THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

Complaint No.5072/ISB/CUST/2024

Dated: 13.06.2024* HQs Islamabad

Mrs. Khatoon,
C/o Mr. Aamir Shakeel,
H. 27, St. 22, F-8/2,
Islamabad. ... Complainant

Versus

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

Dealing Officer	:	Dr. Arslan Subuctageen, Advisor
Appraising Officer	:	Mr. Muhammad Nazim Saleem, Advisor
Authorized Representative	:	Mr. Aamir Shakeel Mr. Muhammad Wisal Ahmed, Advocate
Departmental Representative	:	Ms. Hijab Zahra, DC Appraisement (East) (through zoom link)

FINDINGS/RECOMMENDATIONS

The Complaint was filed in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance), against Collectorate of Customs Appraisement (East), Karachi, for consideration of manufacturing date of vehicle as per manufacturing company for assessment of duty/taxes.

2. Briefly, the Complainant stated in his complaint that a used vehicle, Mercedes Benz, was shipped from UK on 17.07.2023, consigned to Mrs. Khatoon, which, arrived at Karachi Port on 13.08.2023. On 07.08.2023, a letter was already been issued to M/s Shahnawaz (Pvt) Ltd., Karachi, by Collectorate of Customs Appraisement (East), Karachi, for supply of Import Trade price (ITP) for the said vehicle. M/s Shahnawaz Ltd replied on 28.08.2023, mentioning the total value as $ 99,447/- and date of production as March 2022. The clearing agent approached the office of M/s Shahnawaz Ltd with the plea that the said vehicle is 2021 manufactured as well as few extra options are mentioned which are not

*Date of registration in FTO Sectt.

fitted in the vehicle but they refused to make any changes. So, the Complainant emailed a complaint to their principles Mercedes Benz Daimler along with proof of their claim, who forwarded the complaint to their Middle East regional office. M/s Shahnawaz respond through an email mentioning that they oversaw a few options which brought the total Import Trade Price (ITP) value down to $ 96,833/- but still mentioned the date of production as March 2022. M/s Shahnawaz Ltd are taking the date of shipment/delivery to Mercedese Benz UK dealer as the date of production. According to the CGO14/2005 dated 06.06.2005, the assessment can only be made from the date of production and not from the date of shipment/delivery to the Mercedes Benz dealer. Hence, M/s Shahnawaz is deliberately not mentioning the actual date of production just to discourage the import of used Mercedes Benz vehicles. It is not the 1st time, M/s Shahnawaz has supplied disputed ITP values. The Complainant acquired a vehicle enquiry document from the Mercedes Benz UK dealership which clearly mentioned the date of production as 15.04.2021 and left factory date as 19.04.2021. Another factory document known as Certificate of Conformity (COC) was issued and placed in the vehicle right after the vehicle leaves the factory. The year of manufacture on this COC document was mentioned as 2021. The Complainant submitted four ITP letters issued by M/s Shahnawaz Ltd., which were of similar 2021 production vehicles. The chassis numbers/VIN for these four vehicles are A088262, A088777, A089298 and A099876 all which were manufactured in late 2021. Whereas, the vehicle in question VIN A026648 clearly indicates it was manufactured 73228 units before the last above mentioned VIN A099876. Recently, M/s Shahnawaz has started mentioning the manufacturing date on the ITP as 'The vehicle shipped from factory on Month/Year' whereas according to CGO 14/2005 dated 06.06.2005, the manufacturing date is taken for depreciation and not the date of shipment. Other brands operating in Pakistan such as Audi, BMW and Land Rover all declare date of production rather than shipment/delivery dates. The Customs at Karachi Port comprising of Inspector, Appraiser, Principal Appraiser, all admit that it is a 2021 production vehicle but the top officials fail to decide the case on merit. The Complainant prayed that the directions be issued to the Deptt to resolve it on the given valid evidences as the vehicle is deteriorating at Karachi Port for the last 10 months as well as charging heavy storage charges and since the clearance delay is not from his side, the storage charges may also be waived.

