



## WORLD WIDE CLAIMS SERVICES

*Established in 2004*

*Licensed under Dubai Economic Dept.*

*Claims Consultancy*

**and**

*Claims Recovery*

*in respect of*

*Sea Carriage, Airfreight , Road Transport*

**and**

*Property claims*



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**WORLD WIDE CLAIMS SERVICES****BUNKER DISPUTE**

A ship was on time charter and the Time Charterer arranged for supply of bunkers at Fujairah. Accordingly, bunkers were supplied to the vessel from road tankers alongside at the berth.



Samples were taken and retained by the Ship and the Supplier. Subsequently, the Ship owner raised an allegation about the quality of the bunkers. The Charterer in turn took up the issue with the Supplier. Lengthy correspondence ensued between the three parties with the Owners maintaining their allegation and the Supplier refuting it. Owners demanded a joint testing of the samples retained by both parties. Further correspondences ensued about the place of testing and the modalities of testing. Though a neutral venue was chosen for the testing, neither party could agree to the parameters for the analysis. This went on for over four months and finally the Owners decided to go ahead with testing of the samples retained by them.

*“Happiness is not the absence of problems, it is the ability to deal with them.”*





The Charterers' P&I Club instructed WWCS to liaise with the laboratory and attend during the testing process. Our mandate was to ensure that the testing process was strictly followed as per approved shipping practices. The process took two days as some of the tests had to be conducted over a period of 24 hours. Though the Supplier was invited to attend, they failed to do so. The results showed that the bunker samples were off spec.

Soon after, the Supplier decided to test their samples. Our representative attended during this testing on WP basis on Charterer's behalf. Upon completion of testing, these samples were found to be on spec ! The situation was indeed strange with the Owner's samples being off spec and the Supplier's samples being on spec, though both sets of samples were reportedly taken at the time of actual supply to the vessel. In the circumstance, the Owner decided to take the issue to Arbitration.

*This type of situation can arise if the ship's staff are not alert at the time of receiving the bunkers. Samples for both parties are meant to be taken and sealed in the presence of witnesses from both sides. But sometimes, the ship's crew do not bother to attend and rely on the samples handed over to them by the supplier's representative. Such laxity on the part of the crew can lead to enormous loss for the ship Owner.*

### FRAUDULENT ACT OF CLEARING AGENT

A merchant in Colombo imported a consignment of "Aluminium Busduct" from Korea by air. They appointed a Clearing Agent to carry out the formalities for taking delivery. Subsequently, the importer received a notice from the Customs imposing a Duty of Rs. 1,394,099. They realized that there was some error because they had not paid any duty when the same consignment was imported earlier by sea. Upon checking, it was found that the staff at the Clearing Agent's office had inserted the wrong HS Code in the Customs Declaration. The importer refused to pay the duty and held the Clearing Agent responsible. To rectify his error, the concerned staff in the Clearing Agent's office amended the Customs Declaration changing the HS Code and description of the cargo. He further altered the description of the cargo in the shipper's invoice as well. As a result, the Customs duty was reduced to Rs. 228,541.

*"Happiness is not in getting all you want ; it is enjoying all you have"*





However, the Customs authorities became suspicious of the amended Declaration made by the Clearing Agent and detained the cargo for further investigation. At the request of the importer and taking into consideration that the cargo was meant for a strategic development project by the Government, the cargo was released to them against a bank guarantee of Rs. 15,500,000 pending completion of investigation.

All concerned persons of the Clearing Agent and Importer were questioned by the Authorities. At the initial Enquiry, the concerned staff in the Clearing Agent's office stated that he has not committed any illegal act. However, at the second Enquiry, he admitted to committing the fraudulent act. His explanation was that the importer wanted waiver of the customs duty and release of their cargo without delay and he had to oblige them somehow in order not to lose their business. Following conclusion of their Enquiry, the Customs issued Order imposing following penalties –

- Rs. 9,400,000 on importer as forfeiture for release of the cargo
- Rs. 100,000 on Importer
- Rs. 100,000 on Clearing Agent
- Rs. 100,000 on the staff member.

Following an appeal made by the Importer, the Ministry of Finance reduced the forfeiture amount to Rs. 3 Million subject to suspension of Customs Agent Licence of the concerned staff for a period of two years.

The importer subsequently demanded that the Clearing Agent compensate them for Rs. 3 Million. WWCS was instructed by the Liability Insurer of the Clearing Agent to review the matter and provide an opinion. Upon reviewing, we were convinced that the claim was the result of the fraudulent act of the Insured's staff and as such covered under the policy.

***The issue started with a genuine error of the Clearing Agent's staff in declaring the HS Code for the cargo. Instead of rectifying the error in the appropriate manner, he altered the description in the shipper's invoice and Customs declaration. This fraudulent act resulted in substantial loss for his company and their customer. It also led to termination of his employment.***



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