

**THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

COMPLAINT NO.7317/KHI/CUST/2023

Dated: 18.12.2023* R.O. Karachi

M/s Apex Printery (Pvt.) Ltd.,

Recorder House 531. Business Recorder
Road, Karachi.

...*Complainant*

Versus

The Secretary,
Revenue Division,
Islamabad

...*Respondent*

Dealing Officer

: Mr. Gul Rehman, Advisor

Appraising Officer

: Mr. Muhammad Nazim Saleem, Advisor

Authorized Representatives

: Complainant in person

Departmental Representative

: Mr. Faizan Arif, DC Customs
CoC, Enforcement (Ports), Karachi

FINDINGS/RECOMMENDATIONS

P The instant complaint has been filed against the Collector, Collectorate of Customs, Enforcement (Ports), Karachi under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance). The Complainant has raised concerns regarding illegal collection of extra/additional charges and detention of security deposit beyond prescribed period of 15 days in violation of Shipping Agents Rules of Chapter XXVI of Customs Rules, 2001 notified vide SRO 1220(I)/2015 dated 04.12.2015.

2. In summary, the Complainant expressed dissatisfaction with the Customs Deptt. being Licensor to implement the Shipping Agents Rules. The Complainant imported 2(Two) containers of copy paper from UAE under B/L No.MKSJEKHI1419223 upto Karachi port CY/CY, Freight & THCD charges prepaid at port of loading. No other extra/additional charges were mentioned on the B/L to be collected by

Shipping Agent as agreed by the shipper and Shipping Line. The Shipping Agent while issuing delivery order collected extra/additional charges Rs.183,275/- not specifically mentioned on the B/L which is violation of Rule 664(q) of the Customs Rules, 2001 notified vide SRO 1220(I)/2015 dated 04.12.2015. The shipping agent also collected Rs.200,000/- as security deposit. Later, the shipping agent partially returned Rs.110,100/- from DO charges after deducting Rs.3,000 as container detention charges. The shipping agent returned the security deposit after 67 days violating rule 665(1)(r). The Complainant aggrieved with such illegal collection of extra/additional charges and inaction of the Licensor to take action under the Shipping Agents Rules.

3. The complaint was forwarded to the Secretary, Revenue Division, for comments under Section 10(4) of the FTO Ordinance, in conjunction with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act, 2013. In response thereto, the Respondent Collectorate submitted comments vide letter dated 22.01.2024. It was stated that M/s Apex Printery, the Complainant, approached Collectorate before filing the complaint in FTO. The Collectorate made relentless efforts to resolve the issue by conducting frequent meetings with both parties. As a result of their hectic efforts, M/s. Markhor Shipping (Pvt.) Ltd. refunded mistakenly charged DTHC amounting to Rs.110,100/-. M/s. Apex Printery, the Complainant, again approached Collectorate through M/s. All Pakistan Paper Mercantile Association and conveyed that they still have reservation on rest of the charges collected from them by the alleged shipping line. On receipt of the current complaint, an explanation vide letter No.Reg/Prev/LA/SI-Misc/01-12/1979 dated 26.09.2023 was issued to M/s Markhor Shipping (Pvt.) Ltd. In this connection. they replied vide letter dated 03.10.2023 that mistakenly

received DTHC amounting to Rs.110,000/- has already been returned and rest of the amount was charged as standard tariff which was already communicated to the consignee through their agent/shipper. In support of their claim, they have also provided screenshots of email sent by the agent/shipper. Since the issue of extra charges was already resolved, therefore there was no need to intervene without any cause. However, on receipt of the complaint of FTO, efforts were again made to address further reservation of the party. Therefore a meeting was called on 19.01.2024 at the office of the Deputy Collector (Licensing). In the meeting, a representative of the petitioners and representative(s) of the respondent shipping line appeared. It was reiterated to the shipping line(s) to grant maximum discount on the charges collected by them and they have agreed to that extent. Moreover, it was also agreed by the shipping agent that in future to avoid such misunderstanding, it will clearly be mentioned on BL that the consignee shall pay DO charges at POD or not. Lastly, the Collectorate makes all efforts to ensure that the shipping agents perform their function within the rules mentioned in Customs Rule, 2001 and in case of any violation or complaint, the licensees are issued show cause notice. In case it is established that there is some gross violation of the rules and regulations, then their licensees are also revoked. Therefore, in the light of the facts stated above, it is requested that the complaint may be closed since the matter has been resolved.

