



7th September 2012

Mr. Ali Arshad Hakeem,
Chairman,
Federal Board of Revenue,
Government of Pakistan,
Islamabad.

Sub: Recovery of tens of billions of rupees from contactors for illegal refund/exemptions for misusing Complaint Zero Sales Tax for Contractors of International Tendered Contracts.

Dear Sir,

Transparency International Pakistan received a complaint against a KPT Contractor for illegal refund/exemptions of GST by misusing rule of Zero Sales Tax for Contractors of International Tendered Contracts and requested Chairman FBR vide letter dated 20th November 2011, for clarification whether cement, steel and other material bought by contractor against international tender for construction of works are exempt from sales tax or not.

No reply clarifying the specific question was given by previous Chairman FBR. However Directorate of Intelligence and Investigation, Inland Revenue (IR) Karachi took notice of the Complaint and found KPT contractor guilty for misuse of sales tax act which caused a loss to exchequer of over Rs 350 million till 2011, and the contravention report was sent to the Commissioner Inland Revenue Karachi on 7th May 2012 for adjudication.

The contravention report found that the constructed material to be used for constructing a structure is not allowed the zero rated sales tax under Sales Tax 1990.

The report also determined the recovered of over Rs. 360 Million should be affected from the contractor which request adjudicated by the Commission of Inland Revenue within 120 days of the preparation of the date of contravention report.

Findings of the contravention report dated 7th May 2012 are summarized below;

- A. *As per available record during 2008-2011, M/s Ssangyong + Usmani JV started claiming refund of Sales Tax which it had paid in respect of goods purchased for the said project from the local market for the total value of Rs 183,984,337 out of which a sum of Rs 157,023,559 was duly refunded while the balance amount of Rs 26,960,778 is remaining.*
- B. *M/s Ssangyong + Usmani JV claimed zero-rating on the local purchases on the basis of a clarification issued by the Board and did not paid sales tax for an amount of Rs. 74,058,480/- on the local purchases made during 2008-2011.*
- C. *M/s Ssangyong + Usmani JV did not pay sales tax of Rs. 107,644,794/- on imports made during 2008-2011 by claim of exemption under various SRO's thereon.*

The Additional Commission Inland Revenue Karachi adjudicated the case, and vide its order No. 10/2012 dated 28th August 2012 has given the following decision.



36. "On the basis of the above considerations, the undersigned has finally arrived at the conclusion that the registered person was involved in the construction of an immovable infrastructure project which is excluded from the definition of goods. Thus, all sales tax refund and zero-rated purchases availed by the registered person are inadmissible. Further, it is clear that they had passed on the incidence of sales tax on imported goods, but concealed from the buyer that they had availed exemption at the import stage. Thus, they have contravened the provisions of sections 3, 3B, 6(2), 7, 8(1)(a), 8A, 23, 26 and 73 of the Sales Tax and the entire amount of sales tax not paid/short paid/ erroneously recovered is assessable u/s 11(2) and recoverable u/s 36(1) of the Sales Tax Act, 1990. Hence total amount of sales tax of Rs. 351,684,309/- is recoverable from the registered person under the said provisions, along with default surcharge (to be calculated at the time of payment) under section 34 of Sales Tax Act, 1990. Penalty of 100% of the amount of tax involved is also imposed in terms of S. No. 13 of the Table to section 33 ibid. as the actions of the registered person in this regard are clearly deliberate and malafide".


Besides recovery of Rs. 351,684,309 plus a penalty of Rs 351,684,309 for period upto 30 June 2011, further recovery of refund made or zero rated facility availed in FY 2012 are also to be made by FBR, on which no action has yet been initiated.

Further to these recoveries, and in view of fact that the constructed material to be used for constructing a structure is not allowed the zero rated sales tax, TI-Pakistan request the Chairman to order detailed inquiry and all the refunds taken by different contractors since 1990, on contract of WAPDA, Karachi Port Trust (KPT), Capital Development Authority (CDA), National Highway Authority (NHA), Civil Aviation Authority (CAA), Port Qasim Authority (PQA), Pakistan Railways etc.

We are sure that FBR will be able make recoveries of billions of rupees from all such contractors who availed illegal facility.

Transparency International Pakistan is striving to have transparency in procedures and Rule of Law in Pakistan, which is the only way to eliminate corruption and have good governance in country.

With Regards,


Syed Adil Gilani
Adviser

Copies forwarded for the information and action under the authority vested in their respective jurisdictions:

1. Chairman, Public Accounts Committee, Islamabad.
2. Chairman, NAB, Islamabad.
3. Federal Tax Ombudsman, Islamabad,
4. Registrar, Supreme Court of Pakistan, Islamabad.
5. Director-General, Directorate General of Intelligence & Investigation, FBR Islamabad
6. MD, PPRA, Islamabad