

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

OWN MOTION NO.0011/OM/2018

Dated: 19.10.2018* R.O. Karachi

The Secretary,
Revenue Division,
Islamabad.

... Respondent

Dealing Officer:

- i. Mr. Shahid Ahmad, Advisor
- ii. Justice (R) M. Nadir Khan, Advisor

Departmental Representatives:

- i. Mr. Moeen Afzal, Secretary (Export Policy), FBR
- ii. Dr. Iftikhar Ahmed, Collector (Prev.), Karachi
- iii. Mr. Saifuddin Junejo, Collector (Exp), PMBQ, Karachi
- iv. Mr. Saeed Khan Jaddoon, Collector, Peshawar
- v. Mr. Nisar Ahmed, Addl. Coll., MCC, Islamabad
- vi. Mr. M. Farrukh Shareef, Addl. Coll. (Prev.), Lahore

FINDINGS/RECOMMENDATIONS

This is an own motion investigation of systemic maladministration initiated through exercise of jurisdiction conferred under Section 9(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance). The investigation is based upon a news item published in the Daily Dawn dated 11th June, 2018 regarding misuse of import-cum-export facility in respect of gold, jewellery and other precious metals at various Customs Stations, where some exporters of Jewellery failed to remit foreign exchange and Customs Deptt did not take cognizance in the matter due to jurisdictional issue. The news item also referred to cases detected against Gold/Jewellery exporters and failure of the Deptt to take action for violation of import and export policy orders under the Customs Act, 1969. Prima facie, the FBR did not put in place institutional mechanism to stop abuse of scheme regulated through concessional SROs issued by the Ministry of Commerce. As a consequence the importers-cum-exporters hoodwinked the Deptt with impunity especially in cases where concession available under Entrustment Scheme/Self Consignment Scheme was misused and which have attained finality. No serious effort seems to had been made by the Deptt to recover the adjudged

* Date of registration in FTO Secretariat

amount of arrears as per provision of Section 202 of the Customs Act, 1969 read with Chapter-XI of the Customs Rules 2001 notified vide SRO 450(I)/2001 dated 18.06.2001.

2. The Import and Export of Precious Metals, Jewellery and Gemstones Order, 2013 notified vide SRO 760(I)/2013 dated 02.09.2013 prescribes the framework and procedure for exporters of jewellery and gemstones. Prior to Order 2013, the Ministry of Commerce had notified the Import and Export of Gold, Gold Jewellery and Gemstones Order, 2001 vide SRO 266(I)/2001 dated 07.05.2001. The exporters of jewellery and gemstones are required to be registered with Trade Development Authority of Pakistan (TDAP). Authorization to import gold is granted by TDAP to registered exporters. All export proceeds under these schemes are to be realized within one hundred and twenty days. The import or export of precious metals, gemstones and jewellery made up of precious metals, gemstones is allowed under Entrustment Scheme and Self consignment Scheme, which are described below:

Entrustment Scheme:

This scheme provides for export of jewellery against imported gold supplied as partial advance payment, by the foreign buyer to be used in the manufacture of jewellery to be exported. The exporter is required to export eligible and authorized items within 120 days from the date of import. Under the superseded SRO 266(I)/2001 dated 7.5.2001, the exporter was required to export within 180 days.

Self consignment Scheme:

Under Self consignment Scheme export of gold jewellery is made from locally procured gold and gemstones and sale proceeds are realized in foreign exchange. The registered exporter shall apply to the TDAP for export authorization. The sale proceeds shall be realized within 120 days from the date of export and the Commercial Banks shall ensure that sale proceeds is repatriated in full within 120 days otherwise commercial banks shall inform State Bank of Pakistan as well as to TDAP. While, under the previous SRO 266(I)/2001 dated 7.5.2001,

sales proceeds were required to be realized within two hundred and forty days from the date of export, in foreign exchange, through normal banking channels.

3. In response to the notice issued to the Secretary, Revenue Division in terms of Section 10(4) of the FTO Ordinance read with Section 9(1) of the Federal Tax Ombudsmen Institutional Reforms Act, 2013, the FBR submitted reply vide letter dated 16th November, 2018. It was contended that the Directorate General of Internal Audit (Customs) conducted audit for the period from July 2011 to June 2014 in respect of import/export of gold and other precious metals regulated under SRO 266(I)/2001 dated 07.05.2001 and SRO 760(I)/2013 dated 02.09.2013. To regulate the export of gold jewellery, gemstones, and for import of gold, gemstone and other raw materials, the Ministry of Commerce issued SRO 266(I)/2001 dated 07.05.2001 and SRO 760(I)/2013 dated 02.09.2013. For this purpose, two schemes namely, Entrustment Scheme and Self Consignment Scheme were introduced. SRO 266(I)/2001 remained operative till 01.09.2013 and after making some procedural changes in the scheme, SRO 760(I)/2013 dated 02.09.2013 was issued. It was informed that in compliance of audit paras action has been initiated by framing contravention reports and registration of FIRs. According to the reply adjudicating proceedings were finalized in number of cases. The aggrieved parties have approached the Customs Appellate Tribunal whereas in some cases matters are under adjudication. It was further informed that criminal proceedings are pending before Special Judge Customs. The facts be so as stated by FBR, the issues reflecting maladministration on the part of Collectorates, cognizance of which has not been taken and are neither part of adjudication proceedings nor part of criminal trial hence the same are not subjudice so as to bar the jurisdiction of this Office. The investigation is restricted only to the issues being not subjudice before any court/tribunal/authority and the same prima facie constitute maladministration as defined under Section 2(3) of the FTO Ordinance.

