

**BEFORE  
THE FEDERAL TAX OMBUDSMAN  
ISLAMABAD**

**Complaint No.1328/LHR/CUST/2022**

Dated:08.04.2022 RO Lahore

**M/s. Sardar Iqbal Textile ,**  
House No.19, Street No.1,  
Cavalry Ground, Lahore Cantt ... Complainant

**Versus**

The Secretary,  
Revenue Division,  
Islamabad. ... Respondent

Dealing Officer : Dr. Sarfraz Ahmad Warraich, Advisor  
Appraisalment Officer : Dr. Arslan Subuctageen, Advisor  
Authorized Representative : Mr. Muqsit Mushtaq, Advocate  
Departmental Representatives : Mr. Fayyaz Rasool Maken, Collector,  
Collectorate of Customs (Appraisalment),  
East, Karachi.  
Mr. Mahmood-ul-Hassan, Addl. Collector,  
Collectorate of Customs (Appraisalment), East,  
(through zoom)

**FINDINGS/RECOMMENDATIONS**

The Complaint was filed against Collectorate of Customs Appraisalment (East), Karachi, in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance), for illegally conducting auction of imported goods, without proper intimation to Complainant.

2. Precisely, facts of case, as narrated in Complaint, are that a USA based customer, M/s. A One Enterprises, contacted Complainant for alteration, resizing and removal of defects, in consignment; to be exported, comprising of men, women garments & apparels. Deal was settled between parties for repairing cost of 0.75 USD per piece. In pursuance of deal, Complainant imported men & women wearing

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\* Date of registration in FTO Sectt.

apparels (shirts) for alteration, resizing and removal of defect, through two bills of lading, bearing No. 0E180053 and No.0E180050, consisting of five (5) containers at Karachi Port. Complainant filed Goods Declaration (GD), bearing No. KEAP-HC-668 dated 24.03.2021 and GD No. KEAP-HC723 dated 03.05.2021 for release of two and three containers respectively. Complainant filed an application for permission to release said consignments against indemnity bond, without payment of duty and taxes, being imported temporarily. During processing of report, indemnity bonds amounting to Rs.8.203 million, Rs.11.639 million and Rs.12.983 million were demanded. During above proceedings, Complainant came to know that consignments were auctioned on 03.07.2021 and 07.07.2021, despite the fact that proceedings on Complainant's application, with regard to submission of indemnity bonds, was pending and Collectorate, accordingly, ordered deposit of indemnity bonds on 15.07.2021, although, at that time, consignments had already been disposed of and auctioned without giving any notice or intimation to Complainant as required under Section 180 of the Customs Act, 1969. Complainant wrote multiple letters to Department for redressal of matter but they paid no heed. Department's response was in sheer violation of procedure as laid down under Section 180 of the Customs Act, 1969 as well as against the spirit enshrined in Article 9, 24, 25 of the Constitution of Islamic Republic of Pakistan. Department had taken indemnity bonds from Complainant and gave assurance for delivery of consignments after completion of due process but, on the other hand, goods/consignments of Complainant were illegally auctioned with complete disregard to rights of Complainant. Complainant demanded value of temporally imported auctioned goods but Department did not listen request of Complainant and

refused to pay for goods but rather petty amount was offered which was not acceptable to Complainant. Complainant had filed a request letter to FBR for taking strict action against illegal and unlawful act of Department but to no avail. Complainant, out of curiosity and a wild attempt to retrieve and recover loss, knocked door of Honorable Sindh High Court through C.P No.745/2022 against the Department where Honorable Bench guided Complainant to approach redressal from Federal Tax Ombudsman, therefore, Complainant withdrew C.P, in pursuance of Court's Order dated 11.02.2022, to come before FTO. Complainant prayed that acts of the Department may be declared as illegal and excessive of their jurisdiction, arbitrary and fanciful, hence not sustainable in law and of no legal effect. Further prayed that Department be directed to pay loss of Complainant in the shape of American Dollars, amounting to USD 1307688.3, being purchase price of goods/consignment, auctioned unilaterally and without service of notice upon Complainant.

