

**THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

Complaint No.2387/KHI/ST/2023

Dated: 02.05.2023 R.O. Karachi

Mr. Maqsood Yar Khan,
C-296, 1st Floor, Block-6,
F.B. Area, Gulberg Town,
Karachi.

...Complainant

V e r s u s

The Secretary,
Revenue Division,
Islamabad.

...Respondent

Dealing Officer	:	Mr. Badruddin Ahmad Quraishi, Advisor
Appraising Officer	:	Mr. Muhammad Nazim Saleem, Advisor
Authorized Representative	:	The Complainant in person, Mr. Nawab Hussain, Advocate
Departmental Representative	:	Mr. Majid Khan, DCIR Mr. Moin Ahmed Ansari, IRAO RTO-II Karachi

FINDINGS / RECOMMENDATIONS

The above-mentioned complaint has been filed in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against issuance of OIO (Order in Original) dated 02.05.2023 ignoring the specific direction of CIR (A) order dated 08.02.2022.

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2. Briefly, the complainant is an individual proprietorship registered in sales tax under the business name of M/s Libra International Karachi. The complainant hired the services of Mr. Sajid Hussain (consultant) for filing of sales tax return who misused user identification and declared fake purchases during tax periods of March 2014, April 2014 & November 2013 claiming input tax of Rs.1,990,101 against dummy / fake units. As soon as the complainant came to know about this fraud, he immediately requested through e-portal /online for revision of sales tax returns

on 27.06.2014 giving reasons as 'Due to misuse and wrong declaration of data by the consultant' but the Deptt failed to give any response. Thereafter the complainant lodged a FIR on 06.08.2014 and nominated Mr. Sajid Hussain for such crime. The Deptt instead of responding to revision of returns, issued a showcase notice (SCN) on 18.11.2014 after six months. The Complainant submitted reply but the Deptt issued an OIO on 02.02.2015 imposing sales tax amounting to Rs.1,990,101 without examining the reply and facts of the case. Meanwhile, Directorate of Intelligence & Investigation IR Karachi lodged a FIR bearing # 36/05 on 05.11.2014 against the dummy units. The case is still pending since 2014 before Special judge (Customs & Taxation) Karachi. The Complainant deposited Rs.500,000/ against the tax demand on 28.06.2014 due to persistent pressure from the Deptt. The Complainant filed appeal, but the CIR (Appeals) vide order dated 23.12.2015 dismissed the appeal for non-prosecution. However, the Appellate Tribunal vide order dated 07.01.2021 setaside the order of CIR(A) and further remanded back to the learned CIR(A) with the direction to finalize order in accordance with law after providing proper opportunity to the complainant. In compliance thereof, the CIR(A) vide order dated 08.02.2022 disposed of the issues by remanding back the OIO with specific direction. However lately, the DCIR, Unit 7, Zone-II, RTO-II Karachi finalized the assessment order hurriedly on the same date (when this complaint was lodged before this forum i.e; 02.05.2023) repeating the same earlier assessment order and imposing same sales tax amounting to Rs.1,990,101 without considering the documents / reply submitted by the complainant; hence this complaint with the prayer to issue refund of Rs.500,000/ against the payment made against the sales tax demand after settling the core issue.

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-II Karachi vide letter dated 18.05.2023 forwarded comments of Commissioner Zone-II, RTO-II Karachi vide letter dated 16.05.2023 stating that assessment order was passed within four corners of law on the basis of contravention report of Directorate General of Intelligence & Investigation IR Karachi against purchase of fake invoices from dummy units by the complainant.

4. Arguments of parties heard, and record perused.

5. The subject case is a classic example of neglect, inattention, delay, incompetence, inefficiency and ineptitude that constitutes maladministration in terms of Section 2(3)(ii) of the FTO Ordinance, 2000. Prima facie, the case has been mishandled badly by the Deptt because Directorate of Intelligence & Investigation IR Karachi lodged FIR against the complainant & dummy units without considering the factual position.

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6. On merit, It is observed that as soon as the complainant came to know about misuse of his password by his counsel and declaration of fake purchases during tax periods of March 2014, April 2014 & November 2013 claiming input tax of Rs.1,990,101 against dummy / fake units, he immediately requested through e-portal /online for revision of sales tax returns on 27.06.2014 giving reasons as '**Due to misuse and wrong declaration of data by the consultant**' but the Deptt failed to give any response in terms of section 26(3) of the Sales tax Act 1990 (the Act). The Deptt instead of responding to revision of returns, issued a show cause notice (SCN) on 18.11.2014 after six months. Thus the core issue would

have been settled then & there and the Complainant would not have suffered the mental, physical & financial torture since 2014 if the concerned Commissioner disposed of the issue of revision of return on merit in terms of 26(3) & 26(4) of the Act which states:

"26(3) A registered person may, subject to approval of the Commissioner Inland Revenue having jurisdiction, file a revised return within one hundred and twenty days of the filing of return under subsection (1) or, as the case may be, subsection (2), or under clause (a) or clause (b) of section 27, to correct any omission or wrong declaration made therein

Provided that the approval under this sub-section shall not be required if revised return is filed within sixty days of filing of return and either the tax payable therein is more than the amount paid or the refund claimed therein is less than the amount as claimed, under the return sought to be revised.