4. During special audit, the Directorate General of Internal Audit detected serious irregularities relating to following Customs Collectorates:

MCC Peshawar
MCC (Exports), Port Qasim, Karachi
MCC Islamabad; and
MCC (Preventive), Lahore

5. The Collectorate-wise position in respect of cases pointed out by the Directorate of Internal Audit emerges as below:

a. **No export of gold jewellery against imported gold**
(10 importers/exporters) (22 cases) (amount involved Rs.1.360 billion)

(i) **MCC Peshawar**

The Directorate of Internal Audit reported 20 cases involving import of gold under Entrustment/Self Consignment Scheme by 10 importers/ exporters. Contravention reports were framed in 18 cases and forwarded for adjudication. In eleven cases, adjudication orders had been passed and recovery proceedings have been initiated. These cases are, however, under appeal with the Customs Appellate Tribunal, Peshawar Bench, whereas eight cases were pending with the Collector (Adjudication). Recovery position is tabulated below:

Name of Importer/ Exporter	Nature of Contravention	Amount of tax liability/ penalty adjudged	FIR No & Date	Status of Recovery proceedings	Any other remarks
1. M/s Everywhere Room No.1, 3 rd Floor, Nobel Tower, Opp Trust Plaza, GT Road, Gujranwala (01 case) (Self Consignment Scheme)	Inadmissible concession of duty and tax free import of gold as repatriation of gold content used in the manufacturing of gold jewellery exported earlier.	Rs.76.88 million	--	Under adjudication with Collector Adjudication since 02.09.2018	
2. M/s Marwat Gold & Silver Collection Shop No.3, Khurshid Market, Sarafa Bazar, Peshawar (02 cases) (Self Consignment Scheme)	i. Gold was imported as repatriation of sale proceeds against export of Silver Jewellery of equivalent amount. ii. Gold was imported but no export of jewellery made.	Rs.172.754 million ONOs dated 03.02.2017 and 01.02.2017	--	Pending with Customs Appellate Tribunal	No. Stay Amount recoverable

3. M/s Karachi Gold & Silver Collection F-71, Sheikh Yaseen Gold Tower Masjid Mohabbat Khan Road Peshawar (01 case) (Self Consignment Scheme)	Gold was imported as repatriation of sale proceeds against export of Silver Jewellery of equivalent amount.	Rs.159.061 million ONO dated 03.02.2017	--	Pending with Customs Appellate Tribunal	No stay. Amount recoverable NTN is being blocked. Details of owner are also being procured from RTO, so to recover the adjudged amount.
4. M/s Adnan Gold Room No.7, 3 rd Floor, Pushle Chabutra Bilal Plaza, Peshawar (01 case) (Self Consignment Scheme)	Gold was imported as repatriation of sale proceeds against export of Silver Jewellery of equivalent amount.	Rs.82.008 million ONO dated 03.02.2017	--	Pending with Customs Appellate Tribunal	No stay. Amount recoverable. NTN is being blocked. Details of owner are also being procured from RTO, so to recover the adjudged amount.
5. M/s Global Enterprises T-698, Purana Qilla, Bhabra Bazar, Rawalpindi (05 cases) Entrustment Scheme	i. Gold was imported but no export of jewellery made. ii. Gold was imported as repatriation of the gold content used in the manufacturing of gold, jewellery exported earlier. But during verification, 2 shipping bills were not appearing in export record maintained by PRAL. iii. Did not export gold jewellery within 180 days against imported gold.	Rs.342.754 million ONOs dated 01.02.2017 and 03.02.2017	--	Pending with Customs Appellate Tribunal	No stay. Amount recoverable. The Directorate of Internal Audit was requested to settle one para amounting to Rs.3.6 million
6. M/s Muhammad Khaliq Jewellers & Gemstone Center Main Bazar Mingora (07 cases) (Self Consignment Scheme)	i. Replenished the locally procured gold used in the manufacturing of gold jewellery, but sale proceeds mentioned in the Form-E not realized. ii. Replenished the locally procured gold used in the manufacturing of gold jewellery. However, Form-E submitted by the exporter does not relate to his transaction.	Rs.332.661 million ONO dated 25.01.2016	--	06 cases pending with Collector Adjudication since 13.03.2018, 21.06.2018 & 04.09.2018	No stay. Amount recoverable. One case decided by the Collector (Adj) Islamabad. The attachment officer was directed to visit the concerned bank and collect the security amount deposited by the importer
7. M/s Hussain Traders	Did not export gold jewellery within 180 days	Rs. 1.040 million	--	Pending with Customs	No Stay. Amount

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Mohalla Sethi Abad O/s Yaka Toot Agha Mir Jani shah Road, Peshawar (01 case) Entrustment Scheme	against imported gold.	ONO dated 17.01.2018		Appellate Tribunal	recoverable
8. M/s Diamond Trading Corporation Flat No.7, Zulikha Manzil Moosa Lane, Karachi (01 case) (Self Consignment Scheme)	Import was made to replenish the locally procured gold used in the export of gold jewellery. The export was made in Feb/Mar 2009. However, the import entitlement was claimed in Mar 2013 after four years of export.	Rs.23.21 million	--	Pending with Customs Appellate Tribunal	No stay. Amount recoverable The MCC, Preventive, Karachi appraisement is being requested to depute responsible officer to visit the concerned bank and collect the security amount deposited by the importer.
9. M/s A.J Traders Mezzanine Floor, T-751, St.No.14, Shah Chan Chiragh, Sarafa Rawalpindi (02 cases) Entrustment Scheme	Gold was imported but no export of jewellery made.	Rs.21.162 million ONO dated 25.01.2016	--	Pending with Customs Appellate Tribunal since 16.03.2016	No stay. Amount recoverable
10. M/s Himalayan Traders Modern House Mohalla Gombad Mero, Mingora (01 case) (Self Consignment Scheme)	Replenished the locally procured gold used in the manufacturing of gold jewellery, but sale proceeds mentioned in the Form-E not realized.	Rs.148.852 million	--	Pending with Collector Adjudication since 22.02.2018	-

b. **Export of gold jewellery against Fake Form-E**
(5 exporters, 349 cases, amount involved Rs.23.656 billion)

