

FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE
LAHORE

COMPLAINT NO.430/LHR/CUS(15)/736/2010

Dated: 03.06.2010*

**Messers Crescent Art Fabrics
(Pvt.) Limited
10-Abbot Road
Lahore**

... Complainant

V E R S U S

**The Secretary
Revenue Division
Islamabad**

... Respondent

FINDINGS/RECOMMENDATIONS

Dealing Officer : Mr. Saeed Akhtar, Adviser
Authorized Representative : Mr. Anwar Elahi, Director
Departmental Representative : Syed Jawad Ali Shah, D.C

This complaint has been filed alleging maladministration in terms of Section 2(3)(i)(c) of the FTO Ordinance, 2000, for using irrelevant grounds for charging taxes on Polyurethane Resin.

2. The Complainant imported a consignment of Polyurethane Resin from Taiwan and filed G.D LDRY-HC-12776 dated 04.05.2010 claiming applicability of PCT heading 3909.5000 attracting Customs Duty @ 5%, Sales Tax @ 0%, Income Tax @1% and Federal Excise Duty @ 0%. According to examination report, three representative samples were drawn from the consignment in accordance with the law for laboratory test for confirmation of declared description and to facilitate correct determination of leviable duties and taxes. The Customs authorities determined that PCT heading 3208.9090 was applicable in the light of test report No.LDP/LAB/0609/10 dated 06.05.2010 attracting Customs

Duty @ 20%, Sales Tax @ 16%, Income Tax @ 3% and Federal Excise Duty @ 1%.

3. The Complainant submitted an application dated 12.05.2010 before the Deputy Collector Customs requesting for permission for warehousing of goods pending resolution of the dispute. However, without waiting for the decision of Customs, he cleared the goods next day (13.05.2010) on payment of leviable duties and taxes under protest. The Complainant filed this complaint mainly agitating the following grounds: -

- (i) He was a regular importer and industrial consumer of Polyurethane Resin imported from Taiwan dissolved in a mixture of organic solvents, i.e. MEK (Methyl Ethyl Ketone) and DMF (Dimethyl Formamide). The MEK was a volatile organic solvent having 30-35% contents by weight whereas DMF was a non volatile organic solvent having 35-45% contents by weight.
- (ii) DMF had been declared non volatile organic solvent by the Customs Laboratory Lahore and PCSIR Laboratory Lahore vide reports LDP(LAB)/1202 dated 21.07.2000 and ACRC/CMA/ 2000/3192 dated 15.08.2000 respectively.
- (iii) The technical literature of chemical confirms the volatile organic solvent content @ 35% whereas the Customs Laboratory report No.LDP/LAB/609/2010 dated 06.05.2010 had confirmed the volatile organic solvent more than 50%. The organic solvent in the consignment consisted of two chemicals i.e. DMF and MEK. The DMF was non volatile and MEK was volatile organic solvent as already confirmed by the laboratory reports of Customs and PCSIR. The technical literature has confirmed the volatile contents (MEK) @ 35%. Since according to literature the volatile content of organic solvent was less than 50%, the correct classification of imported goods was under PCT heading 3909.5000. The goods were wrongly classified under PCT heading 3208.9090 in view of vague laboratory report.
- (iv) The sample may be got tested again from the PCSIR laboratory for opinion whether the Polyurethane Resin was suitable for printing application and also for determination whether DMF was a non volatile or volatile organic solvent.

- (v) The Customs authorities have not explained as to why they have ignored the Lahore Dryport Laboratory report No.DP/LAB/1692/2000 dated 16.07.2000, PCSIR Lab report No.ACRC/CMA/2000/3192 dated 15.08.2000, assessment made by Lahore Customs in file No.V.CUS.Misc 212(I)/99 under PCT heading 3909.5000, decision of Karachi Customs House for classification under PCT heading 3909.5000 and different Bills of Entry of Karachi and Lahore cleared under PCT 3909.5000.
- (vi) The Appellate Tribunal in Appeal CA No.2467/LB/2001 had directed the Customs to make provisional assessment of goods under PCT heading 3909.5000 already cleared vide Bill of Entry No.6470 dated 28.01.2000 and refund the differential amount of Customs Duty and Taxes between PCT 3208. 9090 and 3909.5000. The FTO office in complaint No.1489-L/2003 directed the Departmental to implement to order of Appellate Tribunal.
- (vii) The Customs Department at Lahore and Karachi had allowed clearance of imported goods under PCT heading 3909.5000 whereas consignment in the present case was classified under PCT 3208. 9090 at the higher rate of duty.
- (viii) The Central Board of Revenue vide classification Ruling No.12 of 1999 classified Polyurethane Resin in solution where solvent accounts for more than 50% by weight of solution under PCT heading 3208. 9090. The word solvent in the classification ruling was substituted by the words volatile solvent after filing of Writ Petition Nos.10714/99 and 5930/2000 in the Lahore High Court Lahore. The Writ Petitions were disposed of after amendment issued by the FBR in the classification ruling. Therefore, the FBR had classified Polyurethane Resin imported in a medium of less than 50% volatile organic solvent under PCT heading 3909.5000.
- (ix) Polyurethane Resin was regularly classified under PCT heading 3909.5000 by SGS Pre-shipment Inspection Company in its reports in 1996-97 and these reports were accepted by the Customs.

