THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

Complaint Nos.3076, 3084-3085,
3254 & 3255/ISB/ST/2024
Dated: 22.03.2024* HQ Islamabad

Syed Shoaib Hussain Shah, ...Complainant
House No.1346, Gali No.14,
Street No.10, Sector I-10/2, Islamabad.

Versus

The Secretary,
Revenue Division, ... Respondent
Islamabad

Dealing Officer	:	Mr. Muhammad Nazim Saleem, Advisor
Appraising Officer	:	Dr. Arslan Subuctageen, Advisor
Authorized Representatives	:	Complainants in person Mr. Usama Rehman Niaz, Advocate
Departmental Representatives	:	Mr. Zahid Baig Second Secretary FBR, Isd Mr. M. Hayat Khan ADC-IR RTO Rawalpindi Mr. Rashid Mahmood ADCIR RTO Islamabad Mr. Suhail Akram Malik, Principal Law Officer, PAEC, Islamabad Mr. Kashif Noshad Ahmed Pr. Accounts Officer, PAEC, Islamabad Mr. Muhammad Shabbir, Admin Officer, PAEC, Islamabad Mr. M. Naveed-ul-Hassan PAO, PAEC, Islamabad

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FINDINGS/RECOMMENDATIONS

The above-mentioned complaints have been filed in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against Pakistan Atomic Energy Commission (PAEC) for charging sales tax on vehicles auctioned by them. Being similar in nature, these complaints are being examined and disposed of together.

2. Briefly, as per the Complainant:

i. It is stated that plaintiffs are law abiding citizen of Pakistan and have a very good reputation and respect all the institutes of state of Pakistan.

ii. That plaintiffs have purchased below mentioned serviceable vehicles from PAEC institutes:

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* Date of registration in FTO Sectt

1.	IDF-8571	Toyota Hiace
2.	GA-676	Mercedes Van
3.	IDH-6755	Suzuki Pick up
4.	DGN-30	Honda City

iii. That these above-mentioned vehicles are serviceable, road Worthy and are to be transferred in the name of plaintiffs so the law does not require payment of GST again on the sales of these vehicles.

iv. That in the spirit of letter of FBR No.418/ISB/ST/2021 dated April 8th,2021, GST cannot be charged on the sales of serviceable auctioned vehicles as the same had been paid at the time of registration.

v. That the GST on above mentioned vehicles is paid once at the time of registration but the PAEC is illegally demanding to pay the GST again.

vi. That the demand of GST is illegal and against law, now the department is asking to either pay the GST amount of the earnest money that had been by the successful bidders would be forfeited that would result in irreparable loss of plaintiffs.

vii. That previously the demand of GST was made in verbal but now the department had issued letters and given specified dates to pay GST that is also attached with the plaint.

Prayer:

Very respectfully it is stated that the demand of PAEC for GST in the spirit of letter of FBR no. 0418/ISB/ST/2021 dated April 8th 2021, is illegal and against the law so to pass a restraining order to PAEC not to demand and collect GST on these above mentioned vehicles and not to forfeit the earnest money paid by the plaintiffs in this regard.

3. The complaint was referred to Secretary, Revenue Division, Islamabad and Pakistan Atomic Energy Commission, Islamabad 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, Sout Zone, RTO, Islamabad vide letter dated 07.05.2024 has submitted following comments/reply:-

"Brief facts of the case are that Mr. Shoaib Hussain Shah purchased a vehicle, having registration No. GA-676, from M/S Pakistan Atomic Energy Commission (PAEC) in an auction arrangement. M/s PAEC, vide its letter No. TRT-2(40)2016 dated 17-04-2024, approved the disposal of the said vehicle in favor of Mr. Shoaib Hussain Shah and required him to pay sales tax on the purchase of the said vehicle.

The Federal Board of Revenue's clarification through letter C. No. 1(16)ST-L&P Misc/2020/21595 5-R dated 20th November, 2020, has been issued in the broader context which implies that on auction of goods - including vehicles - sales tax is chargeable at 17% of value of the good in terms of Section 2(33)(b) of the Sales Tax Act, 1990. In this regard, the Board has clarified that on auction of serviceable old and used vehicles, if sales tax has been paid at the time of local manufacturing or import stage, no sales tax is chargeable on any subsequent resale of the same. On the other hand, upon auction of unserviceable/condemned old and used vehicles, the same shat I attract a charge of 17% sales tax from the bidders, irrespective of the fact that sales tax has already been paid on such imported or locally purchased vehicles, and tax so charged has to be deposited in the federal government treasury accordingly.

