

**THE FEDERAL TAX OMBUDSMAN  
ISLAMABAD**

**COMPLAINT NOs.2011 & 2503/LHR/IT/2022**

Dated:28.05.2022\*RO Lahore

**Mr. Bashir Ahmed,**

Basti Vadore, Mauza Alyani,  
Dak Khana Vadore,  
Dera Ghazi Khan.

... Complainant

**Versus**

The Secretary,  
Revenue Division,  
Islamabad.

... Respondent

Dealing Officer

: Dr. Tariq Mahmood Khan, Advisor

Appraisal by

: Mr. Muhammad Tanvir Akhtar, Advisor

Authorized Representative

: Mr. Khalid Hussain Ghauri, Advocate

Departmental Representative

: Dr. Muhammad Athar Ishaq, Addl CIR  
RTO, Multan

**FINDINGS/RECOMMENDATIONS**

Both the above-mentioned complaints were filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against alleged illegal orders dated 23.05.2022 & 16.06.2022 passed u/s 170(4) of the Income Tax Ordinance, 2001 (the Ordinance) for Tax Years 2018 & 2019, respectively.

2. Brief facts of the case are that the Complainant filed earlier C.No.1104 & 1106/MLN/IT/2022 which was disposed of vide order dated 20.05.2022 directing the CIR Multan Zone to allow appeal effect to the order of CIR (Appeals) dated 09.12.2021 and dispose of Complainant's refund applications for Tax Year 2018 & 2019 after providing hearing opportunity to the Complainant as per law.

3. Earlier in 1<sup>st</sup> round Department had rejected the claim of refund on the ground that tax deduction u/s 236A on lease rights is final discharge. However, CIR (Appeals) remanded back the orders with the directions "to conduct physical enquiry of business premises and call

for record/documents to ascertain nature of business by providing ample opportunity of being heard". In compliance with the appellate orders the Assessing officer deputed 02 Inspectors-IR vide his office order No.167 dated 18.10.2021 to conduct inquiry and report by 20.10.2021. Enquiry report as reproduced in the orders u/s 170(4) dated 02.11.2021 for Tax Years 2018 & 2019 is given hereunder:

- i. That the business premises of the above-mentioned taxpayer is in the form of Picket which has been established at Habib Abad near Habib Hotel on the main road between Sakhi Sarwar and Dera Ghazi Khan. At that picket, a few private employees are deputed to collect excise duty/tolls.
- ii. That at the picket the private employees of the taxpayer stop every vehicle loaded with Minerals. The loaded vehicles are allowed to cross the picket only on their payment of Excise duty / tolls.
- iii. That it has been clearly observed that Excise Duty is being collected in the same manner as toll tax is collected on highways from vehicles for crossing the Toll Plazas".

On the basis of above the Assessing officer has opined in the order that Excise duty is being collected from carriers of specific minerals for crossing of Picket in the same manner as toll tax is collected on highways from vehicles for crossing the Toll Plazas and the claim of refund was once again rejected.

4. In the 2<sup>nd</sup> round CIR appeals vide orders u/s 129(1) of the Ordinance dated 09.12.2021 annulled the orders passed u/s 170(4) of the Ordinance for Tax Years 2018 & 2019 and observed that there is no doubt that lease for collection of **Provincial Excise Duty** cannot be treated as "**Toll**" as both differ materially. The department instead of filing 2<sup>nd</sup> appeal before ATIR once again rejected the refund claims of the Complainant for Tax Years 2018 & 2019 vide orders passed u/s 170(4) of the Ordinance dated 23.05.2022 & 16.06.2022, respectively, on the same grounds which has earlier been adjudicated by the CIR (Appeals) vide order dated 09.12.2021, hence these complaints.

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5. The complaints were sent for comments to the Secretary, Revenue Division, 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 Deptt submitted parawise comments vide letter dated 27.06.2022 contending that after physical verification it was concluded that tax deductions u/s 236A of the Ordinance against sale rights of excise duty on minerals is being collected in the same manner as toll tax is collected on highway from vehicle for crossing the toll plazas. Further contended that in the light of Finance Act 2016 the tax deduction for toll u/s 236A of the Ordinance is final discharge of tax liability, so Complainant is not entitled for any refund.

6. During hearing, AR and DR reiterated their respective stance taken in the complaint and parawise comments. AR of the Complainant provided copy of letters of Mines Labour Welfar Commissioner, Govt. of Punjab dated 13.04.2021 & 06.12.2017 indicating the nature of contract and collection of excise duty on the specified minerals.

7. Both sides heard and available record perused.

#### **FINDINGS:**

8. i. Scrutiny of the record indicates that Complainant deals with the leasing contracts of Sand and Minerals which are governed under provincial law and administered by Mines Labour Welfare Commissioner, Govt. of Punjab. The said authority, vide letters dated 13.04.2021 & 06.12.2017 has already clarified the nature of contract and collection of excise duty on the specified minerals. While processing the claim of refund the nature of deduction has to be determined in the light of laws & rules of concerned provincial department.

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