

# FEDERAL TAX OMBUDSMAN SECRETARIAT

Regional Office, Lahore

## Complaint No.208/LHR/CUS(09)/476/2014

Dated: 15.04.2014\*

M/s M.A Land Transport Co. (Pvt) Ltd.  
Customs Bonded Carrier,  
Near Out Gate Lahore Dry Port,  
Mughalpura, Lahore.

... Complainant

### **V e r s u s**

The Secretary,  
Revenue Division,  
Islamabad.

... Respondent

Dealing Officer : Mr. Umar Farooq, Advisor  
Authorized Representative : Mr. Akram Nizami, Advocate  
Departmental Representative : Syed Jawad Ali Shah, DC, Customs

### **FINDINGS / RECOMMENDATIONS**

The complaint was filed in terms of Section 10(1) of the FTO Ordinance, 2000 (the Ordinance) alleging failure of Customs authorities at Lahore to settle a claim for payment of freight charges out of sales proceeds of auction of PVC scrap transported by the Complainant from Karachi Port to Lahore dryport for a consideration of Rs240,000/-.

2. Briefly stated, the facts of the case are that the Complainant, a Customs bonded carrier, transported a consignment of PVC scrap imported by M/s Glamour Moon Star vide container No. SUDU 5603048, from Karachi to Lahore dryport, vide TP No. 12951 dated 28.12.2011. This container was transshipped from Karachi to Lahore statedly for a consideration of Rs240,000/- as freight to be

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\*Date of registration in FTO Sectt.

paid after transport of goods to Lahore dryport. As the importer failed to get his goods cleared on payment of duty and taxes for reasons best known to him, the goods were auctioned for Rs813,750/- on the importer's own request dated 02.01.2013. The Complainant claimed payment of freight charges out of the sale proceeds of the impugned consignment in terms of Section 201(2)(b) of the Act. However, the Deptt neither settled the claim, nor replied the Complainant's letters. Non-payment of freight charges and non-responding and excessively delayed responding to the correspondence of the Complainant are alleged to be acts of maladministration in terms of Section 2(3) of the Ordinance.

3. The complaint was referred for comments to the Secretary, Revenue Division, in terms of Section 10(4) of the Ordinance. In response, the Deptt filed written comments denying the allegations vide letter C.No.V.CUS.Misc/CFS/02/Pt/Auction/2012 dated 03.04.2014. It was contended that payment of transport charges from Karachi to Lahore dryport out of sale proceeds of auction was not covered in the scope of Section 201(2)(b) of the Customs Act, 1969 (the Act).

4. A copy of the Deptt'l reply was provided to the AR who assailed it by stating that there were two types of charges namely freight and other charges under section 201(2)(b) of the Act. So, according to the AR, freight charges were different from other charges which related to storage and demurrage etc. 'Section 201(2)(b), specifically mentioned payment of freight before other charges, meaning thereby that freight had to be paid before clearance of other charges and even the Customs dues as mentioned in clauses (c) and (d) of Section 201(2) of the Act', the AR contended. He also contended that the custodian (Pakistan

Railways) had to receive other charges and not freight charges if the goods were not transported by Pakistan Railways.

5. The AR further stated that this case was brought by the Complainant to the notice of the Customs and Railways authorities at Lahore dryport before auction of the goods took place with the request that his rights should be safeguarded in the auction proceeds. He also referred to his letter dated 02.01.2013, addressed to the Customs authorities at Lahore. On 17.05.2013, the Complainant also wrote a letter to Pakistan Railways for the same purpose with a copy to the Customs authorities. The order for auction of the goods was passed on 04.07.2013. On 01.08.2013, the Complainant again addressed a letter to Pakistan Railways, requesting for payment of the freight charges in their capacity as custodian of the goods at Lahore dryport. Non-response by the Customs to the aforesaid correspondence was alleged as maladministration in terms of the Ordinance as it was tantamount to inefficiency and ineptitude.

6. Responding to the AR's submissions, the DR rejected the interpretation of Section 201(2)(b) of the Act by the AR as self-styled and incorrect and referred to Complaint No. 133/LHR/CUST(04)235/2012, filed by the same Complainant on the issue of freight charges where the FTO had decided the case as under:

“FBR to direct the concerned officials to:-

decide the claim of freight charges of the Complainant, through a speaking order after due opportunity of hearing, in accordance with law, within 21 days.”

