Federal Tax Ombudsman's

Annual Report 2007

JUSTICE ® MUNIR A. SHEIKH
FEDERAL TAX OMBUDSMAN

Dear Mr. President,

السلام علیکم

D.O. No.10(6)/2008-A-II
Islamabad, the 22nd March, 2008

It is my honour and privilege to place before you, the Annual Report for the calendar year 2007 in pursuance of Section 28 of the Establishment of the Office of the Federal Tax Ombudsman Ordinance 2000.

2. During, the currency of the year 2007, I have ensured that the principles of Accountability and Good Governance in the Federal Board of Revenues and Tax collecting Agency working under it, are instilled through the recommendations made by my office, on the petitions initiated by a large number of complainants. I will complete my tenure in December 2008, with a mixed sense of pride and satisfaction. During the last three years of my tenure this Office has gained a reputation of a relief providing institution to the Tax payers seeking re-dressal of their grievances they faced due to mal-administration of justice at the hands of revenue collecting agencies, without distinction, favor or ill will.

3. Since establishment as an independent office under the Federal Tax Ombudsman ordinance xxxv of 2000, this Office is considered to be the advocate of Tax Payers with a high reputation of excellence. It is most gratifying that the stakeholders, whether members of the business community or private individuals, have reposed outright confidence in this institution which has been constantly impressing upon the tax collectors that the grievances of tax payers have to be considered in the real intent.

4. The very objective of creating an independent Ombudsman office shows the commitment of the government for achieving good governance in tax administration. The institution of the Tax Ombudsman is considered to be the ideal solution to achieve the objective of providing justice at one's doorsteps without getting involved in the lengthy procedural requirements of the judicial system and any cost or court fee. In achieving the objective of protecting the taxpayers from the excesses of the tax collectors caused by mal-administration, relief has been provided to a large number of complainants, directly and to thousands indirectly, as all other taxpayers have been benefited from the recommendations equally applicable to their cases.

5. I would like to highlight some of the important achievements this office has made during the calendar year 2007. 1414 complaints were registered. The balance of 335 complaints brought forward from the pervious year made the total number of complaints to 1749. Out of which 1488 complaints have been decided. A total of Rs.440.43 million was refunded, Two Regional Offices, in Quetta and Peshawar, will start functioning in the current financial year, as all the initial work has been completed. Thus, the long awaited demand of the Chambers of Commerce and Industry of Baluchistan and Sarhad provinces will be fulfilled.

6. The performance of this office, due to its effectiveness and credibility, has created a sense of confidence in the business community in particular and the taxpayers and investors in general as they realize that there is an institution established by the government for the redressal of their grievances which has sufficient authority to implement its decisions. All tax-payer are treated equally and with a sense of urgency according to law as the objective is not to discriminate between the taxpayers, large or small and our experience shows that more than 90% complainants are small and medium range taxpayers.

7. Chambers of Commerce and Industry throughout the country are well satisfied with the prompt response that the business community gets from this office through continued interaction with these chambers. On the international front, Federal Tax Ombudsman is a member of Asian Ombudsman Association, International Ombudsman Association and American Ombudsman Association.

8. One of the issues which still remains un-resolved is the provision of sufficient accommodation according to the requirements of the Federal Tax Ombudsman Secretariat. The Secretariat was located in the Expert Advisory Cell building on the Constitution Avenue under a directive from the Chief Executive of Pakistan. The directive for a reference is reproduced as under: -

> "As already advised, Federal Tax Ombudsman (FTO) Secretariat has to be accommodated in the Experts Advisory Cell building on Constitution Avenue, Islamabad. Any office space in the building may be considered for provision to Ministry of Commerce only after fully meeting the requirements of Federal Tax Ombudsman Secretariat. Therefore, the proposed transfer of the right half of the ground floor of the building to the Commerce Division be undertaken only after accommodating the Federal Tax Ombudsman Secretariat."

9. Despite the above directive the controlling ministry of the Expert Advisory Cell i.e. Ministry of Industries allotted the right half of the ground floor of the building to the WTO cell of the Ministry of Commerce. All our efforts to secure the said space have not borne fruit. Since the stalemate continues in this regard, the President is requested to consider issuing a fresh directive to (a) the Ministry of Commerce to vacate the portion occupied by the WTO Cell and (b) to the Ministry of Industries and Production to issue orders to the Engineering Development Board (the present owners of the building) to allot the said space to the office of the Federal Tax Ombudsman.

10. In the end I would like to convey my gratitude to you, Mr. President Sir for always showering your blessings on the institution without which this office could not have achieved the excellence it has made its hallmark.

Yours sincerely,

Mr. Pervez Musharraf,
The President,
Islamic Republic of Pakistan,
Islamabad.

(Justice (R) Munir A. Sheikh)

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EXECUTIVE SUMMARY

FTO's Eighth Annual Report

This is the eighth Annual Report of the Federal Tax Ombudsman prepared for submission to the President of Pakistan as envisaged in Section 28(1) of the Establishment of the Office of Federal Tax Ombudsman Ordinance, 2000.

The report covers details of major achievements of FTO's Office in the redressal of grievances of the stakeholders during the calendar year 2007.

FTO's Office and Its Objective

The FTO's Office was established on 19 September 2000. The incumbent FTO has been holding the post since 08 December, 2004.

The objective of appointment of Federal Tax Ombudsman according to the preamble of the Ordinance is to diagnose, investigate, redress and rectify any injustice done to a person through Maladministration of the government functionaries administering tax laws. It is a welfare legislation for the benefit of taxpayers and reflects the policy of the Government to create confidence in various sections of society and stakeholders by creating an independent institution for good governance in revenue departments.

Achievement and Good Governance

The Federal Tax Ombudsman is trying to build confidence between the taxpayer and tax collectors by developing the environment of trust and respect for each other.

The Revenue Division and the tax employees showed positive response in a large number of cases. It is heartening to note that the Revenue Division, after receiving complaints for comments/reply, redressed the grievances of complainants in genuine cases and instantly informed the FTO about the action taken by them.

The Federal Tax Ombudsman conduct studies after decision of cases on different areas of major difficulties to the taxpayers. These studies were conducted in the area of Income Tax, Sales Tax and Customs. The studies were carried out by the Federal Tax Ombudsman Office and areas were pointed out where corrections were needed and a workable accounting system was suggested to the Federal Board of Revenue for the Collection of Income Tax.

Likewise studies were taken up in the Sales Tax Law to overcome the problem of fake registration & deregistration process and amendments were proposed in the Registration rules which were amended by the Federal Board of Revenue accordingly.

Implementation of Decisions

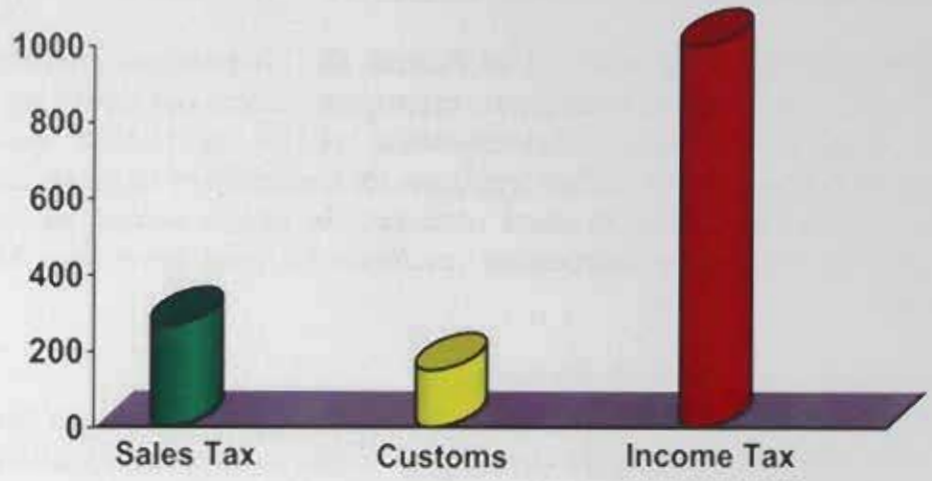
It goes without saying that mere making recommendations cannot bring about any tangible change in the efforts of the government aimed at providing speedy and inexpensive justice to the taxpayers. The timely implementation of the recommendation

in letter and spirit is the key to providing solutions to the problems faced by the tax-payers. Hence great emphasis has all along been laid on this aspect by ensuring implementation of recommendations made by the Federal Tax Ombudsman Secretariat. The Federal Tax Ombudsman has achieved more than 97.46% implementation rate for the decided cases.

Performance during the Year 2007

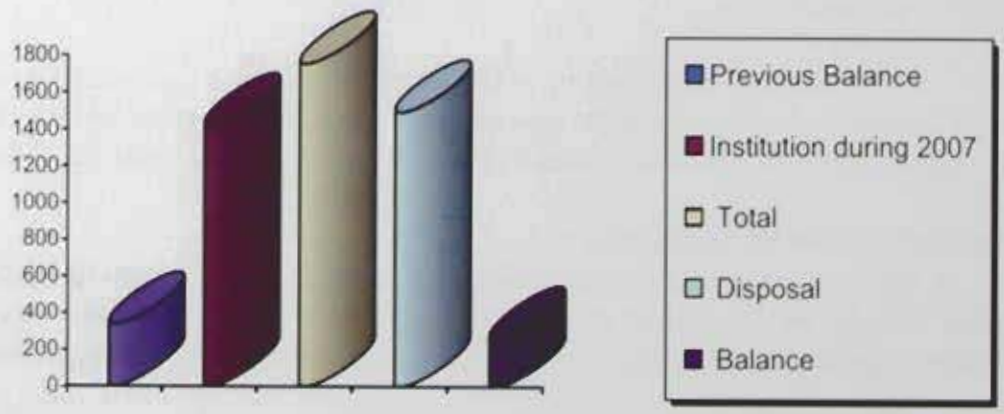
During the calendar year 2007, 1414 complaints were lodged as detailed below:-

Sales Tax	Customs	Income Tax
268	149	997

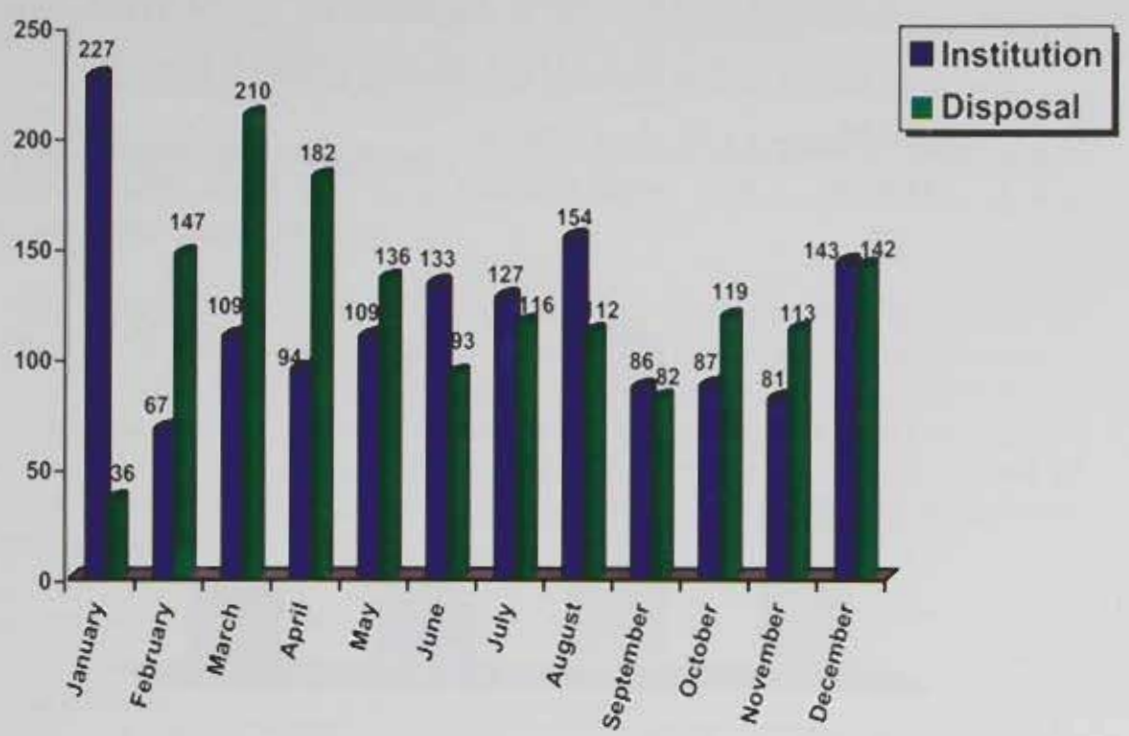


1749 complaints including 335 complaints of the previous year were registered and 1488 were disposed off leaving a balance of 261 as depicted in the following diagram:-

Previous Balance	Institution during 2007	Total	Disposal	Balance
335	1414	1749	1488	261



Month wise Institution & Disposal of the cases in the Calendar Year 2007



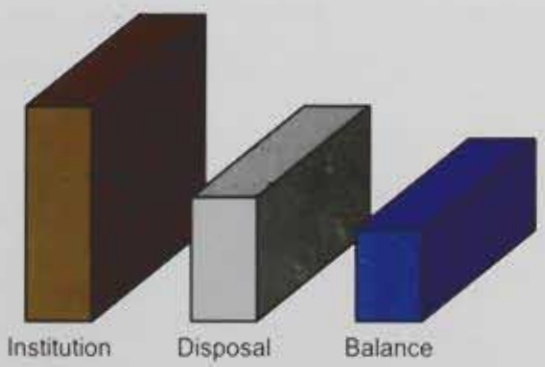
Review Cases

Section 14(8) of the Establishment of the Office of the Federal Tax Ombudsman Ordinance, 2000 empowers the FTO to review any of his findings communicated or recommendations made or any order passed by him.

