

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

COMPLAINT NO.470/ISB/ST/2022

Dated: 11.02.2022* HQs Islamabad

Mr. Tahir Khalil,
C/o M/s Global Venture Services,
H. No.1654, St. 53, Phase-III,
Bahria Town, Islamabad. ...Complainant

V e r s u s

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

Dealing Officer : Dr. Arslan Subuctageen, Advisor
Appraising Officer : Mrs. Sarwat Tahira Habib, Sr. Advisor
Authorized Representative : Mr. Mudassir Malik, Advocate
Departmental Representative : Mr. M. Afzal Malik, Audit Officer

FINDINGS/RECOMMENDATIONS

The above mentioned complaint was filed against the Regional Tax Office, Abbottabad, in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000, alleging delay in issuance of attested copies of the assessment Order No.10 dated 18.03.2021 by the Deptt.

2. Briefly, the Complainant has alleged that M/s Global Venture Services was proprietorship of Mr. Tahir Khalil (the Complainant), which was later on joined by two other stakeholders Col. (R) M. Arif Khan Swati and Mr. Shams-ur-Rehman Alvi on share basis. Some disputes between Mr. Shams-ur-Rehman and the other stakeholders emerged, which were reported to different investigation agencies including FIA, SECP and others. As an outcome of this, proceedings were initiated against Mr. Shams-ur-Rehman C/o Shams Lubricants/Capricorn Petroleum. FBR also started the investigations, vide letter dated 19.12.2018 which were concluded, vide

* Date of registration in FTO Secretariat

Contravention Report No.2838 dated 14.12.2020, wherein it was admitted that Mr. Tahir Khalil, Proprietor M/s Global Venture Service (Pvt) Ltd was innocent and Mr. Shams-ur-Rehman and his staff were the mastermind of all the fraudulent transactions/ misappropriation of Sales Tax Returns.

3. The Complainant further alleged that after issuance of Contravention Report dated 14.12.2020, once again fresh/denovo proceedings were initiated against the Complainant, vide Show Cause Notice (SCN) dated 29.12.2020, for an amount of Rs.56,134,724/- issued under Section 11(3) of the Sales Tax Act, 1990 (the Act), which was confronted before the then Chief Commissioner-IR, RTO, Abbottabad. After hearing on 05.04.2021, no order was passed/delivered to the Complainant, however, the Complainant was telephonically informed that the Deptt has imposed tax/penalty of Rs.61,040,074/- ex-parte against the Complainant, vide Assessment Order NO.10/2021 dated 18.03.2021, which along with any recovery notice was not delivered. The Complainant applied for attested copies of the assessment order dated 18.03.2021 but the request was refused on grounds that the O-in-O has already been posted on the available address of the Complainant at Sherazi Plaza, Batagram. The lawful right of the Complainant was refused in violation of law and falls within the jurisdiction of maladministration under Section 2(3) of the FTO Ordinance, 2000.

4. The complaint was referred to the Secretary, Revenue Division 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. In response, the Chief Commissioner-IR, RTO, Abbottabad, submitted parawise comments dated 21.02.2022, contending that the Complainant has two businesses as per ITMS profile viz M/s Global Venture Services, Bahria Town, Rawalpindi and M/s Abasien Links

Sherazi Plaza, Batagram. According to assessment after examination of the record of M/s Global Venture Services, Batagram, it was found that the Complainant has made inadmissible input adjustment and suppression of stock/carry forward causing non-payment of sales tax along with further tax for the tax periods July, 2015, to January, 2020. The case was finalized on 18.03.2021, after providing the Complainant reasonable opportunity of hearing and creating demand at Rs.55,131,156/- as principal amount of sales tax and further tax of Rs.5,908,918/- under Section 11(3) of the Act.

5. It was further stated that being an assessment proceedings the jurisdiction of the FTO Office is barred under Section 9(2)(b) of the FTO Ordinance, 2000, and the Complainant instead of availing the available forum of appeal as per law for redressal of his grievance, filed complaint before the FTO Office to gain time as the statutory period of filing of appeal has already expired. After expiry of statutory period of filing appeal, recovery notice was issued on 18.06.2021, which was served at the registered address of the Complainant and the AR also attended the proceedings by filing application for provision of documents. The Complainant has applied for attested copies of the Order on 04.01.2022, which was already available to him in his Tax Audit Management System and also served on his registered address. Therefore, the Complainant had the remedy to file appeal under the law. The complaint being devoid of merits be rejected under Section 9(2)(b) of the FTO Ordinance, 2000.

6. During hearing, AR and the DR averred to their written arguments. The AR stated that the Assessment Order dated 18.03.2021 was not received by the Complainant as Batagram address was not valid anymore and the franchise there was non-operational since 2015 and subsequently Complainant was informed about Recovery Notice dated 18.06.2021 and received a copy of the

same on 23.12.2021 (after being informed telephonically). The DR stated that investigation was conducted by him and report was submitted to the Additional Commissioner. It is observed that this investigation report was, however, not kept in view while making the final assessment order which was sent along with all the details of investigation. The DR further reiterated that the Complainant has not been provided with the attested copies of the record and the assessment order.

Findings:

7. In view of the supra, in the subject complaint, the bar of jurisdiction is applicable with reference to the matter of assessment of tax liability order dated 18.03.2021 and the availability of remedy of filing of an appeal before the concerned Commissioner-IR Appeals. However, non-provision of attested copies of the assessment order to the Complainant to enable him to file an appeal before the competent authority is clearly a perverse, arbitrary, unreasonable, unjust, biased and oppressive decision with administrative excesses by the Deptt which falls under the ambit of maladministration under Section 2(3)(b)&(d) of the FTO Ordinance, 2000.

RECOMMENDATIONS:

8. FBR to direct-
- i) the Chief Commissioner-IR, RTO, Abbottabad, to provide attested copies of the Assessment Order dated 18.03.2021 along with relevant record, to the Complainant enabling him to file appeal before the competent authority, as per law; and
 - (ii) report compliance within 45 days

*Approved
for reporting and
press release*

Dated: 17/3/2022
MR/gq

Registrar
FTO Secretariat
Islamabad

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