

## **TaxHelpline 2013/208**

### **FEDERAL TAX OMBUDSMAN**

Complaint No. 293/LHR/ST(62)/488 of 20.13, decided on 3rd July, 2013.  
Before Dr. Muhammad Shoaib Suddle, Federal Tax Ombudsman

Muhammad Munir Qureshi, Advisor Dealing Officer. Hussain Ahmad Sherazi  
Authorized Representative. Muhammad Ali, DCIR Departmental Representative

### **SECCO PAK (PVT.) LTD**

**Vs**

### **SECRETARY, REVENUE DIVISION, ISLAMABAD**

### **FINDINGS/RECOMMENDATIONS**

DR.MUHAMMAD SHOAIB SUDDLE, (FEDERAL TAX OMBUDSMAN).---This complaint is against non-issuance of sales tax input refund of Rs.8,525,028 as per one refund claim dated 13-1-2011 and seven claims dated 25-5-2011 pertaining to tax periods 6/2008, 7/2008, 8/2008, 9/2008/2008, 11/2008, 1/2009, 2/2009 and 3/2009.

2. The complainant is a (Pvt.) Ltd. Company engaged in the manufacture and supply of concrete shelters to house machinery used in the purification of water for human consumption. Supplies of such special purpose housing units are zero rated having been manufactured against international tender. The manufacturer is allowed to claim refund of sales tax paid on inputs utilized in their manufacture. These shelters are an extension of the phrase "plant and machinery" and their supplies are zero-rated on this account as well (S.R.O. 549(I)/2008 dated 11-6-2008, Serials Nos.3 and 7 thereof). The shelters have nothing in common with residential houses and cannot be used for that purpose. The Appellate Tribunal while accepting the appeal filed by the complainant against the decision of the CIR (Appeals) annulled the orders passed by the 1st appellate authority as well as the assessing officer. The complainant contends that the judgment of the Appellate Tribunal IR in S.T.A. No.96/LB of 2012 dated 14-5-2012 is very clear with regard to its stance on zero-rated supplies of such products. Notwithstanding the fact that the ATIR has held unequivocally that refund of input tax was due to the complainant and should be paid, the Deptt has held back on issuance of the refund due. The complainant has accordingly sought the

intervention of the Hon'ble Federal Tax Ombudsman.

3. When confronted, the Deptt filed a reply contending that a reference dated 27-8-2012 had been filed against the ATIR judgment before the Hon'ble Lahore High Court, though no stay against the ATIR order had been granted. It was further contended that legal issues / law points arising from the Tribunal's judgment needed to be resolved, before taking up the refund issue.

4. Both sides have been heard and record examined.

5. The fact is that a reference before the High Court against the ATIR order cannot act as a bar against disbursement of input tax refund due to the complainant. Reference is made to Complaint Nos.1272-K/2007 and 1274/2007 where the President of Pakistan confirmed the Recommendation of the Hon'ble FTO vide Representation No.52/08-Law (FTO) dated 24-4-2009 and No.53/08-Law (FTO) dated 27-5-2009:--

"An appeal or a reference by itself does not operate to suspend the order appealed from or questioned in reference."

### **Findings:**

6. The delay in issuance of refund as a consequence of giving appeal effect to the order of the ATIR is tantamount to maladministration under section 2(3)(ii) of the FTO Ordinance. The delay also creates the right to receive compensation under section 67 of the Sales Tax Act, 1990.

### **Recommendations:**

7. FBR to direct the Chief Commissioner to--

(i) decide refund/compensation due, in accordance with law, without prejudice to the outcome of proceedings before the Hon'ble Lahore High Court; and

(ii) report compliance within 21 days.

### **Order accordingly**



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