

**THE FEDERAL TAX OMBUDSMAN SECRETARIAT**  
REGIONAL OFFICE, KARACHI

Complaint No.264/Khi/Customs(82)/793/2009  
Dated 21.12.2009

Messers Syed Brothers  
Plot No.5087 Block-B  
Shershah Gulbai  
Karachi

Complainant

**Versus**

The Secretary  
Revenue Division  
Government of Pakistan  
Islamabad

Respondent

**FINDINGS/RECOMMENDATIONS**

Dealing Officer	:	Mr. Saeed Akhtar, Advisor
Complainant's Representative	:	Mr. M. Afzal Awan, Advocate
Departmental Representative	:	Mr. Samiul Haq, Deputy Director Mr. Mushtaq Ali Shahani, D.C

The grievance of the Complainant is due to delay in the release of goods allowed to be cleared vide Order-in-Original No. 54/2009 dated 10.06.2009.

2. The Complainant runs a private Warehouse for storing goods of private parties on rental basis. The staff of Directorate General of Intelligence & Investigation, Karachi, seized 3751 tyres of different sizes on 15.11.2008 under the provisions of Section 168 of the Customs Act, 1969 for violation of Section 2(s) and Section 16 of the Customs Act, 1969. A show cause notice was issued on 01.02.2009, and Order-in-Original was passed on 10.06.2009. The adjudication officer ordered

vacation of show cause notice and release of seized goods. The Complainant approached the Directorate of Customs Intelligence & Investigation vide letters dated 12.06.2009 and 28.10.2009 for release of seized goods in the light of Order-in-Original No. 54/2009 dated 10.06.2009, but the goods were not released. The Customs Intelligence informed the Complainant vide letter dated 17.11.2009 that the Collector of Customs had been asked for reopening the adjudication order under the provisions of Section 195 of the Customs Act, 1969. The Collector of Customs reopened the case on 24.12.2009 i.e. six months after the issuance of Order-in-Original and show cause notice was issued when the complaint was already pending investigation in the FTO Secretariat.

3. The complaint was sent to the Secretary Revenue Division, Islamabad for comments in terms of Section 10(4) of the Establishment of the Office of FTO Ordinance, 2000. The Director, Directorate General of Intelligence & Investigation and Collector of Customs (Preventive) in their comments received from the Revenue Division contended as under:

- (i) The mater under reference is hit by bar on jurisdiction of the Honourable Federal Tax Ombudsman in terms of Section 9(2)(b) of the Establishment of the Office of the FTO Ordinance, 2000 as the case was subjudice at the time of filing of complaint as the Order-In-Original No.54/2009 dated 10.06.2009 was reopened under Section 195 of the Customs Act, 1969 and show cause notice was issued by the Collector on 08.01.2010.
- (ii) The Directorate General of Intelligence & Investigation in pursuance of an information of smuggling of tyres intercepted a truck and recovered 26 foreign origin smuggled tyres & tubes and on the pointation of driver a godown named as M/s Syed Brothers was searched which resulted in the recovery of smuggled tyres which were seized as the owner of godown and concerned importers failed to produce necessary documents pertaining to legal import and lawful position of 3751 tyres of different seized.

- (iii) The adjudicating officer vacated the show cause notice and wrongly allowed unconditional release of seized tyres as not only the number was different but also the date of manufacturing of tyres, brand, size and origin of seized goods do not tally with the goods, mentioned in the produced goods declarations.
- (iv) The claimants of the tyres were not the actual importers and demand for production of Sales Tax Invoices from the claimants was lawful demand.
- (v) The tyres seized were having brand name "Ling Long" and "Great Wall" whereas the import documents produced by the claimant depict the brand as any Chinese Brand which proves that the import documents had no nexus with the tyres.
- (vi) The joint examination report clearly showed that no country of origin was mentioned in respect of 660 seized tyres whereas in the import documents country of origin was mentioned as "Chinese". The manufacturing date did not tally with the seized goods. The seized tyres had been smuggled and the documents produced by the Complainant in support of lawful possession of the said tyres were not relevant.
- (vii) The case is now subjudice before the competent authority. The complaint may, therefore, be dismissed.

