

**THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

Complaint No.2132/ISB/ST/2023

Dated: 16.04.2023* HQ Islamabad

Raja Gul Nawaz Abbasi ... Complainant
House NB.71, Street 92,
Faizabad Housing Colony, I-8/4,
Islamabad.

V e r s u s

The Secretary,
Revenue Division,
Islamabad. ... Respondent

Dealing Officer : Mr. Muhammad Nazim Saleem, Advisor
Appraising Officer : Dr. Arslan Subuctageen, Advisor
Authorized Representative : Mr. Siyar Ahmed, Advocate
Departmental Representative : Mr. Sarzamin Khan, Assistant Director, RTO,
Rawalpindi

FINDINGS/RECOMMENDATIONS

2. The above-mentioned complaint was filed in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against Commissioner-IR Cant Zone, RTO, Rawalpindi for resorting to coercive measures by attaching the bank account of the Complainant un-lawfully without following the mandatory law and procedure prescribed for the purpose of recovery.

2. Briefly, the complainant has stated in his complaint that he is a 75 years old individual, engaged in the business of stone crushing at Margalla Hills. The business was discontinued a few years back due to the cancellation of lease by the Government of Punjab under the directions issued by the Honorable Supreme Court of Pakistan and the whole of investment made in the plant and machinery fell to the ground

* Date of registration in FTO Sectt

because no substitute site was leased out by the Government of Punjab. Thus, sustained huge losses.

Back in the year 2020, a sales tax auditor initiated audit without formal selection for audit either under Section 25 or 72 of the Sales Tax Act, 1990 ('the Act'). After sales tax registration by the Commissioner, IR, the Assessing Officer charged sales tax of Rs.15,884,140/-.

The complainant contested the Order-in-Original (O in O) before the Commissioner, IR (Appeal-III), Islamabad who remanded back the O-in-O with certain directions vide No 86 of 2020-21 dated 16-02-2022. The Assessing Officer once again passed Order-in-Original No 20 and charged sales tax at Rs.8,576,700. The complainant also being aggrieved with the second O-in-O contested it before the Commissioner, IR (Appeal-III), Islamabad who allowed partial relief and reduced the tax liability from Rs.8,576,700 to Rs.4,569,741 vide Appeal Order No 322d dated 24-03-2023 by issuing the following directions:

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"It is observed that the denial of adjustment of sales tax already paid by the appellant through electricity bills is unjustified, however, the claim of input tax against the purchase of diesel has been found unsupported by sales tax invoices. Foregoing in view, the appellant stance to the extent of adjustment of input tax paid by him through electricity bills is accepted and accordingly, the demand of sales tax created through impugned order is directed to be reduced at Rs.4,569,741/-"

After the receipt of the above appellate order, the Assessing Officer is legally bound to give appeal effect to the above appellate directions in the terms of Section 118 of the Act and to issue fresh order under Section 11B reducing the resultant default surcharge and penalty with allowing the complainant one month time for the reduced

tax demand under Rule 71 of the Sales Tax Rules, 2002 in fresh order as above:

That the Assessing Officer adopted coercive measures by attaching the bank account of the Complainant unlawfully and is in the process of transfer of money from the bank vide letter 1323 dated 04-04-2023 in order to harass the complainant bulldozing the following facts together with the mandatory requirements of law:

- i. The Assessing Officer has not yet served appeal effect order under Section 11B of the Act after the receipt of appellate order till the date. As per our information, no such order has been passed yet.
- ii. The Assessing Officer has issued letter of attachment for an amount of Rs. 8,576,371 instead of reduced tax as result of appeal through appeal effect order under Section 11B of the Act which will be far less than Rs.4,569,741. This is because that the coercive measures were adopted before issuing order under Section 11B of the Act.
- iii. That the grace period of one month has not yet commenced as the appeal effect order has not been passed.
- iv. That the one month grace period even after the appellate order dated 24-3-2023 has not yet expired.

We also request if the order of attachment is not withdrawn and the draft of payment was encashed in favor of tax office, they may be directed to refund the payment withdrawn unlawfully.

3. The complaint was referred to Secretary, Revenue Division, Islamabad and Chief Commissioner-IR, RTO, Rawalpindi 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, Commissioner-IR, Cantt Zone RTO, Rawalpindi vide report dated 04.05.2023 as received from the Chief Commissioner-IR, RTO, Rawalpindi vide letter dated 05.05.2023, the report reproduced below:-

" Stone crushers are liable to charge and pay Sales Tax on sale/supply of crushed stone by virtue of withdrawal of exemption available at S.No19 and 20 of Table 2 (local supplies) of 6th schedule to the Sales Tax Act, 1990 with effect from 01-07-2018. The commodity is taxable since 01-07-2018.

