

IMF TOLD: CABINET NOD BEING SOUGHT FOR RS170BN TAX MEASURES TODAY - IMF HAS SUGGESTED ADOPTING PATH OF PERMANENT TAXATION MEASURES BY ABANDONING PATH OF ONE-OFFS

ISLAMABAD: Pakistani authorities informed the **International Monetary Fund (IMF)** on Monday night that the government was going to lay down different tax proposals before the federal cabinet on Tuesday (today) to get its final nod in order to fetch additional taxation of Rs170 billion through a presidential ordinance.

The IMF has suggested adopting the path of permanent taxation measures by abandoning the path of one-offs. The government has decided to drop the flood levy on imports owing to stiff resistance by the IMF. However, the **government** has proposed jacking up the general sales tax (GST) rate by one percent, raising it from the standard rate of 17 to 18 percent. "We will adopt the path of promulgation of an ordinance for avoiding further waste of time. Once the cabinet grants its nod the presidential ordinance will be promulgated within the current week," top official sources confirmed while talking to The News here on Monday night.

The **IMF** had given its prescription to slap a standard rate of GST on petroleum products but Islamabad sternly opposed it. However, the Petroleum Levy on High-Speed Diesel (HSD) will be jacked up from Rs40 to Rs50 per liter. The possibility of further increasing the limit of petroleum levy cannot be ruled out at the moment but Pakistan is still resisting it. A senior official of the Finance Ministry said that the authorities on Monday evening shared their detailed comments with IMF's review mission through a virtual meeting on the Memorandum of Financial and Economic Policies (MEFP) and asked the Fund for adopting a staggered approach to making adjustments on all fronts in phases.

However, the IMF has conveyed in a crystal clear tone that Pakistan will have to undertake permanent taxation measures in order to fetch Rs170 billion in additional taxes in the remaining period of the current fiscal year. Although, the government is still making its last-ditch effort to convince the IMF for allowing certain taxation measures which could be considered "one-offs" such as the imposition of flood levies in some form. But the IMF wants permanent taxation measures, so the government will have to slap massive taxation having annualised impact of Rs500 billion. "With the imposition of taxes worth Rs450 to Rs500 billion on an annual basis, the government can raise additional revenues of Rs170 billion in the remaining period of the current fiscal till June 30, 2023," said top official sources.

It is expected that Pakistan and the IMF would strike a staff-level agreement by end of the current week. When asked about the possibility of the promulgation of an ordinance to unveil the mini-budget, an official said that the decision would be taken within the week about introducing a bill or promulgating an ordinance to this effect. However, another official said that the government did not have the luxury to wait for the next 15 days because every day counts to collect the desired tax revenues of Rs170 billion through permanent measures. The possible strategy could be unveiling a mini-budget through the presidential ordinance and then it would be laid down before Parliament within the stipulated timeframe under the constitutional obligations.

The IMF has been informed that the government was pursuing bilateral and multilateral creditors to secure the desired dollar inflows and when it would get stamped approval and backing of the IMF in the aftermath of the revival of the Fund programme, Islamabad will be able to raise the desired inflows of \$12 to \$13 billion. If all dollar inflows are materialised, the ongoing financial year will be ended without the danger of looming default on an immediate basis.

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FTO ACCUSES TRACTOR MANUFACTURER OF FRAUD DURING TAX PERIOD 2017 TO 2022 - FTO SLAMS FBR FOR INCOMPETENCE AND ORDERS IT TO COLLECT RS 14.887 BILLION FROM MILLAT TRACTORS IN ALLEGED TAX FRAUD

ISLAMABAD: The Federal Tax Ombudsman (FTO), per their latest ruling in their investigation against Millat Tractors, has directed the Federal Board of Revenue (FBR) today to conduct a detailed investigation into the company's claims for an inadmissible sales tax refund. The FTO has ordered the FBR to recover an alleged amount of Rs 14.877 billion from Millat Tractors for the tax period of 2017 till 2022. "Our finding, based on the documents provided to us by the complainant and our own investigation, is that there has been a gross violation committed by Millat Tractors," Almas Ali Jovindah, Legal Advisor to the Federal Tax Ombudsman, tells *Profit*.

