

**FEDERAL TAX OMBUDSMAN  
ISLAMABAD**

**COMPLAINT NO.1849/KHI/ST/2023**

Dated 05.04.2023 \* R.O. Karachi

**Mr. Zia Ali Sufi,**  
43-II, 27<sup>th</sup> Street, Phase-V,  
Khayaban-e-Mujahid,  
DHA, Karachi.

...Complainant

**Versus**

The Secretary,  
Revenue Division,  
Islamabad.

...Respondent

Dealing Officer	: Mr. Badruddin Ahmad Quraishi Advisor
Appraising Officer	: Mr. Muhammad Nazim Salim, Advisor
Authorized Representatives	: Mr. Naseer Malik, Advocate
Departmental Representatives	: Mr. S. M. Rizwan, Sr. Auditor, RTO-1 Khi

**FINDINGS/RECOMMENDATION**

The above-mentioned complaint has been filed in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against failure of the department (Deptt) to allow filing of past & present sales tax returns.

2. Briefly, the Complainant is a Director in Merin (Pvt) Ltd company and partner in an AOP under business name of Omega Enterprises. As per complaint, the complainant was never engaged in taxable supply of goods in his personal capacity. The complainant received a show cause notice dated 15.11.2022 under section 21(2) of the Sales Tax Act 1990 (the Act) alleging that he had failed to file sales tax returns since his registration in 2019. The complainant replied vide letter dated 06.12.2022 stating that he had never applied for sales tax registration, and it was done compulsorily by the department (Deptt) without any prior intimation. Getting no

response, the complainant visited office of the Commissioner who directed the complainant to pay Rs.200,000/ as penalty for non-filing of sales tax returns for restoration of his status and permission to file past & future sales tax returns. The Complainant paid Rs.200,000/ vide CPR dated 27.12.2022. The Commissioner vide order dated 29.12.2022 restored the status as 'Operative'. The complainant tried to file his sales tax returns for current tax periods but the system directed to file the returns of the preceding tax periods. The complainant visited the Commissioner office a number of times for resolution of this issue and he was directed to approach FBR for condonation. The complainant prayed for permission to file past and present sales tax returns as delay will attract further payment of penalties under relevant provision of the Act.

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 Commissioner-IR, Zone-II, RTO-1 Karachi vide letter dated 'nil' submitted comments stating that the complainant failed to file sales tax returns as well as penalty for non-filing. As a result, his status was suspended. Afterwards, he deposited the penalty of Rs.200,000/ and his status was restored vide order dated 29.12.2022. However, it was found later on that the total penalty of Rs.450,000/ was recoverable and remaining amount of Rs. 250,000/ was still pending at the complainant's end. Therefore, the complainant may be directed to pay penalty for non-filing of remaining returns.

4. Both parties heard and record perused.

5. It is observed that the Complainant is a director in a private limited company and partner in an AOP. As per AR of the complainant, he was never engaged in taxable supply of goods in his personal capacity. However, as per Taxpayer Profile Inquiry, he was registered in sales tax on 17.07.2019. The Deptt suspended sales tax registration of 472 registered persons including the complainant for failure to file sales tax returns for six consecutive months or more in terms of Rule 12(a)(i)(E) of Sales Tax Rule 2006 read with Section 21(2) of the Act. Thereafter, the Commissioner, Zone-II, RTO-1 Karachi issued a show cause notice on 15.11.2022 for blacklisting under section 21(2) of the Act. Admittedly, the complainant paid Rs.200,000/ vide CPR dated 27.12.2022 and the Commissioner after payment restored the status as 'Operative' vide order dated 29.12.2022. Thereafter, the complainant tried to file his sales tax returns for current tax periods, but the system directed to file the returns of the preceding tax periods. Since the preceding periods are more than one year old, the complainant requires condonation from Board.

6. The approval to file return from the Commissioner is required if not filed within a period of six months after the due date in terms of Rule 14(3) of Sales Tax Rule 2006 which states:

"14(3) In case the return is not filed within a period of six months after the due date, the same shall be filed only after approval of the Commissioner Inland Revenue having jurisdiction"

For condonation of time limit from the Board under Section 74 of the Act for tax periods beyond one year, a standard procedure (SOP) has already been laid down vide Sales Tax Circular/IR Operations # 02 of 2020 dated 21.09.2020. As per this SOP, the complainant will file a formal request to the Commissioner for condonation of time limit who will process the request in terms of Sales Tax Circular/IR

Operations # 02 of 2020 dated 21.09.2020 and forward the report to Board with necessary recommendation.

7. As regards, the argument of the Deptt for payment of penalty of Rs. 450,000/ against non-filing of sales tax returns; perusal of the record reveals that there exists no written assessment / penalty order for payment of penalty. Therefore, the demand of payment of penalty without any written order is not only contrary to law, rules or regulations, a departure from established practice or procedure but also perverse, arbitrary, or unreasonable, unjust, biased, oppressive, or discriminatory attracting maladministration in terms of Section 2(3)(i)(a) & (b) of FTO Ordinance. The Commissioner is required to issue a show cause notice on the issue of non-filing of sales tax returns and thereafter pass a written speaking appealable order of penalty after providing proper opportunity to the complainant in terms of provisions of the Act before he asks the complainant for any balance payment of Rs. 250,000/.

 **FINDINGS:**

8. Not allowing to file sales tax returns and demanding payment of penalty without any written order tantamount to maladministration in terms of Section 2(3)(i)(a) & (b) of FTO Ordinance.

**RECOMMENDATIONS:**

9. FBR to direct: -

- i) the Commissioner, Zone-II, RTO-1 Karachi (after obtaining the request of condonation of the time limit from the complainant) to forward for necessary recommendation to Board in terms of Sales Tax Circular/IR Operations # 02 of 2020 dated 21.09.2020 on its merit immediately; and
- ii) report compliance within 45 days.

10. Since identical facts are involved, in the complaints listed hereunder, Findings/Recommendations quoted supra, shall *mutatis mutandis* apply to complaints listed hereunder:

SL. NO.	Complaint #
1.	1850/KHI/ST/2023 [Mrs. Samina Safdar Ali]
2.	1851/KHI/ST/2023 [Mr. Muhammad Ibrahim Sufi]

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

Dated: 15:5:2023

Approved for reporting

  
Director  
FTO Secretariat  
Islamabad