

## **TaxHelpline Case No. 186 of 2013**

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

**Complaint No. 9/Khi/Cust/(07)/21 of 2013, decided on 29th  
April, 2013**

**Before Dr. Muhammad Shoaib Suddle, Federal Tax  
Ombudsman**

**M. Nadir Khan, Advisor Dealing Officer. M. Adeel Awan for  
Authorized Representative. Zainab Mehmood, Assistant  
Collector Departmental Representative**

**Messrs QUAID-E-AZAM MEDICAL COLLEGE, BAHAWALPUR  
Vs  
SECRETARY, REVENUE DIVISION, ISLAMABAD**

### **FINDINGS/RECOMMENDATIONS**

The complainant has sought indulgence of the Hon'ble Federal Tax Ombudsman against refusal of the FBR to allow exemption of duty and taxes to bed-lifts imported by the complainant for the hospital of Quaid-e-Azam Medical College.

2. According to the complainant, GD was filed under PCT 9914 which allows exemptions to hospitals of 50 beds or more as well as charitable non-profit institutions from duty and taxes on import of equipment apparatus, reagents disposables and spares subject to certain conditions. Being a hospital run by the Provincial government of the Punjab, fulfilling all the relevant conditions, the complainant approached the FBR, but his request for exemption was unlawfully refused.

3. The notice of complaint issued to the Secretary Revenue Division was responded by the department and para-wise comments filed raising the preliminary objection about maintainability of the complaint on the grounds that appropriate remedy against

assessment of goods under section 80 of the Customs Act lay under section 193 of the Customs Act, that the matter involved assessment of duty and taxes and interpretation of law, that the complaint was filed without complying with the requirement under section 3 of Chapter 2 of the FTO Investigation and Disposal of Complaints Regulations and that the complaint was filed by an un-authorized person.

4. On merits, it was pleaded that the lifts imported by the complainant being passenger lifts fell under PCT Heading 8428.1010, not under PCT Heading 9914 allowing duty-free import of equipment. The GD was rightly assessed under section 80 of the Customs Act. The FBR considered the request of the complainant but the same was turned down vide letter dated 31-12-2012. The department prayed for dismissal of the complaint.

5. The complainant on being supplied a copy of para-wise comment filed a rejoinder, rebutting preliminary objections and contending that the complaint was not about assessment of duty and taxes and no issue of interpretation of law was involved. The case was of inaction and negligence in discharge of legal obligations. According to the complainant, the department had itself admitted that the representation was made to the FBR which was declined. The objections were stated to be misconceived and irrelevant.

6. On merits the complainant reiterated the plea raised in the complaint.

7. The parties were afforded opportunity of hearing on 27-2-2013.

8. During arguments, the AR reiterated his plea about bed-lifts being covered by exemption of duty and taxes under PCT Heading 9914 and relied on clearance of patient lifts vide GD No.IDRY-HC-3058 dated 7-5-2012.

9. The DR contended that the exemption was refused to the complainant in view of clarification of the FBR and no case of

maladministration was made out against the Department.

10. Submissions of the parties have been considered in the light of averments of their pleadings and documents available on the record.

11. Before going into the merits of the case, the preliminary objections raised by the department need to be addressed. The issue raised by the complainant is about incorrect application of PCT Heading. No issue of assessment of duty and taxes has been raised. The complaint has been filed against the maladministration of the department, not against assessment of duty and taxes. Similarly, no issue of interpretation of law is involved: the case is simply of incorrect application of PCT Heading. The complainant admittedly made a representation to the FBR against refusal of the department to allow exemption. But the FBR also turned down the request of the complainant.

12. The record reflects that on submission of exemption application by the complainant, the FBR made a reference to the department for submission of a comprehensive report. The department vide letter dated 22-12-2012 submitted to the FBR that the imported lifts were not bed-lifts but passenger lifts and as such were covered under PCT Heading 8428.1010. The FBR on receipt of the report regretted its inability to accede to the request of the complainant.

13. The refusal of the FBR to allow exemption, prima facie, was based on the report received from the department but it did not state any reasons for not allowing the exemptions.

14. The complainant has also filed a copy of GD NO.IDRY-HS-3058 dated 3-5-2012, whereby passenger lifts imported by the Institute of Cardiology, Rawalpindi, were allowed exemption. These were specified as bed-lifts as these were for the use of patients. The case of the complainant was thus on a better footing but this aspect was not considered, resulting in a discriminatory treatment for the complainant.

Findings:

15. Refusal of exemption by the FBR without application of mind, without any just reason and being discriminatory in nature is tantamount to maladministration.

Recommendations:

16. FBR to –

(i) reconsider the issue in accordance with law, after affording opportunity of hearing to the complainant; and

(ii) report compliance within 30 days.

Order accordingly

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