THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

COMPLAINT NO.9021/KHI/IT/2025

Dated: 25.04.2025* R.O. Karachi.

Mr. Nadeem Zafar Lari,
M/s. Fashion Factory NTN 8022848-5
Plot #-5, Sector 12-C, North Karachi Industrial area,
Karachi ...Complainant

Versus

The Secretary
Revenue Division
Islamabad. ...Respondent

Dealing Officer	: Badruddin Ahmad Quraishi, Advisor
Appraisal Officer	: Mr. M. Nazim Saleem, Advisor
Authorized Representatives	: Mr. Shiraz Khan, Advocate
Departmental Representatives	: Mr. Ghulam Shabbir, ADIR CTO Karachi.

FINDINGS & RECOMMENDATIONS

The complaint has been filed against the Commissioner Inland Revenue, Zone-VI, CTO Karachi in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance 2000 (FTO Ordinance) for an alleged illegal suspension order and payment of a refund against tax paid under protest during suspension.

2. Briefly stated, the Complainant is an AOP engaged in manufacturing and exporting textile goods. The complainant came to know through his suppliers that his sales tax status had been appearing inactive / suspended since February 2025. The complainant approached the Commissioner Zone-1, CTO Karachi, vide letters dated 06.02.2025 & 25.03.2025 and came to know that he had been accused of alleged involvement in flying invoices through purchases from suspended and blacklisted units. After meeting with the Commissioner, the complainant paid Rs. 1 million under protest on 25.03.2025 and submitted a request for installment

*Date of registration with FTO Sectt.

with post-dated cheques. However, the Commissioner failed to restore the suspension status; hence, this complaint for restoration of status and refund against payment under protest.

3. The complaint was referred to the Secretary, Revenue Division, Government of Pakistan, for comments and hearing by the Departmental Representative (D.R.), 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, the DR attended and submitted that that the complainant paid tax voluntarily. The case was discussed at length. During the hearing, the DR informed this forum that the suspension status of the complainant had been restored vide order dated 17.03.2025. Moreover, the complainant agitated against illegal recovery without recourse to Section 11E of the Sales Tax Act 1990 (the Act). The AR of the complainant submitted three Supreme Court orders and two Sindh High Court orders in support of his argument.

4. Both parties heard and record perused.

5. Admittedly, the complainant is actively engaged in manufacturing and 100% export of textile products. The Deptt suspended the STRN of the complainant on 12.03.2025 on the allegation of claiming inadmissible input tax from four suspended/blacklisted suppliers. The details are as follows:

Sl. No	Name of Suppliers & tax period	CNIC	Inadmissible input tax (Rs.)
1	Muhammad Hussain Oct 2022	4200025238631	8,536,822
2	Kashif Ashraf Aug 22	4210177060155	73,204
3	Sumair Faheem Oct & Nov 23	4220139047145	277,209
4	Khurram Butt (diff tax periods)	4220139047145	392,014

The Complainant denied receipt of any pre-suspension notice or suspension order and submitted an affidavit in support of his non-receipt of notice & order. Moreover, it is highly appreciated that the Commissioner, Zone-1, CTO Karachi restored the suspension status vide order dated 17.05.2025 during the hearing.

5. As regards payment of sales tax without recourse to Section 11E of the Act, the sales tax payment under threat of suspension/blacklisting is in violation of the legal provisions read with various decisions of Honorable Supreme Court and Sindh High Court (discussed below) and hence highly objectionable. The Honourable Supreme Court of Pakistan in its latest decision dated 16.01.2025 (Para 5) in CPLA 2400L/2022 in the case of Eagle Cables (Pvt) Ltd, Lahore has expounded that in line with section 21(3), goods procured before supplier's registration was suspended with compliance of Section 73 of the Act were entitled to claim an adjustment of input tax. The relevant para 5 of the judgment is reproduced below:

> *"An examination of the records lends credence to the position taken by the respondent. The petitioner has failed to provide any concrete evidence indicating that invoices were issued to the respondent during any period of suspension or blacklisting. It is therefore admitted on all hands that at the time the purchases were made, the suppliers involved were neither blacklisted nor inactive. Furthermore, the payments for these purchases were processed through a legitimate banking channel, adhering to the procedures delineated in Section 73 of the Act. It is now well established in legal precedents that if a transaction is conducted while the suppliers are active and duly registered, any invoices issued are not automatically invalidated by a subsequent blacklisting or suspension of these suppliers. Therefore, it follows that the denial of refunds cannot be justified solely based on the later blacklisting of a supplier. In light of this context, according to sub-section 3 of section 21, all purchases, including the respondent, who procured goods before the suppliers' registration was suspended or they were blacklisted, and who complied with the conditions outlined in Section 73 of the Act, were entitled to claim an adjustment of input tax."*

Similarly, the Honourable Supreme Court of Pakistan in its earlier decision dated 18.05.2018 (Para 2) in CPLA 682/2017 in the case of Sky Pak Enterprises, Faisalabad has already clarified the same issue which is reproduced below:

