

**THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

COMPLAINT NO.3858/SKT/IT/2022

Dated:29.08.2022* RO Lahore

Mr. Abaid Ullah,
P.O Ghondal Miani Awan,
Tehsil & District Sialkot

... Complainant

Versus

The Secretary,
Revenue Division,
Islamabad

... Respondent No.1

The Chief Commissioner
LTO Lahore,

... Respondent No.2

Dealing Officer	: Mr. Abdur Rehman Dogar, Advisor
Appraising Officer	: Mr. Muhammad Tanvir Akhtar, Advisor
Complainant	: in person
Departmental Representative	: Mr. Usman Ijaz Rathore, DCIR, LTO, Lahore

FINDINGS/RECOMMENDATIONS

The above-mentioned complaint was filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against alleged illegal charging of Sales Tax and then further overcharging an amount of Rs.0.245 million on purchase of tractor by Millat Tractors Limited. (MTL)

2. Briefly, the Complainant booked a tractor vide booking No.738103 on 03.06.2022 paying full and final consideration of Rs.1.953 million, inclusive of ST @5% (i.e. Rs.93,500/-). But when the Complainant approached for the delivery of tractor on 03.07.2022 and 14.07.2022, the authorized dealer **further demanded an amount of Rs.0.245 million, allegedly quoting revised taxes on agricultural machinery w.e.f. 01.07.2022 and the Complainant had to deposit Rs.0.245 million.** Whereas factually w.e.f. 1st July, 2022 sale of tractors was exempted from ST under S.No.170 of Table-1 of the Sixth Schedule to the Sales Tax Act, 1990. Instead of passing the tax relief


*Date of registration in FTO Sectt.

to the buyer/complainant MTL has rather overcharged heavily quoting false reasons of revised taxes. The Complainant prayed that the supplier be directed to refund the differential amount of sales tax, as per the rate applicable on the date of delivery of the vehicle.

3. In response to the notices issued under Section 10(4) of the FTO Ordinance, read with Section 9(1) of Federal Ombudsmen Institutional Reforms Act, 2013, the Commissioner-IR, Sialkot Zone, RTO Sialkot submitted parawise comments dated 08.09.2022, wherein it was contended that perusal of the sales invoice dated 22.07.2022 issued by the MTL reveals that no sales tax has been charged through said invoice.

4. Meanwhile, the Complainant submitted additional arguments/grounds vide letter dated 26.11.2022 requesting for directions to FBR and MTL to issue refund of the overcharged sales tax.

5. As invoice of tractor dated 22.07.2022 was issued by MTL which was assessed at LTO Lahore, therefore, a separate notice dated 29.11.2022 was issued to FBR and CCIR, LTO Lahore for seeking comments. In response thereto, CCIR, LTO Lahore, vide letter dated 16.12.2022 submitted parawise comments, stating therein that;

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- i. demand of additional amount of Rs.245,000/- by MTL through their circular dated 18.07.2022 was an internal correspondence between the parties and required no comments from Department.
 - ii. It is not clear whether additional payment of Rs.0.245 million was obtained on account of increase in price of tractors or on the pretense of increase in sales tax. In case, it was received on account of increase in price of tractors then the Department holds no jurisdiction over the pricing policy of a taxpayer. However, if it was demanded and obtained on account of increase in sales tax, such an act would be illegal and proper cognizance of same would be taken while finalizing audit proceedings initiated for Tax Year 2022.
 - iii. The Hon'ble FTO, Islamabad had already held in Complaint No.3367/ISB/ST/2022 that definition of time of supply contained in Section 2(44) of the Sales Tax Act, 1990 covers advances, and in case any part payment or full payment was received in advance, it

was required to be declared in the sales tax return for that tax period. Therefore, MTL was required to declare amount of sales tax charged @5% (i.e. Rs.93,500/-) in its sales tax return for tax period June 2022 and deposit the same into government treasury.

- iv. The amount of Rs.93,500/- charged as sales tax @5% was not refundable to Complainant as MTL was required to deposit the same into government treasury in its sales tax return for June, 2022.
- v. The amount of Rs.0.245 million is refundable to Complainant only if it was obtained on account of increase in sales tax. The said amount had not been paid by MTL the national exchequer, therefore, the Department was not in a position to refund it.

Department prayed that case of MTL had been selected for audit under Section 25 of the Act. Due cognizance of any possible contravention of the law would be taken while finalizing the proceedings.

6. Mr. Usman Ijaz Rathore, DCIR/Audit Officer, attended hearing and reiterated what had been submitted in written complaint and parawise comments. DR pointed out that the Complainant has not approached any forum for resolution of his grievance so complaint is premature. Further submitted that matter pertains to two private parties and as such FBR is not involved. DR referred to directions given by the Hon'ble FTO in another Complaint No.3367/ISB/ST/2022, wherein it was directed that detailed audit of MTL be conducted and same is in progress.

