

## **Ombudsman for taxes is the need of the hour!**

**By Dr G Sreekumar Menon, Commissioner**

**THE** concept of equity and fairness and the necessity for some mechanism to allow citizens to petition for redress of grievances arising from the abuse of power has necessitated the establishment of an independent statutory authority, in many countries, known as 'Ombudsman'. The complexities of the modern state, the domination of Parliament by Government, the delays and expenses involved in going to courts and tribunals, and the growing alienation of citizens from all these institutions, has led to the establishment of the institution of Ombudsman in many countries. Such an institution has been in existence **since the 1960's in Sweden and Finland**. Similar institutions are now found in Europe, Africa, and Latin America which also deal with infringements of fundamental human rights.

An Ombudsman is essentially an independent person appointed to receive, investigate and resolve complaints from affected persons about unfairness in the administration in public services, and, maladministration by Ministries, Boards, Agencies, Commissions and Tribunals. The Ombudsman deals with complaints received from persons affected by any administrative act or omission of a governmental organisation. The issues raised may range from concerns related to one individual situation to concerns of a broad systemic and or system wide nature.

Having an Ombudsman is widely regarded as one of the pillars of a democratic society. The Ombudsman institution is an accountability mechanism which is essential to ensuring effectiveness in meeting the goals of fair public administration. Dealing effectively with complaints is a means of ensuring a high quality of taxpayer funded services. An Ombudsman can identify and recommend resolutions to systemic problems, improve public administration and prevent future complaints relating to identical matter.

The essential and universally acknowledged features of Ombudsmanship include : independence, flexibility, accessibility and credibility. As for the structure of the office and its powers, several variations are possible, however the salient features required are :

1. The Ombudsman must be accessible to all people especially those who are vulnerable to unfairness in public administration.

2. The Ombudsman must be independent of government and free to carry out legislated mandate provided by Parliament. This will require the following factors to be firmly established in legislation :

a) fixed tenure of office extending beyond the lifetime of particular government.

b) Transparent manner of appointment.

c) Financial autonomy

d) Power to issue and publish reports with protection of legal privilege.

e) Power to propose adequate remedies and to secure compliance.

3. The Ombudsman should have broad investigative powers with unrestricted access to documents, files, officials, offices and institutions. The power to launch investigations can arise from three sources:

- a) complaints from individuals
- b) investigations launched by Ombudsman's own initiative
- c) complaints referred to Ombudsman by Members of Parliament.

It is to be clearly understood that an Ombudsman is **neither a substitute for, nor a parallel authority to, governmental agencies**. Generally, complaints have to be directed to the concerned Department only. If there is a failure in addressing the problem then only the Ombudsman's intervention is sought. The Ombudsman is an impartial place of last resort.

Similarly, the Ombudsman is not a substitute or duplication of appeal rights to courts and tribunals. Rights of appeal result in obtaining a binding order. The Ombudsman has no power to make binding orders. The object of the Ombudsman's involvement is not to affix blame or assess penalty, but only to resolve complaints in a fair and practical manner.

Taxation fields like Customs, Central Excise, Service Tax, Income Tax, and Sales Tax need a commitment to openness, transparency, and accountability. Any taxation process is likely to be tinged with unfairness, delays, arbitrariness and interpretational complications. Organisational structures, policies and procedures of tax departments can act as impediments to resolving complaints fairly and expeditiously. An Ombudsman can act to provide tax payers with direct, accessible, timely, impartial and effective remedy to bureaucratic unfairness. The Ombudsman resolves issues without the need of lengthy investigations and facilitates an amicable resolution between the tax payer and the tax officials. Our tax departments are beset with unwanted litigations and complaints of mistreatment and maladministration, thereby giving a poor public image. The institution of Ombudsman can lead to better tax administration and improved services. Hence an Ombudsman for CBEC and CBDT will be a right step aimed at improving procedures and systems for the future.

**(The views expressed are those of the author)**