

**FEDERAL TAX OMBUDSMAN SECRETARIAT
ISLAMABAD**

Complaint No.248/KHI/CUS(72)/743/09

Dated: 25.11.2009

Messrs Durrani Traders
Shop No.1203, New Fruit Market
Sirki Road, Quetta

... Complainants

Versus

The Secretary
Revenue Division
Islamabad

... Respondents

FINDINGS/RECOMMENDATIONS

Dealing Officer

Mr. Justice (R) Muhammad Nadir Khan
Advisor Incharge, Quetta

Authorized Representative

Mr. Naseebullah Khan Achakzai, Advocate

Departmental Representative

Mr. Shahid Abbasi
Deputy Collector Customs, HQ
Mr. Mohabat Khan Mandokhail
AC Customs

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Feeling aggrieved by refusal of the Customs authorities to allow their claim of duty drawback on thirteen (13) consignments of Vegetable Ghee exported to Afghanistan, the Complainants filed this Complaint. Facts in brief are that the Complainants exported forty three consignments of Vegetable Ghee to Afghanistan during 2004 and 2005. They filed duty drawback claims in respect of thirty consignments exported during December, 2004 to August, 2005 with complete documents. The Customs declined to sanction these drawback claims on the ground that the Vegetable Ghee was of sub-standard quality.

2. The Complainants initiated a legal battle against rejection of their thirty claims on ground of sub-standard quality alleged by Customs after export of the goods.

* date of receipt in FTO Secretariat

Collector Customs (Appeals) accepted their appeal against the Order-in-Original through which the Customs had initially rejected their claims. The Department filed an appeal in the Customs Appellate Tribunal against the Order-in-Appeal. The Appellate Tribunal rejected the Departmental appeal and upheld the Order-in-Appeal in favour of the Complainants the Department filed a reference application in the Balochistan High Court which was rejected. The Department then filed a CPLA in the Supreme Court but withdraw it subsequently. In view of these facts, FBR also accepted their thirty claims which were eventually made good by the Customs. But the legal battle between the Customs and the Complainants continued for about three year starting in October, 2005 and ending on 29.07.2008 when the Supreme Court allowed the Customs department to withdraw the CPLA Writ Petition against the decision of High Court or Balochistan.

3. Disappointment by the initial rejection of their thirty (30) claims and the ensuring legal battle, they did not file their thirteen (13) remaining drawback claims. However, when the fate of the thirty (30) claims finally settled in their favour, the Complainants filed the remaining thirteen claims for the consignments which had been exported during October-December period of the year 2005. The Customs rejected these claims on account of late filing of the claims which according to the Customs constituted violation of section 21 of the Customs Act, 1969 read with CG012 of 2002 dated 15.6.2005. The Complainants appealed the rejection order but Collector (Appeal) also rejected their appeal. The Complainants then opted to file the Complaint in hand in the FTO Secretariat on the ground that withholding their drawback claims on the mere technical reason of time limitation was unfair and unjustified, because the superior court have already ruled that withholding of any amount rightly belonging to a citizen on the mere ground of time limitation was unjust and unreasonable. Reference in this connection was made to the decision of Honourable of Supreme Court in case of Messrs Pfizer Laboratories Vs the Federation of Pakistan reported as PTCL 1998 CL 354.

4. The complaint was referred for comments to the Revenue Division. A copy of their comments was supplied to the Complainants. Date of hearing was fixed on 27.01.2010. On the date of hearing, the Legal Counsel Mr. Naseebullah Khan Achakzai and Mr. Baloch Khan, attended the hearing on behalf of Complainants,

while the Respondents were represented by Mr. Shahid Abbasi, Deputy. Collector Customs and Mr. Mohabat Khan Mandokhail, Assistant Collector Customs.

5. Mr. Naseebullah Khan Achakzai argued that after allowing the claim of duty drawback to the Complainants in thirty (30) similar cases, refusal of claims of duty drawback in thirteen (13) cases was malafide. According to him the policy of FBR as reflected by CGO 12 of 2002 dated 15.06.2002 was to remove hardships being faced by the exporters on account of delay in filing the duty drawback claims. He referred to the fact that firstly the Customs rejected their thirty (30) claims on grounds which subsequently turned out to be irrelevant and the dispute came to rest on 29.07.2008 when the Customs withdrew their appeals from the Hon'ble Supreme Court. The Complainants did not file the remaining thirteen case because these were greatly discouraged by the initial rejection of the thirty (30) claims filed earlier and the ensuing legal battle which continued for three long years. When it was finally and categorically settled in favour of the Complainants, they took up the courage to file the remaining thirteen (13) claims. It would be understood that the Complainants could not incur another legal battle in the presence of their ongoing battle about thirty (30) claims. In the stated circumstances, it was a fit case for condonation of delay according to the Legal Counsel. He also quoted the Supreme Court decision in case of Messrs Pfizer Laboratories stating that their claim could not be rejected on the mere technicality of time bar. In spite of all this, the Customs, acting in a malafide manner, rejected the claims of the Complainants which amounts to maladministration.

