

THE FEDERAL TAX OMBUDSMAN
Islamabad

Complaint No.5023/MLN/FE/2022

Dated: 14.11.2022* R.O. Multan

Mr. Liaqat Ali,
M/s Liaqat Traders, 65/15-L, Chab Choki,
Mian Channu, Kahnewal.

... Complainant

V e r s u s

The Secretary,
Revenue Division,
Islamabad.

... Respondent

Dealing Officer	:	Dr. Khalil Ahmad, Advisor
Appraisal Officer	:	Dr. Arslan Subuctageen, Advisor
Authorized Representative	:	Mr. Mazhar Ahmad Khan, Advocate
Departmental Representatives	:	Syed Nadeem Akhtar, IRAO, RTO, Multan
		Mr. Khalid Mahmood Sheikh, IRAO
		I & I-IR, RTO, Multan

FINDINGS / RECOMMENDATIONS

2. The complaint has been filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000, against I&I (Inland Revenue), Multan, for non-compliance to Appellate Tribunal Inland Revenue's order FEA No.01/MB/2021 dated 27.05.2022 and STA No.192/MB/2021 dated 25.05.2022 for release of confiscated goods and vehicle.

2. It has been alleged in Para 2-12 of the complaint that:

- "The complainant M/s Liaqat Traders is a transport service provider and also deals in retail sale of goods and beverages etc. and for the purposes of income tax is registered under NTN 2340632-1.
- The Complainant, had booked a consignment of 142 various local brand cigarettes from the premises of M/s Ammar Traders, Vijianwali through M/s Gujjar Goods Transport Company for onward transportation to Rana Arshed at Billiwala and M/s Bismillah Traders Khanewal.
- On 16.03.2021 the Directorate of I&I-IR Multan seized 120 cartons of the local branded cigarettes along with the vehicle bearing registration No. MNS-18-8080 with the allegation and on assumption/presumption basis that the Complainant was transporting and supplying illicit / counterfeit / non-duty cigarettes owned by the Complainant himself under Section 27 read with Section 3,4,10,11,12,14,14A,17,18 & 19 of the Federal Excise

* Date of registration in FTO Sectt.

Act 2005 further read with Rule 29,62 & 66 of the Federal Excise Rules 2005.

- At the time of the interception, the driver of the vehicle bearing registration No. MNS-18-8080 explained to the staff of Directorate of Intelligence & Investigation, Inland Revenue Multan Public School Mittital Road, Multan about the destination of the loaded goods and **furnished the commercial invoice of M/s Amar Trdaers which the staff was to confirm from M/s Amar Traders or the manufacturers under Section 23 of the Federal Tax Act 2005 read with Section 94 of the CrPC which the staff failed to do and illegally seized the goods along with the vehicle.**
- It is a well-established principle of law that authority making an allegation must bring material evidence to prove the same and any observation which is made upon without evidence is not permitted by any law of the land. Under Article 117 of Qanoon-e-Shahadat Order, 1984, burden of proof is on the department.
- The officials and the staff of the I&I, IR office are in utter violation of law without following the proper legal procedures. The Complainant filed an appeal in the Honorable Appellate Tribunal Inland Revenue Multan Bench under FEA No. 01/MB/2021 along with a Sales Tax Appeal STA No.192/MB/2021 the order of which was passed on 27.05.2022 & 25.05.2022

- The Appellate Tribunal passed order with the observation that:

"We have observed that confiscation of 120 cartons local branded cigarettes along with the vehicle bearing registration No MNS-18-8080 and demand of Federal Excise duty has been made without confirming the record and giving reason is without any justification. The orders have been made on assumption, presumption, surmises and guess work basis.