4. The complaint was sent to the Secretary Revenue Division for comments in terms of Section 10(4) of the Establishment of the Office of

the Federal Tax Ombudsman Ordinance, 2000. The Customs response to the Complainant's contentions was as under: -

- (i) The Complainant has a remedy of appeal before the Collector (Appeals) under Section 193 of the Customs Act, 1969 against final assessment made under Section 80 of the Customs Act, 1969. The Complainant can avail remedy available under the law.
- (ii) The Complainant claimed classification under PCT heading 3909.5000 whereas goods were correctly classified under PCT heading 3208.9090 in the light of laboratory test report No.LDP/Lab/0609/2010 dated 06.05.2010 based on the samples drawn from the imported consignment.
- (iii) The laboratory report has stated that the samples consisted of modified Polyurethane dissolved in more than 50% volatile organic solvents. The goods have been correctly classified under PCT heading 3208.9090 in the light of lab report.
- (iv) The laboratory reports pertaining to the samples drawn from other consignment are not applicable to the present consignment as the Laboratory report regarding disputed consignment was available.
- (v) The Complainant cleared the consignment after payment of leviable duties and taxes and after Customs clearance there was no justification for contesting the classification.
- (vi) The only difference in respect of PCSIR and the Customs Lab report was regarding chemical nature of the solvent. The issue has been settled by the World Customs Organization (WCO) wherein they have determined the classification of Polyurethane Resin dissolved in DMF under heading 3208.9090.
- (vii) The FTO complaint No.1489-L/03 referred by the Complainant relates to delay in the implementation of the decision of Appellate Tribunal. The earlier complaint has no bearing on the present complaint.
- (viii) The classification dispute was on the basis of composition of the chemical. Hence no lab was competent forum to decide classification. The classification was to be made by Customs

with the help of technical literature, lab report and examination report of the goods.

- (ix) The SGS is a pre-shipment company whose opinion on classification has no force under the law.

5. At the time of hearing both the parties reiterated the arguments as contained in the complaint and comments received from the FBR. The DR stated that issue of classification of Polyurethane Resin had already been decided by the World Customs Organization (WCO) under PCT heading 3208.9090. The AR contended that Customs had been allowing clearance of Polyurethane Resin under PCT heading 3909.5000 even after issuance of WCO ruling, and so he was being discriminated against other importers. Being a regular importer, in the past this chemical was classified on the basis of percentage of volatile contents of the medium (organic solvent) in which it was dissolved. He stated that if the Polyurethane Resin was imported in a medium of more than 50% volatile organic solvent, it was classified under PCT heading 3208.9090 and if the percentage of volatile organic solvent was less than 50% then it was classified under PCT heading 3909.5000. The AR stated that according to technical literature the percentage of volatile organic solvent (Methyl Ethye Ketone) in the consignment was 30-35% and correct classification of imported goods was under PCT heading 3909.5000.

6. After carefully considering the contentions of the both parties, the following position has emerged:

- (i) The Complainant being an industrial consumer has been regularly importing the Polyurethane Resin. The clearing of imported goods under PCT heading 3909.5000 was disputed by Customs many times in the past, but allowed under the declared PCT heading on the basis of less than 50% volatile contents of organic solvents.
- (ii) According to the technical literature on the composition of imported product, it was Polyurethane Resin (30%), Dimethyl Formamide (35%) and Methyl Ethye Ketone (35%).

