

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

COMPLAINT NO.3421/ISB/CUST/2022

Dated: 01.08.2022** HQs Islamabad

COMPLAINT NOS. 3454 & 3455/ISB/CUST/2022

Dated: 03.08.2022*HQs Islamabad

**Syeda Rashida Kazmi,
Syed Muzaffar Kazmi,
& Syed Basit Kazmi,**

C/o Mr. Zargham Dil Khan, Advocate High Court,
Frontier Law Chamber, 39 Shaheed-e-Millat Block,
District Courts, F-8 Markaz,
Islamabad

... Complainants

V e r s u s

**The Secretary,
Revenue Division,
Islamabad**

... Respondent

Dealing Officer	:	Dr. Arslan Subuctageen, Advisor
Appraising Officer	:	Dr. Sarfraz Ahmad Warraich, Advisor
Authorized Representative	:	Mr. Zargham Dil Khan, Advocate
Departmental Representatives	:	Ms. Beenish Rashid, DC Customs IIAP Mr. Hashmat Ali, AD, ASF IIAP

FINDINGS/RECOMMENDATIONS

These Complaints were filed against Collectorate of Customs and Airport Security Force (ASF), Islamabad International Airport (IIAP), Islamabad, in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance), for refund of missing amount of Australian Dollars (AUD). All complaints have identical issues and are disposed of, through this single consolidated order.

2. Briefly, Complainants stated that they came from Australia to Pakistan alongwith 10 other family members to settle in Pakistan permanently. However, due to uncertain situation of the country, they decided to go back, alongwith their brought in saved pension

* Date of Registration in FTO Secretariat

amount, equal to AUD 147,000/-, received from Australian Government. On 11.06.2022, they came to IIAP to depart, alongwith AUD 147,000/-, and, after taking guidance from Customs Currency Declaration Counter, they reached at entrance of baggage hall. ASF staff, posted there, asked about the contents of hand bag. In response, they declared that they carried AUD 147,000/- and want to get guidance from Customs staff. Instead facilitating, ASF staff started counting their currency and made seizure and later on, through Hawalgi Report of AUD 131,900/-, handed currency over to Customs officials. Customs officials, in Recovery Memo, declared AUD 131,900/- while 15,150/- were stolen. After couple of days and on their protest, Customs officials, contacted them and returned AUD 4,950/- instead of 15,150/-. However, as per Seizure Report, according to Complainants, creditable information was received by Collector of Customs that an attempt will be made to smuggle foreign currency from Islamabad Airport on 11.06.2022, by flight No.TK-710 (Turkish Airline), departing for Australia whereas they were travelling by flight No.QR-616 and not through Turkish Airline and that purpose of institution of seizure report was to claim inadmissible reward from Government exchequer by so called seizing team. Complainants prayed that directions be issued for strict action regarding maladministration with malafide intention of seizing agencies and remaining stolen money be recovered.

3. The Complaint was referred to Secretary, Revenue Division, and Chief Security Officer, ASF (IIAP), Islamabad, 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, Assistant Director (Legal), ASF (IIAP) and Collector, Collectorate of Customs, Islamabad, submitted reply vide letters dated 12.08.2022 and 15.08.2022 respectively. Assistant Director (Legal) stated that, on 11.06.2022, at about

0750 hours, during screening of a female passenger, namely Syeda Rashida Kazmi, travelling by Qatar Airways Flight QR-615, ASF staff recovered AUD 131,900/- and handed over alongwith 'Hawalgi Report' to Customs staff under Section 6(e) of ASF Act, 1975, for further legal formalities. Collector, Collectorate of Customs Islamabad, vide reply/comments dated 15.08.2022, stated that, based on report, submitted by ASF, Customs staff prepared Detention Memo No.6/251 dated 11.06.2022 of reported amount of AUD 131,900/-, which was duly signed by Complainant. After preparation of seizure report, when staff proceeded to deposit the same in state warehouse, as per legal requirement, it revealed that seized currency was actually AUD 136,850/- and not AUD 131,900/-, as reported by ASF. Excess currency was returned to the head of family with consent of Assistant Collector Customs (Accompanied Baggage). Complainant failed to declare currency to Customs through currency declaration form and there is no documentary evidence with Complainant that they had AUD 147,000/-. Passengers did not allege stealing of amount even at the time of signing detention memo which clearly states that AUD 131,900/- was being seized. Passengers also did not mention alleged amount at the time of receipt of excess amount of AUD 4,950/-. Hence, passengers never mentioned that they were carrying AUD 147,000/- and not AUD 136,850/- and it proves that it is an afterthought. Allegation of alteration/forgery by Customs staff is denied as only number of currency notes, equal to amount reported by ASF, was received and excess amount of AUD 4,950/, after physical examination and counting of currency notes by Customs, was returned. Complainant claimed that they brought AUD 147,000/- from Australia but Currency Declaration System (WeBOC) does not show any such data which reflect that passengers failed to make declaration of this currency upon arrival

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at IIAP. Accordingly, Complaints be disposed of being devoid of any merit.

