

# THE FEDERAL TAX OMBUDSMAN ISLAMABAD

**Complaint No.0714/KHI/CUST/2023**

Dated: 13.02.2023\* R.O. Karachi

**M/s Azuan Naturals**

F 498 A, SITE,  
Karachi

*... Complainant*

**Versus**

The Secretary,  
Revenue Division,  
Islamabad.

*... Respondent*

Dealing Officer	:	Mr. Muhammad Iqbal Bhawana, Advisor
Appraising Officer	:	Mr. Muhammad Nazim Saleem, Advisor
Authorized Representative	:	Mirza M. Abeer, Advocate
Departmental Representative	:	Ms. Sadia Sadaf, Addl. Director- Customs DG of Transit Trade, Karachi

## **FINDINGS/RECOMMENDATIONS**

The above-mentioned complaint was filed against the Directorate General of Transit Trade, Karachi in terms of Section 10(1) of the FTO Ordinance, 2000 for not allowing amendment of the consignee name under Section 138 of the Customs Act, 1969.

2. Briefly, the case pertains to amendment of IGM of imported goods which were originally meant for transit to Afghanistan. However, the consignee refused to accept goods and authorized Pakistani importer to import the goods. The Directorate General of Transit has however declined to allow amendment of IGM in terms of Rule 484L of Customs Rules, 2001 and the provisions of Section 138 of the Act and Board's directives. As per the Directorate, the Board has clarified vide letter dated 10.03.2023 that the applicant be directed to approach the State Bank of Pakistan and Ministry of Commerce for obtaining NOCs regarding transfer of foreign exchange



and substitution of transit goods for consumption in Pakistan. It was averred by the Directorate that the transit goods are dealt with under Section 127 of Customs Act, 1969, whereas import GD for home consumption in Pakistan, is filed under Section 79 *ibid*. The DR conveyed the view of Directorate General that the goods already manifested for transit to Afghanistan cannot be cleared in terms of Section 79 of the Customs Act, 1969.

3. The complaint was referred to the 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 whereof, the Directorate General submitted comments which are placed on record.

4. During hearing proceedings, DR averred that amendment in IGM is governed by Section 45(2) of the Customs Act, 1969 and not under Section 138 *ibid*. The DR invited attention towards Board's letter dated 10.03.2023 in which the Complainant has been advised to approach State Bank of Pakistan and Ministry of Commerce for obtaining NOCs regarding transfer of foreign exchange and substitution of transit goods for consumption in Pakistan respectively. AR highlighted that there is no restriction under the law against amendment of IGM, release of frustrated cargo whether it be the transit goods or those meant for home consumption in Pakistan. AR further stated that the foreign exchange in respect of the said consignment has already been transferred to the consignor as confirmed by relevant banks.

5. Averments of both sides heard and the record examined.



6. There is no doubt that in the normal course of business, the goods meant for transit to Afghanistan or elsewhere are dealt with under separate regime under distinct provisions of Customs Act, 1969 and the prescribed procedure and rules made thereunder. However in exceptional circumstances at times, there arises a need to allow substitution of the goods imported through one regime with the other regime as is the case with respect to the goods in question where importer of transit goods in Afghanistan refused to accept the goods. Infact, as pointed out by the Complainant, the recent amendment introduced in the Customs Act, 1969 duly caters to such an eventuality providing legal cover to the change of consignee name for clearance where consignee has dishonored his commitments. It is noteworthy that Section 138 is the only section of the Customs Act, 1969 dealing with the procedure pertaining to frustrated cargo as a result of inadvertence, misdirection, untraceability of the consignee or where consignee has dishonored his commitments, therefore the instant consignment can also be dealt with under Section 138 of Customs Act, 1969 after introduction of recent amendments read with Rule 484-L of Customs Rules which prescribes that the provisions of Section 138 of the Act, Chapter VII of these rules and Board's directives shall be applicable in dealing with the cases of frustrated cargo of transit trade goods. It is in this backdrop that the Board has not disallowed amendment of consignee name in this particular instance and has instead directed the DG Transit to advise the Complainant to seek NOC from State Bank and Ministry of Commerce before allowing the necessary amendment(s) required by the Complainant. After having gone through the letter of Board bearing C.No1(7)T&BT/2013-38903-R dated 10.03.2023 as well as the information and documentary evidence provided by the Complainant,

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it is clear that foreign exchange in respect of the said consignment has already been remitted to the consignor after approval from the State Bank. Moreover, as stated above the amendment of consignee name from the Afghan importer to Pakistani importer is also covered under the provisions of Section 138 of the Customs Act, 1969. In view of the facts mentioned above, it can be safely concluded that recommendation of the Board to the Directorate General of Transit to ask the Complainant to seek NOC from State Bank and Ministry of Commerce before allowing amendment in consignee name and substitution of transit goods for home consumption in Pakistan is redundant, uncalled for and tantamounts to subjecting the Complainant to unnecessary hardship in the particular circumstances of the instant case.

**RECOMMENDATIONS:**

7. FBR to

- i) direct the Directorate General of Transit to allow amendment of consignee name in order to enable the Complainant to file GD under Section 79 of Customs Act, 1969; and
- ii) report compliance within 15 days.

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

Dated: 6:4: /2023

*Approved for reporting*