

THE FEDERAL TAX OMBUDSMAN SECRETARIAT
REGIONAL OFFICE, KARACHI

Complaint No.218/Khi/Cus(107)/894/2010

Dated: 05.07.2010

Messrs Geofman Pharmaceuticals
204-E I, Lines
Dr. Daudpota Road
Karachi

... Complainant

Versus

The Secretary
Revenue Division
Islamabad

... Respondent

FINDINGS/RECOMMENDATIONS

Dealing Officer : Mr. Justice (R) M. Nadir Khan, Advisor
Authorized Representative : Mr. Mushtaq Kazmi, Consultant
Departmental Representative : Ms. Shalra Khan, Deputy Collector

The Complainant is a manufacturer of drugs and medicines, including various I.V. Solutions sold in LDPE packing locally manufactured by the Complainant using imported Pharmaceutical Grade LDPE Granules. According to the Complainant, LDPE Granules were exempt from payment of Sales Tax as clarified by the Sales Tax Wing of Central Board of Revenue (now FBR) vide letter dated 30.07.1997. However, the matter was finally settled vide letter dated 16.10.1997 when it was ruled that Sales Tax was not chargeable on LDPE Granules used for manufacturing packing of I.V. Solutions.

2. The Complainant alleged that in 2001 the Department started charging Sale Tax on Pharmaceutical Grade LDPE Granules. The objection of the Complainant and his competitors, Messrs Otsuka Pakistan Ltd and others was not accepted by the Department. Having no other alternative LDPE Granules were got cleared on payment of Sales Tax. Simultaneously, the Complainant and

^{*} Date of registration in FTO Secretariat

other importers approached the Ministry of Health in this regard. In the meanwhile, the FBR vide letter dated 04.02.2006 directed the Customs to provisionally assess the imported Pharmaceutical Grade LDPE Granules free of Sale Tax against Indemnity Bond. However, the matter was finally settled by issuance of ruling C. No.1(51)STT/96 dated 03.03.2007 whereby the exemption of Sale Tax was extended to Pharmaceutical Grade LDPE Granules and FBR letter dated 08.09.1997 was held to be valid. Thereafter, Sale Tax was not charged on imported Pharmaceutical Grade LDPE Granules and the Indemnity Bonds submitted by the Complainant for the provisional clearance were returned.

3. The AR pleaded that as Sale Tax unlawfully charged by the Department from July, 2001, to March 2006 was required to be refunded, the Complainant, accordingly, filed 41 refund claims amounting to Rs. 14,267,634/-. A certificate issued by Chartered Accountant confirming that the Sales Tax involved was not passed on to the end consumers was also provided as required by the Department. Despite that, the Department rejected the refund claim vide letter 19.04.2010.

4. The Complainant feeling aggrieved by rejection of refund claims has approached the Hon'ble FTO on the grounds that rejection of the claim after a delay of 3 years vide letter dated 19.04.2010 was illegal as no appealable order had been passed. Nor the certificate of the Chartered Accountant about not passing of the incidence of Sales Tax to the end consumers was considered by the Department. Besides, Section 19-A of the Customs Act was not applicable to the claims relating to period prior to its insertion in the Customs Act, 1969. According to the Complainant, the issue of limitation was not raised nor was he afforded opportunity of hearing on the said issue.

5. The notice of the complaint was issued to the Department through Secretary Revenue Division. In response, Deputy Collector of Customs Appraisalment-II filed parawise comments, wherein preliminary objection about maintainability of the complaint was raised on the ground that it was hit by the provisions of Section 9(2)(b) of the FTO Ordinance. However on merits, the Department did not dispute the facts and it was contended that from 2001 till

2008 Sales Tax was paid voluntarily and the refund claim was filed after the lapse of period provided by Section 33 of the Customs Act. The Department further contended that the Complainant failed to prove that the incidence of tax was not passed on to the end consumers, and so the refund claim was rejected. The order about rejection of the claim was appealable but said remedy was not availed. The Department further contended that Messrs Otsuka Pharmaceuticals Company, Karachi, filed refund claim which was rejected by Alternate Dispute Resolution Committee (ADRC) constituted under Section 195(C) of the Customs Act, 1969 and it was observed that refund claim filed after the expiry of permissible limit of six months under Section 33 of the Customs Act be rejected. According to the Department no element of maladministration was involved in rejection of the refund claim of the Complainant.

6. The Complainant was supplied copy of parawise comments, in response to which he filed a rejoinder. The parties were called for hearing on 27.08.2010 which was attended by Syed Mushlaq Kazmi, Consultant, for the Complainant while the Department was represented by Ms. Shalra Khan, Deputy Collector of Customs.

