

THE FEDERAL TAX OMBUDSMAN
Islamabad

OM No.0093/OM/2022

Dated: 02.12.2023* HQ, Islamabad

The Secretary,
Revenue Division,
Islamabad.

... Respondent

Dealing Officer	:	Dr. Khalil Ahmad, Advisor
Appraised by	:	Dr. Arslan Subuctageen, Advisor
Departmental Representatives	:	Mr. Shahjahan Durrani, DCIR
		Mr. Aziz-ur-Rehman, Auditor
		Mr. Tuseef Khan, Manager PRAL, RTO, Multan

ORDER

Own Motion investigation was initiated by FTO Secretariat, Islamabad under Section 9(1) of the FTO Ordinance, 2000 on rejection of request of a taxpayer for change of jurisdiction of business from one RTO to the other.

2. Briefly stated that a complaint bearing No.2526/GWL/ST/ 2022 was filed by Mr. Nabeel Shahzad against non-transfer of jurisdiction form RTO, Multan to RTO, Gujranwala which was disposed of by the Hon'ble FTO vide order dated 01.09.2022 with the following recommendations:

"6. FBR is directed to:

- (i) dispose of pending application dated 12.03.2022 for change of jurisdiction from RTO Multan to RTO Gujranwala expeditiously; and*
- (ii) report compliance within 45 days."*

3. In pursuance of implementation of the aforementioned recommendations, the Second Secretary (Jurisdiction), FBR, Islamabad submitted report vide letter F.No.6(777)Jurisdiction/2017-II/-231489-R dated 08.11.2022 stating therein that request of taxpayer for change of jurisdiction from RTO Multan to RTO Gujranwala has been regretted by

* Date of registration with FTO Secretariat

RTO Multan by not issuing NOC to FBR on the basis of a preliminary investigation. RTO Multan disclosed that taxpayer is involved in tax fraud and got issued an amount of sales tax refund of Rs.992 million during the period August, 2020 to Sep, 2021. The taxpayer has been blacklisted w.e.f. 22.08.2019 vide Order dated 07.07.2022 and the case is selected for audit under Section 25 of the Sales Tax Act, 1990 (the Act). Furthermore, a team conducted physical inquiry of declared manufacturing premises both at Multan and Gujranwala. The taxpayer added the new business address at Gujranwala on the day of physical inquiry i.e. 22.09.2021 but declared business activities were not found in conformity with provisions of Section 2(29C) of the Income Tax Ordinance, 2001 (the Ordinance) and 2(17) of the Act. Moreover, the taxpayer changed his particulars in form 181 on 27.09.2021 i.e. after its reporting by the RTO, Multan to FBR for rollover of its pending refund claims. Strangely, RTO Gujranwala issued NOC for change of jurisdiction. As both CCIRs were not in agreement on the jurisdiction issue hence an application was made to Member-IR (Operation) on 12.03.2022 which was rejected.

4. These facts when come into the notice of Hon'ble FTO, cognizance was taken under Section 9(1) of the FTO Ordinance, 2000 to initiate own motion proceedings to dig out the facts and circumstances which led to issuance of alleged unlawful refund of Rs.992.000 million and also to identify and take action against the responsible officers / officials involved in tax fraud.

5. Report was called for from CCIR, RTO, Multan vide letters dated 19.12.2022 & 29.12.2022. In response thereto, the Chief Commissioner-IR, RTO Multan submitted reply vide letter dated 09.01.2023. The Deptt in its comments has stated that M/s Bin Tariq Impex bearing STRN 3277876165955 is registered with the RTO, Multan having its declared business premises within the jurisdiction of RTO, Multan. During the

period 08/2020 to 08/2021, the registered person (RP) got an amount of Rs.820.565 million issued as sales tax refund through FASTER/ERS as an exporter of raw copper and refund claim amounting to Rs.171.5849 million are still pending in the system as claimed by the RP. The Deptt took cognizance of this huge amount of refund and reported it to Board to block the issuance of pending refund suspecting the claims being fake and fraudulent. The Deptt also took the following measure against the RP:

- (i) Registration of Bin Tariq Impex was suspended vide order No.7560 dated 30.05.2022.
- (ii) It was blacklisted vide order No.170 dated 07.07.2022.
- (iii) Post refund audit proceedings were initiated for the tax periods 08/2020 to 08/2021 in which an amount of Rs.820.565 million has been issued through CSTRO to the taxpayer.
- (iv) An amount of Rs.171.5849 million is pending for the tax period 09/2021 in the system as claimed by M/s Bin Tariq Impex. Pre-refund audit proceedings in terms of Rule 30(3) of the of the Sales Tax Refund Rules, 2006 (the Rules) have also been initiated / concluded and show cause notices have been issued vide C. No.53 dated 14.12.2022. No compliance has been made by the RP which remain un-responded by the RP till to-date.


6. When the Deptt took cognizance of the issue, the RP attempted to change its jurisdiction to RTO Gujranwala by changing its profile but it was preempted by RTO, Multan through refusal of NOC to the Board for change of jurisdiction. The delay in change of jurisdiction from RTO Multan to RTO, Gujranwala resulted in filing of complaint No.2526/GWL/ST/2022 which was disposed of as per recommendations mentioned in Para 2. It ultimately culminated in OM by the Hon'ble FTO as per facts narrated in Para 3 & 4.

7. On initial probe it was found that the RP filed his refund claims through FASTER/ERS for the first time without any physical verification of the existence / capacity of the business premises and continued to avail fast track issuance of refund claims being an exporter till August, 2021

when the Deptt suspected his business activity and took measures to stop the same.

8. The parawise comments filed by the RTO is an admission that M/s Bin Tariq Impex has caused huge loss to the national exchequer by getting hefty amount of sales tax refunds Rs.820.565 million on the strength of bogus and fake invoices as an exporter through FASTER / ERS.

