

## **TaxHelpline Case No. 173 of 2013**

### **[FEDERAL TAX OMBUDSMAN]**

**Review Application No. 50 of 2012 in Complaint No. 79/KH/ST(30)/238 of 2012, decided on 25th February, 2013**

**Before Dr. Muhammad Shoaib Suddle,  
Manzoor Hussain Kureshi, Advisor Dealing Officer. Fazal  
Abrejo, Commissioner, IR for Applicant. Muhammad Afzal  
Awan for Respondent**

**SECRETARY, REVENUE DIVISION, ISLAMABAD**

**Vs**

**Messrs DATA STEEL PIPE INDUSTRIES (PVT.) LIMITED,  
KARACHI**

### **ORDER**

DR. MUHAMMAD SHOAB SUDDLE (FEDERAL TAX OMBUDSMAN).---The applicant has filed review of Findings/Recom-mendations dated 7-5-2012 in Complaint No.79/KHI/ST (30)/238/2012 on the following grounds:--

(i) Disciplinary proceedings cannot be initiated against the members of the ADRC.

(ii) ADRC can be constituted afresh to decide the matter after thorough deliberation of the issues.

2. Facts briefly stated are that in the applicant's case the FBR appointed an ADRC through letter dated 18-11-2008 under section 47A(2) of the Sales Tax Act, 1990 (the Act). The ADRC submitted its recommendations vide letter dated 2-11-2009, which the FBR found deficient. The case was returned back, vide letter dated 8-12-2009 for re-examination of certain issues. The ADRC re-submitted its report after more than one year through letter dated 16-3-2011. FBR, after passage of more than 11 months, forwarded the said

report to the Chief Commissioner (CC), LTU, Karachi, for comments. The Chief Commissioner LTU, vide letter dated 20-2-2012, remarked that the recommendations were not based on facts and were contrary to law, and so these merited to be rejected.

3. The complaint was decided with directions to the 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.

4. The DR reiterated that all members of the ADRC worked on gratis basis. Except one official nominee, its Chairman, the other members were not under the administrative control of the FBR. Disciplinary proceedings could not, therefore, be initiated against its members. He further stated that notwithstanding the position explained above, the grievance of the respondent had been redressed as the Appellate Tribunal, vide order dated 1-11-2012, had also decided the appeal in his favour, and the ADRC's recommendations had become infructuous.

5. The arguments of parties have been heard and documents perused.

6. The AR contended that till filing of the instant complaint the department had failed to pass the orders which were required to have been passed within 45 days of the receipt of the ADRC's recommendations in terms of section 47A(4) of the Sales Tax Act, 1990.

7. The department contended that the ADRC was constituted on the request of the complainant, and its recommendations were received by the FBR. These were sent to the Chief Commissioner, LTU, Karachi, and on his objections the ADRC's recommendations were

rejected. The committee was reconstituted and asked to submit its fresh proposals.

8. The Order-in-Original was passed on 27-5-2007, and ADRC formed on 18-11-2008. Its report was given to the Board on 30-9-2009 i.e. after 323 days instead of the stipulated 90 days. The Board was required to dissolve the committee for failure to submit its report within the prescribed period. It failed to do so. Even after receipt of the report the Board was required to reconstitute a fresh committee within 90-days. Instead the committee was constituted on 15-10-2012. This was done with a delay of over three years. The ADRC has still to give its fresh recommendations. In the meanwhile the appellate Tribunal has decided the matter, separately referred to it.

9. The complainant may be satisfied at this point of time but the neglect, inattention, delay, incompetence, inefficiency and ineptitude in the discharge of duties and responsibilities is manifest at various levels of tax officials during the complete chain of events. A method devised for the facility of the taxpayer was converted into a torture rack moving inch by inch.

10. There is no ground that can be urged for the review of the decision. Maladministration at all levels, that were entrusted with the provision of due process, expeditious disposal and relief to a taxpayer, is manifest. FBR needs to address the matter as a systemic issue. Apart from setting its own house in order, if any ADRC members are not inclined to follow the law, they should not be restored for such work.

11. The case is closed with the above observations.

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