By exercising the above powers the FTO reviewed a number of cases and modified findings, recommendations and orders by rectifying apparent errors. This helped to save time and energy, ensured speedy justice and enlisted support of the taxpayers.

Review applications decided by the FTO are depicted in the following diagram:-

Institution	Disposal	Balance
99	57	42

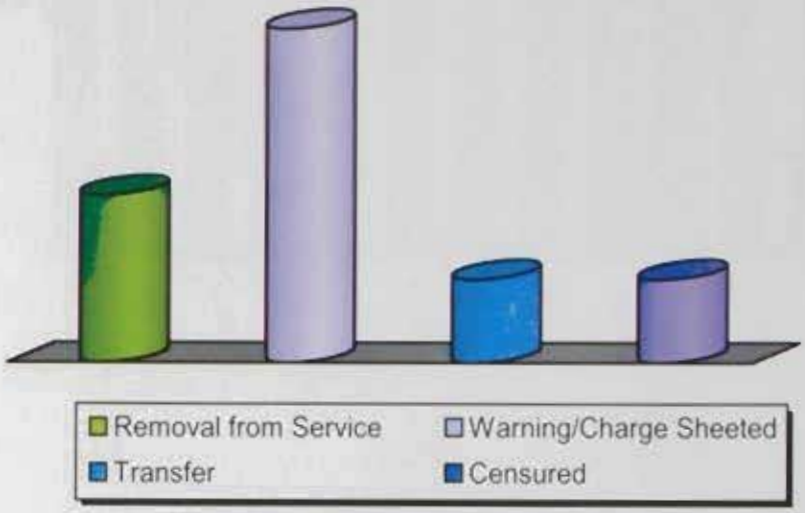


Disciplinary Action

As the FTO's Office is not adversarial to the existing tax structure, it has a perennial feature of making recommendations for disciplinary action against the delinquent officers of the tax administration with a view to forestalling recurrence of indiscipline as also the complaints.

The result of the action so proposed during the year 2007 is as under:-

Removal from Service	Warning/Charge Sheeted	Transfer	Censured	Total
02	04	01	01	08



Refund and Compensation to Taxpayers

Delay in the payment of refund had always been one of the major causes of grievances of the taxpayers. This has had badly impaired the trust of the taxpayers, discouraged the investors and frustrated the efforts of good governance. The FTO's Office has, with a view to bridging the yawning gap of trust deficit between the taxpayers and the administration, recommended systemic reforms as to the removal of irritant of non-issuance of refund.

The complainants of the refund cases where inordinate delay had been caused by the tax employees were duly compensated as detailed below:-

Refund Recommended	Refund Issued	Amount
304	216	Rs.440.43 million

Compensation Cases	Compensation Issued	Amount
48	25	Rs.11.305 million

CHAPTER - I

ROLE OF FEDERAL TAX OMBUDSMAN IN ACHIEVING GOOD GOVERNANCE

The office of Federal Tax Ombudsman was established through Ordinance No.XXXV of 2000 called the "Establishment of the Office of the Federal Tax Ombudsman Ordinance, 2000".

The objective of appointment of Federal Tax Ombudsman according to the preamble of the Ordinance is *to diagnose, investigate, redress and rectify any injustice done to a person through Maladministration of the government functionaries administering tax laws.* **It is a welfare legislation for the benefit of taxpayers and reflects the policy of the Government to create confidence in various sections of society and stakeholders by creating an independent institution for good governance in revenue departments.**

The Maladministration has been defined in the Ordinance as:-

Maladministration has been defined to include: -

"(i) a decision, process, recommendation, act of omission or commission which-

a) is contrary to law, rules or regulations or is a departure from established practice or procedure, unless it is bona fide and for valid reasons.

b) is perverse, arbitrary or unreasonable, unjust, biased, oppressive, or discriminatory;

c) is based on irrelevant grounds; or

d) involves the exercise of powers, or the failure or refusal to do so, for corrupt or improper motives, such as bribery, jobbery, favouritism, nepotism and administrative excesses;

(ii) neglect, inattention, delay, incompetence, inefficiency and ineptitude, in the administration or discharge of duties and responsibilities;

(iii) repeated notices, unnecessary attendance or prolonged hearings while deciding cases involving-

(a) assessment of income or wealth

(b) determination of liability of tax or duty;

(c) classification or valuation of goods;

(d) settlement of claims of refund, rebate or duty drawbacks; or

(e) determination of fiscal and tax concessions or exemptions.

(iv) willful errors in the determination of refunds, rebates or duty drawbacks;

(v) deliberate withholding or non-payment of refunds, rebates or duty drawbacks already determined by the competent authority;

(vi) coercive methods of tax recovery in cases where default in payment of tax or duty is not apparent from record; and

(vii) avoidance of disciplinary action against an officer or official whose order of assessment or valuation is held by a competent appellate authority to be vindictive, capricious, biased or patently illegal.

Jurisdiction

The Federal Tax Ombudsman has jurisdiction to investigate any allegation of maladministration on the part of Revenue Division or Tax Employee, however, subsection (2) of section 9 of the Ordinance excludes from the jurisdiction of Federal Tax Ombudsman **matters** which:

(a) are **subjudice** before a court of competent jurisdiction or tribunal or board or authority *on the date of receipt* of a complaint, reference or motion by him; or

(b) *relate to*

assessment of income or wealth,

determination of liability of tax or duty,

classification or valuation of goods,

interpretation of law, rules and regulations relating to such assessment, determination, classification or valuation,

in respect of which legal remedies of appeal, review or revision are available under the Relevant Legislation.

With the very defined objective and specific jurisdiction Office of the Federal Tax Ombudsman is functional for over seven years and in this period despite providing relief to the individual complainants the main focus of Federal Tax Ombudsman was always on determining the Major causes of grievances to the taxpayers at large and finding solution to these Major Irritants. The Office of the Federal Tax Ombudsman has identified the Major causes of grievances of the taxpayers as under:-

FTO identified the following irritants and maladies and recommended appropriate steps for their eradication:-

i) Improper maintenance of record of the taxpayers.

ii) General slackness in responding to taxpayers' applications/enquiries.

iii) Subversion and disuse of prescribed office procedures.

iv) Lack of expertise in matters relating to Government Servants Conduct, Efficiency and Disciplinary Rules.

v) Arbitrary and undesirable proposals/advice for legislation. –[Deeming provisions]

vi) Discontinuation of periodical inspections.

vii) Improper maintenance of performance record.

viii) Unlawful decision-making.

ix) Deficiency of knowledge and skills among the functionaries to perform their duties effectively and efficiently.

x) Absence of policy of career planning of officers and staff.

xi) Biased conduct of the functionaries.

xii) Discriminatory legislation relating to Amnesty Schemes.

These irritants invariably cause:-

a. Corruption

b. Delay in decision-making.

c. Yawning confidence gap between the taxpayers and the Revenue Division.

There is no iota of doubt that this results in:-

i) Damage to the confidence of honest taxpayers;

ii) Discouragement to the investors, particularly the foreign ones and;

iii) Substantial loss to the national exchequer.

The Federal Tax Ombudsman after studying the sizeable number of cases decided conduct studies on different areas of major difficulties to the taxpayers. These studies were conducted in the area of Record of Income Tax Collection and the procedure to

verifying and settling the claims if refund. The study was carried out by the Federal Tax Ombudsman Office and areas were pointed out where corrections were needed and a workable accounting system was suggested to the Federal Board of Revenue for the Collection of Income Tax.

Another study was carried out for taxing the Golden Hand Shake receipts and amendments were proposed in the Tax Law to avoid the hardship faced by employees who opted for Golden Hand Shake Scheme.

Likewise studies were taken up in the Sales Tax Law to overcome the problem of fake registration & deregistration process and amendments were proposed in the Registration rules which were amended by the Federal Board of Revenue accordingly.

The Advisory Committee was established under Section 18 of the F.T.O. Ordinance with specified jurisdiction. This advisory committee was given certain tasks to suggest the ways to improve the working of F.B.R. and remove difficulties of the Taxpayers. The advisory committee so far has under taken the following studies:-

i. Determination of Customs value of Goods;

ii. Report on Federal Revenue Judicial Service;

iii. Report on Taxpayers Bill of Right.

The Federal Tax Ombudsman is trying to built the confidence between the taxpayer and tax collectors by developing the environment of trust and respect for each other.

The Revenue Division and the tax employees showed positive response in a large number of cases. It is heartening to note that the Revenue Division, after receiving complaints for comments/reply, redressed the grievances of complainants in genuine cases and instantly informed the FTO about the action taken by them.

The FTO, in fact, acts to bridge the gulf of "trust deficit" that exists between the taxpayers and the revenue functionaries. Due to better performance of the FTO, considerable progress has been made in creating awareness in the public mind about the positive and effective role played by him in annihilating the sufferings of the aggrieved taxpayers. This has resulted in enlisting the support of the stakeholders and winning their side which helped a great deal to achieve the aim of good governance.

Honourable Federal Tax Ombudsman with the Officers and Staff of the Federal Tax Ombudsman Secretariat, Head Office, Islamabad

CHAPTER - II

ORGANIZATIONAL SETUP

The Office of the Federal Tax Ombudsman was established in September, 2000 through an Ordinance called "Establishment of the Office of the Federal Tax Ombudsman Ordinance, 2000" with Headquarters at Islamabad and two Regional Offices each at Karachi and Lahore for speedy disposal of the grievances and complaints of the stakeholders.

The Headquarters of the Office of the Federal Tax Ombudsman is located at the Constitution Avenue, Islamabad. Due to inadequate space measuring 6000 sq. ft. provided to this Office in the Engineering Development Board Building the officers and staff are sharing the limited accommodation, which is affecting their performance and efficiency. With the courtesy of the Chief Justice of Pakistan and the Honourable Judges of Supreme Court, the Accounts Branch and the Record Room of this Office are temporarily housed in a Bungalow at Supreme Court Judges Enclave. Therefore, unless the accommodation problem is solved by providing additional accommodation in this Building by removing the WTO Wing of M/o Commerce, it would not be possible for the staff of FTO to function efficiently & smoothly. Alternatively, the office of the FTO may be allotted a piece of land in Islamabad for construction of its own Office Building. This requires consideration at the level of President of Pakistan.

REGIONAL OFFICES

The Regional Office of Federal Tax Ombudsman at Karachi was set up at the 14th floor, NIC building, Abbasi Shaheed Road, off Shahrah-e-Faisal, Karachi in April, 2001 and at Lahore in Bungalow No.186-A, Scotch Corner, Upper Mall, Lahore w.e.f. June, 2001.

PROGRAMME OF OPENING OTHER REGIONAL OFFICES

This Office has planned to open two Regional Offices of the Federal Tax Ombudsman each at Peshawar and Quetta during 2007-2008 keeping in view persistent demand of stakeholders of the areas.

PERSONNEL

At the time of creation of the office of the Federal Tax Ombudsman a staff strength of 243 posts was sanctioned by the Ministry of Finance. However, this Office subsequently in response to the Government's directive for restructuring and Rightsizing reduced the said strength to 146 posts. Now 22 more posts (15 for Peshawar office and 10 for Quetta office) have been got created. The Federal Tax Ombudsman in his Head Office at Islamabad has a Secretary (BS-22), Three Advisors, a Director General (BS-20), one Registrar (BS-20), three Directors, one Secretary to FTO (BS-19), one Deputy Registrar, one Assistant Director and their supporting staff to do the judicial and investigation work.

In the Regional Office of the FTO at Karachi, there are three Advisers and one Consultant drawn from retired Officers of the Income Tax, Customs Groups and Bureaucracy. The administration side is looked after by a Director, a Deputy Registrar and two Assistant Directors and supporting staff. In Regional Office, Lahore there are three Advisers, one Director, one Deputy Director and an Assistant Director with supporting staff.

BUDGET

The Ministry of Finance had allocated Rs.42.642 million to this Office for the Financial Year 2006-2007.

As intimated in the last year Annual Report, this office has encountered difficulties in efficient management of men and material due to the absence of special delegation of administrative and financial powers. A Summary in this regard was submitted to the Ministry of Finance for approval for the smooth running of this office on the same pattern as allowed to the High Courts, Supreme Court, Election Commission of Pakistan and the Wafaqi Mohtasib, which has been approved by the Ministry of Finance vide their letter No.F-3(14)Exp-III/2002-68 dated 07-02-2007.

RULES AND REGULATIONS

The Rules for regulating the procedure for the conduct of business or the exercise of powers under the Ordinance as envisaged by Section 10(11), have already been framed as the "Federal Tax Ombudsman Investigation and Disposal of Complaints Regulations, 2001". The Service Rules for appointment of staff under Section 8 of the Ordinance were framed in consultation with Finance Division and Establishment Division, which have since been approved by the President of Pakistan.

INTERNATIONAL INTERACTION

The Federal Tax Ombudsman is a voting member of the Asian Ombudsman Association and the International Ombudsman Institute. The Honourable FTO along with a delegation visited Vietnam and USA respectively to participate the 10th Asian Ombudsman Association Conference held in Hanoi Vietnam from 25-28 April, 2007 on the theme "Role and Functions of Ombudsman Offices," and to participate the United States Ombudsman's Associations 28th Annual Conference held in Anchorage, Alaska from 24-28 September, 2007 on the main theme," Public Sector Ombudsman; Strategies for an Evolving Profession".

