



Federal Tax Ombudsman Secretariat

No. 1/1588-L/13-Impl.

Dated: 27-12-2013

Complaint No. 882/LHR/ST(276)1588/2013.

To

The Secretary
Revenue Division
Islamabad

FINDINGS/RECOMMENDATIONS.

A copy of the Findings/Recommendations/Order of the Federal Tax Ombudsman dated 24-12-2013 in the complaint cited above is sent herewith for compliance.

2. Compliance report be submitted within prescribed time mentioned in the Findings/Recommendations.

Advisor (I&M)
Federal Tax Ombudsman Secretariat
Islamabad

A copy of the Findings/Decision/Order is forwarded for information to:

1. Mr. Waqar Ahmad, Messrs Nice Industries, 11-A, Industrial Estate, Multan.
2. The Chief Commissioner, RTO, Multan. (Mob: 0345-7272916).
3. Mr. Muhammad Munir Qureshi, Advisor, Federal Tax Ombudsman Regional Office Lahore with the request that case may be monitored/ pursued and final report be sent to this office.
4. Secretary to FTO.
5. Office Copy

Receipt No	6607
Dated	31-12-13
Initial	
(Receipt Clerk)	
CC (IR) RTO	
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Advisor (I&M)
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FEDERAL TAX OMBUDSMAN SECRETARIAT
Regional Office, Lahore

Complaint No. 882/LHR/ST(276)/1588/2013

Dated: 11.10.2013

M/s Nice Industries,
11-A, Industrial Estate,
Multan

... Complainant

V e r s u s

The Secretary
Revenue Division
Islamabad

... Respondent

Dealing Officer : Mr. Umar Farooq, Advisor
Authorized Representative : Mr. Liaqat Hussain, Advocate
Departmental Representative : Mr. M.Akram Khan, DCIR

FINDINGS / RECOMMENDATIONS

Brief facts of the case are that on 02.05.2009 Nice Industries, Multan (Complainant) was burnt to the ground along with five other factories. All assets like machinery, building, raw material, stock and record were completely destroyed. Due to this loss M/s Nice Industries could not resume its business further and was closed.

2. On 07.05.2009 the Complainant sent a written request for de registration w.e.f. 02.05.2009 to the office of the Assistant Collector Registration, Collectorate of Sales Tax and Federal Excise, RTO Multan.

3. This application was received in the office of Assistant Collector on 07.05.2009. An FIR dated 04.05.2009 was also registered in this case, copy of which was duly furnished to the Collector of Sales Tax

*Date of registration in FTO Sectt.

and Federal Excise, RTO Multan. After the incident, the unit filed nil returns for about two years after which the unit stopped filing the returns because it had closed business.

4. At that point of time no liability of Sales Tax in any form existed against the unit. In the year 2013 the CIR Special Zone Multan vide order No. 3895 dated 29.04.2013 suspended the Sales Tax Registration of M/s Nice Industries on the charge of non filing of Sales Tax Returns for more than six consecutive months. A Show Cause Notice was issued by the CIR Special Zone on 03.05.2013 vide order No.520 dated 30.07.2013. The unit was subsequently blacklisted.

5. M/s Nice Industries lodged a complaint with this office on 11.10.2013. The complaint was sent to the FBR and RTO Multan vide letter No.CCIR, RTO/MN/SO/FTO/881/5022 dated 05.11.2013 which responded as under:

- i. M/s Nice Industries, 11-A Industrial Estate, Multan was registered in Sales Tax Department on 14.04.1994 as "Manufacturer". They remained non filers of Sales Tax Returns for more than six consecutive months. As per Rule-34 of STGO dated 3.06.2012, non-filer for consecutive six months will be suspended without any notice. Therefore, their Sales Tax Registration was suspended vide Order No.520 dated 29.04.2013. A Show Cause Notice was issued vide No. 3974 dated 03.05.2013. In the meanwhile they filed an application for de-registration. During the course of hearing, they failed to produce any record before the Commissioner Inland

- Revenue Special Zone, Multan. As a consequence they were blacklisted vide order No.520 dated 30.07.2013.
- ii. Registration of the Complainant was suspended as per para-30, clause-N of Sales Tax General No. 03/2004 dated 12.06.2004. Show Cause Notice was issued vide NO.3974 dated 03.05.2013. In fact, the Complainant failed to file Sales Tax Returns after October, 2011. Therefore, registration was suspended by the Commissioner Inland Revenue, Special Zone, Multan vide order No.3895 dated 29.04.2013.
 - iii. On receipt of an application for de-registration, the then Deputy Commissioner Inland Revenue, Audit Unit-03 Special Zone, Multan initiated the process and requested the Complainant to provide Sales Tax record for audit mandatory for de-registration. This was required to determine the sales tax liability, if any payable for the period of his business activity. However, the Complainant did not provide any record/documents for de-registration audit on the plea that the factory and record were entirely burnt due to fire on 02.05.2009. Hence the Deputy Commissioner Inland Revenue, Audit Unit-03 declined the request for de-registration due to non production of record.
 - iv. The competent authority blacklisted the Complainant after providing an opportunity of hearing and examining his reply. Since the audit is mandatory for de-registration in order to determine the final tax liability, the Complainant was under legal obligation to provide the record/evidence. He failed to comply with the de-registration rules.

6. Parties heard and record perused.

7. The AR dilated in detail facts of the case emphasizing that after the burning of M/s Nice Industries on 02.05.2009, the unit immediately moved an application to Assistant Collector Registration on 07.05.2009 along with form ST-3 for de-registration of the unit because continuation of business was not 'possible as everything including machinery, raw material stocks and records had been totally destroyed. No action however, was taken on his application by the RTO Multan for four years. In 2013 the RTO Multan issued a Show Cause Notice on the charge of non filing of Sales Tax Return for more than six consecutive months to M/s Nice Industries and then blacklisted the unit vide order No.520 dated 30.07.2013.

8. The DR confirmed the facts as narrated by the AR. He argued the case based on the written reply of the Department. On a query as to why the application of de-registration submitted by the unit in 2009 remained unattended without any action, the DR intimated that due to the merger of Income Tax and Sales Tax Departments in the year 2010, the cases were assigned afresh to different officers and Zones. Case of Nice Industries for de-registration could not be tackled in time in this confusion. However, the unit was black-listed after adopting proper procedure. At this point the AR intimated that black-listing of a reputed unit with clean past record a stigma hurts its business repute.

9. The above facts amply demonstrate that M/s Nice Industries, after the fire and destruction of its assets and records, immediately filed an application for de-registration to avoid further legal complications. After 2009 the unit continued to file nil return for two years while its application for de-registration remained unattended.

Obviously M/s Nice Industries, which was non functional since 2009, could not continue filing nil returns till infinity. For four years the de-registration request was not taken up by the RTO. The plea that the record was not produced is factious as it is a matter of record that it was destroyed in the fire.

Findings:

10. M/s Nice Industries have been implicated in a legal battle and suffered loss due to negligence of the Department. For four years the Department slept over the unit's request for de-registration. M/s Nice Industries have now been penalized for a wrong which it did not commit. Maladministration is evident as the RTO did not initiate action for four years on the de-registration request filed by the taxpayer in 2009. Nothing is available on file to explain this delay of the RTO.

Recommendation:

11. FBR to direct-

- (i) the Chief Commissioner, RTO Multan to allow de-registration of sales tax of M/s Nice Industries with effect from 02.05.2009; and
- (ii) report compliance within 21 days.

Dated: 24-12-2013.
MA/my

(Abdur Rauf Chaudhry)
Federal Tax Ombudsman

