

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

COMPLAINT NOS. 3392 & 3903/LHR/CUST/2022

Dated: 29.07.2022* RO Lahore

Mr. Sultan Mahmood,
Prop; Premium Industries,
No.510, Shah Arcade Barkat Market,
Garden Town, Lahore

... Complainants

Mr. Abu Bakar Javaid,
191-General Bus Stand, Badami Bagh,
Lahore

Versus

The Secretary,
Revenue Division,
Islamabad

... Respondent

Dealing Officer	:	Dr. Sarfraz Ahmad Warraich, Advisor
Appraising Officer	:	Dr. Arslan Subuctageen, Advisor
Authorized Representative	:	Complainant in person Mr. Altaf Hussain, AR
Departmental Representative	:	Mr. Nabeel Siraj, Deputy Collector, Collectorate of Customs Appraisalment (West), Custom House, Karachi

FINDINGS/RECOMMENDATIONS

These two Complaints, identical in nature, are filed, in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance), regarding procedure prescribed for EIF pre-approval, by State Bank of Pakistan, vide EPD Circular No.11 of 2022 dated 05.07.2022. Both Complaints having facts, issues and grounds similar, therefore, are disposed of with this one consolidated Order.

2. Precisely:

- (i) In Complaint No. 3392/LHR/CUST/2022, Complainant imported a consignment from Korea, vide Airway bill dated 06.07.2022, at Lahore Airport, comprising of

*Date of registration in FTO Sectt.

Circular Knitting Machine Parts/Needles, to be used for manufacture of knitting garments/hosiery items, consequently to be exported. Exchange Policy Department of State Bank of Pakistan, vide Circular No. 11 of 2022 dated 05.07.2022, issued directions that authorized dealers are required to seek prior permission from Foreign Exchange Operations Department, SBP-BSC, before initiating transaction for import of goods, listed in Annexure to Circular No.11 of 2022 dated 05.07.2022. Authorized Dealers were advised to bring said instructions to the knowledge of all concerned to ensure meticulous compliance of said directions. Enclosure to Circular included Chapter 84 and 85 of Pakistan Customs Tariff, alongwith other PCT headings. Due to regulatory procedure, imposed by State Bank of Pakistan, clearance of consignment is stuck up, resulting in heavy demurrages, airport charges on daily basis and consequently stoppage of manufacturing process and in the long run, hurting national exports. Complainant proposed certain options stating that, in case State Bank of Pakistan has shortage of funds, importers may be allowed to purchase US\$ from market and deposit the same to concerned banks for transactions. Further, if purchase of US\$ is not allowed from market for deposition in banks for such transactions, importers may be allowed to clear imported consignments without payment of foreign exchange, for which Foreign Principal could be requested by Importer to wait till the matter is resolved. Complainant prayed that matter may be resolved at the earliest so as to save national exports from a serious impending crisis due to shortage of foreign exchange. 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 Ombudsmen Institutional Reforms Act, 2013, vide letter dated 01.08.2022, followed by reminders dated 03.08.2022, 16.08.2022, 12.09.2022 and 14.09.2022 but no response has been received. Case was fixed for

hearing four times but neither Department/Complainant appeared nor any adjournment received from either side. Finally, pursuant to telephone call dated 22.09.2022, from this office, Complainant appeared on 23.09.2022 and reiterated/explained the issues, already submitted in written Complaint.

- (ii) In Complaint 3903/LHR/CUST/2022, Complainant raised identical issues with reference to issuance to Electronic Import Form by commercial banks with regard to imports under Chapter 84 & 85 of Pakistan Customs Tariff. 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 Ombudsmen Institutional Reforms Act, 2013. In response thereto, Collector, Collectorate of Customs Appraisalment (West), Custom House, Karachi, vide letter dated 19.09.2022, submitted parawise comments, stating therein that alleged general nature grievance from Complainant, relates to hold on import of HS Codes starting with prefixes 84 & 85 of PCT, by State Bank of Pakistan. Moreover, demurrage and detentions were related to terminal operators and shipping companies which were independent commercial entities. There was no hold on the clearance of goods pertaining to Chapter 84 and 85 of the Pakistan Customs Tariff by Customs. It appeared that Complaint was regarding fulfillment of conditions of import of goods (some PCTs) by commercial banks under instructions issued by State Bank of Pakistan, vide Circular letter Nos. 9/2022 dated 20.05.2022 and 11/2022 dated 05.07.2022, and same did not fall under the ambit of this Collectorate. Consignments pertaining to H.S. Code Chapter 84 & 85 of Pakistan Customs Tariff were regularly being cleared by Department without any hindrance. Therefore, FTO may advise Complainant to approach State Bank of Pakistan for resolution of the issue, if any. Department prayed for dismissal of Complaint.

