

**THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

COMPLAINT No 1736/KHI/ST/2022

Dated: 31.03.2023* R.O.Karachi

Mr. Adnan Yousuf, Proprietor
M/s Niazi Jewelers
5/26, Liaquatabad, Sarafa Market,
Karachi.

...Complainant

V e r s u s

The Secretary,
Revenue Division,
Islamabad.

...Respondent

Dealing Officer	:	Mr. Badruddin Ahmad Qureshi, Advisor
Appraising Officer	:	Mr. Muhammad Nazim Saleem, Advisor
Authorized Representative	:	Mr. Nadeem Yasin, Advocate
Departmental Representative	:	Nemo

FINDINGS / RECOMMENDATIONS

The above mentioned complaint was filed in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against alleged illegal compulsory registration in sales tax and issuance of show cause notice dated 03.03.2023 to impose penalty of Rs. 0.500 million as per serial no. 25A under Section 33 of Sales Tax Act 1990 on failure to get the business integrated with FBR's computerized system for real time reporting (POS).

2. Briefly, the Complainant is an individual running business of jewelry under the business name of "Niazi Jewelers". As per complaint, the department (Deptt) compulsorily registered the complainant in sales tax vide order dated 01.03.2023 due to suspected use of debit or credit machine and later on issued a show cause notice on 03.03.2023 to impose penalty of Rs. 0.500 million in terms of serial no.25A (i) of Section 33 of Sales Tax Act 1990 on failure to integrate business with Board's computerized system (POS). The Complainant applied for

* Date of registration in FTO Secretariat

deregistration vide letter dated 27.03.2023 stating that no such payments had been received through debit or credit card machine since 2014. The Deptt without considering the reply, issued a showcause notice on 03.03.2023 to impose penalty of Rs. 0.500 million in terms of serial no.25A (i) of Section 33 of Sales Tax Act 1990 on failure to integrate business with Board's computerized system (POS); hence this complaint with the prayer to direct the Deptt for deregistration of the unit and not to charge penalty and restrain from sealing the unit.

3. 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. The Deptt failed to submit any response.

4. During hearing the AR submitted documentary evidence related size of the shop whereby the shop measures three hundred square feet in area or less.

5. Arguments of parties heard and record perused.

6. Evidently, the Complainant runs business of jewelry under the business name of "Niazi Jewelers". Perusal of the compulsory registration order dated 01.03.2023 shows that the complainant was compulsorily registered in sales tax due to involvement in taxable activity as 'Tier-1 Retailer' whereas Tier1 Retailers has been defined under Section 2(43A) of Sales Tax Act 1990 which states:

(43A) "Tier-1 retailer" means a retailer falling in any one or more of the following categories, namely: -

- (a) a retailer operating as a unit of a national or international chain of stores;
- (b) a retailer operating in an air-conditioned shopping mall, plaza or centre, excluding kiosks;
- (c) a retailer whose cumulative electricity bill during the immediately preceding twelve consecutive months exceeds Rupees twelve hundred thousand;

- (d) a wholesaler-cum-retailer, engaged in bulk import and supply of consumer goods on wholesale basis to the retailers as well as on retail basis to the general body of the consumers”;
- (e) a retailer, whose shop measures one thousand square feet in area or more or two thousand square feet in area or more in the case of retailer of furniture;
- (f) a retailer who has acquired point of sale for accepting payment through debit or credit cards from banking companies or any other digital payment service provider authorized by State Bank of Pakistan;
- (g) a retailer whose deductible withholding tax under sections 236G or 236H of the Income Tax Ordinance, 2001(XLIX of 2001) during the immediately preceding twelve consecutive months has exceeded the threshold as may be specified by the Board through notification in the official Gazette;
- (ga) a person engaged in supply of articles of jewelry, or parts thereof, of precious metal or of metal clad with precious metal excluding a person whose shop measures three hundred square feet in area or less;
- (h) any other person or class of persons as prescribed by the Board.”

7. According to the above provisions, a jeweler if not operating as a chain of store or in an *air*-conditioned shopping mall must qualify the conditions specified in clause (f) or clause (ga) of the said provision. As regards clause (f), the complainant submits that no such payments had been received through debit or credit card machine since 2014 and the respective account had already been closed. Whereas, the complainant submitted lease agreement of his own shop reflecting the size of the shop not more than 300 sq ft challenging the condition prescribed in clause (ga) of section 2(43A) of the Act. Thus it appears that the complainant does not qualify the conditions of Tier-1 Retailer. Therefore, the order for compulsory registration dated 01.03.2023 and show cause notice dated 03.03.2023 to impose penalty of Rs. 0.500 million in terms of serial no.25A (i) of Section 33 of Sales Tax Act 1990 require fresh reappraisal in the light of the documentary evidence. However, the complainant already has submitted application for deregistration vide letter dated 27.03.2023 which is pending for disposal.


FINDINGS:

8. Passing impugned compulsory sales tax registration order dated 01.03.2023 and issuing show cause notice dated 03.03.2023 for imposing penalty when the Complainant does not qualify for 'Tier -1 Retailers' tantamounts to 'maladministration' in terms of Section 2(3)(i) & (ii) of the FTO Ordinance.

RECOMMENDATIONS:

9. FBR to-

- (i) direct the Commissioner-IR, Zone 1, RTO-1 Karachi to dispose of deregistration application dated 27.03.2023 in the light of discussions held at para 7 on its merit in accordance with law after affording proper opportunity of hearing to the Complainant; and
- (ii) report compliance within 45 days.


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

Dated: 23:51/2023

Approved for reporting