

**THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

COMPLAINT NO4610/ISB/IT/2022

Dated: 13.10.2022* R.O, Karachi.

Mr. Nabi Bukhsh Sathio,

...Complainant

Senior Vice President, Sindh Chamber of
Agriculture, House # 1365, Mohalla Talput
Colony Tando Muhammad Khan,
Hyderabad

Versus

M/s Millat Tractors Limited,
Sheikhupura Road, PO Box 12023,
Shahdara, Lahore.

...Respondent 1

The Secretary,
Revenue Division,
Islamabad.

...Respondent2

The Chief Commissioner-IR,
Large Taxpayer Office Lahore.

...Respondent 3

Dealing Officer	:	Mr. Badruddin Ahmad Quraishi, Advisor
Appraised by	:	Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representatives	:	The complainant in person
		Mr. Hasan Akhter representing Millat Tractors Limited
Departmental Representative	:	Mr. Abdul Wahab, DCIR, LTO Karachi

FINDINGS/RECOMMENDATIONS

The above-mentioned complaint was filed in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against alleged 'Tax Fraud' committed by M/s Millat Tractors Limited and non-recovery of inadmissible sales tax refund amounting of Rs.14.887 billion for tax periods July 2017 to June 2022 sanctioned with the connivance of field formations of FBR.

2. The Complainant is a senior Vice President of Sindh Chamber of Agriculture, Hyderabad and on behalf of his association complained against alleged illegal payment of sales tax refund in billions of rupees to M/s Millat Tractors Ltd (Respondent 1) by managing self-made documents which were never audited by FBR.

3. The complainant prayed for recovery of inadmissible sales tax refunds under Rule 5 of SRO 363(I)/2012 dated 13.04.2012 in respect of following transactions by M/s Millat Tractors Ltd (MTL):

- (i) MTL sold 66,725 tractors from 01.07.2017 to 30.03.2020 by charging 5% sales tax and claimed inadmissible refund of Rs.7,427,157,454 on the basis of fake & flying invoices without adhering to mandatory conditions mentioned in section 73 of Sales Tax Act 1990.
- (ii) MTL sold 39,206 tractors from 01.04.2020 to 28.02.2022 and claimed refund of Rs.5,429,353,425 under the same modus operandi through black money by using fake & flying invoices, benami names & CNIC depriving the benefit to poor farmers.
- (iii) MTL sold tractors to blacklisted taxpayer Mr. Ajmal Khan NTN 6558421-4 and claimed input tax from 391 suppliers through fake & flying invoices.
- (iv) MTL purchased 49 fake / flying invoices worth Rs.120 million declaring purchase of rubbers & articles thereof from Mian Shafique Business International Karachi, NTN 1044079-8.
- (v) MTL purchased 6 fake / flying invoices from M/s Khyber Autos Karachi, NTN 1403163-9 worth Rs.6.400 million for claiming of inadmissible input tax of Rs. 1 million.
- (vi) MTL claimed inadmissible sales tax refund of Rs.495,190,205 & Rs.1,535,805,751 for tax periods May 2022 & June 2022 respectively. The inadmissible refunds are liable to be recovered under Rule 5 of SRO 363(I)/2012 dated 13.04.2012.

4. The complaint was referred to the Secretary, Revenue Division for comments in terms of the FTO Ordinance read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act, 2013. In response, the Chief Commissioner-IR, LTO Lahore submitted comments dated 16.12.2022, vehemently rebutting the allegations of connivance quoting judgment in the case of Justice Qazi Faez Isa in CP no.17 & 19 of 2019. It was further averred that following legal proceedings had already been initiated against Millat Tractors Ltd (MTL):

- (i) Audit proceedings under section 25 of the Sales Tax Act 1990 for Tax years 2018, 2019, 2020 and 2022 are underway.
- (ii) Post Refund Scrutiny for Tax periods 04/2020, 05/2020, 07/2020, 08/2020, 10/2020, 11/2020, 12/2020, 02/2021 and 06/2021 had been completed after due scrutiny as per law.
- (iii) Post Refund Scrutiny for Tax periods 06/2015, 07/2015, 08/2015, 10/2015, 07/2016 to 03/2020 was initiated but stayed by Honorable Lahore High Court.

