

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

1772/KHI/CUST/2022

Dated 10.05. 2022^{*} R.O. Karachi

M/s A.M Corporation,
Office No 402, shariah Trade Centre,
New chali, Karachi.

... Complainant

V e r s u s

The Secretary,
Revenue Division,
Islamabad.

... Respondent

Dealing Officer	:	Syed Tahir Raza Zaidi, Advisor
Appraising Officer	:	Mrs. Sarwat Tahira Habib, Sr. Advisor
Authorized Representative	:	Mr. Affan Usman Ghani, AR
Departmental Representative	:	Mr. Mushtaq Ali Shahani, (ADC-EAST)
		Mr. Sadar Amin farooqui, (AC-EAST)

FINDINGS / RECOMMENDATIONS

The above complaint has been filed by M/s A.M. Corporation under section 10(1) of the FTO Ordinance 2000, against the Collector MCC (Appraisement) East, Custom House, Karachi and Director General (Valuation), Custom House, Karachi on account of non-finalization of provisional assessment within the prescribed time under Section 81 of the CA-1969 (the Act).

2. Briefly the complainant imported 08 consignments of Tyres and Tubes and filed Goods Declarations during the period December 2020 to February 2021 which were provisionally assessed under Section 81(1) of the Act as the complainants request for revision of Valuation Ruling was pending with the Director General (Valuation), Custom House, Karachi. The differential amount of duty and taxes was secured by the Department in the shape of banks guarantee / pay orders as provided under Section 81(1) of the Act. As

^{*} Date of Registration in FTO Sectt.

per the complainant, the provisional assessment was to be finalized by the department within the time frame prescribed under sub-Section (2) of Section 81 of the Act i.e six months extendable by 90 days by the competent authority which has not been done despite lapse of more than 2 years in some cases. The complainant has further averred that Sub-Section 4 of the Section 81 provides that :

- (i) *"If the final determination is not completed within the specified period under sub-Section (2) of Section 81, the provisional determination shall in the absence of any new evidence, be deemed to be final determination."*

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 Tax Ombudsman Institutional Reforms Act, 2013. In response, the Collector of Customs, MCC (Appraisement) East, Custom House, Karachi vide letter dated 17-05-2022, submitted para wise comments. The department stated, inter alia, that the complainants request for revision of Valuation Ruling was pending with the Director General (Valuation) and since no response / advise was received, the cases of provisional assessment could not be finalized, within the stipulated time frame. During the course of hearing, it was further informed by the Department that once the goods are provisionally assessed by the appropriate officer, the Goods Declaration on WeBOC window is transferred to Directorate of Valuation for further necessary action without leaving any trace or link for the assessing officer to monitor the progress. The Department has also cited the decision / order passed by this forum in complaint No. 0570 / LHR/CUST/2022 and claimed similar treatment as the present complaint is identical in nature. The said order has been examined and it transpires that the complaint was launched after finalization of the assessment by the department within the time frame prescribed under Section 81 of the Act, hence the cited case is altogether different in nature viz-a-viz the instant complaint.

4. Since the instant Complaint has cropped up owing to in-action by the Directorate of Valuation on the revision application dated 24-07-2020, the

complaint was referred to the Directorate for comments. The Director Valuation, Custom House, Karachi, vide letter dated 19-06-2022, inter alia, submitted that:

"It is informed that the Directorate General of Valuation issued Valuation Ruling No. 1319/2018 under section 25A of the customs Act, 1969 on 30th of August 2018 after multiple meetings with stakeholders; including PTIDA (Pakistan Tyre Importers and Dealers Association). Any importer/manufacturer, aggrieved by any Valuation ruling, can file a review petition under section 25D of the Customs Act, 1969 to the Director General Valuation within thirty days from the issuance of Valuation ruling. In the instant case, the revision application was received in this Directorate on 29th of July, 2020 after lapse of almost 23 months since issuance of the aforementioned Valuation Ruling. The review application, in itself, was barred by time and could not be considered. Moreover, as per section 25D of the Customs Act, there is no explicit provision for condonation of delay in revision application, therefore, such time barred application stands void ab initio. It is further submitted that since the complainant's GDs were forwarded to this Directorate in consequence to his time barred application it can be constructed that no action in law was required on part of Directorate General of Customs Valuation in terms of advising values of imported goods. Therefore, it is stated that the complainant has not approached the honorable FTO with clean hands since his application was barred by time knowing well that "ignorance of law is no excuse".

5. The above comments have been examined and it is evident that the Directorate failed to respond to the complainant's request for revision of Valuation Ruling despite lapse of almost two years and have returned the GDs to the Collectorate without any advise for final determination of value. The contention of the Directorate about in-admissibility of the revision application being time barred should have been communicated to the complainant two years back when the application was filed which was not done.

6. The Director (Valuation) has also annexed FBR's letter C.No. 3(21) S.Val./2021 dated 13-06-2022 whereby the FBR under section 224 of the Act has granted blanket extension for finalization of provisional assessment in 280 cases forwarded by the Directorate of Valuation vide letter No. ESH/21/Misc/FBR/2022/571 dated 02-06-2022. It is evident from record that the Directorate of Valuation, failed to finally determine the assessable value of imported goods within the prescribed time under Section 81(2) of the CA-

1969 and sought extension from FBR which was granted in a mechanical manner without ascertaining the reason for such delay on case to case basis. The Director Valuation vide letter dated 14-06-2022 addressed to this forum has further stated that:

"It is further informed that all the GDs mentioned in the subject complainant have been referred back to Clearance Collectorates after due extension from the Board . It the Collectorates require specific advice from this Directorate on these particular GDs, they may forward the same with specific request. It is, therefore, requested that respondent Collectorates may be directed to consider this matter in light of facts and relevant statutory provisions".

7. It is evident from the above narration by the Director (Valuation) that 280 cases of provisional assessment including those under the instant complaint remained un attended and were returned back to the Collectorate without any input / advice.

8. It has also transpired that once a GD is provisionally assessed, the same is no more visible on the WeBOC Screen of the assessing officer and is transferred to the appropriate officer of valuation Department, resultantly the assessing officer is not able to monitor the progress and finally determine the value of goods within the prescribed time frame. The Director Reforms & Automation should address this shortcoming in the WeBOC system and fix the same on priority. The Collectorate should immediately develop Change Form Request (CRF) and sent the same to Director, Reforms & Automation for systemic updation enabling the assessing Collectorate to monitor the progress on regular basis.

FINDINGS:-

9. Failure to finalize the provisional assessment within prescribed time frame provided under Section 81(2) of the Act tantamount to mal-administration as defined under Section of the FTO Ordinance, 2000.

RECOMMENDATIONS:-

10. FBR to direct;

- (i) the Director General of Reform & Automation to ensure systemic improvements in WeBOC so as to enable the Assessing Collectorates to monitor the progress of provisional assessments on regular basis;
- (ii) the Director General Customs (Valuation) to ensure that all cases of provisional assessment are finalized within the prescribed time frame under Section 81(2) of the Act;
- (iii) the all Collector of customs to finalize the provisional assessment of cases strictly in accordance with dictates of Section 81(4) of the Act on merit according to the judgments of the superior judiciary in this regard and;
- (iv) fix responsibility on delinquent officials who have failed to discharge their responsibility in accordance with law; and
- (v) report compliance in 60 days.

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

Dated: 13:7 2022
pk/gq

Approved for reporting