3. The Complaint was referred to Secretary Revenue Division, for comments, in terms of Section 10(4) of the FTO Ordinance, read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act, 2013. In response thereto, Collector of Customs (Appraisalment), East, Custom House, Karachi, vide letter dated 12.05.2022, submitted parawise comments, stating therein that issue, highlighted in instant complaint, was raised by Complainant in C.P No. D-745/2022 which stands disposed of by Honorable High Court vide Order dated 11.02.2022. Without prejudice, instant complaint was time barred, in terms of Section 10(3) of FTO Ordinance 2000 as same was filed after expiry of statutory period of six months. Further submitted that subject goods of lot number, i.e. S-128/March, 2021

were auctioned and delivered to successful bidder on 07.07.2021, vide Delivery Order No. 6546. Lot No. S-131/March, 2021 was auctioned and delivered to successful bidder on 03.07.2021, vide Delivery Order No. 6538, therefore, considering provisions of Section 10(3) of the FTO Ordinance, 2000, subject Complaint was time barred and liable to be dismissed on this account. Further stated that considering provisions of Section 201 of the Customs Act, 1969, refund application, for sale proceeds, was ought to be filed between the period from July, 2021 to December, 2021, however, record available with Collectorate's Auction Section, reflects that Complainant never approached for refund of any sale proceeds, within the stipulated period, as prescribed under Section 201 of the Act. Despite the issuance of repeated letters dated 10.02.2022, 16.02.2022 and 26.02.2022, even after expiry of six (6) months' period, no application, for sales proceeds, has been received. In terms of Section 79(1) of the Act, all importers were required to file GD for clearance of imported cargo within ten (10) days. Whereas, as per Section 82 of the Act, if goods were not cleared from the port, within twenty (20) days, then goods would be auctioned. Record showed that goods related to three containers, arrived at Karachi Port on 15.01.2021. However, GD was filed after three and half months. Likewise, two (2) containers arrived at Karachi Port on 04.01.2021, however, GD was filed on 24.03.2021, i.e. after two (2) and half months. Thus, there was clear violation of Section 79(1) of the Act on part of Complainant/importer and simultaneously non clearance of goods within 20 days. Thus, after issuance of due notice on 28.05.2021 for Lot No. S-131/March, 2021 and notice dated 14.05.2021 for Lot No. S-128/March, 2021, goods were lawfully auctioned. Therefore, keeping in view the facts and circumstances of

the case and relevant provisions of law, there was neither mal-administration nor any un-lawful act on part of Collectorate. That is why, Complainant did not approach Hon'ble Forum of the FTO, within the stipulated period. Without prejudice, to above, Complainant's purported letter dated 12.07.2021, addressed to the Chairman FBR, for an enquiry into the matter of missing goods, was never received by Department. Simultaneously, there were doubts that signature of "Abdul Haseeb" were also manipulated/forged because of different "Font" on pages 1, 7, 8 and 35 of the Complaint and signatures on Indemnity Bonds and Post Dated Cheques and other correspondence, were entirely different. Even "Affidavit", annexed with the Complaint, was from Mr. Abdul Haseeb S/o Nazeer Mirza instead of Abdul Haseeb S/o Nazar Meeran. Keeping in view provisions of sub-sections (1) and (2) of Section 10 of the FTO Ordinance, 2000, subject Complaint was liable to be dismissed in limine on this account. As per Section 10(1) of the FTO Ordinance, 2000, Complaint had to be filed by actual owner/aggrieved person and none other. However, in case of his death, the heirs/his blood relations could file Complaint. Without prejudice, it was also brought into notice that purported signatures, on "SOLEMN AFFIRMATION", Vakalatnama, CNIC and on other correspondence of Complaint, drastically differed from each other, therefore, prima facie, it was a case of forged signatures, without knowledge of actual aggrieved person. Therefore, considering provisions of Section 10, read with Section 25 of the FTO Ordinance, 2000, and further read with provisions of Section 79(1) as well as 201 of the Act and clause (p) of the Rule 101 of the Customs Rules, 2001 and the Standing Order No. 16/2001 (A) dated 17.11.2001, subject Complaint was not maintainable, hence, liable to be dismissed on this account also