(ii) **MCC (Exports) Port Qasim, Karachi**

The Directorate of Internal Audit (Customs) during audit pointed out case of M/s Makkah Enterprises who had submitted E-Forms at the time of exports which were found to be fake upon verification. The Collectorate taking lead sorted out all the

consignments of exports regulated under SRO 266(I)/2001 dated 07.05.2001 and SRO 760(I)/2013 dated 02.09.2013 during period 2011-12 to 2013-14 wherein 18,072 E-Forms submitted by exporters were sent for verification. As a result thereof it was found that 349 E-Forms, including 44 E-Forms submitted by M/s Makkah Enterprises were fake. The department initiated recovery proceedings under Section 202 of the Customs Act, 1969 including appointment of Attachment Officer but till to date no recovery could be affected.

Name of Exporter	Nature of contravention	Amount of tax liability/ penalty adjudged	FIR No & Date	Status of recovery proceedings	Any other remarks
1. M/s B.D Enterprises Shop No.150, Serena Tower, Near Skahi Hassan Chowrangi, Karachi (Entrustment/ Self Consignment Scheme)	Export of gold jewellery against fake, forged and fabricated Form-Es (109 cases)	Rs. 8.209 billion ONO No.181 dated 29.06.2016	SI/Misc/405/ AFU-Exp- 2015 17.03.2015 Case No. 28/2015	Pending with Customs Appellate Tribunal. No coercive measures as per Hon'ble High Court's directives vide order dated 24.05.2018.	
2. M/s Rubab Corporation Plot No.33-6, Rahat Lane, No.2, Phase- VI, DHA, Karachi (Entrustment/ Self Consignment Scheme)	Export of gold jewellery against fake, forged and fabricated Form-Es (46 cases)	Rs.2.971 billion ONO No.182 dated 28.06.2016	SI/Misc/476/ AFU-Exp- 2015 06.04.2015 Case No. 34/2015	Pending with Customs Appellate Tribunal. No coercive measures as per Hon'ble High Court's directives vide order dated 24.05.2018.	
3. M/s Makkah Enterprises GC-4/8, Clifton, Karachi (Entrustment/ Self Consignment Scheme)	Export of gold jewellery against fake, forged and fabricated Form-Es (49 cases)	Rs.3.178 billion ONO No.183 dated 29.06.2016	SI/Misc/812/ AFU-Exp- 2015 30.05.2015 Case No. 60/2015	Pending with Customs Appellate Tribunal. No coercive measures as per Hon'ble High Court's directives vide order dated 24.05.2018.	
4. M/s Reaz Corporation Room No.43, 4 th Floor, Textile Plaza, M.A Jinnah Road, Karachi (Entrustment/ Self Consignment Scheme)	Export of gold jewellery against fake, forged and fabricated Form-Es (101 cases)	Rs.6.527 billion ONO No.184 dated 29.06.2016	SI/Misc/813/ AFU-Exp- 2015 30.05.2015 Case No. 59/2015	Pending with Customs Appellate Tribunal. No coercive measures as per Hon'ble High Court's directives vide order dated 24.05.2018.	

5. M/s Saani Impex Ground Floor, Preedy Street, Saddar, Karachi (Entrustment/ Self Consignment Scheme)	Export of gold jewellery against fake, forged and fabricated Form-Es (44 cases)	Rs.2.771 billion ONO No.185 dated 29.06.2016	SI/Misc/477/ AFU-Exp- 2015 01.06.2015 Case No. 58/2015	Pending with Customs Appellate Tribunal. No coercive measures as per Hon'ble High Court's directives vide order dated 24.05.2018.	
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c. **Failure to export within prescribed time**

(iii) **MCC Islamabad**

The Directorate of Internal Audit (Customs) pointed out 5 cases relating to M/s Dubai Chain Centre Rawalpindi for irregularities in the export of gold jewellery during the period 2011-12 to 2013-14. Five audit paras were raised regarding irregularities in import/export of gold and violation of SRO 266(I)/2001 committed in import/export of gold jewellery. However, 04 audit paras were dropped/settled by Directorate General of Internal Audit, Islamabad.

Name of Importer/ Exporter	Nature of Contravention	Amount of tax liability/ penalty adjudged	FIR No. & Date	Status of Recovery proceeding	Any other remarks
M/s Dubai Gold Chain Centre Shop No.130, New Sarafa Bazar, Rawalpindi (Entrustment Scheme)	Failure to export gold jewellery within 180 days (05 cases)	No contravention was made out.	-	Amount deposited voluntarily in 01 case on 05.12.2018	Pending one case relate to export beyond prescribed period.

d. **Non-realization of Export Proceeds**

(25 exporters, 778 cases, amount involved Rs.18.232 billion)

