THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

COMPLAINT NO.1751/LHR/CUST/2024
Dated: 11.03.2024 * RO Lahore

Mr. Abdul Razzaq,
E-144, Phase-1, DHA,
Lahore. ... Complainant

Versus

The Secretary,
Revenue Division,
Islamabad ... Respondent

Dealing Officer	:	Ms. Adila Rehman, Advisor
Appraising Officer	:	Dr. Arslan Subuctageen, Advisor
Authorized Representative	:	Complainant in person
Departmental Representatives	:	Ms. Saima Zaib, D.C Customs Mr. Faizan Arif, D.C, Enforcement (Ports)

FINDINGS/RECOMMENDATIONS

This Complaint was filed against the Collector, Collectorate of Customs (Appraisement-West), Customs House, Karachi and Collectorate of Customs Enforcement (Ports), in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance), for delay in release of Complainant's consignments/goods.

2. Precisely, facts of the case are that the Complainant imported Silico Manganese chemical vide Container No.MSCCU 3331694 and CBH 3720259 valuing US$ 59400/- (Rs.18.414 million). However, the consignments could not be cleared due to shortage of Dollars and difficulty in L/C. The Complainant had to pay heavy demurrage charges to the Shipping Line vide Pay Order Nos.10771962, 10771548 & 10773879 of Faisal Bank amounting to Rs.2.517 million, Rs.0.139 million & Rs.0.240 million. The Complainant had also paid Customs Duty amounting to Rs.4.543 million. The Complainant, time and again, approached the

*Date of registration in FTO Sectt.

Shipping Lines for issuance of Delivery Order/NOC but they refused to issue the same despite the fact that all the detention charges had been paid to the Shipping Line. The Customs Authorities had also failed to redress the Complainant's grievance. It was pertinent to mention here that at the time of import the one US$ was equal to Rs.310/- and now the same is equal to Rs.280/-. The Complainant had to bear heavy loss due to the negligence of the Customs officials. The Complainant prayed that the Customs Authorities be directed to release the consignments/goods. It was further prayed that the extra charges paid to the Shipping Line may be returned to the 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, the Collector, Collectorate of Customs (Appraisement-West), Customs House, Karachi, vide letter dated 22.03.2024, submitted parawise comments, stating therein that the Complainant's consignment of Silico Manganese was shipped from Port Kelang, Malaysia on 18.01.2023 and arrived at the KICT on 12.02.2023 vide IGM No.KAPW-27/2023 and Index No. 54. The Complainant filed GD with self-assessment payment on 27.12.2023 vide No.KAPW-HC-94847-27-12-2023 under PCT Heading 7202.3000. The GD was subject to scrutiny in terms of Section 80(1) of the Customs Act. 1969. The delayed filing of the GD attributed to issues surrounding financial instruments was related to banking procedures and such matters were typically independent of Customs regulations. Regarding the fines, penalties, demurrage, and detention charges incurred at the port and were enforced by the port authorities, shipping lines and terminal operators in accordance with their respective regulations and policies as the Collectorate's role primarily revolved around the assessment of duties and taxes, customs clearance,

and enforcement of trade compliance regulations. As per Log Report through WeBOC, the message was send to the Terminal Operator for arrangement of examination and the GD was assigned to the Examining Officer on 01.01.2024 and it was forwarded to the Custom House Laboratory for test of samples. After payment of the Lab Test Fee by the importer, the GD was opened for Lab testing on 03.01.2024. In the light of the Lab report, the GD was assessed by the Appraising Officer under PCT Heading 7202.3000 as declared and completed by the Principal Appraiser on same day i.e. 03.01.2024 and the GD was on "Assign to Gate Out Role" since that day. Despite clearance of the consignment, the Complainant did not take delivery of the consignment reportedly due to some charges owed to the shipping line.

4. The case was fixed for hearing on 28.03.2024. Both AR/DR attended the hearing and reiterated what had been mentioned in the written Complaint and parawise comments. The Complainant submitted that his goods had not been released despite the fact that he had paid duty/taxes and detention charges. The DR submitted that the GD was cleared by the Department on 03.01.2024. The DR was directed to investigate the issue thoroughly and report to this Office. During the Complaint proceedings, the Collector (Enforcement-Port), Karachi was approached and required to resolve the issue. The Complainant was advised to meet the Collector for resolution of the issue, however, the issue remained unresolved.

