

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

COMPLAINT NOS. 1913,1914,1916 & 1917/KHI/CUST/2022

Dated: 21.05.2022 R.O. Karachi

M/s Chanar Energy,
House No. 404 Block J-ii,
WAPDA Town
Lahore

... Complainant

V e r s u s

The Secretary,
Revenue Division,
Islamabad

... Respondent

Dealing Officer	:	Syed Tahir Raza Zaidi, Advisor
Appraising Officer	:	Dr. Sarfraz Ahmad Warrach, Advisor
Authorized Representative	:	Mr. Hamad Raza Advocate
Departmental Representative	:	Mr. Usman Tariq (DC)

FINDINGS / RECOMMENDATIONS

These Complaints were filed by Chaudhry Ahmad Raza of M/s Chanar Energy Ltd., under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance), against MCC East, Custom House, Karachi, due to denial of exemption of duty and taxes, under SRO 659(1) 2007-3866 dated 30.06.2007 and SRO 1178(1) 2015 dated 30.11.2015, read with Serial No. 7 of Table-3 of the Sixth Schedule of the Sales Tax Act, 1990.

2. Briefly, Complainant imported Bagasse Fired Boilers and claimed exemption from duty and taxes under above referred SROs. The claimed exemption was denied by Department as imported boilers are listed in CGO-2/2017, issued on 19.04.2017 as being manufactured locally. Complainant approached Hon'ble High Court, Lahore and in compliance of Court's orders, consignment was released after securing disputed amount of duty

* Date of Registration in FTO Sectt.

and taxes against Bank Guarantee. As per Department, importer was required to bring clarification from Engineering Development Board, Islamabad regarding manufacturing status of imported goods, whether manufactured locally or not, which has not been furnished despite lapse of about 4 years.

3. During the course of hearing, both Complainant and Department were directed to approach Engineering Development Board and seek clarification on priority as the matter has been delayed substantially. The Engineering Development Board, Islamabad, vide letter dated 20.05.2022, written in response to MCC (East) Custom House, Karachi's letter dated 20.06.2022, communicated decision, taken by Inter Departmental Technical Committee (IDTC) in the year 2018 which, hitherto, was not known to Complainant or the Department. EDB, vide letter dated 20.05.2022 informed that;

06. *In compliance with the court order, case under reference was reconsidered in 59th meeting of IDTC on 22.5.2018. After comprehensive deliberation, the committee decided as under the decision on 59th IDTC is place as.*

"After having gone through the record and deliberations held in the meeting, the IDTC concluded that the imported boiler of M/s CEL is a customized (made to order) engineering product and for such products, capability of industry is considered. In the instant case, it had been established that local manufacturers have the expertise to manufacture high pressure boilers and they have technical agreements with foreign principals and are paying heavy annual fee to maintain technical assistance agreement plus royalty on getting a confirmed order".

07. *However, M/s Chanar Energy Ltd filed C.P. No D-2101/2021 for the same product in the Honorable Sindh High Court Sindh, which is pending before the court.*

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4. It is evident that the manufacturing status of the imported goods was decided by the competent forum in year 2018 but the same was not communicated to Department and Complainant by EDB and both parties, to instant dispute, never bothered to approach EDB to seek clarification.

5. In view of supra, it is evident that the manufacturing status of the imported Boilers has been decided by competent forum and Department is obliged to act in accordance with law and on merits. However, before proceeding further, Department should update itself on case, pending before Hon'ble High Court of Sindh, Karachi under CP No. 2101/2021 as identical matter has been arraigned by Complainant before the Hon'ble Court.

FINDINGS:

6. Department has failed to follow up the case proactively with EDB despite lapse of 04 years and has left the job of seeking clarification to the sweet will of Complainant / importer. This inaction, on the part of Department, tantamounts to mal-administration under Section 10(1) of the FTO Ordinance, 2000 and resultantly a huge amount of duty and taxes remained stuck up for a prolonged period. Since identical question of facts and law are involved, Findings/Recommendations shall, mutatis mutandis, apply to all four complaints mentioned above.

RECOMMENDATIONS:-

7. FBR to direct:

- (i) Collector MCC (East), Custom House, Karachi to finalize the instant dispute on merits as per law without further delay;
- (ii) all field formations be directed to identify such cases where consignments were released during last five ~~five~~ 10

years against bank guarantees & pay orders etc for want of clarification / certification from various Ministries, Departments etc and intimate un-realized amount of duty and taxes involved;

- (iii) to develop a robust and effective mechanism within WEBOC to keep track of such cases proactively; and
- (iv) report compliance within 30 days.

(Dr. Asif Mahmood Jah)
(Hilah-i-Imtiaz)(Sitara-i- Imtiaz)
Federal Tax Ombudsman

Dated: 28.7.2022
PK/U.f./Satti

Approved for reporting.