

**THE FEDERAL TAX OMBUDSMAN SECRETARIAT**  
**ISLAMABAD**

**Complaint No. 95/ISD/CUS(05)/400/2010**

**Dated: 19.03.2010\***

Messrs Khyber Tea and Food Company  
Peshawar

...Complainant

V E R S U S

The Secretary  
Revenue Division  
Islamabad

...Respondent

**FINDINGS/RECOMMENDATIONS**

Dealing Officer : Mr. Yasin Tahir, Senior Advisor  
Authorized Representative : Mr. Fakhre Alam, Managing Partner  
of the Complainants Company  
Departmental Representative : Mr. Arbab Qaiser Hamid  
Deputy Collector Customs

The complaint under reference is directed against the alleged maladministration in the seizure of a consignment of 40 bags of black tea along with vehicle No.C-2341 by the Customs Mobile Squad-II of Peshawar Collectorate and subsequent confiscation thereof by the adjudicating officer. It is alleged that the Complainant had sold 40 bags (2720 Kgs) of black tea to a buyer in Swabi. He accordingly dispatched the consignment on a Bed Ford Truck bearing Registration No.C-2341 Peshawar on 05-12-2007. On its way to Swabi, the Customs Mobile Squad-II of Peshawar Collectorte interdicted the vehicle carrying the consignment under reference. Although the Complainant's representatives accompanying the driver produced a copy of Bill of Entry, the Sales Tax Invoice issued by Messrs SPATCOS of Karachi and the Sales Tax Invoice issued by the Complainant's company namely Messrs Khyber Tea and Food Company Peshawar, the Mobile Squad seized the goods and the vehicle. The Customs officials also destroyed the aforesaid documents and obtained affidavits of their choice from the Complainant's representatives and the driver of the vehicle and made out a case of smuggling. The adjudicating officer of Customs ignored the evidentiary material provided by the Complainant and confiscated tea and the vehicle vide Order-in-Original No. 78/2008

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\*Date of registration in FTO Secretariat



dated 11-04-2008. The vehicle was later allowed release on payment of redemption fine equal to 30% of the Customs value.

2. Being aggrieved by the above O-in-O, the Complainant filed an appeal with the Collector Appeals who issued an Order-in-Appeal No. 428/2008 directing the release of seized/confiscated goods on payment of redemption fine equal to 30% and penalty of Rs.70,000/-. Being aggrieved by the aforesaid Order-in-Appeal the Complainant filed second appeal before the Customs Appellate Tribunal Peshawar which remanded the case to the adjudicating authority vide Order-in-Appeal No. 395/PB/2008 dated 13.10.2008 with the direction for proper verification of the Sales Tax Invoice No.63 dated 01-12-2007 issued by Messrs SPACTOS of Karachi. The adjudicating officer however heard the Complainants, re-examined the facts without waiting for the verification report from Karachi and came to the conclusion that the Order-in-Original No. 78/2008 dated 11-04-2008 was in accordance with law and needed no modification.

3. Being aggrieved by this Order-in-Original No.79/2010 dated 26.02.2010, the Complainant filed appeal before Collector (Appeals) on the ground that the O-in-O was in violation of the direction of the Appellate Tribunal as it had been issued without a waiting the verification report about Messrs SPATCOS of Karachi's Sales Tax Invoice No.63 (The O-in-O was issued on 26-02-2010 whereas the verification report was issued subsequently on 09.03.2010). As this O-in-O was obviously unjust, unfair and arbitrary, the Complainant filed the present complaint under the FTO Ordinance, 2000 invoking FTO's jurisdiction on maladministration. Subsequently, he also invoked the jurisdiction of Collector (Appeals) against Order-in-Original No.79/2010 dated 26.02.2010 for decision on the merits of the case.

4. The complaint was referred for comments to the Secretary Revenue Division by the Customs at Peshawar. In reply, the Customs at Peshawar filed parawise comments. The Customs contentions, in brief, are that the consignment of tea was dispatched for Swat and not for Swabi as alleged in the complaint. Besides, the persons accompanying consignment did not produce any documents like copy of GD or the supplier's Invoice etc. They also on the spot claimed the ownership of the consignment and offered to pay duties and taxes. These facts were duly narrated in affidavits of the persons accompanying the driver. No maladministration was therefore involved, according to the Customs authorities of Peshawar Collectorate.



