THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

COMPLAINT NO.1874/ISB/CUST/2023

Dated: 05.04.2023* HQs Islamabad

REMAND BACK CASE

Mr. Shahid Inayat Cheena,
409, St. 84, G-11/3,
Islamabad. ...Complainant

Versus

The Secretary,
Revenue Division, ...Respondent
Islamabad.

Dealing Officer	: Mr. Muhammad Nazim Saleem, Advisor
Appraising Officer	: Dr. Arslan Subuctageen, Advisor
Authorized Representative	: Barrister Syed Aun Muhammad Bukhari,
Departmental Representative	: Mr. Shahid Jan, Additional Director and Mr. Salik Muhammad, Deputy Director, Directorate of I & I-Customs, Rawalpindi
	: Mr. Asif Jahangir Khan, Inspector, Excise & Taxation Office, Islamabad

FINDINGS/RECOMMENDATIONS

The above-mentioned complaint was filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance), against the Director, Directorate of Intelligence & Investigation-Customs, Rawalpindi, for not allowing refund of bid amount paid by the Complainant as a successful bidder after auction proceedings.

2. Briefly, the Complainant has alleged in his complaint that he purchased Mazda Mini Truck, Model 1996, having Chassis No. WGT4H-100675, through an auction dated 07.06.2018 conducted by the Directorate of Intelligence & Investigation-Customs, Islamabad. Due to Covid-19, registration process of the said vehicle before Motor Registration Authority was delayed and applied for the registration on 07.05.2019 as per Islamabad Police Vehicle

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* Date of Registration in FTO Secretariat

Verification Certificate. On 25.08.2022, through Capital Territory Police Lab Report 3114/2022, it was revealed that the chassis number was not genuine rather it has been engraved and tampered after deep filling the original. Thus, the Directorate violated CGO 5/2018 dated 24.05.2018, as tampered vehicles cannot be sold out to private individuals. On 21.02.2023, the Complainant applied for refund of auction proceeds but the application was turned down by the Directorate vide letter dated 20.03.2023. The Complainant has prayed that the directions be issued to the Deptt to refund the proceeds amount to the Complainant, in light of CGO 5/2018 dated 24.05.2018.

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. In response, Director, Directorate of Intelligence & Investigation-Customs, Rawalpindi, vide letter dated 26.04.2023, submitted parawise comments, stating therein that a Mazda T-3500 Truck, Registration No. SBA-731-Sibi, Model-1996, Chassis No.WGT4H-100675, was seized by the staff of Directorate General Intelligence & Investigation, Islamabad, on 07.12.2017. The vehicle was referred to National Forensic Science Agency for lab test of its Chassis number, which was reported, vide Lab Report dated 12.12.2017, that "Chassis Number WGT4t-I-100675 has not been tampered and chassis frame has not been cut and welded". The vehicle was put to auction on 07.06.2018 and sold to highest bidder i.e. Complainant, Mr. Shahid Inayat. After payment of all dues, the Complainant got the vehicle on 20.06.2018. The Complainant was required to register the vehicle within 60 days of the issuance of Auction Certificate dated 20.06.2018, which he failed to do. On 09.08.2018, a letter dated 07.08.2018 was received

from MRA Islamabad, for verification of auction documents of the subject vehicle, which were duly verified, vide letter dated 15.08.2018. After a period of four years, on 29.08.2022, a request for refund of the payment was received from the Complainant stating that the vehicle found tampered in the lab report conducted by Forensic Science Laboratory, Capital Territory Police Islamabad, vide Lab No. 3114/2022 dated 25.08.2022. The Complainant also mentioned that the vehicle was earlier provisionally registered in ETO Office, Islamabad, in 2021, on the basis of lab report conducted by the National Forensic Science Agency, Ministry of Interior Islamabad. As the specified terms and conditions of auction were not followed and since there is no certainty about the status and nature of the vehicle at this belated stage, the application dated 21.02.2023 of the refund of auction proceeds by the Complainant was turned down, vide letter dated 20.03.2023, stating all the relevant reasons for rejection of refund.