The FTO has recommended that the FBR direct the Chief Commissioner of Inland Revenue to conduct a detailed inquiry into the matter, in accordance with the provisions of the Sales Tax Act, 1990, and relevant SROs. The FTO has also recommended that the director general of the Benami Initiative investigate instances of benami transactions by Millat Tractors Limited, as well as other leading tractor manufacturing companies and submit a detailed report to the FTO within 90 days.

Looking at the alleged tax fraud

The senior vice president of the Sindh Chamber of Agriculture, Hyderabad, brought the allegations against the company on behalf of his association. The complaint claimed illegal payment of sales tax refund was made to MTL through the use of self-made documents, fake and flying invoices, benami names, and unrelated CNIC numbers. The complaint also stated that the conditions outlined in sections 73 and 23 of the Sales Tax Act, 1990 were not followed, and the FBR never audited these claims.

The FTO's order stated that the underlying issue is the alleged tax fraud committed through the payment of inadmissible sales tax refunds to MTL. The order also revealed that tractors are frequently booked with black money and invoiced under benami names and CNIC numbers of unrelated individuals, who often use the tractors for purposes other than agriculture. "The zamindar's themselves are coming forward. The tractors were obtained using the sale deeds of zamindars with the connivance of local patwaris and others. The subsidy is basically for the zamindar, and if they have not bought it then how can anyone claim the subsidy," asks Jovindah.

The Federal Board of Revenue's failure

The FTO's order highlighted that these instances of neglect and inefficiency in the administration of duties and responsibilities amount to maladministration and should be thoroughly investigated. "This is a serious lapse on part of the FBR. Their neglect led to them failing to recognise a fraud that was culminating under their nose. We were able to unearth and figure out the fraud through the relatively little investigation we carried out. It would have been much easier for them to figure this out. They overlooked this, and we believe this to be serious negligence on their part," says Jovindah.

The verdict

"Our recommendation is for the FBR to collect the tax, and for Millat Tractors to be denied the refund that they have claimed. Furthermore, the tax that they have evaded in the previous years should also be recovered from them," Jovindah tells *Profit*.

When probed about Millat Tractors' possible tax evasion in the past, Jovindah states, "They have been engaged in tax evasion since 2017. They could have been engaged in this prior to 2017, however, based on the documents that we have received till now from the zamindars, an agricultural forum, our assessment is that they have been evading taxes for the past five, five and a half years. We do not rule out the fact that they may have been engaged in this prior to that as well. If we were to receive a complaint prior to 2017, then we can conduct an investigation into that as well. However, as of right now our documentation goes back till 2017 based on the current complaint that we received."

"The case is with the president of Pakistan in representation so we will have to see whether our assessment and decision is upheld," Jovindah continues. When asked about what a representation entails. "Representation," Jovindah states, "Is more parallel to an appeal. Normally, a party can come to us and state that they have an objection to our findings and/or judgement. They can make the appeal that we review our findings and/or judgement."

"However, if a party chooses not to file an appeal, then they can go to the president of Pakistan. They can state their objections, and how they differ from our findings. With the representation, they have opted to challenge our decision and asked the president to adjudicate," Jovindah elaborates. "We hope that the representation yields a quick decision. Our findings are always based on solid evidence, and we don't believe there is anything within them that will lead the president of Pakistan to differ from us. We have a very strong case and we believe that our recommendations are based on merit," Jovindah tells *Profit*. When asked what the FTO's course of action will be going forward after unearthing this, Jovindah responded by saying "We are very keen to know exactly what is happening with the other tractor manufacturers as well. Maybe the FBR should examine the issue on their end as well as to how this malpractice took place, and if it permeates across the industry because Millat Tractors is not the only tractor manufacturer in Pakistan." Millat has issued a notification to the Pakistan Stock Exchange that it has challenged the FTO's verdict in the Lahore High Court and with the Commissioner Appeals, LTU, Lahore. The notification also highlights that Millat will file an appeal with the president against the decision, as it believes that it is innocent. It states that there was, in fact, a regulatory change governing the refunds, and that the FTO's decision fails to take cognisance of that.

SHC ALLOWS PETITION BY TEXTILE EXPORTER: AN F.I.R REGISTERED AFTER 11 YEARS OF DEFAULT FOR ALLEGED IN-ADMISSIBLE SALE TAX REFUND

KARACHI: An F.I.R registered after 11 years of default against Lace Fashions for alleged in-admissible sale tax refund claim was quashed by a custom appellate bench of High Court of Sindh.