In the instant case, the CIR(A) vide OINA# 186 dated, 16-03-2022 remanded back the case with single direction to rationalize rate of crushed stone per ton for Sales Tax demand as per prevailing market rate. The case was fixed for fresh hearing and 04 opportunities were provided to the taxpayer. However, the rates were not provided by taxpayer. Therefore, the department once again had to establish Sales Tax on the basis of sale value declared by taxpayer in its Income Tax Return-2019 and Sales Tax recoverable amount was reduced from Rs.15,884,140/- to Rs.8,576,371/- vide OINO# 86 dated 30-06-2022.

The department issued Recovery Notice STR-16 and STR-17 dated 17 -08-2022 and 07 -09-2022 but no information regarding filing of appeal was provided, the accounts of the taxpayer were attached as per Sales Tax Rule,2006. The CIR(A) vide OINA# 322 dated 14-03- 2023 reduced amount from Rs.8,576,3711 to Rs.4,569,7411- received to this office dated 07-04- 2023. This office vide OINO # 104 dated 11-04-2023 granted appeal effect, and this office vide letter No. 1367 dated 14-04-2023 sent to Bank for recovery of Rs.4,569,7411- from bank accounts of the subject tax payer. The Appeal effect was given by the assessing officer, according to the decision of CIR(A) and a recovery of Rs.4,569,7411- only was made from bank account.

In view of the facts stated above, the Advisor to Hon'ble FTO may kindly be requested to reject the complaint, being devoid of merit.

5. Hearing in the case was conducted on 05.06.2023 attended by AR of the Complainant and DR of RTO, Rawalpindi. During hearing, the AR, inter alia, emphasized that the Assessing Officer issued recovery notice dated 04.04.2023 which was manual without bar code as the said notice was issued in back date, as such, it carries no legal sanctity. The copy of notice is part of record as earlier provided by the AR. The AR added that 30 days grace period is allowed to the registered person after passing of appeal-effect order as required under rule 71 of the Sales Tax Recovery Rules, 2006. On the other hand, the DR stated that the recovery notice to bank was written by the Assessing Officer on 14.04.2023. The AR added that Assessing Officer on re-adjudication of the case created liability of Rs.5,914,740/- which on appeal was reduced to Rs.4,569,741/- by the Commissioner-IR (Appeals). The Complainant's case was of compulsory registration and the superior courts have held in different cases that no liability can be

created for the period prior to registration in such cases. During hearing, the AR also produced transcript of a message from ABL which confirms that an amount of Rs.1,647,049/- was debited from the bank account of the Complainant at 02:17PM on 14.04.2023. The said transcript is now part of the record.

6. On appeal against the order of CIR (Appeals), the Appellate Tribunal, Inland Revenue Division, Banch-II, Islamabad has allowed Appeal of the Appellant/Complainant and annulled both the orders issued by the Assessing Officer and Commissioner-IR (Appeals) discussed above. The Order dated 18.05.2023 says that "the instant Appeal is, therefore, allowed and the orders of both the authorities are hereby annulled resultantly the tax demand created through the original order is deleted". The Appeal has been allowed on the ground that no liability can be created for the period prior to the date of compulsory registration. As per record, the Complaint was registered compulsorily vide order dated 27.02.2020 whereas the audit period resulting into recovery was July, 2018 to June 2019.

FINDINGS:

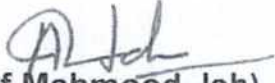
7. The orders of Assessing Officer and CIR (Appeals) have been annulled by the learned Appellate Tribunal Inland Revenue, Islamabad and the original liability of Rs.5,914,740/- created by the Assessing Officer vide O-in-O No.86 of 2021-2022 dated 30.06.2022 is deleted vide Order dated 18.05.2023. Quite shockingly, the recovery proceedings were also arbitrary and patently illegal in violation of rule 71 of Sales Tax Rules, 2006. The recovery action was initiated on 04.04.2023 whereas appeal-effect order under section 11B of the Sales Tax Act, 1990 was passed on 11.04.2023. Therefore, as per record both appeal-effect-order and recovery notices were

manipulated and the same were issued manually in back dates instead of issuing bar coded order/notices. The said position leads to conclude that the action of the Department, attaching bank account of the Complainant was absolutely illegal, based on malafide intent in sheer pursuit of recovery which amounts to 'maladministration' as defined in section 2(3)(i)(a)(b) and (ii) of FTO Ordinance 2000.

RECOMMENDATIONS:

8. FBR to: -

- i. direct Chief Commissioner, RTO, Rawalpindi to refund the complainant, an amount of Rs.1,647,049/- recovered illegally from his bank account on 14.04.2023 and to conduct a fact finding inquiry to fix responsibility for resorting to illegal and coercive means for recovery of amount prior to issuance of appeal-effect order in terms of section 11B of Sales Tax Act, 1990 and why the said order and recovery notices were issued manually instead of prescribed bar coded order/notice;
- ii. report compliance within 45 days.


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

Dated: 22:6: /2023

Approved for reporting


Director
FTO Secretariat
Islamabad