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unless investigated properly and bring genuine aggrieved person/owner of goods for hearing. Further, submitted that, keeping in view the powers, conferred under Rule 101(P) of the Customs Rules, 2001, read with instructions contained in the Standing Order 16/2001-(A) dated: 17.11.2001, claimant of imported goods and/or any other type of refund, had to satisfy appropriate officer about genuineness of status of ownership of imported goods through original documents of shipment/import alongwith documents relating to particulars of imported goods and transactions of declared invoice value in accounts of seller/shipper of goods. Further stated that invoices, submitted under Section 79(1) of the Act, alongwith GDs, were confirming that imported goods were sold @USS 0.75/pc and there is/was no mentioning of re-exporting, repairing, etc., and in-fact with malafide intentions "value for custom purpose", with different "Fonts" of typing, had been inserted subsequently, to make out their case for release of goods free of duty/taxes. Complainant's declaration on GDs was for the exemption of duty/taxes in terms of SRO 680(1)/2019 dated: 28.06.2019 and not for exemption of temporary import in terms of SRO 492(1)/2009 dated: 13.06.2009. Further, despite notice by Auction Section, Complainant had never bothered to inform Auction Section about their willingness to clear goods and/or to make any request /application for stoppage of lawful auction proceedings, despite knowing the fact that, as per Section 82, of the Act, imported goods were ought to be auctioned even if any proceedings were pending. In view of above, Department prayed for dismissal of Complaint.

4. Both AR/DR attended hearing and reiterated what had been submitted in written Complaint and parawise comments. Crux was

that, according to Department, GDs were required to be filed within 15-days of filing of IGM which were not filed as per law. Before initiation of proceedings under Section 82 of the Customs Act, 1969, importer was intimated, through TCS on given address, regarding further disposal of imported goods. However, notices sent through TCS, were received back undelivered. Consequently auction was conducted as per provisions of Section 82 and regarding sales proceeds, Auction Section again approached importer on given address/NTN address for applying refund of admissible part of sales proceeds. According to Department, again, one TCS letter got back undelivered while other two were not received back. Department also has exception to the Complainant's particulars given in the Complaint as compared to particulars given in import documents. DR, however, stated that if importer applies for refund of admissible part of sale proceeds, duly supported by requisite import documents, same shall be expeditiously processed and admissible refund sanctioned. AR states that Department's view, that it was not approached by the importer for lawful disposal of the goods, is not correct as, vide importer's letter dated 11.02.2021, addressed to Chief Collector (South), Karachi, it was requested that being a case of temporary import/export, their consignments may be handled/disposed as per law. However, no response was received from Department and, instead goods were auctioned on 03.07.2021 and 07.07.2021 to the utter surprise of importer. Both DR/AR, after thorough discussion, agreed that, in the first place, AR needs to file rejoinder on Department's parawise comments. It was, after mutual understanding, decided that AR/importer would visit Collector of Customs (Appraisement), East, Karachi to sort out factual controversy in the matter.

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5. Pursuant to hearing dated 16.05.2022, Complainant/AR visited office of Collector of Customs (A) East, Karachi on 24.05.2022 where whole issue was discussed with Collector and his team. Due to complex nature of the issue, Department informed that inquiry in the matter was initiated and likely to be completed in three weeks. AR desired that draft findings in the matter may not be concluded before receipt of inquiry report which was agreed.