- (iii) According to report of PCSIR Laboratories Lahore No.ACRC/CMA/2000/3152 dated 15.08.2000, the organic solvent DMF was a non-volatile solvent.
- (iv) According to report of Customs Laboratory Lahore No.LDP/LAB/1692/2000 dated 16.07.2000 DMF was not considered "Volatile Organic Solvent" and it was taken as non volatile organic solvent.
- (v) The Federal Board of Revenue vide classification Ruling No.12 of 1999 classified the Polyurethane Resin under PCT heading 3208.9090 where organic solvent accounted for more than 50% by weight. The word solvent in classification ruling was substituted by the word volatile solvent after the filing of Writ Petitions No.10714/99 and 5930/2000 in the Lahore High Court Lahore. The Writ Petitions were disposed of after amendment in the classification ruling. Therefore, the FBR classified Polyurethane Resin imported in a medium of less than 50% volatile organic solvent under PCT heading 3909.5000.
- (vi) The Collectorate of Customs (Appraisement) Karachi decided the classification of Polyurethane Resin under PCT heading 3909.5000 and allowed clearance accordingly vide Bill of Entry ST-3020 dated 22.01.2000. The Collectorate of Customs Lahore examined the issue of classification vide file No.V.Cus/Misc/212(1)/98 and accepted classification under PCT heading 3909.5000.
- (vii) The Customs Laboratory Lahore in its report No.LDP/LAB/609/2010 dated 06.05.2010 reported that Polyurethane Resin was dissolved in more than 50% volatile organic solvents consisting of DMF and MEK. In this report organic solvent DMF has been taken as volatile solvent against the already reported findings of the same lab where it was reported as non volatile solvent. The PCSIR laboratory had also reported DMF as non volatile solvent. According to FBR ruling the classification of Polyurethane Resin was based on the percentage of volatile contents of organic solvent in which it was dissolved.
- (viii) The Pre-shipment Inspection Company SGS in its reports has been categorising the product under PCT heading 3909.5000, and the Customs accepted those certificates without any reservation despite the fact that classification was not the mandate of SGS.

- (ix) The Federal Board of Revenue referred the issue of classification of Polyurethane Resin (30%) dissolved in organic solvent DMF (70%) to World Customs Organization (WCO) who decided the classification under PCT heading 3208.9090 in May 2003. The Federal Board of Revenue circulated the classification ruling vide letter C.No.2(4)Tor-I/99 dated 26.07.2003. The Customs even after the receipt of classification ruling of WCO continued to allow clearance of consignments of Polyurethane Resin of different importers including the Complainant under PCT heading 3909.5000.
- (x) The WCO ruling was regarding classification of Polyurethane Resin (30%) dissolved in medium of organic solvent DMF (70%) whereas the composition of imported consignment was Polyurethane Resin (30%) dissolved in medium of organic solvents DMF (35%) and MEK (35%). According to FBR ruling and the Customs practice, the volatile contents of organic solvent were taken into consideration while deciding the classification. If the volatile contents were found more than 50% by weight, the goods were classified under PCT heading 3208.9090 and if volatile contents of organic solvent were less than 50% by weight, the goods were classified under PCT heading 3909.5000. The PCSIR Laboratory Lahore and Customs Laboratory in their reports had held the DMF non volatile solvent. However, the Customs report No.LDP/LAB/609/2010 dated 06.05.2010 reported the DMF as volatile solvent alongwith MEK ignoring the previous findings of the same laboratory and report of PCSIR laboratory where DMF was held non volatile solvent.
- (xi) While the FTO is not mandated to take up issues pertaining to classification, the objection of the FBR in this case is misconceived; the issue here is not of classification, but fair application of already in vogue classifications/practices and the available evidence on the subject in a consistent manner, not in an arbitrary fashion.

6. The WCO ruling was regarding classification of Polyurethane Resin (30%) imported in a medium of organic solvent DMF (70%) whereas in the disputed consignment Polyurethane Resin was imported in a medium of organic solvents DMF & MEK. In the Customs Laboratory report dated 06.05.2010 DMF has been taken as volatile solvent against the pervious findings of Customs Lab and the report of PCSIR

Laboratory. The Customs Laboratory report dated 06.05.2010 being a departure from the previous reports/practice should at the very least have been referred to PCSIR Laboratory for comparison, before finally deciding the classification issue.

Findings:

7. Maladministration in terms of Section 2(3) of FTO Ordinance, 2000, is established against the Department.

Recommendations:

8. FBR to-

- (i) direct the concerned officials to refer the matter to PCSIR Laboratory, as the result of the Customs Laboratory appears to be contrary to its earlier findings, the technical literature on the product, the explanatory notes to HS Code, WCO classification and the FBR ruling on the subject;
- (ii) constitute a committee for the determination of correct classification of the imported product considering PCSIR Laboratory report, the available evidence on the subject and affording opportunity of hearing to the Complainant;
- (iii) ensure that classification of imported goods is done in a consistent manner, including in the Complainant's case; and
- (iv) report compliance within 30 days.

(Dr. Muhammad Shoaib Suddle)
Federal Tax Ombudsman

Dated: 28-10-2010
Khalil Ahmad/my