

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

Complaint No.2739/ISB/ST/2021

Dated:24.12.2021* RO Lahore

Mr. Kashif Anwar,
President,
Friends of Economic & Business Reforms,
9-B, Cooper Road,
Lahore

... Complainant

Versus

The Secretary,
Revenue Division,
Islamabad.

... Respondent

Dealing Officer	:	Dr. Sarfraz Ahmad Warraich, Advisor
Appraising Officer	:	Mrs. Sarwat Tahira Habib, Sr. Advisor
Complainant	:	in person
Departmental Representative	:	Nemo

FINDINGS/RECOMMENDATIONS

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The Complaint was filed against Federal Board of Revenue, Islamabad, in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance), for not deleting retailers, having single shop irrespective of their shop area, from the list of Tier-1 retailers, to get themselves integrated with FBR's POS System.

2. Precisely, facts of case, as narrated in the Complaint, are that, as per SRO.608(I)/2014 dated 02.07.2014, amongst various categories of Tier-1 retailers mentioned below, a retailer whose shop area measures 1000 sq.ft in area or more fell in the definition of Tier-1 retailer and had to integrate with the FBR POS System:

- (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

*Date of registration in FTO Sectt.

immediately preceding twelve consecutive months exceeds twelve hundred thousand Rupees;

- (d) a wholesaler-cum-retailer, engaged in bulk import and supply of consumer goods on wholesale basis to the retailers as well as retail basis to the general body of the consumers;
- (e) a retailer, whose shop measures one thousand square feet in area or more; and
- (f) any other person or class of persons as prescribed by the Board.

Complainant failed to understand correlation of retailer shop area with sales tax registration as Sales Tax was applicable on turnover and not on area. Businesses were very upset due to after effects of Covid-19, inflation, devaluation and other various economic crises. Currently, issues were of livelihood, survival, job security etc. to run the economy smoothly and not of business margins and profits. Complainant prayed that FBR may be directed to delete retailers, having single shop irrespective of their shop area, from the condition to get integrated with FBR's POS System as, Complainant feared that such integration would increase their already increasing cost of doing business as they could not fulfill the strict conditions of abiding sales tax laws/provisions.


3. The Complaint was referred to 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, FBR, vide letter dated 02.02.2022, submitted parawise comments, stating therein that Section 2(43A) of the Sales Tax Act, 1990 was inserted by Finance Act, 2017 amended from time to time, aimed to achieve broader economic and financial stability through sustainable economic growth, removal of distortions, broadening of tax base and documentation of economy. However, Complainant's contention, that he failed to understand correlation of

retailer shop area with sales tax registration as sales tax was applicable on turnover and not on area, was misconceived since, in case of Tier-1 retailer, sales tax was not being imposed on area but on the taxable supply of such person at the applicable rate under sub-section (1) of Section 3 of the Sales Tax Act, 1990. A person falling in the category of Tier-1 retailer was merely required to pay sales tax under the standard regime like other categories of registered persons and the legislature was duly empowered to take effective measures to frame laws for collection of revenue. Further, registered persons, if falling in any of the categories of aforesaid law, were liable to integrate as Tier-1 retailer in the light of Chapter XIV-AA of the Sales Tax Rules, 2006, amended vide Notification No.SRO.1360(I)/2018, dated 12.11.2018 and discharge their sales tax liabilities accordingly. The purpose of said provision was documentation and correct reporting of taxable activities. The legislature, in its wisdom, had deemed it fit to lay down certain conditions one of them being shop area as a yardstick to identify person whose taxable activities were significant enough to require documentation through integration with a computerized system of the Board. Department prayed for dismissal of Complaint.

4. No one appeared from FBR. However, Mr. Kashif Anwar, Complainant/President of Friends of Economic & Business Reforms, attended hearing and reiterated what had been submitted in the Complaint. The matter was discussed threadbare. Provisions relating to persons, liable to be registered under Section 14, alongwith retailers, liable to be registered under Sub-Section (9) of Section 3 of Sales Tax Act, 1990, were discussed. Provisions, under Sub-Section (9A), relating to Tier-1 Retailers, read with Section 2(43A), were also discussed. Mr. Kashif Anwar saw discrimination between Section 3(9) and Section 3(9A) as it created disabling environment for Tier-1

retailers in the wake of huge undocumented economy. Furthermore, he stressed that integration would encourage Tier-1 retailers to opt for mis-declaration through falsely bar-coded invoices. In order to create fair and equal environment for retailing business, a well-considered framework needed to be put in place. After deliberations it was decided that Complainant would come up with an informed input from Lahore Chamber of Commerce & Industry including Anjuman-e-Tajran in order to bring out their point of view in elaborate way.

5. The Lahore Chamber of Commerce & Industry (LCCI), vide letter dated 14.02.2022, submitted its viewpoint that LCCI was for documentation and wanted that tax base and revenue should increase by bringing those who were not in the tax net and identify those persons who did not file their tax returns. FBR had to provide more and more facilitation to filers and distinguish them from non-registered/non-filer businesses. LCCI desired that such rules and regulations should be revisited whose applicability, in practical, was difficult for any person, community or group of persons as in case with certain categories of Tier-1 retailers, based on area, amount of electricity bill and condition of air-conditioned mall. LCCI referred to relevant provisions of law and requested that following recommendations may be made to FBR to address the anomalous situation and create a level playing field for all the retailers:

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- (i) amendments should be made in relevant law, keeping in view post Covid-19 scenario to keep the businesses sustainable;
 - (ii) stop registration of retailers for POS integration whose twelve months bill of any period is more than twelve lakh rupees till the electricity values are determined as per current rates;
 - (iii) stop registration of retailers, having small shops in air-conditioned malls until their shop areas are redefined

- with the condition of a shop in air-conditioned mall;
- (iv) stop registration of those retailers for POS integration who have one outlet irrespective of their outlet area;
 - (v) in order to provide enabling environment to retailers, condition of area should be eliminated in the next budget;
 - (vi) in upcoming budget, exemption for one retailer one shop should be announced from POS integration irrespective of area.