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6. DRs Mr. Shahid Abbasi, Deputy Collector Customs and Mohabat Khan Mandokhail, Assistant Collector Customs, stated that the Complainants were misstating the facts as the dispute in thirty (30) other cases being referred to by the Complainants was relating to sub-standard quality of the exported ghee and not to time bar in the case of thirteen cases in the Complaint under reference. They also stated that the period of limitation provided for filing of duty drawback claim as per CGO 12 of 2002 dated 15.06.2002 was 210 days from the date of exportation and after 180 days of the realization of the foreign exchange whereas the thirteen claims under reference were filed after 1095 days or three long years. The Complainants had no plausible explanation for delay in filing their duty drawback claims. The last

limb of the Customs argument was about maintainability of the complaint that the Complainants had filed without exhausting the remedial measure of filing of appeal under Section 194-A of the Customs Act, 1969 before the Appellate Tribunal and so, in view of Section 9(2)(b) Establishment of the Office of Federal Tax Ombudsman, it fell out of the jurisdiction of the Hon'ble Federal Tax Ombudsman.

7. The complaint has been examined in the light of the written and oral submissions of the parties. The Customs position that the Complainants are confusing the case of thirty (30) previous claims with the thirteen claims in hand is neither plausible nor maintainable. The Complainants are not confusing the two sets of issues. They are only stating that initial rejection of thirty (30) claims by the Customs discouraged the Complainants to invite another trouble by filing the remaining thirteen cases. The Complainants therefore avoided another legal battle with the Customs Department. It is very unfortunate that the Customs Department have miserably failed to appreciate the tribulations of the Complainants who were unnecessarily involved by the Customs in a legal dispute which could not stand scrutiny even at the 1st appeal stage. Yet they unnecessarily prolonged it by filing appeals upon appeals from the stage of Appellate Tribunal upto the Supreme Court inspite of the fact that none of these fora made any sense out of the Customs appeals. Now, in case of the remaining thirteen claims too, they have again failed to appreciate the genuine cause of delay in filing of the duty drawback claims. They have also unjustifiably ignored the fact that superior courts have deprecated, in the strongest of terms, withholding the amounts rightfully belonging to the Citizens on the mere technicality of time limitation.

8. However, during hearing, on query Mr. Shahid Abbasi, Deputy Collector Customs, admitted that prima facie the claim of the Complainant, if not hit by time limitation, seemed to be correct. As far time limit, the Customs insist that it is too long a period to be condoned. They however forget that the longevity of this period is only due to their failed repeated attempts to block the payment of their previous drawback claims for three long years inspite of the fact that they failed at the 1st Appeal stage, in the Appellate Tribunal, and the Supreme Court. This kind of adverse competition from public functionaries who are mandated to honour rather than resist

the rights of the citizens much more the exporters is downright maladministration under section 2(3)(i)(b) & (d) and (ii) of the FTO Ordinance, 2000.

Findings

9. In view of the above discussion, the explanation of the Complainants for long delay in filing the thirteen claims after the legal battle about thirty claims filed earlier, is compelling and plausible. Besides, there is no justification for withholding of an exporter's money on the mere ground of time limitation provided he has a plausible explanation for the delay in filing the drawback claim. The Customs should have properly appreciated the circumstances of this case, and moved the competent authority for condonation of delay. Their failure to do so and rejection of Complainant's claims on the mere ground of time limitation for which the Complainants had a plausible explanation constitutes maladministration under section 2(3)(i)(b) & (d) and (ii) of the FTO Ordinance, 2000.

Recommendations:

10. In view of the above findings FBR to:
- (i) set aside the Order-in-Original No.05/2008 dated 23.12.2008 and Order-in-Appeal No.13/2009 dated 04.03.2009;
 - (ii) condone the delay involved in filing the thirteen claims under reference; and
 - (iii) direct the Customs authorities to dispose of the thirteen duty drawback claims as per law and procedure within 15 days.
11. Compliance be reported within 30 days.

(Dr. Muhammad Shoaib Suddle)
Federal Tax Ombudsman

Dated: 13-03-2010
M.R/my

Approved for reporting

22-3-10

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