

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

Federal Board of Revenue Vs Mr. Arshad Mehmood, Mr. Khan Afsar, Muhammad Anwar & Mr. Muhammad Yasir

Subject: REPRESENTATIONS PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST THE FINDINGS / RECOMMENDATIONS DATED 19.11.2021 PASSED BY THE LEARNED FTO IN COMPLAINT NOS. 1938,1940-1942/ISB/ST/2021

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

2. These representation have been filed by Federal Board of Revenue (FBR) on 17.12.2021 against the order of the learned Federal Tax Ombudsman (FTO) dated 19.11.2021, whereby it has been held that:

"FBR to direct:

- (i) the Commissioner-IR, Abbottabad, to de-register the Complainant as per law; and
- (ii) report compliance within 45 days."

3. The above mentioned complaints were filed against the 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. The complaints having identical issues were disposed of through a single consolidated order.

4. The background of the case is that complainants alleged that they had the proprietorship of four shops situated in at Gul Building, Main Bazar, Abbottabad and their shops were less than 1000 sq ft but still the Deptt illegally registered them under Section 2(43A)(e) compulsorily. Mr. Arshad Mehmood's outlet had a covered area of 760 sq ft in Gul Building, Main Bazar, Abbottabad and as per Section 2(43A)(e) of the Sales Tax Act, 1990 (the Act), a Retailer whose shop measuring 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 (Rules) and none of the prescribed conditions/criteria was attracted in his case. An application dated 09.03.2020, for deregistration was filed before the concerned Commissioner-IR (CIR), Abbottabad and was followed by a reminder dated 15.02.2021, which remained unattended. The business premises of the complainants were visited and 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. The complainants prayed that the Deptt be directed to strictly observe the rule of law as per Section 2(43A)(e) of the Act and they may be de-registered.

5. The learned FTO called the comments of the Secretary, Revenue Division. In response thereto, the FBR submitted the parwise comments of the Chief Commissioner-IR, Abbottabad, contending that, after visit of the complainant's business premises, it was found that the shop had single business name i.e. Bombay Cloth having four storey building with single entrance and which had measured more than 1000 sq ft and liable to registration under Section 2(43A) of the Act. The structure of the Bombay Cloth House (Building) consists of a Ground Floor and First Floor of the building. In Ground Floor, existed two different distributions of sections, one was Bombay Cloth House and other was Bombay Boutique Fabrics. In First Floor found two different sections, one was Bombay Abaya & Matching Center and other was Bombay Aroosi Corner. There was no clear and visible segregation of shops, in fact, a whole section was randomly and verbally divided into two parts with no separation wall or structure on the Ground found. This fact led to the conclusion 'that the apparent division was devised to misguide the Tax Authorities. Four brothers were carrying out their own individual businesses inside the shops. The Deptt registered the Taxpayers compulsorily as provided under Rule 6 of the Rules.

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

7. The hearing of the case was fixed for 31.05.2022. Mr. Fazal-e-Subhan, Commissioner-IR has represented the FBR, whereas Mr. Waheed Shehzad Butt, advocate and Mr. Mudassir Malik, Advocate have appeared on behalf of the complainant.

8. The learned FTO dealt with the matter vide paras 4&5 of the order as follows:-

"4. During hearing on 25.10.2021, AR and the DRs averred to their written arguments. The DR submitted the Deptt's report which states that a 05 members' committee was constituted to visit the premises of the Complainant and reported that total area of the building named 'Gul Building' was 2946.1 sqft, there are 04 outlets of different merchandize and there is one collection point for payment of cash at main counter. The AR stated that each and every outlet has its own cash counter where payments are received and provided photograph. Each owner of the shop is an NTN holder and pays income tax, no shop is in excess of 1000 sqft. The AR further stated that Gul Building is a commercial mall which consists of different shops with different owners. The AR also submitted NTN/Tax profile certificates according to which all are active taxpayers registered on different dates and are part owners of the building. The DR submitted the reply with a report from the Chief Commissioner-IR, Abbottabad, dated 14.10.2021 giving measurements in total and of individual shops along with photographs. The AR provided the individual taxpayers name and shop measurement and that all shops are less than 1000 sqft and does not fall in the ambit of Section 2(43A)(e) of the Act.

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5. After perusal of all evidence produced by the AR, complete record and report from the Deptt dated 14.10.2021, it is observed that the Gul Building is a multi-storied building owned by different individuals and is operating as a shopping mall with 04 outlets of various commodities, owned by different individuals having independent NTN's and all of them are paying tax regularly. Measurements and size of each of these outlets is less than 1000 sqft while the total area of the shopping mall is 2946.1 sq ft. Shop/Business outlet owned by the Complainant, Mr. Arshad Mehmood is 760 sq ft, which is less than the required 1000 sqft as per Section 2(43A)(e) of the Act, evidently 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 the Rules, is contrary to law, rules, is arbitrary/unjust and is based on irrelevant grounds and tantamount to maladministration as defined under Section 2(3)(i)(a), (b) & (c) of the FTO Ordinance, 2000."

Thus, he concluded that arbitrary/unjust registration of the complainants amount to maladministration.

9. During the hearing, it appeared that on the basis of a consensual understanding, the matter can be settled on mutually acceptable arrangement, i.e. carrying out on the spot measurement of the shops. The Commissioner-IR (DR) Zone-I, Abbottabad has agreed to visit the building alongwith his team for making physical measurement of the shops in the presence of the complainants. The Authorized Representative (AR) of the complainants has also assured to extend full cooperation in this regard. Thus, both parties have agreed to this arrangement and will accept the outcome of on the spot measurement in order to settle the dispute amicably. In view of such consensual agreement, the representation is liable to be disposed of accordingly on the above terms and inform the FTO's Secretariat within 45 days.

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

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

The Chairman,
Federal Board of Revenue,
Islamabad.

Mr. Arshad Mehmood
Prop: Bombay Aroosi Cornor,
Main Bazar, Abbottabad. 0333-4417181

Mr. Khan Afsar,
Prop: Bombay Boutique,
Main Bazar, Abbottabad. 0333-4417181

Mr. Muhammad Anwar,
Prop: Bombay Cloth House,
Main Bazar, Abbottabad. 0333-4417181

Mr. Muhammad Yasir,
M/s Bombay Abaya and Matching Centre,
Main Bazar, Abbottabad. 0333-4417181

No.130/FTO/2021 dated 22.06.2022

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.
- (5) Master file.

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