3. The Complaint was referred to Secretary, Revenue Division, Islamabad, for comments, in terms of Sections 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 Appraisement (East), Karachi, submitted comments, vide letter dated 01.07.2024, stating therein that the Complainant imported one unit of Mercedes Benz S580, bearing Chassis No. W1K2231682A026648 and sought clearance vide Goods Declaration (GD) No.KAPE-VB-1 1404-16-08-2023, under Gift Scheme in terms of Appendix-E of Import Policy Order, 2022. In pursuance of CGO-14/2005 dated 06.06.2005, Collectorate, vide letter dated 07.08.2023, requested the authorized local agent of Mercedes Benz in Pakistan, i.e. M/s Shahnawaz (Pvt.) Ltd for provision of ITP and month/year of manufacturing. In response thereto, M/s Shahnawaz (Pvt.) Ltd, vide their letters dated 28.08.2023 and 06.09.2023, intimated the ITP at US$ 96,833/- with date of production as March, 2022. Being aggrieved and dissatisfied with both the ITP values and the manufacturing period provided by the local dealer, the one, Mr. Aamir Shakeel filed a representation dated 20.09.2023 to Chairman FBR regarding discrepancy in ITP value. The FBR, vide letter dated 18.10.2023, directed the Collectorate to conduct a thorough investigation in the matter. While

scrutinizing the documents provided by the Complainant and the local dealer, the Collectorate issued a letter dated 04.10.2023 to M/s Shahnawaz (Pvt.) Ltd with following queries:

i. What is the actual date of production of subject vehicle in light of inquiry document provided from Mercedes Benz UK dealership and Certificate of Conformity (CoC).

ii. The date of production in earlier issued ITPs by M/s Shahnawaz (Pvt) Ltd for Chassis Nos. A088262 and A08877 were given as 2021, whereas the date of productions of subject vehicle, produced before the manufacturing of above-said vehicles having Chassis No. A026648, as March, 2022.

iii. The date of Production mentioned in ITP is taken from date of delivery to Mercedes Benz UK Dealer, provide the details regarding criteria adopted for confirmation of production period in the instant case.

In response thereto, M/s. Shahnawaz (Pvt.) Ltd replied, vide letters dated 12.10.2023 and 23.10.2023, submitted the following details:

i. The importer had sent first email to Mercedes-Benz AG., Germany on 30.08.2023 and shown reservation on the value of the vehicle and its production year. Our reply to customer dated 06.09.2023 after re-comparing the UK specs with manufacturer price list issued the revised letter and ITP price corrected from USS 99,448/- to USS 96,833/-. There was no change in the production year.

ii. In compliance to the preamble of the CGO 14/2005, "to prescribe the procedure for assessment of motor vehicles in order to ensure its uniform application". Whenever we receive a request to provide ITP and production year of any grey import vehicle, in our confirmation letters to Customs Authorities, the data card in the WeDoc (Vehicle Documentation System) is the data source. For all three vehicles the source for production year is the same, which is the vehicle data card. This is the only source from which we can get information on grey import vehicles.

iii. The vehicle A026648 is a unique case and not a regular one to determine its actual completion/manufacture. The year 2021 was the year, when the whole automobile industry was severely affected due to shortages of critical parts mainly involving microchips/semiconductors and COVID related issues. This was the time when the manufacturer was, left with no other option than shutting down the whole plant but to build the vehicles in absence of missing parts, the manufacturer parked them at different storage places till the time missing parts arrived and were fitted to the incomplete vehicles. Whenever an incomplete vehicle leaves the production line/assembly line it gets the date processed in the system as "completion date" and once it leaves the factory for a storage place, date processed as "left the factory". All vehicles which leave the plant incomplete are marked under "Technical Hold" which means the vehicle is not completed and neither can be invoiced nor can leave for shipment. The vehicle in question A026648 may be one of them which left the production line on 15.04.2021 as incomplete and left the plant for a storage place on 19.04.2021. Mr. Amir Shakeel is well versed of the situation. His confession in his email of 06.09.2023 "It is clearly understood that the factory had parts issues due to the supply chain problems caused during Covid which effected various vehicle deliveries".

iv. As per CGO 14/2005, for the purpose of assessment of the motor vehicles, the word "manufacture" stands for completion of the vehicle in all aspects, means vehicle which is ready for drive and delivery. This unit was held-up due to its incompletion/missing parts etc. Once the vehicle was completed in early 2022, it was invoiced on 16.03.2022 (change of title from manufacturer to buyer/orderer).

v. The purpose of the COC is to certify that the vehicles meet the Type Approval Standards of certain markets i.e. European Union and UK, where it is mandatory requirement for vehicle registration.

vi. In normal circumstances, the vehicles completion/plant leaving date is invoicing date as no vehicle leaves the plant without invoicing. However, during the COVID pandemic, supply chain bottleneck and shortages of critical parts led to delay in vehicle completion. For such vehicles the completion/plant leaving date was delayed and the vehicle was invoiced only when 100% complete and in drivable condition. Therefore, in the WeDoc, the invoicing dated of the vehicle is 16.03.2022.

vii. Despite explaining the above background of the case A026648, final decision lies with the Custom Authorities to accept or reject the submissions. Our only request to your good office is that while deciding this case please don't treat this as a one of case. There will be lot more such vehicles in UK and Japan which were ordered for production in 2021 and got delayed due to the

> shortages of critical parts in 2021 and delivered only in 2022. The grey market importers have been keeping a close watch on such vehicles and the decision of this case to deprive the exchequer of due revenue by securing extra rebate based on misleading data or declaring the half-truth.

