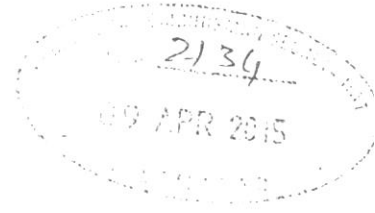


PRESIDENT'S SECRETARIAT (PUBLIC)  
AIWAN-E-SADR, ISLAMABAD

M/s Exalo (Krakow) Drilling S.A., Karachi  
*Versus*  
FBR



REPRESENTATION PREFERRED BY FBR AGAINST FINDINGS /  
RECOMMENDATIONS DATED 27.10.2014 PASSED BY THE FTO IN COMPLAINT  
NO. 223/KHI/CUS(36)/766/14

I am directed to refer to your representation No.1(766)S(TO-II)/2014 dated 25.11.2014 on the above subject and to say that the President has been pleased to pass the following orders:

2. Feeling aggrieved of and dissatisfied with the Decision dated 27.10.2014 of the learned F.T.O. the Secretary Revenue Division/Agency and Collector of Customs have preferred the Representation dated 14.11.2014 (subject Representation). Relevant portion of the Findings and Recommendations of the impugned Decision is reproduced herein below:

**“Findings:**

issuing SCN and O-in-O in a case on which complaint had already been registered by the FTO Office, and disregarding a long standing practice of allowing release of commissaries including liquor imported by privileged persons in terms of FBR letter No.10(14)/93-ICM.Con dated 13.06.1994, constitutes maladministration in terms of Section 2(3) of the FTO Ordinance, 2000.

**Recommendations:**

FBR to-

- i. call for and examine the record of Customs House, Karachi pertaining to the proceedings in this case for ascertaining the legality and propriety of detention and confiscation of goods belonging to privileged persons and decide the issue as per law;

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5. The admitted factual and legal position which emerges after going through the case record is that the import of liquor for non-commercial use and consumption is not prohibited and reliance of the Agency on the above provision of Import Policy Order is misconceived. Secondly, even the FBR has issued a booklet Regime, which is a part of the case record for duty free import of commissary stores including Complainant's persons based in Pakistan. Most significant is the latest clarification document issued by the Agency itself having reference No.C.No.3(24)S.Val/2013 dated 21.08.2014 available at page 209 of the case file, wherein the Secretary Customs has clarified that the liquor is included in the list of commissary stores. The subject Representation is an elaboration of its stance before the FTO, with additional grounds relating to ouster of FTO jurisdiction, as the Agency initiated an independent proceeding against the Complainant though admittedly during pendency of the proceeding before the FTO. However, the Agency has not addressed a very basic and specific question of the entire dispute, which has been dilated upon by the FTO in Para-11 of his Decision; that the Customs authorities have been invariably allowing duty free import of liquor/alcoholic beverages for the consumption of expatriate employees of other commercial entities. This is where the principle of departmental practice is applicable as there is no expressed statutory prohibition for import of liquor/alcoholic beverages for the above category of cases. The Complainant in response to the subject Representation has filed an elaborated response supported by the case law as well as the aforementioned latest clarification dated 21.08.2014 issued by the Agency. The judgment reported as *PLD 1984 Karachi page 302*, pronounced by the Division Bench of Sindh High Court is relevant for the purposes of departmental practice relating to executive interpretation of PCT (Pakistan Customs Tariff) and/or HS Code. There is a legitimate expectation in favour of Complainant that it should also be given the same treatment.

6. The upshot of the above discussion is that the impugned Decision of the learned FTO is unexceptionable and the Agency has failed to make out plausible ground(s) for interference with the impugned Decision.

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