

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

Complaint No.0606/KHI/ST/2022

Dated: 22.02.2022 R.O. Karachi

Mr. Sohail Ali Khan,

Proprietor: M/s Karachi Chemist,
Shop No.11, 3-C, 10/5, Nazimabad No.3,
Karachi.

...Complainant

Versus

The Secretary,
Revenue Division,
Islamabad.

...Respondent

Dealing Officer	:	Mr. Manzoor Hussain Memon, Advisor
Appraising Officer	:	Mrs. Sarwat Tahira Habib, Sr. Advisor
Authorized Representative	:	Mr. Aftab Ahmed and M. Naeem Noor, Advocates
Departmental Representative	:	S.M Ghazanfar, Sr. Auditor, RTO-I, Karachi

FINDINGS / RECOMMENDATIONS

The above mentioned complaint was filed against the Commissioner-IR, Enforcement-I, Zone-I, RTO-I, Karachi in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance), for compulsorily registering the Complainant with sales tax without listening their contention.


2. Precisely, M/s Karachi Chemist, Shop No.11, 3-C, 10/5, Nazimabad No.3, Karachi is a medical store and selling medicines in retail. According to them, they were using Debit Card provided by M/s Muslim Commercial Bank (MCB) for its promotion and allowing some discount on purchase of goods to the buyers using their Debit Card. The Federal Government inserted clause "f" in Section (43A) of the Sales Tax Act through Finance Act, 2021 effective from 1st July, 2021 where under the retailers using Debit/Credit Card machines while selling goods are required to be linked with Point of Sale (POS) of FBR for monitoring their sale.

Non-compliants are required to be penalized under the sales tax law. Since the Complainant was selling medicines only which were exempt from payment of sales tax under S.No.104 of 6th Schedule to the Sales Tax Act, 1990, therefore, to avoid unnecessary hassle of sales tax law requirements just because of using Debit Card machine, they returned the machine to the bank on 9th December, 2021. When they received notice from RTO-I dated 14.12.2021 for linking with POS of FBR, they immediately informed them the factual position vide letter dated 15.12.2021. Despite clarifying the position, the Commissioner-IR, Zone-I, RTO-I, Karachi compulsorily registered them under sub section (3) of Section 14 of the Act vide order dated 01.02.2022. Thereafter, the RTO-I issued them a show cause notice dated 03.02.2022; which was not delivered to them. However, the Order-in-Original passed by the Adjudicating Office was received under which a penalty of Rs.5 lac was imposed upon them for not linking with POS of FBR. On receipt of the ONO, they again wrote a letter to the RTO authorities clarifying the position; but they did not listen to anything, hence, the instant complaint with the prayer to direct the RTO authorities to withdraw the imposition of the penalty and deregister them; as they are not liable to be registered being not falling in any category of Tier-1 retailers.

3. The complaint was referred to the Secretary, Revenue Division 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, comments from the Commissioner-IR, Zone-I, RTO-I, Karachi were received vide letter dated 07.03.2022, wherein it was averred that since M/s Karachi Chemist was using Debit Card machine, therefore, was falling in Tier-1 retailer category as defined in Section 2(43A) of

the Act. Since he was not registering itself with the sales tax despite issuance of notice, therefore he was compulsorily registered under the Sales Tax Act and issued STRN 3277876257448. Since he was not linking himself with POS of FBR despite compulsory registration, a show cause notice was issued to him and penalty of Rs.5 lac was imposed in terms of law for non-complying with the legal provisions of the Sales Tax Act. According to them, the complaint is without any merit and not supported by the facts of the case, therefore, be rejected.

4. Hearing was held on 14.03.2022. Both sides reiterated the arguments advanced in written submissions. DR also confirmed that the Complainant was not using Debit Card machine since December, 2021 and the Deptt had no evidence to prove that the Complainant was selling taxable goods also during the period July to December, 2021. Further stated that they had registered him and imposed penalty simply due to non linking his machine with POS system of FBR. AR added that they were already paying sales tax at the rate of 5% through electric bill in terms of sub section (9) of section 3 of the Act applicable on retailers who do not fall in any category of the Tier-1 retailer as defined in Section 2(43A) of the Sales Tax Act.

 5. Averments of both sides heard and the record as well as legal provisions of sales tax law were examined.

6. The Federal Government inserted clause "f" in section 2(43A) of the Sales Tax Act, 1990 vide Finance Act, 2021 effective from 1st July, 2021 under which the retailers who are using Debit/Credit Card machines are required to be linked with POS, FBR to monitor their sales to check whether sales tax was being paid correctly by the retailer or otherwise. It is admitted fact that

P the Complainant was using Debit Card machine provided by M/s MCB for its promotion when this clause was inserted in the Act. Knowing this legal requirement, the Complainant returned the machine to the bank on 09.12.2021 to avoid any unnecessary hassle due to sales tax law requirements; as he was selling medicines; which were exempt from payment of sales tax under S.No.104 of 6th Schedule to the Sales Tax Act, 1990. This was intimated by them to the RTO-I when they received the notice for linking with the system. Despite receiving this information, the Deptt compulsorily registered them with sales tax under the sales tax law and issued sales tax registration order which was again agitated by the Complainant which went unheard and a show cause notice was issued to them and penalty imposed vide Order-in-Original No.83 of 2022 dated 18.02.2022. This whole exercise carried out by the RTO-I was uncalled for and not legally required; as the basis of getting registration with sales tax was already removed by the Complainant by returning the machine to the Bank to come out of the legal requirement. Secondly, he is dealing in sales of medicines; which were exempt from payment of sales tax till 15.01.2022, they were made liable to zero rate of sales tax through second amendment to the Finance Bill of 2022 w.e.f 15.01.2022. Even with zero rating, there is no practical impact of this change in rate as the retailer is not to pay any tax but to file return only showing sale. Thirdly, the Complainant is already paying sales tax at rate of 5% through electric bill in terms of sub section (9) of Section 3 of the Act applicable on retailers not falling under any category defined in Section 2(43A) of the Sales Tax Act. The actions taken in haphazard manner create fear amongst the traders and discourage them to use Debit/Card card machines; which is otherwise essential for documenting the businesses. They should be provided incentives to use machines/technology to

document the economy. Hasty actions taken by field formations have compelled the traders to deal in cash instead of through banking channels; which is unfortunate and against the spirit of the government's policy. The Government's objective behind insertion of clause "f" in section 2(43A) of the sales tax act is to monitor sale of sales taxable goods and to stop evasion of tax. The said insertion was not made to monitor even sale of exempted goods. Mere using Debit Card machine does not make exempted goods liable to 17% sales tax. The spirit behind insertion of said clause is to be understood by field formations while acting upon implementation of the clause.

7. In view of supra, it is held that compulsory registration of the Complainant and imposition of penalty upon him are not in accordance with the sales tax law.

RECOMMENDATIONS:

8. In view of supra, FBR to direct:-

- i) the Commissioner-IR, Zone-I, RTO-I, Karachi to reopen the O-in-O in terms of Section 45A of the sales tax act and set it aside being not in accordance with the law;
- ii) the Commissioner-IR, Zone-I, RTO-I, Karachi to deregister the Complainant as he does not fall within the provisions of section 2(43A) of the Sales Tax Act; and
- iii) report compliance within 45 days.

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

Dated: 11/4/2022

Approved for reporting and press release

Certified to be True Copy

Registr
FTO Secretariat
Islamabad

