

FEDERAL TAX OMBUDSMAN SECRETARIAT
Regional Office, Karachi

Complaint No. 380/ KHI/CUST(44)/561/2017

Dated: 18.09.2017¹

M/s. Pioneer Cables Limited,

1001 Uni Tower, I. I. Chundrigar Road,
Karachi.

... Complainant

Versus

The Secretary,
Revenue Division,
Islamabad.

... Respondent

Dealing Officer : Mr. Shahid Ahmad, Advisor
Authorized Representative : Mr. Pervaiz Lakhani,
Departmental Representative : Ms. Sadaf Noor, Deputy Collector

FINDINGS

The complaint has been filed in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against MCC Appraisement (West) Karachi (the Deptt) for delay in the refund of customs duty and additional custom duty which the Complainant paid due to inadvertence at the time of importing 7 consignments when he failed to claim exemption under 5th schedule of the Customs Act, 1969 (the Act) or SRO 1178(I)/2015 dated 30.11.2015.

2. The complaint was referred for comments to the Secretary, Revenue Division, in terms of Section 10(4) of the FTO Ordinance. In response, MCC Appraisement (West) Karachi filed comments informing that M/s. Pioneer Cables Limited imported consignments of Polythylene Viscole from Austria and got released following 7 GDs after the Payment of CD @ 11% and additional 1%:-

¹ Date of registration in FTO Secretariat

Sr. No.	GD No.
1	KAPW-HC-91137-10-11-2016
2	KAPW-HC-47815-07-09-2016
3	KAPW-HC-80278-26-10-2016
4	KAPW-HC-47820-07-09-2016
5	KAPW-HC-22563-04-08-2016
6	KAPW-HC-5022-13-07-2016
7	KAPW-HC-10446-19-07-2016

Further that at the time of filing of GDs, the importer neither claimed any benefit of "5th Schedule" of the Act nor that of SRO 1178(I)/2015 dated 30.11.2015. He filed for refund of overpaid Customs Duty and Additional Customs Duty for the above mentioned 7 consignments. In response a letter No. SI/MISC/27/2017-III, was sent by the Deptt to the importer asking him for a separate confirmation for his claiming input from the sales tax amount paid on imported consignment from Sales Tax Department. The Complainant replied that since he was claiming refund for customs duty only, therefore, he need not to produce documents regarding claim of input tax adjustment for sales tax. However, since under the provisions of the Customs Act, refund can only be sanctioned on proving that the incidence of customs duty has not been passed on to the end consumer. It was also informed by the Deptt that M/s. Pioneer Cables Limited has not submitted the sufficient reasons, confirming their stance that, the incidence of Customs Duty and other levies have not been passed on the buyer or consumer. The Complainant has tried to prove that incidence of overpaid duty and taxes have not been passed on to buyer or end consumer, by submitting the certification made by M/s Rehman Sarfraz Raheem Iqbal Rafiq Chartered Accountants Karachi. Whereas,

Section 19A of the Act does not prescribe such certificate by chartered accountants. The department needs to examine its record to determine the input to output ratios of the imported raw materials and the finished goods manufactured there from, as the unit of measurement in GDs is mentioned in Kilogram whereas, in sales tax invoices, it is provided in meters and determine whether the incidence of duties and taxes has been passed on the final consumer. It is, therefore, requested that the importer may be asked to provide all relevant documents to the department for making these calculations and deciding whether refund is due or not.

3. During hearing, the Authorized Representative (AR) averred that complete documents have been submitted to the Deptt and in case any specific document is required, the same may be identified and intimated. The Departmental Representative (DR) averred that the Complainant has not submitted sufficient information to ascertain the admissibility of refund. The DR was accordingly directed to inform the Complainant about specific information / documents required to finalize the claim.

4. The complaint has been examined in the light of written and oral submissions of the parties and documents available on record. The AR committed to provide documents as identified by the Deptt. The DR undertook to finalize the matter upon submission of requisite information by the Complainant. It is evident that the matter is pending before the Deptt for the last nine months but since no time line is provided in the Act for passing orders on refund applications, no case of maladministration is made out.

5. In view of *supra*, the Deptt is advised to finalize the proceedings expeditiously, and preferably within 45 days. FBR is also advised to consider for amending relevant Section of the Act, for inclusion of a specific period for deciding refund applications. File be consigned to record.

(Mushtaq Ahmad Sukhera)
Federal Tax Ombudsman

Dated: 26/1/2017

Inccr/U.F