CHAPTER - III

PERFORMANCE DURING THE YEAR

The establishment of the office of Federal Tax Ombudsman has notable impact on the public in general and the taxpayers in particular. During the last six years this office has addressed the grievances of ten thousand and fourty three against the Revenue Division and tax functionaries. Present Hon'ble Federal Tax Ombudsman Mr. Justice (R) Munir A. Sheikh during his tenure till December 2007 provided relief to 4437 taxpayers. A consensus exist that the taxpayers are largely satisfied with the performance of the office of Federal Tax Ombudsman. Various stakeholders have appreciated the excellent work being done by the Federal Tax Ombudsman and his office particularly implementation and Monitoring Section in providing justice to taxpayers and in meeting the objectives for which this institution was created.

The present Hon'ble Federal Tax Ombudsman assumed his functions in December 2004. Since then considerable progress has been made in creating awareness in the public mind about the role and function of the Federal Tax Ombudsman and enlistening support of the stakeholders and wining confidence of tax paying community to come forward and express their grievances. For this purpose various Conferences, Seminars have been attended by the Hon'ble Federal Tax Ombudsman. He attended Ombudsman Conferences in New Zealand, Hong Kong, Vietnam and Alaska (USA). He participated in various T.V. talk shows and expressed his views on various aspects of this institution. Various decisions published in leading daily English and urdu newspapers created awareness among taxpayers. Decision of the Federal Tax Ombudsman on the complaints of the aggrieved taxpayers regarding Income Tax, Sales Tax and Customs etc were released to the press. These were given vide converge in view of tremendous interest shown by the readers. Newspapers also wrote articles on the working / performance of this institution and its impact on tax administration as well as taxpayers. During his tenure he has been able to bridge the gap between the taxpayer and the tax collector. His recommendations given in the various complaints filed before him were thoroughly monitored by implementation and monitoring section. However, over the scope of jurisdiction of Federal Tax Ombudsman taxpayers have expressed their frustrations on the controversy raised by the Revenue Division. The FBR objected to the jurisdiction of the Federal Tax Ombudsman by filing representation before the President. This action has caused delay in the implementation because in terms of directive of the President filing of a representation keeps the recommendation in abeyance till the decision of the President. Resultantly the implementation process of this office curtailed but the Revenue Division is free to proceed with the impugned action. This issue has created anomaly and frustration among the taxpayers, needs to be addressed.

In the last reports Federal Tax Ombudsman identified several irritants and maladies and recommended appropriate steps for their eradication, however, the following still exists.

(i) General slackness in responding to taxpayer's applications/enquiries.

(ii) Subversion and disuse of prescribed office procedures.

(iii) Unlawful decision-making.

(iv) Biased conduct of the functionaries.

Apart from this the Revenue Division and the relevant department showed positive response in a large number of cases. It is important to note that the Revenue Division, after receiving complaints for reply/comments, redressed the grievances of complainants in genuine cases and instantly informed the Federal Tax Ombudsman office about the action taken by them. During 2007 this meaningful attitude was betrayed in around 628 cases. During the year 2007, 1414 complaints were registered. The balance of 335 complaints brought forward from the pervious year made the total number of complaints tune to 1749. Out of which 1488 complaints have been decided during the year 2007 leaving a balance of 261. (A statement showing the month-wise institution, disposal, and balance of complaints is placed at page 15). The FTO, in addition to addressing grievances of taxpayers, carried out investigations to diagnose the causes of maladministration and recommended appropriate remedial measures aimed at changing the mindset and hence improving the working of Revenue Division. The office of FTO has also been proactive in forestalling recurrence of complaints by recommending disciplinary action to the Revenue Division against their delinquent functionaries. (A statement showing the details of the disciplinary action taken by the CBR on the recommendation of the FTO is annexed at page 16).

Under Section 22 of the Federal Tax Ombudsman Ordinance, compensation can be awarded to aggrieved parties for any loss or damage caused to them on account of maladministration committed by the Revenue Division or its functionaries. e.g. in complaint No. 247/07 compensation under this section was granted to the complainant.

In this complaint complainant alleged maladministration on the ground that valuable carpets belonging to the complainants were seized by the respondent/ department on 27-1-2002 which were subsequently confiscated and sold. However, the sale proceeds, to which he became entitled after the adjudication proceedings, were far too less than those at which the goods were assessed when originally seized. He was being offered a paltry sum of Rs.7060/- against the original value of Rs.3,25,000/-.

It was inter alia alleged that Valuable carpets of the complainant were seized by the Custom Mobile Squad No.1 on 27-1-2002 and vide Order-in-Original No. 597/2002 dated 5-6-2002 the seized goods were ordered to be confiscated. Against Order-in-Original No. 597/02 an appeal was filed before the Collector Appeals, Custom, Central Excise and Sales Tax Peshawar, whereby seized goods were ordered to be released on payment of duty taxes and redemption fine. Against Order-in-Appeal a 2nd Appeal was filed before the Appellate Tribunal Custom Peshawar whereby the seized goods were ordered to be released unconditionally but as the goods were auctioned their sale proceeds were ordered to be given to the Complainant. In presence of order of the Tribunal an application for obtaining the sale proceeds was submitted before the

Assistant Collector Auction Cell Custom House Peshawar and during pendency of that application it came to the notice of the complainant that his valuable carpets of Rs.3,25,000/- had been auctioned at a price of Rs.7,060/- on 20-8-2006 vide Lot No. 688/2002. The complainant, being aggrieved from this illegal auction, filed an other application for release of actual carpets or their actual sale value of Rs.3,25,000/-. This was submitted before the Collector Custom Peshawar but till date of filing of complaint no response was given by the respondent.

It was prayed that on acceptance of his complaint the Respondents be directed to hand over the sale proceeds equal to 3,25,000/- instead of Rs.7,060/- which he was being offered. In its reply the Respondent/ department stated that during the course of adjudication proceedings M/s Kabul House Carpet dealers Peshawar were requested to examine the seized carpets and give expert opinion whether the same were of foreign origin or otherwise. They opined that the same were of foreign origin. Opportunities of hearing, on several dates, were provided to the complainant to prove the legal possession but they failed to do so. So on the basis of opinion of Carpet Dealers, the same were confiscated out-right. The goods being confiscated became state property, and were ripe for disposal. Therefore the same were sold to Cooperative Stores. It was wrong to alleged that the confiscated carpets were auctioned. They were rather sold to Cooperative Stores against Rs.7,060/- as synthetic carpets @ $0.20 P. Sq. Ft. Assessment of the same was made according to the valuation advice No. 22/99 dated 17.2.1999. The seizing agency was not competent to determine the value of the goods seized and the complainant was obliged to accept the value of sale proceed, which was properly appraised by the appraisement cell of the Collectorate, against which the goods had been disposed off. The case was decided through proper adjudication proceedings and the Appellate Tribunal did not order for return of the seized goods, on market value. Instead it was ordered that the sale proceeds of the disposed seized carpets should be returned to the appellant in toto. All legal formalities were fulfilled prior to disposal of the confiscated goods, and the issue had not been raised by the complainant at appeal stage. In view of the above, it was prayed that the instant complaint may be rejected and the complainant be directed to accept the amount of sale proceeds as ordered by the Appellate Tribunal.

Case was considered in the light of the arguments advanced by both the parties and facts on record. It was found that gross irregularities were committed by the respondent/department while dealing with the case. Recovery Memo No.93/2002 dated 27-1-2002 prepared at the time of seizure indicate that a total 13 Carpets recorded as (Carpets Hand Knotted of Foreign Origin) as size 9'x6' were seized in the vicinity of Bara Agency while on their way to Peshawar. Details of the seized goods, as per Recovery Memo, indicate that a market value of Rs.3,25,000/- was arrived at the time of seizure. Subsequently, the process of adjudication of the case was initiated, in consequence of which the goods were confiscated. The complainant filed an appeal against the order confiscating the goods and confiscated goods were ordered to be released on payment of taxes and redemption fine.

The goods were later on sold to M/s Co-op Store, "Ferozepur Road, Lahore". In the proper column, lot No. 638/02, mentioned 13 number Carpets measuring 5'x9' as "synthetic". The total value of the consignment was assessed at Rs.7,060/- it was argued on the behalf of the complainant that the entries in the concerned Register were fraudulent. The Carpets which have been mentioned as "synthetic" were in effect (hand knotted of foreign origin) as recorded in the Recovery Memo and were in much more valuable than as per the entries recorded in the Register carrying the details of confiscated goods. Both the entries were compared and the statement given by the authorised representative of the complainant was found to be correct. The word "synthetic" had been inserted with malafide intentions. It was prima facie proved that the value assessed at the time of disposal of the goods was fraudulently manipulated and the complainant was being denied the actual price that the goods would have fetched had they been restored to the complainant. It was also found that the officer responsible for the assessment and disposal of the goods was already facing criminal charges and was under the custody of NAB. A show cause notice was thus issued to the respondent/department to explain as to why compensation may not be awarded to the complainant u/s 22 of the FTO Ordinance for the loss that he was being subjected to.

The Deputy Collector Customs Peshawar appearing in response to the Show Cause Notice reiterated the points raised in the written defence submitted earlier by the respondents that the irregularity, which was the subject matter of the complaint, had been committed by the officer Incharge State Warehouse who was in custody of NAB in another fraud case. Neither the Revenue Division nor the Collectorate of Peshawar, according to him, could be held responsible for this act being done in personal capacity of the above stated officer. As such action should have been taken against him and he should bear the cost of compensation. However, this plea was rejected. Since the maladministration was occasioned by fraudulent act of departmental employee, therefore, following recommendations were given:-

(i) The difference of amount between the amount assessed in the seizure report i.e. Rs.2,43,750/-(c.i.f value) and the amount of value at which the good was sold i.e. Rs.7,060/- be paid to the Complainant.

(ii) The Revenue Division should recover this amount from the concerned officer Incharge of the State Warehouse and make the payment to the complainant

(iii) Action may be completed within a period of two months.

In the same way if the allegations contained in the complaint could not be proved and the accusation was found to be false, frivolous and vexatious, the FTO is empowered to award reasonable compensation to the Revenue Division or the tax employee against whom the complaint was lodged as envisaged under section 14(4) of the FTO Ordinance. One of such decision has also been included in the latter part of this report.

CONSOLIDATED STATEMENT SHOWING BALANCE, INSTITUTION AND DISPOSAL OF COMPLAINTS DURING THE YEAR 2007

Month	Balance of 2006	Institution	Total Institution	Disposal	Balance
January	335	227	562	36	526
February	526	67	593	147	446
March	446	109	555	210	345
April	345	94	439	182	257
May	257	109	366	136	230
June	230	133	363	93	270
July	270	127	394	116	278
August	278	154	432	112	320
September	320	86	406	82	324
October	324	87	411	119	292
November	292	81	373	113	260
December	260	143	403	142	261
Total		**1414**		**1488**	

REFUND & COMPENSATION CASES

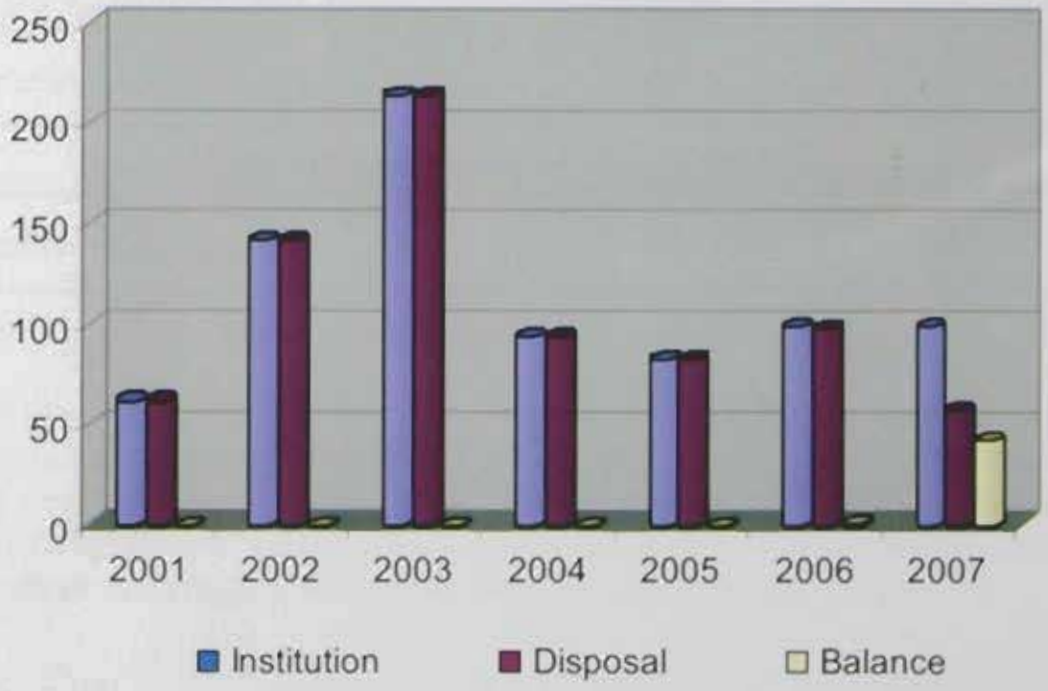
YEAR	TOTAL CASES OF REFUND		AMMOUNT ISSUED
	Recommended	Issued	
2007	304	216	Rs.440.43 million
TOTAL CASES OF COMPENSATION			
2007	48	25	Rs.11.305 million

POSITION REGARDING DISCIPLINARY ACTION AGAINST TAX OFFICIALS DURING THE YEAR 2007

Sr. No.	(Summary) Topics	Total Cases
1.	Removal from Services	02
2.	Warning/Charge Sheeted	04
3.	Transfer	01
4.	Censured	01
	Total:	08

