THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

Review Petition
Dated: 02.09.2024* R.O Karachi
in
C.No.6027/KHI/CUST/2024

Engr. Muhammad Zain Ashraf,
Karachi (zain27ashraf@gmail.com). ...Petitioner

Dealing Officer	:	Mr. Gul Rehman, Advisor
Appraising Officer	:	Dr. Arslan Subuctageen, Advisor
Authorized Representative	:	Mr. Shahan, Advocate
Departmental Representative	:	Mr. Fayaz Rasool Maken, Collector CoC, Appraisement, PMBQ

ORDER-IN-REVIEW

The above-mentioned Review Petition has been filed by the Complainant under Section 14(8) of the Federal Tax Ombudsman Ordinance (FTO Ordinance), 2000, against Findings dated 30.08.2024 carrying the following observations:

"4. During the course of hearing, complainant pressed to undo the cancellation of the auction proceedings by the Deptt. and allow him to take delivery of vehicle after payment of 75% of the bid amount being successful bidder. The DR on the other hand argued that RP of the vehicle Audi E-Tron model 2020 was incorrectly fixed by the Deptt. which on the pointation in complaint made to the Federal Board of Revenue has been revisited in consultation with the Collectorate of Customs, Appraisement (West), Karachi. The RP has been now re-fixed as Rs.24,086,469/- instead of earlier RP of Rs.13,000,000/- and the vehicle will be put to auction in the forthcoming auction. DR further argued that the Collectorate has rightly cancelled the auction proceedings to rectify the error and safeguard government revenue which if gone undetected otherwise, could have resulted in loss to the national exchequer. The complainant vide Collectorate's letter dated 23.07.2024 issued in terms of Section 201 of the Customs Act, 1969 was requested for provision of Refund Payment Order (RPO) Form in pursuance of cancellation of auction proceedings. However, no reply has been received from the complainant.

5. In view of facts discussed supra, the complainant has failed to make out a case of maladministration against the Deptt. However, the Collector of Customs concerned is required to immediately process the refund of the 25% earnest money as soon as the duly filed in RPO form is submitted to the Collectorate by the Complainant and report compliance within 30 days."

Date of registration in FTO Sectt:

2. The Petitioner Complainant has filed review application on the following facts and grounds:

1. That the impugned Findings is bad in law and based on mis-reading and faulty understanding of the facts and the law, therefore, the same is liable to be set aside.
2. That the M/s Premier Systems (Pvt.) Ltd vide letter dated 18.09.2023 apprised concerned Collectorate that the ITP value of the subject vehicle is EUR 52,120.00 and the value is based on a brand new condition. Moreover, as per Facilitation Guide for the import of Vehicles when the Customs value cannot be determined under SRO 577(I)/2005 dated 6th June, 2005, the same is to be finalized in accordance with the Valuation Ruling issued under Section 25A of the Customs Act, 1969. Where there is no Valuation Ruling and the value cannot be determined under 577(I)/2005 dated 6th June, 2005 too, the same is to be determined on the basis of MSRP (Manufacturer Suggested Retail Price) while allowing the admissible depreciation in following manners;- *a). Depreciation in the assessable value, for the purpose of assessment shall be allowed on the import of used/secondhand motor vehicles at the rate of 2% per month for each completed month. (1st day of January of the year subsequent to the year of manufacture till the date of shipment as per Bill of lading), subject to a maximum of 50%.* In circumstances, the ITP value mentioned above is further subject to maximum allowed 50% depreciation. Therefore, concerned Collectorate cannot on its whims and wishes set price of the vehicle and bid offered by the petitioner is sufficient and above market value. Thus, authorities may be directed to deliver the vehicle to him after payment of 75% of the remaining amount of the bid.

3. That the authorities misguided FTO when they claimed that it was the first auction of the subject lot, however, in reality, it was the fourth (4) auction. From the concealment of facts at the hands of concerned Collectorate, their ulterior motives are exposed. Hence, the impugned Findings may be altered and the authorities may be directed to deliver the vehicle to him after payment of remaining legitimate amount.
4. The subject lot vehicle (2020 Audi e-tron 50 quattro) is available in the market at the value of 17 to 19 million PKR with all the legitimate duty and taxes paid including customs duty.

