

PRESIDENT'S SECRETARIAT (PUBLIC)
AIWAN-E-SADR

Federal Board of Revenue Vs Mr. Manzoor Ahmed

Subject: REPRESENTATION FILED BY FEDERAL BOARD OF REVENUE AGAINST THE FINDINGS / RECOMMENDATIONS DATED 17.11.2021 PASSED BY THE LEARNED FTO IN COMPLAINT NOS. 1704/ISB/ST/2021.

Kindly refer to your representation on the above subject addressed to the President in the background mentioned below:-

2. This representation has been filed by Federal Board of Revenue (FBR) on 17.12.2021 against the order of the learned Federal Tax Ombudsman (FTO) dated 17.11.2021, whereby it has been held that:

✓ "FBR to direct:

- SS(TO-II) 29/8/21 ✓
- i. the Commissioner-IR, Abbottabad, to de-register the Complainant as per law; and
 - ii. report compliance within 45 days."

3. The above mentioned complaint was filed against the Regional Tax Office (RTO), Abbottabad, in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 for deregistration under Rule 6(4) of the Sales Tax Rules, 2006.

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4. Mr. Manzoor Ahmed, Proprietor of M/s Kashmir Cloth House (the complainant) alleged that he had proprietorship of the Kashmir Cloth House having covered area of 514 sq ft in Kashmir Building, Main Bazar, Abbottabad. As per Section 2(43A)(e) of the Sales Tax Act, 1990 (the Act), a retailer whose shop measured 1000 sq ft or more would qualify to be a Tier-1 Retailer and liable to be registered under Section 14 of the Act, Rule 6 of Sales Tax Rules, 2006 and none of the prescribed conditions/criteria was attracted in his case. He filed an application dated 09.03.2020, for deregistration before the Commissioner-IR (CIR), Abbottabad, and remained unattended which was also followed by a reminder dated 15.02.2021. Although, his business premises was visited, found lacking of the settled criteria and was apparently/verbally suggested for deregistration, but neither any official correspondence was made, nor the intentions of the Deptt were communicated. He therefore took up the matter with the learned Federal Tax Ombudsman by filing complaint under Section 10(1) of the FTO Ordinance 2000 for strict observance of Section 2(43A)(e) of the Act.

5. The learned Federal Tax Ombudsman called the comments of the Secretary, Revenue Division, Islamabad. In response thereto, the FBR forwarded parawise comments of the Chief Commissioner-IR, Abbottabad dated 14.09.2021 contending that after visit of the complainant's business premises, it was found that the shop had single business name i.e. Kashmir Cloth House having four story building with single entrance and which having covered area more than 1000 sq ft and was liable to registration under Section 2(43A) of the Act. An opportunity of being heard was given to the complainant through Show Cause Notice dated 06.12.2019 before proceeding further in the matter. However, on non-compliance, the Deptt registered the Taxpayer compulsorily as provided under Rule 6 of the Sales Tax Rules.

6. Considering the respective stances, the learned Federal Tax Ombudsman proceeded to pass the above referred order. Thus, the representation by the FBR.

7. The hearing of the case was fixed for 17.05.2022 and today, on 19.07.2022 Mr. Fazal-e-Subhan, Commissioner-IR, RTO, Abbottabad has represented the FBR, whereas Mr. Waheed Shahzad Butt, Advocate and Mr. Mudassir Malik, Advocate have appeared on behalf of the complainant.

8. The learned Federal Tax Ombudsman thrashed the matter vide para 6 of the order, i.e.:-

"6. After perusal of all evidence produced by the AR, complete record and report from the Deptt dated 06.10.2021, it is observed that the Kashmir Cloth Building is a four storied premises owned by different individuals and is operating as a shopping mall with 12 outlets of various commodities which are owned by 12 different individuals having independent NTN's and all of them are paying income tax regularly. Measurements and size of each of these outlets is less than 1000 sqft while the total area of the shopping mall is 6091 sqft. Shop/Business outlet owned by the Complainant, Mr. Manzoor Ahmed is 594 sqft as per Deptt's report, which is much less than the required 1000 sqft as per Section 2(43A)(e) of the Act, resultantly the Complainant does not fall in the category of Tier-I retailer, nor under the ambit of Rule 150ZEA of Chapter XIV-AA of the Rules and his compulsory registration done by the Deptt under the provisions of Rule 6(4) of Sales Tax Rules, 2006 is contrary to law, rules, is arbitrary/unjust and is based on irrelevant grounds and tantamount to maladministration as defined under Section 2(3)(1)(a), (b) & (c) of the FTO Ordinance, 2000."

Thus, he concluded that the arbitrary registration of the complainant under the Rules 6(4) of the Sales Tax Rules, 2006 amounts to maladministration.

9. Suffice it to observe that the Chief Commissioner-IR Abbottabad submitted a report before the learned FTO vide letter No.965 dated 13.09.2021 alongwith measurements in total and of individual shops with photographs, the individual taxpayers name and shops measurement. As per report, all 12 shops are less than 1000 sq.ft. and the owners of the shops are registered taxpayers who also submit their annual income returns regularly. Evidently, the complainant's shop is consisting of 594 sq.ft which does not fall in the ambit of Section 2(43A) (c) of the Act and his compulsory registration by the Deptt under Section 6(4) of the Sales Tax Rules, 2006 is contrary to law and rules. Thus, the order of the learned FTO is based on sound footings and there is no valid justification to interfere with the impugned order. In such circumstances, this representation is liable to be rejected accordingly.

10. From the above paragraph it is evident that it is a simple matter of on the ground measurements. Thus, the order of the learned FTO is based on sound footings and there is no valid justification to interfere with the impugned order. In such circumstances, this representation is liable to be rejected accordingly. It is surprising that such simple matters are not dealt with expeditiously by the FBR. If any doubt (FBR) remained after their first visit, they could have physically re-visited the place again. More effort has been spent contesting this issue rather than solving it. It is not only bad for the image of FBR and all tax authorities and increases public resentment of such processes.

Please send a report within 45 days of implementation of this order and reasons why this miscarriage happened, justice was delayed and why time has been wasted of this highest forum.

10. Accordingly, the Hon'ble President, as per his decision above, has been pleased to reject the instant representation of the FBR.

(Anwar-ul-Haq)
Director General (Legal)

The Chairman,
Federal Board of Revenue,
Islamabad.

Mr. Mansoor Ahmed, Prop:
M/s Kashmir Cloth House, Main Bazar,
Mansehra Road, Abbottabad.
0333-502303 / 03334417181

No.133/FTO/2021 dated 25.08.2022

Copy for information to:

- (1) The Registrar, Federal Tax Ombudsman, Islamabad.
- (2) The Chief (Legal-III), Federal Board of Revenue, Islamabad.
- (3) The Commissioner-IR, Regional Tax Office, Abbottabad.
- (4) Waheed Shahzad Butt, Advocate, Tax Resolution Services Company, 87-Shahrah-e-Quaid-e-Azam, Republic Motors, Lahore 0333-4417181
- (5) Master file.


(Anwar-ul-Haq)
Director General (Legal)