The petitioner impugned the F.I.R for declaring the FIR bearing No.03/2021 dated 09.06.2021 to be unlawful, unconstitutional, without jurisdiction and void ab-initio and to quash the same and not to take any coercive measure in respect of the said FIR. The main ground was that said FIR has been lodged after 11 years of the alleged tax default. According to details the petitioner No.2 is a private limited company engaged in manufacturing and exporting textile products who claimed tax benefit with regard to sales tax under SRO 1125(1)/2011 and filed its sales tax returns accordingly.

The Department, however, gathered some information that petitioner No.2 has misused the tax benefit, as provided under the said SRO, of which they were not entitled to, and thus have committed tax fraud by claiming bogus tax refunds which were recoverable from them under Section 3, 3(1A) of the Sales Tax Act, 1990. As per the Department the petitioners were involved in a tax fraud amounting to Rs.18,10,7000/- pertaining to the tax periods February and March, 2010, by claiming inadmissible input / refunds. It is in this background that when the Department has gathered certain evidences against the petitioners that the above referred FIR was lodged, which FIR has been challenged in the instant petition. Owais Ali Shah and Umer Ilyas Khan, Advocates appearing on behalf of the petitioners stated that the FIR is liable to be quashed as the same was based on incorrect allegations leveled upon the petitioners and are baseless hence it would be a futile exercise to file an application under Section 265-K Cr.P.C. before the trial court or to appear before the said Court in view of the facts obtaining in the instant matter. They stated that the refund claimed by the petitioners was duly approved by the department, which pertained to the periods February and March 2010, and therefore the information given by the Directorate of Intelligence and Investigation i.e. respondent No.4 was legally and factually incorrect. The learned counsel stated that a Show Cause Notice dated 02.07.2012 was issued to the petitioner with regard to claim of alleged illegal refund claimed by the petitioner which was duly replied by the petitioner. The learned counsel stated that thereafter vide Order in-Original No.01/2012, dated 06.07.2012 the petitioner was required to pay the disputed amount along with default surcharge. Being aggrieved with the said order appeal was preferred before the concerned Collector (Appeals), who set-aside the Order-in-Original passed by the Additional Collector vide order dated 18.07.2012.

As per the learned counsel, an appeal against the said order, bearing STA No.165/KB/2012, was preferred by the department before the Tribunal, which appeal also, vide order dated 03.04.2015, was decided against the department. The learned counsel stated that they are not aware whether any reference application, against the order of the Tribunal, was preferred by the department before this Court. The learned counsel further stated that again a SCN dated June 18, 2016 was issued to the petitioner which was duly replied and then vide letter dated June 28, 2016 the said SCN was also withdrawn unconditionally by the department. As per the learned counsel then on the third time, on 20.12.2019, proceedings against the petitioner were initiated, which were replied and thereafter the present FIR was lodged, against which the present petition has been filed. As per the learned counsel not only the proceedings with regard to previous SCN issued to the petitioners were finalized in their favour but even in respect of the second SCN 4 also proceedings were culminated in favour of the petitioners.

The learned counsel for petitioner further stated that whatever amount of refund was claimed by the petitioners was in accordance with law and the criminal case lodged against the petitioners is illegal, as even if for arguments' sake it is assumed that the petitioners have claimed illegal refunds, the same is a civil liability and has to be dealt with in accordance with civil laws and the procedures. Shahid Ali Qureshi, Advocate appearing for the Department stated that the instant petition is not maintainable as the petitioners were involved in committing tax fraud of a huge amount of Rs.18,10,7000/-. He stated that the petitioner is duly appearing before the Trial Court and has even obtained bail in the instant matter, hence petitioners may be required to join the proceedings before the Trial Court and if they are found innocent by the Trial Court they would be acquitted in accordance with law. The learned counsel stated that interim challan in the instant matter has already been filed by the I.O, which is under consideration. He stated that the instant petition is premature and is liable to be dismissed and the petitioner may be directed to join the trial. He further contended that petitioner has alternative remedy of filing application under Section 265-K Cr.P.C which was not availed. According to him since petitioner has committed tax fraud and has rendered substantial loss to the exchequer, therefore, petitioners are not entitled for any relief, hence petition is not maintainable and is liable to be dismissed on this score also.