3. The Collector, Collectorate of Customs, Appraisement (PMBQ), Karachi submitted comments vide letter dated 11.09.2024, wherein it was stated that the FTO has passed well-reasoned Findings after due process of law and upon consideration of each and every plea of the complainant. The Manufacturer's Suggested Retail Price (MSRP) is the price that a product's manufacturer recommends it be sold for at the point of sale. In the instant case, M/s Premier Systems (Pvt.) Ltd., Karachi (local agent) vide letter dated 18.09.2023 provided MSRP of the impugned vehicle as Euro 52,120/-. That initially value of the vehicle was erroneously determined @US$ 52,120 at the time of setting the reserved price whereas the ITP value provided by the local agent was in Euro 52,120. Subsequently, new R.P. of the vehicle was calculated which comes as Rs.24,086,469/- with the depreciated value of 14% in terms Para 7 of CGO 12/2002 dated 15.06.2002. After affixing the Reserved Price (RP), the said vehicle was put up for open auction on 18.01.2024 and 20.02.2024 respectively. During the auction held on 20.02.2024, a bid of Rs.14,200,000/- was received from the complainant, wherein 25% earnest money was deposited on the spot after falling of the hammer and the case was forwarded to the competent authority for approval/consideration of the bid. The imported vehicle assessed in terms of SRO 577(I)/2005 dated

06.06.2005, whenever, the Customs value cannot be determined under aforesaid SRO, the same is to be finalized in accordance with the Valuation Ruling issued under Section 25A of the Customs Act, 1969, and if there is no Valuation Ruling and the value cannot be determined under 577(I)2005 dated 6th June, 2005, the same is to be determined on the basis of MSRP while allowing the admissible depreciation. Accordingly, the revised RP has been calculated on the basis of MSRP given by the local agent.

4. It was prayed that the review petition may be dismissed / disposed of in terms of Section 10(4) of the FTO Ordinance, as the Complaint No.FTO-6027/KHI/CUST/2024 has rightly been disposed of in accordance with the law and on its merits. Furthermore, the complainant in the instant review petition has failed to identify any typographical mistakes, legal errors or oversight in the FTO's Findings, therefore, the review petition is liable to be rejected and the complainant may be directed to furnish signed and stamped RPO Form for processing of the refund amount of 25% earnest money as per the Findings of the FTO in the subject complaint.

5. During the hearing, AR for the petitioner contended that he was successful bidder of the subject lot consisting of a vehicle auctioned on 20.02.2024 by Port Qasim Appraisement and deposited earnest money on the same day. The bid was approved by AC-Auction on 22.02.2024, but the vehicle was not delivered to him despite many visits to Port Qasim and it was learnt that the earnest money had been deposited in treasury of the government. After almost five (5) months, in July, 2024, he was informed that the auction had been cancelled by the Collector for the reason that RP of vehicle had not been calculated correctly. The Deptt. calculated new RP in which depreciation was not allowed as provided in Para 7 of CGO 12 of 2002. He further contended that he should not be punished for the mistake and delay of five months by the Collectorate and demanded that the vehicle should be handed over to him on the basis of already approved bid. DR for

the Deptt. stated that immediately after the approval of bid, the importer filed a complaint in FBR that the subject vehicle was being auctioned at throw away price. The Collectorate responded to the FBR and initiated scrutiny of the case record which transpired that, while fixing the reserved price, the currency was erroneously taken in Dollar while the value of vehicle provided by the local agent was in Euro. Having no other option to rectify the error and to safeguard the legitimate government revenue, the auction was cancelled by the incumbent Collector, empowered under Rule 75(ii) of the Customs Rules, 2001 notified vide SRO 450(I)/2001 dated 18.06.2001. The bidder was properly informed to get a refund of the deposited earnest money; however, he never came up to receive the refund. The Collector mentioned that, reserve price of the impugned vehicle was got assessed from the Appraisement Collectorate, Customs House, Karachi at Rs.24,086,469/-. However, when he himself scrutinized the same in light of the applicable provision, i.e. Para 7 of CGO 12 of 2002, the same has turned out to be Rs.13,897,240. The Collector further stated that, since the auction proceedings have already been cancelled, the lot shall be put in next auction and the bidder can participate in the bid. While replying to the Collector's aforesaid contention, the bidder stated that he has offered bid of Rs.14,200,000/- which is higher than the Reserve Price of Rs.13,897,240/- and pressed for allowing him to deposit the remaining 75% of the bid amount enabling him to lift the vehicle.

6. The above-stated facts amply highlight how the Collector (Appraisement), Port Qasim has taken keen interest and timely action not only to safeguard revenues but also to make merit-based decision-making to address the bona fide issues of the taxpayers. Had the Collector not taken the decisive action and gone through minutely the relevant records, the instant issue would have been complicated, obstructing a smooth resolution of the matter.

RECOMMENDATIONS:

7. FBR to:-

i) direct the Collector of Customs, Port Muhammad Bin Qasim, Karachi to undo the cancellation of the auctioned vehicle and allow the bidder to lift the vehicle after payment of 75% of the bid amount;

ii) Secretary Revenue Division FBR to issue appreciation letter to Mr. Fayyaz Rasool Maken, Collector Port Muhammad Bin Qasim, Karachi for taking keen and timely action not only to safeguard revenue but also making merit based decision-making to address the bonafide issues of the taxpayers; and

iii) report compliance within 30 days.

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

Dated: 23 : 10 : /2024

Approved for reporting