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FEDERAL TAX OMBUDSMAN SECRETARIAT
Regional Office, Lahore

Complaint No.23/LHR/CUS(04)/65/2015

Dated: 16.01.2015

Mr. Qasim Hussain Ali, Proprietor,
M/s Super Beverage Industries (SMC-PVT) Ltd, ... Complainant
Khawat No.14, Khat Chowk Mission,
Kalar, 17-KM Lahore Road, Sheikhpura.

V e r s u s

The Secretary,
Revenue Division, ... Respondent
Islamabad.

Dealing Officer : Mr. Umar Farooq, Advisor
Authorized Representatives : (i) Mr. Qasim Hussain Ali, Complainant
(ii) Mr. Abdul Rashid Khan, AR
Departmental Representatives : (i) Mst. Sobia Kiran, DC
(ii) Mr. Zaigham Abbas, Suptt

ORDER

The complaint was filed in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (the Ordinance). Maladministration was alleged on the part of FBR, Islamabad for delay in grant of registration status, as manufacturer and Model Customs Collectorate, Appraisement [MCC (A)], Lahore for not returning post-dated cheques deposited as security for sales tax in terms of condition (i) of Sales Tax Notification No.SRO 727(I)/2011 dated 01.08.2011 despite filing of the first sales tax return after import of the machinery under reference.

2. The Complaint was referred for comments to the Secretary, Revenue Division, in terms of Section 10(4) of the Ordinance. In response, MCC (A), Lahore (the Deptt) furnished comments vide letter No.2NG/LAPR/1624/2014/121 dated 04.02.2015. The Deptt

*Date of registration in FTO Sectt.

requested dismissal of the complaint intimating the following facts/grounds:-

- (i) the Complainant imported three consignments of old and used machinery against GDs No.LAPR-HC-12302, LAPR-HC-12300 both dated 05.05.2014, and LAPR-HC-13705 dated 29.05.2014, and availed exemption of sales tax as manufacturer under condition (i) of SRO 727(I)/2011 dated 01.08.2011, by depositing post dated cheques with MCC (A), Lahore, claiming that his case for registration as manufacturer was under process with the FBR;
- (ii) in the month of June, 2014, the Complainant requested for release of the post-dated cheques and provided copies of sales tax returns for May, 2014, which showed his status as 'importer (commercial)';
- (iii) condition (ii) of the said SRO pertaining to the commercial importers envisages that the cheques shall be returned after providing evidence of next supply to the registered manufacturers or industrial users. Since the Complainant did not provide the requisite evidence, he was directed to furnish the proof of next supply before release of the post-dated cheques. Subsequently, the Complainant submitted revised sales tax return for the said period, showing his status as manufacturer. As there were two returns filed by the Complainant for the same period, the Additional Commissioner, Regional Tax Office-II, Lahore was requested to probe into the matter, and determine the actual status of the Complainant. The Complainant approached the MCC (A), Lahore for release of the post dated cheques, and submitted sales tax registration certificate dated 23.10.2014, wherein his status had been changed to exporter / importer / manufacturer. The concerned Appraisal Group recommended the release of the cheques on 03.01.2015;
- (iv) the Additional Commissioner, RTO-I, Lahore responded to the queries raised by MCC (A), Lahore on 08.01.2015 and intimated that initially the Complainant was registered as 'importer' on 11.04.2014. However, his status was changed to 'Manufacturer/Importer/Exporter' on 20.10.2014;
- (v) the Complainant, M/s Super Beverage Industry (SMC-PVT) Ltd, applied for sales tax registration on 14.02.2014, as importer. The Complainant was registered in sales tax

as "importer (commercial)". The Complainant himself admitted in his letter dated 13.05.2014, that he was registered as "Other Personal Service Activities NEC/Importer" and also requested for withdrawal of his application for change in category as 'manufacturer'. He conceded in the same letter that the imported machinery had not been installed till that time;

- (vi) The Complainant applied for change in particulars in May, 2014 for registration as 'manufacturer of beverages and soft drinks'. The Complainant's premises was visited, but no taxable activity was seen at the premises. The Complainant, present during the visit, presented a letter dated 13.05.2014, requesting for withdrawal of his application seeking categorization as 'manufacturer'. The Inspector in his report recommended that due to NIL taxable activity and Complainant's withdrawal of his request, application for change in particulars in sales tax registration as 'manufacturer' may be rejected. The Complainant, however, in the application had also stated that he shall apply later for addition of 'manufacturer' status in his profile;
- (vii) the premises were re-visited on 13.10.2014, and it was reported that most of the machinery was lying in the hall, some portion of which was also found in ~~the~~ containers. The said machinery was being reconditioned, and prima-facie no manufacturing activity was seen at the premises. Neither the machinery had been installed nor any taxable activity was being carried out. Furthermore, the electricity meter was not in the name of the 'Importer';
- (viii) as per information gathered, the Complainant was involved in the business of importing old and used machinery, and subsequent sale after its refurbishment;
- (ix) at the time of claiming the benefit of condition (i) of the said SRO, the two essential conditions as per Registration Rules, 2006 were not fulfilled by the Complainant. Neither the imported machinery had been installed for carrying out taxable activity, nor the electricity meter was in the name of the importer (commercial importer);
- (x) till date the machinery has not been installed.