6. Anjuman-e-Tajran Lahore (Qaid-e-Azam Group), vide letter dated 14.02.2022, asserted that comparison of size of shop with turnover was irrational as size of shop did not reflect quantum of business turnover in true sense. POS integration is bound to increase expenditure on running the business which small shopkeepers could not afford. Legal understanding of statute/regulatory procedure, in automated environment, was big hurdle for shopkeepers as generally they are illiterate. It was reiterated that bracketing certain retailers in Tier-1 category while allowing other categories of retailers out of the ambit of POS integration, would create extremely disabling/discriminatory environment, discouraging retailers to integrate with POS System. Buyers would prefer to visit non-integrated outlets to avoid paying 17% Sales Tax hence effecting turnover volume of the integrated retailers. It has been prayed that, in view of the stated, retailers, having only one shop, should be excluded from Tier-1 integration irrespective of area of the shop; area of the shop, located in air-conditioned malls, should also be determined to qualify for Tier-1 integration; electricity bill limitation of Rs.1.2 million should be re-assessed afresh keeping in view current rates of electricity bill; presently effective Tier-1 regulatory mechanism be held in abeyance till budget when it is revisited to make the procedure practical in accordance with on-ground realities; benefits, allowed to retailers under Tier-1 regime, should also be allowed to one shop retailers but

currently not falling under Tier-1 regime; and, Anjuman-e-Tajran, further asserts that government should focus on broad basing of tax revenue in other potential areas of economy instead of only squeezing retail business.

2 7. Arguments of Complainant, FBR's reply, LCCL's view point and Anjuman-e-Tajran Lahore's assertions in the matter have been considered. FBR's views, in the matter, carry weight. Relevant amendment, vide Section 2(43A) of the Sales Tax Act, 1990, aims to achieve broader economic and financial stability through sustainable economic growth, removal of distortions, broadening of tax base and documentation of economy. FBR explains that, in case of Tier-1 retailer, sales tax was not being imposed on area but on the taxable supply of such person at the applicable rate under sub-section (1) of Section 3 of the Sales Tax Act, 1990. A person, falling in the category of Tier-1 retailer, was merely required to pay sales tax under the standard regime like other categories of registered persons and the legislature was duly empowered to take effective measures to frame laws for collection of revenue. The purpose of said provision was documentation and correct reporting of taxable activities. The legislature, in its wisdom, had deemed it fit to lay down certain conditions one of them being shop area as a yardstick to identify persons whose taxable activities were significant enough to require documentation through integration with a computerized system of the Board. FBR, however, failed to appreciate, while outlining objective of documentation of economy, that said measure has created extreme discriminatory/disabling environment vis-à-vis integrated and non-integrated retailers. While POS integrated retailers would be under a tight regulatory regime, non-integrated retailers would virtually be operating in tax haven environment, thus creating an unhealthy competition between integrated and non-integrated

retailers, compelling them to resort to mis-declaration, fake invoicing and other malpractices to remain viable in the business. Reflecting on LCCI's viewpoint on the issue, though in principle, LCCI's advocates broad basing, however, in practical, such effort through regulatory regime of Section 2(43A) *ibid*, has not been supported while emphasizing that registered persons/filers should be facilitated while non-registered persons/non-filers should be pursued for broad basing. While idea of one shop exemption from Tier-1 integration, alongwith many other proposals, has been supported, no tangible proposal has been given, keeping in view international best practices in the wake of technological advancements, to document the economy without discrimination, through a level playing field. Anjuman-e-Tajran is more vocal/asserted in advocating viewpoint of shopkeepers as is reflected in paragraph 6 above. However, Anjuman-e-Tajran has also failed to oppose a framework which equally supports just interest of shopkeepers as well as documentation of economy in automated environment.

8. This Forum is of the view that, in the wake of proposals/recommendations made by Complainant/LCCI/Anjuman-e-Tajran, FBR needs to hold an exhausted pre-budget session with the stakeholders to reach out to common point of facilitation of taxpayer alongwith documentation of economy under automated environment without creating discrimination amongst different tiers of stakeholders. Ensuring taxpayers friendly automated regulatory regime through level playing environment and without creating discrimination is critical for effective success of regulatory regime. Neglecting this aspect would but only result in failed regulatory system. It is also observed that, FBR needs to raise a comprehensive infrastructure, based on automated environment, through which all persons, liable to be Sales Tax registered are

brought under tax net without discrimination/without exemption brackets. Federation of Chambers of Commerce & Industry/ Chambers of Commerce & Industry/representative associations of traders/retailers also need to come to the fore to accept this national challenge and assist state authorities in devising a mechanism to document the economy which equally serves public interest as well as interest of the taxpayers.

Recommendations:

9. FBR to:-

- (i) hold pre-budget session with all stakeholders including Federation of Chambers of Commerce & Industry/Chambers of Commerce & Industry/representative associations of traders/ retailers to develop taxpayers friendly automated regulatory regime specifically for Tier-1 retailers ensuring level playing environment and without creating discrimination for effective success of regulatory regime; and
- (ii) report outcome of such deliberations once the same are concluded through pre-budget session.

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

Dated: 12/4/2022
K.A/gg

Approved for press release
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Registrar
FTO Secretariat
Islamabad