THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

Complaint No.1712/PWR/CUST/2025
Dated: 31.01.2025* R.O Peshawar

Haji Fazal e Mabood,
R/o Urmar Mayna, Mohallah Lali Khel,
Tehsil & District, Peshawar. ...Complainant

Versus

The Secretary,
Revenue Division,
Islamabad ... Respondent

Dealing Officer	:	Mr. Muhammad Nazim Saleem, Advisor
Appraising Officer	:	Dr. Arslan Subuctageen, Advisor
Authorized Representative	:	Mr. Najeeb ur Rehman Abbasi, Advocate
Departmental Representatives	:	Mr. Sajid Khan (DC) Collectorate of Customs (Appraisement) Peshawar

FINDINGS/RECOMMENDATIONS

The above-mentioned complaint has been filed in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against Collectorate of Customs (Appraisement) Peshawar for not returning 170 tolas of gold despite decision of Customs Appellate Tribunal in his favour which has been upheld by the Peshawar High Court and the Supreme Court of Pakistan.

2. Briefly, as per the complaint:

"1. That, the complainant arrived at Peshawar Airport from Dubai by flight No.PK-207 on 05.01.1997, opted for red channel and presented his baggage for examination to the Customs Staff on duty and nothing objectionable was recovered from the baggage. The Customs Staff took body search and recovered 170 tolas of gold slabs of 10 tola each from the waistcoat of complainant which was kept in the pockets of his waistcoat with the intension of safety of his belongings. The Customs Staff seized all the baggage and the said gold from the complainant, arrested the complainant and lodged an FIR against him.

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* Date of registration in FTO Sectt

2. Seizure case against the complainant was sent before the learned Additional Collector of Customs, Custom House, Peshawar for Adjudication, who confiscated the impugned gold vide Order-in-Original No. 36/97 dated *26.04.1997.*

3. The complainant preferred an Appeal against the impugned Order-in-Original No. 36/97 dated 26-04-1997, before the learned Collector of Customs (Appeals) Northern Zone, Rawalpindi which was dismissed vide Order-in-Appeal No.1889/97 dated 21-06-1997.

4. The complainant field Appeal against Order-in-Appeal No. 1889/97 dated 21-06-97 before the honourable Customs, Excise & Sales Tax Appellate Tribunal, Islamabad Bench. The honourable Appellate Tribunal set aside the impugned Order-in-Appeal vide Judgment F.No.7(145)ATIB/97-5104 dated 25.10.1997 and remanded back the case to the Additional Collector of Customs, Peshawar, for denovo consideration and decision.

5. The learned Additional Collector of Customs, Custom House, Peshawar vide Order-in-Remand No. 52/97 dated 28-11-1997 confiscated the impugned gold once again.

6. An Appeal **against** the impugned Order-in-Remand No. *52/97* dated 28-11-1997 was dismissed by the learned Collector of Customs (Appeals), Northern Zone, Rawalpindi vide Order-in-Appeal No. 2929/98 dated 02-12-1998. The complainant preferred an Appeal before the honourable Customs, Excise and Sales 'fax Appellate Tribunal, Peshawar Bench, which was accepted by the learned Customs, Excise and Sales Tax, Appellate Tribunal, Peshawar Bench vide Judgment 7(786)CU/IB/2000PB) dated 08.01.2004 and ordered to release the impugned gold on payment of 10% fine of the value thereof in terms of section 181 of the Customs Act, 1969 in addition to leviable duty / taxes at statutory rate by modifying the impugned Order-in-Appeal No.2929/98 dated 02.12.1998 passed by the learned Collector of Customs (Appeals), Northern Zone, Rawalpindi.

7. Being aggrieved by the judgment of honourable Customs, Excise & Sales Tax Appellate Tribunal, Peshawar Bench, the learned Collector of Customs, Custom House, Peshawar filed a reference SAO. Cust No. 135/2004 dated 25-03-2004, before the honourable Peshawar High Court, Peshawar, which was not accepted vide judgment dated 18-04-2012.