4. The contents of para-wise Departmental comments have been perused on which rejoinder has been filed by the Complainant with following contentions:-

- I. That pursuant to earlier round of litigation before this FTO ended up through findings/recommendations dated 12-01-2010 upheld in review order 28-01-2013, the Federal Board of Revenue promulgated Shipping Agents Rules by notification SRO 1220(I)/2015 dated 04-12-2015 ('The Rules') issued in exercise of

powers conferred u/s 219 of the Customs Act, 1969. Under Rule 664(q) of the Rules, the Respondent Shipping Agent who is the licensee of the Respondent Department could only collect additional charges other than freight which are agreed by Shipper and Shipping Line as specifically written on the bill of lading, airway bill or bill of freight.

- II. That under Rule 665(1)(p) of the Rules, the license issued by the Respondent Licensor i.e Customs Department shall be revoked if the delinquent Shipping Agent found involved in charging extra amount other than agreed charges or those mentioned in the bill of lading and the license or permit of such Shipping Agent shall also be suspended and punitive actions envisaged in the Act, 1969 shall also be initiated in case of violation of Rule 664(q) of the Rules in terms of Rule 665(1)(e)&(p) of the said Rules.
- III. That in the Departmental comments it has been categorically stated that the additional charges other than freight were collected by the Respondent Shipping Agent who partly returned some amount to the Complainant after considering that it was collected in violation of Rule 664(q) of the said Rules. The matter in this case relates to the grievance that the Respondent Shipping Agent admittedly committed violation of Rule 664(q) of the Rules which is not condonable and require appropriate actions of revocation or suspension of license or permit of the delinquent Shipping Agent under Rule 665(1)(p) of the Rules against whom punitive actions envisaged in the Act, 1969 are also required to be taken. On the contrary, the Respondent Department misconceived the matter and grievance which is subject matter of this complaint who commented that it is a case of recovery of alleged additional charges instead of violation of Rule 664(q) of the said Rules subject to actions under Rule 665(1) of the Rules.
- IV. That the Respondent Shipping Agent in first instance has already conceded in its letter dated 12-08-2023 addressing the Complainant that the alleged additional charges collected from the Complainant are not covered by the freight charges and the same are meant to recover the costs of the Respondent Shipping Agent which is an admission that offence of violation of Rule 664(q) of the said Rules has been committed which is not condonable and require

appropriate actions of revocation of license of the delinquent Shipping Agent under Rule 665(1)(p) of the Rules against whom punitive actions envisaged in the Act, 1969 and prescribed under Rule 665(1) of the said Rules are also required to be taken. The said Respondent Shipping Agent also admitted in its letter dated 03-10-2023 as mentioned in para-3 of the Departmental comments that alleged additional charges were collected from the Complainant in violation of Rule 664(q) of the said Rules which were already paid at Port of loading, hence, the same has been returned to the Complainant.

- V. That the aforesaid letters of the Respondent Shipping Agent as well as the Departmental comments are *prima facie* establishing the allegation of the Complainant that offence of violation of Rule 664(q) of the said Rules has been committed by the Respondent Shipping Agent who is the licensee of the Respondent Department. The admitted violation of Rule 664(q) of the said Rules is not condonable as per Rule 665(1) of the Rules under which appropriate action of revocation or suspension of license or permit of the delinquent Shipping Agent is required to be taken a/w punitive actions envisaged in the Act, 1969 by the Respondent Department being licensor who while avoiding such appropriate actions in violation of Rule 665(1) of the Rules is committing maladministration, as defined u/s 2(3) of the FTO Ordinance, 2000.

