

**THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

Complaint No.2673/KHI/CUST/2023

Dated: 14.05.2023 * HQs Islamabad

Mr. Muhammad Zain Ashraf,
Plot No 299, Street 8, Block B,
CBR ECHS PHASE 1,
Islamabad.

... Complainant

V e r s u s

The Secretary,
Revenue Division,
Islamabad.

... Respondent

Dealing Officer	:	Dr. Arslan Subuctageen, Advisor
Appraising Officer	:	Mr. Muhammad Nazim Saleem, Advisor
Authorized Representative	:	In Person
Departmental Representative	:	Ms. Umme Kalsoom

FINDINGS/RECOMMENDATIONS

 The above-mentioned complaint was filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance), against the Collectorate of Customs (Appraisement) East, Karachi for release of auction vehicle.

2. Briefly, the Complainant stated that he purchased a Toyota Vitz vehicle, Model 2017, through Auction from Appraisement East Collectorate, Karachi that had previously been attempted to be auctioned 10 times through Custom Auction. Complainant stated that he participated in auction held on 02.01.2023 and gave a bid for Rs.2,430,000 (Two Million Four Hundred and Thirty Thousand Rupees), he being the second highest bidder for the subject lot and was declared successful. The file was then placed on discussion by the Department of Customs-Appraisement East so that if the Bidder Agrees, the Bid can be enhanced to 100% of the Reserve Price of the file so as to generate

maximum revenue from the successful bidder which is a routine practice at this and other Collectorate. During this period, the file was delayed on the end of the Department of Customs due to excessive workload etc. Further, the bidder was requested to increase this bid amount to 100% of the Reserve Price, to which Complainants agreed and increased bid to 100.11% of the Reserve Price Amounting to Rs.2,430,000. The Voucher of 25% Earnest Money was issued to complainant on 30.01.2023, which he paid the next day. The 75% Payment Voucher was issued on 13.02.2023 which he paid on 16.02.2023 within the due date. Further, he submitted the voucher on the same date to the auction section, both the 25% and 75% Vouchers were verified by the National Bank. After 75% Payment of the Bid Amount, complainant was asked to pay the Income tax, and he paid an amount of Rs. 243,000/- on 17.02.2023 and submitted the undertaking for Registration of the Vehicle. The NOC for Registration was issued by the Concerned AC Auction on 17.02.2023 and was dispatched to Motor Vehicle Registration Authority through courier on the same day. On February 21, 2023, Complainant received the Delivery Order and obtained permission to take delivery of the vehicle after completing all the necessary documentation. The next day, he went to KPT East Wharf to collect the vehicle, and after the documents were checked and cleared, a Gate Pass was issued on February 22, 2023. Following this, he went to the Motor Shed where the Gate Pass was signed and stamped, allowing me to drive the vehicle out of the shed. However, Custom Officers supporting the Auction Mafia and a bidder named Qazi Mussawir, who is closely connected to a Senior Customs Officer, requested him to bring the vehicle back to investigate a fake verbal complaint about the vehicle not being properly auctioned. After providing evidence of his presence at the auction and winning the bid, the bidder admitted that he was not present on the auction day. He raised concerns about the auction

process and the lack of vehicle registration by the Assistant Collector. After waiting for 7 days, complainant visited the Additional Collector who instructed him to reclaim the delivery of the vehicle. However, Additional Collector halted the delivery, expressing their exclusive interest in the vehicle, which is legally under complainant's name with all payments and documentation complete and is now being re-auctioned. The complainant further stated that he reported this issue to the Chairman FBR, who directed the concerned Collector Customs for a personal hearing. Unfortunately, the Assistant Collector Auction, ignored the Chairman's directions, misled senior officers, and manipulated facts in a letter sent to the Chairman, making false allegations against complainant.