8. Being aggrieved by the judgment of honourable Peshawar High Court, Peshawar, the Collector of Customs, Model Customs Collectorate, Custom House, Peshawar filed an Appeal before the

honourable Supreme Court of Pakistan which was dismissed vide order in Civil Petition No. 1276/2012 dated 26-04-2013.

9. Being dissatisfied with the judgment of honourable Supreme Court of Pakistan passed in Civil Petition No. 1276/2012 dated 26-04-2013, the Collector of Customs, Model Customs Collectorate, Custom House Peshawar filed a Review Petition No. 144 of 2013 which was also dismissed on 16-12-2013.

10. The Collector of Customs, Model Customs Collectorate, Custom House, Peshawar was requested on 20-05-2013 and 20-01-2014 to comply with the judgment of the Apex Court and release the impugned 170 tolas of gold on payment of duty / taxes alongwith redemption fine to the complainant in terms of honourable Supreme Court's Order but no action has been taken by the Collector of Customs (Enforcement), Custom House, Peshawar as well as Collector of Customs (Airports), Peshawar despite the fact that Civil Review Petition No. 144 of 2013 was decided on 16-12-2013, approximately 11 year ago, which is suggestive of non compliance of the judgment of honourable Supreme Court and conduct demonstrated in the process by causing delay of eleven years in compliance of the honourable Supreme Court's order amounts to mal-administration in terms of sub section (3) of section 2 of Federal Tax Ombudsman Ordinance, 2000. Moreover, the Respondents are accountable before this honourable forum for denying justice to the complainant despite the order of the honourable apex court in lucid and specific terms."

3. The complaint was referred to Secretary, Revenue Division, Islamabad 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 vide letter dated 03.02.2025. The Collector, Collectorate of Customs Airports, Islamabad vide letter dated 03.03.2025 sought time to file comments to obtain complete record as the case was as old as 27 years. It was added that the Collectorate of Customs (Enforcement) has been requested to directly respond to complainant and submit comments to FTO, R.O, Peshawar. The Collectorate of Customs (Enforcement) Peshawar vide letter dated 05.03.2025 referred the matter back to Collectorate of Customs (Airports) Islamabad in terms of SRO 1637(I)/2024 dated 18.10.2024 since the gold was seized at Bacha Khan

International Airport, Peshawar. The Collectorate of Customs (Airports) Islamabad vide letter dated 10.03.2025 referred the case to Collectorate of Customs (Appraisement) Peshawar as all legacy issues relating to erstwhile Collectorate of Customs, Peshawar have been entrusted to the said Collectorate. The relevant record was also transferred to the Collectorate.

4. Keeping in view the uncertain position as detailed supra, it was expedient to fix some date of hearing. Accordingly, 20.03.2025 was fixed for the purpose. Hearing was conducted on the said date duly attended by AR of the Complainant and the DR. While the AR attended hearing in person, the DR was contacted on mobile phone video as he was in his office in Peshawar. During hearing, AR stated that the matter is being lingered on unnecessarily despite clear judgement of the Customs Appellate Tribunal dated 08.01.2004 in favour of the complainant as the Tribunal ordered to release the confiscated gold on payment of leviable duty and taxes and 10% redemption fine. The said judgment has been upheld by Peshawar High Court vide Judgement dated 18.04.2012 and by the Supreme Court of Pakistan vide Judgement dated 26.04.2013. Even the Review Petition has been dismissed by the Honourable Apex Court. He also cited Article 189 of the Constitution of Pakistan, 1973 which requires implementation of Judgement/decision of the Supreme Court of Pakistan. The DR did not contest the aforesaid contention of the AR, however, sought some time for formal response on the issue as the case was 27 years old with voluminous record. On this, the D.R was asked to submit proper reply within a week.