*We have no hesitation to delete the charges leveled in the impugned orders below being against the facts and law without due process has no sanctity in the eyes of law and are therefore, set aside. The seized/confiscated 120 cartons local branded cigarettes along with the vehicle bearing registration No MNS-18-8080 of the appellants are **directed to be released unconditionally.**"*

- Consequent to the order the Complainant has been approaching the I&I, Inland Revenue office Multan Public School Mittital Road, Multan to release the cartons along with the vehicle. However, more than 5 months have lapsed but the goods and vehicle are still in the custody of the officials which is a direct contempt of the order passed the Honorable Appellate Tribunal.
- The Complainant has time and again made repeated oral as well as written requests dated 20-07-2022, 03.08.2022 etc to the Investigation & Intelligence, Inland Revenue Office for the release of the unlawfully seized stock but to no avail.
- The officials are misusing their position to harass the Complainant by not responding to his requests. That the complainant so many times visited

the office of the respondent and submitted copies of documentary evidence along with the Order in Original of the Honorable Appellate Tribunal regarding lawful possession of cigarettes in question but all in vain. The Investigation & Intelligence Inland Revenue Office have been unofficially asking for bribe in order to release the seized stock & vehicle of the Complainant and they have been misusing their authority to their gain and have refused to cooperate upon refusal of any kind of bribe.

- The act of respondent is contrary and inconsistent with the provisions of law. The act of respondent is also departure from established practice & procedure, (ii) is a direct violation of the order passed by the Honorable Appellate Tribunal (iii) involves the exercise of powers, failure / refusal to cooperate with the Compliant for corrupt or improper motives, such as administrative excesses. Despite repeated request of the complainant, the respondents, neglected and doing inattention delay for the release of local branded unlawfully seized cigarettes of the complainant, hence, the respondent has committed "maladministration" in terms of section 2(3)(i)(a)(c)(d) & Section 2(3)(ii) of the Federal Tax Ombudsman Ordinance, 2000.

In view of above it has been alleged that the respondent has failed to discharge his legal obligations and responsibilities hence committed "maladministration" in terms of section 2(3)(i)(a)(c) (d) & 2(3)(ii) of the Federal Tax Ombudsman Ordinance, 2000. It is, therefore, most respectfully prayed to direct the I&I office to unconditionally release the goods and the vehicle of M/s Liaquat Traders as is directed to them by the Honorable Appellate Tribunal that are retained by the officials without due process of law in violation of section 14 of the Federal Excise Act, 2005 and lastly to take adverse action against the officials involved in the confiscation who with malafide intentions are causing loss to the complainant. Any other relief that the Federal Tax Office deems fit for the Complainant may be granted."

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 Addl. Director I & I (IR), Multan submitted Para-wise comments vide letter dated 29.11.2022.

4. The Deptt has contended that credible information was received that illicit / non-duty paid / counterfeit stock of cigarette was being transported from Chab Chowki towards Khanewal on Shahzore. A team of Directorate of I&I-IR, Multan constituted vide order No.DIR/I&I-IR/MN/2060 dated

16.03.2021 intercepted Shahzore bearing registration number MNS-18-8080 at 8:40 P.M. loaded with 120 crotons of illicit /non-duty paid / counterfeit cigarette. The said team was authorized under Rule 62 to 67 of the Federal Excise Rules, 2005 (the Rules) read with Section 38 of the Sales Tax Act, 1990 (the Act) as per law. Mr. Munawar S/o Malam Din, driver informed that the owner of the cigarette as well as aforesaid vehicle is Mr. Liaqat S/o Naik Muhammad resident of Chak No.80/15L, Police Chowki Chab, Tehsil Mian Channu, District Khanewal. The driver was asked to produce the record /invoices showing deposit of FED and Sales Tax in the National Exchequer or any evidence of the production / supply of the cigarettes to the team but he failed to provide the same. Therefore, the team detained / seized 120 crotons / 1,200,000 sticks of illicit / non-duty paid / counterfeit stock of cigarettes alongwith vehicle. The report vide No. DIR/I&I-IR/MN/2102 dated 25.03.2021 enclosing seizure report No.10/2020-21 was forwarded to the Commissioner-IR, Multan Zone, RTO, Multan for cognizance as per law. The owner of the cigarettes and the vehicle is Mr. Liaqat Ali S/o Naik Muhammad. The online taxpayer inquiry revealed that no transport services are being provided by the Complainant.

