

PRESIDENT'S SECRETARIAT (PUBLIC)
AIWAN-E-SADR



Subject: REPRESENTATIONS FILED BY THE FEDERAL BOARD OF REVENUE AGAINST THE FINDINGS/RECOMMENDATIONS PASSED BY THE FEDERAL TAX OMBUDSMAN IN FOLLOWING COMPLAINTS NUMBERS:-

1. Rep. No.98/FTO/2021 in C. No.1757/LHR/ST/2021
2. Rep. No.100/FTO/2021 in C. No.1757/LHR/ST/2021
3. Rep. No.104/FTO/2021 in C. No.1628/ISB/ST/2021
4. Rep. No.106/FTO/2021 in C. No. 1539/ISB/ST/2021
5. Rep. No.107/FTO/2021 in C. No. 1528/GWL/ST/2021
6. Rep. No.111/FTO/2021 in C. No.1911/LHR/ST/2021
7. Rep. No.112/FTO/2021 in C. No.1954/LHR/ST/2021
8. Rep. No.113/FTO/2021 in C. No.1631/ISB/ST/2021
9. Rep. No.114/FTO/2021 in C. No.2016/LHR/ST/2021
10. Rep. No.115/FTO/2021 in C. No.1865/LHR/ST/2021
11. Rep. No.116/FTO/2021 in C. No.1980/LHR/ST/2021
12. Rep. No.117/FTO/2021 in C. No.1660/ISB/ST/2021
13. Rep. No.126/FTO/2021 in C. No.1752/KHI/IT/2021
14. Rep. No.127/FTO/2021 in C. No.2082/ISB/ST/2021
15. Rep. No.159/FTO/2021 in C. No.2082/ISB/ST/2021
16. Rep. No.128/FTO/2021 in C. No.1996/KHI/ST/2021
17. Rep. No.129/FTO/2021 in C. No.2136/ISB/ST/2021
18. Rep. No.134/FTO/2021 in C. No.1774/LHR/ST/2021
19. Rep. No.135/FTO/2021 in C. No.2036/MLN/ST/2021
20. Rep. No.155/FTO/2021 in C. No.2036/MLN/ST/2021
21. Rep. No.154/FTO/2021 in C. No.2129/ISB/ST/2021
22. Rep. No.156/FTO/2021 in C. No.1964/FSD/ST/2021
23. Rep. No.157/FTO/2021 in C. No.1880/FSD/ST/2021
24. Rep. No.158/FTO/2021 in C. No.1881/FSD/ST/2021

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Kindly refer to your representations on the above subject addressed to the President in the background mentioned below:-

2. 24 representations have been filed by Federal Board of Revenue (FBR) against the orders of the learned Federal Tax Ombudsman (FTO), whereby it has been held that:

"FBR to direct:

- (i) *the concerned Commissioner-IR to refund the amount of Sales Tax collected in excess of 12.5% from the Complainant as per law; and*
- (ii) *report compliance within 45 days."*

3. The abovementioned complaints were filed against the FBR Islamabad and M/s Pak Suzuki Motor Company Limited in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) for charging Sales Tax @ 17% on purchase/delivery of Suzuki Vehicles upto 1000cc after 1st July 2021 onwards as against @12.5%, which was the actual rate at that time. In this way, the complainants had been constrained to pay in excess of what was actually due. Thus, the complainants sought directions for refund of the excess amounts of the Tax paid.

4. The complainants stated that they had booked Suzuki Cars upto 1000cc prior to 30.06.2021 at 100% advance payments with tentative date of delivery after 01.07.2021. the Sale Tax add in the prices was at the rate of 17%. Meanwhile, the rate of Sales Tax on such Cars was revised downwards from erstwhile 17% to 12.5% and the FED chargeable @ 2.5% was waived off altogether through the Finance Act, 2021-22 applicable from 01.07.2021. Further, the term "time of supply" defined in Section 2(44) of the Sales Tax Act, 1990 was also amended "*the time at which the goods were delivered or made available to the recipient of supply*". The Cars were delivered to them on different dates alongwith Invoices after 01.07.2021, thus, the Tax rate applicable in the instant cases was as per rate in July 2021 and not the one, at the time of booking of the Cars, i.e.before 30.06.2021. Whereas, M/s Pak Suzuki Company Limited

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charged Sales Tax as per Booking Dates rather than Invoice Dates and refused to refund the difference. Hence, they were deprived of due effect of the reduced Tax burden. Although condition 5 of the Pak Suzuki Motor Company Limited's Terms and Conditions clearly stated that "if any new Taxes/Duties are levied and/or rates of existing taxes/duties structure are revised by the Government, the impact of such levies/revisions would be borne by the customer and the applicable price at the time of delivery shall include the additional amount representing the change in applicable Taxes/Duties". They therefore took up the matter with the learned Federal Tax Ombudsman by filing complaints under Section 10(1) of the FTO Ordinance 2000.