5. The Collector of Customs (Appraisement) Peshawar has submitted the desired report vide letter dated 26.03.2025 which is detailed hereunder: -

"1. That, on 05.01.1997, during routine checking, the Customs staff recovered seventeen (17) slabs of gold each slab weighing 10 tolas, from the possession of a passenger namely Syed Rehman S/o Gui Rehman coming from Dubai via Flight PK-207, and subsequently seized vide Seizure Case No.02/97, dated 05.01.1997. An FIR No. 03/97, dated 05.01.1997 was also lodged against him.

2. That, the learned Additional Collector of Customs, Custom House, Peshawar adjudicated the instant case and confiscated the seized gold vide Order-in-Original No.36/97 dated 26.04.1997 in favor of the state.

3. That, the complainant filed an Appeal against Order-in-Original 36/97 dated 26.04.1997 before the learned Collector (Appeals), Northern Zone, Rawalpindi, which was dismissed vide Order-in-Appeal No.1889/97 dated.21.06.1997.

4. That, the complainant filed Appeal against Order-In-Appeal No.1889/97 dated 21.06.1997 before the honorable Customs, Excise & Sales Tax Appellate Tribunal, Islamabad Bench. The honorable Appellate Tribunal vide Judgment F.No.7(145)ATTB/97-5104 dated 25.10.1997 remanded back the case to the Additional Collector Customs, Peshawar, for denovo consideration and decision.

5. That, the learned Additional Collector of Customs, Customs, Peshawar confiscated the seized gold once again vide Order-in-Remand No.52/97 dated 28.11.1997.

6. That, the complainant filed an Appeal against Order-in-Remand No.52/97 dated 28.11.1997 before the Collector of Customs Appeals, which was dismissed. The Complainant appealed further before the Customs, Excise and Sales Tax Appellate Tribunal, Peshawar Bench. The honorable Appellate Tribunal vide Judgment 7(786)CU/IB/2000(PB) dated 08.01.2004, ordered the release of the confiscated gold on payment of 10% fine of the value thereof in terms of section 181 of the Customs Act, 1969 in addition to leviable duty/taxes at statutory rate.

7. That, the Department filed a reference S.A.0.Cust No.135/2004, dated 25.03.2004 before the honorable High Court, Peshawar against the Judgment of the honorable Customs Excise & Sales Tax Appellate Tribunal, Peshawar Bench which was not accepted vide judgment dated 18.04.2012.

8. That, being aggrieved by the judgment of honorable Peshawar High Court, Peshawar, the Department filed a Civil Petition No. 1276/2012 (an Appeal against the judgment dated 18.04.2012 passed by the Peshawar High Court, Peshawar in S.A.0 No. 135/2004) before the August Supreme Court, Pakistan which was dismissed on 26.04.2013.

9. That, the Department filed a Review Petition No.144 of 2013 before honorable Supreme Court of Pakistan, which was also dismissed on 16.12.2013

10. That, the subject case has attained its legal finality after issuance of the August Supreme Court of Pakistan vide its order dated 20.05.2013 and subsequent Review Petition order dated 20.01.2014. As per SRO 1637(1)/2024, dated 18.10.2024, the legacy matter of the erstwhile Model Customs Collectorate, Peshawar has been shifted to this Collectorate for further required action. The original case file has been requested by this Collectorate which was received on 17.03.2025. The record of the instant case is being scrutinized and the lawful implementation will be processed in light of the Judgments of the legal fora in due course of time on merit.

FINDINGS:

6. The Collectorate of Customs (Appraisement) Peshawar has categorically stated that the relevant record is being examined with a view to implement the judgement of superior courts of the country.

RECOMMENDATIONS:

7. FBR to direct:-

i) Collector, Customs (Appraisement) Peshawar to implement the judgement of Customs Appellate Tribunal dated 08.01.2004 in letter and spirit as upheld by Hon'ble High and Supreme Court of Pakistan; and

ii) report compliance within 30 days.

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

Approved for rehanty

Dated: 07/04 /2025