5. The Complainant submitted written arguments on 01.04.2024 stating that he had filed the aforesaid complaint before the FTO against the customs department and shipping lines for not releasing his consignments/goods despite the fact that the Complainant had paid all dues of customs and shipping lines. It is pertinent to mention here that the complainant has filed GD and paid duty and taxes amounting to Rs.4.5

million on 27.12.2023. On the same day the Complainant had also approached the shipping lines for payment of demurrage and detention charges. The shipping lines calculated the amount and informed the Complainant to deposit an amount of Rs.0.379 million which was paid but no DO/NOC was issued. However, the Complainant again deposited Pay Order dated 09.01.2024 amounting of Rs.2.517 million to the Shipping Line as per their invoice and requested to issue DO/NOC. However the consignments were not released till date. The matter was brought to the notice of the customs department time and again but they have done nothing despite instructions from the Learned Advisor to resolve complainant's grievance.

6. Vide this Office letter dated 17.04.2024, the Chief Collector, Collectorate of Customs (Enforcement-South), Customs House, Karachi was also required to resolve the issue after inquiring into the matter, by 07.05.2024 but no report has been received from the Chief Collector to-date. The case was also fixed for hearing on 08.05.2024, the Chief Collector was also required to ensure attendance of DRs alongwith authorized representative of Shipping Line. The DRs attended the hearing and reiterated what had been mentioned earlier but no-body attended the hearing on behalf of the Shipping Line nor submitted any request for adjournment.

7. The Collector, Collectorate of Customs, Enforcement (Ports), Custom House, Karachi, vide letter dated 07.05.2024 submitted comments, stating therein that the Complaint was filed regarding non-release of goods despite clearance of all dues. In this regard thorough inquiry and hearings were conducted on 16.04.2024, 20.04.2024, 22.04.2024 and 24.04.2024. It had been informed by the relevant shipping agent that Al-Razzaq Trading owed an outstanding amount of $30,728 to Austere Shipping Line. This outstanding payment was the primary cause

for the non-issuance of the Delivery Order (DO) by the shipping line. It was pertinent to mention here that the Complainant was asked to provide any written evidence of the agreement between them and shipping line and what charges were/are being over charged. The Complainant was not able to provide any such document. Further, in its defense, the Shipping Agent presented evidence of communications and notices regarding payment due from the consignee. Rule 665(p), (q) and (r) dealt with such situation where there was bar on the shipping agent to charge anything beyond what has been agreed before the commission of the transaction. As the consignee has not been able to prove any such overcharging the matter remained out of the purview of the Department. The Complainant may be directed to provide any such document/agreement with the shipping line/agent wherein it was evident that an extra amount which was not agreed previously was being demanded/paid, so that the matter may be appropriately handled. If the consignee was not able to provide any such document which he had not been able to provide on repeated demand, the matter be closed.

8. Arguments of both sides heard and available record perused. The Complainant contends that he has paid heavy demurrage charges to the Shipping Line vide Pay Order Nos.10771962, 10771548 & 10773879 amounting to Rs.2.517 million, Rs.0.139 million & Rs.0.240 million. The Complainant had also paid Customs Duty amounting to Rs.4.543 million. The Complainant, time and again, approached the Shipping Lines for issuance of Delivery Order/NOC but they refused to issue the same despite the fact that all the detention charges had been paid to the Shipping Line. The Collectorate of Customs (Appraisement-West), Customs House, Karachi contends that the Collectorate has finalized the GD on 03.01.2024 after payment of duty/taxes and the GD was on "Assign to Gate Out Role" since that day.

9. The matter was brought to the notice of the Collector, Collectorate of Customs Enforcement (Ports) to resolve the issue. However, the Collector also failed to resolve the same. Therefore, the matter was also brought to the notice of the Chief Collector (Enforcement-South), Custom House, Karachi vide this Office notice dated 17.04.2024 to resolve the issue and submit report. The Chief Collector was also required to ensure the attendance of all stakeholders but the Shipping Line (Ocean Pacific Line) has failed to attend the hearing and also failed to give its point of view.

10. Perusal of the documents submitted by the DR (Enforcement Ports) shows that the Ocean Pacific Shipping Line issued invoice dated 30.05.2023 amounting to Rs.6.274 million to the Complainant. M/s Ocean Pacific Shipping Line again issued four different invoices dated 13.06.2023 for different amounts of Rs.6.274 million, Rs.11.260 million, Rs.17.066 million and Rs.147.461 million to the Complainant. It is not understandable why Ocean Pacific Shipping Line issued different invoices for different amounts. However, the matter has not been resolved between the Complainant and the Shipper/Shipping Lines as is evident from different emails once to each other. Perusal of the email dated 30.11.2023 sent from the Ms. Srabani (Principal Shipping Line) to Mr. Umair Jamshad (Ocean Pacific Shipping Line) clearly states that:

> "We here by request you to kindly coordinate with consignee & asked them to start the procedure of cargo clearance.
>
> Pls provide a mail to c'nee that we will not charge Detention to them, shipper will care of detention part, once we will tell you to release the DO then only provide the DO to C'nee".