> "2 *Before us, the learned counsel has read from the provisions of section 21(3)of the Act, which is reproduced as follows:*
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> > *(3) During the period of suspension of registration, the invoices issued by such person shall not be entertained for the purposes of sales Tax refund or input tax credit, and once such person is black listed, the refund or input tax credit claimed against the invoices issued by him, whether prior or after such black listing, shall 334[...] be rejected through a self-speaking appealable order and after affording an opportunity of being heard to such person*
>
> *A bare reading of the said provision shows that it is attracted to transactions that take place after the event of suspension of a supplier of goods under alleged fake invoices. The event of blacklisting follows suspension. Consequently, any transaction which is either prior to or after blacklistingof the supplier is liable to rejection, provided that such transaction has taken place after the date of the suspension of the supplier. In the present case , the petitioner has not been able to make a case before any of the four fora below a case that the suspension of the alleged issue of fake invoices took place prior to the relevant period July 2008 – September 2009.*
>
> *3. For the foregoing reasons, we do not find any merit in this petition as such the same is dismissed, Leave is refused,"*

In addition, the identical decisions of Sindh High Court in the following cases are available which are as follows:

(i). Sindh High Court decision dated 21.03.2025 in Spl Sales Tax Reference Application no. 217 of 2024

(ii). Sindh High Court decision reported as 2021 SLD 424 and 2021 PTCL 576

(iii). Sindh High Court decision dated 06.12.2023 in Spl Sales Tax Reference Application no. 734 of 2015

In the instant case, if all of the four suppliers were active at the time of transactions and there is evidence wherein the provision of section 73 of the Ordinance has been followed, the complainant is eligible to claim a refund against the payment made under protest/pressure during the period of suspension. A registered person, especially an exporter, cannot afford the suspension of his STRN as it will not only lead to cancellation of his export orders but also reflect a bad reputation in the market. Moreover, in the instant case, the total alleged inadmissible input tax against four suppliers was Rs. 9,279,249. Of these, Rs. 8,536,822 (92%) belongs to supplies made by one supplier, Mr. Muhammad Hussain, CNIC 4200025238631, who was suspended on 23.11.2023 as per Taxpayers Profile Inquiry. No show cause notice for blacklisting and blacklisting order was issued after suspension. On the contrary, the allegation of inadmissible input tax in the instant case on supplies from Muhammad Hussain pertains to the tax period of October 2022, which is about one year before the date of suspension, 23.11.2023, when the STRN of supplier Muhammad Hussain was active. Moreover, the Deptt after suspension of supplier Muhammad Hussain failed to serve order of blacklisting within ninety days of the issuance of the notice to Muhammad Hussain, CNIC 4200025238631 resulting the suspension of registered person to become void ab-initio in terms of Rule 12(b)(iii) of Sales Tax Rule 2006 which states:

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> "*(iii) the order of blacklisting shall be issued within ninety days of the issuance of the notice of hearing. In case, the order of blacklisting is not issued within this time period the suspension of registered person shall become void ab-initio;"*

The above conclusion is also supported by a decision of Honourable Sindh High Court dated 12.09.2019 passed in C.P. No. D-8101 of 2017, alongwith several other identical petitions, which state:

> "All *the order(s) of suspension of Sales tax Registration, wherein, show cause Notice(s) under section 21(2) has not been issued within seven days therefrom, and / or no order of blacklisting has been passed within ninety days of issuance of the notice of hearing, the suspension of sales Tax registration becomes void-ab-initio, accordingly the sales Tax registration stands restored."*

Therefore, for all practical purposes, the alleged transaction of Rs. 92% of the alleged inadmissible input was made with a supplier whose suspension order had become ab initio void in terms of the provision of law. In view of the discussions supra, the complainant is entitled to claim a refund against the payments made under coercion/pressure/protest if the compliance with the provision of section 73 of the Act is verified. Therefore, the complainant is directed to file the refund claim in terms of section 66 of the Act.

6. It will not be out of context to discuss that this forum has been receiving a plethora of identical complaints during meetings with several Trade & Bar Associations. This practice of arbitrary or unreasonable, unjust, biased, oppressive, administrative excesses based on irrelevant grounds of tax fraud along with sales tax payment under threat of suspension/blacklisting in violation of Honourable Supreme Court & Sindh High Court (discussed supra) resulting closure of business by exporters and others tantamount to maladministration under section 2(3)il)(a)(b) & (c) of the FTO Ordinance. The Supervisory Officer, including the Chief Commissioner and Member-IR(Ops) must take cognizance of violations of Decisions of the Supreme Court of Pakistan.

FINDINGS:

7. Suspension of STRN and sales tax payment without recourse to Section 11E of the Act in violations of decisions of Hon'ble Supreme Court of Pakistan dated 16.01.2025 in CPLA 2400L/2022 and dated 18.05.2018 in CPLA 682/2017 contrary to the principle of natural justice and hence, unlawful *per se.*; and also tantamount to maladministration, in terms of Section 2(3)(i)(a)(b)(c) & (vi) of the FTO Ordinance.

<u>RECOMMENDATIONS</u>:

8. FBR to direct:

   (i) the Commissioner IR, Zone-I, CTO Karachi to process the refund claim paid under protest after seeking an application in accordance with the law as per discussions in para 5;

   (ii) the Member (Ops) to take cognizance of the blatant violation of the Honorable Supreme Court decisions as a part of confidence measures for the taxpayers, especially the exporters, and

   (iii) report compliance within 45 days.

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

Dated: 04 JUN 2025
Akif

Approved for reporting