4. During hearing, ARs and DRs averred to their written arguments. DRs stated that currency was recovered from Complainant in pursuance of search process, conducted by Mr. Munawar Khan, AD/Sector Incharge, ASF, who counted the amount. Customs Inspector, S.M. Ejaz, received Hawalgi Report alongwith recovery memo and currency report from ASF. Inspector, S.M. Ejaz, took the same to detention room in presence of Inspector Muhammad Farooq and two other sepoy, on 14.06.2022. On counting currency, an excess amount of Rs.4,950/-, was found which was reported to AC Customs, IIAP and was then returned to Syed Muzafar Kazmi. There was no mention of any excess amount of currency by Complainant. AR reiterated and further argued that their actual amount was AUD 147,000/-, whereas, "Hawalgi" report of ASF and seizure report, made by Customs, mention only AUD 131,900/-. ASF and Customs have embezzled and stolen an amount of AUD 15,100/- from the hand bag of Syeda Rashida Kazmi. There was no currency counter with Customs staff available for them to make currency declaration and first enforcement agency counter was that of ASF where Syeda Rashida Kazmi made declaration with complete detail about each and every packet of currency notes of AUD but ASF staff instead started counting currency notes and made smaller bundles and then prepared "Hawalgi report" for an amount equal to AUS 131,900/- and, on protest by Complainant, ASF Incharge told her that if she does not accept this, all her money would be confiscated. Complainant got scared due to this intimidation and she was not given any opportunity to declare her foreign currency before Customs authorities, as per law, while ASF has no power or authority to seize foreign currency vide ASF Act. AR further continued that an

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amount of AUS 15,100/- was siphoned out and stolen by ASF staff, who apparently but clandestinely kept AUS 10,000/-, while AUS 5,000/- were illegally given to Customs staff. Subsequently, on protest by Complainant and on approaching Custom House, Islamabad, to launch a Complaint before Collector of Customs, Customs airport staff returned an amount of AUS 4,950/-, to Syed Muzafar Kazmi, while remaining AUS 10,150/- are still missing and neither accounted for in hawalgi and seizure report nor returned back. DR from ASF committed to and subsequently provided camera footage of the whole proceedings at ASF checking counter and names of detecting ASF staff while DR from Customs committed to provide names of Customs staff involved in seizure. However, required information was not provided by Customs.

5. Evidently, Complainants, Syed Muzafar Kazmi and Syeda Rashida Kazmi are senior Australian citizens of Pakistani origin, aged 74 and 72 years respectively, who brought into Pakistan their Government pension savings from Australia on 04.03.2022 which they encashed from bank accounts (AUD 148,000/-), as per their common wealth bank account statements pertaining to account Nos.06219110354017 and 06230110386833, for the period 01.07.2018-30.06.2022, for settling down permanently in Pakistan. However, on assessing prevailing economic status of the country, they decided to go back to Australia through Qatar Air's flight No.QR615 from IIAP alongwith their brought in currency. Admittedly, ASF checked the hand bag of Complainant, Syeda Rashida Kazmi, holding Passport No.PB-3318281, at 0750 hours on 04.06.2022 at IIAP, while travelling through QR-615 and recovered ASD 131,900/-, which were handed over to Customs staff alongwith "Hawalgi Report" signed by Sector Commander ASF, AD, Mr. Munawar Khan and received by Customs Inspector

of Shift-III, Mr. S.M Ejaz. Customs staff, admittedly, prepared a detention memo No.6/251 dated 11.06.2022, for an amount of AUD 131,900/-, after receiving above referred amount through ASF "Hawalgi Report". Customs officer prepared seizure report and proceeded to deposit the same in Customs State Warehouse. It was revealed, at that time, that seized currency was actually AUD 136,850/- and not AUD 131,900/- as reported by ASF and thereafter, excess currency was returned to Complainant, Syed Muzaffar Kazmi. It was also admitted by Department of Customs that details of currency notes were subsequently written on Recovery Memo and said amount was handed over to inspector incharge detention room on 15.06.2022.

6. Precisely, seized currency was detected at ASF scanning machine before Customs counter and admitted by Customs that first Customs counter, for international passenger interaction and declaration, is located after ASF scanning machine/counter. Evidently, Complainant was not given any chance to declare currency before appropriate Customs Officer under Section 139 of the Customs Act, 1969 and non-compliance of aforementioned explicit provisions of law renders entire proceedings infructuous in the eyes of law. Hon'ble Peshawar High Court, Peshawar, in Customs Reference 326-P/2020, has decided in judgment dated 14.01.2021 that "the passenger should be given the opportunity of goods declaration under Section 139 on first point of entry at international departure lounge".