The learned counsel further stated that though under Section 561-A Cr.P.C this Court has ample powers to quash the FIR but in exceptional circumstances only, however in the present case those circumstances are not available hence in his view the request of the learned counsel for the petitioner for quashment of the FIR is misplaced and not entertainable.

The bench after hearing the sides in detail and perusing the case papers held that petitioner has been put to multiple proceedings. The bench further held that it is now a settled proposition of law that in exceptional circumstances this Court has the jurisdiction to quash the proceedings emanated from a FIR, in order to save a person from the agony of facing trial and thereafter getting acquitted on the charges leveled against the person being groundless / baseless and that there is no probability of conviction of the said person. If all the facts of the present case are examined in juxta position, it would reveal that this was the third time when the Department has proposed to initiate civil / criminal proceedings against the petitioner,

which twice have been culminated / drooped and finalized in favour of the petitioner. Therefore, on the face of it without indulging into other factors, it seems that the proceedings initiated by the Department are not in accordance with the law. It is also a matter of record that the FIR has been lodged after 11 years of the alleged tax default, if any. This in our view speaks volume about the veracity or otherwise of the FIR. The record also reveals that a person is required to maintain accounts, under Section 24 of the Sales Tax Act, for a period of six years only whereas in the instant matter the Department has requisitioned from the petitioner to produce the records which is more than 11 years old. Hence on this aspect also, we are of the view that the Department has no jurisdiction to require from the petitioner to produce the record beyond this mandatory time period. The bench further noted that during the course of the arguments, when the counsel appearing for the Department was confronted with the facts emanating in the present matter he candidly conceded that this Court under Article 199 of the Constitution of Islamic Republic of Pakistan read with Section 561-A Cr.P.C has the jurisdiction to quash the proceedings of a FIR in case of exceptional 16 circumstances. The learned counsel also could not controvert the fact that this is the third time on the same set of facts when the proceedings civil & criminal have been initiated by the Department against the petitioner. Learned counsel appearing for the Department also conceded that the Department has no jurisdiction to require from a person to maintain/keep or produce the record after the expiry of the mandatory period, as provided under Section 24 of the Act, however his contention had remained the same that since the petitioner has the remedy to file application under Section 265-K Cr.P.C before the Trial Court, therefore the instant petition is not maintainable and the petitioner may be required and directed to appear before the concerned Trial Court for redressed of his grievance. We however, disagree with the contention of the learned counsel appearing for the Department. No doubt, when a criminal matter is pending before a Trial Court and interim challan has been submitted, under normal course an application under Section 265-K Cr.P.C is to be filed before the concerned Court in case the accused is of the opinion that the charge is either groundless or there is no probability of conviction. In the present case as noted above, it is evident that the present case do fall within those exceptional circumstances and the petitioner is entitled that the FIR lodged against him be quashed. The petition thus stands allowed; FIR lodged against the petitioner is quashed and all the criminal aspects emanating from the said FIR are declared null and void and of no legal effect. The Department however would be at liberty to proceed against the petitioner in respect of its civil tax liability, if any, subject to limitation the bench observed while allowing the petition stand allowed.

CN 13-2-2023

FBR ANNOUNCES KEY TRANSFERS, POSTINGS IN PAKISTAN CUSTOMS SERVICE

ISLAMABAD: Federal Board of Revenue (FBR) on Tuesday announced key transfers and postings of officers (BS-17 to BS-20) in Pakistan Customs Service (PCS). The FBR notified the transfers and postings of following officers with immediate effect and until further orders:

