THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

COMPLAINT NO.0636/GWL/ST/2024

Dated: 31.01.2024* RO, Gujranwala

Mr. Talib Mehmood, ...Complainant
Prop: M/s. Al-Kassa Crockery Mart,
Near Fazal Centre, G.T. Road Rahwali
Cantt. Gujranwala.

Versus

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

Dealing Officer	:	Mr. Rana Hassan Akhtar, Advisor
Appraised by	:	Mr. Arslan Subuctageen, Advisor
Authorized Representative	:	Mian Abdul Ghaffar, Advocate
Departmental Representative	:	Syed Qambar Ali, ACIR

FINDINGS/RECOMMENDATIONS

The above-mentioned complaint was filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against Inland Revenue Audit Officer, POS Team-III, Zone-II, RTO, Gujranwala regarding imposition of penalty of Rs.0.500 million vide Order No.72/ST/2022 dated 22.09.2022 under Section 33(24) of the Sales Tax Act, 1990 (the Act) for non-issuance of invoices through point of sale (POS) invoicing system of FBR.

2. Brief facts of the case are that the Complainant is running a shop under the name and style M/s. Al-Kassa Crockery Mart, engaged in the business of sale and purchase of grocery items on retail basis. According to Department, M/s Al-Kasa Crockery Mart, Gujranwala being integrated person with FBR's computerized POS system was not issuing invoices under POS system since date of integration without any plausible cause/reason, hence, contravened sections 2(43A), 3(9A) and

*Date of registration in FTO Sectt.

3(10) of the Sales Tax Act, 1990 read with chapter XIV-AA (Online Integration of Tier-I Retailers) of the Sales Tax Rules, 2006 and this act comes under the purview of section 33(24) of the Sales Tax Act, 1990. According to AR of the Complainant, the Inland Revenue Audit Officer issued show cause notice to the Complainant which was duly replied, but statedly the reply of the Complainant was not considered. The adjudication proceedings culminated in passing of an Order dated 22.09.2022 under section 33(24) of the Sales Tax Act, 1990 by imposing the penalty of Rs.0.500 million. In Appeal proceedings, Commissioner-IR(Appeals) Gujranwala observed that the instant appeal has been filed against the order passed under Section 33(24) of the Sales Tax Act, 1990 against which appeal under section 45B of the Sales Tax Act, 1990 does not lie. Being aggrieved, the Complainant sought legal remedy from Appellate Tribunal, Inland Revenue, Lahore against the said Order, which was rejected on the ground that the legislature has excluded the right of appeal to the Complainant against the Order passed under Section 33 of the Act, therefore, it is barred by jurisdiction.

3. In response to the notice issued under Section 10(4) of the FTO Ordinance, read with Section 9(1) of Federal Ombudsmen Institutional Reforms Act, 2013, the Chief Commissioner-IR, RTO, Gujranwala submitted parawise comments dated 01.03.2024, wherein it is contended that the show cause notice was issued under Section 33(24) of the Act on the grounds that the Complainant was not issuing invoices through POS invoicing system of FBR, hence the subsequent Order dated 22.09.2022 was passed in accordance with law.

4. Both the parties heard and record perused.

5. It is important to note that in the impugned order-in-original, vide No. 72/ST/2022 dated 03.10.2022, there has clearly been mentioned at

the outset that, "an appeal against this order lies within thirty days of the receipt of the order and the respondents aggrieved by this decision/order may file appeal against this order under section 45-B of the Sales Tax Act, 1990 addressed to the Commissioner Inland Revenue (Appeals), Regional Tax Office, Gujranwala". Whereas contrary to this when the Complainant filed appeal before Commissioner-IR(Appeals), he has been denied of his right of appeal on the ground that the instant appeal has been filed against the order passed under section 33(24) of the Sales Tax Act, 1990 against which appeal under section 45B of the Sales Tax Act, 1990 does not lie. For ease of reference Section 45B is reproduced hereunder:

> "45B. Appeals (1) Any person, other than the Sales Tax Department, **aggrieved by any decision or order passed under section 10,11,25,36, or 66,** by an officer of Inland Revenue may, within thirty days of the date of receipt of such decision or order, prefer appeal to the Commissioner Inland Revenue (Appeals)"

The above provision of law clearly shows that legislature has expressly excluded the right of appeal to the taxpayers against the order passed under section 33 of the Sales Tax Act, 1990. Section 33(24) of the Act reads as under:

> "33(24). Any person, who is integrated for monitoring, tracking, reporting or recording of sales, production and similar business transactions with the Board or its computerized system, conducts such transaction in a manner so as to avoid monitoring, tracking, reporting or recording of such transactions, or issues an invoice which does not carry the prescribed invoice number or barcode or bears duplicate invoice number or counterfeit barcode or defaces the prescribed invoice number of barcode or QR code, or any person who abets commissioning of such offence."
>
> **"Penalty"**
>
> "Such person shall pay a penalty of five hundred thousand rupees or two hundred per cent of the amount of tax involved, whichever is higher......."

In the instant case, the proceedings were carried out by the Inland Revenue Officer after issuance of show-cause notice under section 33(24) of the Act instead of issuing show cause notice under Section 11 of the Act which rendered the Order-in-Original non-appealable in terms of Section 45B of the Act. From above discussion, it is clear that section 33 alone does not provide for issuance of any show cause notice under this section rather the show-cause notice and all the proceedings are to be carried out under section 11 of the Act and the penalty under section 33(24) is the logical conclusion of the procedure to be adopted. Section 33 in general and entry at S. No.24 in particular does not empower any Officer of In-Land Revenue to issue show cause notice or adjudication thereof under the said section. The mechanism and procedure laid down under section 11 has not been traversed through which renders the imposition of penalty under penal provision illegal and unlawful. In this case proceedings have not been initiated in terms of section 11 of the Act and the Order-in-Original passed is not an appealable being order passed under section 33(24) of the Act. It is well settled principle that when law requires something to be done in a particular way, it should be done in that way only and not otherwise. Reliance is placed in the case titled "Executive District Officer (Education), Rawalpindi Vs. Muhammad Youngs" (2007 SCMR 1835), the Supreme Court of Pakistan. Had proceeding been initiated by the Audit Officer(IR) strictly in accordance with law by issuing proper notice in terms of section 11 of the Act read with enabling provisions of the Act as well as the Rules, against the appellant, the Complainant's right to appeal would have been safeguarded. It is well settle d principle that at least one appeal, revision or review before any forum against the Order-in-Original is the right of the Complainant. In the instant case, no right of appeal is given to the Complainant which is against the fundamental rights and violation of Article 10A of the Constitution of Islamic Republic of Pakistan. Furthermore, the Complainant also contended that as the Commissioner-IR (Appeals), Sargodha is entertaining appeals filed against orders passed against any default under section 33 of the Act and it is a case of discrimination at the appellate forums on the part of Commissioner-IR(Appeals), Gujranwala and ATIR by rejecting his appeals on the point of jurisdiction under section 45B of the Act.

Findings:

6. From foregoing discussion, it is clear that the right of appeal has been denied to the Complainant which is a violation of Article 10A of the Constitution of Islamic Republic of Pakistan and against the fundamental rights. The Order-in-Original has been passed without following prescribed procedure under the law by issuing proper notice in terms of section 11 of the Act read with enabling provisions of the Act as well as the Rules, and is tantamount to maladministration under Section 2(3)(i)(a)&(ii) of the FTO Ordinance.

Recommendations:

7. FBR to direct-

   (i) the Commissioner-IR Zone-II, RTO Gujranwala to review the Order dated 22.09.2022 after affording opportunity of hearing to the Complainant and pass fresh order as per law; and

   (ii) report compliance within 45 days.

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

Dated: 19-12-2024
M.A

Approved for reporting

Director
FTO Secretariat
Islamabad