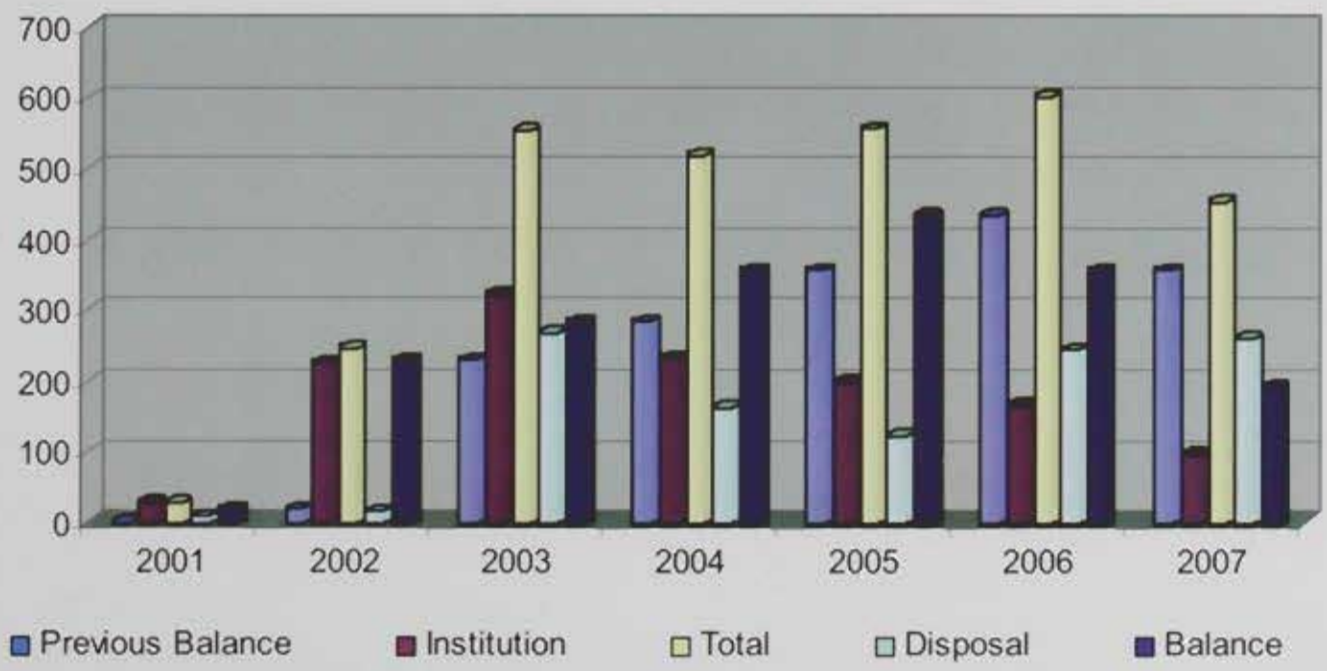
REVIEW APPLICATIONS FILED & DISPOSED OF TILL DECEMBER 2007

Year	Institution	Disposal	Balance
2001	62	62	0
2002	142	142	0
2003	214	214	0
2004	94	94	0
2005	83	83	0
2006	99	98	01
2007	99	57	42
Total	**793**	**750**	**43**



STATEMENT SHOWING THE PROGRESS OF REPRESENTATION MADE TO THE PRESIDENT TILL DECEMBER 2007

Year	Previous Balance	Institution	Total	Disposal	Balance
2001	0	29	29	9	20
2002	20	227	247	17	230
2003	230	324	554	269	285
2004	285	234	519	162	357
2005	357	200	557	123	434
2006	434	168	602	245	357
2007	357	97	454	261	193
Total		1279		1086	193



CASES RELATED TO SALES TAX

BEFORE THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

COMPLAINT NO.382/2007

M/s. Sarina Industries (Pvt) Ltd,
Haripur. ...Complainant

Versus

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

Dealing Officer: ...Mr. Shamim Ahmad, Adviser

FINDINGS/DECISION

Present: Mr. Farhat Nawaz Lodhi, Advocate & A.R for the Complainant.
Mr. Sadiqullah Khan, D.C, Sales Tax & Federal Excise, RTO, Peshawar & DR, for the Respondent.

The complaint under consideration relates to the non-payment of refund amounting to Rs.553,895 which was due for a long time.

2. Brief facts of the case are that the Complainant was engaged in the manufacture of PVC Pipes. It was exempt from paying Sales Tax under SRO 580(I)/1991. The exemption expired w.e.f. 11-02-1998 and from that date onwards, it was to pay Sales Tax on the supplies made. During the audit of the case, it was noticed that it had claimed adjustment of input tax amounting to Rs.553,895 paid on stocks acquired before the expiry of the exemption under the SRO quoted above. The Sales Tax department decided that the adjustment of input tax was wrongly claimed and made the Complainant pay the amount. The Complainant went into appeal and finally it was decided by the Customs, Central Excise & Sales Tax Appellate Tribunal, Peshawar Bench, Peshawar vide its order No.79/2000 dated 02-01-2002 that they were entitled to the adjustment of the said input tax and amount recovered be refunded.

2.1 The matter, however, did not end there. The Sales Tax department now adopted the view that the refund could not be made under the provisions of Section 66 because it was not claimed within one year of the date of payment. The Complainant went into appeal against this decision. The case was decided in the Complainant's favour by the Collector (Appeals), Peshawar vide his Order-In-Appeal No. 630 of 2005 dated 23-11-2005. He held that according to the SROs issued in this regard the amount paid by the Complainant was payable within 15 days. Due to the amnesty awarded under SRO 461(I)/99 dated 09-04-1999, the question of limitation did not arise. This decision was not challenged by the Respondent.

2.2 Despite the clear decision by the Collector (Appeals) and its acceptance by the Respondent, the refund was not issued.

3. Following prayers were made:

a. Non-issuance of refund be declared as maladministration.

b. The Respondent be directed to issue illegally withheld refund immediately.

c. Further sum u/s 67 of the Sales Tax Act 1990 for delayed refund be ordered.

4. The Additional Collector, Regional Tax Office, Abbottabad in his written reply stated that the refund claim was being processed. Explaining the reason for the withheld refund, it was stated that the R.T.O Abbottabad had been recently established. The Sales Tax Refund Division was not fully operational which was expected to become operational within a few days. As soon as the Refund Section became operational, the refund would be granted to the claimant on priority basis.

5. Both A.R and D.R attended and the case was discussed with them. The D.R at the very outset stated that the refund in question had been issued on 26-04-2007. He produced a copy of the cheque of refund amounting to Rs.553,895. As the refund had been made the grievance of the complaint had been redressed, it was submitted.

6. The A.R acknowledged the receipt of the refund of the original amount. However, he was not satisfied with the delayed action of the Sales Tax department. He narrated a long story of woe tracing the history of the case, depicting a series of litigations and the inaction of the Sales Tax department. The inaction, he insisted, was based on malafides.

7. He emphasized that the department, though had issued the cheque for the original amount of tax paid, did not pay the further sum under the provisions of Section 67 of the Act.

8. Rebutting the claim of payment of further sum u/s 67 of the Act, the D.R argued that the provisions of Section 67 were not applicable. In his view they came into play when the refund was due u/s 10 of the Act. He argued that the refund claim related to the second proviso of Section 66 of the Act.

8.1 The A.R was of the view that the provisions of Section 10 were applicable because the amount in question related to input tax. He further argued that the Collector (Appeals) in its judgement quoted above had clearly stated that it was the responsibility of the department to refund the said amount within 15 days of the date of the Tribunal's order and the time limitation did not apply.

9. The case was considered in the light of the arguments, both written and oral of the two parties. Despite the fact that the original amount has now been refunded, it

has to be observed that the department delayed it for unreasonably long time. It became due within 15 days of the judgement of the Tribunal which was passed on 02-01-2002. It was delayed by wrongly invoking the provisions of Section 66. Even after the decision of the Collector (Appeals) on 23-11-2005, the refund was not issued. It was done only after the filing of the complaint under consideration. The inordinate delay clearly falls within the definition of maladministration. The C.B.R would be well advised to look into the matter and fix the responsibility on the officer(s) concerned.

10. The plea of the payment of refund sum u/s 67 of the Act was also considered. The argument of the D.R that the same was not payable because of 2nd proviso to Section 66 was not found to be valid. As discussed above, the Collector (Appeals) in his judgement referred to above has discussed that the payment had to be made within 15 days of the Tribunal's order. This observation has acquired finality because the department has not gone into further appeal. The argument of the D.R that the matter did not relate to Section 10 was not fund correct either. Therefore, the further sum u/s 67 is payable.

11. In view of the above discussion, it is recommended that:

i. Further sum be paid under the provisions of Section 67 of the Sales Tax Act, 1990.

ii. The C.B.R to investigate the reasons for the abnormal delay in the payment of Sales Tax refund and take necessary action against the officer(s) concerned.

iii. Compliance report of above-mentioned recommendations should reach this office within 60 days of its receipt by the Secretary Revenue Division.

(Justice (R) Munir A. Sheikh)
Federal Tax Ombudsman

Dated: -2007

BEFORE THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

COMPLAINT NO.575/2007

M/s. Chiniot Enterprises (Pvt) Ltd,
Haripur. ...Complainant

Versus

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

Dealing Officer: ...Mr. Shamim Ahmad, Adviser

FINDINGS/DECISION

Present: Mr. Sarwar Khan Jadoon, A.R for the Complainant.
Mr. S. Fazle Samad, A.C, Sales Tax & D.R, for the Respondent.

The Complainant is a corporate body engaged in the manufacture of ghee and allied products. Its unit is located in Industrial Estate, Hattar, Haripur. It submitted a refund claim to the Collector of Sales Tax & Federal Excise, Peshawar on the purchase of raw material, packing material and services. A Show Cause Notice (S.C.N) dated 14/09/2006 was issued in which it was stated that for six suppliers the STARR system has raised objections. The Complainant submitted its explanation and finally the Sales Tax department confined its objection to four suppliers. Their names, amount of sales tax, STARR objections and findings are contained in the following schedule:

Name of Supplier	Sales Tax Rs.	STARR Objection	Findings
M/s Inter Hom	Rs.44,483/-	Non Filer / Invoice summary not submitted.	The respondent has not provided the sales tax return and invoice summary statement of his supplier. Therefore, the objection raised by the system is sustained.
M/s Mobilink	Rs.1,101/-	Invoice summary not submitted. Violation of Section 8(I)(a)	The respondent has not provided the sales tax return and invoice summary statement of his supplier. Therefore, the objection raised by the system is sustained.
M/s Zee Petroline	Rs.2,113/-	Invoice Summary not submitted.	The respondent has not provided the sales tax return and invoice summary statement of his supplier. Therefore, the objection raised by the system is sustained.
M/s TCS	Rs.253/-	Invoice summary not submitted. Violation of Section 9(I)(a)	The respondent has not provided the sales tax return and invoice summary statement of his supplier. Therefore, the objection raised by the system is sustained.
Total	**47,932**		

2. The Complainant objected to the disallowances mentioned above on the following grounds:

a. It claimed the genuine refund of the amount paid by it through proper banking channel.

b. The suppliers were genuine and working in the field. If the Respondent considered the invoices fake, the onus of proving the same was on their shoulders. They failed to discharge the said onus.

c. It was not the duty of the Complainant to provide the summary statement of the suppliers.

d. According to the scheme of Sales Tax law, if the purchaser paid the tax and suppliers failed to deposit the same in the government treasury, the refund could not be disallowed.

e. All the suppliers were registered persons. As such they were the agent of the government in terms of Section 218 of Contract Act, 1872.

f. The C.B.R issued Circular No.6 of 2006, according to which the courier services were exempted from submitting the Invoice Summary.

g. It was prayed that the Respondent be directed to refund the amount of Rs.47,932.

3. The Complainant sought remedy against the findings in the Order-In-Original (O.I.O) by filing an appeal before the Collector (Appeals), Peshawar. He, in his Order-In-Appeal bearing No.51 of 2007 dated 15/03/2007, confirmed the findings of the O.I.O. At this point of time, the complaint under consideration was filed.

4. The Collector, RTO, Peshawar, in his written reply started as follows:

a. The Order-In-Original and Order-In-Appeal were passed in accordance with the law and the facts of the case.

b. The contents of the complaint were not denied. However, STARR system raised the objections on the invoices of the suppliers and the failure to submit summary statements as per format notified by the CBR vide SRO 525/2005 dated 06/06/2000. The Sales Tax Act 1990 (the Act) did not allow issuance of refund unless proper verification/investigation of documents was carried out to the satisfaction of the officer concerned.

c. The suppliers did not provide the summary statements either.

d. It was also pointed out that the Complainant ought to have gone in appeal before the Appellate Tribunal u/s 46 of the Act instead of seeking the remedy before the honourable F.T.O.

e. It was contended that no maladministration was committed and the complaint be rejected.

5. Both A.R and D.R attended and the case was discussed with them. The A.R reiterated the arguments contained in the written complaint. He emphasized that the Complainant had paid due sales tax through proper banking channel. Moreover, atleast 2 of the parties, namely Mobilink and T.C.S are well-known parties and could not be termed as fake. He also produced Circular No. 6 of 2006 dated 12/09/06 which excluded, amongst others, courier services "from the purview of filing the summary statement.....".

6. The A.R declared on solemn affirmation that no appeal was filed before the Appellate Tribunal.

7. The above-mentioned circular of C.B.R was presented before the D.R. Apparently its contents were not in his knowledge. He accepted that the production of invoice summary was not required in case of M/s. T.C.S.

7.1 In respect of M/s. Mobilink, he pointed out that it was not clear whether the mobile phone was used for business purpose only. It could be in the name of someone not connected with the business and was used for purposes other than business.

7.2 In respect of M/s. Inter Hom, he stated that the concern was registered in Gujranwala. However, the Complainant received the goods from Karachi. On enquiry, it was not found traceable in either of the two cities. Similar was the case with M/s. ZEE Petroline.