Considering all above stated facts, Collectorate submitted a report in the instant matter to FBR, vide letter dated 30.10.2023, confirming the production date of subject vehicle as 16.03.2022 in accordance with the justifications provided therein by M/s Shahnawaz (Pvt.) Ltd. In the instant case, M/s Shahnawaz (Pvt.) Ltd. informed that due to shortage of critical parts, mainly involving semiconductors/microchips primarily due to Covid related issues, the delivery remained under technical hold, till the final completion, ready to drive and delivery/change of the title from manufacturer to the buyer. Even, the online verification done by the Collectorate (vin-info.com) confirms that the manufacturing year of vehicle is 2022. Therefore, the year of production was taken as the one provided by M/s Shahnawaz (Pvt.) Ltd. being the authorized local agent for assessment purpose in terms of CGO 14/2005 dated 06.06.2005. The same has been confirmed by the manufacturer in the WeDoc system shared with the authorized dealer in Pakistan. In light of above, it is evident that no maladministration has been committed by the Collectorate in the subject matter. Regarding the non-completion of the GD, the responsibility lies with the consignee. Despite repeated requests for submission of mandatory documents such as Proceed Realization Certificate (PRC), the consignee failed to meet the conditions specified in Appendix-E of the IPO, 2022. Consequently, the Collectorate has processed the GD based on the ITP and production year provided by M/s Shahnawaz Pvt. Ltd as per CGO 14/2005 dated 06.06.2005. The GD completion is pending as the consignee has not been providing requisite documents, using delaying tactics and violating the conditions specified in Appendix-E of the IPO. In light of the submissions made above, it is prayed that the subject complaint may kindly be dismissed being not maintainable, as the matter pertains to the determination of value and date of production which is beyond the jurisdiction of FTO Office in terms of Section 9(2)(b) of the FTO Ordinance, 2000. The Deptt has adhered to the CGO 14/2005 and accepted the ITP value and date of production of vehicle in question provided by the authorized local agent i.e. M/s Shahnawaz (Pvt.) Ltd to exercise uniformity in assessment of vehicles.

4. During hearing, ARs and the DR appeared and reiterated their written submissions. The AR has submitted his written arguments and a copy of EC Certificate of Conformity by Mercedes-Benz in German language along with its translated copy in English. The AR has stated that M/s Shahnawaz (Pvt.) Ltd, vide letters dated 12.10.2023 and 23.10.2023 provided explanation for year of manufacturing/production being 2022, however, it is agitated that the explanation provided has been based on unreliable data and information in order to discourage imports of used Mercedes Benz. The Certificate of Conformity issued by the manufacturer i.e. Mercedes Benz under Article 6 of the European Union Council Directive No.92/53/EEC of 18.06.1992 amending Directive 70/156/EEC against the vehicle clearly states the date of manufacturing as 25.03.2021, furthermore, the Certificate issued is for completed vehicles, it is also pertinent to note that the Certificate of Conformity is necessary for the purposes of registration and taxation of the vehicle within the Member State and further free movement of the vehicle within the EU. In terms of OASIS Vehicle Report, which is the Official Mercedes Benz database, the year of production is 2021, the left Factory date along with the final inspection and completion date is 19.04.2021. The above mentioned documents are a reliable source of data which the M/s Shahnawaz (Pvt.) Ltd completely overlooked and refused to acknowledge, therefore to rely on such an explanation by them would be an unfair assessment of the situation. The importance of determination of

