

TaxHelpline 2013/202

FEDERAL TAX OMBUDSMAN

Complaint No.81/LHR/ST/(12)/153 of 2013, decided on 24th May, 2013

Before Dr. Muhammad Shoaib Suddle, Federal Tax Ombudsman

Haji Ahmad, Advisor Dealing Officer. M. Wasim Ch., Authorized Representative. Faisal Asghar, DCIR Departmental Representative

EAGLE ENGINEERING WORKS

Vs

SECRETARY,REVENUE DIVISION, ISLAMABAD

FINDINGS/RECOMMENDATIONS

This complaint is filed against delay in disposal of application dated 20-11-2012 filed for dropping the recovery proceedings initiated under section 48 of the Sales Tax Act, 1990 (the Act).

2. Briefly stated the Department examined sales tax returns, purchase and sale invoices for the period 1/2007 and 4/2007 and observed that the complainant unlawfully claimed input tax adjustment against the invoices issued by blacklisted suppliers. During the adjudication proceedings, sales tax due at Rs.4,075,919 was deposited by the complainant. However, order-in-original was passed on 20-6-2011, wherein the complainant was required to deposit default surcharge amounting to Rs.1,935,202 under section 34(1)(c) and penalty under section 33(13) of the Act. Thereafter, notices were issued for recovery of the default surcharge, but the same could not be recovered. In the meanwhile, FBR vide S.R.O. 606(I)/2012 dated 1-6-2012 announced amnesty and allowed exemption of the whole amount of default surcharge and penalty payable by a person who had illegally adjusted input tax, subject to the condition that sales tax due was paid by 25-6-2012. To avail this benefit, the taxpayers were required to withdraw any case or complaint pending before a court of law or any other authority. The S.R.O. was superseded vide another S.R.O. 774(I)/2012 dated 27-6-2012, allowing the taxpayers to make payment in installments by 31-12-2012. The complainant applied for the waiver vide application dated 20-11-2012 and requested to drop the recovery proceedings on the ground that principal amount of sales tax had already been paid. The application was not disposed

of, and hence this complaint.

3. When confronted, the Deptt. contended that the complainant deposited the principal amount of tax prior to the issuance of both S.R.Os. As no sales tax was outstanding at the time of issuance of S.R.Os., the complainant was not entitled to claim exemption / waiver. Further contended that the effect of a notifications and S.R.O. is prospective and not retrospective.

4. The DR reiterated the written comments. According to him, there was no maladministration involved in the case. However, he could not justify for not deciding the complainant's application dated 20-11-2012.

5. The AR contended that amnesty contemplated under the S.R.Os. dated 1-6-2012 and 27-6-2012 was available to the complainant, as the principal amount of sales tax had already been paid. According to him, if the exemption allowed by the S.R.O. is denied to the complainant it would amount to discrimination. In support of his contention, the AR referred to a judgment of Lahore High Court cited as 2006 PTD 336 in a similar issue wherein held:--

"a person who had already paid the tax due to the public ex-chequer will be burdened with additional tax and penalty while the one who does so after issuance of that notification and having withheld the amount of tax due from him in the meanwhile will be rewarded by allowing exemption from penalty and levy of additional tax. This could never be the intention of any superior or subordinate legislation. A person placed in similar factual situation cannot be discriminated against merely for the reason that he has first to be a continuous defaulter on a date of grant of amnesty in order to avail the same.the amnesty granting legislation, both superior as well as subordinate, needs to be construed liberally so that it does not either trap an unwary taxpayer or else otherwise succeeds in taking away with the other hand while giving it by the one".

6. Both the parties have been heard and record perused. The contention of the AR appears to be convincing. A taxpayer having paid sales tax before the announcement of amnesty scheme cannot be punished by depriving him of the benefit available under the S.R.Os. The denial, of the benefit to the complainant would indeed be discriminatory. Further, it is a settled principle of law that a notification, which is, beneficial to a person can operate retrospectively.

Findings:

7. The delay in disposal of the complainant's application dated 20-11-2012 is

tantamount to maladministration under section 2(3)(ii) of the FTO Ordinance.

Recommendations:

8. FBR to direct the Chief Commissioner to-

- (i) dispose of the complainant's application dated 20-11-2012, as per law; and
- (ii) report compliance within 21 days.

Order accordingly



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