THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

COMPLAINT NO.0875/LHR/CUST/2024

Dated: 12.02.2024 * RO Lahore

Medical Superintendent,
Sir Ganga Ram Hospital,
Lahore ... Complainant

Versus

The Secretary,
Revenue Division,
Islamabad ... Respondent

Dealing Officer	:	Ms. Adila Rehman, Advisor
Appraising Officer	:	Dr. Arslan Subuctageen, Advisor
Authorized Representatives	:	Mian Abdul Sattar Mr. Ijaz Ahmad Sheikh
Departmental Representatives	:	Ms. Hijab Zahra, D.C Customs (zoom) Ms. Umme Kalsoo, D.C Customs
From Karachi Gateway Terminal	:	Mr. Najeeb-ur-Rehman Abbasi, Advocate Syed Imtiaz Hussain Shah from KPT

FINDINGS/RECOMMENDATIONS

This Complaint was filed against Collectorate of Customs, Appraisement-East, Custom House, Karachi, in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000, for refusal to honour Delay and Detention Certificate (DDC) by the Traffic Manager, Karachi Port Trust/PICT, Karachi.

2. Precisely, facts of the case are that the Complainant was one of the oldest and biggest Hospitals in Lahore serving humanity before creation of Pakistan and providing treatment to all admitted patients as part of Government Policy particularly to mother and child. As per policy of Governments' Health Department, to provide better health and additional facilities, in consisting of approximately 550 beds along with other necessary facilities, a big project by the name of "Mother and Child Hospital" was constructed which was now in operation, MS Project Director of Block Sir Ganga Ram Hospital Lahore imported INCUBATORS (40 UNITS), COLOR DOPPLER 17 UNITS for better

*Date of registration in FTO Sectt.

treatment of mother and child. The Complainant's consignment was necessary and useful for providing free treatment to the public at large and particularly for mother and child. The imported goods were lying at Karachi Port Trust/PICT since January, 2023 & September, 2023 due to non-availability of the funds to pay the demurrage & detention charges with limited financial resources. It would not be out of place to mention here that the consignment of goods were necessary for functioning of the health facility provided by Sir Ganga Ram Hospital including MCH Block. On Complainant's request vide No.916/G.R dated 02.02.2024 the Karachi Port Trust/PICT verbally refused to release the consignment without payment of demurrage & detention charges. The Complainant prayed that the Department be directed to force the aforesaid authorities to waive of the demurrage & detention charges on these shipments and release them on urgent basis.

3. The Complaint was referred to Secretary, Revenue Division for comments, in terms of Sections 10(4) of the FTO Ordinance, 2000, read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act, 2013. In response thereto, the Collector, Collectorate of Customs Appraisement-East, Customs House, Karachi, vide letter dated 26.02.2024 submitted parawise comments, stating therein that the Complainant imported two consignments of Incubators (40 Units) and Color Doppler (17 units) vide GD No.KAPE-HC-24362-06-10-2023 and KAPE-HC-137850-21-03-2023. The subject GDs were examined in terms of Section 198 of the Customs Act, 1969 and Rule 435 of Customs Rules, 2001 and assessment was made under Section 80 of the Customs Act, 1969 read Rule 438 of Customs Rules, 2001, which was legal procedure required for the clearance of the goods Accordingly, the goods were released by the Customs as per law. It was pertinent to mention that assessment had been completed in GD No.KAPE-HC-137850-21-03-2023 on 06.04.2023 but the Complainant had not accepted the assessment and claimed that item No.5 and 6 containing

"High Density Thermal Paper Roll" was short shipped in said consignment. Re-examination of the said consignment was created on 06.06.2023 in WeBOC system on the basis of importer's claim for short shipment. Accordingly, assessment was made after re-examination on 09.06.2023 and the delay between 06.04.2023 to 06.06.2023 was on importer's end. Similarly, regarding GD No.KAPE-HC-24362-06-10-2023, the Complainant was asked to provide DRAP clearance certificate, which was mandatory condition on import of "Incubators" as per Serial No.33 of Part-VI of IPO 2022, but the same was scanned by the importer on 13.12.2023 in WeBOC system after lapse of two months and the delay was on importer's end due to non-submission of DRAP certificate timely. Moreover, this Collectorate had not verbally refused to issue demurrage and detention waiver certificate as alleged by the importer. The Complainant had filed the said complaint on 03.02.2024 in FTO just after one day of his referred letter No.916/G.R dated 02.02.2024. However, keeping in view, the nature of equipment and noble cause of said importer for serving common man particularly poor people, the Collectorate had issued demurrage and detention certificate for the time period, in which, subject consignments were under Custom clearance. The Department prayed for dismissal of the Complaint.

