

**THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

Complaint No.4159/ISB/FE/2023

Dated: 21.07.2023 HQs Islamabad

Mr. Saad Zaman

S/o Qamar Zaman,
H. 03, Block 59-A, Mohallah Railway Colony,
Sadar Rawalpindi.

... Complainant

V e r s u s

The Secretary,

Revenue Division,
Islamabad.

... Respondent

Dealing Officer	:	Dr. Arslan Subuctageen, Advisor
Appraising Officer	:	Mr. Muhammad Nazim Saleem, Advisor
Authorized Representative	:	Mr. Saleem Raza, Consultant
Departmental Representatives	:	Ms. Huda Khalid, DC Customs Mr. Yasir Khalid, Sr. User Support Officer Mr. Tasneem Safdar, Sr. User Support Officer

FINDINGS/RECOMMENDATIONS

The above-mentioned complaint was filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance), against the Collectorate of Customs, Islamabad, against non-clearance of Goods Declaration (GD) dated 19.07.2022 and to take disciplinary action against the concerned officers.

2. Briefly, the Complainant has alleged in his complaint that a vehicle Bentley Continental Flying Spur W12, Model 2020, was imported by the importer and GD along with all documents under Section 79 of the Customs Act, 1969 (the Act) were submitted for assessment and examination which was duly done under Section 80 ibid. The duty and taxes were assessed to the tune of Rs.134,252,271/-. An amount of Rs.73,029,971/- were paid and a pay order dated 19.10.2022 for the differential amount equal to Rs.61,222,300/- was submitted to the Collectorate for provisional

release of vehicle in terms of Section 81 of the Act. The Deptt encashed the pay order on 30.11.2022 manually, but the GD filed was neither processed nor finalized, which is clear maladministration on part of the Deptt. The time period for finalization of the provisional assessment provided in terms of Section 81(2) of the Act, is only ninety days. Whereas, in the instant case, it has been more than a year. The Complainant has approached the Deptt many times for the process of the GD, however, to date the same has borne no fruit, the Deptt failed to entertain the Complainant and have repeatedly failed to clear and finalize the GD till to date which is clear maladministration on behalf of the Deptt in terms of Section 2(3)(i)(a),(b),(d) and (3)(i) of the FTO Ordinance, 2000. The Complainant has carried out no procedural lapse nor has he violated any law, he has done everything to ensure conformity towards the Customs authorities, however, the Deptt, due to negligence and malafide, have failed to clear the GD, due to which the Complainant is suffering and inter alia is unable to get proper registration of the Vehicle. The Complainant has prayed that the directions be issued to the Deptt to clear the GD dated 19.07.2022 immediately, take action against the delinquent officers and directions be issued for payment of compensation.

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3. The Complaint was referred to Secretary, Revenue Division, 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, Collector, Collectorate of Customs, Islamabad, vide letter dated 03.08.2023, submitted comments, stating therein that Mr. Javed Khan Afridi imported a used vehicle Bentley Continental Flying Spur W12, Model 2020, from United Kingdom under personal Baggage Scheme and filed Goods Declaration dated 19.07.2022 declaring its value equal to GBP 79,000/- . The Collectorate after taking MSRP from authorized dealer which was

GBP 211,990/- determined the assessable value of the vehicle as GBP 134,834.10/- (after all deductions) and thus leviable duty/taxes were calculated to be Rs.134,246,012/-. After assessment, on behalf of the importer, representative of M/s. Abaseen Agency, clearing agent appeared personally on 10.10.2022 and contested the assessment of the value made on the basis of value provided by the authorized dealer and requested for the provisional assessment under Section 81 of the Act, which was allowed. After completing the clearance under Section 81 ibid the GD was marked to Directorate of Customs Valuation, in WeBOC System for valuation of the subject vehicle. The Directorate of Customs Valuation, Lahore, provided an MSRP of GBP 212,000/- and finalized the value of the vehicle i.e. FOB value GPB 177,205/- and assessable value 155,223/-. The duty/taxes calculated on the above value comes to Rs. 154,545,985/-. Both the value taken as MSRP by the Collectorate & Directorate of Valuation are almost the same (with a minute difference of GBP 10). However, the assessable value provided by Directorate of Customs Valuation is much higher. This price difference was apparently due to that fact that the Collectorate had deducted 27.5% VAT as per the long standing past practice at Islamabad Dryport, Islamabad, in the light of the directions issued by Directorate General Valuation, vide letter dated 19.08.2011. As there was a huge difference in duty/taxes calculated of more than Rs.20 million, the importer also agitated the same. In this regard letter for clarification was written to Directorate General of Customs Valuation, Karachi, to advise regarding the percentage of VAT to be deducted on 19.01.2023. The Directorate General replied on 10.04.2023. Meanwhile the vehicle was already handed over to the Importer/Clearing Agent and the original documents on request of importer were also handed over in order to get the vehicle registration process started. After the clarification issued from Directorate General of Customs Valuation,