It was also averred that 'STRIVE' system of return filing has eliminated the chance of fake invoices & black listed persons and compliance of section 73 of Sales Tax Act were always checked in all proceedings of audit & post refund scrutiny. No refund was issued after promulgation of SRO 563(I)/2022 dated 29.04.2022. However, the issues raised in this complaint will be carefully looked into during the pending audit proceedings and post refund scrutiny. The complainant may be directed to provide all documentary evidences for a judicious order on merit.

5. On the other hand, the AR of M/s Millat Tractors Limited vide letter dated 25.11.2022 submitted comments raising preliminary objection against competence & jurisdiction of this forum under section 9(2)(b) of FTO Ordinance related to assessment for which legal remedies are available under Sales Tax Act 1990. It was further argued that there had been illegal access to privileged / confidential tax information. On merit, it was averred that no documentary evidences were provided against fake & flying invoices by the complainant. The department never raised the issue of fake & flying invoices during scrutiny of refund claims. Further, the allegations of charging sales tax @ 5% on the basis of benami invoices and fake land records claiming inadmissible refunds was based on a lack of understanding of law. The condition of making supplies to persons holding proof of land-holding was introduced

through SRO 563(I)/2022 dated 29.04.2022; therefore, the company was legally entitled to charge sales tax @ 5% on all its suppliers of tractors irrespective of whether the buyers were farmers / landowners or not. The allegations of claiming inadmissible refund for tax periods May 2022 & June 2022 has also been denied as no such refund of these tax periods have been filed yet. However, all supplies in which 5% sales tax was charged were made to farmers holding valid proof of land-holding.

6. The complainant also filed rejoinder on 19.01.2023 in response to MTL's comments and stressed on the issue of black money investors in this tractor business whereby MTL claimed refund of more than 14 billion during the period of 01.07.2017 to 30.06.2022 committing tax fraud under section 2(37) of Sales Tax Act by using benami names, irrelevant CNICs, fake & flying invoices and violating section 73 of Sales Tax Act.

7. The case was thoroughly discussed with the complainant, AR of MTL and Officer from LTO Karachi representing LTO Lahore and record perused.

8. The objection regarding bar of jurisdiction, raised under Section 9(2)(b) of the FTO Ordinance, is misconceived as the Complainant is not aggrieved against the assessment as such but against failure of the Deptt to unearth alleged tax fraud & loss of Govt. legitimate revenue due to inadmissible sales tax refund sanctioned to M/s Millat Tractors with the connivance of field formations of FBR. The complainant also in his rejoinder contested the preliminary objection of jurisdiction citing case laws as 2013 SCMR 634 and 2020 PTO 1352; 2020 PTO 1161; 2020 PTO 1111. Thus, the objection is overruled in view of some glaring instances of omission and commission on the part of LTO Lahore.

9. Arguments heard and record perused.

FINDINGS:

10. The core issue is allegation of 'Tax fraud' on payment of inadmissible sales tax refund of Rs.14.887 billion during tax periods July 2017 to June 2022 to M/s Millat Tractors Ltd (MTL) against transactions made through black money, by using fake & flying invoices, benami names & CNICs, without adhering to mandatory conditions mentioned in section 73 of Sales Tax Act 1990, depriving the benefit to poor farmers. Some of the examples submitted by the complainant in support of his allegations are:

