

THE FEDERAL TAX OMBUDSMAN
Islamabad

Complaint No.1785/MLN/ST/2023

Dated: 03.04.2022* R.O. Multan

Mr. Muhammad Naeem,
Quaid-e-Azam Road, Mailsi,
Vehari.

... Complainant

V e r s u s

The Secretary,
Revenue Division,
Islamabad.

... Respondent

Dealing Officer : Dr. Khalil Ahmad, Advisor
Appraisal Officer :
Authorized Representative : Ch. Muhammad Ashraf, Advocate
Departmental Representatives : Mr. Massod-ul-Hassan, ACIR
RTO, Sahiwal

FINDINGS/RECOMMENDATIONS

The above-mentioned complaint was filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against CIR-RTO, Sahiwal regarding enrollment under Section 2(43A) of Sales Tax Act, 1990 (the Act).

2. The contents of complaint as submitted by the Complainant are as follows:

“That the Complainant is regular taxpayer at NTN.0953155-6, doing business of pesticide and seeds at Mailsi within jurisdiction of RTO Sahiwal and taxpayer complainant voluntary registered himself with sales tax as on 18.01.2022 due the reason that sale tax imposed on seeds through Finance (Supplementary) Act, 2022 and later on through Finance Act 2022 seeds again exempted from sale tax and added in sixth schedule of the Sale Tax Act, 1990 at Sr. 171.

* Date of registration in FTO Sectt.

That the complainant now filing sales tax returns and showing exempt sales of pesticide and seeds, however I am not liable to register with sale tax due to exempt sales and now I file application for deregistration of sales tax.

That the complainant is not falling in the ambit of Tier-01 retailer as defined under sub-section (43A) of Section 02 of the Sales Tax Act, 1990 due to the following reasons

I am not retailer who operating as a unit of a national or international chain of stores;

I am not retailer operating in an air-conditioned shopping mall, plaza or centre, excluding kiosks;

I am not retailer whose cumulative electricity bill during the immediately preceding twelve consecutive months exceeds Rupees twelve hundred thousand;

I am not 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;

I am not retailer, whose shop measures one thousand square feet in area or more.

♀ That the respondent No.04 issued notice and without indentifying any reason due to which the complainant is under legal obligation to integrate his business point of sale with FBR computerized system as the complaint is not fall in the category of tier-01 retailers.

That the respondent No.04 issued illegal notice for integration and also issued show cause notice dated 03.03.2023 for imposing penalty Rs.500,000/-. The respondent without providing proper opportunity of being heard imposed penalty which is not justified. That the issuance of illegal notice for integration is contrary to law and imposing penalty without providing proper opportunity of being heard is fall in the ambit of mal-administration.”

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. In response thereto, the Chief Commissioner-IR, RTO, Sahiwal forwarded Para-wise comments of the Commissioner-IR, Sahiwal Zone dated 14.04.2022 vide letter dated 17.04.2022.

4. It has been argued that:

“The taxpayer is registered for Sales Tax w.e.f 18.01.2022 at NTN 0953155-6 and his business profile is as under.

Sr.	Business/ Branch Name	Business/ Branch Address	Principal Activity
1	Jillani Seeds and Fertilizers	Quaid-e-Azam, Road, Mailsi	471900-Wholesale and retail trade; repair o motor vehicles and motorcycles/Retail sale in non-specialized stores/Other retail sale in non-specialized stores
2	Pasha Agro Traders	Quaid-e-Azam, Road, Mailsi	471900-Wholesale and retail trade; repair o motor vehicles and motorcycles/Retail sale in non-specialized stores/Other retail sale in non-specialized stores
3	Itthad Agro Service	Quaid-e-Azam, Road, Mailsi	471900-Wholesale and retail trade; repair o motor vehicles and motorcycles/Retail sale in non-specialized stores/Other retail sale in non-specialized stores
4	Jillani Seeds and Cotton Ginners	Quaid-e-Azam, Road, Mailsi	471900-Wholesale and retail trade; repair o motor vehicles and motorcycles/Retail sale in non-specialized stores/Other retail sale in non-specialized stores
5	Pasha Agro Commission Shop	Quaid-e-Azam, Road, Mailsi	890147-Other service activities/Services/Brokerage

The Registered Person has taken the plea that he is doing business of pesticides and seeds which is exempt vide Finance Act, 2022 w.e.f. 01.07.2022. On the other side the complainant has paid sales tax w.e.f. 01.07.2022 as under:

Month	Gross purchase	Taxable purchase	Input tax	Gross sales	Taxable sales	Output tax
07/2022	15206757	1795000	35900	15662959	0	0
08/2022	31025339	369659	62842	31945007	369659	62842
09/2022	19343632	144323	16892	19875180	99894	16892
10/2022	4761676	81719	13893	4902077	81722	13893
11/2022	13678715	925374	157314	14061312	925374	157314
12/2022	14314243	35	0	7108163	0	0
01/2023	75474253	0	0	49417745	0	0
02/2023	38631947	0	0	61594566	0	0

The complainant has filed an application for de-registration on 01.04.2023 and not filed sales tax return for the month of March 2023.