In a similar case, representation was filed by Pakistan Atomic Energy Commission against the orders of the learned Federal Tax Ombudsman dated I 0.02.2023 in complaint No.5313/ISB/ST/2022 to the President's Secretariat (Public) Aiwan-F-Sadar, who, vide judgment in Rep.No.70/FT0/2023 dated 04-03-2024, upheld the decision by the honorable FTO. The recommendations or the learned Federal Tax Ombudsman read: "It is therefore, adequately established that sales tax has already paid on the vehicles under reference, therefore, in the light of FBR's clarification issued vide letter No.3(18)/ST-L&P (Pr50594-R- dated 13.04.2021, sales tax is not chargeable on these vehicles got by the complainant through public auction from PINSTECH (P.A. E. C) Islamabad in October, 2022. FBR and PINSTECH (P.A.E.C) Islamabad are therefore, directed to refrain from charging sales tax on auctioned vehicles in the light of FBR's clarification issued vide letter No. 3(18) ST-L& P(Pt.50594-R dated 13.04.2021 as sales tax has already been paid on these vehicles". Copy of the order in Rep. No.70/FT0/2023 dated 04-03-2024.

In the light of judgment in Rep. No.70/FT0/2023 dated 04-03-2024, if sales tax has been paid on the vehicle (Mercedes Van) bearing registration No. GA-676 at the time of import or local manufacturing while being purchased by M/s Pakistan Atomic Energy Commission (PAEC), then there is no need to charge sales tax upon auction of the same. Therefore, M/s Pakistan Atomic Energy Commission (PAEC) is required to produce the purchase invoice of the said vehicle and proof of payment of sales tax to the Government exchequer in order fer the same to be exempt from the levy of sales tax upon auction.

The report is submitted for kind perusal and may be forwarded to the Assistant Advisor (I&M), FTO Secretariat, 5-A, Constitution Avenue, Islamabad."

4. The Director, Legal Affairs Division PAEC HQ, Islamabad and Principal Law Officer PAEC HQ, Islamabad vide letter dated 08.05.2024 has submitted following comments/reply:-

"Undersigned is to refer to Office of Federal Tax Ombudsman Secretariat at Islamabad Complaint Nos. 3076,3254,3255,3084 & 3O85IISBISTI 2023 dated 13.02.20232 filed by Mr. Tariq Zaman Abbasi and others addressed to the Director Admin, PAEC HQ on the subject mentioned above and to furnish the Report and Para-wise comments in the subject case which are as under:

PRELIMINARY LEGAL OBJECTIONS:

1. That bare perusal of the complaints reveals no legal grievance of the complainants as such the cases are not maintainable before this Hon'ble Office of Wafaqi Mohtasib being no cause of action and involvement of maladministration on the part of respondent! Agency.

2. That the complainants have not pointed out in their complaints any act of mal-administration on the part of Department / Agency. Rather the complaints are of general nature involving no particular question / issue

to be determined / decided by this Hon'ble office of Federal Tax Ombudsman Secretariat, Islamabad.

3. That the instant complaints are not maintainable both on law and facts of the cases.

4. That the Complainants have got no cause of action / locus standi to file the instant complaints.

5. That u/s 22 of the National Command Authority Act-2010, the instant complaints do not apparently fall within the jurisdiction of this Hon'ble Wafaqi Mohtasib.

6. That the Complainants are estopped by their own words and conduct to file the instant complaints.

7. That the Complainants have not come before this Hon'ble Wafaqi Mohtasib with clean hands, as such, they are not entitled to the relief claimed.

8. That complainants are bound to follow/act upon on the agreed terms & conditions elaborated at tender documents.

9. That the complainants have not approached this office with clean hands, therefore, they are not entitled to equitable relief as sought by them. Reliance is placed on:

   1969 SCMR 141 Abdul Rashid vs Pakistan etc.

   PLD 1973 SC 236 Nawab Syed Raunaq Ali Khan case.

   1983 SCMR 196 Principal KEMC vs Ghulam Mustafa.

10. That the complainants have no locus standi or cause of action in terms of NCA Transport Rules 2010 therefore the complaints are liable to be dismissed on this score alone.

11. That the complaints are based upon mala fide intention both on law as well as on facts as the complainants have deliberately concealed the material facts from this honourable office in order to achieve the wrongful gain and their complaints are liable to be dismissed on this score alone.