8. Before the case is taken up on merit, it is considered expedient to meet the objection raised by the Respondent as contained in para 4 (d) above. There is no doubt that the Complainant could have sought the remedy with the Appellate Tribunal. However, it is not barred to come before this forum because whenever maladministration is committed, the F.T.O acquires jurisdiction. The provisions of Section 9(2)(b) of the F.T.O Ordinance have to be read in conjunction with the provisions of Section 2(3) of the Establishment of the Office of Federal Tax Ombudsman Ordinance 2000 (the FTO Ordinance). The definition of maladministration is wide and inclusive in nature and includes decisions, processes, recommendations, act of omission or commission which are contrary to law, rules and regulations and or perverse, arbitrary, unreasonable, unjust, biased, oppressive or discriminatory. Disallowing the refund of Sales Tax paid on the bills of M/s. T.C.S on the ground that Invoice Summary was not furnished despite exemption granted by the C.B.R and disallowing the claim in other 3 cases without conducting proper enquiries are actions which squarely fall in the definition of maladministration.

9. The case was discussed on merit at length. The rejection of the refund of amount paid to M/s. TCS because invoice summary was not submitted was wrong in

malafide act. The complainant had obtained a certificate from M/s Flying Craft Papers showing that it had supplied 4380500 bags and not packing material in KGs. The certificate was produced before the Additional Collector (Adjudication) and he did not express any dissent with complainant's contention. However, in the O-I-O he held that the objections of the complainant to the findings of the committee were not sustainable as the complainant did not join the proceedings of the committee. The committee was constituted at the request of the complainant. The complainant provided the committee the particulars of suppliers and even if the complainant did not join the proceedings the factual findings of the committee were (on record) and the department had not challenged the veracity of the same. The figure provided by M/s Flying Craft Papers Limited was the actual number of bags and not number of KGs of bags and the same position was accepted by the Additional Collector when he admitted on page-21 of the impugned order that:

> "....However, the objection of the respondent that quantity of bags given by M/s Craft Paper should be in "numbers/bags instead of Kgs is valid".

The Additional Collector should not have upheld the false charge leveled against the complainant. The contention that during the period from July 1995 to June 2001 the complainant had clandestinely removed 614656 bags of cement weighing 305723 MT was absurd because during the whole period the unit was working under system of supervised clearances. The goods could not be removed clandestinely. The D.C was asked to summon the staff which was posted there for recording their evidence, which was denied in violation of the provisions of Qanun-e-Shahdat, which was applicable to quasi-judicial proceedings. The impugned O-I-O was time barred. As per the mandatory provisions of section 36(3) of the Sales Tax Act, 1990 the order was to be passed within 135 days of the issuance of show cause notice whereas under section 33(3) of the Central Excise Act, 1944 the O-I-O was to be passed within 45 days. The O-I-O was not passed in the stipulated period of time attracting time limitation under both statutes. The proceedings were without lawful jurisdiction. At one stage the FBR had referred the matter to the ADRC but no hearing was held by the said committee, which was also an act of 'maladministration'. The Central Excise Act, 1944 was repealed w.e.f. 01.07.05 and was substituted by the Federal Excise Act, 2005 wherein the proceedings under the repealed Act were not saved. Through Finance Act, 2006 time limit for adjudication of pending sales tax cases was extended upto 31.12.06. Since the time limitation had expired before this amendment in section 45(2) of the Sales Tax Act, 1990 the new provision was not applicable in the complainant's case. This being one-time extension the FBR could not extend the limitation beyond 31.12.06, therefore, the FBR in pursuance of second proviso of sub-section (1) of section 45 of the Sales Tax Act, 1990 read with section 74 through order dated 18.08.07 extended the limitation in this case from 16.05.06 to 30.06.06 and from 01.01.07 to 30.09.07 illegally. The O-I-O had been passed on 30.09.07 whereas the limitation for this purpose had expired well before 16.05.06. There were no exceptional circumstances for multiple extension of limitation. The impugned O-I-O No.23/07 dated 30.09.07 may be declared as illegal, time-bared and without jurisdiction.

2. In reply, the Collector of Sales Tax and Federal Excise (LTU), Lahore has submitted that the audit/prosecution had neither assumed the number of bags consumed

by the complainant by dividing the amount of cost of packing material with a hypothetical figure of cost per bag nor presumed the difference as 'suppressed production', rather the figures of packing material consumed were taken from the "Annual Audit Reports" of the company pertaining to the period from 1996 to 2001, which was a duly audited record and, being a public document, it was admissible as evidence. The total cost of paper sacks so calculated was divided by prevalent rates of bags obtained from sales/purchase agreements reached between the complainant and manufacturers of paper sacks all over the country. The alternate mode of calculation/assessment of duty/taxes was resorted to only when it was established that the complainant had failed to maintain correct and unambiguous record of packing material for excisable cement. No doubt, a reconciliation committee had been constituted but the complainant opted to remain away from the committee, yet, without prejudice to the findings of the committee, the case against the complainant was based on charges leveled in the show cause notice on the basis of annual audit reports, packing material records and sale/purchase contracts. Neither the respondents nor the complainant could go beyond the ambit of the show cause notice. Reconciliation exercise could not be a substitute for show cause notice, audit reports etc. The complainant failed to rebut the said charges. The statutory forum for pressing complainant's point of view was Collector (Appeals). The adjudication officer after going through the merits of the case and written and oral versions of the complainant as well as of the department established the charge of clandestine removal against the unit and passed O-I-O No.23/07 dated 29.09.07 in accordance with law. It suffered no legal infirmity in terms of limitation or otherwise, as the same was passed within the time limit i.e. 30.09.07 given by the FBR vide order dated 18.08.07. The complaint may be rejected as the issues involved were liable to be decided on merit by the appropriate appellate authority. No 'maladministration' was committed. FTO's forum was being used as substitute for the appellate fora. The complainant had itself boycotted the proceedings of the reconciliation committee set up by Additional Collector (Adjudication).

3. During the first hearing, the AR submitted that in the show cause notice it was alleged that the complainant had cleared cement packed in 57952343 bags as against declared bags of 51838087-a difference of 61144456 bags-which led to evasion of excise duty of Rs.313.618 Million and sales tax of Rs.359.371 Million. Show cause notice was issued under rule 10(3) of the Central Excise Rules, 1944 and section 36 of the Sales Tax Act, 1990. Whereas the supplier had supplied 4380500 bags the respondents multiplied it by 5 on the assumption that 1 KG material produced 5 bags and worked out the number of bags at 21902500. The actual number of bags, in fact, was that 4380500. This was not the weight of packing material. This fact had been certified by M/s Flying Craft Paper, the supplier. The certificate in question was presented to Additional Collector (Adjudication) but he did not consider it nor did he record his findings on this issue. The duty was calculated on the assumption that total numbers of bags used during 07/95 to 06/2001 were 21902500 and not 4380500 bags. The charge of concealment was untenable. The O-I-O was time barred. The show cause notice was issued on 26.10.02. The impugned order was passed on 27.09.07 and hence it was time barred as per the proviso to sub-section (3) of section 36 of the Sales Tax Act, 1990 and sub-section (3) of section 33 of the Central Excise Act, 1944. Sub-rule (3) of rule 10 of the Central Excise

Rules, 1944 was omitted on 15.06.02 whereas the show cause notice was issued on 26.10.02, invoking defunct rules, which was illegal.

4. The DR submitted that the complainant had filed an appeal against the O-I-O before Collector (Appeals) on 11.10.07. The AR stated that it had filed complaint on 05.10.07 prior to filing of appeal before Collector (Appeals). The DR argued that the President of Pakistan had vide orders on complaint No.584-K/06 (M/s A.G. International vs. Revenue Division) decided that where the taxpayer chose to avail the remedy of appeal against the impugned order he could not make or pursue a complaint before the FTO and the FTO in such cases should stop the investigation of the complaint even where the appeal was filed before or after the filing of complaint. He also added that the FBR had extended the time limit for deciding the case upto 30.09.07. The impugned order was passed on 27.09.07 before the expiry of the extended period. The DR was asked that if the complainant's contention that the weight of material was converted into bags by multiplying the material by 5 (1 KG = 5 bags) was correct then he should indicate as to exact amount of duty and taxes alleged to have been evaded on account of 21902500 bags allegedly worked out by the respondents by multiplying 4380500 KG of raw material he stated that he would check the position and provide the information shortly because he did not have the information readily available. He was also asked to produce various extensions given in this case by the FBR extending the time for deciding the case under the provisions of Sales Tax Act, 1990 and Central Excise Act, 1944 or 2005 and also supply copy of sub-rule (3) of rule 10 of the Central Excise Rules, 1944 and offer comments on AR's contention that the rule was omitted before issuance of show cause notice. The DR also submitted that he would like to present various relevant sale/purchase invoices. The DR was asked to prepare a chart explaining the correct position with reference to the number of bags supplied by M/s Flying Craft Papers; whether the numbers of bags were 21902500 or 4380500 and also work out the liability of duty and taxes involved on the aforesaid quantities. He promised to do so. The case was adjourned till 10.12.07. Subsequently, the respondents vide letter dated 07.12.07 (on record) requested that they may be allowed 10 days adjournment to enable them to put up replies to certain queries. However, at the hearing fixed for 10.12.07, the DR representing the department submitted that only one week's time was required to do the needful and requested that the case was re-fixed accordingly.

5. At the next date of hearing the DR submitted that the show cause notice issued in the case and the O-I-O passed were both based on annual audit reports of the company submitted by it to the corporate law authority. According to that the complainant had incurred an amount of Rs.66.2 Million for purchase of papers sacks or poly propylene bags. With the average rate per bag being Rs.11.44 the number of bags worked out to 57.9 Million consumed by the complainant during the period in question. On the other hand, the excise record (RG-II) maintained by the complainant had recorded only 51 million bags. There was thus a difference of 6114456 bags. The quantity of cement packed in these bags and clandestinely removed worked out to 305723 M.T @ 50 KG per bag. The DR also added that during the period from 07/1995 to 06/2001 M/s Flying Craft Papers supplied 4380500 Kg material, which were converted by the committee @ 5 bags per Kg to 21902500 bags but while deciding the case the adjudication authority did not go by the recommendation of the committee, rather the

basis of adjudication was the figures of cost of bags and sacks obtained from complainant's annual audit reports submitted by it to the corporate law authority. It was on the basis of cost of packing material that the total numbers of bags were worked out by dividing the total cost by Rs.11.44 per bag. The figures were taken from complainant's own account. Since the complainant had accounted for only 51 Million bags in its record there was a difference of 6.1 Million bags on the basis of the aforesaid working. While deciding the case committee's findings that the complainant had used 67 Million bags were ignored by the adjudicating officer. The case was decided on the basis of figures contained in the annual audit reports of the complainant itself.

6. The AR submitted that if that was the case why the respondents (adjudication officer) used committee' report as an evidence in support of allegations framed in the show cause notice by observing that the committee's report further substantiated the charges against the complainant. He argued that the audited accounts of the complainant were not maintained under the Excise Rules and were, therefore, not prescribed. The cost of packing material included freight, octroi etc. The respondents just took the price of bags without working off the incidence of freight, octroi etc. and straight away calculated the number of bags. Similarly some bags also got busted. Such bags were also not excluded although they numbered 912992 bags. The respondents assumed as if those too had been cleared packed with cement. According to the respondents the complainant had shown consumption of 51 million bags whereas it had declared the consumption at 52 million bags during the period. The respondents did not consider the relevant facts and figures. The duty and taxes were calculated without reference to methods and the rates of excise duty prevalent at different periods; these rates were sometimes ad-val and sometimes per ton. The adjudication authority did not disclose how duty and taxes were calculated. This was done in disregard to complainant's point of view (see sub-para (iii) of para 2 of the O-I-O). Whereas sales tax was imposed on cement w.e.f. 05.09.2000 the respondents calculated the liability right from 07/1995 to 06/2001. The respondents also assumed the price per bag for the entire period and for all manufactures. The prices of bags changed from time to time. The department should have obtained the information from the suppliers rather than conjecturing it. Show cause notice was issued on 26.10.02, the order was passed on 27.09.02. It was hit by time limitation as provided in section 36(3) of the Sales Tax Act, 1990 and 33 of the Central Excise Act, 1944. The extension granted in the case was not valid because the time limit had already expired before granting extension. In support of his contention he cited FTO's findings in complaint No.541/06. The same could not be extended retrospectively. The legislatures had granted extension from 01.07.06 to 31.12.06 only in pending cases. This was not a pending case on 01.07.06. Extension through Finance Act 2006 was a one-time extension and no further extension could be allowed after 31.12.06. The department had taken this view in C.No.299-L/07 reported as 2007 PTD 2473. No extension was obtained under the Excise Act i.e. under section 33 of the Central Excise Act, 1944. Proceedings were initiated against the complainant under rule 10(3) of the Central Excise Rules, 1944 despite the fact that the aforesaid rule had been omitted on 15.06.02 before issuance of show cause notice. This issue was decided by the adjudication officer vide para 9(1) of the O-I-O where he wrongly held that the rule was rightly invoked. The rule was omitted on 15.06.02 whereas the show cause notice was issued on 26.10.02.