FINDINGS:

7. Arguments of both sides heard and record perused. Core issues are summed up as under;

- i. The parties were informed that FTO Office shall not step into the private commercial matters between the complainant and the complaine company, rather it would confine itself to the acts of omission and commission by FBR authorities, cognizable u/s 2(3)(ii) of FTO Ordinance, 2000, visible from the contents of complaint & rejoinders and not reasonably rebutted by concerned tax authorities.
- ii. Sales tax component of price received by MTL can neither be retained by the supplier for an indefinite period nor can it be

adjusted against price differential, if any by supplier on its own without disclosing this fact in the relevant sales tax return. Thus, non-declaration of whole transaction and nonpayment of sales tax recovered from the payer/complainant MTL has contravened sales tax Act and LTO Lahore failed to take any suo moto cognizance of this glaring default.

- iii. As regards, Department's contention that demand of additional amount of Rs.0.245 million by MTL, through their circular dated 18.07.2022, was an internal correspondence between the parties and required no action from Department is partially correct. During pending audit department will have to ascertain whether additional amount in this case as well as other similar cases on the pretext of "**Revised Taxes**" has been collected by the complaine company and its authorized dealers or not. Sanctity of FBR's tax regime cannot be left solely to the market rather it needs to be upheld through strict vigilance, monitoring and enforcement by field tax formations. **Fraudulent overcharging in the garb of taxation tantamount to tax fraud.**
- iv. Departmental plea that the issue of unpaid Sales Tax charged with the sale price before 30th June, 2022 shall be taken up with assessment of TY 2022 is totally misplaced. In terms of section 2(44) of Sales Tax Act, 1990 the time of supply falls in tax period June, 2022 and any default on this account has to be sorted out under sales tax law. The amount charged during the month of June, 2022 as ST in this case and other similar cases but not deposited in state treasury needs immediate intervention by the department.
- v. In the recent past there are hundreds of cases wherein **M/S Pak Suzuki Limited Karachi** had charged ST @ 17% before 30th June but ST was reduced w.e.f. 1st July i.e. before delivery of vehicles. In said cases, FTO Office had raised the issue of excessive charge of ST, investigated it thoroughly and concluded that refund of excess amount is due to the end consumers who are entitled to reduced tax burden. Complaint Nos. 1757/LHR/ST/2021, 1628/ISB/ST/2021, 1539/ISB/ST/2021, 1528/GWL/ST/2021, 1911/LHR/ST/2021, 1954/LHR/ST/2021, 1631/ISB/ST/2021, 2016/LHR/ST/2021, 1865/LHR/ST/2021, 1980/LHR/ST/2021, 1660/ISB/ST/2021, 1752/KHI/IT/2021, 2082/ISB/ST/2021, 2082/ISB/ST/2021, 1996/KHI/ST/2021, 2136/ISB/ST/2021, 1774/LHR/ST/2021, 2036/ST/2021, 2129/ISB/ST/2021, 1964/FSD/ ST/2021, 1880/FSD/ST/2021 and 1881/FSD/ST/2021, are witness to

the above wherein relief provided by this office has already been upheld by the Hon'ble President of Pakistan vide Order Nos. 98, 100, 104, 106, 107, 111, 112, 113, 114, 115, 116, 117, 126, 127, 159, 128, 129, 134, 135, 155, 154, 156, 157 and 158/FTO/2021.

- vi. In view of above the complainant is entitled to refund of Rs.93,500 by MTL as tax charged at the time of booking has not been paid to the state treasury. LTO Lahore must ensure that relief is granted to the complainant and other similar buyers with same facts.
- vii. LTO Lahore, the concerned field formation was in complete darkness but for intervention of this office and this ***“neglect, inattention, inefficiency and ineptitude, in the administration or discharge of duties and responsibilities”*** clearly tantamount to maladministration in terms of section 2(3)(ii) of FTO Ordinance, 2000.

RECOMMENDATIONS:

- 7. FBR to direct Chief Commissioner IR, LTO, Lahore to;
 - i. conduct probe into charging of ST at the time of booking but not disclosed by MTL while issuing invoices at the time of delivery of tractors, or while filing ST returns for the month of June, 2022;
 - ii. ensure that relief granted by legislature, through Finance Act, 2022 is passed on to the end consumers, wherever 5% ST was charged by MTL before 30th June, 2022 but delivery of tractors was made after 1st July, 2022; and
 - iii. report compliance within 90 days.

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

Dated: 20.12.2022

Approved for reporting