That case was decided by the Deptt vide a speaking order rejecting his claim which was stated to be pending appeal before Collector of Customs (Appeals).

7. The DR further explained that sale proceeds of auctioned goods were dealt with in accordance with the provisions of Section 201 of the Act read with the Standing Order No.16/2001 dated 17.11.2001 issued by MCC Appraisement, Custom House, Karachi and Auction Rule No.62 of SRO 450(I)/2001 dated 18.06.2001. He contended that freight charges mentioned in clause (2)(b) of Section 201 of the Act related to the handling charges of auctionable goods during the process of auction. It did not include inland freight charges, which were incurred on the transshipment of goods from Karachi to Lahore dryport as these charges had to be paid by the importer to the transporter as per their mutual agreement or contract. Besides, the claim of Rs240,000/- was apparently abnormally higher than the normal freight charges of such goods', the DR contended. Regarding the allegation of non-response to the correspondence of the Complainant company, the DR intimated that reply was sent to the Complainant's application dated 01.08.2013, on 25.02.2014. 'Hence, no maladministration had occurred', the DR contended.

8. The complaint has been examined in the light of written and oral submissions of the parties and the documents on record. Non-responding or delayed responding to the public correspondence is a perennial problem with the tax departments being administered by the FBR. It not only constitutes maladministration under Section 2(3) of the Ordinance, but it also involves violation of the FBR's instructions issued vide Standing Order No.6(23)Coord/2011 dated 03.03.2011. Neglect of public correspondence by tax departments causes frustration and aggravates agony of the aggrieved taxpayers. The FTO Office has been particularly focusing on this long standing problem and recommending systemic redress of this abiding malaise. It, however, appears that this systemic problem is

defying redress. It, thus, continues to disappoint and estrange the aggrieved taxpayers with the dispute resolution capacity of the FBR and its tax departments.

9. As regards, the scope of the terms 'freight and other charges' used in the aforesaid provisions of the law, it is for the FBR to clarify as to whether or not the inland freight charges payable on goods which are lawfully imported into the country but abandoned by the importer at a port or dryport are covered by the aforesaid term used in Section 201(2)(b) of the Act. As the interpretation of law falls outside the FTO jurisdiction, the FBR may examine the issue in the light of contentions of the parties and make an appropriate clarification. If it is concluded that inland freight, if any, is payable from the sale proceeds in terms of Section 201(2)(b), a clarification may be incorporated in the Auction Rules. The problem also appears to be that the Auction Rules notified vide Chapter (V) of SRO 450(I)/2001 dated 18.06.2001 or the Customs Standing Order No.16/2001 dated 17.11.2001 do not contain any instructions for the Customs staff to include freight or other charges payable under Section 201(2)(b) of the Act in the reserve price of auctionable goods. Therefore, when it comes to payment of such freight charges out of sale proceeds of auction, the Customs authorities resist payment. The Deptt explained this limitation vide additional arguments submitted in its letter dated 28.05.2014 contending that inland freight charges cannot paid out of the sale proceeds as these charges are not included in the reserve price.

**Findings:**

10. Failure of the Deptt to respond to the Complainants letters/applications dated 02.01.2013 and 17.05.2013 and excessively delayed response of the Deptt to the Complainant's

letter dated 01.08.2013 as late as 25.02.2014 i.e. after almost seven months, constitute maladministration in terms of Section 2(3)(ii) of the Ordinance.

**Recommendations:**

11. FBR to-

- (i) examine and decide whether or not freight charges involved in inter-port transport of goods, transshipped by Customs bonded transporters, are payable in terms of Section 201(2)(b) of the Act, from sale proceeds of auction of goods other than confiscated goods, if not paid by the importers;
- (ii) if inland freight charges are held to be payable in terms of Section 201(2)(b), a suitable amendment be made in the Auction Rules notified vide Chapter-V of SRO 450(I)/2001 dated 18.06.2001. Procedure may also be added to the proposed amendment how best to determine the exact amount of freight charges payable by the importer;
- (iii) in case it is decided by the FBR that payment of inland freight charges is not covered by the scope of Section 201(2)(b) of the Act, the Customs authorities be directed to issue a speaking order to enable the Complainant to avail remedy of appeal under the Act; and
- (iv) report compliance within 45 days.

**(Abdur Rauf Chaudhry)**  
Federal Tax Ombudsman

Dated: -2014  
Qasim/my/MR