

BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

Complaint No.511/ISB/CUS/2021

Dated: 10.03.2021* HQs Islamabad

M/s Gadoon Synthetic Mills Ltd.,
H. No.566, St. 13, G-10/1,
Islamabad.

... Complainant

Versus

The Secretary,
Revenue Division,
Islamabad.

... Respondent

Dealing Officer : Dr. Arslan Subuctageen, Advisor
Appraising Officer : Mrs. Sarwat Tahira Habib, Advisor
Authorized Representatives : i. Mr. Ihsanullah Chaudhry, CEO
ii. Khawaja Aamir Ahmad, Advocate
Departmental Representatives : i. Mr. Rizwan Salabat, Addl. Collector
ii. Mr. Shoukat Hayat, Secretary (Judicial)

FINDINGS/RECOMMENDATIONS

The complaint was filed against the Collectorate of Customs, Islamabad, under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) for implementation of the Alternative Dispute Resolution Committee, (ADRC)'s Recommendations dated 17.01.2008.

2. Briefly, the Complainant was engaged in the business of manufacturing of polypropylene yarn and was granted manufacturing bond license in July 1993, but was not renewed after 1995 which led to closure of the mill. The Complainant filed application dated 14.06.2006, under Section 195-C of the Customs Act, 1969 (the Act), for settlement of dispute through ADRC. Accordingly, FBR constituted a Committee and concluded the matter but no order was passed by

* Date of registration in FTO Secretariat

FBR for the last so many years. The Complainant filed another application dated 05.07.2019, for implementation of ADRC's recommendations dated 17.01.2008, but failed to evoke any response. The Complainant, therefore, filed a complaint before this Office, which was rejected for want of jurisdiction as the matter was subjuice before the Hon'ble Islamabad High Court and Lahore High Court, Rawalpindi Bench. The Complainant filed representation against the FTO's Findings, before the Hon'ble President of Pakistan, who set aside FTO's Findings with the directions to process, enquire and deal with the complaint in accordance with the law after affording due opportunity of hearing.

3. The proceedings were initiated afresh. During hearing, the Complainant, his AR and the DRs averred to their written arguments. The AR stated that the application was filed before the ADRC in 2006, as per Section 195-C(4) of the Act, the FBR can pass an order as it deems appropriate, but no such orders were made and communicated to the Complainant. The Complainant stated that though he had assailed two Customs references before the Hon'ble High Courts but the specific matter of implementation of ADRC's recommendations raised before this Office has not been challenged in Customs Reference No.2 & 9/2012.

4. The ADRC recommended in para No.12 of its Recommendations dated 17.01.2008, that:

- "(i) the stock position of raw materials and finished goods be rectified in accordance with the admissions and concessions made by the representatives of the Customs Department specified in paragraph 11 above.*
- (ii) The liability of duties and taxes payable by the petitioner be re-calculated in respect of raw materials and finished goods in the light of rectifications made in the stock.*

- (iii) *The Income Tax and Sales Tax be recovered from the petitioner's company after allowing lawful exemptions, if admissible to the Company.*
- (iv) *The petitioner case is certainly that of hardship, particularly because of demise of its original owner. The Committee, therefore, further recommends that the outstanding government dues may be recovered in the following manner to provide relief to the Company:*
- (a) *The stock of raw materials and finished goods in hand be disposed of under supervision of the officers of the department and, in the first instance, the government dues recovered therefrom and for the balance liability, if any be recovered in easy for the balance liability, if any be recovered in easy installments as may be determined by the Collector of Customs.*
- (b) *The penalty for any default, surcharges and additional duties and taxes may be remitted as a special case in the light of the amnesty allowed in the Budget 2007-08."*

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5. The Secretary (Judicial), FBR/DR stated that no order under Section 195-C(4) of the Act was passed by the FBR. The Additional Collector, Collectorate of Customs, Islamabad/DR stated that the Collectorate had already asked FBR, vide letter dated 22.10.2020, that Board may accede to the request of the licensee to the extent of implementation of recommendations of ADRC dated 17.01.2008, however, the request for constitution of second ADRC being not only illegal but unreasonable may be declined. Two references before Hon'ble Islamabad High Court, Islamabad and Lahore High Court, Rawalpindi Bench, are although on the issue which has been taken up by the ADRC, however, in both the reference applications, matter pertaining to implementation of ADRC's decision has not been challenged or referred to.

FINDINGS:

6. Failure of the FBR to pass any order on the ADRC's Recommendations dated 17.01.2008, as per Section 195-C(4) of the Act, constitutes maladministration in terms of Section 2(3) of the FTO Ordinance, 2000.

RECOMMENDATIONS:

7. FBR to-

- (i) pass orders on ADRC's Recommendations dated 17.01.2008, in the case of M/s Gadoon Synthetic Mills Ltd as per law;
- (ii) direct the Collector, Collectorate of Customs, Islamabad, to implement the subject order as per law;
- (iii) Make necessary changes in the Rules made under Section 195-C of the Customs Act 1969, giving a specific time limit by which, the Board may make orders upon the recommendations of the ADRC committee; and
- (iv) report compliance within 45 days.

(Dr. Asif Mahmood Jah)
(Hilal-i-Imtiaz) (Sitara-i-Imtiaz)
Federal Tax Ombudsman

Dated: 9/2/ 2022
MRga

Certified to be True Copy

10-2-2022
Registrar
FTO Secretariat
Islamabad