4. At the time of hearing both the parties reiterated the same arguments as contained in the complaint and comments furnished thereon. The status of Complainant as owner of private Warehouse was not disputed by the Respondents. However, the Godown operator was made answerable on behalf of owners of goods who stored their goods in his Godown on rental basis. During the course of hearing, the AR stated that proper record of owners of goods, being maintained by the Warehouse operator, was produced before the Respondents for scrutiny. Also, the goods were examined by a Joint Team, and a report submitted. The AR stated that size and RP of tyres tallied with the details available in the 13 Bills of Entry produced by the Complainant. He also

stated that local Sales Tax invoices were not required as the goods were not further supplied after import. Also, lack of year of manufacture on the tyres was not the fault of importer and he should not be punished for the offence not committed by him. Regarding origin of tyres, the Customs clearing Agent declared the goods of Chinese origin instead of mentioning individual brands and the same was accepted by Customs at the time of import. It was the responsibility of Customs Examiner to mention the origin and brand of goods in the examination report. The Respondents failed to explain their position before the adjudicating officer and in the absence of any explanation the viewpoint of the Complainant was accepted by the adjudicating officer. The AR insisted that the Collector could only revise the Order-in-Original on his own, not on a letter from Customs Intelligence, as held by Lahore High Court in Writ Petitions Nos. 18776 to 18778 of 2008 (2009 PTD 1463).

**Findings:**

5. The Order-in-Original No. 54/2009 was passed on 10.06.2009 and the Complainant requested the Customs for its implementation vide letters dated 12.06.2009, 28.10.2009, 18.11.2009 and 25.11.2009. However, no action was taken on these repeated reminders, which tantamounts to maladministration.
6. The highhandedness of dealing Customs officials is also evident from the fact that the case has been instituted against the Godown operator, not the owners of impugned goods.
7. The Collector reopened the Order-in-Original under the provisions of Section 195 of the Customs Act, 1969 on 24.12.2009 i.e. more than six months after the issuance of Order-in-Original dated 10.06.2009. More so, the Order-in-Original was reopened on asking of Customs Intelligence, vide their letter dated 17.11.2009. Apparently, the

Directorate of Customs Intelligence seems to have 'reacted' to the Complainant's second notice dated 28.10.2009. The complaint before the Federal Tax Ombudsman was filed on 21.12.2009, when repeated reminders by the Complainant, including a notice dated 18.11.2009 to the effect that continued non-implementation of Order-in-Original would be brought to the notice of FTO, were not responded to. The Collector issued Show Cause Notice for confiscation of goods on 08.01.2010 when investigation had since been initiated on the complaint by the FTO Secretariat, and the fact that the Complainant had filed the complaint before the FTO was in the knowledge of the Collector since at least 31.12.2009. These arbitrary actions clearly show malafide on the part of Customs, and also tantamount to prejudicing determination of a matter pending before the FTO.

**Recommendations:**

8. Federal Board of Revenue to-
  - (i) call for the record of the case, examine it and pass appropriate order for the cancellation of reopening of Order-in-Original and subsequent SCN dated 08.01.2010 (for confiscation of Complainant's goods lying with the Customs since June 2009) issued by the Collector; and
  - (ii) direct Collector Customs (Preventive), Karachi, to explain within 15 days why action under Sections 16 of FTO Ordinance, 2000, for trying to prejudice the determination of a matter pending before the FTO may not be initiated against him.
9. Compliance report of 8(i) be furnished within 20 days.

(DR. MUHAMMAD SHOAIB SUDDLE)  
Federal Tax Ombudsman

Dated: 31.12.2010

Mirza Rafi-uz-Zaman

*Approved for reporting*



**Mirza Rafi-uz-Zaman**  
(R) District & Sessions Judge  
Advisor (Implementation & Monitoring)  
Federal Tax Ombudsman Secretariat  
Islamabad