9. In order to dig out the facts which led to the issuance of huge refunds, a thorough probe has been made by this office with the assistance of local PRAL authorities and the Dept'l officers. They were required to provide complete income tax profile of the Complainant and month wise data of sales tax returns for the period August, 2020 to Oct, 2021. The examination / analysis of the said data has revealed startling facts which resulted in colossal loss to the national exchequer as discussed below:

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- (i) As already mentioned in above paras, the RP managed to get refund of Rs.820.565 million for the period 08/2020 to 08/2021. Analysis of month-wise data of sales tax returns filed by M/s Bin Tariq Impex shows that Tier-I & Tier-II suppliers of the RP have some relevance to the business activity of the RP but Tier-III suppliers are totally irrelevant to the business activity of the RP (Sales tax returns for August, 2020 – August, 2021 enclosed). It is also worth mentioning that Tier-III suppliers are invariably different on month to month basis and their nature of business activity is incompatible with the Tier-II and Tier-I suppliers of M/s Bin Tariq Impex. It leads to the logical inference that the supply chain is fake and bogus input of sales tax has been claimed in the chain by the end user who has declared himself as manufacturer-cum-exporter.

It is observed that the same taxpayer got another fake Refund at Rs.50.269 million for the month of October, 2021 through another business name M/s Symbol Impex Pvt. Ltd having STRN 3277876210913. The owner of M/s Bin Tariq Impex is also a director of M/s Symbol Impex Private Limited (Sales tax return for Oct, 2021 enclosed).

- (ii) Reportedly, during the post audit refund proceedings, the RP has been found non-compliant to the provision of Section 73 of the Act, as well.
- (iii) Income tax profile of the RP declared with the Deptt in the IRIS is as under:

Sr.#	Tax Year	Income declared (in million)	Business Capital declared (in million)
1	2019	Rs.0.575	Rs.0.615
2	2020	Rs.1.300	Rs.5.000
3	2021	Rs.139.555	Rs.50.000
4	2022	Nil	Rs.50.000

(Copy of tax returns enclosed)

It is astonishing to note that during the tax period August, 2020 to September 2021, the RP made local purchases to the tune of Rs.6,390.807 million and imports of Rs.99.706 million with NIL / meager business capital disclosed in the preceding / corresponding tax years. The business capital declared for Tax Year 2020 is Rs.5.0 million and for Tax Year 2021 at Rs.50.000 million which is not commensurate with the quantum of purchases made and consequent export proceeds.

- (iv) The case requires a thorough probe by the Deptt because the RP has completely hoodwinked the tax authorities at all levels. Failure to co-relate the data of Income Tax & Sales Tax available is a classical example of the negligence and failure of the Deptt at all levels i.e. FBR & field formations and is a defeat of the spirit of merger of direct and indirect taxes.

2 10. In the wake of foregoing it s manifestly clear that the RP has successfully managed to get the refund issued due to inadequate checks and balances in FATER/ERS. FBR at all levels failed to take timely cognizance of huge refunds which continued to flow for almost a year till the Deptt took notice of this fraudulent activity.

11. The case is a clear instance of maladministration, neglect, inattention, incompetence, inefficiency and ineptitude, in the administration or discharge of duties and responsibilities in terms of Section 2(3)(ii) of the FTO Ordinance and requires a thorough investigation at the highest level. It also calls for revisiting the refund systems already in place by creating sufficient, inbuilt checks in order to

forestall the future repetitions. Some of the measures are proposed in the recommendations part.

Recommendations

12. It is recommended that:

- (i) A high level inquiry committee may be constituted by the FBR to probe and examine the facts and circumstances which led to issuance of this huge amount of refund and fix the responsibility for the negligence and inefficiency by the concerned Dept'l functionaries which led to substantial loss to the national exchequer.
- (ii) The CCIR, RTO, Multan may be directed to ensure corrective measures as provided in the Income Tax Ordinance / Sales Tax Act for the retrieval of lost state revenues.
- (iii) To avoid multiple ST registrations on single premises GPS tagging may be introduced in sales tax registration software. During registration process taxpayer may enter GPS coordinates of manufacturing premises in the system and in case of duplicate GPS coordinates system should provide existing STRN of the same premises.
- (iv) FBR may consider the following proposals to develop adequate safeguards in FASTER/ERS:
 - (a) When the manufacturer files first claim of refund in the FASTER, physical verification of the business premises by the concerned RTO may be ensured to determine the genuineness of the business activity and determination of its production capacity by co-relating it with its utility expenses. Any change of particulars in Form 181 in IRIS may be made with the prior approval of the concerned Commissioner-IR.
 - (b) A validation check may be put in place to cross-match the purchases declared in the sales tax returns with the capital declared in the income tax return.
 - (c) Co-relation of HS code of goods purchased as declared in sales tax returns may be made compulsory in the IRIS for the refund claimant in order to determine its relevance to the supply chain.
 - (d) Built in checks may be introduced in FASTER/IRIS to block refunds in cases of STRN suspension with the same CNIC of individual/AOP member/director of a company. Actual verification of payment deposit may be put in place in the

FASTER instead of invoice based input verification mechanism. There are only two ways of sales tax payment: i) through CPR, & ii) through Bill of Entry at the time of import. Currently, input validation process through column 7(a) and 7(b) is in place. Evidence based physical transaction will ensure input tax deposit in the government treasury.

(v) Compliance be reported within 45 days.

(Dr. Asif Mahmood Jah)

(Hilal-i-Imtiaz)(Sitara-i-Imtiaz)

Federal Tax Ombudsman

Dated: 10-2-2023

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Approved for reporting