5. The complaint was also sent to the CCIR, RTO, Multan. The CCIR, RTO, Multan forwarded CIR, Multan Zone's report dated 19.12.2022 vide letter dated 21.12.2022, who has endorsed the stance taken by the Director (I&I)-IR, Multan. The Deptt stated that upon receipt of seizure report No.10 dated 25.03.2021, the IRO, IR, Unit Mian Channu adjudicated the case and passed Order-in-Original No.14 dated 15.05.2021 and No.1 dated 15.05.2021 confiscating the stock alongwith vehicle. Added that order of Appellate Tribunal Inland Revenue is under process.

6. The AR in rejoinders dated 22.12.2022 & 23.12.2022 in response to the Dept'l stance has reiterated the allegations leveled in the complaint and has squarely alleged the Deptt for *ulterior motives*.

7. Both the parties heard and record perused.

8. Evidently the Directorate of I&I-IR, Multan submitted the case along with Shahzore bearing registration number MNS-18-8080 and 120 crotons of illicit /non-duty paid / counterfeit cigarette to RTO, Multan for adjudication vide seizure report No.10 dated 25.03.2021. The IRO, IR, Unit Mian Channu adjudicated the case and passed FE O-in-O No.01 dated 15.05.2021 and Sales Tax O-in-O No.14 dated 15.05.2021. Being aggrieved the Complainant filed appeal before the CIR (Appeals), Multan who vide orders dated 12.08.2021 dismissed the appeals and confirmed the orders of the IRO, Mian Channu. Being aggrieved the Complainant filed appeals before the Appellate Tribunal Inland Revenue (ATIR) which, vide order in FEA No.01 dated 27.05.2022, directed that vehicle bearing registration No. MNS-18-8080 be released unconditionally to the Appellant and in STA No.192/MB/2021 dated 28.05.2022 deleted the charges leveled in the impugned orders being against the facts and law.

9. The Complainant has come up to this forum for implementation of the orders passed by the Hon'ble ATIR dated 27.05.2022 and 28.05.2022. Consequent to ATIR's orders, the Complainant requested to Chief Commissioner-IR, RTO, Multan. Director I&I-IR, Multan and Unit In charge, Mian Channu in writing vide letters dated 14.08.2022 duly received by these offices for the release of confiscated goods and the vehicle but the Dept'l functionaries have not responded to his request. During the investigation proceedings the AR strongly argued that this act of the Deptt is caused hardship to the Complainant. It has been found that the Director I&I-IR, Multan requested the RTO, Multan to take possession of the confiscated goods/vehicle after firming up the seizure

report vide letter dated 25.03.2021 but the Deptt has failed to do so and the goods / vehicle are statedly still lying with Director I&I-IR, Multan. It is a clear manifestation of disconnect between two sister organizations of FBR. It is also observed that no efforts have been made for recovery of FED / Sales Tax based on O-in-O by the Deptt so far which again speaks for inefficiency of the Deptt.

FINDINGS:

10. In view of the foregoing the delay in implementing the order of ATIR is abundantly clear and the inefficiency in terms of Section 2(3)(ii) of the FTO Ordinance is apparent. Charges of maladministration thus, stands established.

RECOMMENDATIONS:

11. FBR to:

- (i) direct the CCIR, RTO, Multan and Director I&I-IR, Multan to implement the orders of the Hon'ble ATIR dated 27.05.2022 and 28.05.2022;
- (ii) direct Member IR (Ops) and DG I&I-IR to develop an effective mechanism for better coordination between its field formations and the I&I-IR Directorates to forestall the disconnect in order to safeguard the state revenue; and
- (iii) report compliance on recommendations (i) within 30 days.


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

Dated: 16.1.2023
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Approved for reporting.