

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

Review Petition

Dated: 15.09.2022* HQs Islamabad

in

COMPLAINT NO.1838/ISB/ST/2022

Syed Rehmat Ali Shah,
Chairman,
Pakistan Overseas Employment
Promoters Association,
Office 07, 2nd Floor, Plaza 2000,
I-8 Markaz, Islamabad.

...Petitioner

Versus

The Secretary,
Revenue Division,
Islamabad.

... Respondent

Dealing Officer
Appraising Officer
Authorized Representatives

:Dr. Arslan Subuctageen, Advisor
:Mr. Nisar Ahmad, Registrar
:i. Mr. Faheem Iqbal, Former Vice Chairman
:ii. Mr. Shahbaz Zeb Khan, Secretary General
:Mr. Amir Amin Bhatti, Chief FBR

Departmental Representative

ORDER-IN-REVIEW

Through the instant Review Petition (RP) filed under Section 14(8) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) the Petitioner has assailed the impugned Findings dated 02.08.2022, passed by this forum in complaint No. 1838/ISB/ST/2022 whereby the complaint was rejected on the ground that:-

"Complainants have not been able to establish any act of maladministration of FBR or its field offices".

2. Briefly, the Petitioner agitated that:-

- (i) Sales Tax should be charged on service charges instead of turnover;
- (ii) tax laws should not be applied retrospectively; and

* Date of registration in FTO Secretariat

- (iii) uniform tax rate of 5% should be charged all over the country.

The Deptt had earlier stated in their comments that sales tax is charged, in the case of Pakistan Overseas Employment Promoters Association, (POEPA) under Islamabad Capital Territory (Tax on Services) Ordinance, 2001 whereas provinces charge Sales Tax as per their respective laws. The rate, provided under said laws is 16%.

3. During investigation, notification regarding (Sindh Sales Tax on Services) dated 30.06.2021 and Punjab Finance Act, 2020 were carefully examined, wherein the tax on similar services was charged by these provinces @ 5%, vide Punjab Finance Act, 2020 amended notification dated 29.06.2020, at para 6(15)g, which reads as follow:-

“(g) at Sr. No.26, in column (4), for the existing entry, the following shall be substituted:

‘(a) Five percent without input tax adjustment for services where the value of service is fixed by the Bureau of Emigration and Overseas Employment; and

(b) Sixteen percent for others.’;”

Whereas, in Islamabad Capital Territory (ICT) it was initially charged @ 16% now revised to 15% under Finance Act, 2022 under PCT Heading 9805.6000 at Sr. No.15 of the Schedule of the ICT (Tax on Services) Ordinance, 2001 (Ordinance No. XLII of 2001). Petitioner also raised the matter that vides Show Cause Notices (SCNs) dated 07.03.2022, issued by RTO, Islamabad they have been asked to get registered for Sales Tax purposes or they will be compulsorily registered and to pay Sales Tax on the sales for Tax Years 2018 to 2021 based on sales/services declared in income tax returns.

4. The Petitioner in his RP submitted that the Executive Committee of the Association had taken up the matter with FBR, through several

letters and meetings and Member-IR (Policy), FBR has agreed to send a proposal for a uniform tax rate policy in the coming budget. The Petitioner has prayed that the directions be issued to FBR not to issue demand notices to the tax affectees till recommendations of the FTO Office are favourably considered by the Federal Govt. to review its tax policy in question and to provide a level playing field at the ICT in consonance with the provinces of Sindh and Punjab.

5. The RP was referred to Secretary, Revenue Division, Islamabad for comments. In response thereto, Secretary (Court Matters), FBR, Islamabad submitted Para-wise comments vide letter dated 27.09.2022. It was contended that tax rates are different in ICT and Punjab as the Sales Tax on Services is charged as per their respective laws after the 18th amendment. Through the Finance Act, 2022 Federal Government has reduced the tax rate from 16% to 15% to provide some relief to the taxpayers. Notices are being sent as per law and the same is true about registration. As far as the retrospective application of the law is concerned, law says that a person registered or liable to be registered has to pay Sales Tax. The issue of uniformity of tax rates has been taken up by the National Tax Council (NTC) and it has been decided that the Federation and Provinces have the right and autonomy to decide the Sales Tax rates on services. It is beyond the powers of FBR to reduce rates and create parity at the National level and, thus, the RP merits rejection.

6. During hearing, ARs and the DR averred their written arguments.

7. Both the parties heard and record perused.

8. There is no denial of the fact that the rate of Sales Tax on overseas employment promoters, applicable in ICT, is discriminatory vis-a-vis the rates, applicable in the provinces of Sindh and Punjab while no tax has been notified by the province of KPK and Baluchistan.

However, on this account, no act of maladministration can be attributed to FBR or its field formations as they are applying the law i.e. "The Islamabad Capital Territory (Tax on Services Ordinance, 2001)" promulgated by the President and amended by Finance Act, 2021. This discrimination can only be removed by Legislation. The subject plea of the Petitioner was earlier received at FTO, Secretariat as "Budget Proposal" for Finance Year 2022-23, which was accordingly sent to FBR with recommendations for consideration. As far as, the application of the retrospective effect of law, Inland Revenue Officer has pointed out in the show cause notice dated 07.03.2022 that the Term Registered Person, as defined u/s 2(25), means "a person who is registered or is liable to be registered under Sales Tax Act, 1990". As some members of POEPA are rendering services since 23.11.2000, therefore, they were asked to pay Sales Tax for previous Tax Years too. This act of the unit officer is, as per law. Thirdly, the charge of Sales Tax only on service charges (Rs.6000/- per person), instead of the entire turnover which includes actual expenses incurred on air ticketing, medical, work permit, levy, visa and documentation of the emigrant, was also considered. Service charges have been elaborated at Sr. No.15 of the Emigration Rules, 1979 updated 2021, which reads as under:-

- (1) A person selected for employment abroad by an Overseas Employment Promoter or the Corporation shall deposit a sum of rupees six thousand in case of monthly salary up to twelve hundred US dollars or equivalent to it in any other currency, and rupees ten thousand in case of monthly salary equal to twelve hundred and one or more US dollars or equivalent to it in any other currency with a branch of a bank which shall issue a certificate in the form as set out in Form 7."

It is observed that the Punjab Finance Act, 2020 referred to above, has clarified that a 5% rate of tax is chargeable on the value of service as fixed by the Bureau of Emigration and Overseas Employment (referred to above), whereas, the ICT (Tax on Services) Ordinance, 2001 vide

Section 3(1) determines the scope of tax on the value of the taxable services rendered or provided in ICT and applies 15% rate of tax. This is a major dichotomy of Provincial and Federal Sales Tax Law where the Provinces are charging Sales Tax on service charges equal to Rs.6,000/- or Rs.10,000/- as the case may be, while the FBR in ICT is charging Sales Tax on the overall value of taxable services.

FINDINGS:

9. Evidently, no maladministration can be attributed to FBR. However, due to the glaring dichotomy and disparity in the Sales Tax chargeability rate between the Provinces and ICT as well as in the matter of its applicability on service charges or value of services respectively, is found to be discriminatory, which adversely impacts the ease of doing business and is tantamount to non-provision of a level playing field to Pakistan Overseas Employment Promoters Association, in ICT.

RECOMMENDATIONS:

10. FBR is advised to remove this disparity as well as discrimination by proposing necessary amendments as detailed above, in the ICT (Tax on Services) Ordinance, 2001 in the next budget proposals for the Finance Bill 2023-24.

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

Dated: 13/10/2022

MR/Satti

Approved for
reporting

Certified to be True Copy

Registrar
FTO Secretariat
Islamabad