

**THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

Complaint No.1200/SGD/ST/2023

Dated: 06.03.2023* R.O. Faisalabad

Mr. Muhammad Hashim,
Al-Hamra Sweet, Faisal Bazar,
Sargodha.

...Complainant

V e r s u s

The Secretary,
Revenue Division,
Islamabad.

... Respondent

Dealing Officer	:	Dr. Muhammad Akram Khan, Advisor
Appraising Officer	:	Dr. Arslan Subuctageen, Advisor
Authorized Representative	:	Mr. Naeem Aziz, Advocate
Departmental Representative	:	Mr. Tahir Munawar, ACIR, RTO, Sargodha

FINDINGS/RECOMMENDATIONS

The complaint was filed in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against Commissioner-IR, Zone-I, RTO, Sargodha for illegal registration/integration with POS System.


2. Briefly, the Complainant, an individual, deriving income from sweets & bakery shop in the name & style M/s Al Hamra Sweets received notice No.704 dated 07.02.2023 u/s 3(9A) of the Sales Tax Act, 1990 whereby, he was required to integrate with POS as provided u/s 3(9A) read with 2(43A) of the Sales Tax Act, 1990. Against notice, Complainant submitted reply whereby he informed that his shop area is less than 1000sqft and annual electricity bill is less than Rs.1.200 million etc. but of no avail, hence the instant complaint.

3. The complaint was sent to the Secretary, Revenue Division, Islamabad in terms of Section 10(4) of the FTO Ordinance read with

* Date of registration in FTO Sectt:

Section 9(1) of Federal Ombudsmen Institutional Reforms Act 2013. In response thereto, the Chief Commissioner IR, RTO, Sargodha vide letter dated 27-03-2023 submitted comments of the Commissioner-IR, Zone-I, RTO, Faisalabad dated 24.03.2022. On merits, it was contended that Complainant's reply was received on 20.02.2023 which is under consideration. Further, the verification of the business premises is also under process. As per Chapter XIV-A of the Sales Tax Rules 2006, bakers & Sweets are under obligation to integrate their business with FBR's POS system under Rule 150ZB of the Sales Tax Rules 2006. Hence, no element of maladministration is involved in the case.

4. In response to the department's comments, the AR of the Complainant submitted a detailed rejoinder strongly defending his position i.e. complainant running a bakery did not fall in the category tier-I under clause 43 of Section 2 of the Sales Tax Act 1990 and that Deptt was wrongly invoking Rule 150ZB for integration with POS system. Relevant part of the said Rule reproduced;



(1) "the registered person specified in Rule 150ZA, herein after referred to in this chapter as registered person, shall install such fiscal electronic device and software, as approved by the board, available on its website with complete technical instructions, for installation, configuration and integration."


150ZA- "The provision of this chapter shall be applicable to the registered person being restaurants, cafes, coffee shops, eateries, snacks bars and hotels having any of such business activities for the purpose of monitoring or tacking of taxable activities by electronic or other means."

He also contended that Deptt admitted that Complainant does not fall in the domain of 2(43) of the Sales Tax Act, 1990 and said Rule will only apply if the person falls in any category of Tier-I retailer, under Section 2(43A) of the Sales Tax Act, 1990.

5. Both the parties heard and record perused.

6. Examination of record and documents submitted by both sides transpires that there is no evidence that the sector 'sweets and bakers'

must be integrated with FBR's POS system. Further, this forum demanded list of 'Sweets & Bakers' integrated with FBR's POS system and as per list provided by the Deptt, out of 32 shops 9 shops were integrated with POS. Deptt insisted that bakeries and Sweets shops were obliged to register themselves under Sales Tax Act, 1990 and install POS system according to Rule 150ZA and Rule 150ZB contained in chapter XIV of Sales Tax Rules, 2006. Conditions laid in Section 2(43A) did not apply and bakeries as business sector were supposed to install POS. However, no express specific order from FBR could be produced from both sides. On the other hand, AR of the Complainant insisted that for installation of POS system conditions/categories enumerated in Section 2(43A) were a pre-requisite and mandatory. The same defined as Tier-I retailers are mentioned below"

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- (a) a retailer operating as a unit of a national or international chain of stores;
 - (b) a retailer operating in an air-conditioned shopping mall, plaza or centre, excluding kiosks;
 - (c) a retailer whose cumulative electricity bill during the immediately preceding twelve consecutive months exceeds Rupees twelve hundred thousand;
 - (d) a wholesaler-cum-retailer, engaged in bulk import and supply of consumer goods on wholesale basis to the retailers as well as on retail basis to the general body of the consumers;
 - (e) a retailer, whose shop measures one thousand square feet in area or more;
 - (f) a retailer who has acquired point of sale for accepting payment through debit or credit cards from banking companies or any other digital payment service provider authorized by state bank of Pakistan; and
 - (g) a retailer whose deductible withholding tax under Sections 236G or 236H of the Income Tax Ordinance, 2001(XLIX of 2001) during the immediately preceding twelve consecutive months has exceeded the threshold as may be specified by the Board through notification in the official Gazette; and
 - (h) any other person or class of persons as prescribed by the Board.

AR submitted copious references to case law establishing that principal law/statute prevails where there is difference/inconsistency between main statute and subordinate legislation i.e. rules, case law cited as

2001 PTD 2383 = 84 Tax 248 Supreme Court of Pakistan, 2011 PTD 543 Inland Revenue Appellate Tribunal of Pakistan. Relevant portion is reproduced;

"It is now a well-established principle of interpretation of statutes that Rules which are merely subordinate legislation, cannot override prevail upon the provisions of the parent statute and whenever there is an inconsistency between a Rule and the Statute, the latter must prevail. This, however, envisages that all efforts to reconcile the inconsistency must first be made and the provisions of the parent Statute prevail only if the conflict is incapable of being resolved."


7. Matter was also discussed with other field formations of FBR and none reported any such exercise whereby bakeries, catteries, coffee shops were being registered for POS on sectoral basis without pre-qualification of Tier-I retailers enumerated in Section 2(43A) of the Act.

FINDINGS

8. In view of above it is evident that concerned Commissioner is exercising powers not given by law and guilty of maladministration.

RECOMMENDATIONS

9. FBR to-
- i) direct Commissioner-IR RTO Sargodha to withdraw the show cause notice dated 07.02.2023;
 - ii) issue clear instructions to field formation regarding POS spelling out criteria as defined in Section 2(43A) of Sales Tax Act 1990.
 - iii) report compliance within 45 days.


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

Dated: 8.6.2023
RS

Approved for reporting