- VI. That the Respondent Department in its para-wise comments in para-5 has stated that "*in case it is established that there is some gross violation of the rules and regulations (Rules promulgated vide SRO 1220(I)/2015) then their licenses are also revoked*". In this case, it is *prima facie* established that the gross violation of Rule 664(q) of the said Rules has been committed by the Respondent Shipping Agent who admittedly collected the alleged additional charges other than freight which were not agreed charges by Shipper and Shipping Line and not specifically written on the bill of lading, airway bill or bill of freight. But, in spite of such admitted violation of Rule 664(q) of the said Rules on part of the Respondent Shipping Agent, the aforesaid

action of revocation of license under Rule 665(1) of the said Rules has not been taken and avoided by the Deputy Collector (Licensing Section), Collectorate of Customs Enforcement (PORTS), Customs House, Karachi being concerned officer of the Respondent Department may be for the reason of connivance or otherwise which is apparent maladministration being committed by the Respondent Department.

- VII. That the matter of maladministration of inaction of non-compliance of Rule 665(1) of the Rules on violation of Rule 664(q) of the Rules on part of the delinquent Respondent Department is involved in this complaint, but, the Respondent Department in its comments manipulated the matter by observing that the matter of maximum discount on the alleged additional charges collected by the Respondent Shipping Agent in violation of Rule 664(q) of the said Rules is involved. On one hand, the Respondent Department stated in para-5 in its comments that *"in case it is established that there is some gross violation of the rules and regulations (Rules promulgated vide SRO 1220(I)/2015), then their licenses are also revoked"*, on the other hand, when such gross violation of Rule 664(q) of the said Rules has been committed as conceded by the Respondent Shipping Agent itself and observed by the concerned officer of the Respondent Department in its comments the same appropriate action of revocation of license in compliance of its own Rule 665(1) of the Rules is being not taken and avoided may be for the reason of connivance with the delinquent Shipping Agent or otherwise which is *prima facie* maladministration as defined u/s 2(3) of the FTO Ordinance, 2000 being committed by the Respondent Department.
- VIII. That to understand the grievance and case of the Complainant following example is being given:-

"In case where Importer declared quantity '100 units' for assessment of imported goods and the Department during examination found quantity '200 units' and invoked provision of Section 32 of the Act, 1969 by alleging misdeclaration and the Importer after accepting the quantity of imported goods in excess of declared quantity found by the Department made payment of differential amount of duty/taxes chargeable on excess quantity then Respondent Department has no

jurisdiction and authority to exempt the Importer from penal action prescribed u/s 156(1)(14) of the Act, 1969".

Similarly, in this case, offence of violation of Rule 664(q) of the said Rules has been committed by the Respondent Shipping Agent which has been observed by the concerned officer of the Respondent Department in the para-wise comments and conceded by the Respondent Shipping Agent itself then the Deputy Collector (Licensing Section), Collectorate of Customs Enforcement (PORTS), Customs House, Karachi has no jurisdiction and authority to exempt the Respondent Shipping Agent from penal action prescribed under Rule 665(1) of the said Rules who himself stated in the para-wise comments in para-5 that *"in case it is established that there is some gross violation of the rules and regulations (Rules promulgated vide SRO 1220(I)/2015), then their licenses are also revoked"*.

5. During the course of hearing, the AR for the Complainants stated that the Shipping Agent violated the Shipping Agents Rules while collecting extra/additional charges not written on the B/L. He also contended that the Shipping Agent after admitting such illegal collection returned an amount of Rs.110,100/- to the Complainant. AR contended that remaining amount is also liable to be returned and action to be taken against Shipping Agent Rules. Moreover, the security deposit has been returned after 67 days instead of 15 days as required under Rule 665(1)(r) of Rules. The DR while reiterated on comments stated that shipping agent returned amount partly which was mistakenly received and rest of the amount was charged as standard tariff. However, the DR could not deny the additional charges collected from the Complainant by the shipping agent. Also he could not justify the retention of the security deposit by the shipping agent beyond fifteen (15) days. The representative of Shipping Agent

contended that due notice was served to the complainant that he is required to pay the administrative expenses for Delivery Order required for taking delivery of consignment as per Declared Tariff of our clients and that these are quite unrelated to the freight.

