

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

Review Petition

Dated: 22.10.2021* R/O, Quetta

in

Complaint No.1484/QTA/CUST/2021

The Secretary,
Revenue Division,
Islamabad.

...Petitioner

Versus

Mr. Muhammad Faisal Khan S/o Haji Nek Muhammad,
C/o Haji Naseebullah Khan Achakzai, Advocate
Haji Laalak Law Chamber, office # 01, 1st Floor,
National Medical Centre, Manan Chowk, Jinnah
Road, Quetta.

... Respondent

Dealing Officer : Mr. Justice (R) M. Nadir Khan, Advisor
Appraising Officer : Mrs. Sarwat Tahira Habib, Advisor
Authorized Representative : Mr. Naseebullah Khan Achakzai, Advocate
Departmental Representatives : (i) Mr. Muhammad Ismail, Director I&I
(ii) Mr. Abdul Haye Sheikh, Add Director I&I

ORDER-in-REVIEW

The FBR/Directorate I&I Customs, Quetta (the Petitioner) feeling aggrieved by the order dated 06.10.2021 filed review application under Section 14(8) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance).

2. Facts leading to the review petition are that the complaint was filed for issuance of auction certificate of vehicle purchased by the Respondent against his bid of Rs.375,000/- in auction held by the Directorate of Intelligence and Investigation-FBR, Regional Office, Quetta on 15.09.2012. The Respondent alleged that issuance of auction certificate is being lingered on one pretext or other. The Respondent had sold the vehicle to Muhammad Mohymin Khan for Rs.450,000/- and considerable amount has been withheld for want of remaining documents/auction certificate.

*Date of registration in FTO Sectt

3. The Petitioner did not contest the complaint. During hearing, the DR informed that the record of the case has been received from NAB and grievance of the Respondent shall be redressed within 7 days whereupon the AR did not press the complaint for further action and complaint was disposed of vide order dated 06.10.2021.

4. The Petitioner has filed review application on the ground that the Directorate re-examined the record and found that the auctioned Toyota Hilux purchased by the Respondent was tempered as. **"A small metal strip measuring about 18X03 Cms bearing the inscribed No. KZN130-9066452 was superficially pasted over the original chassis site, while delicately covering up the company's genuine number. Hence, it is opined that the present chassis No. GRN215-8054098 of Toyota Hilux Surf is correct one"**. The Petitioner has pleaded that no option other than to cancel the auction and get back the vehicle is left.

5. The Respondent/AR in response to the notice of review petition did not filed reply and telephonically informed that he would argue the matter during hearing before the Hon'ble FTO.

6. During arguments the DR reiterating averments of review application submitted that the Respondent never approached the Petitioner for issuance of auction certificate for almost nine years. The vehicle was used by him. After disposal of complaint the process for issuance of auction certificate was initiated. The record on examination transpired that Forensic Science Lab, Crime Branch, Quetta certified that the chassis number was tempered by pasting metal strip inscribing No.KZN 130-9066452 covering the original chassis No. GRN 215-8054098. According to pasted chassis number the model of the vehicle was 1994 whereas according to original chassis number the model of the vehicle was found to be 2005

whereby the assessment value alongwith duty and taxes comes to Rs.5,742,003/- whereas, the Respondent has deposited only Rs.375,000/-. The Respondent was given option either to deposit the assessed value of the vehicle or the Petitioner is left with no other option but to cancel the auction and refund the amount deposited by the Respondent taking back the vehicle.

7. The AR did not dispute the fact about pasting of metal strip with chassis No.KZN 130-9066452 covering the original chassis No.GRN 215-8054098 whereby at the time of auction the model of the vehicle was considered as 1994 instead of 2005. The AR pleaded that the Respondent cannot be held responsible for negligence of the Petitioner. Now after nine years when the vehicle has been sold almost 8 time and huge amount has been spent on maintenance of the vehicle the demand of the Petitioner is unjust. The AR contended that the Petitioner was repeatedly approached for issuance of auction certificate as without auction certificate the vehicle cannot be registered but the matter was delayed unnecessarily.

8. The AR on being asked to submit copies of applications submitted for issuance of auction certificate, requested for time for submission of copies of applications. After 7 days the Respondent has submitted copies of two applications dated 17.06.2015 and 16.05.2018 purportedly submitted by him for issuance of auction certificate.

9. Both parties heard and the relevant record has been perused. It remains a fact that the vehicle was legally auctioned by the department on 15.09.2012. As a consequence of the auction proceedings, the vehicle in question was duly delivered to the successful bidder. It is a set practice at all customs field formations that at the time of seizure, the vehicles under detention are referred to

the Forensic Laboratories to ascertain the genuineness or otherwise of the chassis nos. in order to determine whether a vehicle can be put to auction or not. The vehicles with genuine, non-tempered and non-cut & weld chassis nos. are disposed of through auction while the vehicles with tempered and cut & weld chassis nos. are disposed of in light of other relevant law/procedures in vogue. It is evident from the above discussion that department failed to ascertain at the time of auction in this case that a small metal strip is superficially pasted over the original chassis site. And, there is no fault on part of the successful bidder who purchased the vehicle through a lawful auction conducted by the Department.

10. Furthermore, the departmental stance about giving option to the respondent to deposit the assessed value of the vehicle or to cancel the auction **after more than nine (09) years** neither carries any weight nor supported by any law. The Collector's powers to cancel an auction in terms of Rule 75(ii) of Customs Rules, 2001 issued vide S.R.O. 450(I)/2001 dated 18.06.2001 is restricted to a scenario where it is proved that there has been a **deliberate attempt** to cause loss to the public exchequer, which is obviously not the case in this complaint. The relevant portion of the above Rule is reproduced as under:-

"accept or reject any bid or offer or auction at any time before the goods are delivered to the successful bidder/private offerer. He may also recall the proceedings and recover the goods even after delivery of goods if it is proved that there has been a deliberate attempt to cause loss to the public exchequer"

11. In view of the facts narrated above, non issuance of the auction certificate by the department at this stage is tantamount to maladministration in terms of Section 2(3) of FTO Ordinance 2000.

12. Therefore, FBR is:-

- (i) to direct Director, Intelligence & Investigation, Customs, Quetta to issue auction certificate in this case with correct chassis no. within 15 days; and
- (ii) to report compliance within 45 days.

The Review Petition, accordingly, stands disposed of in the above terms.

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

Dated: 10/02/2022
Aakash/gg

Certified to be True Copy



Deputy Registrar
FTO Secretariat
Islamabad