2 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, Collector, Collectorate of Customs Appraisalment (East), Karachi, stated that goods imported vide IGM No. 74/2019, Index No. 53 were put to auction vide Auction Lot No. EM-June- 19-0017 under Chapter V of Customs Rules, 2001 on 02.01.2023. During auction proceedings, the complainant, Engr. Muhammad Zain Ashraf, offered the highest bid amounting to Rs. 2,430,000/-. The bidder was required under Rule 66 of the Rules ibid to deposit 25% of the bid amount as earnest money immediately after the fall of hammer falling which the bid was liable to be cancelled. However, the aforesaid bidder failed to deposit 25% of the bid amount payable as earnest money on spot, and instead, deposited the same on 31.01.2023 vide Voucher No. 048959, which, being about one month after the date of auction, was in violation of Rule 66 of the Rules ibid on the part of the bidder. The said bidder also deposited remaining 75% of the bid amounting to Rs. 1,822,500/- vide Voucher No. 006069 on 16.02.2023

and income tax @ 10% amounting to Rs. 243,000/- vide CPR No. IT-20230217-0101-1839555. When the aforesaid violation of Rule 66 of the Rules ibid (i.e. late depositing of 25% of bid amount as earnest money in violation of Rule 66) was found the auction delivery of the goods was put on hold by the Collectorate. In order to avoid setting any precedent against the aforesaid rule, and to ensure transparency and fairness in auction proceedings, and while considering the provisions of Rule 75 of the Rules ibid, the bid of Engr. Muhammad Zain Ashraf has been cancelled by the competent authority and order of fresh re-auction of the goods has been issued. In light the facts of the case, the cancellation of bid of the complainant is consistent with Chapter V of Customs Rules, 2001.

27

4. On hearing dated 16.06.2023, the complainant was presents but request for adjournment was received from department, during hearing complainant stated that he received an official notice dated 30.01.2023 from the Principal Appraiser (Auction), Collectorate of Customs (Appraisement) East Karachi to deposit 25% earnest money, on receipt of this notice which he deposited Rs.607500/- on 31.01.2023 (very next day). On 13.02.2023 deptt issued a second official notice for payment of remaining amount of 75% equal to Rs. 18,22,500/- which was also deposited by the complainant within 03 days of issuance of the notice on 16.02.2023. After full payment was made further 10% income tax was deposited by him on 17.02.2023 as desired by the deptt vide above referred notice of 16.02.2023. After that delivery order was issued on 21.02.2023 and gate pass was issued on 22-02-2023 and vehicle was taken in possession on 22.02.2023 from Motor Shed of the Collectorate of Customs. Various officers of Collectorate of Customs (Appraisement) East, started taking interest including Additional Collector. Vehicle got stuck for 03 months with Customs Collector and no notice was issued as to why his vehicle was illegally held by the Customs inspite of all

payments. Further Complainant stated that he filed his complaint to Chairman FBR, Member Customs (Operations) and Collector, Collectorate of Customs (Appraisalment) East Karachi with the directions for personal hearing of complainant but that never happened. After wards an irreverent and concocted report was sent to FBR by the then Collector, Collectorate of Customs (Appraisalment) East Karachi dated 01.04.2023. The vehicle is still in illegal custody of Collectorate of Customs (Appraisalment) East, Karachi without any reason what so ever and he prayed that his vehicle may be handed over him.

5. During 2nd hearing dated 21.06.2023, both complainant and DR from the department were presents. DR stated that when the matter came to the knowledge of the Collectorate that earnest money was not deposited by the complainant by fall of hamer, the auction was cancelled for violation of Rule 66 of the Customs Auction Rules 2001 (SRO 450(i)/2001 dated 18.06.2001 and remaining 75% was not deposited in time. However, no justification was provided by the deptt to the fact that an official notice for payment of 25% earnest money was issued on 30.01.2023 by the Collectorate and amount was deposited on 31.01.2023 and then on 13.02.2023 remaining 75% amount was also asked by the Collectorate under another official notice issued by the Principal Appraiser (Auction) which was also paid on 16.02.2023 and 10% Income tax was also depoisted on 17.02.2023 by the complainant, as per directions of the department. Vehicle was called back by the department on phone and was held in illegal custody, the Auction was cancelled on 01.04.2023, under Rule 75. The DR further stated that under Rule 75 sub-Rule (ii) the Collector can recall the proceedings and recover the auctioned goods, if it is proved that the buyer has caused some loss to the exchequer deliberately. On the contrary, it was observed that the complainant deposited the amount on demand by the Collectorate and there is no evidence that the complainant deliberately

attempted to cause loss to the public exchequer. DR offered to refund the amount including Customs duty paid by the complainant but without Income tax and Sales tax. Vehicle is currently parked at seaport Karachi and is in physical possession of the Collectorate of Customs (Appraisement) East, Karachi.

