classified as a service. However, **PESCO**, as a

distribution company, is responsible for the supply of electricity to end consumers and, therefore, remains **liable to charge and collect all applicable taxes.**

These taxes are levied in accordance with the prevailing legal framework in Pakistan, including:

The **Sales Tax Act, 1990** (for GST on electricity consumption),

The **Income Tax Ordinance, 2001** (for withholding and income based obligations), and its consumers.

Accordingly, PESCO ensures full compliance with all federal and provincial tax laws while billing to its consumers.

Query:3 FBR concurrence has been obtained while charging aforementioned taxes

Response:

All taxes mentioned in the electricity bills are strictly in accordance with the applicable laws and regulations. For your perusal, a detailed explanation of each tax item, along with the relevant legal provisions under which they are charged, is provided below:

a) Electricity duty

Charged under the West Pakistan Finance Act, 1964 (now referred to as the Punjab Finance Act), read with Article **Electricity Duty**: 157(2)(b) of the Constitution of the Islamic Republic of Pakistan.

b) General Sales Tax (GST)

Leviable under Section 3(1) of the Sales Tax Act, 1990, at the rate of 18% on the total amount of the electricity bill for all categories of consumers.

c) PTV License Fee:

Charged at a fixed rate of Rs. 35/- for domestic consumers and Rs. 60/- for commercial consumers, incorporated in the electricity bills as per government directives.

d) Financing Cost Surcharge:

Charged at Rs. 0.43 per kWh, applicable uniformly across all categories of consumers to recover financing costs associated with power sector liabilities.

e) Fuel Price Adjustment (FPA):

Reflects the difference between the actual fuel cost incurred for power generation in given month and the reference fuel cost, and is adjusted accordingly in consumers' bills.

f) Extra Tax:

Charged under Section 3(5) of the Sales Tax Act, 1990, on industrial and commercial consumers who are not listed in the active Taxpayers List (ATL). The rate varies between 5% to 17% depending upon the billing amount slabs.

g) Further Tax:

Levied under Section 3(1A) of the Sales Tax Act, 199, on supplies made to persons who do not possess a valid sales tax registration number. It is not applicable to domestic, agricultural, bulk consumers, and street light connections.

h) Income Tax (Advance Tax on Electricity Consumption):

Charged under Section 235 of the Income Tax Ordinance, 2001. The rates vary based on the applicable consumer category and the amount of the electricity bill, as prescribed under the Income Tax Rules

We trust that the explanation provided above will assist in resolving the matter at hand. For any further clarification, additional information, or a more detailed explanation on any specific point, please do not hesitate to contact us in writing. We remain available and committed to providing any necessary assistance to ensure full understanding and resolution of the issue."

6. In response to the hearing notice, both the parties were heard in details. Mr. Usman Asif, DCIR from RTO, Peshawar presented the departmental stance as mentioned in para 3 above. Whereas from PESCO, A/R of the complainant from Rafaqat Babar & Co Chartered Accountants, Mr. Zulfiqar Ali, presented the PESCO stance on the issue as per written arguments mentioned at para 5 above. D/R of the department also based his arguments on the written comments elaborated at para '3' above, stating that no income tax has been charged by the withholding agent as the bill is below the threshold of Rs. 25000/-, whereas GST has been charged as per law. About the other levies, the D/R stated that these do not pertain to the jurisdiction of Inland Revenue department, hence, the complainant may approach to the relevant quarter for redressal of his grievance.

7. While examining the different components of billing, it was observed that the electricity duty (ED) is being levied across the board on all consumers. To, a query of this office regarding legal cover available to this duty, A/R of the complainant did not file any

satisfactory reply except a short answer that the same is charged under the West Pakistan Finance Act, 1964 (Now referred to as the Punjab Finance Act) read with article 157(2)(b) of the Constitution of the Islamic Republic of Pakistan.

As a matter of fact, this levy dates back to "ONE UNIT PERIOD" when in order to generate funds for further power generation the provinces (East & West Pakistan) were mandated to charge a levy on electricity units consumed. Under ***"The Punjab Finance Act 1964"*** ED is charged by the licensee from its consumers and paid to the concerned Provincial Energy Department. After the dissolution of One Unit, this practice is still continued by all the four provinces and ED is being charged under the respective provincial laws. However, in 1997 Pakistan's Energy Sector underwent a major change when NEPRA Act, 1997 was introduced after major restructuring of Energy Sector and from 1997 onwards, licenses to the DISCOS are granted under the NEPRA Act. **Now the licensees approved by NEPRA have the mandate to collect Federal Taxes as withholding agents but unless they are approved as licensees under respective Provincial Laws, they are not entitled to collect ED on behalf of the provinces. As till date this legal lacuna has not been removed, therefore the legal status of ED and FBR's taxes collected on the basis of ED base value is questionable. In this way all consumers/Taxpayers are being burdened with an excessive charge.**

8. While examining the issue of ED some other revealing aspects have surfaced:

i. ED, charged & collected by DISCOs is not being timely remitted to Provincial Energy Departments, within given timelines. It seems that the DISCOS operating in the country tend to withhold ED collection for years and only after the reconciliation with the Government of Punjab and after adjustment of all unpaid bills of different Provincial Government Departments, the remaining amount of ED is paid. This reconciliation takes years and years. Punjab Energy Department has unearthed thousands of fake & dormant meters which were being misused by DISCOs to inflate Provincial Government Electricity bills. **In other words, ED charged by the legislature to generate funds for further generation of power is being used to pay the current bills of provincial governments. No Tax law allows the collection of taxes to be misused in this manner.**

ii. Even IESCO has been found charging this provincial levy to its consumers residing in Islamabad Capital Territory.

iii. Currently **K-Electric** owes around Rs. 21 billion unpaid ED to Sindh Energy Department.

iv. If the total unpaid ED is calculated across Pakistan, the figure runs into staggering amount. This is how an ordinary taxpayer and a common consumer is being skimmed and provincial governments defrauded. All Federal taxes worked out against the value of ED thus tantamount to excessive and unjust taxation and reflect clear incidence of maladministration in terms of section 2(3)(i)(b) and (ii) of FTO Ordinance, 2000. In view of the facts narrated above the following recommendation are made **which have already been upheld by the President of Pakistan in Complaints Nos.5746, 5748, 5753, 5754, 5756, 5757, 5773, 5774, 5775, 5778 and 5779/LHR/IT/2023, vide order dated 4th March, 2024.**

RECOMMENDATIONS:

9. FBR to:

(i) direct Member legal to convey the discrepancies mentioned above to PESCO for corrective measures;

(ii) constitute a committee, comprising of members from RTO, Peshawar, PESCO and KPK Energy Department to work out a strategy whereby whole regime of ED and taxes calculated thereon is reviewed so as to provide

No.0149/OM/2023

some relief to ordinary consumers and the taxpayers and,

(iii) report compliance in 60 days.

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

Dated: 08.05.2025
Azeem

Approved for reporting