

**FEDERAL TAX OMBUDSMAN SECRETARIAT
ISLAMABAD**

Complaint No.197/ISD/CUS(12)/1331/2010

Dated: 24.11.2010

Mr. Inamullah
Branch Manager Bank Islami
Main Shahi Bazar
Chitral

... Complainant

Versus

Secretary
Revenue Division
Islamabad

... Respondent

FINDINGS/RECOMMENDATIONS

Dealing Officer : Mr. Yasin Tahir, Senior Advisor

Authorized Representative : Mr. Abeer Muhammad

Departmental Representative : Dr. Ahsan Khan, Deputy Collector
Model Customs Collectorate, Peshawar

The Complainant has alleged maladministration on the part of Model Customs Collectorate (MCC), Peshawar, for illegally and unfairly making him responsible for payment of duty, taxes and redemption fine. According to the Complainant, he purchased an old and used Toyota Land Cruiser bearing registration No.GLTA-4362 from Mr. Musafir Khan who had purchased it in auction held on 31.05.2007 by Agha Khan Rural Support Program (AKRSP), Chitral. The vehicle was transferred in the name of the Complainant on 11.07.2008. However, the vehicle was seized on 22.04.2010 by Customs staff at Ring Road, Peshawar on the ground that it was not a duty paid vehicle. A show cause notice No.Cus/Adj/Add:C-II/142/2010/4865 dated 02.06.2010 was accordingly issued to the Complainant as well as to the driver of the vehicle and Manager (Administration) of AKRSP, Chitral. After adjudication, the Order-in-Original (O-in-O) No.221-222 of 2010 dated 26.08.2010 was issued confiscating the vehicle but allowing its redemption on payment of leviable duty and taxes under SRO 576(I)/2006 dated 05.06.2006 and redemption fine @ 20% of the value.

2. The complaint was referred for comments under Section 10(4) of the FTO Ordinance, 2000, to the Secretary Revenue Division. After receipt of parawise

* Date of registration in FTO Secretariat

comments, the parties were heard wherein they reiterated the averments of their written pleadings. The DR did not dispute the lawful import of the vehicle under reference by AKRSP. He also accepted that the Complainant and the driver were innocent in the matter and that the management of AKRSP, Chitral, was responsible for disposal of the vehicle without obtaining the requisite NOC and payment of duties and taxes. As regards the duty and other taxes, the DR stated that the same had been assessed under SRO 576(I)/2006 dated 05.06.2006. Explaining the reason of huge difference in the amount of Customs duty and other taxes levied on similar vehicles which were simultaneously auctioned in 2007, the DR stated as follows:

- (i) the exchange rate of Yen in the year 2007 was Rs.0.5197 whereas in 2010 the exchange rate of Yen was 1.01. Obviously the assessable value of the vehicle under reference had almost doubled in rupee terms on that account;
- (ii) the rate of duty in 2007 was 75% whereas in 2010 it was 100%;
- (iii) in addition to the above Regulatory Duty (RD) of 50% was leviable in 2010 whereas no such RD was leviable in 2007;
- (iv) Sales Tax rate in 2007 was 16% whereas in 2010 it was 17%;
- (v) withholding tax was 4% in 2007 whereas in 2010 it was 6%; and
- (vi) 20% redemption fine was imposed.

3. The AR, however, contended that the mistake of auction without obtaining the requisite NOC from the competent Customs authorities was committed by the management of AKRSP, Chitral, as admitted by them at the time of adjudication by the Customs authorities. AKRSP had also promised to pay the leviable duty and taxes leviable on the vehicle. Therefore, the Complainant and his driver being innocent in the matter should not have been made responsible for payment of duty, taxes and redemption fine. Besides, the determination of Customs duty and taxes as Rs.2,715,353/- was exorbitant as compared to the duty and taxes of Rs.771,000/- to 778,000/- determined on similar vehicles which were disposed of in the same auction on 31.05.2007. He therefore, prayed that justice should be done and the vehicle should be charged to duty and taxes leviable at the time of its disposal to be paid by AKRSP. Besides, the Complainant should not be punished with redemption fine.