3. During hearing, the parties reiterated the averments of their written pleadings. The AR stated that the Complainant had imported beverage manufacturing machinery in April and May, 2014. Whereas, duties and taxes were paid, post-dated cheques were furnished as security for sales tax in terms of Sales Tax Notification No.SRO 727(I)/2011 dated 01.08.2011. According to condition (i) of the said SRO, the post-dated cheques were returnable on filing of the first sales tax return after import of the machinery under reference. As the sales tax return was filed on 14.06.2014, the Complainant applied for return of these post-dated cheques. In response, a verbal message was received in September, 2014 from the Deptt that the sales tax return filed by the Complainant showed his status as 'importer' instead of 'manufacturer'. The Complainant approached the concerned authorities and showed sales tax registration certificate dated 14.02.2014, in which his status was shown as 'Manufacturer (Under Process). He was advised to again approach the FBR for addition of 'manufacturer' to his profile. Consequently, the FBR advised the Complainant to re-submit application for registration as 'manufacturer' along with the required documents. The Complainant's premises was re-visited by the tax functionaries and imported plant and machinery was inspected on site, which was being reconditioned prior to installation. The Complainant's status was changed on 20.10.2014 to 'manufacturer/importer/exporter' by the FBR, statedly w.e.f.11.04.2014, as per his original application. A copy of the amended certificate was uploaded on the FBR e-portal and fresh returns were filed. The customs authorities ordered release of post-dated cheques of the Complainant on 03.01.2015. However, Superintendent (Bank Guarantee) refused to return the cheques to the Complainant, and informed that an inquiry was being initiated against him by the Additional Collector (Bank Guarantee). The Complainant met the Additional Collector, who told him that the

cheques could not be returned, as the Additional Collector was not willing to accept the two different sales tax returns filed by the Complainant, one showing him as 'importer' and the other as 'manufacturer'. The Complainant explained to the Additional Collector (Bank Guarantee) that the registration certificate initially furnished by him showed the status as 'Manufacturer (Under Process)', but on 23.10.2014, he was confirmed as 'manufacturer of beverages' w.e.f.11.04.2014, on the basis of his original application dated 14.02.2014. The Complainant invoked the jurisdiction of the FTO for maladministration involved in the Deptt's refusal to return his post dated cheques.

4. The DR averred that at the time of importing the machinery, the Complainant was not registered as 'manufacturer', as the FBR e-portal showed him as an 'importer (commercial)'. So, the Complainant did not qualify condition (i) of the SRO. He further added that at the time of furnishing of sales tax returns in May, 2014, the Complainant submitted an application for withdrawal of his request of categorizing him as a 'manufacturer'. Further informed, that at the time of import, as the Complainant was registered as 'importer (commercial)', he should have claimed the benefit under condition (ii) of the said SRO, which required evidence of next supply to a registered manufacturer or industrial user. Copies of the sales tax returns furnished by the Complainant were not amended but changed, the DR stated.

5. Responding to the DR contentions, the AR argued that he was an 'industrial user' and not an 'importer (commercial)', which was proved by his Income Tax Registration Certificate of 14.02.2014. His letter dated 13.05.2014, for withdrawal of his request as 'manufacturer' was written on the advice of the Inspector of the RTO, who visited his premises for verification, the AR averred. The imported machinery was lying in two halls and had nothing to do with

the stuff stored in the open premises of 22 acres, which had two separate entries for two different units. Regarding DR's argument that the copies of sales tax returns were not amended, but changed, the AR clarified that when a new amended sales tax return was filed, the system of the FBR automatically removed the previously filed sales tax return.

6. The facts of the case, written replies of the MCC(A) and the arguments of both the parties depict the following:

- (i) that the Complainant applied for registration as 'manufacturer' in Feb, 2014, and the FBR showed him as 'manufacturer (under process)' in the sales tax profile. The machinery was imported in April and May, 2014, but in May, 2014, the Complainant withdrew his request for addition of 'manufacturer' status to his portfolio;
- (ii) from May, 2014, when the Complainant withdrew his request, till the time of addition of 'manufacturer' status to his portfolio in Oct, 2014, he remained an 'importer (commercial)'. So the benefit of condition (i) of the said SRO cannot be extended to the Complainant. If such a practice is allowed, then this will definitely harm the spirit of law, and writ of the Federal Government.

7. The complaint is dismissed being devoid of merit, and the case file consigned to record.

(Abdur Rauf Chaudhry)
Federal Tax Ombudsman

Dated: 12-3-2015
Qasim/MR

Approved for reporting

12/3/15