

THE FEDERAL TAX OMBUDSMAN SECRETARIAT
REGIONAL OFFICE, KARACHI

Complaint No.250/Khi/Customs/(73)/754/2009

* Date 03.12.2009

Messers Lucky Cement Limited,
6-A, Muhammad Ali Housing Society,
A. Aziz Hashim Tabba Street,
Karachi.

Complainant

Versus

The Secretary,
Revenue Division,
Government of Pakistan,
Islamabad.

Respondent

FINDINGS/RECOMMENDATIONS

Authorized Representative : Mr. M. Afzal Awan, Advocate
Departmental Representative : Syed Imran Bukhari, D.C
Dealing Officer : Mr. Saeed Akhtar, Adviser

The grievance of the Complainant is against imposition of penalty of Rs.5,000/- under the provisions of Section 156 (1)(1) of the Customs Act, 1969, for violation of Rule 389 of SRO 450(I)/2001 dated 18.06.2001 and inattention to the notice dated 18.11.2009.

2. The Complainant imported a consignment of PCS Discharge Comb QTY01 from China and filed documents for Customs clearance. At the time of

Date of receipt in FTO Secretariat

Customs examination Commercial Invoice and Packing list were not found lying inside the container attracting violation of Rule 389 of SRO 450(I)/2001 dated 18.06.2001. A penalty of Rs.5,000/- was imposed on the importer under the provisions of Section 156 (1)(1) of the Customs Act, 1969.

3. The main contentions of the Complainant included:

(1) The Rule 389 framed under SRO 450(1)/2001 dated 18.06.2001 is ultra vires of the Customs Act, 1969. It was the seller who was required to place the commercial invoice and packing list inside the container. Such conditions are invariably mentioned in the letter of credit issued by the Complainant. If the seller fails to place the invoice and packing list, the Complainant should not be punished for the violation as there is no failure or attempt, or malafide on his part.

(2) Rule 389 of SRO 450(I)/2001 dated 18.06.2001 is a confiscatory legislation/Rule. There is no mechanism provided under the Customs Act, 1969, where the Complainant being importer could be bound to place Packing list and Commercial invoice inside the container. The Rule is, therefore, confiscatory in nature, unfair, harsh, unreasonable and impossible to be implemented by the Complainant.

(3) Imposition of penalty under Rule 389 is contrary to Fundamental Rights guaranteed in Article 18 of the Constitution of Pakistan which has given right to every citizen to enter upon any lawful profession or occupation and to conduct any lawful trade or business. The imposition of penalty is hindering the importer to enter upon the lawful business, profession or occupation.

- (4) The implementation of Rule 389 is not a fool proof legislation. At times, the commercial invoices and packing lists are removed at the port of loading or at the port of examination despite the Complainant's clear instructions to the contrary. The Rule 389 is liable to be set aside as against the principles of natural justice.
- (5) The provisions of Customs Act, 1969, are implementable in the territorial waters of Pakistan. The Rules could not bind the seller to implement the provisions of law and hence it is ultra vires of the Act and beyond jurisdiction.
- (6) The Complainant has discharged his liability for compliance of Rule 389 of SRO 450(I)/2001 dated 18.06.2001 by incorporating the condition into the letter of credit established in favour of exporter supplying the goods.
- (7) The imposition of penalty may be declared illegal and an act of maladministration on the part of Respondent.

4. The complaint was sent to the Secretary Revenue Division, Islamabad, for comments in terms of Section 10(4) of the Establishment of the Office of FTO Ordinance, 2000. The Collector Model Customs Collectorate of Appraisement Karachi in its report received through the Revenue Division stated that there were complaints about evasion of revenue due to deliberate misdeclaration by submitting false documents. In order to curb malpractice and to protect the legitimate revenue, the Rule 389 was incorporated in the Customs Rules, 2001 notified vide SRO 450(I)/2001 dated 18.06.2001 under Section 219 of the Act. The importer, therefore, was bound to ensure placement of Commercial Invoice and Packing list of imported goods inside the container. As Commercial Invoice was not found lying inside the container

as required by the law and rules, penalty was imposed for violation after due process of adjudication. Implementation of law and rules, therefore, could not be termed as maladministration.

5. The Revenue Division in its report stated that the Federal Board of Revenue was empowered by the law to make rules under Section 219 of the Customs Act, 1969, for carrying out the purposes of the Act and if the Complainant thinks that there was any illegality, then he could challenge the same before the appropriate forum as this being the interpretation of law, the complaint could not have been lodged before the FTO Secretariat in view of provisions of Section 9(2)(b) of the FTO Ordinance, 2000. It was further stated that if the Complainant thinks the rules were ultra vires of the Customs Act, 1969 or against the Fundamental Rights guaranteed in Article 18 of the Constitution of Pakistan or rules framed by the FBR were confiscatory in nature, he was at liberty to approach the competent forum for the redressal of his grievances.

6. During the course of hearing both the parties reiterated the same arguments as contained in the complaint and reply received from the Revenue Division.

FINDINGS:

7. At the time of customs examination, the Commercial Invoice and Packing List was not found inside the container which attracted the violation of Rule 389 of SRO. 450(I)/2001 dated 18.06.2001. The Complainant was punished under the provisions of Section 156 (1)(1) of the Customs Act, 1969 and penalty of Rs.5,000/- was imposed. The Complainant while establishing the Letter of Credit specifically advised the supplier to place Commercial Invoice and Packing List inside the container but the supplier/exporter failed to

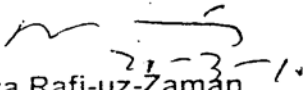
fulfill his legal obligation and violated a condition of the Letter of Credit. Moreover Rule, 391 of the aforesaid Rules has fixed responsibility of placing such documents in the manner prescribed in the Rules as an obligatory condition on the exporter shipping the cargo from overseas. The Complainant/importer, can be punished for the violation of Rule 389 of SRO. 450(I)/2001 dated 18.06.2001 only if connivance is established in this regard between the overseas exporter and the Pakistan importer.

RECOMMENDATIONS:

8. (i) Revenue Division to direct the concerned authorities to recall the order of imposition of penalty in terms of Section 195 of the Customs Act, 1969 and decide the matter afresh within 30 days providing opportunity of hearing to the Complainant to enable him to present evidence in support of his innocence.
- (ii) Compliance report be furnished within 10 days thereafter.

(DR. MUHAMMAD SHOAB SUDDLE)
Federal Tax Ombudsman

Dated: 17-03-2010
Khalid Ahmad /my


21-3-10
Mirza Rafi-uz-Zaman
(R) District & Sessions Judge
Advisor (Implementation & Monitoring,
Federal Tax Ombudsman Secretariat
Islamabad