(iv) **MCC (Preventive) Lahore**

Name of Importer/ Exporter	Nature of contravention	Amount of tax liability/ penalty adjudged	FIR No. & Date	Status of recovery proceedings	Any other remarks
1. M/s Gunj Buksh Jewellers 146-Main Bazar, Ismail Nagar,	Non-realization of sale proceeds against export	Rs.13.703 billion		Subjudice before FEAD (SBP) as informed by SBP vide email dated 17.07.2018	

Chungi Amar Siddhu, Lahore (Self Consignment Scheme)	of gold/silver jewellery (172 cases)			Exporter absconder	
2. M/s Imtiaz Jewellers Sarafa Bazar, Gujranwala (Self Consignment Scheme)	Non-realization of sale proceeds against export of gold/silver jewellery (122 cases)	Rs.935.00 million		Pending action by SBP since 21.10.2015.	
3. M/s Sharif Jewellers Sarafa Bazar, Gujranwala (Self Consignment Scheme)	Non-realization of sale proceeds against export of gold/silver jewellery (35 cases)	Rs.150.00 million		Pending action by SBP since 21.10.2015.	
4. M/s Umer Gold Sarafa Bazar, Gujranwala (Self Consignment Scheme)	Non-realization of sale proceeds against export of gold/silver jewellery (76 cases)-	Rs.754.00 million		Pending action by SBP since 21.10.2015.	
5. M/s Mian & Co Office No.114, 1 st Floor, Latif Centre, Ichhra, Lahore (Self Consignment Scheme)	Non-realization of sale proceeds against export of gold/silver jewellery (12 cases)	Rs.306.00 million		Subjudice before FEAD (SBP) as informed by SBP vide email dated 17.07.2018. Exporter absconder	
6. M/s Noor Rabbani Zargar (Self Consignment Scheme)	Non-realization of sale proceeds against export of gold/silver jewellery (4 cases)	Rs.23.869 million		Subjudice before FEAD (SBP) as informed by SBP vide email dated 17.07.2018 Exporter absconder	
7. M/s Qari Traders (Self Consignment Scheme)	Non-realization of sale proceeds against export of gold/silver jewellery (2 cases)	Rs.10.791 million		Subjudice before FEAD (SBP) as informed by SBP vide email dated 17.07.2018 Exporter absconder	
8. M/s Raju Gold Lab (Self Consignment Scheme)	Non-realization of sale proceeds against export of gold/silver	Rs.13.276 million		Pending action by SBP since 21.10.2015	

	jewellery (2 cases)				
9. M/s Amin Casting Jewellery (Self Consignment Scheme)	Non-realization of sale proceeds against export of gold/silver jewellery (6 cases)	Rs.18.283 million		Subjudice before FEAD (SBP) as informed by SBP vide email dated 17.07.2018 Exporter appearing	
10. M/s Bismillah Jewellers Shop No.F.819, Suha Bazar, Lahore (Self Consignment Scheme)	Non-realization of sale proceeds against export of gold/silver jewellery (1 case)	Rs.4.081 million		Subjudice before FEAD (SBP) as informed by SBP vide email dated 17.07.2018 Exporter appearing	
11. M/s Fareed Goldsmith (Self Consignment Scheme)	Non-realization of sale proceeds against export of gold/silver jewellery (2 cases)	Rs.24.881 million		Subjudice before FEAD (SBP) as informed by SBP vide email dated 17.07.2018 Exporter appearing	
12. M/s H&S Traders H.No.182, D-Block, Faisal Town, Lahore (Self Consignment Scheme)	Non-realization of sale proceeds against export of gold/silver jewellery (21 cases)	Rs.221.00 million		Pending action by SBP since 21.10.2015	
13. M/s Insha Traders E-2542-K, Malik Aziz Rang Mahal, Lahore (Self Consignment Scheme)	Non-realization of sale proceeds against export of gold/silver jewellery (4 cases)	Rs.137.00 million		Subjudice before FEAD (SBP) as informed by SBP vide email dated 17.07.2018 Exporter absconder	
14. M/s Life Style Enterprises H.No.296, Block H, Johar Town, Lahore (Self Consignment Scheme)	Non-realization of sale proceeds against export of gold/silver jewellery (12 Cases)	Rs.1.034 billion		Subjudice before FEAD (SBP) as informed by SBP vide email dated 17.07.2018 Exporter absconder	
15. M/s M. Akram Jewellers Shop No.E-2525, Kucha Dhona, Sarafa Bazar,	Non-realization of sale proceeds against export of gold/silver	Rs.84.115 million		Subjudice before FEAD (SBP) as informed by SBP vide email dated 17.07.2018	

Rang Mahal, Lahore (Self Consignment Scheme)	jewellery (3 cases)			Exporter absconder	
16. M/s Siddique Jewellers Chak No.106, R. B Choudhary Wala Faisalabad (Self Consignment Scheme)	Non-realization of sale proceeds against export of gold/silver jewellery (2 cases)	Rs.3.259 million		Subjudice before FEAD (SBP) as informed by SBP vide email dated 17.07.2018 Exporter absconder	
17. M/s Sikandar Jewellers (Self Consignment Scheme)	Non-realization of sale proceeds against export of gold/silver jewellery (7 cases)	Rs.193.00 million		Subjudice before FEAD (SBP) as informed by SBP vide email dated 17.07.2018 Exporter absconder	
18. M/s SKS International F-753, Gali Tobian, Rang Mahal, Lahore (Self Consignment Scheme)	Non-realization of sale proceeds against export of gold/silver jewellery (5 cases)	Rs.75.563 million		Subjudice before FEAD (SBP) as informed by SBP vide email dated 17.07.2018 Exporter absconder	
19. M/s United Gold H.No.43-A-1, St.No.49, Bank Street Islamabad Colony, Samanabad, Lahore (Self Consignment Scheme)	Non-realization of sale proceeds against export of gold/silver jewellery (1 case)	Rs.2.235 million		Subjudice before FEAD (SBP) as informed by SBP vide email dated 17.07.2018 Exporter appearing	
20. M/s Gold Mine 1-1080, Kucha Chabaksawar, Near Mission High School, Rang Mahal, Lahore (Self Consignment Scheme)	Non-realization of sale proceeds against export of gold/silver jewellery (52 case)	Rs.206.00 million		Subjudice before FEAD (SBP) as informed by SBP vide email dated 17.07.2018 Exporter appearing	
21. M/s Everywhere (Pvt) Ltd (Self Consignment Scheme)	Non-realization of sale proceeds against export of gold/silver jewellery (17 cases)	Rs.68.730 million		Pending action by SBP since 31.12.2015	

