

TaxHelpline Case No. 190 of 2013

[FEDERAL TAX OMBUDSMAN]

**Complaint No. 19/KHI/ST (03)156 of 2013, decided on 2nd
May, 2013**

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

**Manzoor Hussain Kureshi, Advisor Dealing Officer. Dr. M.
Farogh Naseem, Ghulamullah, Abdul Wasey Samdani, CFO
and M. Hanif Shaikh, FCA Authorized Representatives. Mirza
Nasir Ali, DCIR, Departmental Representative**

**Messrs LOTTE PAKISTAN (PTA) LTD
Vs
SECRETARY, REVENUE DIVISION, ISLAMABAD**

FINDINGS/RECOMMENDATIONS

DR. MUHAMMAD SHOAB SUDDLE, (FEDERAL TAX OMBUDSMAN). This complaint of maladministration is against the Department for their failure to settle sales tax refund claims for tax period from July, 2011 to September, 2012 filed on account of input adjustment under section 7(1) read with section 2(14) of the Sales Tax Act, 1990 (the Act).

2. According to the AR, Messrs Engro Vopak deducted provincial sales tax on services rendered to the complainant. The deduction amounting to Rs.221,402,055 for the period from July 2011 to September, 2012 was made under section 26 of Sindh Sales Tax on Services Act, 2011 (SSTS Act). The complainant filed refund claim under Section 10 of the Act, duly supported with complete copies of invoices of paid challans. The Department however deferred the claims without giving any cogent justification.

3. In response to the notice issued to the Secretary, Revenue Division, the Department filed parawise comments on 24-1-2013. It was stated that sales tax refund claim of the complainant relating to the period from July, 2011 to September, 2012 pertained to sales tax paid on services to the Sindh Revenue Board (SRB). However, the claim was deferred by the STARR system for non-verifiability. It was further contended that in terms of section 2(22A)(e) of the Act 'provincial sales tax' meant sales tax under Sindh Sales Tax Ordinance (SSTO) 2000 (VIII of 2000) and not SSTS Act. Thus necessary amendment substituting SSTO 2000 with SSTS Act was needed establishing proper linkage between FBR database and SRB portal, before allowing adjustment of sales tax input. In the meanwhile, however, keeping in view the hardship being faced by the taxpayers, the Chief Commissioner IR, Large Taxpayer Unit (LTU), Karachi, had already approached the FBR, vide letter dated 20-9-2012, to bring necessary changes in the law, with reminders sent vide letters dated 31-12-2012, 10-1-2013 and 4-1-2013.

4. The AR and the Department filed rejoinders on 27-2-2013 and 4-3-2013 respectively. The AR rejected the Department's contention that input of sales tax on services could not be refunded/adjusted without appropriately amending section 2(22A)(e) of the Act. In support of his contention, he referred section 8 of the General Clauses Act, 1897 which reads as under:--

"8. Construction of the references to repealed enactments

"Where this Act, or any (Central) Act or in any regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment then reference in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be constructed as references to the provision so re-enacted."

5. The AR further argued that there is no difference in the intent of SSTO 2000 and SSTS Act. Moreover, the taxpayers' legitimate money could not be withheld merely on account of FBR's inertia in

getting the relevant provision of law amended.

6. The pleadings of both the parties have been considered and record perused. It is evident that the issue involved in the instant case is about refund of input claimed on account of sales tax on services under SSTS Act. After 18 Amendment, the power to collect sales tax on service has been delegated to the provinces. In terms of section 2(14)(e) read with section 7(1) of the Act FBR is required to allow adjustment/refund to the taxpayer in lieu of sales tax collected on services by the SRB, it is an admitted position that both the SRB and FBR, in order to provide access to their respective databases for the purpose of verification of input tax adjusted, have already issued such authorizations respectively vide letters dated 26-10-2011 and 4-4-2012. Subsequently, FBR in letter dated 11-4-2012 addressed to the SRB categorically stated that input adjustment of sales tax would be allowed at the time of filing Return in accordance with section 7(1) of the Act. As FBR has failed to workout appropriate modus operandi for input tax adjustment in respect of provincial sales tax on services collected by the service providers assessed with SRB this has led to inordinate delay, neglect, inattention, incompetence and inefficiency in the discharge of duties and responsibilities on the part of FBR, which being a systemic issue needs to be addressed on priority basis.

Findings:

7. Inordinate delay on the part of FBR to devise modalities for settling sales tax adjustment claims of the taxpayers is tantamount to maladministration in terms of section 2(3) of the FTO Ordinance, 2000.

Recommendations:

8. FBR to –

(i) provide database linkage as mutually agreed between SRB and FBR so as to resolve the systemic issue:

(ii) direct the Chief Commissioner to process and settle the complainant's claims, as per law; and

(iii) report compliance within 30 days.

Order accordingly

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