(4) Notwithstanding the penalties prescribed in section 33, if a registered person wishes to file revised return voluntarily along with deposit of the amount of tax short paid or amount of tax evaded along with default surcharge, whenever it comes to his notice, before receipt of notice of audit, no penalty shall be recovered from him."

Not responding to the request of the Complainant for revision of returns, the concerned Commissioner has been guilty of being unreasonable, unjust, biased and of neglect, incompetence, inefficiency and ineptitude, in the administration or discharge of duties.

7. The Commissioner (Appeals -VI) Karachi vide order 08 dated 08.02.2022 remanded back the OIO dated 02.02.2015 with the specific directions to the Assessing Officer to give due consideration on the instances taken by the Complainant after providing proper opportunity of being heard on the following points:

- "Ascertain whether any benefit has been enjoyed by the appellant by filing the original returns for the tax periods November 2013, March 2014 & April 2014 by claiming the input.
- Ascertain whether the showcause notice has been served before the request of the revision filed by the Appellant on the portal.
- If so, reason for non-disposal till date and ascertain it's legal status.
- Ascertain the status of M/s Tripick Trading Co. Adilte Advertisers, Technical Engineering services and Elitoco Trading Co, having sales tax registration # 170095182818, 1200441800128, 1700980006573 and 1704999803828 respectively with reference to the Black Listing Proceedings and outcome thereof
- Ascertain that the department has taken any action against Mr. Sajid Hussain who is the master mind of the entire scenario

- Consult with the authorities of the I & I department Karachi for ascertaining the position of the FIR lodged by the them
- Ascertain the latest position of Custom Court proceedings”

On the contrary, it is observed from the remand back proceedings of the impugned order dated 02.05.2023 that the Assessing Officer did not examine / consider any of the above-mentioned points and issued an order in a sling shot manner ignoring specific direction of the CIR (A) and without using independent and judicious mind.

8. Perusal of the impugned order dated 02.05.2023 also reveals that the impugned order (para 03) **denies submission of any single documentary evidence** by the Complainant whereas the order sheet entry dated 29.08.2022 acknowledged the receipt of documents by the Deptt which is reproduced below:

“Mr. Maqsood Yar appeared and provided copy of C. Petition, challan of Custom Court, Income Tax return of 2014, 2015 & 2016, bank statement and copy of revision request. All documents are in photocopy”

This speaks of the height of neglect, incompetence, inefficiency and ineptitude on the part of Assessing officer who committed administrative excesses by issuing an unjust, biased and oppressive impugned order contradicting his own order sheet entry. Strangely, the CIR Zone-II, RTO-II overlooked this glaring illegality and impropriety and instead tried to defend the Unit Officer concerned in his parawise comments dated 16.05.2023 stating that the assessment order was passed within four corners of law.

FINDINGS:

9. Not responding to the request of revision of returns, issuance of impugned order dated 02.05.2023 ignoring the reply as well as documentary evidences submitted by the complainant, and turning a blind eye to the specific directions of Commissioner Appeals tantamount to maladministration under section 2(3)(i)(b)& (ii) of the

FTO Ordinance.

RECOMMENDATIONS:

10. FBR to direct:

- (i) the Commissioner, Zone-II, RTO-II Karachi to revisit the impugned order dated 02.05.2023 under section 45A(4) of the Act complying with the specific direction of CIR(A) in terms of discussions held in paras 7&8 supra after providing proper opportunity of hearing to the complainant on its merit and in accordance with the law;
- (ii) after an order is passed as directed in recommendation (i) above and the complainant's stance is found correct and accepted, then immediately process the refund claim of Rs.500,000/ under section 66 of the Act;
- (iii) initiate disciplinary proceedings against the Assessing Officer (DCIR, Unit-7, Zone-II) of the RTO-II, Karachi for being incompetent, inefficient and demonstrating non-professional attitude, under the Efficiency & Disciplinary Rules, 2020; and
- (iv) report compliance within 45 days.

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

Dated: 16.06.2023

Approved for reporting


Director
FTO Secretariat
Islamabad