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22. M/s Waqar Jewellers (Self Consignment Scheme)	Non-realization of sale proceeds against export of gold/silver jewellery (2 cases)	Rs.3.303 million		Subjudice before FEAD (SBP) as informed by SBP vide email dated 17.07.2018 Exporter appearing	
23. M/s Tahir Jewellers (Self Consignment Scheme)	Non-realization of sale proceeds against export of gold/silver jewellery (1 case)	Rs.0.410 million		Pending action by SBP since 31.12.2015	
24. M/s Waheed Jewellers (Self Consignment Scheme)	Non-realization of sale proceeds against export of gold/silver jewellery (28 cases)	Rs.226.00 million		Subjudice before FEAD (SBP) as informed by SBP vide email dated 17.07.2018 Exporter appearing	
25. M/s Pakeeza Jewellers (Self Consignment Scheme)	Non-realization of sale proceeds against export of gold/silver jewellery (3 cases)	Rs.34.734 million		Subjudice before FEAD (SBP) as informed by SBP vide email dated 17.07.2018 Exporter absconder	

- e. **Failure to export gold jewellery against imported gold**
(involvement of 3 importers - 58 cases and amount Rs. 6.694 billion)

(v) **MCC (Preventive) Karachi**

The Directorate of Internal Audit (Customs) did not point out any irregularity for this Collectorate.

The Collectorate conducted audit of cases involving import/export of gold/jewellery and framed 58 contravention cases involving an amount of Rs.6.694 billion against 3 importers who imported gold under Entrustment Scheme. Recovery proceedings against the defaulters were initiated in terms of Section 202 of Customs Act, 1969 and attachment proceedings were initiated, but no recovery till date has been made.

Name of Importer/ Exporter	Nature of contravention	Amount of tax liability/ penalty adjudged	FIR NO.& DATE	Status of recovery proceedings	Any other remarks
1. M/s Saani Impex Ground Floor, Preedy Street, Saddar, Karachi (Entrustment Scheme)	Gold imported but jewellery not exported (10 cases)	Rs.1.350 billion	71/2017 31.10.2017	Recovery u/s 202 initiated vide notice dated 07.09.2018.	Stay granted by Sindh High Court vide order dated 22.11.2018.
2. M/s Makkah Enterprises GC-4/8, Clifton, Karachi (Entrustment Scheme)	Gold imported but jewellery not exported (25 cases)	Rs.2.431 Billion	72/2017 31.10.2017	Recovery u/s 202 initiated vide notice dated 07.09.2018	No stay. Amount recoverable.
3. M/s Rubab Corporation Plot No.33-C, Rahat Lane-2, Phase-VI, DHA, Karachi (Entrustment Scheme)	Gold imported but jewellery not exported (23 cases)	Rs.2.913 billion	73/2017 31.10.2017	Recovery u/s 202 initiated vide notice dated 07.09.2018	Stay granted by Sindh High Court vide order dated 22.11.2018.

6. During hearing on 06.12.2018, record was produced by Collectors MCC Islamabad, Additional Collector (Preventive), Lahore, Collector MCC Peshawar, Collector PMBQ (Exports) Karachi and Collector (Preventive) Karachi. Mr. Moen Afzal, Secretary (Customs Policy) also attended the hearing. During hearing it was observed that detailed independent reports were required to be submitted by FBR, Collector MCC, Islamabad, Peshawar, Preventive-Lahore, Preventive-Karachi and PMBQ (Export), Karachi. As per request of the DRs hearing was adjourned to 13.12.2018. The DRs submitted their reports alongwith supporting documents relating to exports and imports under Entrustment Scheme as well as Self Consignment Scheme administered through SRO 266(I)/20001 and SRO 760(I)/2013 regarding irregularities which were detected through special audit by the Directorate General of Internal Audit.

7. The material available on the record and submissions made by the DRs on due consideration reflects that SRO 266(I)/2001 and SRO 760(I)/2013 were issued to regulate import and export of gold/gold jewellery, gemstones and other raw materials. Both the SROs provide mechanism for

import as well as export. As pointed out hereinabove, under the SROs import and export were governed by two schemes i.e. Entrustment Scheme and Self Consignment Scheme. Under Para 5(2) of SRO 266(I)/2001, the exporter was required to supply gold jewellery of contracted quantity of gold content within one hundred and eighty days from the date of import of gold into Pakistan, in case of failure to export jewellery within one hundred and eighty days the exporter was to pay leviable duty and taxes on imported gold alongwith penalty @5% of leviable duty and taxes for first month and @ 10% of leviable duty for subsequent months.