6. Heard both parties and perused the case file.

FINDINGS:

7. On examination of facts it has been revealed that SRO 1220(I)/2015 dated 04.12.2015 was issued by the FBR in compliance of recommendations dated 12.01.2010 of this Forum given in identical complaints bearing No.462-469-K/2009 through which while making amendments in Customs Rules, 2001 the SHIPPING AGENTS RULES (*'the Rules'*) have been made in exercise of powers conferred u/s 219 of the Customs Act, 1969 (*'the Act, 1969'*) for carrying out the purposes of the Act, 1969. Under the Rules Collector of Customs or any officer not below the rank of Assistant Collector of Customs authorized by the Collector is the Licensing Authority and the Shipping Agent is the licensee¹ to carry out customs business. The allegations of the complainant not controverted by the shipping agent and customs department in its comments that extra/additional charges other than freight not agreed by the shipper and shipping line and not written on the bill of lading were collected and security deposit has been returned beyond prescribed period of 15 days. Such collection of extra/additional charges and delay in return of security deposit are violation of Rule 664(q) and 665(1)(r) of the Rules which require action by the Licensor customs department under Rule 665(1)&(4) of the Rules. Return of collected extra/additional charges partly by shipping agent also established that the extra/additional charges collected by it were in violation of Rule 664(q) of the Customs Rules, 2001. The

customs department in its comments at para 5 itself contended that in case it is established that there is some gross violation of the Rules, then, license of the licensee is also revoked. It is observed from the perusal of the Rules that in case violation of any Rule including Rule 664(q) of the Rules is made by licensee, then, the license of such licensee shall be revoked under Rule 665(1)&(4) of the Rules. The Licensing Authority may revoke or suspend a license or permit of a shipping agent for one or more reasons given in Rule 665 of the Rules. The offence of violation of Rule 664(q) of the Rules by the licensee is not condonable from the punitive penal action(s) required to be taken for such violation under Rule 665(1)&(4) of the Rules by the Licensing Authority. In this case, the Licensing Authority has failed to implement Shipping Agents Rules in letter and spirit who did not issue show cause notice to the delinquent licensee for initiating/taking appropriate penal action(s) in compliance of Rule 665 of the Rules for violation of Rule 664(q) & 665(1)(r) of the Rules. Omission to discharge the duty and responsibility entrusted to the Licensing Authority under the Rules constitutes maladministration as defined u/s 2(3)(i)&(ii) of the FTO Ordinance, 2000.

RECOMMENDATIONS:


8. FBR to:-

- i) direct the Collector, Collectorate of Customs, Enforcement (Ports), Karachi to issue show cause notice to the delinquent shipping agent being licensee to initiate appropriate action under Rule 665 of Customs Rules, 2001 notified vide SRO 450(I)/2001 dated 18.06.2001;
- ii) issue instructions to the Collector to conduct audit of delinquent shipping agent to check and examine conduct-related violations of the Shipping Agents Rules and take appropriate actions under the Rules;

- iii) issue directions to the Collector to ensure that the shipping agent return the extra/additional charges forthwith collected in violation of Rule 664(q) of the Customs Rules, 2001 to the Complainant;
- iv) direct the Collector to ensure that Shipping Agents demand those charges which have been agreed upon and specifically mentioned on the B/L indicating the DO charges at the port of destination and return security deposit within 15 days failing which appropriate action under the delinquent Shipping Agent is initiated as per Shipping Agent Rules; and
- v) report compliance within 45 days.

9. The above order shall *mutatis mutandis* apply to the following complaints being similar in nature:

- i. 7314/KHI/CUST/2023 M/s Yousuf & Co
- ii. 7315/KHI/CUST/2023 M/s Apex Printery (Pvt.) Ltd.


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

Dated: 16/02/2024

Approved for reporting


Director
FTO Secretariat
Islamabad