

**THE FEDERAL TAX OMBUDSMAN  
ISLAMABAD**

**Complaint No.958/PWR/CUST/2023**

Dated: 22.02.2023\*R. O. Peshawar

**Mr. Fakhr-e-Alam,**

Khyber Tea & Food Company Ashraf Road,  
Katchery Gate, Peshawar.

...Complainant

*V e r s u s*

**The Secretary,**  
Revenue Division,  
Islamabad.

... Respondent

Dealing Officer	:	Mr. Ziauddin Wazir, Advisor
Appraising Officer	:	Dr. Arslan Subuctageen, Advisor
Authorized Representative	:	Mr. Saifullah Saddiqi, Advocate
Departmental Representatives	:	Mr. Mohib Khan, AC, MCC, Peshawar
		Dr. Tahir Iqbal Khatta, Deputy Director
		I&I (Customs, Peshawar.

**FINDINGS/RECOMMENDATIONS**

The complaint was filed against the Collectorate of Customs (Enforcement), Peshawar, under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) regarding delay in payment of sale proceeds and refund of redemption fine.

2. Briefly, the facts of the case are that Customs, Intelligence & Investigation's squad, Peshawar seized foreign origin smuggled goods along with vehicle. The impugned goods are confiscated by adjudicating officer, however, the vehicle was ordered release against payment of redemption fine amounting to Rs:11,0000/-. The aforesaid order was upheld by Collector Customs (Appeal) Customs. Appellate Tribunal (CAT), Peshawar, accepted 2<sup>nd</sup> appeal filed by complainant and ordered to return/release the goods unconditionally. Redemption fine on vehicle was also remitted. Customs, Peshawar filed reference before Hon'ble Peshawar High Court against CAT, Peshawar's judgment. According to complaint, the Hon'ble Peshawar High Court,

\* Date of registration in FTO Secretariat

Peshawar rejected the reference filed by the Department vide judgment Cust-Ref No.26-P/2013 dated 25.04.2022. He requested Customs, Peshawar either to release the goods or return the sale proceeds in case the impugned goods are already auctioned. Customs, Peshawar did not entertain the application despite reminders, therefore, complainant filed complaint No. 3319/PWR/CUST/2022 before FTO. FTO vide Findings/Recommendations dated 23.08.2022 asked FBR to direct Collectorate of Customs Enforcement, Peshawar to dispose of applications of refund of sales proceeds in respect of complaints No.2898, 2902 and 3319/PWR/CUST/2022 on merits and under the law. Collector of Customs reported that Refund Order of sales proceeds dated 27.10.2022 has been issued in compliance of judgment of Peshawar High Court, Peshawar and Rs:832816/- has been sanctioned & paid to complainant after deduction of 1% auction charges and duty & taxes. Complainant filed the instant complaint against deduction of duty & taxes and 1% auction charges and prayed to ask Collector to refund the remaining sales proceeds i.e Rs: 867200/- Complainant has also prayed to refund the redemption fine.

3. The complaint was referred to the Secretary, Revenue Division for comments in terms of Section 10(4) of the FTO Ordinance, read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act, 2013. In response, the Collectorate of Customs (Enforcement), Peshawar, vide letter No.846 dated 06.03.2023, reproduced below:

Complaint No.	Auction disposable amount (in Rs.)	Amount of sale proceeds sanctioned (in Rs.)	Remarks
958/PWR/CUST/2023 related to earlier complaint No.	1,700,000/-	832,816/-	The present complaint is related to the already disposed of complaints bearing No.3319/PWR/CUST/2022. It is submitted that in the light of FTO's order in complaint



3319/PWR/C UST/2022			No.3319/PWR/ CUST/2022, dated 28.08.2022, the Directorate of Customs-I&I, Peshawar vide letter C.No.CII/ Khyber-Tea/1718 dated 15.07.2022 requested for return of sale proceed to Khyber tea and Food company in the light of judgment of Peshawar High Court dated 25.04.2022 in customs reference No.26-P/2013 which has accordingly been processed under section 201 of the Customs Act, 1969 and after deduction of 1% auction charges and duty/taxes, the remaining sale proceeds of Rs.832,816/- has been sanctioned in favor of the complainant. Needless to mention that as per judgment of the High Court, the question of payment of duty/taxes in the subject case has been decided in negative. As far as Bank Guarantee is concerned as per Order in Original No.59/2011, on 09.01.2010 Mr. Wailiullah (Advocate) submitted an application on behalf of Mr. Bilal for release of vehicle (Registration No. LES-2924) on Bank Guarantee. The vehicle was released against Bank Guarantee No.03/2010. The adjudicating authority ordered for release of vehicle and encashment of the said Bank Guarantee as redemption fine. Moreover, the Collectorate has already issued refund order in respect of redemption fine amounting to Rs.1,10,000/-.
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4. The case was fixed for hearing on 22.03.2023. Mr. Saifullah Saddiqi, Advocate (AR) on behalf of the Complainant, Mr. Mohib Khan, Assistant Collector, (Customs) (DR) and Tahir Iqbal Khattak, Deputy Director, Directorate of I&I Customs, Peshawar (DR) attended on behalf of Department. AR advocated that the impugned goods in the instant case are released unconditionally by CAT, Peshawar and reference filed before Peshawar High Court by Department is also dismissed. DD Customs Intelligence wrote to Collector Customs on 15.07.2022 to allow release of the goods or refund sale proceeds pertaining to seizure case No.62/09 dated 26.11.2009. Director I&I