- i) Purchase of 49 fake / flying invoices worth Rs.120 million declaring purchase of rubbers & articles thereof from Mian Shafique Business International Karachi, NTN 1044079-8. Whereas taxpayers' profile inquiry reflects principal activity as Wholesale and retail trade; repair of motor vehicles and motorcycles/non-specialized wholesale trade/non-specialized wholesale trade
- ii) Purchase of 6 fake / flying invoices from M/s Khyber Autos Karachi, NTN 1403163-9 worth Rs.6.400 million for claiming of inadmissible input tax of Rs. 1 million.
- iii) Sale of tractors to blacklisted taxpayer Mr. Ajmal Khan NTN 6558421-4 claiming input tax from 391 suppliers through fake & flying invoices. As per taxpayer's profile inquiry, Mr. Ajmal Khan is blacklisted since 09.11.2020.



11. The allegation of 'Tax Fraud' requires detailed examination of claim of refund by MTL under section 10 of Sales Tax Act 1990 read with SRO 563(I)/2022 dated 29.04.2022 and SRO 363(I)/2012 dated 13.04.2012.

The term 'Tax Fraud' has been defined under section 2(37) of Sales Tax Act 1990 which states:

"(37) "tax fraud" means knowingly, dishonestly or fraudulently and without any lawful excuse (burden of proof of which excuse shall be upon the accused) –

(i) doing of any act or causing to do any act; or Sales Tax Act, 1990

(ii) omitting to take any action or causing the omission to take any action, including the making of taxable supplies without getting registration under this Act

(iii) falsifying or causing falsification of the sales tax invoices, in contravention of duties or obligations imposed under this Act or rules or instructions issued thereunder with the intention of understating the tax liability or underpaying the tax liability for two consecutive tax periods or **overstating the entitlement to tax credit or tax refund to cause loss of tax.**"

'Tax fraud' has civil consequences as provided under section 21 which include suspension and black listing and criminal consequences as provided under section 33(13) of Sales Tax Act 1990.

12. Likewise, the allegations of use of fake & flying invoices for claiming refund by MTL also requires examination to rule out paper transactions having no link with the actual transactions where goods are delivered to one person and invoice is issued to other dummy/fictitious persons. Invoicing which is the cardinal principle of value added tax under sales tax regime has been prescribed under section 23 of Sales Tax Act which states:

"23. Tax Invoices. – (1) A registered person making a taxable supply shall issue a serially numbered tax invoice at the time of supply of goods containing the following particulars, in Urdu or English language, namely: –

(a) name, address and registration number of the supplier;

(b) name, address and registration number of the recipient and in case of supplies by manufacturer or importer to unregistered distributor, the NIC or NTN of such unregistered distributors, as the case may.

Explanation. – For the purpose of this clause, ordinary consumer means a person who is buying the goods for his own consumption and not for the purpose of re-sale or processing: Provided that the condition of NIC or NTN shall be effective from 1st August, 2019

Provided further that the condition of NIC shall not apply in the case of payment through debit or credit card or digital mode;

(c) date of issue of invoice;

(d) description including count, denier and construction in case of textile yarn and fabric, and quantity of goods;

(e) value exclusive of tax;

(f) amount of sales tax; and

(ff) ***

(g) value inclusive of tax:

Provided that the Board may, by notification in the official Gazette, specify such modified invoices for different persons or classes of persons;

Provided further that not more than one tax invoice shall be issued for a taxable supply"

In the light above provision, the transaction under Sales Tax Act is required to be conducted through valid sales tax invoicing showing particulars of supplier and recipient of goods. Further the transfer of the payment against supply of goods should be from business account of the buyer to business account of the supplier within one hundred and eighty days of issuance of the tax invoice in terms of section 73 of Sales Tax Act which states:

"73. Certain transactions not admissible.— (1) Notwithstanding anything contained in this Act or any other law for the time being in force, payment of the amount for a transaction exceeding value of fifty thousand rupees, excluding payment against a utility bill, shall be made by a crossed cheque drawn on a bank or by crossed bank draft or crossed pay order or any other crossed banking instrument showing transfer of the amount of the sales tax invoice in favour of the supplier from the business bank account of the buyer

Provided that online transfer of payment from the business account of buyer to the business account of supplier as well as payments through credit card shall be treated as transactions through the banking channel, subject to the condition that such transactions are verifiable from the bank statements of the respective buyer and the supplier.