4. The complaint has been examined in the light of the written and oral submissions of the parties. It is observed that the Adjudicating Officer had accepted the vehicle as having been lawfully imported but holding that the procedure set out under the SRO 576(I)/2006 was not complied with, he ordered confiscation of the vehicle under clause 10-A of sub-section (1) of Section 156 of the Customs Act, 1969. The Adjudicating Officer who appears to have accepted the plea of mistake

and inadvertence by the management of AKRSP, did not somehow make it an exclusive responsibility of AKRSP to pay the duty, taxes and redemption fine. He also did not impose any penalty against AKRSP for violation of law and procedure and non payment of duty and taxes at the time of disposal of the vehicle. Instead, he decided to club the Complainant, the driver and the management of AKRSP as respondents and made them responsible for payment of duty, taxes and redemption fine. This clubbing of all the respondents, guilty and innocent alike, patently unjust, unfair and unlawful and is tantamount to maladministration as defined under Section 2(3)(i)(a) and (b) of the FTO Ordinance, 2000. Besides, SRO 576(I)/2006 clearly relates to assessment of duty and taxes relevant at the time of disposal and does not warrant assessment at the rates prevailing at the date of assessment. The relevant provisions of the SRO read as follows:

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| (ii) If sold or otherwise disposed of after the expiration of one year from the date of importation. | So much of the Customs-duty and other taxes as are in excess of leviable amount of Customs-duty and other taxes at the prevailing rates of exchange and duty and other taxes on the value determined in foreign currency at the time of importation, which is arrived at after deduction of two percent per month of duty and taxes calculated from the date of first registration abroad in case of old and used vehicles, and from the date of import in the case of new vehicles, subject to a maximum of fifty percent concession. |
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5. Despite this clear legal position, the Customs assessment staff wrongly determined the duty and other taxes at the rates prevailing on the date of assessment in 2010, as they normally do in case of seizure of smuggled vehicles under the relevant proviso of Section 30 of the Customs Act. In other words, they have wrongly applied an irrelevant method in determining the leviable amount of duty, taxes and the exchange rate to the vehicle under reference. This determination is obviously not legally maintainable. Besides, punishing the innocent Complainant with 20% redemption fine is also not justified because it was not the Complainant but the management of AKRSP which was exclusively responsible for the mistake. Imposition of redemption fine is unlawful also because this case does not appear to fall under any category of offending goods mentioned in the Table to SRO 499(I)/2009 dated 13.06.2009. The Adjudicating Officer also failed to mention the specific category of the offences listed in the Table to the SRO under which he placed the offence under reference and imposed the redemption fine. Non mention

of the specific category of offence also indicates negligence and inefficiency on the part of the Adjudicating Officer.

Findings:

6. Charging duty and other taxes at the rates prevailing in the year 2010 instead of the date of disposal is obviously unlawful besides being unjust and unfair. The redemption fine imposed on the Complainant and the driver of the vehicle instead of the importers who were responsible for paying duty and taxes due is also unfair and unjust. Non mention of the specific category of offence under the Table to SRO 499(I)/2009 dated 13.06.2009 for imposition of redemption fine also involves neglect and inefficiency. These acts of omission and commission by the Customs Collectorate, Peshawar, are tantamount to maladministration as defined under Section 2(3)(i)(a) and (b) and (ii) of the FTO Ordinance, 2000.

Recommendations:

7. FBR to-
- (i) direct the Customs authorities of Peshawar to assess the amount of duty and other taxes at the rates prevailing at the time of disposal of the vehicle under reference in accordance with the provisions of SRO 576(i)/2006 dated 05.06.2006, as they did in the case of other vehicles of AKRSP;
 - (ii) reopen the Order-in-Original No. 221-222 of 2010 dated 26.08.2010 to examine the legality and propriety of imposing the burden of redemption fine on the Complainant and the driver who appear to be totally innocent in the matter;
 - (iii) make the management of AKRSP, Chitral, exclusively responsible to pay the leviable amount of duty, taxes, etc., as per law; and
 - (iv) report compliance within 30 days.

(Dr. Muhammad Shoaib Suddle)
Federal Tax Ombudsman

Dated: 26-02-2011
M.R.