

TaxHelpline Case No. 172 of 2013

[FEDERAL TAX OMBUDSMAN]

**Complaint No. 79/KHI/ST(30)238 of 2012, decided on 7th
May, 2012**

**Before Dr. Muhammad Shoaib Suddle,
Manzoor Hussain Kureshi, Advisor Dealing Officer.
Muhammad Afzal Awan Authorized Representative. Abdul
Hameed Shaikh, DCIR and Mirza Nasir Ali, DCIR
Departmental Representatives**

**Messrs DATA STEEL PIPE INDUSTRIES (PVT.) LIMITED,
KARACHI
Vs
SECRETARY, REVENUE DIVISION ISLAMABAD**

FINDINGS/RECOMMENDATIONS

DR. MUHAMMAD SHOAIB SUDDLE (FEDERAL TAX OMBUDSMAN).---The complainant is aggrieved with the Department for not implementing recommendations of the Alternate Dispute Resolution Committee (ADRC) in terms of section 47A(4) of the Sales Tax Act, 1990 (the Act).

1. According to the AR, the audit of the complainant's sales tax record for the years 2003-2004 was carried out by the Directorate General, Revenue Receipt Audit (DRRA). On the basis of discrepancies pointed out in the audit, a show cause notice was issued and case finally adjudicated. Subsequently, on the complainant's request, the FBR vide letter dated 18-11-2008 appointed an ADRC under section 47A(2) of the Act. The AR argued that the ADRC conducted extensive investigation on the issues involved and submitted its unanimous recommendations dated 30-9-2009 vide letter dated 2-11-2009. The last para (36) of the recommendations is reproduced below:--

"(vi) That the ADR Committee after detailed discussions, came to

the conclusion that MS Angles acquired by the applicant was ultimately used as supporting Angles in the taxable activities to protect the steel pipes from damage during transportation. The ADR Committee has the unanimous view that the applicant is therefore, entitled to claim input tax on the MS Angles as the same is used in the taxable activities as already confirmed by their competitors as well as their buyers."

2. The AR argued that till filing of the Complaint before the Hon'ble Federal Tax Ombudsman, the department had failed to pass orders, otherwise required to have been passed within forty-five days of the receipt of ADRC's recommendations in terms of section 47A(4) of the Act.

3. In response to the notice of complaint issued to the Secretary Revenue Division, the Department filed para wise comments on 10-4-2012, contending that on the basis of audit for the tax period 2003-2004, the Order-in-Original (O-i-O) dated 27-5-2007 was passed whereby sales tax along with penalty aggregating to Rs.9,452,330 was held payable. It was further contended that on the request of the Complainant, ADRC was formed on 18-11-2008 and its recommendations were received by the FBR vide letter dated 2-11-2009. The Committee failed to submit recommendations within the stipulated time of 90 days, as required under subsection (3) of section 47A of the Act. The FBR was now in the process of constituting a fresh ADRC to re-adjudicate the issue.

4. The arguments of both the parties have been given due consideration and case record perused. As per record, the ADRC admittedly submitted its report vide letter

No.01(119)ADRC/DC/DATA STEEL/2008 on 30-9-2009. The FBR did not find the report up to the mark and returned it back to the Committee for re-examination of certain issues vide letter dated 8-12-2009. The ADRC after examining the issues raised by the FBR re-submitted its report vide letter dated 16-3-2011. The FBR after passage of more than 11 months forwarded the said report to the Chief Commissioner, LTU, Karachi, for comments vide

letter dated 7-2-2012. The Commissioner, LTU, vide letter dated 20-2-2012 remarked that the recommendations being contrary to law merited to be rejected by the FBR. However, the FBR, vide letter dated 8-3-2012, held that as the Committee did not furnish its recommendations within the stipulated period of 90 days as provided under section 47A(3) of the Act, a fresh ADRC was in the process of constitution. Intimation in this regard would be communicated to the complainant in due course.

5. It may be noted that section 47A, subsection (3), was brought into the Act through the Finance Act on 30-6-2009. At that time, the ADRC was already seized of the matter. The amendment made it imperative for the ADRC to give its recommendations within 90 days. The FBR on 8-12-2009 asked the same ADRC to re-examine certain issues. The Committee submitted its fresh recommendations on 16-3-2011 i.e. a year and ninety eight days after the second reference. This should have called for appropriate disciplinary action against the members of ADRC, particularly the departmental member, but there is nothing on record to show that the FBR took the necessary steps to address this issue. Nor does the FBR appear to have taken any action against the members of ADRC for submitting a report containing recommendations which according to the Commissioner, LTU, Karachi, were not based on facts and were contrary to law. The FBR further failed to pass appropriate orders within 45 days of receipt of the final recommendations. Instead, after keeping the file for more than 11 months, the FBR called for a report from the Chief Commissioner, LTU, Karachi, vide letter dated 7-2-2012. The FBR thus manifestly violated the provisions of section 47A(4) of the Act by not passing orders within the mandatory period of 45 days of receipt of the recommendations.

Findings:

6. The inordinate delay in passing orders on the unanimous recommendations dated 16-3-2011 of the ADRC has been established which is tantamount to maladministration in terms of section 2(3)(ii) of the Federal Tax Ombudsman Ordinance, 2000.

Recommendations:

7. FBR to-

- (i) pass orders, as per law, on the recommendations of the ADRC under subsection (4) of section 47A of the Act. If the FBR is of the opinion that recommendations of ADRC are not based on facts and are contrary to law, then appropriate disciplinary action must be initiated against members of ADRC; and
- (ii) report compliance within 30 days.

Order accordingly

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