FEDERAL TAX OMBUDSMAN SECRETARIAT
REGIONAL OFFICE
KARACHI

Complaint No.233-KHI/Cust(70)/708/2009
Dated: 5.11.2009*

M/s. Sultex Industries ... Complainants

Versus

Secretary,
Revenue Division,
Islamabad. ... Respondent

FINDINGS/RECOMMENDATIONS

Dealing Officer	:	Mumtaz Ahmad, Advisor
Authorized Representative	:	Mr. Naeemuddin, Consultant
Departmental Representative	:	Mr. Salamat Ali, Deputy Collector (PaCCS)

The firm is manufacturer and exporter of textile made ups. Being aggrieved and dis-satisfied with alleged discriminatory treatment and due to intransigent attitude of customs authorities of Model Customs (PaCCS) and Model Customs Collectorate (Exports) for delay in payment of duty draw back (DDB) claims filed in terms of Rules 455 to 460 of Customs Rules, 2001, this complaint has been filed.

2. The claims relating to the years 2006-2009 shown pending till October 2009 (till filing of complaint) are as under:

1) Export Collectorate for the years 2006 and 2008 ... 7 claims involving Rs. 86,709
2) PaCCS Collectorate for the years 2006 to 2009 ... 78 claims involving Rs. 1,271,225

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* date of receipt in FTO Secretariat

on pursuing the refund claims from 1997 till 2005 but to no avail. In 2005 i.e. after seven years of filing the claims, the Complainants along with representatives of WAPDA held a meeting with Collector Customs Rawalpindi who informed that their claims were not traceable in the Air Freight Unit. Although the Complainants showed receipts of refund claims issued by Customs authorities at AFU Islamabad, yet the refund claims could not be traced. Consequently, the Complainants were asked to file all the 135 claims afresh, in the year 2005 which they accordingly did. In 2007, they again met the Collector of Customs, who informed that 41 of the duplicate claims were again missing. The Complainants once again filed 41 missing claims.

3. Inspite of the contract specific retrospectivity of the exemption granted by the Government to the import of goods under reference, and inspite of the fact that 135 claims were initially filed with original documents in time and the FBR had condoned the time limitation vide their letter No.1/26/Macls/95-PI dated 30.07.1997, the Assistant Collector of Customs, AFU, Islamabad rejected the claims through Order-in-Original No.20 of 2007 dated 31.10.2007.

4. Feeling aggrieved, the Complainants appealed this order before Collector Appeals. He too rejected the appeal through his Order No.144/2008 dated 26.02.2008.

5. The Complainants then filed second appeal before the Customs Appellate Tribunal, which accepted the appeal of the Complainants with the following observations:

> "We have heard both the parties and perused the record of the case at length. The appellants have produced receipts/documents showing the deposit of refund claims with the office of Additional Collector, AFU, Islamabad Airport, Islamabad which has not been denied by the respondents. The impugned order is set aside and the respondents are directed to sanction the refund claims, if legally admissible, on the basis of photocopies of the Bills of Entry provided the amount of Customs duties and other taxes sought refunds tallies with the entries in cash register and other records of the respondents maintained for official purposes. The respondents shall make payment of refund claims within sixty days of the receipt of this order or receipt of the requisite documents from the appellants/WAPDA, whichever is later."

6. Inspite of the aforesaid judgement dated 23.09.2008, the Customs authorities failed to sanction any of the refund claims. Thus the matter got inordinately delayed once again. After waiting for a period of over one year and wasting a number of visits to the AFU and the Model Customs Collectorate, Islamabad, the Complainants filed the subject complaint in the FTO Secretariat in October, 2009.

7. The FTO Secretariat sought a reply of the allegations in the aforesaid complaint from the Islamabad Customs through the Revenue Division/FBR. In their reply, the Customs authorities submitted that the Appellate Tribunal Islamabad had directed the Customs to sanction the refund claims, if otherwise legally admissible on the basis of photocopies of the Bills of Entry, provided the amount of Customs duties and other taxes sought for refund, tallied with the entries of cash register and other records maintained by the Collectorate for official purposes. The record was sent to the Treasury Officer for verification of the credit. The Customs Treasury Officer vide his Letter No.Acctts-Try/C.Verification/ 03/07/6534 dated 17.06.2009 reported that it was not possible for their branch to tally the record with scroll with Cash Nos as the relevant documents were not legible. This fact was explained by the Treasury Officer to the representatives of the Complainants. Subsequently the Complainant returned the documents, after rectification in June, 2009. The Treasury Officer vide his letter dated 17.06.2009 has so far verified the record in respect of 30 Bills of Entry. Subsequently, it was explained to the Complainant to produce requisite record to the Treasury Officer.