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3. Issue, having been creating ripples amongst stakeholders of export industry at national level, Mr. Kashif Anwar, President Lahore Chamber of Commerce and Industry, has also repeatedly taken up this matter with FTO Regional Office, Lahore. He appeared with a delegation of exporters during hearing proceedings on this issue and put forward Chamber's concern alongwith certain recommendations to look for a way forward in the midst of current national financial crunch. He, alongwith members of delegation, submitted that Government has recently made it difficult to release consignment falling under Chapter 84, 85 & 87, considering them to be part of Luxury. In Chapter 84, there are 87 sub-heads which mainly comprise of replacements and industrial inputs and some are for construction industry. Likewise in Chapter 85 there are 48 sub-heads, which comprise of electric motors, gen sets, machinery for construction industry, alongwith for educational institutions. Likewise, Chapter 87 generally comprises of CBUs, including locomotive, agricultural units and so on. Initiative of the Government is to reduce gap in balance of trade but measures taken are not commendable as Government's motto is to increase exports to strengthen economy and earn more foreign reserves but regulatory measure has given space to smuggling, mis-declaration and unfair means as well as resulting in reduced collection of custom duty, income tax and sales tax. He further stated that when consignment is not released within 14 free days, shipping line start charging detention/container rent which varies from USD 80-150 per calendar day, including holidays. This payment is made to the shipping line at the open market USD rate and the same amount is repatriated to head offices abroad in the shape of foreign exchange which is also a great loss. No consignment is being released from the port which is creating congestion at port, adding to port demurrage charges.

The mechanism adapted is that when the documents lying under above chapters are received importers are supposed to apply for approval of release of documents to the State Bank of Pakistan through receiving bank. There is a portal on which commercial banks apply for approval which delays release of documents adding to extra demurrage and detention charges, further added in the shape of increasing dollar rate. Importers, whether commercial or industrial, have to face one more issue of devaluing currency and USD parity rate which is being charged over and above by commercial banks at a rate which commercial banks like to charge in the name of free flow market. EASE of Doing Business slogan has badly failed as above factors have added to landed cost, thus, making product expensive which pushes it away from consumer due to their pocket size. He went on to state that, after signing AML, it is not at all possible to import any product into Pakistan without involving commercial banks and without filing I-Form.

4. Pursuant to above observations/evaluation, Chamber delegation made certain recommendations, stating therein that (i) in order to avoid additional cost on account of demurrage, shipping line charges / other port charges, importers should be allowed in bonding of consignments, currently under State Bank of Pakistan above stated regulatory procedure (ii) importers should be allowed to apply approval immediately after issuance of BL; (iii) there should be time frame, set by State Bank of Pakistan to approve documents well before arrival of consignment; (iv) there should be no pick and choose, should be on FIFO basis; (v) LC is backed by guarantee from State Bank but, under new measures, needs to be approved which is not understandable as, after Pakistan's WTO ratification status, all items are freely importable into Pakistan; (vi) definition of

luxury items needs to be corrected immediately as most of the items, lying in above stated chapters, are industrial inputs which are essential for running industry; (vii) most of the orders to commercial banks are verbal, like documents/invoices over and above USD 100000.00 need to be released after prior approval. Such invoices are mostly of industrial importers who need their material for making product and fulfill their export order; (viii) luxury items (after correction of definition) be allowed to be imported with maximum rate of duties and taxes at par with practice in neighboring countries, in order to support local industry; and (ix) in view of current flood situation in Pakistan, FRRF @ 2% be imposed on all imports for 02 months so as to raise nation's on resources for re-building infrastructure and to rehabilitate flood affectees.

FINDINGS:

5. In view of supra, it is evident that instant Complaints relate to State Bank of Pakistan's Circular dated 05.07.2022, not directly related to FBR, therefore, not falling within jurisdiction of this Forum. However, issue involves tax revenues mobilization, national foreign exchange reserves, trade balance, susceptibility of national exports and running of local industry, therefore, requires immediate collective wisdom of FBR, State Bank of Pakistan, Ministry of Commerce, Ministry of Finance and Economic Coordination Committee of the Cabinet, in consultation with FPCCI, Chambers of Commerce and Industry and other stakeholders, to look for sustainable answers/ resolution.

RECOMMENDATIONS:

6. FBR to:

- (i) forward Findings/Recommendations of this Forum to all stakeholders as reflected in para-5 above, for reflection

and further processing/fine tuning for further action;

- (ii) invite input from FPCCI, Chambers of Commerce and Industry and other stakeholders and process recommendations on merit;
- (iii) propose immediate possible holding of meeting of ECC of Cabinet once input, provided by business stakeholders, is evaluated/processed by stakeholders Departments/Ministries, as well; and
- (iv) this Forum may also be kept abreast about outcome of above measures/steps taken.

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

Dated: 13 : 10 : 2022
K.A

Approved for reporting