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7. During arguments, the parties supported the averments of their pleadings. However, the focus of arguments was the letter of rejection of the refund claim which according to the AR could not be termed as an order against which appeal could be filed. The AR contended that the Complainant was called upon to submit certificate issued by Chartered Accountant to prove that the incidence of tax was not passed on to the end consumer but the same was rejected without assigning any valid reason. The AR also contended that no issue of limitation was raised and without affording of any opportunity the claim was rejected treating it as time-barred. According to the AR, limitation was to be reckoned w.e.f 03.03.2007 when ruling No.1(51)/STT/96 was issued by FBR about Pharmaceutical Grade LDPE Granules being exempt from Sales Tax.

8. The DR though supported the order of rejection of the refund claim but on being confronted with the submission made by the AR fairly conceded that the Complainant was not heard on the issue of limitation. However, he pleaded that

rejection of the claim being in the form of administrative letter notwithstanding, the Complainant could have availed the legal remedy under the Customs Act, 1969. He submitted that if the Complainant considered that on the issue of limitation as well as applicability of Section 19-A of the Customs Act, the matter required further consideration, the Complainant should file application for review which would be considered as per law.

9. After due consideration of the submissions made by the parties and thorough examination of the record, it is observed that the Complainant and other importers paid Sales Tax from 2001 to 2006 as the Department did not extend the concession of exemption of Sales Tax on import of Pharmaceutical Grade LDPE Granules. However, from 04.02.2006 as per instructions of FBR, LDPE Granules was provisionally assessed by obtaining pay orders against the Sales Tax, and subsequently, on issuance of ruling No.1(51)STT/96 dated 03.03.2007, the goods under reference were held to be exempt from payment of Sales Tax. The Complainant thereafter filed the claim for refund of Sales Taxes received by the Department from 2001 to 2006. The Department demanded evidence about not passing the incidence of refund claimed to the end consumer, which the Complainant did provide, but the Department through letter dated 19.04.2010 rejected the refund claim on two grounds: firstly, that the certificate issued by the Chartered Accountant was not a sufficient document for confirmation whether or not the incidence of tax was passed to the end consumer, according to the Department, for the said purpose audit report and certification of import documents by Chartered Accountant were also required, and, secondly, that the claim was time-barred under Section 33 of the Customs Act, 1969.

10. The record does not indicate that the Department ever asked the Complainant to submit additional evidence i.e. audit report and certification of import documents by Chartered Accountant to prove that the incidence of tax was not passed on to the end consumer. Furthermore, at the time of issuance of letter of rejection of the claim, applicability of Section 19-A of the Customs Act for claims relating to period prior to insertion of said provision was not considered. It would be desirable to examine the applicability of the aforesaid Section in the

light of Supreme Court Judgment reported as 2005 PTD 2286 and 2005 PLD 605 (Fecto Belarus Tractors Ltd Vs Government of Pakistan).

Findings:

11. As it is an admitted fact that the Complainant was not confronted with the issue of limitation, and the claim was rejected by issuance of letter which could not be termed as an order to enable the Complainant to file appeal/review, the rejection of refund claim in such a manner constituted maladministration under Section 2(3) of the FTO Ordinance, 2000.

RECOMMENDATIONS:

12. FBR to-

- (i) direct the Collector to withdraw the Deputy Collector's letter dated 19.04.2010 in exercise of his powers under Section 195(1) of the Customs Act, 1969, treating the claim of refund as pending;
- (ii) direct that the pending claim of refund be decided in accordance with law within 21 days after affording opportunity of hearing to the Complainant; and
- (iii) report compliance within 7 days thereafter.

(DR. MUHAMMAD SHOAIB SUDDLE)
Federal Tax Ombudsman

Dated: 21-07-2010
Waqas M.R.

Approved for signature

ATTESTED

[Signature]
Dr. Muhammad Shoaib Suddle
Advisor (Investigation) & Director
Federal Tax Ombudsman
Islamabad

THE FEDERAL TAX OMBUDSMAN SECRETARIAT
REGIONAL OFFICE, KARACHI

Complaint No.205/KHI/CUS(103)/815/2010

Dated: 17.06.2010

Messrs Admjee Enterprises
Plot No. E-17/A S.I.T.E.
Karachi

... Complainant

Versus

The Secretary
Revenue Division
Islamabad

... Respondent

FINDINGS/RECOMMENDATIONS

Dealing Officer : Justice (R) Muhammad Nadir Khan, Advisor
Authorized Representative : Mr. Naeem Uddin, Consultant
Departmental Representative : Mr. Salamat Ali, Deputy Collector Customs

The Complainant has approached the Hon'ble FTO with grievance that their 84 rebate claims relating to years 2007 and 2008 are withheld by the Department without any cogent reason or justification. The Complainant alleges that as per SRO-704(1)/2007 dated 14.07.2007, rebate claims (duty drawback claims) were required to be processed as part of processing of goods declaration; rebate amount was to be sanctioned immediately after sailing of the vessel and cross cheque was required under the procedure to be electronically issued against the account number given in the profile of the exporter. The Department however, violated the procedure prescribed by FBR. The Complainant pleaded that they had approached the Chairman, FBR vide letters dated 09.04.2010 and 12.06.2010 for redressal of their grievance but no response was received.