4. After hearing the Complainant and DR from the respondent department Directorate of I&I-Customs, Rawalpindi, the FTO issued following Findings on 29.05.2023:'

> "5. *In view of supra, no maladministration stands established on part of the Deptt as the vehicle was auctioned and handed over to the Complainant on 20.06.2018, which was required to be registered within 60 days of the issuance of auction certificate dated 20.06.2018 but on the contrary and in violation of rules, the vehicle was continuously used for a period of four years without registration and on 29.08.2022, a request for refund of amount paid in auction is without any merits and is accordingly rejected. File be consigned to record.*

5. The review petition was filed by AR of the Complainant against above Findings, under Section 14(8) of the Federal Tax Ombudsman Ordinance (FTO Ordinance), 2000. After personally hearing both the sides, following Findings dated 26.07.2023 were issued:

"Review hearing was conducted on 12.07.2023, The DR reiterated the departmental stance and stressed that instead of getting the auctioned vehicle registered in 60 days as per law, when there was no sign of covid in Pakistan and when the Motor Registration Authority got the auction document verified on 15.08.2018, the petitioner who is a regular auction bidder, kept the vehicle in use for 04 long years without registration. It was observed that the hearing notice from this office was issued on 04.05.2023 giving ample reflection time to both, the complainant and the deptt. The AR submitted an unsigned application on 16.05.2023 and an email was submitted on 17.05.2023 seeking adjournment which was rejected as the proceedings cannot be kept in pending indefinitely. On the date of hearing 18.05.2023 the DR was present however, neither the complainant nor his AR appeared on the given date and time in spite of the fact that the staff of this Secretariate telephonically called the AR twice with directions to attend the hearing but the AR refused. However, he left an application with the R&I Branch in the late afternoon of 18.05.2023, while the hearing proceedings were concluded in the morning. In the Review Application no infirmity, error, typographical mistakes or any other plausible point of law or fact has been raised. However, a request was made to conduct a fresh investigation by comparing the two Forensic Science lab Reports which is not possible at Review stage. The complaint was investigated as per record submitted by the complainant and his AR. The Review Petition is breft of any merit and is accordingly dismissed keeping the Finding/Recommendation dated 29.05.2023 intact.

6. On a Representation filed by the Complainant Mr. Shahid Inayat Cheena against the Review Order of the Federal Tax Ombudsman dated 26.07.2023, the Hon'ble President has been pleased to remand the instant case to FTO to consider the matter afresh after providing due opportunity of hearing to the parties in accordance with law, expeditiously. The Hon'ble President also observed that "How any fault can be attributed to the taxpayer who acted in good faith and paid substantial amount."

7. As per direction of the Hon'ble President, the respondent department was required to file comments on the issue. The Director, Directorate of Intelligence & Investigation-Customs, Rawalpindi vide letter dated 12.03.2024 submitted following comments: -

Brief facts of the case are that a Mazda T-3500 Truck Reg. No. SBA-73 1-Sibi, Model — 1996, chassis No. WGT4H-100675 was seized by the staff of Directorate General Intelligence & Investigation — Customs, *Islamabad on 07.12.20 17. The vehicle was referred to National Forensic Science Agency for lab test of its Chassis No. which reported dated 12.12.2017 that "Chassis Number WGT4H- 100675 has not been tampered and chassis frame has not been cut and welded". The vehicle was put to auction on 07.06.2018 vide DA No. 07/2018 and sold to highest bidder / complainant Mr. Shahid Inayat Sb Inayat Ali, as the highest bid of Rs. 1,900,000/- was accepted by the Authority on 07.06.2018. After payment of all dues, the complainant Mr. Shahid Inayat got the vehicle on 20.06.2018. The complainant was required to register the vehicle within 60 days of the issuance of Auction Certificate dated 20.06.2018, which he failed to do.*