Provided further that adjustments made by a registered person in respect of amounts payable and receivable to and from the same party shall be treated as payments satisfying the provisions of this sub-section subject to following conditions, namely: –

(a) sales tax has been charged and paid by both parties under the relevant provisions of this Act and rules prescribed thereunder, wherever applicable; and (b) the registered person has sought prior approval of the Commissioner before making such adjustments.

(2) The buyer shall not be entitled to claim input tax credit, adjustment or deduction, or refund, repayment or draw-back or zero-rating of tax under this Act if payment for the amount is made otherwise than in the manner prescribed in sub-section (1),

provided that payment in case of a transaction on credit is so transferred within one hundred and eighty days of issuance of the tax invoice.

(3) The amount transferred in terms of this section shall be deposited in the business bank account of the supplier, otherwise the supplier shall not be entitled to claim input tax credit, adjustment or deduction, or refund, repayment or draw-back or zero-rating of tax under this Act."

In the light of above-mentioned provisions, the allegation of payment received from black money investors and invoices issued in the names of benamidars depriving the genuine farmers/ growers the benefit of reduced rate in violation of SRO 563(I)/2022 dated 29.04.2022 require detailed scrutiny of supply chain under section 2(33A) read with sections 7,8 & 73 of sales Tax Act against claim of refund.

13. The bookings of tractors are made by commercial dealers who themselves are not the growers / farmers rather they are only carrying on the purchase and sale of tractors for profit/ commission motive. Tractors invoiced in the names of unrelated persons and mostly used for purposes other than agriculture i.e., industry, trolleying bricks & construction material, digging of land, cleaning of garbage etc are not eligible for refund in terms of SRO 563(I)/2022 dated 29.04.2022

14. In addition, the issue of benami transactions as raised by the complainant where the tractors are delivered to one person and invoices are issued to other dummy / fictitious persons is a tailor made 'Benami Transaction' cognizable under Benami (Transactions) Prohibition Act 2017. Such a camouflaging transaction in the garb of engineered purchases attributed to fake growers / farmers shields the particulars of black money investors by misusing CNICs of unrelated person and investments made & profits earned by the beneficiaries remain concealed and untaxed. On one hand it conceals commercial transactions made by non - growers / farmers without land holding and on the other hand paves the way for claiming bogus sales tax refunds by tractor manufacturing companies.

15. The similar issue of Tax Fraud, illegal invoicing, benami transactions etc by MTL has also been dealt earlier by this forum in

complaint NOs. 3367/ISB/ST/2022, 3858/SKT/IT/2022 & 5423/LHR/ST/2022.

16. Such glaring instances of omission and commission on the part of department reflecting "**neglect, inattention, inefficiency and ineptitude, in the administration or discharge of duties and responsibilities**" clearly tantamount to maladministration in terms of section 2(3)(ii) of FTO Ordinance, 2000.

RECOMMENDATIONS:

17. FBR to direct:

- i) Chief Commissioner IR, LTO, Lahore to probe / conduct detailed inquiry in the light of discussions held in Paras 10-14, in accordance with the provisions of Sales Tax Act 1990 read with SROs 563(I)/2022 dated 29.04.2022, 1248(I)/2020 dated 23.11.2020 & 363(I)/2012 dated 13.04.2012;
- ii) DG Anti-Benami Initiative, FBR to probe the incidence of Benami transactions through eighty-two dealers by MTL not only in the case of MTL but also other leading tractor manufacturing units; and
- iii) report compliance within 90 days.


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

Dated: 10.2.2023

Approved for reporting