

**BEFORE  
THE FEDERAL TAX OMBUDSMAN  
ISLAMABAD**

**Complaint No.2654/LHR/CUST/2022**

Dated:23.06.2022\* RO Lahore

**M/s Fayyaz Trading Impex,**  
36/A, Allama Iqbal Road,  
Main Garhi Shahu Road,  
Near Dr. Masood Homeo Pathic,  
Lahore

... Complainant

**Versus**

The Secretary,  
Revenue Division,  
Islamabad

... Respondent

Dealing Officer	:	Dr. Sarfraz Ahmad Warraich, Advisor
Appraising Officer	:	Dr. Arslan Subuctageen, Advisor
Authorized Representatives	:	MianT anveer Ahmad alongwith Mr. Altaf Hussain, ARs
Departmental Representative	:	Nyma Batool, Director, Directorate of IPR Enforcement-South, Custom House, Karachi (through zoom)

**FINDINGS/RECOMMENDATIONS**

This Complaint was filed against Director, Directorate of IPR Enforcement-South, Custom House, Karachi, in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance), for delay in release of Complainant's goods, pursuant to Hon'ble High Court of Sindh, Karachi's Order dated 25.02.2022.

2. Precisely, facts of case, as narrated in Complaint, are that Complainant imported a shipment of Empty Printed Aluminum Aerosol Cane from Dubai and filed G.D No.KAPE-HC-65256 dated 21.10.2020 which was seized illegally during examination by holding the goods as infringing or counterfeit. Complainant's goods related to a registered brand namely Diefei and not copy of any other company. Complainant approached Hon'ble High Court of Sindh at Karachi vide C.P No.D-

\*Date of registration in FTO Sectt.

6410/2020 who, vide Order dated 25.02.2022, held that *"in the given circumstances, this petition is allowed and the respondents are directed to release the consignment of the petitioner alongwith delay and detention certificate forthwith and file a compliance report"*. As Department delayed to implement Hon'ble High Court's Order, therefore, Complainant approached Court vide contempt petition but one day before hearing of case, Department submitted compliance report which was against law on the ground that if Complainant's application was found false then he was responsible to pay port demurrage, shipping and detention charges. Due to negligence and delay in release of goods on behalf of Department, demurrage and detention charges became Rs.15.000 million. Delay and Detention Certificate, issued by Department, was not honoured by Port and Shipping Authorities. Complainant prayed that Department be directed to release his goods without payment of port demurrage and detention charges etc, as already two years have been elapsed.

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, Director, Directorate of IPR Enforcement-South, Custom House, Karachi, vide letter dated 04.07.2022, submitted parawise comments, stating therein that M/s Brand Protection System (Pvt.) Limited, filed a Complaint, on 10.10.2020, against Complainant indicating that said importer was a habitual importer of counterfeit aerosol cans. It was evident from Departmental record that Complainant's consignments had been blocked several times in the past two years on observation of his criminal activities. On receipt of application against Complainant, his GD dated 21.10.2020 was blocked on 21.10.2020 in the light of Rule 680 of SRO.170(I)/2017 dated

16.03.2017. Importer had infringed trade dress as well as trade mark. Aerosol cans marks identical or deceptively similar to original brand mark and identical trade dress, the "deceptive similarly" was sufficient basis to declare marks as infringing; and the cans as counterfeit. After a period of two years, Complainant approached Hon'ble High Court of Sindh at Karachi who, vide Order dated 25.02.2022, allowed release of consignment. In compliance of Hon'ble Court's Order, Department removed the hold and allowed goods to be released. Thereafter, Complainant approached Clearance Collectorate for issuance of Delay/Detention Certificate which was also issued. Department also requested port authorities to comply with Court's Order, vide letter dated 25.02.2022 alongwith Delay/Detention Certificate. Department prayed for dismissal of Complaint.

4. Both AR/DR attended hearing on 21.07.2022 and 05.08.2022 and reiterated what had been submitted in Complaint/rejoinder and parawise comments.

5. Arguments of both sides heard and record perused. It is evident that, in compliance of Hon'ble High Court of Sindh at Karachi's Order dated 25.02.2022, Department issued Delay & Detention Certificate. Director, Directorate of IPR Enforcement-South, Custom House, Karachi, vide letter dated 19.07.2022, informed this Forum that, in compliance of Delay and Detention Certificate issued by Department, M/s United Marine Agencies (Pvt.) Ltd. Karachi, vide letter dated 15.07.2022, informed that they had waived off all charges. Director, vide letter dated 21.07.2022, addressed to Collector, Collectorate of Customs Appraisalment-East, Karachi, advised that, in accordance with Order of Hon'ble High Court of Sindh, M/s PICT was to be directed to honour Delay/Detention Certificates and, in this respect, Collectorate

♀

was requested to direct M/s PICT to honour Delay/Detention Certificates in accordance with Section 14 of the Customs Act, 1969. Further, Director, Directorate of IPR Enforcement-South, Custom House, Karachi, vide letter dated 29.07.2022, informed Complainant that necessary action had been taken, vide letter dated 28.07.2022.

**FINDINGS:**

6. It is evident that, in compliance of Hon'ble Sindh High Court's Order, Delay/Detention Certificates has been issued by Collector, Collectorate of Customs, Appraisalment-East, Karachi. M/s United Marine Agencies (Pvt) Ltd., Karachi, vide letter dated 15.07.2022, informed that they have waived off all charges. Director, Directorate of IPR Enforcement-South, Custom House, Karachi directed M/s PICT to honour Delay/Detention Certificates. However, goods are not released as M/s PICT are yet to honour delay and detention certificate, issued by Department. Needless to say that a delay and detention certificate, issued by Department, needs to be implemented in letter and spirit.

**RECOMMENDATIONS:**

7. FBR to:

- (i) direct Collector, Collectorate of Customs, Appraisalment-East, Karachi to ensure that M/s PICT honour Delay and Detention Certificates, issued by Department under Section 14A(2) and in case of defiance, the license of M/s PICT be suspended and proceedings for its cancellation be initiated, as per law;
- (ii) release goods immediately after doing needful; and
- (iii) submit compliance report within 45 days.

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

Dated: 11/9/2022

K.A

Approved for reporting