It is further observed from the email dated 05.01.2024 sent from Ocean Pacific Shipping Lines to Principal Shipping Line states that "***please find attached invoice as per your advice and confirm us as soon as possible".*** In response, the Principal Shipping Line replied to Ocean Pacific Shipping Line that ***"Requests you to raise the invoice to***

Consignee Usd 8832 as detention charge". On same date, the Ocean Pacific Shipping Line issued invoice dated 05.01.2024 for an amount of Rs.2.517 million (USD 8832). On receipt of invoice, the Complainant submitted Pay Order dated 09.01.2024 of Faysal Bank against the invoice amounting to Rs.2.517 million to the Shipping Line, the receipt No.JR-1044/24 has also been endorsed by the Shipping Line. The Complainant sent various emails to the Shipping Line for issuance of Delivery Order/NOC but the Shipping Line failed to do so despite the fact that they have already received the detention charge and acknowledged the same.

11. The Shipping Line should have issued DO/NOC to the Complainant for release of his consignment after receipt of Pay Order dated 09.01.2024 as detention charges as per advice of the Principal Shipping Line. It is further observed from the email dated 11.03.2024 send by the Ocean Pacific Shipping Lines to the Principal Shipping Lines which is "***Please attached invoice and receipt. Consignee has been paid detention till 05-Jan-2024. Now they want NOC till 15-Mar-2024. Consignee and clearing agent approaching us on daily basis for resolving this issue. Kindly answer this email and given them detention charges till 15-Mar-2024 so they release containers from port.*** Perusal of aforesaid email clearly reveals that the Shipping Line acknowledged that the Complainant had paid detention till 05.01.2024. It is observed that if the Complainant paid detention charges till 05.01.2024, however, the Shipping Line has failed to issue DO/NOC.

12. In view of the above, it is evident that the Complainant has paid the detention charges as per invoice issued by Ocean Pacific Shipping Lines as per advice of Principal Shipping Lines, therefore, there is no basis for holding the Complainant's consignment on one pretext or the other. However, the Chief Collector and the Collector of Customs Enforcement (Ports), Karachi have also failed to resolve the Complainant's grievance

despite FTO's verbal/written instructions. The Principal Shipping Lines' email clearly shows that they will not charge Detention to the consignee/Complainant, the Shipper will take care of detention part. However, the Shipping Line asked the Complainant to deposit Rs.2.517 million for issuance of DO/NOC which is also misconception on part of the Shipping Line. The Shipping Lines also failed to honour their obligations and did not issue DO/NOC to enable the Complainant to release his consignments. The Shipping Line has violated the provisions of Rule 665(1)(b)(d)(g) of the Customs Rules, therefore, the Licensing Authority may revoke or suspend its license for violation of the Rules.

13. It is also observed that during the hearing of the Complaint, the Complainant requested the DR (Appraisement-West, Karachi) to issue delay and detention certificate. The DR assured to try her level best for issuance of delay and detention certificate but no response has been received from her.

FINDINGS:

14. Failure of the Chief Collector/Collector of Customs Enforcement (Ports) Department not to take any legal action against the Shipping Line/Shipper for not discharging their obligations and non-issuance of DO/NOC despite receipt of detention charges as per invoice dated 05.01.2024, tantamount to maladministration in terms of Section 2(3) of the FTO Ordinance, 2000.

RECOMMENDATIONS

15. FBR to:-

(i) direct the Chief Collector, Collectorate of Customs (Enforcement-South), Customs House, Karachi to initiate proceedings against the Customs officers and officials responsible for failure to resolve the genuine issue of the Complainant and direct the relevant Collectorate to release Complainant's goods immediately without any fail after payment of port charges and fulfillment of legal requirements;

(ii) direct the Collector, Collectorate of Customs Enforcement (Ports) to issue directions to the concerned Shipping Lines for issuance of DO/NOC to enable the Complainant for release his goods after payment of port charges or revoke its license after issuing proper SCN for violation of Rule 665(1) (b)(d)(g) of the Customs Rules and also direct it to return Rs.2.517 million illegally received as detention from the Complainant despite the Principal Shipping Lines emails dated 30.11.2023 clearly stating that the Shipping Lines will not charge Detention to the Complainant.

(iii) direct the Collector, Collectorate of Customs (Appraisement-West) to issue Delay and Detention Certificate to the Complainant; and

(iv) report compliance within 45 days.

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

Dated: 14-6-2024
K.A

Approved for reporting