

2. Brief facts of the case are that a Toyota Hilux Surf, model 1995, was imported free of duties and taxes by the Consulate General of Iran in Quetta vide G.D No.KAPR-HC-1-119646 dated 25.05.2002. The vehicle was sold in the market after obtaining permission from the Ministry of Foreign Affairs, Islamabad, vide letter dated 19.12.2003 subject to payment of applicable duty and taxes. However, the buyer managed registration of vehicle from Excise and Taxation Office, Quetta, without payment of duties and taxes. After registration, the vehicle was sold in the market and it finally reached in the hands of present owner from whom it was seized by the staff of Directorate of Customs Intelligence and Investigation, Multan, for non payment of leviable duties and taxes. As no evidence of payment of duties and taxes was produced by the owner, the vehicle was ordered outright confiscation vide Order-In-Original No.97/2009 dated 14.09.2009 by the Deputy Collector Customs. The Complainant filed an appeal before the Collector (Appeals) who allowed release of vehicle on payment of leviable duties and taxes vide Order-in-Appeal No.158/2009 dated 10.12.2009 considering that the Complainant was an innocent buyer. The Complainant did not prefer appeal against the Order-in-Appeal before the Customs Appellate Tribunal and the Order-in-Appeal attained finality.
3. The Complainant feeling aggrieved with the Order-in-Appeal has filed this complaint mainly on the following grounds:

- (i) That he is a bonafide innocent purchaser who purchased the vehicle on the strength of registration book issued by the Motor Registration Authority, Quetta.
- (ii) That he was not involved in the registration of vehicle at any stage nor in non payment of duties and taxes.
- (iii) The vehicle is five year old and huge amount of duties and taxes are being demanded, which is unfair.
- (iv) That he is willing to pay duties and taxes equal to 5% of the reserve price of vehicle.

4. The Complaint was sent to the Secretary Revenue Division, Islamabad, for comments in terms of Section 10(4) of the Establishment of the Office of FTO Ordinance, 2000. The Model Customs Collectorate, Multan, stated that the Complainant failed to produce evidence regarding payment of duties and taxes which proved the fact that the vehicle was got registered with the Motor Registration Authority, Quetta, without payment of leviable duties and taxes in violation of sale permission of Ministry of Foreign Affairs. It was further stated that Assessment Sheet in the light of procedure laid down in SRO 577(I)/2006 dated 05.06.2006 had already been issued to the Complainant.

5. At the time of hearing, both the parties repeated their respective arguments. Perusal of record shows that the vehicle was originally

registered in the name of one Abid Kurd of District Mastung by Motor Registration Authority, Quetta. It was next purchased by a Mir Hazar of Quetta, who in turn sold the vehicle to Ismaeel Khan of Quetta. These sales were made without transfer of vehicle in the names of the new owners. The vehicle was then purchased by Muhammad Hassan of Multan, who sold the vehicle to the present owner: Abdul Waheed, from whose possession the vehicle was confiscated by the Customs authorities. The record further shows that except the first registration, the vehicle was not got transferred/registered by any of the later purchasers in their name.

6. The issue raised in the instant case appears to be a **systemic problem** at least on the following counts:

- (a) While allowing permission to the Consulate General of Iran for sale of diplomatic vehicle, the Ministry of Foreign Affairs should clearly mention in the permission letter that the vehicle would not be handed over to the buyer without credible proof of payment of applicable customs duty/taxes.
- (b) The Motor Registration Authority Quetta should have registered the vehicle in the name of the first purchaser only after ensuring that applicable duties/taxes had been duly paid.

- (c) As rightly observed by the Collector (Appeals), the Complainant being an innocent buyer should not be punished for the wrong done by the first purchaser and negligence or connivance of others.

Findings:

7. It is evident that the practice followed by the Customs authorities in confiscating vehicles from the last buyer or forcing him to pay applicable taxes/duties is arbitrary, unjust and unlawful. It is the first purchaser who is solely responsible for non-payment of duties/taxes due, unless it is established that the subsequent purchasers acted in connivance with him.

Recommendations:

8. FBR to -
- (i) allow the Complainant being, prima facie, an innocent buyer, to use the vehicle on the basis of any security instrument or 'sapurdari' and in the meanwhile find out the first buyer/actual evader of taxes for realizing applicable duties/taxes;
 - (ii) amend the relevant SRO making it obligatory for the Ministry of Foreign Affairs not to issue the permission letter to sell the imported duty-free vehicles to foreign missions unless the applicable duties/taxes have been duly paid by them;

- (iii) issue instructions to Motor Vehicle Registration authorities across Pakistan not to register any vehicle for the first time without obtaining credible proof of payment of applicable duties/taxes, and
- (iv) report compliance within 90 days.

(DR. MUHAMMAD SHOAIB SUDDLE)
FEDERAL TAX OMBUDSMAN

Dated: 17/04/2010

Khalil Ahmad (M.L.)

Approved for reporting

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