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7. The DR placed on file a calculation sheet showing that duty and taxes were calculated as per the different rates of duty and taxes prevalent during the period in question. The AR objected that the statement did not show the calculation year-wise or period-wise. The DR submitted that the AR's contention that the annual audited accounts were not prescribed was not tenable because these accounts were supportive documents/public documents prepared by complainant's own auditors and could be relied upon. He also added that the complainant had cleared cement in a clandestine way. He also submitted that one could not rely on supplier's information. Sometime the suppliers were reluctant to disclose correct figures. He also added that the complainant's case had been pending before the Alternate Dispute Resolution Committee. The extension in the time for deciding the case was granted by the competent authority through legislation upto 31.12.2006 and then again from 01.01.2007 to 30.09.2007 and the case was decided on 29.09.2007 before expiry of the extended period. Since it was a combined notice both for recovery of excise duty and sales tax the extension dated 18.08.2007, allowed by the FBR, covered excise duty as well as sales tax. As to the application of rule 10(3) of the Central Excise Rules, 1944 the DR submitted that the contravention case against the complainant was made out on 21.03.2002 on which date the said rule was in existence and applicable. It was invoked as infringement took place during the validity of the rule. The complainant's case was pending before Collector (Appeals). In such a case FTO's jurisdiction was barred as decided by the President in complaint No.584-K/2006 (M/s A.G International). The AR argued that according to section 9(1)(a) of the FTO Ordinance the only bar on FTO's jurisdiction was that the case should not be pending or be subjudice before a competent court of jurisdiction on the date of receipt of complaint. Thus no bar operated on the jurisdiction of the FTO. In support of his contention he cited FTO's findings in complaints No.645-L/07 and 621-L/06.

8. The arguments of the two sides and records of the case have been considered and examined. As regards respondents' objection to FTO's jurisdiction on the ground that the complainant had filed appeal against the impugned order this is to point out that the complaint in this case was filed on 05.10.07 whereas appeal before Collector (Appeals) was filed on 11.10.07. Thus on the day on which the complaint was filed the case was not subjudice before Collector (Appeals). The FTO is fully competent to investigate complaints involving 'maladministration'.

9. In the show cause notice dated 26.10.02, issued to the complainant, it was alleged that it had consumed 57952543 papers sacks/bags during the period from 07/95 to 06/2001 whereas it had shown a consumption of only 51838087 bags/sacks in its central excise record during the said period and there was, therefore, an unaccounted for difference of 6114456 sacks/bags, which though received by the complainant were not accounted for in the records. The aforesaid unaccounted sacks/bags, it was alleged, were used for packing/filling of cement, which was clandestinely cleared without payment of duty and taxes (excise duty = Rs.313.618 Million and sales tax = Rs.359.371 Million) recoverable from the unit under rule 10(3) of the Central Excise Rules, 1944 and section 36 of the Sales Tax Act, 1990 alongwith additional tax and duty for violating various provisions of law. The complainant was, therefore, asked as to why duty and taxes, additional duty and additional taxes be not recovered from it and why penal action be not

taken for violation of the provisions of central excise and sales tax laws. The case was decided by the Additional Collector (Adjudication) vide O-I-O No.23/07 dated 27.09.07.

10. The complainant contends that (i) the determination of unaccounted sacks/bags worked out on the basis of cost of packing material shown by the company in its annual audit reports by dividing the cost of packing material with a hypothetical figure of cost per kg ranging from Rs.11 to 12, the audit had merely assumed the number of bags consumed during the said period and wrongly presumed the difference as 'suppressed production', (ii) the complainant had requested the adjudication authority to constitute a departmental committee to investigate and determine the number of paper sacks/bags actually consumed by the company during the subject period and the Collector (Adjudication) constituted a committee, which, after obtaining information from the suppliers of paper sacks/bags of the company gave its findings. The committee calculated the number of bags as 67168312 bags and observed that quantity of paper sacks was greater then the quantity shown in the excise record. However, the committee made a factual blunder in that the number of bags purchased by the complainant from M/s Flying Craft Papers was reflected in the report as Kgs. The committee instead of checking up the position from the supplier concerned accepted it and by multiplying the quantity of 4380500 Kgs with 5 worked out the number of bags at 21902500 instead of actual figure of 4380500 bags, which was malafide act. The complainant had obtained a certificate from the aforesaid supplier showing that the figure given in the committee's report was the actual number of bags and not packing material in Kgs. The adjudication officer did not disagree with this position but held that complainant's objections to the findings of the committee were not sustainable because it had not joined the proceedings of the committee. The Additional Collector had also observed in his impugned O-I-O "however, the objection of the respondent that quantity of bags given by M/s Flying Craft Papers should be in number/bags instead of Kgs is valid", (iii) during the entire period the complainant's unit was working under supervised system of clearance and there was no likelihood of clandestine removal of cement, (iv) the impugned order was time barred in terms of mandatory provisions of section 36(3) of the Sales Tax Act, 1990 and 33(3) of the Central Excise Act, 1944. The order was passed much beyond the stipulated period prescribed for deciding the case, (v) the FBR had referred the matter to ADRC but no meeting of the committee took place, the FBR failed to monitor the case referred to the committee, (vi) through Finance Act 2006 time limit for adjudication of pending sales tax cases was extended upto 31.12.06. Since in this case the limitation had already expired before amendment in section 45 of the Sales Tax Act, 1990 the new provision was not applicable to the case. Even otherwise extension allowed could not be extended beyond 31.12.06. But the FBR in pursuance of second proviso to sub-section (1) of section 45 read with section 74 of the Sales Tax Act, 1990 through its order dated 18.08.07 extended the time limit in this case from 01.01.07 to 30.09.07 illegally. Extension could not be made beyond 31.12.06. There were no 'exceptional circumstances' for granting multiple extensions. Rule 10(3) of the Central Excise Rules was illegally invoked despite its omission from the Excise Rules.

11. The respondents, on the other hand, contend that (i) final judgment passed in the case was based not on the facts/figures and findings as reported by the reconciliation committee but on the basis of annual audit reports of the complainant for

the period from 07/95 to 06/2001. The differential bags numbering 6114456 were filled with cement (50 kg per bag) and clandestinely cleared. The charges were established as alleged in the show cause notice. The quantity of bags shown by the committee as having been used was not adopted for adjudication purposes. The complainant's objection to the committee findings was over-ruled because the complainant had deliberately absented itself from the proceedings of the committee. No doubt, the adjudication officer did observe that the objection of the respondents that the quantity of bags given by M/s Flying Craft Papers should be in numbers/bags instead of kgs was valid but the fact remained that the case was finally adjudicated on the basis of cost of packing material shown in the annual audited accounts of the complainant. Therefore, the contention of the complainant that raw material reported in Kgs was converted into bags and made the basis of adjudication was factually wrong, (ii) the allegation that the O-I-O was time bared is incorrect. The FBR had extended the time limit for deciding the case vide order dated 18.08.07 from 01.01.07 to 30.09.07 because the case was pending for consideration with the ADRC. The extension was allowed under second proviso to sub-section (1) of section 45 of the Sales Tax Act, 1990 vide FBR's order dated 18.08.07. Since it was a combined show cause notice for recovery of both excise duty and sales tax the extension so allowed by the FBR under the Sales Tax Act, 1990 did also cover, by implication, extension under the Federal Excise Act, 2005 also, (iii) the contention that rule 10(3) of the Central Excise Rules, 1944 could not be invoked as the same had been omitted at the time of issuance of show cause notice on 26.10.02 was not valid because at the time the contravention case was instituted against the complainant the aforesaid rule was in existence and was invoked for making past recoveries.

12. A perusal of both the show cause notice and the impugned O-I-O shows that complainant's case was adjudicated by the adjudication authority principally on the basis of facts and figures obtained from the annual audit reports of the complainant itself. As explained by the respondents also during the complaint proceedings the figures ascertained and reported by the Reconciliation Committee were not considered for adjudication purposes. Instead, the Additional Collector (Adjudication) took into consideration the cost of packing material obtained from the complainant's annual audit reports and worked out the actual number of bags at the average price per bag holding that 6114456 bags were not accounted for as the same were cleared packed with cement without payment of duty and taxes.

13. While passing the judgment the adjudication officer appears to have relied upon the number of bags i.e. 57952543 worked out as unaccounted for on the basis of price of packing material consumed by the respondent company given in each annual audit report and determined the tax and duty liabilities accordingly. It is observed that at the same time the adjudication officer seems to be drawing strength from the departmental reconciliation committee's findings by observing that *"this fact is further substantiated by the report of "Departmental Re-Conciliation Committee" headed by the Additional Collector, Central Excise & Sales Tax, Rawalpindi which was constituted by the then Collector (Adjudication) Customs, Excise & Sales Tax, Rawalpindi. According to the findings of the Committee 67,168,312 bags were sold to the respondent company by various manufacturers of papers sacks during the period from 1996 to 2001. Relevant portion of its findings is produced as below:-*

"It is evident from the details provided by the manufacturers of the papers sacks that the quantity of the papers sacks is greater than the quantity shown in the excise record maintained by the respondent and even exceeds from the quantity worked out by the audit team in two cases. It is therefore beyond doubt that the respondent evaded the taxes against the quantity of bags cleared but not accounted for".

The respondent also raised certain objections as to findings of the "Departmental Reconciliation Committee" which are overruled for the reason that the company had been given an opportunity to join the proceedings of the Committee and contest its case but it deliberately absented itself. However, the objection of the respondent that quantity of bags given by M/s Craft Paper should be in "numbers/bags instead of in Kgs is valid".

14. Since the departmental reconciliation committee was constituted by the then Collector (Adjudication), Customs and Excise, Rawalpindi and it had given its findings about a certain quantity of bags supplied to the complainant by various suppliers of bags/paper sacks during the period 1996 to 2001 it is not understood why the findings of the committee were not taken into consideration while working out the quantity of bags actually consumed and not accounted for, especially when the reconciliation committee was set up by the then Collector (Adjudication) for ascertaining the correct number of bags received and used by the complainant. It is also not understood why the complainant's objection to committee's findings, especially in regard to the number of bags received from M/s Flying Craft Papers was not considered, especially when this supplier had given a certificate that the bags supplied by it were actual number of bags and not the weight of material. The contention that complainant's objection to the findings of the committee was overruled because it had not joined the proceedings of the committee is not convincing for even if the complainant had not joined the proceedings of the committee the committee's report based on figures of bags supplied to the complainant by its suppliers was available on record and the adjudicating authority should have given this report its due weight also. During the complaint hearings it was argued by the complainant's AR that while working out the number of bags on the basis of cost of packing material shown in the annual audit reports the adjudication authority did not even take into consideration the fact that the cost also included freight and transport charges which were not excluded while making the calculation and that a large quantity of bags got busted which could not be considered as having been actually received or used. The adjudication authority should have considered both the annual audit reports of the complainant as well as the departmental reconciliation committee's findings alongwith complainant's objections on those findings and its other arguments to arrive at a just and fair conclusion. It is felt that the ends of justice will be met if the respondents again look at the complainant's case both in the light of annual audit reports of the complainant as well as the findings of the departmental reconciliation committee (giving the committee's report its due weight) and pass a fresh order after considering all of complainant's arguments and contentions on the merits of the case in accordance with the provisions of law.

15. The contention that the O-I-O was time barred has been explained by the respondents that the FBR had vide amendments in section 45 of the Sales Tax Act, 1990

and section 31 of the Federal Excise Act, 2005 given an omnibus extension in all cases pending as on 30.06.06 for deciding the same upto 30.12.06. It is observed that the show cause notice in this case was issued on 26.10.02 and it was pending as on 30.06.06. The same as per the aforesaid amendments could have been decided upto 31.12.06. Since it could not be decided by 31.12.06 the FBR allowed further extension upto 30.09.07 vide order dated 18.08.07 under section 45 read with section 74 of the Sales Tax Act, 1990 for which it was competent. While it is true that the extension was allowed only under the Sales Tax Act, 1990 and not under the Federal Excise Act, 2005, the fact remains that the time for deciding the case was extended vide order dated 18.08.07 because the complainant's case was pending for consideration with the ADRC appointed by the FBR. Although the extension was allowed under the provisions of Sales Tax Act, 1990 but since it was a combined notice for recovery of both excise duty and sales tax the extension for purposes of excise is also implied.

16. As regards complainant's contention that sub-rule (3) of rule 10 of Central Excise Rules, 1944 could not be invoked because the rule had been omitted vide SRO.328(I)/02 dated 15.06.02 this is to point out that the rule was in vogue at the time of instituting the contravention and was invoked in the show cause notice for recovery of excise duty pertaining to the past periods.

17. In view of the foregoing discussion, it is observed that the Additional Collector (Adjudication) committed 'maladministration' by ignoring (i) the findings of the departmental reconciliation committee, which was specifically set up by the Collector (Adjudication) to reconcile the number of bags which were actually received by the complainant from its suppliers and consumed during the period in question, (ii) the objections of the complainant on the findings of the committee (ignoring also the certificate given by M/s Flying Craft Papers) and on the determination of number of bags on the basis of cost of packing material. Accordingly, it is recommended that the Revenue Division direct the competent authority to:

i. Reopen the impugned O-I-O No.23/2007 dated 27.09.07 under the provisions of section 45A of the Sales Tax Act, 1990 and section 35 of the Federal Excise Act, 2005, set aside the same and decide the complainant's case afresh on its merits in accordance with the provisions of law after considering the annual audit reports of the complainant, the findings of the departmental reconciliation committee and all of the complainant's arguments and objections, including those on the findings of the committee and on the indirect method of determination of number of bags on the basis of cost of packing material.

ii. Compliance be reported within 30 days of the receipt of this order.

(Justice (R) **Munir A. Sheikh)**
Federal Tax Ombudsman

Dated: -2007

BEFORE THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

COMPLAINT NO.1102/2006

M/s. Captain Cook's Fast Food,
Islamabad. ...Complainant

Versus

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

Dealing Officer: ...Shamim Ahmad, Adviser

FINDINGS/DECISION

Present: Mr. Faraz Fazal, A.R and Mr. Javaid Qureshi, the Complainant.
Mr. Zulfiqar Hussain Khan, DC (Sales Tax) &
Mr. Ghulam Mustafa, A.C, DRs, for the Respondent.