FINDINGS:

7. In view of supra, it is evident that on 04.06.2022, ASF staff detected foreign currency from the hand bag of Complainant viz Syeda Rashida Kazmi, travelling through Qatar Airs flight QR 615 and, on enquiry by ASF staff, whole amount of AUD 147,000/- was

declared by Complainant but ASF detained amount and made a 'Hawalgi Report' and then called Customs staff and handed over Complainants and foreign currency, with Hawalgi report for an amount of AUD 131,900/-, to Customs staff. Complainant was not given any opportunity by ASF staff to declare her goods/currency before Customs staff, as per provisions of Section 139 of the Customs Act, 1969, which reads:-

"139. Declaration by passenger or crew of baggage.- (1) The owner of any baggage whether a passenger or a member of the crew shall, for the purposes of clearing it, make a verbal or written declaration of its contents in such manner as may be prescribed by rules to the appropriate officer and shall answer such questions as the said officer may put to him with respect to his baggage and any article contained therein or carried with him and shall produce such baggage and any such articles for examination.

[Provided that where the Customs Computerized System is operational, all declarations and communications shall be electronic.]

(2) Where any passenger or a member of the crew makes a false declaration or fails to make such declaration as required under sub-section (1), he shall be guilty of an offence under this Act.

(3) Notwithstanding the provisions of sub-section (2), where any person attempts to bring into or takes out of Pakistan, currency, gold, precious metals or stones, in any form, through concealment in baggage or circumventing customs controls at airports, sea-ports and land border custom-stations, he shall be guilty of an offence of smuggling within the meaning of clause (s) of section 2."

Evidently an excess amount of AUD 4,950/- was paid by Customs, unaccounted for in Hawalgi and seizure report, and was handed over to Complainant Syed Muzafar Kazmi under an undated receipt. This fact confirms that actually detained and seized amount of AUD was not 131,900/- but was much more than that and claim of Complainant gains strength that amount was AUD 147,000/- and that an amount of AUD 15,100/- had been stolen out illegally like a Broad Daylight Robbery. Return of AUD 4,950/- by Customs staff to Complainants, instead of including that amount

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and making out a complete seizure of AUD 136,850/-, a partial seizure of AUD 131,900/- was made without any lawful excuse and legal provision. All the above narrated facts, tantamount to maladministration against Customs, in terms of Section 2(3)(i)(a)&(b) and (ii) of FTO Ordinance, 2000. Moreover, clear theft of AUD 15,100/- cannot be denied on the basis of corroborative evidence and relevant record which establishes the claim of Complainants and is tantamount to gross maladministration and misconduct against relevant ASF staff with charges of theft, dacoity and embezzlement of passenger currency.

8. A detailed examination of the entire episode of events in the subject case yields the following observations:-

- (i). Currency was detected by ASF staff prior to Customs Declaration counter. This clearly established the fact that the passengers were never given any chance to declare the subject currency before Customs Authorities in terms of Section 139 of the Customs Act, 1969.
- (ii). Prima facie, the provisions of Section 139(3) of the Customs Act, 1969 are not attracted in this case as the subject currency was neither concealed (as the currency was recovered from the hand bag of the passenger which cannot be considered as concealed by any stretch of imagination) nor any circumvention of Customs controls took place (as the passengers were never provided any chance to declare the currency before Customs, as explained at para 8(i)) to make out

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a case of currency smuggling in terms of section 139(3) *ibid*.

- (iii). Returning AUD 4,950/- by the Customs Authorities to the complainant, while seizing the other chunk of currency, in itself speaks volume of the weak legal footing of the subject seizure. Declaring one part of the currency legal (as evident from its return) while seizing the other part of the same good (currency) makes the entire seizure exercise infructuous and bad in the eye of law.

RECOMMENDATIONS:

9. FBR to:-

- (i) forward the observations made by this forum at para 8 above to the concerned adjudicating authority currently adjudicating this case to duly take into account the same while deciding the case, as per law;
- (ii) constitute a fact finding inquiry committee to investigate all concerned Customs officials including Inspector S.M. Ejaz and initiate necessary disciplinary proceedings under E&D Rules, 2020, against those found guilty, as per law;
- (ii) convey, directions of this office to Secretary, Ministry of Aviation and DG ASF, to constitute a fact finding inquiry committee against Mr. Munawar Khan, AD/Sector Incharge, Sgt. Afzal Hussain and all other concerned ASF officials and initiate necessary disciplinary proceedings under E&D Rules, 2020, against those found guilty, as per law;
- (iii) direct all Chief Collectors of Customs, across the country, including Collector Customs, Islamabad, to establish and functionalize a Customs currency declaration counter, in collaboration with CAA (under Section 14A of Customs Act, 1969), at a suitable place but before ASF counter, as a first point of interaction with outgoing international passengers, as per law; and
- (iv) report compliance within 60 days.

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10. Complainants are also advised to approach State Bank of Pakistan to consider issuing NOC to the complainants as a special case to take out of Pakistan the subject currency in relaxation of the conditions imposed vide SBP notification no. F.E.1/2015-SB dated 01.06.2015, as per law.

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

Dated: 20:9: 2022
MR/U.F/AQ

Approved for reporting