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VAT was accordingly deducted and final duty/taxes were communicated to the Importer/Clearing Agent, but since the duty/taxes were already deposited in the form of encashed pay order, there was no provision in WeBOC to adjust the manual payment against the GD. Thus, as last resort, the Importer/Clearing Agent was advised to submit a refund application and deposit the duty/taxes against the GD so the same could be gated out from WeBOC system. However, they have not submitted any such application to date. It is once again reiterated that during all this time, the Clearing Agent was on board with Customs and the importer had the custody of vehicle since October, 2022.

4. During first hearing dated 04.08.2023, both, AR and the DRs reiterated their averments submitted earlier. The AR stated that the GD processing and its being made out of charge is delayed by the Deptt without any fault on his part as he had paid the differential amount in shape of a pay order, which, Deptt encashed unlawfully in violation of provisions of Section 81(3) of the Act, without clearing the GD and now the Deptt due to this illegal encashment and unprofessional handling is unable to process his GD. The AR further argued that the Deptt has also violated the provisions of Section 81(2) of the Act. On request of the Deptt to give them an opportunity to resolve the matter, the case was adjourned with directions to the Deptt and representatives of M/s PRAL to process the matter as offered by the Collectorate. During next hearing dated 09.08.2023, the AR submitted that inspite of all possible efforts to resolve the matter of GD completion nothing concrete has taken place, the differential amount in shape of pay order was got encashed illegally in violation of the explicit provisions of Section 81(3) of the Act, as the vehicle was earlier provisionally handed over under Section 81 ibid. The DR and PRAL representatives submitted that the Deptt could not process the GD due to technical hitches involved in the electronic clearance system and Complainant may deposit once again

an amount of Rs.61 million (apx.) deposited earlier and only then the GD would be processed out of charge. The AR submitted that the Complainant filed application dated 10.08.2023 to the Deptt in compliance with the directions of this Office, to refund him the illegally encashed amount of pay order and the same would then be paid again and redeposited as a fresh pay order for entry of its particulars in the pending GD for completion of its processing in the WeBOC system and finalization as proposed by the Deptt. Deptt in response to the said application, replied on 11.08.2023 to the Complainant to first deposit the differential amount of duty/taxes Rs.61,228,559/- once again and for a second time into the government treasury and only then the refund process will be initiated to pay him back the refund of already paid amount i.e. Rs.61,222,300/-.

5. It is observed that the directions given by the Deptt to the Complainant dated 11.08.2023 for payment of an amount afresh, equal to what had already been submitted by the Complainant as differential amount under Section 81 of the Act and encashed by the Deptt in violation of the provisions of sub-section 3 of Section 81 of the Act, is not only against the provisions of the Customs law but also unconstitutional in terms of violation of the provisions of clause (a) and (c) of article 4 of the Constitution of Islamic Republic of Pakistan, 1973, is discriminatory and is causing double jeopardy to the Complainant.

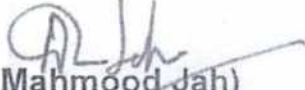
FINDINGS:

6. In view of supra, it is established that the Deptt has encashed the pay order of Rs.61,222,300/- in violation of provisions of Section 81(3) of the Act, without any lawful authority and without any justification while keeping the clearance of GD in pendency, which is tantamount to maladministration on part of the Deptt as defined under Section 2(3)(i)(a)(b),(ii) of the FTO Ordinance, 2000.

RECOMMENDATIONS:

7. FBR to:

- (i) direct the Chief Collector of Customs (North) to resolve the subject matter within 15 days;
- (ii) direct the Chief Collector of Customs (North), Islamabad to conduct a fact finding inquiry into this non-professional attitude of the concerned officers resulting into the hardship for the taxpayer and in light of the findings of the above fact finding inquiry, take corrective measures, interalia, imparting necessary WeBOC trainings to the concerned officers/ staff of the Collectorate; and
- (iii) report compliance within 45 days.


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

Dated: 12-9-2023.

Approved for reporting


Director
FTO Secretariat
Islamabad