4. Mr. Najeeb-ur-Rehman Abbasi, Advocate submitted parawise comments on behalf of M/s Karachi Gateway Container Terminal, Karachi Port (Erstwhile PICT), stating therein that the complaint was about entertaining the delay and detention certificates issued by the Customs Authorities in terms of Section 14A(2) of the Customs Act, 1969. The two different consignments concerning GD No.KAPE- HC-24362 dated 06.10-.023 and GD No. KAPE-HC-137850 dated 21.03.2023, out of which one consignment, concerning GD No. KAPC-HC-24362 dated 06.10.2023 had already been cleared/gated out on 13.01.2024 after payment of demurrage charges amounting to Rs.0.977 million. The other consignment concerning GD No.KAPE-137850 dated

21.03.2023 was still lying at the seaport and sum of Rs.0.238 million had to be paid as demurrage charges to M/s KGTCL (the Terminal Operator). The Terminal Operators had filed a CPLA No.426/2020 before the Hon'ble Supreme Court of Pakistan against the Judgment of Hon'ble High Court of Sindh, Karachi passed in Constitutional Petition No.4867/13, questioning the vires of Section 14A of the Customs Act 1969, as inserted through Finance Act, 2013 while seeking the Hon'ble Supreme Court's intervention to declare the same ultra vires and without legal authority. The Hon'ble Supreme Court of Pakistan had suspended the impugned judgment of Hon'ble High Court of Sindh, Karachi and had been pleased to pass an interim order, reproduced verbatim hereunder:-

> "The Petitioners shall hence forth submit to the relevant customs authority a monthly statement of account of the amount of demurrage received by them from the various parties and shall continue to do so till further orders.

In view of the Hon'ble Supreme Court's order dated 03.03.2020 in CPLA No 426/2020, the complaint was not maintainable and be dismissed.

5. During the hearing, the ARs, DRs and representative of M/s KGTL reiterated what had been mentioned in the written Complaint and parawise replies.

6. Arguments of the ARs and averments of the Complaint/reply have been perused. It is evident that the Complainant's imported goods were necessary and essential for providing free treatment to the public at large and particularly for mother and child. The imported goods were lying in Karachi Port Trust/PICT since January, 2023 & September, 2023 due to non-availability of the funds to pay the demurrage & detention charges with limited financial resources. It is also evident that the actual sufferers in this case are no one else but the patients and the poor people of Pakistan who get treatment from public sector hospitals of the Country. Some of those poor patients have also approached the FTO office for an early release of the consignments so that they could get medical treatment at the Hospital. Be as it may, the provisions of Section

14A(2) of the Customs Act, 1969, are binding on the shed operator/ Karachi Port Trust/PICT.

7. The contention of the representative of M/s KGTL that the terminal operators have filed CPLA No.426/2020 before the Hon'ble Supreme Court of Pakistan against the judgment of the Hon'ble High Court of Sindh at Karachi passed in CP No.4867/2013, wherein the Hon'ble Supreme Court suspended the operation the impugned judgment of the Hon'ble High Court is not convincing on the following grounds:

- The Terminal Operators challenged the vires of Section 14(A), as inserted by Finance Act, 2013 in the Hon'ble Supreme Court of Pakistan vide Civil Petition No.426/2020 where the Hon'ble Supreme Court granted leave and ordered that "Impugned judgment shall remain suspended till next date of hearing" while did not grant any stay/suspend the law as envisaged u/s 14(A) of the Customs Act, 1969 as amended through Finance Act, 2013.
- In the Islamabad High Court in Islamabad W.P. No. 2895/2022 the relevant citations were provided as "leave refusing/granting orders are not considered as precedents; <u>until the law is held to be ultra vires, it should have its normal operation</u>; reliance is placed on the cases titled "Qasim International Container Terminal Pakistan" Ltd v. Federation of Pakistan through Secretary and others" [2020 PTD 1952 (SHC)], "Messrs Amin Fabrics Ltd., Kotri vs The Commissioner, Aiwan-e-Mehnatkash, Karachi and another" [1998 PLC(CS) 694], "Muhammad Tariq Badr and another vs National Bank of Pakistan and others" [2013 SCMR 314], "Federation of Pakistan v. Aitzaz Ahsan and another" [PLD 1989 SC 61], "Aijaz Ali Khan Jatoi v. Liaquat Ali Khan Jatoi" [1993 SCMR 2350], "Messrs Elahi Cotton Mills Ltd and others vs. Federation of Pakistan through Secretary M/o Finance, Islamabad and 6 others'" [1997 PTD SC 1555], "Messrs Khurshd Soap and Chemical Industries (Pvt) Ltd through Sheikh Muhammad Ilyas and others v. Federation of Pakistan through Ministry of Petroleum and Natural Resources and others" [PLD 2020 SC 641], "Messrs Sui Southern Gas Company Ltd and others v. Federation of Pakistan and others" [2018 SCMR 802], "Tara Chand and others v. Karachi Water and Sewerage Board, Karachi and others" [2005 SCMR 499] (PLD 1989 SC 61 & 1993 SCMR 2350.
- Even otherwise, Section 14(A) of the Customs Act was actually inserted as far back as 14.06.1984 through Finance Ordinance, 1984 (Annexed as K), reported as PTCL 1984 St. 375. Since then the Section 14(A) was read as *"Any agency or person managing or owning a customs-port, a customs-airport or a land customs station shall provide at its or his own cost adequate accommodation to customs staff for offices, examination of goods, detention and storage of goods and for other departmental requirements to be determined by the Collector of Customs"* and as far back as 18.06.2001 these words were added *"and shall pay utility bills, rent and taxes in respect of such accommodation."* The petitioners only challenged the constitutionality of Section 14(A) of the Customs Act, 1969, as amended through Finance Act, 2013 while the original provisions of law as enumerated in Section 14(A)