5. The learned Federal Tax Ombudsman called the comments of the Secretary, Revenue Division, Islamabad. In response thereto, the FBR forwarded comments of the concerned Commissioners Inland Revenue. It was averred that the instant complaints were lodged in the context of Finance Act 2021-22 being applicable from 01.07.2021. As per new regime, Federal Excise Duty (FED) @ 2.5% was waived off for upto 1000 cc locally manufactured Vehicles, while Sales Tax on such Motor Cars was also reduced from 17% to 12.5% in order to facilitate the middle class consumers mentioned under Serial Number 72 of Table-1 of the Eighth Schedule to the Sales Tax Act, 1990. Added that the complainants contention that standard rate of Sales Tax charged on delivery of Vehicles on 11.07.2021 was correct. It was further explained that Vehicles booked and payment thereof made by the persons prior to Finance Act, 2021-22 irrespective of whether the Vehicles were delivered after 01.07.2021 would attract the rate applicable at the time of payment as per the then definition of the term "time of supply" in Section 2(44) of the Sales Tax Act, 1990. Hence, it would be construed that 17% Sales Tax had to be charged by the supplier and accordingly paid by the buyers. However, in case of Vehicles upto 1000 cc delivered by the manufacturers w.e.f 01.07.2021 onwards, no FED was payable and the applicable rate of Sales Tax was 12.5% only.

6. Considering the respective stances, the learned Federal Tax Ombudsman proceeded to pass the above-mentioned orders. Hence, the representations by the FBR.

7. The hearing of the case was fixed for 22.02.2022. Mr. Shakeel Ahmad Shakeel, ADCIR, RTO, Sargodha has represented the FBR; whereas, the complainant has not appeared despite notice. Needless to mention that Section 15 of the Federal Ombudsman Institutional Reforms Act, 2013 empowers the decision of a representation on the basis of available record without giving personal hearing of the parties.

8. The learned Federal Tax Ombudsman thrashed the matter vide Paras 5 to 7 of the order as follows:-

"5. The DR, referring to the departmental reply received under the signatures of Second Secretary (ST & FE-Policy), FBR dated 17.09.2021 stated that as per the policy Sales Tax @ 12.5% was chargeable on vehicles supplied after 01.07.2021, as against the standard rate of 17% charged by the manufacturer as per invoice, in his capacity of withholding agent. However, there was lack of clarity with regard to the definition of time of supply" at the time of booking of the vehicle in June 2021 and that at the time of its delivery in July 2021. As per the definition in June 2021, the relevant time for determining the rate of taxation was the time when payment was received by the supplier, wherein Sales Tax was @ 17% and FED @ 2.5%. However, both the definition and the applicable rates of taxes had been changed.

6. The Finance Act, 2021, after amendments in Sales Tax Act, 1990, Section 2(44)(a) was enforced w.e.f. 01.07.2021 and as per reply of FBR dated 17.09.2021 is clear that:-

"2(44) "time of supply", in relation to,—

(a) a supply of goods, other than under hire purchase agreement, means the time at which the goods are delivered or made available to the recipient of the supply"and

(b) 5. Change in the rate of tax.- If there is a change in the rate of tax-

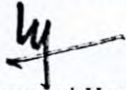
(a) a taxable supply made by a registered person shall be charged to tax at such rate as is in force at the time of supply."

In view of the above clarification, the time of receipt of payment by supplier becomes irrelevant, if the supply is made on or after 01.07.2021. In accordance with Section 5 of the Act: "If there is a change in the rate of tax, a taxable supply made by a registered person shall be charged to tax at such rate as is in force at the time of supply" which in the subject case is July 2021.

7. Collection of Sales Tax in excess of being legislated in Finance Act, 2021 and delay in settling the refund, tantamounts to maladministration, in terms of Section 2(3)(i)(a) of the FTO Ordinance."

