

**FEDERAL TAX OMBUDSMAN SECRETARIAT
ISLAMABAD**

Complaint No.206/lsd/Cus(23)/785/2009

Dated: 19.12.2009

Mr. Asif Siddiq
Messers Starco (Pvt) Limited
Gujrat

Complainant

Versus

The Secretary
Revenue Division, Islamabad

Respondent

FINDINGS/RECOMMENDATIONS

Dealing Officer	Mr. Yasin Tahir, Senior Advisor
Authorized Representative	Syed Aun Mohammad, Barrister
Departmental Representatives	Mr. Faiz Ali, Deputy Collector Customs Mr. Ejaz Gilani, Deputy Superintendent, Customs

The complaint under consideration involves allegations of maladministration and embezzlement of imported goods worth US \$ 118656 involving Government revenue of Rs. 2.5 million. The Complainant's submissions in brief are that on 14-3-2007, he established two Letters of Credit (LCs) with National Bank of Pakistan, Railway Road, Gujrat, for import of 60 M.Ton Urea Formaldehyde and 60 M.Tons of Glazing Powder from China. The suppliers in China shipped the goods in December 2006 and sent the Shipping Advice alongwith other import documents showing numbers of three trucks carrying 120 M.Ton of cargo.

2. The Complainant statedly received advance information through a fax message from the shippers in China that the goods had been shipped and their

^{*} Date of receipt in FTO Secretariat

arrival was due any time during 27-30 December, 2006. Instead of retiring the bank documents by paying to the bank the balance amounts of the Letter of Credit, the Complainant admittedly deliberately delayed clearance of the goods which arrived at the Sust Dryport in December, 2006.

3. After reopening of the Sust Dryport on 1st May, 2007, the Complainant checked up the whereabouts of his consignments. He was informed by the Dryport management that the goods had already been cleared in December, 2006, by the Consignees namely Messers Rabbani Trading Company of Sust. When he tried to probe into the matter, he started receiving threats that he should keep quiet. The Complainant accordingly kept quiet for a period of over two and a half years. He reported the matter for the first time to the Additional Collector Customs, Rawalpindi, vide his Legal Counsel's letter dated June 18, 2009. Three years after the incident, the Complainant filed the complaint under consideration on December 26, 2009 requesting that:

- (i) orders be issued that the imported goods be returned to the Complainant;
- (ii) the Complainant be compensated by granting equal value of the imported goods u/s 216 of the Customs Act, 1969;
- (iii) any other relief deemed appropriate be provided.

4. The complaint was sent to the Revenue Division for comments. On receipt of their comments, the parties were finally heard on 22.3.2010. The DR informed that only 59.5 M.Ton Urea-Formaldehyde Moulding Powder was received in Sust Dryport which was cleared by Messers Rabbani Trading Company, Clearing and Forwarding Agents. The goods were transported to the address of Sufi Arshad (brother-in-law of the Complainant), in Rawalpindi. Receipt of the goods was duly acknowledged by Mr. Waqas Arshad S/o

Muhammad Arshad. Therefore, the Complainant seems to have cleared and received the goods through his brother-in-law i.e. Sufi Arshad of Rawalpindi.

5. As regards 60 Metric Tons of Glazing Powder, the DR informed these were not received at the Sust Dryport as per the record maintained by the Dryport management. Thus, the whereabouts of this consignment were not known. The Clearing Agent who was present during the hearing also confirmed these facts. In response to a query, the clearing agent informed that he had a residence in Rawalpindi where Sufi Arshad got acquainted with him through an old friend namely Sheikh Arshad. Thereafter, Sufi Arshad occasionally used to visit him with Sheikh Arshad. In November, 2006, they informed him that Mr. Asif Siddiq, the brother-in-law of Sufi Arshad was importing some goods from China. So he would like to clear the consignment through his Clearing Agency. During this period, Mr. Asif Siddiq also rang him up from his residence in Gujrat to request him to clear the consignment on his behalf and told him that all necessary formalities would be done by his brother-in-law Sufi Arshad.