2. Not admitted. The Registered Person has paid sales tax as per details mentioned above. He is dealer of Pesticides, seeds as well as other Taxable goods and liable to be registered under section 14 of the Sales Tax Act, 1990. He filed application for de-registration to escape the POS.
3. Not Admitted. He falls in the ambit of Tier-1 retailer as mentioned under sub section (43A) of section 2 of the Sales Tax Act 1990 as per following details:
 - a. His shop measurement situated at Quaid Azam Road Mailsi is above 1000 square foot. His business premises consist of 6-Marlas i.e. 1854 square feet.
 - b. His Name has been included by the FBR in STGO -8 treating Tier-1 retailer.
 - c. His principal companies have deducted Income tax u/s 236H of the Income Tax Ordinance 2001 during the last three years treating him retailer as under:

Taxable	Tax	Taxable	Tax	Taxable	Tax
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amount T.Y 2021	deducte d T.Y 2021	amount T.Y 2022	deducte d T.Y 2022	amount T.Y 2023 up to 10.04.202 3	deducted T.Y 2023 up to 10.04.202 3
13,704,30 6	75,777	83,916,16 4	569,275	41,652,050	208,450

The complainant/registered person not only falls in the ambit of Tier-I retailer as defined under sub section 43 (A) of section 2 of the relevant law but his name has also been included by FBR in STGO-8 for POS integration. In the aforementioned circumstances the registered persons application for de-registration and discontinuation of filing of sales tax returns is simply an attempt to hide the true incidence of taxation. In the meantime, the concerned officer has legally issued notice and imposed penalty after providing reasonable opportunity of hearing.”

In view of the above, it is clear that no maladministration is involved in the instant case and the complaint of the taxpayer may therefore be rejected being devoid of merit.

5. The AR in his rejoinder date 05.05.2023 contended that contention of the Deptt is not correct as the Unit Mailsi issued noticed dated 08.02.2023 and not mentioned any reason due to which the Complainant is liable to integrate his business with FBR and secondly Deptt is also not correct by saying that notice issued for Tier-1 integration due to FBR's identification of taxpayer's name for Tier-1 retailer in STGO 08 but the fact is that IRO, Unit Mailsi completed all proceedings in this case and passed order of penalty of Rs.500,000 dated 03.03.2023 and STGO issued on 10.03.2023.

6. During hearing, the AR argued that the Complainant is not liable to be registered as Tier-1 retailer because no taxable activity is being

carried out. He pointed out that sufficient opportunity of hearing has not been provided and no spot inquiry has been conducted to assess the pre-requisites of registration. The DR on his part argued that multiple business activities are being carried out as have been declared by the Complainant in sales tax returns.

7. Both the parties have been heard and record perused.

8. It is observed that the Complainant is objecting to its forced integration on POS as Tier-1 retailer on the following grounds:

- (i) No business activity attracting charge of sales tax is being carried out.
- (ii) He has not been identified to be registered as Tier-1 retailer by the FBR.
- (iii) He got registered on sales tax roll voluntarily when the sales tax was imposed on seed sales through Finance Supplementary Act, 2022 which was exempted later on.
- (iv) His application for deregistration is still pending with the Deptt and Deptt has forcibly integrated the business without considering its application.

9. The Deptt on the other hand is of the view that the Complainant is carrying out multiple businesses in the business premises as has declared taxable activity in his sales tax returns filed for the period August 2022 to November 2022. He is therefore liable to be integrated with POS.

10. After considering the arguments of both sides it is observed that the Complainant has been compulsorily registered on POS as Tier-1 retailer without giving due consideration to the facts of the case. It is obligatory upon the Deptt to first dispose of the pending application for de-registration to determine the legality of the issue and then proceed

for POS registration after conducting a spot inquiry of business premises to ascertain whether additionalities for registration of Tier-I retailer as defined under sub-Section 43A of Section 2 of the Act are fulfilled.

Findings:

11. Delay in disposing of de-registration application and registration at POS without providing him due opportunity of being heard is tantamount to maladministration in terms of Section 2(3)(ii) of the FTO Ordinance.

Recommendations:


12. FBR to-

- (i) direct the Commissioner-IR, Sahiwal Zone, to dispose of de-registration application of the Complainant;
- (ii) direct the Commissioner-IR, Sahiwal Zone, to revisit the case after due verification through spot inquiry in order to ensure that the requisite criteria for POS registration is applicable, in the presence of the Complainant and after providing him due opportunity of being heard; and
- (ii) report compliance within 45 days.

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

Dated: 15.5.2023
My/AQ

Approved for
reporting


Director
FTO Secretariat
Islamabad