8. Under Para 6(ii) of SRO 266(I)2001, time frame was provided to exporter of gold jewellery and gemstone made on Self Consignment basis for bringing back gold and gemstones or export proceeds and any unsold gold jewellery and gemstones on import authorization issued by Trade Development Authority of Pakistan (TDAP) which was 120 days and Para 6(iv) of the SRO provided 240 days for realization of sale proceeds from the date of export failing penalty equal to 1% of sale proceeds per month was to be paid.

9. Similarly, Para 4(II)(ii) of SRO 760(I)/2013 requires that the exporter shall export eligible and authorized items within 120 days from the date of import of eligible and authorized items into Pakistan. Failure to export jewellery within the stipulated period shall be penalized under the relevant laws. Para 5 of SRO 760(I)/2013 provides following procedure for export of jewellery made from locally procured precious metal and gemstones:

- (i) *The registered exporter shall apply as per prescribed application form (Annex-H) to the Trade Development Authority of Pakistan for export authorization and such application shall be checked and verified by the TDAP and the entries shall be made in the jewellery Pass Book.*
- (ii) *Customs checking, random sampling etc. shall be same as in the entrustment scheme.*
- (iii) *The sale proceeds shall be realized within 120 days from the date of export.*
- (iv) *Minimum 50% of the export proceed shall be realized in the form of foreign exchange through normal banking channel. The remaining 50% of the export proceed may be realized either in the form of foreign exchange or in the form of precious metals, authorization of import of such precious metals shall be authenticated in the passbook by TDAP.*
- (v) *The unsold jewellery or gemstones shall be deposited with the customs authorities and shall be cleared against relevant entries in Jewellery Pass Book for import of unsold jewellery or gemstones against previous authorization;*

- (vi) *The Commercial Banks shall ensure that sale proceeds of jewellery and gemstones exported under this Order shall be repatriated in full within 120 days otherwise commercial banks shall inform State Bank of Pakistan as well as to TDAP.*

10. Audit reports alleging illegality, irregularities and violation of SROs by MCC, Islamabad, Peshawar, Lahore and Karachi in transactions for import and export of gold, gold jewellery, gemstone and precious raw materials on due consideration reflect that the violations committed by each of the Collectorate are of different nature, therefore, the case of each Collectorate is to be examined separately. However, it is to observe that the Collectorate in their reply/reports did not dispute the observation made in audit reports. The same are rather admitted.

11. Following emerged on examination of audit paras and reports submitted by the Collectorates:

(i) **MCC, Islamabad**

05 audit paras were raised regarding import of gold and violation of SRO 266(I)/2001 committed in export of jewellery. However, 04 audit paras were dropped / settled by Directorate General of Internal Audit, Islamabad. Remaining one audit para relate to duty free advance import of 30 consignments weighing 1327.361 kg gold valuing Rs.57.065 million at AFU, MCC Islamabad by Dubai Chain Centre during May 2013 to July 2013 and failure to export jewellery within 180 days from the date of import as required by Para 5(II) of the SRO 266(I)/2001. M/s. Dubai Chain Centre had exported gold jewellery weighing 1357.365 kg during February and March 2014 which was after period prescribed under Para 5(II) of SRO 266(I)/2001 creating demand of Rs.332.830 million but the Department has taken no action for recovery of due amount rather M/s. Dubai Chain Centre is being defended on the ground that Director Internal Audit has been directed by the Director General Internal Audit to refer the matter to Ministry of Commerce for endorsement of condonation granted by TDAP which is the regulatory body.

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Delay in finalizing the case as per law tantamount to maladministration as defined in the FTO Ordinance.

(ii) **MCC Lahore**

Audit objections regarding non-repatriation of foreign exchange in more than 300 cases of 25 importers of Lahore, were raised. The Collectorate, however, took the plea that action for non-repatriation of foreign exchange falls within the domain of State Bank of Pakistan (SBP) and referred the cases to the SBP for necessary action as per the Foreign Exchange Act, 1947 and rules made there under. The Deptt informed that the SBP has lodged complaints regarding the non-repatriation of Foreign Exchange in these cases with Foreign Exchange Adjudication Court. The Ministry of Law and Justice had also upheld the stance of MCC (Preventive), Lahore vide U.O. NO. 115/2018-Law-1 dated 09.04.2018 that the cognizance for non-receipt of remittances in cases where jewellery was exported against Form-E was to be taken by the SBP.

The SBP vide its letter dated 05.04.2019, informed that total amount involved in cases of twenty-five gold exporters of MCC Lahore was approximately equivalent to USD 272.41 million. Out of this amount, USD 128.57 million had already been repatriated in the form of foreign exchange of USD 93.16 million and Gold of USD 35.41 million. In cases of three exporters involving amount of USD 0.99 million, one case has been closed by the Adjudicating Officer due to death of the exporter and by imposing monetary penalty of Rs.6.39 million on other two exporters. At present, cases of eighteen exporters having outstanding amount of approximately USD 142.85 million are under adjudication before Adjudicating Officers, which is a competent forum to decide such cases under the provisions of Foreign Exchange Regulations Act, 1947. Amongst eighteen exporters, four exporters having outstanding overdue amount of

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USD 12.97 million are not attending proceedings before Adjudicating Officer. However, Adjudicating Officer is trying to locate the exporters thorough NADRA and PTA to give them every possible chance to be heard and for realization of export proceeds. After exhausting options to locate the exporters, the Adjudicating Officer will decide cases according to the Adjudication Proceedings and Appeal Rules, 1988.