6. As a result, Sufi Arshad visited Sust Dryport during the last week of December and authorized Messers Rabbani Trading Company, the Customs Clearing Agents to clear the goods vide his authority letter copy of which is available in record. The Clearing Agent accordingly filed the Bills of Entry with the Customs authorities. Sufi Arshad paid duties and taxes and himself arranged transportation of the goods from Sust Dryport to Rawalpindi as is also evident from the record of Messers Friendship Goods & Transport Company, Gilgit. When asked how could Sufi Arshad who did not have any papers like L/Cs, Invoices and Bills of Lading etc. clear the goods from Customs, the Clearing Agent told that instead of messrs Starco (Pvt.) Ltd of Gujrat, the goods were consigned in the I.G.M to the Clearing Agents and Sufi Arshad had told

him that it was not a case of L/C but of cash. The practice at Sust Dryport as confirmed by the DR was that consignments imported on cash basis are cleared without the import documents.

7. The Complainant was confronted with these facts. He expressed his ignorance about this part of the story. He informed that Sufi Arshad, his brother-in-law, had a Melamine Factory at Pirwadhai, Rawalpindi, which is closed and he is absconding without leaving any clue of his whereabouts. As a result, the Complainant's sister (wife of Sufi Arshad) and her children have shifted to Gujrat. The DR stated that Sufi Arshad had swindled many people, and so criminal cases had been instituted against him. The DR also informed that he had conducted a preliminary investigation into the case with the following results:

- (i) Residential address of both Sufi Arshad and the Complainant is the same in Gujrat as per the National Identity Cards of both;
- (ii) Messers Starco (Pvt) Limited, Gujrat, owned by Mr. Asif Siddiq is registered with Gujrat Chamber of Commerce and Industry, but their Licence has expired with effect from 31-03-2009. No request has been received by the Chamber for its renewal;
- (iii) Sales Tax Office, Gujrat, has issued Mr. Asif Siddiq a Show Cause Notice No.ST/GRT/EA/08-09/09/422 dated 9-02-2010 for being defaulter and non-filer for the year 2008-09.
- (iv) Mr. Asif Siddiq has shifted the machinery of Sufi Arshad's Melamine Factory in Pirwadhai, Rawalpindi, to Gujrat. The unit is manufacturing melamine dinner sets on wholesale basis. The Factory is operating for the last three years although Messers Starco Pvt Limited are registered only as importers/exporters with Sales Tax/Income Tax and Gujrat Chamber of Commerce & Industry;

- (v) The history received from RTO, Sialkot, also confirms non-filer status of Messers Starco (Pvt) Ltd Gujrat;
- (vi) Sufi Arshad sold his residence in Westridge, Rawalpindi, without informing the buyers that it was mortgaged with the Standard Chatered Bank against loan. The buyer filed a civil suit in the Civil Court. As a consequence, he got the ownership papers of the said house.
- (vii) An FIR No.10 dated 25-12-2009 was registered by the buyer of the aforesaid house in Police Station City, Rawalpindi, under the orders of Additional Sessions Judge Rawalpindi for giving two bogus cheques for Rs.5 lakhs. The case is under investigation by the Police.
- (viii) Sufi Arshad is being pursued by Police, FIA, Banks, other agencies, friends and private persons for fraud;
- (ix) Signatures of Sufi Arshad on various documents involved in the complaint tally with his signatures on an affidavit given to the buyer of his house;
- (x) On 23-11-2006, Mr. Asif Siddiq rang up Messers Rabbani Trading Company from his residential landline Number 0533-531000. A copy of telephone bill for the month of November, 2006 issued by PTCL is duly reflected in the bill. [The Complainant confirmed having made the call but denied having given any instructions about clearance of the goods];
- (xi) Sufi Arshad and Mr. Asif Siddiq appear to be habitual in defrauding innocent people as well as the Government Departments;
- (xii) Conclusion of Customs preliminary inquiry is that Sufi Arshad and Mr. Asif Siddiq were in league with each other to commit the fraud under reference; and

- (xiii) Sheikh Arshad, an industrialist friend of Mr. Mahboob-e-Rabbani, the Clearing Agent, as well as of Sufi Arshad, present in the hearing, confirmed having introduced Sufi Arshad to the aforesaid Clearing Agent and solicited his help for clearance of the goods under reference by Sufi Arshad.

8. The complaint has been examined in the light of the written and oral submissions of the parties, the Clearing Agent and Sheikh Arshad of Rawalpindi who is a friend of Sufi Arshad. The Complainant has implicated a number of persons and agencies, public and private, in his complaint of maladministration and embezzlement. However, as the jurisdiction of the Office of FTO extends only to the maladministration of tax employees, this investigation is focused on the alleged maladministration of the Customs functionaries at Sust Dryport.