2. On 09.08.20 18, a letter No. 02038/08/ETO-MRAIICT/2018 dated 07.08.2018 was received from MRA Islamabad for verification of auction documents which were duly verified vide this Directorate's letter DA.No.07/2018/SWH/ISB/1198 dated 15.08.20 18. Thereafter, after a period of four years, a request for refund of the above payment was first received from the Complainant on 29.08.2022 stating that the vehicle is found to be tampered in the lab report conducted by Forensic Science Laboratory, Capital Territory Police Islamabad vide Lab No. 3114/2022 dated 25.08.2022. The complainant also mentioned in his request that the vehicle was earlier provisionally registered in ETO office Islamabad in 2021 on the basis of Lab report conducted by the National Forensic Science Agency, Ministry of Interior Islamabad. As the specified terms & conditions of an auction were not followed and since there is no certainty about the status and nature of the vehicle at this belated stage, the application dated 21.02.2023 of the refund of the auction proceeds by the complainant was turned down vide letter D.A.No. 07/2018/SWH/ISB/814 dated 20.03.2023 stating all the relevant reasons for rejection of refund.

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PRAYER: -

In the light of above, the subject complaint may kindly be rejected as the same is not based on merit.

8. The ETO Islamabad submitted comments dated 18.04.2024 which are reproduced hereunder:

"The matter has been thoroughly examined. The requisite detailed report is hereunder:

1. That one Mr. Shahid Inayat Cheena s/o Inayat Ali Cheena holding CNIC No. 33100-0765412-3 approached this office for registration of Imported Vehicle in this office on 07-08-2018.
2. That this office adopted due legal process and sought verification of the Auction Documents vide this office letter No. 02038/08/ETO-MRA/ICT/2018, dated 07-08-2018.
3. That in response, vide letter No. 07120181SWH11SB11198 dated 15-08-2018, the Directorate of Intelligence & Investigation — Customs Rawalpindi confirmed the authenticity of auction documents from Customs Department.

4. That the applicant also submitted 'Vehicle Verification Certificate' issued by Islamabad Police vide ID No. IPSC-VVERF-12761 dated 07-05-2019.

5. That after receipt of Verification of Pre-Registration of Documents and receipt of Police Verification Certificate, the vehicle in question Make Mazda T3500, Model 1996 bearing Chassis No. WGT4H-100675 (as per the auction documents) was provisionally registered against registration No. TAA-800.

6. That on 25-08-2022, during Road Checking, a vehicle was impounded by the Field Staff of this office from one Mr. Mukhtar Ali s/o Zarshad Khan holding CNIC No. 37405-0349646-5 being suspicious.

7. That the said vehicle was sent to Forensic Science Laboratory for Technical / Chemical Examination of Chassis / Engine Number of the said vehicle

8. That on the same date, report was received vide No, 3114/2022 dated 25-08- 2022. Through said report it got revealed that the Chassis Number place was found deep filled".

9. That after confirmation that the said vehicle is tempered, this office adopted legal process and issued notices to Mr. Mukhtar Ali s/o Zarshad Khan (being possessor / keeper of the vehicle) but he didn't appear. Finally, vide Order dated 24-11-2022, the vehicle in question was confiscated in favour of State/Government of Pakistan under the relevant provisions of Islamabad Capital Territory Seizure & Disposal of Motor Vehicle Rules, 2014.

10. That, under the Islamabad Capital Territory (Seizure & Disposal of Motor Vehicle) rules, 2014 a remedy of appeal has been given to challenge the confiscation but the owner/possessor failed to file appeal before the appellate authority under the said rules.

11. It is a general principle of law that under the prevailing law without availing departmental remedy filing of case before another forum is not maintainable."

9. Hearing has been conducted on 08.04.2024, 17.04.2024 and 19.04.2024. During hearing, the AR emphasized that the Complainant is innocent as he purchased the vehicle in public option and paid dues to the government being the successful bidder as required after auction proceedings. The learned AR challenged verasity of the forensic examination report dated 12.12.2017 got conducted by the respondent department, on the ground that the forensic test conducted by Capital Territory Police on 25.08.2022 declared the same chassis number "not genuine, engraved and

tampered after deep filing". On a query as to why the Complainant failed to get the vehicle under reference registered after applying for the purpose to ETO/MRA, Islamabad and remained disappeared till January 2021 when provisional number plate was issued, the AR responded that it was merely a "procedural lapse". On asking that the Complainant again disappeared after getting provisional registration number plate and remained so till 22.08.2022 when the vehicle (Mini Mazda Truck) was impounded by the staff of ETO Islamabad during routine checking on road. The AR again responded that it was also a "procedural lapse". The AR requested for some time to file comments on the replies submitted by respondent department Directorate of I&I – Customs, Rawalpindi and ETO/MRA Islamabad. Accordingly, a copy each of their comments dated 12.03.2024 and 18.04.2024 respectively was provided to AR with the request to submit comments on 24.04.2024.