12. That the averments made in the complaints are even otherwise incorrect and are specifically denied by the answering Respondents. The same being disputed questions of fact give rise to certain controversies which cannot be resolved without recording of evidence and admittedly that exercise cannot be performed / made through the instant complaints. Therefore this honourable has lack jurisdiction in the instant matters. Reliance is placed on following case laws: -

2000 SCMR 718 (b)	Shah Wali vs. Ferozuddin.
2001 SCMR115(a)	Revenue Employees Cooperative Housing Society Ltd. Vs Mst. Bachoo.
2001 SCMR 575	Muhammad Ishaq vs Government of
2001 SCMR 1493 (I)	Punjab
2001 SCMR 1569 (c)	Mst. Kaniz Fatima vs Muhammad Salim.
PLD 1996 Sc 246	Ali Muhammad vs Muhammad Aftab.
2001 MLD 1477 (b)	Ch. M. Ismaeel vs Fazal Zada Civil judge.
2001 MLD 1514	Haq Nawaz vs Zonal Chief NBP etc.

PLD 2002 Sc 816 Mst. Kausar Perveen vs Abdul Khaliq
Fida Ullah vs Secretary Settlement and Reh.

13. That U/S 22 of the NCA Act-2010, the instant complaints do not apparently fall within the jurisdiction of this Hon'ble Office.

14. That by virtue of acceptance of terms & conditions mentioned I elaborated in advertisements as well as agreed terms & conditions of the bid/auction proceedings, the complainants are estopped by their own words and conduct to file the instant complaints.

PARA-WISE COMMENTS ON FACTS ARE AS UNDER:

1. It is submitted that on different dates, publications in national newspaper were published and accordingly all the complainants alongwith other bidders participated in the bid proceedings conducted in major cities including provincial capitals Lahore, Karachi, Peshawar and Quetta as well as Federal Capital Islamabad. The complainants were declared as highest/ successful bidders in mentioned vehicles. (The detail is attached herewith for kind perusal).

2. That all the bidders were informed through announcements by the Board of Officers (BOO) of PAEC/Respondents in public at large that GST is fully applicable under the NCA Transport Rules 2010 as well as law of the land i.e. In Land Revenue Policy Wing FBR Letter no. C.No.3(18)ST-L&P/13(Pt)/50594-R dated 13.04.2021 wherein it has been clearly mentioned that on auction of unserviceable! condemned old and used vehicles, the same shall attract charge of 17% Sales Tax from the bidders, irrespective of the fact the Sale Tax has already been paid on such imported or locally purchased vehicles and Tax so charged be deposited in to the Federal Government treasury accordingly.

3. That it was crystal cleared to all bidders/ participants that the vehicles have been declared un-serviceable/condemned by duly constituted Board of Officers (BOO) after having physical and technical inspections as per procedure laid down in NCA Transport Rules 2010 and GST will be charged from successful bidders in addition to offered price. Copies of advertisements, payment deposits receipts and bidder's certificates reflecting charge of GST are enclosed for kind perusal. Video proof is also available which can be produced! played as per demand of this Hon'ble Office.

4. That all the participants accepted the terms & conditions to participate in auction and quoted their bids taking into considerations the applicable amount of GST. All the bidders have deposited their balance payments except complainants who are deviating their commitments / agreed terms and conditions of auction in an attempt to escape from payment of handsome amount on account of GST.

5. All the successful bidders (except complainants) have deposited the amount as mentioned against each (inclusive of GST +Income Tax) and collected/taken over their respective vehicles. Complainants are deviating from commitments I agreed terms and conditions of auction in an attempt to escape from payment of handsome amount on account of GST on the plea that these vehicles are serviceable which is not true! based on real facts.

6. The respondent/PAEC also reserves the right to accept or reject any bid without citing any reason.

7. That complainants are delaying the matter on flimsy grounds as it is clearly mentioned at advertisements wherein complainants are legally bound to pay the GST liability alongwith others participants! bidders and further delay in the instant matter is fatal not only for the complainants but also cause of delay in running of official affairs in smooth way.

8. That the treasury! national exchequer should not be deprived of the GST collected from the bidders on the basis of baseless pleas/stance of the complainants.

PRAYER

In view of the above submissions, it is humbly requested that the complaints of the complainants may kindly be dismissed being baseless, sans legal justification and without merit having no cause of action whatsoever.