above existing before Finance Act 2013 is not even challenged at any forum/court of law. Even before the Finance Act 2013 it was explicitly mentioned that the port terminal (QICT) "shall provide at its or his own cost adequate accommodation to customs staff for offices, examination of goods, detention and storage of goods". Hence, even custom Rule 556(a)(iv) stood notified vide SRO.82(I)/2008 dated 23.01.2008, reported as PTCL 2008 St. 1952(ii) which is even before the Finance Act 2013 while the said Custom Rule and the SRO are not even challenged before any court.

- In a similar case, after the interim order of the Hon'ble Supreme Court dated 03.03.2020, the Hon'ble Sindh High Court in C.P. Nos.D-6145 to 6150 of 2018 (Annexed L) was pleased to order on 08.03.2021 "all these petitions also merit no consideration and are hereby dismissed for the reasons so assigned hereinabove by the learned Division Bench of this Court in the case of Qasim International Container Terminal Pakistan Limited (supra)." Since there is no bar on implementation of the law u/s 14(A) of the Customs Act vide judgment of the Supreme Court hence the Hon'ble SHC in this case dismissed the petitions.
- In a similar case, after the interim order of the Hon'ble Supreme Court dated 03.03.2020, the Hon'ble Sindh High Court in C.P. Nos. D-2385 of 2017 a/w CP No. D-4861/2013, 4862/2013, 4863/2013, 4907/2013, 777/2014, 7476/2018, C.P. D-4128/2019 & 6547/2019 (Annexed as M) was pleased to order on 04.10.2021 "The only defence today taken by Mr. Ameer Uddin that on assailing the referred judgment before Hon`ble Supreme Court the same has been suspended. Be that as it may, we are of the view that the private terminal operators do not enjoy the powers of adjudication and these were the reasons assigned while the referred petition was disposed of. The private terminal operators are bound to follow delay detention certificate as issued by the customs officials unless the private terminal operators, in law, are equipped with powers to re-adjudicate such certificate viz-a-viz their demands which was not permitted in the referred judgment, hence, in the line with the referred judgment, these petitions are allowed. The respondents are directed to honour delay detention certificate in accordance with law." Since there is no bar on implementation of the law u/s 14(A) of the Customs Act vide judgment of the Supreme Court hence the Hon'ble SHC in this case did not sustain the defense of Mr. Ameer Uddin with reference to the judgment of Hon'ble Supreme Court while allowing the petitions and directing the respondents to honour delay detention certificate.
- In a similar case, after the interim order of the Hon'ble Supreme Court dated 03.03.2020, the petitioner M/s Pakistan International Airlines Corporation had filed W.P. No. 2895/2022 in Hon'ble Islamabad High Court and challenged the vires of Section 14A(2) of the Customs Act, 1969. The learned counsel for the petitioner has laid great stress on the question whether the provisions of Section 14A of the Act could have been inserted through money bill. In this regard this Court concurs with the view/reasoning of the learned SHC in the case reported as Qasim International Container Terminal Pakistan LTD. [2020 PTD (SHC) 1952]. The Court vide Order dated 07.12.20022 held that on the touchstone of the above principles and law, the learned counsel could not make out a case for striking down the vires of section 14A(2) of the Act. The Hon'ble Court dismissed the petition of PIA and allowed the petitions of importers.

8. In an identical case, the Hon'ble President of Pakistan, in a representation filed by M/s Gerry Dnata (Pvt.) Limited against the FTO's recommendations in Complaint No.7546/ISB/CUST/2023, had rejected the representation vide Order Rep No.44/FTO/2024 dated 04.03.2024 and upheld the FTO's recommendations.

9. In view of above, Collectorate should re-issue Delay and Detention Certificate from January 2023 till date instead of earlier issued DDC.

Findings:

10. Department's failure to give full benefit to the Complainant in the issuance of Delay and Detention Certificates and also failure to enforce its own Delay and Detention Certificates from its licensee KGTL, in violation of the provisions of Section 14A(2) ibid, falls under the ambit of maladministration as defined under Section 2(3)(i)(a),(b) and (ii) of the FTC Ordinance, 2000.

Recommendations:

11. FBR to:

(i) direct Collector, Collectorate of Customs, Appraisement-East, Customs House, Karachi, to re-issue Delay and Detention Certificate w.e.f. January 2023 till date and immediately coordinate with KGTL and get the Delay and Detention Certificate under Section 14A(2) of the Customs Act, 1969 implemented within 07 days and release the goods. In case of non-compliance, the Collector shall initiate the necessary proceedings, as per law; and

(ii) report compliance within 20 days.

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

Dated: 20.5.2024
K.A

Approved for reporting