**Customs: History, collection and litigation**

[Umme Kalsoom](https://nation.com.pk/authorpost/columnists/umme-kalsoom/)

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The exact history of conception of ‘Customs’ as a source of revenue is unknown, however, Adam Smith in his book “The Wealth of Nations” says that Customs as common payment obligations existed since the ancient times. It is believed that Customs existed in ancient Egypt, around 2700-2200 BC. Evidence suggests that “caravan management”, a title for official administration posts of that time, was responsible for the registration of goods entering and exiting Egypt. It also used to collect customs duties along with statistics, thus having functions akin to those of customs today.
Customs are state revenue that is paid to the government on occasion of certain goods crossing through its borders. The nature and role of customs duties has not been the same in all periods of historical development. Until the 18th century, the role of customs duties was converged to regulating trade balance, maintaining hegemony in international affairs and political manoeuvring amid conflicts among various nations of the world.
The nature and role of customs duties began, as historical facts show, since the time of slaves, but they developed in the second phase of feudalism and especially in the first phase of the capitalist relations development. During that period, the role of customs duties was solely focused on protecting domestic production. That period is called the period of protectionism in customs. Customs revenues and quantitative restrictions on the import or export constitute what is often called trade policy instruments. Customs represent one of the fundamental instruments for the protection of national economies from foreign competition.
In the nineteenth century, Adam Smith’s ideas regarding free trade began to take traction. The idea of free trade and open borders changed the whole concept of collection of customs duties. Rather than using custom duties as a policy instrument for trade barriers only, they were to be used as a means to raise revenue for public finances, thus profiling the fiscal role of customs duties.
In contemporary times, public spending on important social sectors like health, education and infrastructure are considered vital for robust and sustainable economic growth. However, public spending is directly dependent upon the revenues collected and expenditures incurred by the state on running the affairs of governments. It has been noticed that developing countries often find it very difficult to keep their budget deficits under control. This means that revenues do not increase with matching pace as the cost of running a state escalates. Such a scenario inhibits developmental policy options for a government which ultimately resorts to cutting crucial spending meant for the socio-economic development of citizens, thus slowing the pace of the nation’s growth.
Pakistan is facing a very similar situation. Though revenue statistics show a growth of 18 percent in FY 2020-21 yet our fiscal deficit is hovering around 7 to 9 percent of the GDP, which is unsustainable amid rising inflation and almost stagnant exports and Foreign Direct Investment (FDI).
If we look closely at the revenue breakup, we see that around Rs747.3 billion have been collected against custom duties only. This amounts to 15.78 percent of the total revenue collected in FY-2020-21. On the other hand, if we look at the volume of imports i.e Rs8982 billion, the figure does not correlate with the duties collected.
If we further delve into finding the reasons for this gap, we observe an interesting phenomenon catalysing the revenue gap; it is the litigation against the duties imposed on imported merchandise. There is no cavil to the proposition that the calculation of duties is a complex procedure which can be manipulated, misused or abused. However, mere complexity of the procedure does not warrant a higher number of litigations being faced by Pakistan Customs.
As a matter of fact, around 3200 cases are collectively pending against the major revenue collecting Customs Collectorates of Karachi. This huge number of litigations reveals the underlying hurdles faced by Pakistan Customs in collecting duties in an efficient and timely manner. On the other hand, a major chunk of the revenues remains uncollected due to impending stay orders granted by the various judicial fora.
There is no denying the fact that every citizen enjoys certain constitutional guarantees against abridging of fundamental rights by the executive authorities and the constitution allows courts to intervene in such eventualities, but it has been observed that there is a growing tendency to circumvent fiscal obligations behind these constitutional safeguards. There is a need to understand that the welfare of the citizens rests on the economic stability of a country, which is based on efficient revenue collection, which requires smooth tax governance.
It is the need of the hour for special benches with expertise in Customs laws to be constituted in each high court of the country to decide all pending cases relating to disputes on duties within three months. No stay should be allowed to continue beyond a period of two months as the state not only loses revenue but pays an opportunity cost too. All the benches of the special Customs Appellate Tribunal (CAT) in the country may be made functional to clear the backlog of cases. Currently, out of nine benches of the Tribunal, four have no Legal Members, whereas, three benches are working without Technical Members. A close coordination between the Federal Board of Revenue and the Ministry of Law and Justice could solve the issue of appointment of technical and legal members of the Appellate Tribunals.
Apart from these policy and administrative measures to end the practice of lengthy legal battles to avoid taxes and duties by tax defaulters, it is also imperative to strengthen the legal wing of Pakistan Customs. A legally sound and technically well-versed prosecution can equally be effective in timely disposal of cases and stay orders as the other suggested measures are. The creation of the Directorate General of Law & Prosecution will have a positive impact on investigation and prosecution of the cases. As an independent body having no relation with revenue collection, L&P will promote unbiased and impartial investigation as well as prosecution of cases, which would boost the confidence level of business community and eliminate bureaucratic delays. The Directorate General of Law and Prosecution will be responsible for all matters relating to the initiation of legal proceedings, investigation, prosecution and defending criminal as well as civil proceedings before all courts including the High Courts and Supreme Court of Pakistan through the respective directorate.
A responsible nation pays its taxes and a democratic government makes the process easy for its taxpayers. Pakistan is a democracy and its people are responsible citizens. Let us hope this theory translates into practice too.

Umme Kalsoom
The writer is an Assistant Collector, Pakistan Customs.