6. Accordingly, Collectorate conducted inquiry into the matter and submitted inquiry report dated 19.06.2022 with following findings:

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- (i) The Terminal operator sent notices dated 10.02.2021 to the importer/shipping line intimating inclusion of goods in Auction, if not cleared within 15 days. Importer was further advised to approach Assistant Collector (Auction), to withhold Auction.
  - (ii) Notices under Section 82 of the Act were issued by the shipping line on 25.02.2021 and 13.03.2021 on the given address of the importer.
  - (iii) Auction GDs NO. KAPE-AD-158260 dated 27.02.2021 and KAPE-AD-167129 dated 11.03.2021 were filed by the WeBOC system due to non-clearance of goods by the importer. The importer / representative approached the Department for cancellation of auction GDs. The former GD was cancelled by Assistant Collector (MIS) on 29.03.2021 and the later was cancelled by Deputy Collector (Auction) on 27.04.2021. The importer thus cannot claim that he was not aware of the auction proceedings.
  - (iv) After cancellation of auction GDs, the importer again did not clear the goods from port area within the time period provided under Section 82 of the Act, therefore, the auction section put the goods to public auction.
  - (v) The Complainant has altogether concealed the cancellation of auction GDs in his representation.
  - (vi) Second auction notice dated 14.05.2021 was also issued by the Deputy Collector and copy was also marked for placing on notice board.

- (vii) The auction notices issued on the address given in the Import General Manifest were returned. It is pertinent to mention that a letter dated 16.02.2022 issued on the complete/detailed address also returned with remarks "consignee shifted".

Further stated that, on the basis of the above facts, it was evident that Auction Section issued notices under Section 82 of the Customs Act, 1969, on given/available address but returned un-delivered. Moreover, representative of importer got WeBOC auction GDs cancelled for filing the same in One Customs. Therefore, claim of importer, that goods were auctioned without due notice, was not based on fact as they were aware of institution of auction proceedings.

7. Further stated that, apart from objection/allegation of auction of goods without due notice, Complainant also alleged maladministration on account of delay in processing file of "Temporary Import" in terms of para-13 of the I.P.O, 2020. However, Complainant's declaration on GDs was for exemption of duties & taxes in terms of SRO 680(I)/2009 dated 28.06.2019 and not for the exemption of "Temporary Import" under SRO492(I)/2009 dated 13.06.2009, read with para 13(m) of Import Policy Order, 2016. Requisite securities (i.e. IB & PDC) were submitted in June, 2021, therefore, delay in processing of GDs was on part of Complainant. Further, lapses, on part of importer/clearing agent, have been stated as under:

- (i) The importer submitted request dated 11.02.2021, for release of subject consignments, temporarily against bank guarantee. However, indemnity bonds were not provided which is a mandatory requirement of para 13(m) of IPO, 2020.
- (ii) One Customs Section informed clearing agent to provide

Indemnity Bonds as required under para 13(m) of IPO, 2020 on 16.03.2021. GD No. KEAP-HC-723 dated 03.05.2021 and KEAP-HC-668 dated 24.03.2021 were filed after a delay of 105 days and 75 days respectively.

- (iii) After filing of GDs in One Customs, on 24.03.2021 and 03.05.2021, clearing agent took thirty days and 20 days for completion of examination of the GDs respectively after arrival of goods at port. Delay in processing of file, for the period from 20.03.2021 to 23.05.2021 (63 days), is on part of clearing agent. Indemnity bonds were submitted in securities Section on 24.06.2021. Further, despite knowing period for removal of goods, prescribed under Section 82 of the Customs Act, 1969, he did not submit any request to Auction Section for withholding auction proceedings.
- (iv) The importer submitted indemnity bond in Securities Section on 24.06.2021. Even after completion of all formalities, delivery of goods was not taken. Consignments were delivered to successful bidder on 03.07.2021 and 07.07.2021.

Department averred that delayed processing of case by One Customs Section was because of late submission of indemnity bonds by the clearing agent.