The Complainant is registered under the Sales Tax Act, 1990 (the Act) and runs a fast food restaurant. It claimed to be bonafide taxpayer and never defaulted on payment of taxes. The brief facts of the case are narrated as follows:

a) The Respondent audited the Complainant's accounts for the second time and issued different observations on 12-11-2002. It was alleged that the utility bills did not contain the G.S.T No., name and address of the Complainant. It was stated in the complaint that this objection was never raised in the first audit.

b) A Show Cause Notice (S.C.N) was issued on 31-05-04. It stated that the bills and invoices of electricity, sui gas, telephone bills and purchase of food stuff on which adjustment of input tax was claimed did not contain the name, address as well as registration number of the Complainant. The inadmissible input tax credit/adjustment was calculated at Rs.137,672.

c) The Complainant replied with proper supporting documents which briefly stated as follows:

   i. Electricity Bills. The Complainant produced the photo copies of the bills endorsed by the Customer Services Officer, Islamabad Electricity Supply Company (IESCO). The electricity department was also requested to mention the GST number on the bills pertaining to subsequent periods. They now carry the said number. Copies of the bills were produced at the time of hearing.

ii. Sui Gas Bills. Photo copies of these bills were endorsed by the Senior Billing Officer of SNGPL, Islamabad.

iii. Telephone Bills. Photo copies were endorsed from Data Processing Assistant of the department.

iv. Purchase of PEPSI. The distributor of PEPSI issued only cash memos and did not issue invoices to the customers as per their practice. However, a letter from Hadri Bevegages (Pvt) Ltd was obtained which confirmed the quantity of supplies as well as the sales tax paid.

v. Similar was the case with regard to all the purchases of mineral water, Value Chicken and the packing material.

vi. The Assistant Collector (Adjudication) did not entertain the submissions of the Complainant and passed the Order.In.Original (O.I.O) bearing No.130 of 2006 dated 21-10-2006 after lapse of 30 months of the issuance of S.C.N, thereby violating the limitation provided u/s 36(3) of the Act.

vii. Quoting the judgement of a Special Bench of Tribunal bearing STA No.23/ST/IB/2004 dated 31-01-2006 and two other judgements, it was claimed that the input taxes were admissible on the utility bills if the same were installed in the premises of the registered person in the light of Section 7 of the Act.

viii. It was prayed that due to the time barred nature of the O.I.O and the unjustifiable disallowances of the input tax, it may be quashed.

2. The Deputy Collector (Law), Collectorate of Sales Tax & Federal Excise, Rawalpindi in his written arguments raised the preliminary objection that the matter fell outside the jurisdiction of the honourable F.T.O in terms of Section 9(2)(b) of the Establishment of the Office of Federal Tax Ombudsman Ordinance 2000 (FTO Ordinance) because it related to assessment of income, determination of tax liability etc. Second preliminary objection raised was that the O.I.O was assailed before the Collector (Appeals) u/s 45B of the Act and therefore is debarred from being entertained by the F.T.O Office.

3. On merits of the case, it was submitted as follows:-

a. The Complainant violated the provisions of Section 7(1), 7(2)(i) and 23(1)(a)(b) of the Act. They envisaged that the invoices ought to contain the name, address and registration number of the supplier as well as the recipient.

b. "Special Procedure For Collection and Payment of Sales Tax on Electric Power" had specified that electricity bills issued by electric

power distribution company shall be treated as a tax invoice for the purpose of claiming input tax provided they contained the registration number and address of the business premises of the registered person as well as those of the supplier. The electricity and sui gas bills submitted by the Complainant showed the name of the previous owner of the premises. Therefore, the condition of SRO was not fulfilled. It was emphasized that the provisions of Section 7(2)(i) clearly stated that for claiming input tax, the invoices should bear the registration number of the registered person.

c. The limitation provided u/s 36(3) of the Act was waived by the insertion of Section 45(2) of the Act by the Finance Act 2006. By this amendment the period was extended upto 31-12-2006.

d. It was prayed that the complaint be dismissed as infructuous as no act of maladministration was committed while passing the O.I.O.

4. The Complainant, the A.R and the two D.Rs attended during the course of two hearings. The case was discussed at length. The A.R, in addition to his written arguments, stated that the Complainant applied to the relevant agencies like IESCO, Sui Gas and telephone company for the change of name in their respective bills when he took over the business from the previous owners. The agencies did not oblige in time and continued to give the name of the previous owners. This was not the fault of the Complainant and he could not be denied the adjustment of input tax because of the default of some other agencies. In this regard the relevant correspondence was produced. The decisions of the Tribunal referred to in para 2 (vii) above were also relied upon.

5. Another point raised by the A.R was that not only the Tribunal had decided in favour of the registered person when number and name was not given on the bills but also the sales tax department accepted this point. He produced copy of the O.I.O No.91/2005 dated 30-07-2005 where the bills which did not carry the registration number and the name of the registered person but verified by the authorised officer later were accepted. The Complainant had followed the identical procedure by having its bills/invoices verified from the relevant authorities later.

5.1 He also emphasized the time-barred nature of the O.I.O and argued that the insertion of sub-section (2) of Section 45 of the Act could not possibly have a retrospective effect because *"where a statute effects a substantive right, it operates prospectively unless by an express enactment of necessary intendment retrospective operation has been given"*. (Civil Petitions No.999/K, 1000/K of 2001 dated on Ist July, 2002 by the honourable Supreme Court of Pakistan).

6. The D.R stated that the Complainant did not produce the judgement of the Tribunal at the time when the adjudication proceedings were being conducted, thereby implying that had he done so his point of view could be considered.

6.1 He, however, emphasized that the Complainant failed to fulfil the requirements of Sections 7 and 23 of the Act.

7. Discussing the fact of filing of appeal before the Collector (Appeals) immediately one day after the filing of complaint under consideration, he discussed the contents of the order of the honourable President of Pakistan contained in Law, Justice and Human Rights Division's letter No.191/2005-Law(FTO) dated 22-05-2006. The relevant portion is quoted as follows:

> *"Where a complainant files departmental appeal after making complaint, the President's view is that departmental appeal have preference over the FTO's jurisdiction to investigate the matter. The reason is that departmental appeal is part of judicial process and the matter may reach the Supreme Court through Appellate Tribunal and High Court whereas the FTO's jurisdiction is administrative to identify maladministration. Thus, the FTO's findings/recommendations cannot be sustained".*

7.2 He also brought on record the findings of the honourable President of Pakistan as contained in Law, Justice and Human Rights Division's letter No.16/2006-Law(FTO) dated December, 2006. The relevant portions are quoted below:

> *"The department contested the complaint on the grounds: (a) that the matter raised in the complaint related to determination of tax in respect of which legal remedy of appeal is available to the complainants therefore the FTO has no jurisdiction to investigate the complaint in view of the bar of jurisdiction contained in section 9(2) of the Establishment of the Office of Federal Tax Ombudsman Ordinance 2000; (b) that since the complainants have filed appeal against the impugned OIO under the relevant legislation the FTO should not exercise his jurisdiction".*

> *"The FTO did not stop the investigation notwithstanding that the complainants had filed statutory appeal against the impugned OIO before the Collector on the ground that the appeal was filed after filing the complaint and was not pending on the date of the receipt of the complaint as provided in section 9(2) of the Establishment of the Office of FTO Ordinance 2000".*

> *"The FTO's jurisdiction is primarily administrative jurisdiction. It must give way to the judicial jurisdiction. The Collector Appeal's decision is appealable before the Customs Appellate Tribunal and therefore before the High Court and the Supreme Court. The FTO ought to have stopped investigation of the complaint when he learnt that the complainants have availed legal remedy of appeal against the impugned OIO under the Sales Tax Act, 1990".*

On the strength of the above observations, the honourable President of Pakistan directed that the FTO's recommendations in complaint No.1241-L/2005 be set aside.

8. In respect of above observations of the honourable President of Pakistan, the A.R submitted as follows:

The observations of the honourable President of Pakistan in Law, Justice and Human Rights Vision's letter dated 22-05-2006 as referred to in para 7 above was superseded by his own observation as contained in Law, Justice and Human Rights Division's letter No.144/2005-Law(FTO) dated 12-07-2006 as apparent from the following:

"The President's decision in complaint No.335/2002 pertained to the matter where an action on the part of the public functionary was likely to affect the right of a citizen and not where the public functionary was empowered to create liability. The FTO's decision thus must be sustained".

8.1 In respect of the observation of the honourable President in the letter of December 2006, he stated as follows:

i. The Complainant had not come before this honourable forum against the determination of tax but against the maladminstration committed by the Respondents. The decision by the Tribunal quoted above and the judgement of its own officers accepted the invoices which did not contain the registration number. The Respondents ignored these decisions thereby committing injustice and discrimination, which therefore squarely fell in the definition of maladministration.

ii. The Complainant invoked the administrative jurisdiction of the honourable FTO because of the acts of maladministration committed by the Respondents as clarified above. Therefore no judicial jurisdiction of the Collector (Appeals) was violated.

iii. Sections 9(2)(a) of the F.T.O Ordinance clearly stated that the matter should not be subjudice "*on the date of receipt of a complaint*". This point was not considered.

9. The arguments of the two sides, both written and oral, were duly considered. First of all the preliminary objection raised by the Respondents are taken up as follows:

The provisions of Section 9(2)(b) of the F.T.O Ordinance have to be read in conjunction with the provisions of Section 2(3) which define maladministration. Whenever maladministration is committed, the honourable F.T.O acquires jurisdiction in that case. Section 9(2)(b) of the FTO Ordinance debars the jurisdiction of the honourable FTO which relate to assessment of income, determination of liability of tax or duty etc. However, if it is a case of maladministration, the provisions of Section became inoperative. The definition of maladministration is very wide and inclusive in nature and includes decisions, processes, recommendations, act of omission of commission which are contrary to law, rules and regulations and are perverse, arbitrary, unreasonable, unjust, biased, oppressive or discriminatory.

10. As pointed out by the A.R also the Complainant came before this forum to challenge the maladministration of the Respondents. This objection is, therefore, overruled.

10.1 Another objection raised was that, as the Complainant has filed an appeal before the Collector (Appeals) u/s 45B of the Act, the jurisdiction of the honourable FTO is ousted. In making this statement, however, the Respondent have ignored the fact that the matter would be considered subjudice, if any appeal had already been filed on the date of receipt of the complaint within the meaning of Section 9(2)(a) of the FTO Ordinance. According to the fact, accepted by both the parties, the complaint under consideration was filed on 17-11-2006 and the appeal on 18th of November 2006. This point will be discussed at length while considering the contents of the Law, Justice and Human Rights Division's letter dated December 2006. This objection is also overruled.

11. Considering the merits of the case, one main point which emerges is that the Respondents did not challenge the fact of payment of input tax. The only objection raised from their side was that the invoices under consideration did not fulfil the various conditions laid down by the Act as well as the SROs. It is also noteworthy that it was emphasized time and again that the decision of the Tribunal and that of the Additional Collector (O.I.O NO.91/2005 dated 30-07-2005) was not brought to the notice of the adjudicating authority at the relevant time.

12. At this stage it is considered appropriate to discuss the various issues raised in the relevant judgements of the honourable President of Pakistan. I agree with the point of view of the A.R that the observation of the honourable President of Pakistan as contained in their letter of 22-05-2006 stood superseded by the observation in their letter dated 12-07-2006. The observation contained in the letter of December 2006, however, need a thorough study.

13. The decisions of the honourable President of Pakistan have been carefully considered. It could be observed that every case has its own peculiar facts and circumstances, which have to be kept in view at the time of deciding them. It appears that when the case was placed before the honourable President for decision, following crucial points were not brought to his notice:

a. That the complaint did not relate to assessment of income or determination of liability of tax or duty, but the maladministration which was committed by the Respondents. The fact of commitment of maladministration has been discussed at length above. Therefore, in taking up this complaint, this office did not transgress the judicial jurisdiction of the Collector (Appals). The investigation in respect of the complaint under consideration is only an exercise of the administrative jurisdiction because of the commitment of maladministation by the Respondents.

b. The complaint would be considered subjudice, only on the date of its receipt according to the provisions of Section 9(2)(a) of the FTO Ordinance as pointed out above which was not taken into account.

14. Therefore, it is evident that the case was not placed before the honourable President in its true perspective for it is based on a presumption that the complaint related only to assessment and determination of duty and no maladministration was committed. Any order or decision passed or made by any officer of the Revenue Division could be taken up by this office and declared to have suffered for maladministration.

15. The relevant statutes were also examined.

i. Sub-section (1) of Section 7 only talks of entitlement to deduct input tax and does not deal with the requirement of the claim which are contained in sub-section (2). It is, therefore, not relevant.

ii. The words "in his name and bearing his registration number" were inserted in clause (i) of sub-section (2) of Section 7 of the Act by the Finance Act 2003. The complaint under consideration relates to the year 2001. Therefore, these words are not applicable on the complaint under consideration.

iii. The conditions laid down u/s 23(1)(a)(b) were also fulfilled by the subsequent endorsement of the name and the GST No. of the Complainant by the relevant authorities. Therefore, the said conditions also stand fulfilled.

16. The claim of the A.R that the insertion of sub-section (2) of Section 45 of the Act could not have retrospective effect were also considered in the light of the judgements of the honourable Supreme Court of Pakistan. The retrospective effect surely would not apply when the express intendment and retrospective operation is not contained in the statute. The wordings of the said sub-section are, however, different, which clearly show the intendment of retrospective effect. The objection raised by the A.R is overruled.

17. The above discussion clearly brings out that the Respondents committed acts of maladministration by refusing to allow the credit of input tax duly paid by the Complainant. The impugned O.I.O, therefore, can not be sustained.

18. It is, therefore, recommended that:

a. The competent authority to reopen the O.I.O bearing No.130 of 2006 dated 21-10-2006 and allow the complainant the deduction of input tax duly paid by him.

b. The compliance of the above-mentioned recommendation should reach this office within 45 days of its receipt by the Secretary Revenue Division.