10. As no comments were received, therefore, the AR was contacted telephonically on 25.04.2024 for the purpose. The AR informed that he consulted the Complainant, however, he is not interested to submit written comments instead desired that his complaint may be decided on merit based on available record.

11. As per record, pandemic of COVID-19 hit Pakistan in the year 2020 as the National Institute of Health (N.I.H), Government of Pakistan issued its first Advisory for General Public on 21.01.2020. Therefore, Complainant's plea justifying the delay because of COVID-19 to get vehicle registered within two months of issuing of Auction Certificate dated 20.06.2018 by the respondent department, is without any substance. He applied to ETO/MRA Islamabad in August, 2018. Accordingly, the said office approached the respondent Department Directorate of I&I-Customs, Rawalpindi for

verification of documents vide their letter 07.08.2018. The said department responded positively on 15.08.2018. According to DR from ETO/MRA Islamabad, the Complainant also submitted police verification report from Police 15 dated 07.05.2019 certifying that the vehicle Mine Mazda Truck was not stolen as per police record. The said DR informed that according to their SoP, Police-15 verification and Forensic Lab Test are got done by the Applicant himself/herself in order to meet the registration requirement. He also produced a copy of the said SoP which is undated. The Complainant remained dormant thereafter and re-appeared in ETO office in Jan 2021 when the said office issued a provisional number plate to the Complainant after charging some amount as fine. The Complainant again did not get the vehicle examined by FORENSIC LAB; whose report was to be produced to ETO office. In the meanwhile, the staff of ETO Islamabad is per routine checking intercepted the vehicle, under reference on 25.08.2022 which was being driven by some Mr. Mukhtar Ali. The vehicle was impounded by the staff and sent to FORENSIC LAB Islamabad for Chemical examination. The Report dated 25.08.2022 stated that: -

> *"The above-mentioned chassis number is not genuine which has been engraved and tampered after deep filling the original. The original chassis number could not be deciphered due to deep filing." Accordingly, the ETO Islamabad summoned the Possessor of vehicle Mr. Mukhtar Ali vide notice dated 08-9-2022 who failed to appear. Therefore, the said authority confiscated the vehicle displaying TAA-800 vide order dated 24-11-2022 being tampered vehicle.*

12. During Hearing on 21.04.2024, the AR was requested to offer comments on the aforementioned development and also to explain relationship between the Complainant and Mr. Mukhtar Ali. The AR responded that neither he was in knowledge of any such happening nor privy to any relationship between both the persons.

FINDINGS:

13. The legal and factual position detailed at Para 11 & 12 above reflects that the Complainant has made unprecedented delay spanning over almost four years to get the vehicle registered. After such a considerable lapse of time, no maladministration can be attributed to the department. However, in order to ensure a fair treatment to the Complainant and avoid such happenings in future, the following recommendations are made: -

RECOMMENDATIONS:

14. FBR to: -

(i) direct the Director General Intelligence & Investigation - Customs, FBR to instruct Director, Intelligence & Investigation – Customs, Rawalpindi to personally review the entire case and pass a speaking order on the refund issue, as per law, and after providing the complainant an adequate opportunity of being herd;

(ii) direct Member Customs (Operations), FBR to devise and disseminate to all Customs field formations a comprehensive SOP regarding lab test of the auctioned vehicle by the successful bidder in a specified number of days after delivery of the vehicle in order to avoid such happenings in future; and

(iii) report compliance of the recommendation no 14(i) in 45 days and that of 14 (ii) in 90 days.

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

Dated: 21:5: 2024
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Approved for reporting

Director
FTO Secretariat
Islamabad