5. The hearing in this case was conducted on 09.05.2024. During hearing, the Complainants contended that the vehicles under reference are serviceable and roadworthy, as such, not chargeable to levy of sales tax in the light of FBR's clarification issued vide C.No.3(18)ST-L&P/13(pt) 50594-R dated 13.04.2021. Before proceeding further, it would be expedient to reproduce below the relevant para of the aforestated clarification: -

> "However, the clarification vide letter C.No.1(16)ST-L&P Misc/2O2O/2 1595 5-R dated 20th November, 2020 has been issued in the broader context which implies that on auction. of goods including vehicles, sales tax is chargeable @17% in terms of section 2(33)(b) of the Sales Tax Act, 1990. In this regard, the Board is pleased to clarify that on auction of serviceable old and used vehicles, if sales tax has been paid at the time of local or import stage, no sales tax is chargeable on auction of stated vehicles. Whereas, on auction of unserviceable/ condemned old and used vehicles, the same shall attract charge of 17% sales tax from the bidders, irrespective of the fact that sales tax has already been paid on such imported or locally purchased vehicles and tax so charged be deposited into the federal government treasury accordingly."

The Complainants vehemently emphasized that the auctioning department PAEC provides original Registration Books to successful bidders while physically handing over auctioned vehicles to them, on completion of all formalities including payment of bid amount and taxes. The aforesaid position was endorsed by the DRs of the responding department, as a matter of fact. The Complainants added that the department also provides them Fitness Certificate, however, they could not produce any such Certificate. The DRs of the respondent department denied the said position. The successful bidders (now owners) approach the Motor Registration

Authorities who after getting the Fitness Certificates from the Motor Vehicle Examiners transfer vehicles in their names. The Departmental Representatives, on the other hand argued that they put up vehicles for auction after the same are declared 'unserviceable' as per their laws/rules. Elaborating further, it was added that a car, truck and bus is considered 'unserviceable' on completing life of 8, 9 & 12 years respectively. Additionally, these vehicles are categorized as 'Beyond Repair'. The D.Rs informed that they have auctioned 400 vehicles since December, 2023 to April, 2024 and most of the these vehicle were purchased in 2002-04. They also emphasized that their advertisement in press/newspapers clearly indicate that the vehicles put for auction are 'condemned' vehicles. They provided copies of such advertisements published in different newspapers in the year 2023 and 2024; the same have been placed on record. It is important to mention here that the DR from FBR explained in perspective of FBR's clarification dated 13.04.2021 that for 'unserviceable' vehicle, it is imperative that the vehicle is cut, not to be used as a vehicle anymore. In that situation, sales tax would be attracted as the same is being disposed of as scrap. The DRs from the responding department also confirmed that some vehicles are put to public auction as scrap after their chassis and engine are cut.

FINDINGS:

6. The PAEC is undoubtedly declaring auction of 'condemned' vehicles in newspapers in terms of age of such vehicles in line with their laws/rules as referred at para 5 above. Nevertheless these are not condemned vehicles for all practical purpose. The contention of Complainants that while handing over auctioned vehicles, the PAEC provides them original Registration Books of these vehicles carries substantial weight. The NCA Rules dated 30.04.2010 envisage, inter alia, that expenditure required to return the vehicles/motorcycles to roadworthy

would be kept in mind while fixing the price for auction purpose. Such legal position depicts intent of the respondent department that they are auctioning these vehicles as serviceable/road worthy. More importantly, another rule stipulates that "the bidder will be responsible to make payment of registration charges to the concerned Excise and Taxation Officers so that the new registration book and number to the vehicle/motor cycle is issued." In nutshell, the vehicles under reference as auctioned by the respondent department are old and used but serviceable/roadworthy. Furthermore, their law requires to facilitate the successful bidders to get these vehicles transferred in their names by the Excise & Taxation Offices/Motor Registration Authorities. The said position is fully covered by FBR's clarification referred at para 5 supra. It may not be irrelevant to mention here that in a similar case, the Hon'ble President of Pakistan vide Order dated 04.03.2024 in Representation.No.70/FTO/2023 upheld the Findings of Federal Tax Ombudsman in Complaint No.5313/ISB/ST/2022. The said Representation was filed by the Pakistan Atomic Energy Commission.

RECOMMENDATIONS:

7. FBR to direct-

   i) the Chief Commissioner, RTO Islamabad that sales tax is not charged on the vehicles auctioned by the PAEC and its subsidiary organizations;

   ii) to allow refund of amount of sales tax if already collected by the PAEC; and

   iii) report compliance within 30 days.

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

Dated: 30: 5: /2024
Approved for reporting