9. The submissions of the parties and the witnesses raise a number of questions including:

- (i) Why the importer (the Complainant) did not immediately retire the import documents to clear his consignments despite knowing fully well that Sust Dry Port was scheduled to close for four months from 1st week of January to 30th April, 2007?
- (ii) How could he afford to leave his goods at Sust for four months knowing that the shelf life especially of Urea Formaldehyde was only six months?
- (iii) Why did he keep quiet for over two and a half year from May, 2007 to June, 2009 after the alleged embezzlement had taken place?
- (iv) How is it that the goods were consigned in the Import General Manifest to the Clearing Agents rather than the importers as per the import documents received through the bank?
- (v) How was the shipment transferred by the Shippers from three trucks/containers to five trucks? What was imported in the two

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additional trucks not mentioned in the Packing List and the Shipping Advice?

- (vi) How was it that only 59.5 MT of Urea formaldehyde is accounted for. The wareabouts of 60 tons of Glazing Powder are not known?
- (vii) Why is it that Sust Customs cleared goods without the requisite documents?

10. The Complainant was confronted with questions related to him. As regards lack of his anxiety on his part to retire bank documents to clear his goods as early as possible, he simply stated that he thought it was alright if he cleared the consignment after the Dryport reopened after the winter season as he still had about two months left in the shelf life of the chemicals. The explanation is not plausible, as no experienced importer like the Complainant can afford to ignore his high value consignment at a Dryport scheduled to close for four months. This kind of complacency is unthinkable as it obviously suffers from rationality deficit.

11. The question why he did not immediately get after the Clearing Agent, the Dryport management and the Customs as well as the Chinese suppliers for depriving him of the life-line of his business, he statedly did not raise the issue with the Chinese suppliers for unauthorisedly consigning the goods to a Clearing Agency, rather than the importer, as per the requirement of the contract. He also did not ask the Chinese suppliers about the wareabouts of the consignment of Glazing Powder which was reported to have not been received at the Sust Dryport. This kind of after-the-event complacency in such a serious matter is absolutely abnormal. He even did not check with the Chinese suppliers how was it that a consignment shipped by three trucks arrived by five trucks with

the name of the Consignees. The Complainant's failure to protest against these violations of his contract and the LCs by the Shippers in China simply betrays his active complicity. The evidence of telephone calls produced by the Clearing Agent, and the confirmation by Sheikh Arshad that Sufi Arshad did use his acquaintance with Messers Rabbani Trading Company of Sust for clearance of the goods under reference also prove that it is Sufi Arshad who is the principal culprit in this case. However, the complicity of Mr. Asif Siddiq is also evident from his after-the-event conduct. The following remarks of the Complainant's Legal Counsel in his letter addressed to the Additional Collector of Customs, Rawalpindi in June, 2009 are highly revealing:

"It is pertinent to bring on record of the (Customs) Department that my client (Mr. Asif Siddiq) has intimated me on the basis of credible information that both the consignments under question have clandestinely been removed on 28-12-2006 from Customs Dryport Sust".

The question is how did the Complainant know for sure that both the consignments had actually reached Sust Dryport when the Dryport record showed arrival of only one consignment comprising 60 M. Ton Urea Formaldehyde?

Findings:

15. From the foregoing discussion, it seems evident that Sufi Arshad cleared the entire consignment comprising 60 M.Tons of Urea Formaldehyde and 60 M.Ton of Glazing Powder from Sust Dryport by paying duties and taxes only on 60 M.Ton of Urea Formaldehyde, thus evading duties and taxes on the remaining 60 Tons of Glazing Powder. Such a fraud could not have happened without the connivance of his brother-in-law, Mr. Asif Siddique and collusion of the Customs and the Dryport authorities.

Recommendations:

16. It is recommended that FBR to-
- (i) conduct thorough investigation into the case in coordination with the concerned agencies and persons listed in the complaint;
 - (ii) examine the legality and propriety of the practice of clearing consignments without necessary documentation; and
 - (iii) fix responsibility for those found guilty of alleged maladministration/fraud in this case; and proceed against them as per law/rules.
17. Final outcome of the case be reported within 60 days.

(DR. MUHAMMAD SHOAIB SUDDLE)
Federal Tax Ombudsman

Dated: 21/07/2010.

AN/Imp/AM/My/AH

Approved for up to 10


Mirza Rafi-uz-Zaman
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