8. Responding to additional comments dated 20.06.2022, submitted by Department, AR also submitted rejoinder dated 24.06.2022, during hearing dated 27.06.2022. It was again averred that Collectorate's Auction Section resorted to auction while approval process for allowing temporary import in subject consignments was underway in Bank Guarantee Section of the same Collectorate which reflected maladministration on part of the Department. He again reiterated that Department be directed to pay loss of Complainant, amounting to USD 1307688.3, being purchase price of goods/consignments, auctioned unilaterally and without service of notice upon Complainant.

9. Arguments of both sides heard and record perused.

10. It is evident from record that first consignment, comprising of two containers arrived at Karachi Port on 04.01.2021. Second consignment, comprising of three containers, arrived at Karachi Port on 15.01.2021. Due to non-filing of GD/non-clearance of goods within mandatory period of fifteen days, Terminal Operator issued notices dated 10.02.2021 to importer/shipping line, intimating that goods shall be included in auction, if not cleared within 15 days with further advice to approach Assistant Collector (Auction) to withhold auction, if so required. Notices, under Section 82 of the Act, were issued by the shipping line on 25.02.2021 and 13.03.2021 on given address of importer. Auction notices, issued on the address, given in the Import General Manifest, returned undelivered. Letter dated 16.02.2022, issued on complete/detailed address, also returned with remarks "consignee shifted". Due to non-clearance of goods by importer, WeBOC System filed auction GDs No. KAPE-AD-158260 dated 27.02.2021 and KAPE-AD-167129 dated 11.03.2021. Importer/Representative approached the Department for cancellation of auction GDs. As per request, auction GDs were cancelled on 29.03.2021 and on 27.04.2021. However, though, importer filed GD No. KEAP-HC-668 dated 24.03.2021 after two and half months of arrival of consignment and GD No.KEAP-HC-723 dated 03.05.2021 after three and half months of arrival of consignment, he again did not clear consignments from port area within time period provided under Section 82 of the Act. Second auction notice dated 14.05.2021 was issued by Deputy Collector with copy marked for placing on notice board.

11. Due to status of consignments having been overstayed, Terminal Operator submitted list of auctionable lots of March 2021 (Blue Book),

comprising of 190 consignments/lots which also included under reference consignments. Consequently, Auction Section started auction proceedings in respect of all 190 lots including these two consignments. In addition to manual notices, WeBOC electronic notice through auction document were communicated to importer, in terms of Section 155-E, read with Sections 82 and 215(c) of the Customs Act, 1969. Subsequently, notices dated 08.05.2021 and 14.05.2021 were issued on Complainant's given address regarding auction proceedings. Second auction notice dated 14.05.2021 was issued by Deputy Collector with copy marked for placing on notice board. Auction notices, issued on the address, given in the Import General Manifest, returned undelivered. Due to non-response by importer, Auction Section initiated auction proceedings and consignments were delivered to successful bidder on 03.07.2021 and 07.07.2021.

12. On the other hand, importer submitted request dated 11.02.2021, in Bank Guarantee Section, for release of subject consignments temporarily against bank guarantee. However, GD Nos.KEAP-HC-723 dated 03.05.2021 and KEAP-HC-668 dated 24.03.2021 were filed after a delay of 105 days and 75 days for clearance of consignments. After filing of GDs in One Customs, on 24.03.2021 and 03.05.2021, clearing agent took thirty days and 20 days for completion of examination of the GDs respectively. One Customs Section informed clearing agent to provide Indemnity Bonds as required under para 13(m) of IPO, 2020 on 16.03.2021 who took 63-days (20.03.2021 to 23.05.2021) to submit Indemnity Bonds in Bank Guarantee Section which were submitted on 24.06.2021. Further, despite knowing period for removal of goods, prescribed under Section 82 of the Customs Act, 1969, he did not submit any

request to Auction Section for withholding auction proceedings. Even after completion of all formalities, delivery of goods was not taken.