2. Notice of the complaint was issued to the Secretary Revenue Division Islamabad in response to which Deputy Collector Customs (Exports) submitted reply contending that payment of duty drawback were being made regularly to the Complainant. During past three years 975 duty drawback claims amounting

* Date of registration in FTO Secretariat

Rs.17.67 million had been paid to the Complainant. The Department pleaded that in the pending claims the Complainant had been repeatedly requested vide letters dated 02.07.2010, 13.07.2010 and 14.07.2010 to provide necessary documents to process the claims, but the requisite documents have not been supplied. The Department contended that the matter for issuance of duty drawback cheque would be taken as soon as the documents are received.

3. After receiving parawise comments, the matter was fixed for hearing on 23.08.2010 which was attended by Mr. Naeem Uddin Consultant for the Complainant {AR}. The Department was represented by Mr. Salamal Ali, Deputy Collector {DR}.

4. The learned DR at the very outset came up with plea that except 4/5 claims which are stuck up in the computer system, all other rebate claims had been finalized. The AR disputed the statement of DR contending that Complainant's 36 claims were still pending. The DR, denying the plea of AR, requested for two days time to submit final report. As per his request he was allowed opportunity to file final report on 25.08.2010. On the said date the DR reported that in 29 claims cheques had been issued on 23.08.2010. The AR contended that still 14 rebate claims were pending which fact was not denied by the DR who submitted that remaining claims would be finalized at the earliest.

5. The record of the case and submissions made by the parties show that Complainant's 84 rebate claims (duty drawback claims) relating to years 2007 and 2008 were pending. There is nothing on record to show that prior to filing of the complaint any objection memo or documents call notice was issued to the Complainant. However after receiving of notice of this complaint the Department issued notices to the Complainant for submission of documents. The delayed notice itself reflects that it was a failed attempt to create an excuse for delay in processing of the claims. However subsequently without receiving of any document from the Complainant all the pending claims except 14 have been cleared. This reflects that no document was required for processing of the rebate claims; hence the same were withheld without any just and cogent reason. The Hon'ble FTO had already dealt the issue of withholding of rebate claims and disapproved delay in processing of rebate claims. In said regard Recommendations/Findings in complaints No.233/KHI/Cus/(70)/708/2009 and

243/KHI/Cus(72)/725/2009 dated 17.03.2010 and 18.03.2010 respectively are relevant, wherein following was recommended:-

"RECOMMENDATIONS:

The FBR to direct the Chief Collector to:-

- (i) settle the Complainant's claims as per law within 30 days;
- (ii) form a committee of relevant officials of Collectorates of Exports, PaCCS, PRAL, etc. to evolve workable strategy to address the systemic issue of unacceptable levels of delay in processing of claims;
- (iii) settle all 150,000 pending refund claims, as per law, within three months; and
- (iv) submit a monthly progress report to the FTO Secretariat."

FINDINGS:

6. As pointed out hereinabove the duty drawback claims of the Complainant relating to years 2007 and 2008 were withheld without any cogent reason or justification which not only tantamounts to maladministration but also to defiance of Recommendations of the Hon'ble FTO which could attract action under Sections 12 and 16 of FTO Ordinance.

RECOMMENDATION:

7. The FBR to-

- (i) direct the Collector PaCCS, Karachi, to settle the Complainant's pending rebate claims as per law within 15 days;
- (ii) fix responsibility of non-compliance of Findings/Recommendations of Hon'ble FTO in Complaints No.233/KHI/Cus(70)/708/2009 and No.243/KHI/Cus(72)/725/2009, and direct the concerned officials to show cause why action under Section 12/16 of FTO Ordinance may not be taken against them; and
- (iii) report compliance within 30 days.

(DR. MUHAMMAD SHOAB SUDDLE)
Federal Tax Ombudsman

ATTESTED

Dated: 2010-03-18
"Waqas"/M.R.

Muhammad Siddiq Tabassum
Ch. Muhammad Siddiq Tabassum
Advisor (Implementation & Monitoring)
Federal Tax Ombudsman Secretariat
Islamabad