Failure to repatriate foreign exchange by the exporters was not only the violation of Foreign Exchange Act 1947 and the rules made there under but also the violation of SRO 266(I)2001 and SRO 766(I)2013 read with Import and Export Act, 1950 yet the Deptt instead of taking cognizance preferred to look other way. Allowing unhindered subsequent exports when it was evident that foreign exchange in respect of earlier export had not been repatriated within specified period, reflects negligence, inattention and ineptitude in discharge of duties and responsibilities which is tantamount to maladministration.

(iii) **MCC Peshawar:**

Audit paras were raised in 23 cases relating to MCC Peshawar, out of which 10 cases of the same nature i.e. duty/tax free advance import of gold was made under Entrustment Scheme against which jewellery was not exported, whereas 13 cases relate to Self Consignment Scheme. 09 cases after adjudication are pending with Customs Appellate Tribunal, 08 cases are under adjudication. In 05 cases ONOs are being implemented and proceedings for recovery of adjudged amount have been initiated. One of the case has been referred to Directorate of Internal Audit for settlement of audit para as against advance import of gold jewellery was exported from AFU BBI Airport Islamabad wherefrom GD No.RAFU-HC-12324 dated 22.01.2011 and shipping bills RAF-FB-2515 dated 26.07.2011

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was confirmed vide letter C.No.SI/IMPO/MISc/50/20101761 dated 31.08.2015.

During hearing, the Collector Customs Peshawar was confronted with the issues relating to delay in initiation of action, non-registration of FIRs and delay in adjudication proceedings. Although he could not explain delayed initiation of action and non-registration of FIR, however, he assured that adjudication will be expedited and similarly proceedings for recovery of adjudged amount would be followed and efforts would be made for early disposal of appeals pending before the Customs Appellate Tribunal.

It is observed that at the time of import of gold the concerned officer/official of the Deptt acted negligently and did not pay attention to the entries made in Jewellery Pass Book being maintained under Para 2(v) of SRO 266(I)/2011. Negligence, inattention and ineptitude in discharge of duties performance is evident.

iv. **MCC Preventive, Karachi**

Audit paras were raised relating to 58 cases, of import of gold under Entrustment Scheme relating to 03 importers and their failure to export jewellery. On the basis of audit paras contravention was created and after adjudication recovery of Rs.1.250 billion was created against M/s. Saani Impex, Rs.2.431 billion was created against M/s. Makkah Enterprises and Rs.2.913 billion was created against M/s. Rubab Corporation. Recovery proceedings were also initiated by the Department and FIRs have been lodged. After investigation challans have been submitted in the Court of Special Judge Customs, however, 02 of the importers namely M/s. Saani Impex and M/s. Rubab Corporation have filed appeals against the ONOs before the Customs Appellate Tribunal and simultaneously the Hon'ble High Court of Sindh was approached by the filing of CP wherein

vide Order dated 22.11.2018 the Department has been restrained from initiation of coercive measures for recovery for two months whereas in one case i.e. M/s. Makkah Enterprises, importer is not traceable. Although the DR assured that the matter will be pursued in accordance with law for disposal of appeals and recovery of adjudged amount. However, no explanation was advanced for allowing repeated imports without ascertaining the fact about export of Jewellery against earlier import of gold which fact was ignored despite having evidence of imports entered in the Jewellery Pass Book to be maintained under Para 2(5) of the 266(I)/2001 and defined under Para 2(j) of SRO 760(I)/2013. Therefore, the concerned officers of the Deptt at the time of import are found to have failed to discharge their duties and responsibilities and acted in a negligent manner which constitutes maladministration.

(v) **MCC, PMBQ, Karachi**

Audit detected fake Form-Es involving revenue of Rs.3.178 billion submitted by M/s. Makkah Enterprises whereupon the Department initiated inquiry and detected fake Form-Es submitted by M/s. B. D. Enterprises involving revenue of Rs.8.209 billion, M/s. Rubab Corporation involving revenue of Rs.2.971 billion, M/s. Reaz Corporation involving revenue of Rs.6.527 billion and M/s. Saani Impex involving revenue of Rs.2.771 billion. After due adjudication, the Department issued ONOs creating liability of revenue against fake Form-Es. Although the Department had initiated recovery proceedings but four importers namely M/s. B. D. Enterprises, M/s. Rubab Corporation, M/s. Reaz Corporation and M/s. Saani Impex had filed appeals before the Customs Appellate Tribunal against the ONOs. Simultaneously, the Hon'ble High Court was also approached by filing of CPs. The Hon'ble High Court restrained the Deptt from adopting coercive measures till disposal of

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appeals by the Tribunal for which period of two months had been granted w.e.f. 22.11.2018.

12. It is to observe that repeated exports were made by all the five exporters. Admittedly, foreign exchange was not repatriated against Forms-E which subsequently turned out to be fake. Ignoring the said fact, there is no explanation that how subsequent exports were allowed when it was evident that foreign exchange was not repatriated within the specified period as the evidence of earlier exports were available to the Department in shape of Jewellery Pass Book maintained under (2(v) of SRO 266(I)2001 and Para 2(j) of SRO 760(I)/2013. This reflects the negligence, inattention and ineptitude in discharge of duties and responsibilities which does tantamount to maladministration.

13. It is rather strange that the Collectorates had failed to recover the adjudged amount of fine imposed against the clearing agents, who are otherwise licensee of the Deptt. Perusal of the record shows that either no stay had been granted or the period for stay of order under appeal had been lapsed. But the Department had not initiated recovery proceedings for which no explanation could be advanced. This again reflects negligence, inattention, inefficiency and ineptitude in discharge of duties and responsibilities by concerned officers/officials of the Department which tantamounts to maladministration.

