

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

Complaint No.1945/KHI/ST/2022

Dated: 21.05.2022* R.O. Karachi

Syed Riaz Ahmed,

Proprietor: M/s Itehad Motors,
F-12, Shaheen Apartment, Block-2,
Karachi.

... *Complainant*

V e r s u s

The Secretary,
Revenue Division,
Islamabad.

... *Respondent*

Dealing Officer	:	Mr. Manzoor Hussain Memon, Advisor
Appraising officer	:	Dr. Sarfraz Ahmad Warriach, Advisor
Authorized Representative	:	Mr. Nadeem Yaseen, Advocate
Departmental Representative	:	Nisar Ahmed Rao, IRO, RTO-I, Karachi

FINDINGS / RECOMMENDATIONS

The above mentioned Complaint is filed against the Commissioner-IR, Zone-III, RTO-I, Karachi, in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance), for compulsory registration of the Complainant, under Section 14 of the Sales Tax Act, 1990 and imposing penalty of Rs.500,000/- upon him.

2. Precisely, Syed Riaz Ahmed, Proprietor M/s Itehad Motors, 53/3, Shikarpur Colony, new M.A. Jinnah Road, Karachi, bearing NTN 09207996, runs a motor vehicle showroom for resale/purchase of secondhand vehicles of other persons on commission basis. The Commissioner-IR, Zone-III, RTO-I, Karachi

* Date of registration in FTO Sectt

registered him as a Tier-1 Retailer compulsorily under Section 14 of the Sales Tax Act, 1990, in terms of clause "e" of sub section (43A) of Section 2 ibid, as area of his premises was more than 1000 sq. ft. Complainant came to know about it on receipt of Assessment Order No. 197/17 of 2022 dated 12.03.2022, received on 28.04.2022 according to which a penalty of Rs.500,000/- was imposed. Complainant averred that he deals in resale and purchase of secondhand vehicles of other people on commission basis and does not fall within the definition of retailer as he provides service, accordingly registered with Sindh Revenue Board (SRB) as service provider, files monthly sales tax return with SRB regularly and pays provincial sales tax on received commission. However, Deptt did not appreciate Complainant's view point, hence, instant complaint with prayer to direct the Commissioner-IR, Zone-III, RTO-I, Karachi to deregister him as he is not liable to be registered as Tier-1 Retailer.

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, the Commissioner, Zone-III, RTO-I, Karachi furnished comments vide letters dated 30.05.2022 and 21.06.2022 wherein it was averred that business activity of the Complainant is a taxable activity under the Sales Tax Act, 1990, hence, the Complainant was required to be registered in terms of Section 3(9A) of the Act, ibid and to integrate itself with FBR; being a Tier-1 Retailer in terms of clause "e" of sub section (43A) of Section 2 ibid; as covered area of his business activity is more than 1000 sq. ft.

4. Hearings were held on 08.06.2022, 15.06.2022 and 22.06.2022. AR vehemently contested the contention of the Deptt arguing that dealing in resale and purchase of motor vehicles of other people, through showroom, is not a retail activity. He referred to the definition of 'Retailer', as notified vide sub section (28) of Section 2 of the Sales Tax Act, 1990 which states "Retailer means a person supplying goods to general public for the purpose of consumption." Vehicles are not for consumption but are treated as capital goods and shown accordingly in sales tax returns and income tax returns by its owner. By no stretch of imagination, they can be treated as consumable goods. He further averred that showrooms provide place only to general public for sale or purchase of their vehicles through such showrooms for which they charge commission. Since their activity falls within the definition of service provider, they are, therefore, accordingly registered with provincial sales tax deptt (SRB), file returns there and pay sales tax on commission received by them. It was averred that the sales tax, under the Sales Tax Act, 1990 is charged and paid on the vehicles at the time of import or on locally purchased one, hence, charging sales tax again on the same at its resale stage would be triple taxation i.e at import stage, sale stage as well as paying sales tax on commission by them which can never be intent of the law.

5. Averments of both sides heard and the legal issues involved in the case were examined. Federal sales tax under the Sales Tax Act, 1990 is charged and paid on vehicles at import/locally manufactured stage. If the sales tax is again charged at its resale

stage, FBR has to give adjustment of input tax, paid at import/local purchase stage under the sales tax law. In that situation, the government would be looser as input tax would be higher than the output tax simply because of the reason that value of secondhand vehicle would be less than the new one. The contention of the AR that role of showroom owner, in dealing with resale/purchase of secondhand vehicles of other persons, falls within the definition of service, is correct. Hence activity of the Complainant does not fall within the definition of retailer, as defined in Section 2(28) of the Act by stretch of any imagination.

RECOMMENDATIONS:

6. FBR to direct-

- i) the Member-IR (Policy) FBR to issue clarification to the field formations in the matter and direct them not to register showrooms dealing in resale/purchase of secondhand vehicles of other persons as retailers under Section 2(43A) of the Sales Tax 1990; and
- ii) report compliance within 45 days.


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

Dated: 20/07 /2022

Approved for reporting