9. By virtue of Section 3 of Sales Tax Act, 1990 there shall be charged, levied and paid a tax known as sales tax at the rate of 17% of the value of taxable supplies. The term "taxable supply" has been defined by the Act itself vide S.2(41) "means a supply of taxable goods made by an importer, manufacturer . . ." By virtue of S.2(44) "time of supply" has been defined as "(a) a supply of goods, other than under hire purchase agreement, means the time at which the goods are delivered or made available to the recipients of the supply. It may be noted that this change has been brought into force vide Finance Act, 2021 effective 01.07.2021. Keeping the above legal background in view there appears no difficulty in reaching the conclusion that the term "time of supply" as introduced and amended through the Finance Act, 2021 is of utmost relevance and importance. Such conspicuous change by the law maker demonstrates its intention of amending the definition by giving meaning to the time of supply. Such intendment of the law maker neither can be ignored nor frustrated rather it has to be given effect irrespective of any effects. Section 5 of the Act removes any possibility of doubt and sets the controversy at rest which says "if there is a change in the rate of tax a taxable supply made by a registered person shall be charged to tax at such rate as in force at the time of supply". Therefore, the approach adopted by the FTO in deciding the complaints that collection of Sales Tax in excess of due tax is contrary to the law and direction of refund the amount of Sales Tax collected in excess of 12.5% from the complainants is absolutely lawful and in accordance with law. These representations are bereft of any merits or justifications and are liable to be rejected.

10. Accordingly, the Hon'ble President, as per his decision above, has been pleased to reject the representations.


 (Anwar-ul-Haq)
 Director General (Legal)


1. The Chairman, Federal Board of Revenue, Islamabad.
2. Ms. Maryam Ahmad, R/o House No. 09, Haq Street No.40, Garhi Shahu, Lahore.
3. Mr. Muhammad Zeeshan, ACC HO, Plaza 1-B, St-57, Khawaja Market, G-9/4, Islamabad.
4. Mr. Furqan Ahmed, H. 103/2, Link Stadium Road, Sargodha
5. Mr. Muhammad Sufiyan, Village Faqirian, P.O Mona Dept, Mandi Bahauddin.
6. Mr. Mahboob Ahmad, House No. 18/A, Ali Block, Madina Homes, Lahore
7. Mr. Noman Ashraf, Behind Ghulam Muhammad Building, Gulshan Hayat Park, Shahdara, Lahore
8. Mr. Abdul Majid Qureshi, H. 15/8/F, St. 08, Dheri Hassanabad, Rawalpindi.
9. Mr. Irfan Yousaf, House No. 34, Block-B, Nawan Town, Raiwind Road, Lahore.
10. Mr. Waheed Khizar, 20-M, Valencia Town, Lahore
11. Mr. Muhammad Amir Ismail, House No. 768, J2-Muhammad Ali Johar Town, Lahore
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14. Mr. Bilal Ahmad, Street-D, Sabz Ali Town, Warsak Road, Peshawar.
15. Mr. Atif Shakeel, H. No. 04, St. No. 02, Munawar Colony, Adyala Road, Rawalpindi.
16. Dr. Muhammad Asif Sohail, THQ, Khushab, Sargodha.
17. Mr. Muhammad Saddar-ul-Aala Khan, House No. 9/1, Sadar Colony, Danewal, Vehari.
18. Mr. Shahnawaz Khan, H. No. 11, St. No. 33, River Gardens, Islamabad.
19. Mr. Khuram Manzoor Anwar, House No. 292, A-Block, Satellite Town, Jhang.
20. Mr. Shahid Munir, Apartment No. 11-E5, Block E, Staff Colony, Government College, University, Faisalabad.
21. Mrs. Bushra Ambreen, C/o Mr. Budha Khan, H. 910/3, Malik Muzafar Street, Cantt View Colony, Rawalpindi.
22. Mr. Nasir Jamil, House No. 844-C, Street No. 36, Citi Housing, Sargodha Road, Faisalabad.

Nos.98,100,104,106,107,111,112,113,114,115,116,
117,126,127,159,128,129,134,135,155,154,156,157&158/FTO/2021

Dated 10.03.2020

Copy for information to:

1. The Registrar, Federal Tax Ombudsman, Islamabad.
2. The Chief (Legal-III), Federal Board of Revenue, Islamabad.
3. Master files.


 (Anwar-ul-Haq)
 Director General (Legal)

11.3.2022
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