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14. In order to ascertain the amount of foreign exchange involved in the import of gold and other raw materials and jewellery exported under SRO 266(I)/2001 dated 07.05.2001 and SRO 760(I)/2013 dated 02.09.2013, information was sought from Trade Development Authority of Pakistan (TDAP) and State Bank of Pakistan (SBP) The SBP vide its letter dated 12.02.2019, informed that in terms of both SROs 266((I)2001 dated 07.05.2001 and SRO 760(I)2013 dated 02.09.2013, complete data of export and imports of precious metals and jewellery along with the amount of foreign exchange being maintained by TDAP and may be obtained from them. The TDAP vide its letter dated 15.03.2019 informed that all the remittances

actually realized are maintained by the SBP and provided value of imports and exports of gold under the scheme. The following position emerges on the basis of information provided by TDAP.

SRO 266(I)/2001 dated 07.05.2001

Amount in USD (Million)

Period	Value of locally procured gold (Self Consignment)	Value of imported gold (Entrustment)	Value of Export
Jan 2007 – Apr 2007	-	6.447	14.225
Dec 2008	8.014	1.917	0.625
Jan 2009 – Dec 2009	146.326	30.869	2.005
Oct 2010 - Nov 2010	19.469	6.795	0.456

SRO 760(I)/2013 dated 02.09.2013

Amount in USD (Million)

Period	Entrustment Scheme		Self Consignment Scheme	
	Value of import	Value of export	Value of locally procured gold	Value of export
Sep 2013 – Dec 2018	92.196	11.536	15.139	19.314

15. Data provided by the SBP regarding realization against export of precious metals, jewellery and gemstones as reported by Banks under International Transactions Reporting System to SBP during the period from 2008 to 2018 is as under:

Amount in USD (Million)

Year	Jewellery of Gold	Other Articles of Jewellery- Other Precious Metal	Articles of Silver Jewellery	Sub-Total
2008	24.681	0.046	1.817	26.544
2009	51.93	0.649	0.826	53.405
2010	109.558	1.086	1.411	112.055
2011	124.331	3.435	1.093	128.859
2012	247.944	14.922	1.624	264.49
2013	177.367	7.222	32.461	217.05
2014	6.511	6.941	2.578	16.03
2015	0.915	4.351	2.42	7.786
2016	0.74	5.026	1.812	7.578
2017	1.146	4.652	0.124	5.922
2018	1.216	3.997	0.005	5.218
Grand Total	746.339	52.327	46.171	<u>844.837</u>

16. An analysis of the above data reveal that there is a gap between the value of import and value of export and lack of data synchronization relating

to data provided by TDAP and SBP. It appears that TDAP has not put in place any mechanism of monitoring and reporting of exports and imports taking place under SRO 760(I)2013 dated 02.09.2013. In the absence of authentic and complete data of import and exports under the said SRO, no meaningful analysis can be carried out. It is, therefore, imperative that the Ministry of Commerce may consider conducting impact analysis of the incentive scheme as provided for under the Import and Export of Gold, Gold Jewellery and Gemstones Order, 2001 and Import and Export of Precious Metals Jewellery and Gemstones Order, 2013.

17. Similarly there are some weaknesses in the scheme as notified vide SRO 760(I)2013 dated 02.09.2013 which need to be revisited to provide for a performance based quota scheme for import of gold, authentication of passbook entries by TDAP, only if all timelines are being met including realization of foreign exchange of previous exports and clearly spelled out penal clauses for defaulters and reporting mechanism to the concerned adjudicating authority.

FINDINGS:

18. Failure of the Dept'l officer(s) to take timely action under Section 156(1) and (14A) of the Customs Act, 1969 as well as under Import and Export Control Act, 1950 and failure to exercise due precaution, in the discharge of their duties and responsibilities resulting in massive loss of revenue to the national exchequer which is a sheer negligence, ineptitude, incompetence and inefficiency, which does tantamount to maladministration as defined under Section 2(3)(ii) of the FTO Ordinance.

RECOMMENDATIONS:

19. (a) FBR to:

- (i) direct the Chief Collectors (North), (Central), and (Enforcement) South to initiate departmental enquiry to ascertain the Officers/Officials and take disciplinary action against those found involved in illegal/inadmissible imports/exports in violation of SRO 266(I)/2001 and SRO 760(I)/2013;

- (ii) ask the Collectors concerned to initiate recovery proceedings in accordance with law to recover the adjudged amount;
 - (iii) request Ministry of Commerce to constitute a committee comprising of representatives from SBP, FBR and TDAP to review SRO 760(I)2013 dated 02.09.2013 and proposed amendments to plug in the loopholes in the procedure to obviate chances of misuse /abuse in future; and
 - (iv) report compliance within 45 days.
- (b) The Ministry of Commerce to:-
- (i) get a study conducted to measure impact analysis of the incentive scheme as provided for under the Import and Export of Gold, Gold Jewellery and Gemstones Order, 2001 and Import and Export of Precious Metals Jewellery and Gemstones Order, 2013;
 - (ii) examine the proposal to prescribe bank guarantee against import value of precious metal instead of one percent cash margin and make necessary amendment in the Import and Export of Precious Metals Jewellery and Gemstones Order, 2013 notified vide SRO 760(I)/2013 dated 02.09.2013;
- (c) The Director General FIA to conduct inquiry against all concerned Departments/Agencies and initiate criminal proceedings against those found involved, in accordance with law.

(Mushtaq Ahmad Sukhera)
Federal Tax Ombudsman

Dated: 21/05/2019

*SHZ_A/Intezar/U./HUK

Agreed to reporting.

Certified to be True Copy



Deputy Registrar
FTO Secretariat
Islamabad