

# THE FEDERAL TAX OMBUDSMAN ISLAMABAD

## Complaint No. 1718/PWR/ST/2023

Dated: 30.03.2023 \*R.O. Peshawar

**Mahmood Ul Haq, M/s Rahman Cotton Mills Ltd,**  
House No.19, Street No.1, Sector-H,  
Sheikh Maltoon, Mardan.

...Complainant

### *Versus*

**The Secretary**  
Revenue Division  
Islamabad.

...Respondent

Dealing Officer : Mr. Ziauddin Wazir, Advisor  
Appraising Officer : Dr. Arslan Subuctageen, Advisor  
Authorized Representative : Mr. Yawar Muhammad, Advocate  
Departmental Representative : Mr. Baseer Khattak, DCIR, RTO, Peshawar

## FINDINGS/RECOMMENDATIONS

The complaint has been filed under Section 10 (1) of the Federal Tax Ombudsman, Ordinance, 2000 (FTO Ordinance) against RTO, Peshawar for allegedly illegal detention of vehicle carrying four hundred (400) bags of yarn cotton.

2. The Complaint was referred to 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 RTO, Peshawar vide letter No.1338 dated 27.04.2023 submitted report, reproduced below:

"please refer to the OIR-Legal Cell Letter NO.IRO-L HQ/FTO/2022-2023/1253 on the subject noted above along with Advisor Incharge FTO Secretariat, Peshawar Letter C.No.1718/PWR/ST/2023 dated 30.03.2023.

Report in the matter is as follows:

2. The check posts and squads has been established under 40-D of Sales Tax Act, 1990 read with rule 69A to 69H of the Sales Tax Rule, 2006.
3. During the course of routine surveillance truck No.K-9855 was intercepted carrying yarn cottons at Karnel Sher Interchange. The vehicle was



carrying no Sales Tax Invoice or E-Transport Advice. Therefore, it was not possible for the staff posted at check post to ascertain the true origin of goods and the vehicle was detained for further investigation.

4. Moreover, as per section 23 of Sales Tax Act, 1990 a registered person while making taxable supply shall issue a Sales Tax Invoice at the time of supply of goods. The word supply of goods is clearly defined in sub section 33 of Section 2 of Sales Tax Act, 1990. After examination of the documents the vehicle has been released vide order No.2023/54 dated 06.03.2023.

5. In view of the above, the complaint of the taxpayer being illegal and against the facts and law may please be vacated".

3. Mr. Muhammad Yawar, (AR) and Mr. Baseer Khattak, DCIR RTO, Peshawar (DR) attended on 03.05.2023. RTO, Peshawar checks vehicles loaded with taxable goods originating from exempt areas under section 40-D Sales Tax Act, 1990. Complainant's unit M/s Rehman Cotton Mills, Takhtbai, District, Mardan (not exempt area) is engaged in taxable supplies of yarn cotton. Vehicle loaded with cotton yarn of complainant's unit was detained by RTO, Peshawar at Karnal Sher Khan Interchange on pretext that consignment is not accompanied with Sales Tax invoice coming from tax exempt area i.e. Malakand Division. According to AR there is no provision under Sales Tax Act, 1990 and rules made there that consignment from premises of registered person will be accompanied by sales tax invoice. RTO, Peshawar has unlawfully detained the vehicle despite production of gate pass by driver to RTO's staff and damaged reputation of old listed company. He prayed to conduct thorough inquiry for clear violation of law by RTO, Peshawar and issue directions to FBR to stop harassment in future.

4. DR reported that check post is established in December, 2022 to check vehicles from exempt area under section 40-D of Sales Tax Act, 1990 and examine documents for ascertaining their validity and conformity to the goods carried. During last five months sizeable revenue realized on goods emanating from exempt areas. As regard request of complainant to conduct inquiry, he submitted that it was not intended at all to cause any hardship to complainant. He, however, regretted that staff mistakenly detained complainant's vehicle which is



released vide order issued u/s 40-D of Sales Tax Act, 1990 after examination of the documents. During hearing, DR could not produce any detailed procedure prescribed by FBR or concerned RTO to bring uniformity of action and avoid unnecessary hardship to genuine registered persons operating in adjoining settled districts i.e Swabi, Mardan, Charsadda etc.

### **FINDINGS:**

5. AR, DR heard and record perused. Section 40 deals with provisions relating to goods supplied from tax exempt areas. Exempt area includes Azad Jammu & Kashmir, Gilgit-Baltistan, [Border Sustenance Markets and] Tribal Areas as defined in Article 246 of the Constitution of the Islamic Republic of Pakistan. It is provided that the conveyance supplied from the tax exempt area shall be accompanied by documents. No standing operative procedure (SOP) or standing order or guide lines have been issued either by FBR or CCIR, Peshawar regarding working of check post established under Section 40-D of Sales Tax Act, 1990 on routes originating from tax exempt area.

### **RECOMMENDATION:**

6. FBR to-

- (i) direct Chief Commissioner-IR, RTO, Peshawar, to develop and implement SOP u/s 40-D of Sales Tax Act, 1990, streamlining procedure of checking conveyance carrying goods supplied from exempt area and to ensure that no hardship is caused to genuine registered persons of adjoining settled districts, these SOPs should then be shared with Member-IR (Ops), and all concerned Chief Commissioners IR for necessary action; and
- (ii) report compliance within 45 days.

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

Dated: 1/06/2023  
Tariq Jan

Approved for  
reporting