13. Pursuant to the provisions of Section 82 of the Customs Act, 1969, goods are to be cleared/warehoused/transshipped/exported /removed from the port within 15-days, extendable by another 5-days on approval of an Officer not below the rank of Assistant Collector, after unloading or filing of declaration and on failure to do so, after due notice to the owner or, if his address could not be ascertained, after due notice to the carrier, shipping or customs agent, custodian of goods, as the case may be, if his address could not be ascertained, goods could be sold in auction under order of the Assistant Collector notwithstanding the fact that adjudication of the case u/s 179, or an appeal u/s 193, or 196, or a proceeding in any Court is pending. In the instant case, IGMs for arrival of goods were filed on 04.01.2021 and 15.01.2021 and GDs were filed on 24.03.2021 and 03.05.2021, after a delay of two & half months and three & half months of arrival of consignments respectively, much beyond mandated period of fifteen plus five days, under Section 82 of the Customs Act, 1969. Importer/his clearing agent did not respond to auction notices u/s 82 ibid, issued by Terminal Operator, Shipping Line and later by Auction Section of the Collectorate. Importer's plea, that he was unaware of proceedings under Section 82 ibid, is not convincing as he immediately acted and requested for cancellation of system generated auction GDs. His request for cancellation of system generated auction GDs was approved. In the meanwhile, he filed GDs under temporary import regime but yet took long protracted time for processing of GDs/submission of Indemnity Bonds for finalization of GDs. While consignments landed at port area and IGMs filed on 04.01.2021 and

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15.01.2021, GDs were filed on 24.03.2021 and 03.05.2021, after above referred delay and goods were finally auctioned on 03.07.2021 and 07.07.2021, after a delay of almost six months, much beyond mandate under Section 82 of the Act. During this period, goods stayed at the Port area, importer/clearing agent did not bother to contact Auction Section to hold back auction proceedings, if any. However, Auction Section acted in isolation, though following provisions of Section 82 of the Act but without knowing that some parallel activity was underway in Bank Guarantee Section of the Collectorate. At the same time, importer/clearing agent also failed to convey ongoing parallel activity to the Auction Section. In order to ensure Port area decongestion, Section 82 provides sweeping powers to Port Customs Authorities, as is evident from text of Section 82. It was also responsibility of importer/clearing agent to keep watch on status of consignments if the same were staying at Port area for 6 long months beyond mandated period of 15 + 5 days. Due to the said lapse/non-interaction/non-response to notices, issued by Terminal Operator, Shipping Line and Customs, goods stand disposed of through auction process. However, the above outcome of events in the subject case is evident of the fact that there exists a serious non communication among different branches of same Collectorate. This working in silos approach is not only detrimental for the working of a government organization in general but becomes devastatingly harmful in cases where government functionaries are dealing with property of a citizen. Article 24 of the Constitution guarantees protection of property rights in the following very clear terms:-

“(1) No Person shall be compulsorily deprived of his property save in accordance with law”

It was duty of the Collectorate, specially the Auction Section, to have exercised more caution in the subject auction in view of the history of the subject case and the fact that parallel clearance GDs were also under process and the Indemnity Bonds were submitted on 24.06.2021. This lapse on part of the Collectorate tantamounts to maladministration in terms of Section 2(3) of the FTO Ordinance, 2000.

**Recommendations:**

14. FBR to:-

- (i) direct Collector, MCC(A) East, Karachi, to expeditiously process importer's request for sale proceeds, subject to submission of application to the said effect, as per law;
- (ii) direct Collector, MCC(A) East, Karachi, to ensure smooth/effective horizontal interaction amongst various branches of the Collectorate for just and informed decision making and to issue detailed office order to the said effect to avoid such future recurrences;
- (iii) the instructions issued by Collectorate of Customs (Appraisalment), East , Karachi, in light of para 14(ii) above, to be circulated to all other field formations of Customs for information/ compliance to avoid happening of such undesirable events in future; and
- (iv) report compliance within 45 days.

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

Dated: 10/08/2022

Approved for reporting