date of manufacture is because of Clause 2A of CGO 14/2005 dated 06.06.2005, whereby depreciation of assessable value is allowed to secondhand/used motor vehicles. There is no indication that the vehicle was put on hold as being suggested by M/s Shahnawaz (Pvt.) Ltd, not a single piece of evidence has been brought forward that would suggest the same, furthermore, there is ample evidence that vehicles were being manufactured during the COVID period especially during the duration in which the Complainant's vehicle was manufactured. M/s Shahnawaz (Pvt.) Ltd in their previous report have clearly mentioned the factory exit dates as the date of production/manufacture, however, in the instant case they have completely ignored/refused to mention that factory out date in their report, which as per the OASIS report is 19.04.2021, therefore, M/s Shahnawaz (Pvt.) Ltd.'s report cannot be relied upon as it suffers from various lapses. In light of the above it is prayed that the actions and inactions on part of the Deptt be held to be maladministration and Deptt be directed to consider and accept the evidence of year of manufacturing submitted by the Complainant. The DR stated that the Collectorate has lawfully examined and assessed the vehicle in accordance with Clause (i) of CGO 14/2005 dated 06.06.2005, the FOB value of a motor vehicle at the time of its manufacture, as certified by the manufacturers or their authorized local agents shall be accepted.

5. During proceedings, it was observed that the Dept'l contention regarding applicability of 9(2)(b) of the FTO Ordinance, 2000, would be misconceived as the issue is a dispute of year of manufacturing, which needs deliberation and attention by the Deptt. According to Clause (i) of CGO 14/2005 dated 06.06.2005, which reads as follows:

> "(i) The FOB value of a motor vehicle at the time of its manufacture, as certified by the manufacturers or their authorized local agents shall be accepted."

The Deptt requested the authorized local agent of Mercedes Benz in

Pakistan i.e. M/s Shahnawaz (Pvt) Ltd. for provision of ITP and month/year of manufacturing whereas, clause (i) of para 01 of CGO 14/2005 dated 06.06.2005 clearly stipulates that the FOB value of the motor vehicle at the time of its manufacture, as certified by the manufacturer as first priority and subsequently mentions the words "or their authorized local agents" shall be accepted. The Collectorate relied upon the info provided by the authorized local agent M/s Shahnawaz (Pvt) Ltd inspite of the fact that a major dispute about the year of manufacture has been raised by the Complainant on the fact that the local agent is relying inter alia on the factory exit date/invoice date rather than the date of manufacturing. It is also pertinent to mention here that the following definition of the word "Manufacture" given in the Sales Tax Act, 1990, should have been kept in view by the Collectorate for identification of the year of manufacture:

> "(16) **"manufacture"** or **"produce"** includes –
>
> (a) any process in which an article singly or in combination with other articles, materials, components, is either converted into another distinct article or product or is so changed, transformed or reshaped that it becomes capable of being put to use differently or distinctly and includes any process incidental or ancillary to the completion of a manufactured product;"

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The Deptt should have kept all the above narrated facts and legal provisions in view and should have contacted the Actual Manufacturers of the impugned vehicle i.e. M/s Mercedies Benz, DE-70372 Stuttgart, Germany, instead of simply relying upon the info provided by their local agent viz M/s Shahnawaz (Pvt) Ltd and on vin-info.com an independent website while "Oasis" is reportedly the official website).

Findings:

6. In view of supra, it is evident that the issue of manufacturing date of the subject vehicle bearing chassis No.A026648 is a unique case in view of temporary closure of manufacturing process due to COVID lock down and

remains the core issue of the subject complaint. Therefore, the Deptt should either have accepted the Certificate of Conformity (CoC) as sufficient evidence provided by the Complainant or should have approached the concerned manufacturing unit of the company i.e. Mercedes Benz, DE-70372 Stuttgart, Germany, for verification and confirmation of manufacturing date of the said vehicle instead of simply relying upon the challenged information provided by the local agent i.e. M/s Shahnawaz (Pvt) Ltd. The above confirms an unjust and discriminatory decision making by the Deptt due to its neglects, inattention, delay, incompetence and inefficiency and is tantamount to maladministration as defined under Section 2(3)(i)(b) and (ii) of the FTO Ordinance, 2000.

Recommendations:

7. FBR to direct:

(i) Collector of Customs Appraisement (East) to verify the certificate of conformity issued by the manufacturer i.e. Mercedes Benz under Article 6 of EU Council Directive No.92/53 of 18.06.1992 which clearly states the date of manufacturing as 25.03.2021, directly from the manufacturing company i.e. Mercedes Benz, DE-70372 Stuttgart, Germany, as soon as possible but not later than 30 days, in case the verification is not made within the given time line by the Deptt, the documentary evidence of CoC issued by the manufacturer, be used for determination of the year of manufacturing and the assessment be made accordingly, as per law; and

(ii) report compliance within 45 days.

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

Dated: 24.7.2024

Approved for reporting