5. After receipt of parawise comments of the Customs, the parties were heard in the FTO Secretariat, Islamabad. The AR contended that their goods were seized and confiscated with malafide. He stated that such injustices were being meted out to them every now and then. He informed that since last 10 years, 19 consignments of tea were similarly interdicted by the Customs of various Collectorates during their inland transport in the country. In 15 out of 19 seizures, either the adjudicating authorities or the appellate authorities released the goods after due verification of their import and Sale Tax documents. In four cases, however, they paid duties and taxes for urgent release of the seized tea to fulfill their business commitments. These facts would show that these seizures finally proved to be unlawful and unmaintainable.

6. The DR, on the other hand, stated that the Complainant was misusing the import documents and the Sales Tax invoices to cover inland transport of smuggled tea. Explaining the modus operandi of the Complainant, the DR stated that smuggled tea was transported usually during the night. If it was interdicted by the Anti Smuggling Squads, the persons accompanying the driver of the transport vehicle would claim the ownership and offer to pay duties and taxes to buy time for the Complainant to arrange documentation to subsequently show that their import was legal and lawful. They also would provide affidavits on the spot to prove their ownership. The exact name and address of the buyer of the tea would not be disclosed for fear of exposure of bogus documentation. After some days when the Complainant was ready with the manipulated documentation, he would appear on the scene; claim ownership; present the manipulated documents; file counter affidavits and finally get away with it usually at the appeal stage.

7. In the mean time, the Collector Appeals has heard the parties and accepted the Complainant's appeal setting aside the Order-in-Original No. 79/2010 dated 26-02-2010, directing release of the vehicle and the tea to the rightful owners.

8. Although the Order-in-Appeal has redressed the grievance of the Complainant, the element of maladministration needs to be looked into by this office. As regards the allegations of the Complainants and counter allegations of the Customs narrated vide para 5 and 6 respectively, they could not produce any independent evidence to substantiate these allegations. However, one thing is evident. If 15 out of 19 interdictions have been found unmaintainable by the adjudication or appellate authorities, the Customs Department needs to launch an in-house investigation into the phenomenon in order to put an end to these kinds of

interdictions which do not stand the scrutiny of Collector (Appeals) and the Appellate Tribunals. As these cases have been failing time and again, the FBR and the Directorate General of Intelligence and Investigation need to launch an in-depth inquiry to find out why such interdictions, if true, are failing again and again.

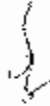
9. In the present case, however, the failure of the adjudicating officer to implement the Appellate Tribunal's directive to verify the Sales Tax Invoice No.63 issued by Messrs SPATCOS of Karachi, and deciding the case without obtaining the verification report would indicate willfulness, neglect and inefficiency on the part of the Adjudicating Officer.

**Findings:**

10. In view of the foregoing discussion, while the aspect of maladministration on the part of the seizing squad of Customs needs to be adequately investigated through an in-depth inquiry by FBR/Director General of Intelligence and Investigation, the willfulness, neglect and inefficiency with which the adjudication authority decided the case vide O-in-O No.79/2010 dated 26.02.2010 without waiting for verification of the Sales Tax Invoice No.63 certainly constitutes maladministration as defined under Section 2(3) of the FTO Ordinance, 2000.

**Recommendations:**


11. FBR to-
- (i) hold an in-depth inquiry into the entire phenomenon of 19 cases interdicted by the Customs anti-smuggling staff during the past about 10 years in the light of allegations of the parties as reproduced in paragraph 5 and 6 supra;
  - (ii) ask the adjudication officer to explain his failure to adequately implement the Appellate Tribunal's decision to verify Sales Tax Invoice No.63 issued by Messrs SPATCOS of Karachi; and
  - (iii) report compliance within 60 days.



(Dr. MUHAMMAD SHOAIB SUDDLE)  
Federal Tax Ombudsman

Dated: ..... -2010  
A.H/M.R/A.H/M.R

**ATTESTED**

  
Sh. Muhammad Siddiq Tabassum  
Advisor (Implementation & Monitoring)  
Federal Tax Ombudsman Secretariat  
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