

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

Complaint No.0807/KHI/ST/2022

Dated: 07.03.2022* HQ, Islamabad

Mr. Abdul Hafeez, Director
M/S Junaid Jamshed (PVT) Limited,
Plot NO. 615/616, I-CC/2 PECHS
Karachi.

M/S Moore Shekha Mufti,
Chartered Accountants,
C. 253 PECHS, Block-6,
Off Shahrah-e- Faisal Karachi

...Complainant

VERSUS

The Secretary,
Revenue Division,
Islamabad.

...Respondent

Dealing Officer	: Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representative	: Mr. Razaqat Ali Khan, CA Firm
Departmental Representative	: Mr. Zulfiqar Ali Gopang, Second Secretary IT Wing, FBR Islamabad

FINDINGS

The above mentioned complaint was filed in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against a systemic failure of the department (Deptt). The Complainant has alleged that FBR's operational softwares have been allowed to supersede the dictates of law.

2. As contents of the instant complaint are identical with C.NO. 668/ISB/2022, reflecting the same allegations, which were already 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. FBR was confronted on the following specific allegations contained in the instant complaint:

- i. "In terms of Section 9 of the Act read with Rule 19 to 22 of the Sales Tax Rules, 2006 [the Rules], sale tax invoice issued by the registered person can be modified because of cancellation of supply or return of goods or a change in the nature of supply or change in the value of the supply through issuance of **credit note**.
- ii. The issue of admissibility of **CREDIT NOTES issued to un-registered persons** is being faced by the taxpayers since July 2021 onwards. Various Trade bodies and Tax Bar associations have taken up the matter FBR management but still it remains unresolved:

Due to recent shift in sales tax return portal from **e.FBR to IRIS**, at one point of time, it appeared that the matter was resolved as the **IRIS allowed the declaration of credit notes issued to unregistered customers in the sales tax return filled for the tax period December 2021**. However, in subsequent month, the FBR portal has reversed the aforesaid credit note in the column 7(a) of the return for the tax period of January 2022 with the following reason being mentioned in report generated in respect of credit notes reversed in column 7 (a):

"Recovery/adjustment of provisionally allowed reduction in output tax"

If a buyer has not so far accepted the Credit Note issued by supplier, however, the supplier was allowed provisional reduction in their output tax against the said Credit Note but they have failed to accept the said Credit Note by the 10th day of the next month, therefore, said reduction in output tax, is adjusted/recovered. The supplier, therefore, is advised to contact the said buyers and persuade them to accept the said Credit Note so that the supplier could get benefit of reduction of output tax."

- iii. As in instant scenario the buyers are unregistered, therefore, it is practically not possible that the said buyers accept credit note issued by the registered supplier @ IRIS.

- iv. As Rule 20(3) of the Rules categorically provides that the supplier shall issue credit note upon cancellation or return of supplies by an unregistered person. Hence, the above check placed on IRIS Portal is unwarranted, illegal and unlawful and is a sheer violation of Section 9 of Sales Tax Act 1990 which allows such adjustment.
- v. The complainant has enclosed extracts of return for the tax period of December 2021, as Annexure- II, wherein credit notes issued to unregistered person were declared which were accepted in the month of December, 2021, however, the same have been reversed in the return of January 2022.

The above trail apparently reflects incidence of maladministration in terms of section 2(3)(i)(a) &(b) of FTO Ordinance, 2000.”

3. The case was finally fixed for hearing on 28th April, 2022. On the given date & time AR and DR, as indicated above attended the hearing and case was thoroughly discussed with them. Upshot of the discussions is summarized as under;

- i. DR admitted the anomaly that credit notes issued to unregistered person declared by Registered Persons were accepted in preceding month, however, the same are reversed in the return of succeeding month. He further explained that this blocking was temporary, aimed at abnormal flow of credit notes. Board's bona fide action may not be treated as maladministration.
- ii. DR also admitted the legal position whereby in terms of Section 9 of the Act read with Rule 19 to 22 of the Sales Tax Rules, 2006 [the Rules], sale tax invoice issued by the registered person can be modified because of cancellation of supply or return of goods or a change in the nature of supply or change in the value of the supply through issuance of **credit note**.
- iii. He also conceded that the issue of admissibility of **CREDIT NOTES issued to un-registered persons** is being faced by the taxpayers since July 2021 onwards.
- iv. DR Explained that unbridled acceptance of CREDIT NOTES can trigger a wave of tax fraud as in some

cases of Registered Persons an abnormally huge credit notes against supplies made to unregistered persons, drastically reducing their tax liability has been observed by FBR.

- v. He explained that in order to address the hardships caused to the Registered Persons and after the intervention of FTO Secretariat FBR has;
- a. first allowed adjustment of credit notes against unregistered buyers in case of the automobile sector; and
 - b. then at second stage adjustment through credit notes against sales returns from unregistered buyers to tax payers registered as manufacturer-cum retailers, up to certain limits has been allowed vide FBR's clarification C.NO. 5(17) ST-L & P/CN/2021/81632-R dated 11th April, 2022.

4. AR conceded FBR's clarification dated 11.04.2022 but insisted that the limits stipulated in the clarification in question and the limited scope of aforesaid clarification goes counter to the provisions of Section 9 of the Act read with Rule 19 to 22 of the Sales Tax Rules, 2006. AR was confronted that in case any genuine hardship case surfaces after the said clarification this office can always intervene in future as well.

FINDINGS:

5. In view of FBR's detailed reply and actions initiated after the intervention of this office in order to alleviate the grievances of genuine registered persons is fair, cautious and reasonable. No maladministration is visible. The complaint warrants no further action. File be consigned to record.

Approved for reporting

Dated: 24-5-2022
Akif/Satti

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

Certified to be True Copy

Registrar
FTO Secretariat
Islamabad