01. Syed Asad Raza Rizvi (Pakistan Customs Service/BS-20) has been transferred and posted as Director, National Targeting Centre, Islamabad (the officer shall draw his salary from FBR (HQ), Islamabad) from the post of Collector, Collectorate of Customs, Allama Iqbal International Airport, Lahore.
02. Ms. Naureen Ahmad Tarar (Pakistan Customs Service/BS-20) has been transferred and posted as Director, Pakistan Customs Academy (PCA), Lahore from the post of Director, Directorate of Post Clearance Audit (Central), Lahore.
03. Farrukh Sajjad (Pakistan Customs Service/BS-20) has been transferred and posted as Chief, Federal Board of Revenue (HQ), Islamabad (Stationed at Karachi) from the post of Collector, Collectorate of Customs (Exports), Custom House, Karachi.
04. Ms. Saira Agha (Pakistan Customs Service/BS-20) has been transferred and posted as Collector, Collectorate of Customs Appraisalment (East), Lahore from the post of Director, Pakistan Customs Academy (PCA), Lahore.
05. Jamshed Ali Talpur (Pakistan Customs Service/BS-19) has been transferred and posted as Collector, (OPS) Collectorate of Customs (Exports), Custom House, Karachi from the post of Additional Director, Pakistan Customs Academy (PCA), Karachi. The officer will assume charge after completion of his SMC.
06. Ms. Mehreen Naseem (Pakistan Customs Service/BS-19) has been transferred and posted as Collector, (OPS) Collectorate of Customs, Allama Iqbal International Airport, Lahore from the post of Additional Collector, Collectorate of Customs, Allama Iqbal International Airport, Lahore.
07. Taimoor Kamal Malik (Pakistan Customs Service/BS-19) has been transferred and posted as Director, (OPS) Directorate of Post Clearance Audit (Central), Lahore from the post of Additional Director, Directorate of IPR Enforcement (North), Islamabad.

08. Muhammad Rashid Munir Siddiqui (Pakistan Customs Service/BS-19) has been transferred and posted as Additional Director, Directorate of Intelligence & Investigation, FBR, Hyderabad from the post of Additional Director, Directorate of Intelligence & Investigation, FBR, Peshawar.

09. Dr. Noman Khan (Pakistan Customs Service/BS-19) has been transferred and posted as Additional Director, Directorate of Intelligence & Investigation, FBR, Peshawar from the post of Secretary, Federal Board of Revenue (Hq), Islamabad.

10. Sumair Mustansar Tarar (Pakistan Customs Service/BS-19) has been transferred and posted as Additional Director, Directorate of Intelligence & Investigation-FBR, Lahore from the post of Additional Director, Directorate of Post Clearance Audit (Central), Lahore. The officer will assume charge after completion of his SMC.

11 Mr. Asim Rehman (Pakistan Customs Service/BS-19) has been transferred and posted as Additional Director, Pakistan Customs Academy (PCA), Islamabad from the post of Additional Collector, Collectorate of Customs, Islamabad.

12. Ms. Azka Zafar Rana (Pakistan Customs Service/BS-18) has been transferred and posted as Deputy Director, Directorate General of Customs Valuation, Karachi from the post of Deputy Collector, Collectorate of Customs, Jinnah International Airport (JIAP), Karachi.

13. Ms. Zohrain Bhaur (Pakistan Customs Service/BS-18) has been transferred and posted as Deputy Director, Directorate of Intelligence & Investigation, FBR, Lahore from the post of Deputy Collector, Collectorate of Customs Allama Iqbal International Airport, Lahore.

14. Ms. Beenish Rasheed (Pakistan Customs Service/BS-18) has been transferred and posted as Deputy Collector, Collectorate of Customs, Islamabad International Airport, Islamabad from the post of Deputy Collector, Collectorate of Customs, Islamabad.

15. Syed Talha Salman (Pakistan Customs Service/BS-17) has been transferred and posted as Deputy Director, (OPS) Directorate General of Customs Valuation, Karachi from the post of Deputy Collector, (OPS) Collectorate of Customs Enforcement, Custom House, Karachi.

16. Ms. Iqra Shaukat (Pakistan Customs Service/BS-17) is currently posted as Assistant Director, Directorate of Transit Trade, Peshawar. The officer is assigned additional charge of the post of Deputy Collector (OPS), Collectorate of Customs (Adjudication), Islamabad (stationed at Peshawar) in addition to her presently assigned duties till further orders. The officer is allowed to exercise powers of the higher post under section 5(2) of the Customs Act, 1969.

The FBR said that earlier transfer/posting orders of officers appearing at Sr.No. 6, 21, 32, 33, 37 & 40 of Board's Notification No. 0356-C-II/2023 dated 03.02.2023 are cancelled ab-initio. Whereas, place of posting in respect of the officer appearing at Sr. No.17 of the same notification shall be read as Additional Director, Directorate of Intelligence & Investigation-FBR, Gwadar instead of Additional Director, Directorate of Intelligence & Investigation-FBR, Lahore. The Officers who are drawing performance allowance prior to issuance of this notification shall continue to draw this allowance on the new place of posting.

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