8. On 20.08.2009, the Complainants requested to settle the issue of refund by making adjustment against any liability of WAPDA as, according to Complainants, WAPDA would be the beneficiary of refund. The Customs accordingly obtained details of arrears of WAPDA computerised data warehouse of PRAL. Moreover, details of arrears of WAPDA were required from Recovery Sections of other Collectorates. The Complainants were also asked to provide NOC from WAPDA regarding adjustment of arrears. Another meeting dated 05.11.2009 was convened in the office of Additional Collector Customs AFU

wherein the Complainant promised to provide complete, legible record to Treasury Section without further delay, so that the issue could be resolved.

9. Parties were heard in the FTO Secretariat on 17.11.2009. Mr. Imran Chaudhary, Deputy Collector, appeared on behalf of the Islamabad Customs. Mr. Nauman Rafique, Resident Representative of the Messrs GBC accompanied by Mr. Ali Akhtar Shah, Executive Engineer WAPDA also attended the hearing. DR, Mr. Imran Chaudhary, stated that most of the hurdles in sanctioning the refund claims had been removed and that they had already completed the formalities in respect of 69 claims in accordance with the decision of the Appellate Tribunal. He expected that these claims would be sanctioned within another fortnight or so. He promised that the remaining 66 claims would be processed, verified and sanctioned by 20.12.2009.

10. On 20.12.2009 the position of the sanction and payment of 69 already processed claims and the present status of the remaining 66 claims was checked by FTO Secretariat from the DR. On that day, surprisingly, he reported nil progress. When asked why the Customs could not keep their word of settling the claims by 20.12.2009, he blamed the Resident Representative of Messrs GBC for changing his position in the case, which had, according to him, created some problems. As this stalemate was undesirable, the parties were called for hearing on 31.12.2009. During hearing, the Resident Representative of Messrs GBC and the Executive Engineer, WAPDA confirmed that they had not at all changed their position in the case. It was rather Islamabad Customs which was again creating problems about the liability of WAPDA towards the Customs Department by treating the liabilities of distribution companies as the liabilities of WAPDA. The Executive Engineer WAPDA clarified that those companies were not part of WAPDA, therefore, their liabilities of Customs duties could not be treated as the liabilities of WAPDA. After discussion, it was agreed by the DR as well as the representative of Complainants and WAPDA that only those liabilities will be taken for adjustment of refund as pertained to WAPDA itself. Any dues from the distribution companies not belonging to WAPDA would not be treated as the liabilities of WAPDA.

11. This unnecessary misunderstanding now out of way, the DR promised to settle the refund claims by 25.01.2010. The position was against checked from the DR on 26.01.2010. He informed that they had not yet received any intimation from other Collectorates about the Customs dues recoverable from WAPDA. Therefore, the refund claims of the Complainants were still pending unsettled. He however, admitted that Messrs GBC had confirmed on behalf of WAPDA that there were no Customs liabilities on WAPDA. The DR further informed that he would put up the file to the Collector for a decision on the 69 verified claims. He, however, stated that Messrs GBC were not interested in the remaining 66 refund claims. This position was not understandable why a beneficiary of refund would decline to exercise his right to refund. Accordingly the position was checked up from the Resident Representative of Messrs GBC. He denied having declined to pursue the 66 claims under reference. He rather confirmed that they were very keen to have their refund claims sanctioned entirely at the earliest.

Findings

12. The forgoing facts amply prove that the Customs authorities have grossly mishandled this case for the last over twelve years, initially by misplacement of all original claims and again 41 of the duplicate claims; the rubber stamping of an apparently unmaintainble rejection order issued by the Assistant Collector Customs by the Collector Appeals; non-implementation of the decision of the Appellate Tribunal in favour of the Complainants for frivolous reasons; and the misstatement of facts by DR in the FTO Secretariat. These are all acts of a worst form of maladministration on the part of Cusstoms. The entire case is a tell-tale of mischief repeated over and over again.

Recommendations

14. In view of the foregoing findings, it is recommended that FBR to -

i. direct the Collector Customs, MCC, Islamabad to get the 135 refund claims processed and sanctioned in accordance with the decision of the Appellate Tribunal within a period of 30 days;

ii. launch an investigation into the numerous acts of omission and commission on the part of Islamabad Customs ;

iii. proceed against the officers found guilty of maladministration/misstatement of facts in this case, including the DR; and

iv. This case be included as a case study in the training module of Customs training institutions.

15. Compliance be reported within 45 days.

(Dr. Muhammad Shoaib Suddle)
Federal Tax Ombudsman

Dated: 02-03-2010.

6-3-10