Customs, Peshawar also in a report dated 07.03.2023 stated that Peshawar High Court upheld the judgment of CAT, Peshawar. AR pleaded that despite unconditional release of impugned goods by CAT, Peshawar, Collector Customs Peshawar has deducted duty & taxes and did not refund the entire auction proceeds. DD Customs (I&I) Peshawar (DR) responded that Customs Intelligence has already written to Collector Customs, Peshawar to allow refund of sale proceeds as well as redemption fine, therefore, there is nothing pending on part of Directorate.

5. AC Customs Peshawar (DR) reiterating written reply/comments argued that Collectorate of Customs, Peshawar in compliance of Hon'ble Peshawar high Court, Peshawar allowed refund of sales proceeds of Rs: 832816/- after deductions of 1% auction charges & leviable duty & taxes under section 201 of Customs Act, 1969. This position has already been intimated to Hon'ble FTO office. He vehemently emphasized that duty & taxes are deducted from sales proceeds in view of Hon'ble Peshawar High Court's judgment where the question of payment of duty & taxes in the subject case has been decided in negative. He also informed that Collectorate of Customs has issued refund order on 06.03.2023 in respect of refund of redemption fine in view of CAT, Peshawar's judgment in favour of complainant. AR did not agree and contended that the Hon'ble Peshawar High Court decided the case in favour of his client and upheld the judgment of CAT, Peshawar. As regard refund of redemption fine, the complainant replied that he has not received any amount in respect of Refund Order dated 06.03.2023.

#### **FINDINGS:**

6. AR and DR heard. Record perused. The subject matter is previously decided vide Findings/Recommendation No.2898, 2902 & 3319/PWR/CUST/2022 dated 23.08.2022. The instant complaint is



filed against deduction of 1% auction expenses and duty & taxes from sales proceeds on the ground that CAT, Peshawar released the goods unconditionally. Department is consistently holding that application of sales proceeds is disposed of under Section 201 of Customs Act, duty & taxes are deducted correctly in view of Hon'ble High Court's judgment dated 25.04.2022. However, the department has failed to duly appreciate and interpret the Judgment of Hon'ble Peshawar High Court in Cust Reference No.26-P/2013. Wherein the Hon'ble Court (Para-09) has clearly held that:-

*"Two forum i.e Adjudicating Officer and Collector Appeal have concurred with the department by holding the said invoices are irrelevant, whereas, the learned tribunal after going through the said invoices have held the same is relevant and thus held that the recovered blended tea was legally imported against payment of duties. This is indeed a question of fact which has been finally determined by the Tribunal and the law is by now settled that reference before this Court only lies when there is a substantial question of law raised for adjudication and the question of fact once determined by the tribunal cannot be re-agitated before this Court to answer a reference in terms of Section 196 of the Customs Act is limited only to question of law".*

7. From the plain reading of the above, it is clear that decision of the learned Appellate Tribunal is in field . The above has been further endorsed by the Hon'ble Supreme Court of Pakistan vide its order (C.P.2033/2022 and C.P.2034/2022) dated 24.08.2022 in the following terms:-

*" Learned Custom Appellate Tribunal has decided the matter in favour of the respondents, which the petitioner assailed before the High Court in Custom Reference but the same were dismissed and the decision of the Tribunal was upheld. After arguing the matter at some length, learned council wishes to withdraw the titled petitions, which are dismissed as withdrawn".*

8. In view of the discussion made above, the Complainant Company is entitled to receive the entire sales proceeds in the subject case without any deductions in the name of duty /taxes or auction charges.

### **RECOMMENDATIONS**

9. FBR to direct:

- i) the Collector, Collectorate of Customs Enforcement, Peshawar to refund the entire sales proceeds to the Complainant Company without any deductions;
- ii) the Collector, Collectorate of Customs (Enforcement), Peshawar to make payment of refund of redemption fine already sanctioned vide C.No. 2194 /PWR /CUST/2022 dated 06.03.2023 without further delay; and
- iii) report compliance within 45 days.

  
(Dr. Asif Mahmood Jah)  
(Hilal-i-Imtiaz) (Sitara-i-Imtiaz)  
Federal Tax Ombudsman

Dated: 26.4.2023  
Tariq Jan

Approved for reporting