6. During investigation and hearings in the subject matter, it is observed that the Collectorate of Customs (Appraisement) East conducted an Auction on 02.01.2023. A Toyota Vitz was auctioned and Mr. Muhammad Zain Ashraf gave highest bid, 25% earnest money was neither deposited nor procured by the deptt after the fall of Hamer as required under Rule 67 of the Auction Rules, however the deptt after almost 28 days of Auction on 30.01.2023 issued an official notice signed by the Principal Appraiser (Auction) directing the complainant to deposit 25% earnest money in NBP, which was compiled on 31.01.2023 by the complainant. Subsequently another official notice dated 13.02.2023 was again issued by the same Principal Appraiser (Auction) declaring the complainant to be the successful bidder and directing him to deposit the remaining amount of Rs.18,22,500/- (remaining 75% of the balance bid amount) which was again compiled by the complainant by depositing the said amount on 16.02.2023 and 10% Income Tax equal to Rs. 243,000/- was also deposited in the concerned head of account of the State Exchequer. Deptt issued NOC on 17.02.2023, Delivery Order was issued on 21.02.2023 and Gate pass was issued on 22.02.2023, accordingly the vehicle was taken in possession by the lawful owner after competition of all required documentation and pre requisites. Subsequently the vehicle owner was asked by the department on phone to bring back the vehicle, when the owner of the vehicle brought it back, it was illegally held by the deptt without any plausible reasons and without any legal proceedings. This illegality was further augmented by the department when the complainant filed complaint before the

Chairman FBR, the Collectorate of Customs (Appraisement) East ignored the directions of inquiry by a BS-20 officer of Customs after giving personal hearing to the complainant and continued to harass him. After exhausting all possible departmental options and remedies, the complainant filed the subject complaint before this office on 14.05.2023. The departmental reply dated 12.06.2023 was submitted wherein the department in a strange move, accused the complainant of non-deposit of 25% earnest money on the spot, thus violated Rule 66, therefore the Auction was cancelled under rule 75.

P 7. The extent of Mal-administration in this case can evidently be judged from the fact that the complainant was directed to pay the earnest money by the Collectorate on 30.01.2023 through official notice by Principal Appraiser (Auction), then the remaining 75% was also got deposited from the complainant through official notice issued under Rule 68 and subsequently 10% Income Tax was also deposited by the complainant, however through Sheer high handedness, the legally purchased vehicle was called back and held in illegal custody by the Collectorate. The deptt instead of owning its mistake and Mal-administration once again placed the onus of responsibility upon the poor complainant, without accepting the fact that the vehicle was auctioned and the amount of 25% earnest money was demanded and recovered from him by the Collectorate through official notices, issued under Rule 67 and 68. The serious charges of nepotism, corruption and being hand in glove with the bidder Mafia etc, all are to be taken seriously and are required to be thoroughly investigated. The holding of vehicle in illegal custody and the subsequent counter allegation of violation of Rule 66 is nothing more that an eye wash to save the skin of departmental delinquents, more over the cancelation of auction under Rule 75 of Auction Rules without proof of any deliberate attempt to cause

loss to the public exchequer is in absolute disagreed to law and in violation of rights of a citizen of Pakistan.


FINDINGS:

8. In view of supra, gross Maladministration as defined vide section 2(3)(i)(a),(b),(c)(d) and (ii) of the FTO ordinance 2000 stands established on part of the Collectorate of Customs (Appraisement) East Karachi.

RECOMMENDATIONS: -

9. FBR to:-

- i) direct the Collector concerned to undo this illegal cancellation of auction made without any legal grounds and return the lawfully purchased auctioned vehicle to the complainant within 15 days.
- ii) direct, Chief Collector of Customs (Appraisement) Karachi to conduct a fact finding inquiry in this matter and submit his report within 30 days to Chairman FBR for taking necessary disciplinary action against officials found guilty,
- iii) report compliance within 45 days.


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

Dated: 11:7: 2023

Approved for reporting


Director
FTO Secretariat
Islamabad