(Justice (R) Munir A. Sheikh)
Federal Tax Ombudsman

Dated: -2007

BEFORE THE FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE, KARACHI

COMPLAINT NO.358-K/2007

M/s F.K. Enterprises
207, 3rd Floor, Munir Centre
Shahrah-e-Liaquat
Karachi. ...Complainant

Versus

Secretary
Revenue Division
Islamabad. ...Respondent

Dealing Officer: Mr. M. Mubeen Ahsan, Advisor

FINDINGS/DECISION

Present: Mr Nadeem Ahmed Mirza, Consultant
Mr Shafique Ahmad, Deputy Collector of Sales Tax
Mr Tariq Hussain Sheikh, Assistant Collector of Sales Tax

The complaint has been filed against the Collector (Enforcement) Sales Tax and Central Excise, Karachi, alleging maladministration for not refunding Rs.100,000/- forcibly recovered on 06-05-2004. The order-in-original for recovery was passed on 01-02-2006 against which appeal was allowed by the Collector (Appeals) vide order dated 30-05-2006. It has been alleged that the Complainant's Consultant sent representation for refund to the Respondent vide a letter dated 09-08-2006 and reminders dated 23-09-2006, 15-11-2006 and 18-12-2006. On telephonic instructions from the Respondent the desired documents were sent vide letter dated 28-12-2006 and another reminder was sent on 14-02-2007 but no action was taken. It was alleged that this was a case of maladministration under sub-section (3) (iii) of section 2 of Ordinance No. XXXV of 2000.

2. It has been stated in the complaint that the Complainant is a commercial exporter of textile goods registered with the Sales Tax Department since 2002. The refund of Rs.538,635/- was sanctioned to the exporter and cheque was issued but subsequently he faced enormous harassment at the hands of the officials of the Collectorate and he was pressurized to submit to the Department a pay order of Rs.100,000/- dated 06-05-2004 against the previously sanctioned amount.

3. After lapse of considerable time an order-in-original dated 01-02-2006 was received directing the Complainant to pay the sanctioned amount alongwith additional tax and penalty of Rs.25,000/- or 100% of the amount of tax involved

whichever higher under sections 34 and 33(b) of the Sales Tax Act. This order was passed without issuing a show cause notice. The legality of the order-in-original was challenged under section 45B of the Sales Tax Act before the Collector (Appeals) and the Collector vide order-in-appeal dated 30-05-2006 allowed the appeal setting aside the order-in-original with the observations that "(a) no show cause notice was issued/received nor had the Department shown compliance of section 56 (b) the record of the appellant was audited and the High Court has also intervened (c) all companies mentioned in the FIR are not corresponding to the appellant transaction and (d) no contravention of the rule by the appellant according to the body of show cause notice" had been committed. Consequently, by virtue of this order the amount of Rs.100,000/- forcibly recovered was refundable to the Complainant alongwith additional amount under section 67 of the Sales Tax Act.

4. It was further stated that it was incumbent upon the Respondent to sanction the refund immediately on receipt of order-in-appeal but it was not sanctioned despite the aforesaid letter and reminders. Only a telephonic call was received inquiring about the Group of the case and another call for copies of order-in-original and order-in-appeal, which had already been submitted but were again sent vide letter dated 28-12-2006 reiterating the request to refund the additional amount within the specified time. Complainant again sent a reminder dated 14-02-2006 to comply with the order-in-appeal and sanction the refund alongwith additional amount failing which a complaint would be filed before the Federal Tax Ombudsman. Despite the above correspondence, the refund of Rs.100,000/- forcibly recovered and the additional amount had not been paid and there was no hope of payment in the near future. It was requested that the Respondent be directed to refund Rs.100,000/- and additional amount @ 14% per annum under section 67 of the Act and any other relief deemed fit and prayer be granted.

5. In reply to the complaint, Secretary (TO) CBR forwarded copies of the letter dated 07-04-2007 of the Collector of Sales Tax and Sales Tax Refund Payment Order dated 06-04-2007 for Rs.100,000/-. During the hearing of the complaint on 30-04-2007, the Consultant representing the Complainant stated that the refund had been made but the second request for compensation under section 67 of the Act from the date of payment 06-05-2004 had not been granted. He argued that in the appeal before the Collector (Appeals) the prayer for additional amount had been made and by allowing the appeal the Collector in fact also allowed payment of the additional amount. He also stated that in an identical case the Federal Tax Ombudsman had allowed the compensation. It was observed that the Department had not submitted a reply to the allegations made in the complaint and merely forwarded a copy of the refund order. A serious view of this lapse was taken by this office and the Deputy Collector of Sales Tax was asked to furnish a complete reply within seven days.

6. The learned Consultant submitted another application containing additional arguments as follows:

(i) Instead of conducting investigation of the documents the office of the Complainant was raided by the officials Mr Najeeb-ullah Jaffri,

Mr. Jahengir and Mr Mohsin Shah on 04-05-2004 who created ugly scenes. They remained in the office for three to four hours and forcibly checked the records.

(ii) The Advocate of the Complainant sent a legal notice dated 05-05-2004 to the Collector (Enforcement) against the rude attitude and misbehavior of the public servants; subsequently the Complainant under protest sent a pay order of Rs.100,000/- dated 06-05-2004.

(iii) The officials denied harassing the Complainant and the Deputy Collector sent a letter dated 13-10-2004 for supply of sales tax record already available in his office. The Complainant approached the High Court of Sindh for redress of his grievances through Constitution Petition and notices to all concerned including Najeeb-ullah Jaffri Deputy Superintendent, Jahengir, Deputy Superintendent and Mohsin Shah, Inspector were issued. They appeared before the High Court and tendered unconditional apology to the Complainant and the Court and undertook to proceed strictly within the parameters of law.

(iv) High Court disposed of the petition with the direction that any action against the petitioner should be taken in accordance with law and due opportunity of hearing be provided.

(v) Contrary to the direction of the High Court's order, the Complainant received order-in-original No.7 of 2006 dated 01-12-2006 based on the facts of some other case. This order was passed without a show cause notice which was set aside by the Collector (Appeals) vide order dated 30-05-2006. It was reiterated that since Rs.100,000/- had been forcibly recovered against lawfully sanctioned refund and eventually sanctioned on 21-04-2007, additional amount under section 67 of the Act was due from the date of recovery i.e. 06-05-2004.

(vi) The Consultant referred to the following decision of the Federal Tax Ombudsman contained in the order in defiance application in complaint No.164-K/2006:

> "the argument that in such a case section 67 was not applicable has no substance. The matter at all the stages centered around the decision by one authority or the other on the question whether the amount was due to the complainant and if ultimately the appellate authority held that the same was due and rightly paid to the complainant which was wrongly recovered shall be deemed to fall under section 67 and not that the same was payable independently from section 67 of the act."

It was requested that the additional amount be ordered to be paid to the Complainant for the sake of equity, justice and fair play.

7. The Assistant Collector of Sales Tax finally submitted reply to the contents of the complaint that the Complainant was found connected with the racket of M/s Al-Jadded Enterprises against whom criminal proceedings were subjudice before the Special Judge (Customs and Taxation), Karachi. During the course of inquiry it was revealed that the Complainant had also claimed refund of Rs.538,625/- against flying and fake invoices. Keeping in view the gravity of the case the Complainant submitted pay order Rs.100,000/- against the liability. Adjudicating proceedings were initiated and the decision of the adjudication authority in favour of the Department was set aside in the order-in-appeal. Complainant filed refund application on 09-08-2006 and the amount of Rs.100,000/- was refunded vide order dated 18-04-2007 voluntarily to avoid any adverse action. It was stated that it was not mandatory to sanction refund on receipt of order-in-appeal until claim was filed under section 66 of the Sales Tax Act. In this case the Complainant applied for refund on 09-08-2006 whereas the additional amount under section 67 of the Act was due only on refund claim filed under section 10 of the Act. It was stated that since the amount of Rs.100,000/- had been sanctioned, the complaint be rejected.

8. During the hearing of the complaint, the Consultant stated that refund was originally paid under section 10(2) of the Sales Tax Act and since the amount of Rs.100,000/-forcibly recovered was to be refunded as decided by the Collector (Appeals), it was payable under the same section and there was no need of a fresh refund application. According to him the order-in-appeal dated 30-05-2006 was the document on the basis of which refund should have been paid. The Complainant sent a letter dated 09-08-2006 to remind the Department of the delay in payment and not an application of refund.

9. Assistant Collector of Sales Tax replied that according to the practice it was necessary for the Complainant to file a refund application. However, there were no written instructions about this practice and the Assistant Collector did not produce any precedent to support his claim. He referred to section 66 of the Act which primarily referred to the period within which refund could be claimed.

10. He further stated that this was a case of misconception on the part of the Department due to which the recovery was made but when the appellate order was passed in favour of the party it should have applied for refund and it was wrong that it was the duty of the Department to pay refund on the basis of the appellate order. He argued if this were the case there was no reason to incorporate the second proviso under section 66 of the Act which specifically mentioned about the period during which the refund should be applied for consequent on the decision of any officer or Court of competent jurisdiction. He further stated that the additional payment as provided under section 67 did not apply to the circumstances surrounding the payment of refund in this case.

11. The learned Consultant argued that consequent on the issue of order-in-appeal dated 30-05-2006 the Complainant was not required to make an application for refund. Nevertheless a letter was sent to the Department for payment followed by several reminders. But the Department did not make any refund. Ultimately a complaint was

Honourable Federal Tax Ombudsman with the Officers and Staff of the Federal Tax Ombudsman Secretariat, Regional Office, Karachi

filed to the Federal Tax Ombudsman on 10-03-2007 as a result of which the payment was made by the Department on 18-04-2007. Under the aforesaid circumstances, he argued, since the recovery of Rs.100,000/- was made on 06-05-2004 and was ultimately refunded on 18-04-2007, the Complainant was entitled to additional amount under section 67 of the Act for the period 06-05-2004 to 18-04-2007. He did not agree that the payment would be due from the date of order-in-appeal i.e. 30-05-2006 to 18-04-2007, the date of refund.

12. The submissions made by both the sides have been examined. It has been established that against a sales tax refund of Rs.538,625/- the amount of Rs.100,000/- was recovered vide pay order dated 06-05-2004 by exercising coercive measures. It has also been established that order for recovery was passed by the Deputy Collector much later i.e. on 01-02-2006 without issuing a show cause notice against which appeal was allowed by the Collector (Appeals). The recovery was made illegally without applying due process of law, which clearly shows that the sales tax staff intimidated the Complainant to pay the amount without any lawful order. Even when the appeal was allowed by the Collector (Appeals) two years later, the refund was not made till a complaint was filed in this office on 10-03-2007 and payment was made vide order dated 06-04-2007. The argument that the Complainant should have filed a formal claim is not acceptable. If it was believed that for compliance of the order of Collector (Appeals) a formal refund application was necessary, it was the duty of the dealing officials to advise the Complainant to file such an application. Maladministration against the Department is established.

13. Since the Complainant was forced to pay Rs.100,000/- on 06-05-2004 without lawful authority which was eventually refunded on 18-04-2007, he is entitled to payment of additional amount under section 67 of the Act for the period from 06-05-2004 to 18-04-2007. It is recommended that FBR direct the Collector of Sales Tax to

(i) pay the amount in accordance with the rate(s) prescribed under section 67 of the Act within thirty days; and

(ii) compliance be reported to this office within forty five days.

(Justice (R) **Munir A. Sheikh)**
Federal Tax Ombudsman

Dated: -2007

BEFORE THE FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE , KARACHI

COMPLAINT NO.533-K/2007

M/s. Lion Box Factory
D-237, Opp: S.G. Rayon, SITE,
Karachi. ...Complainant

Versus

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

Dealing Officer: ...Mr. Shamshad Ahmad, Consultant

FINDINGS/DECISION

Present: Mr. Abbas Bhojani, Complainant
Dr. Ahsan Khan, Asstt. Collector of Sales Tax
Dr. Ali Raza, Asstt. Collector of Sales Tax

M/s. Lion Box Factory, Karachi, registered as manufacturer with the Sales Tax Department about two decades ago lodged a complaint that the Department vide letter dated 23-03-2007 de-registered them with retrospective effect from 01-07-2004 on the grounds that their turn-over during 2003-2004 was below Rs.5 million and advised them to apply for fresh registration.

2. Mr. Abbas Bhojani , Proprietor of the Factory admitted that their turn-over amount during the above said period was correctly mentioned in the Department's letter. But he stated that he was first informed about de-registration vide Department's letter dated 23-3-2007 intimating that they stood de-registered from 01-07-2004. He added that he had been submitting the Sales Tax Returns regularly on monthly basis alongwith the summary under section 26 (5) of the Sales Tax Act, 1990 and obtained acknowledgements. He further stated that sales turn-over during the year 2005-2006 was above Rs.5 million i.e. Rs.7.213 million while during the current financial year 2006-2007 (upto 07-02-2007), sales have reached Rs.3.249 million. Further, Department has withheld Factory's suppliers/customers heavy refunds and as such suppliers made the Factory to suffer a big financial loss of about Rs.19 lacs.

3. Department stated in its comments that Complainant was de-registered by virtue of Federal Government's Policy announced in budgetary measures 2004-2005 with regard to sales tax payers having turn over of less than Rs.5 million during the period 2003 – 2004. It was stated that Federal Government abolished the Turn Over

Tax/Enrolment Scheme and rationalized the exemption threshold by raising the ceiling to Rs.5 million for both manufacturers and retailers vide CBR letter dated 30-6-2004. Accordingly all the manufacturers and retailers enrolled under section 14 of the Sales Tax Act, 1990 whose annual turn over during the last 12 months was below Rs.5 million stood de-registered with effect from 01-07-2004. It was stated in the comments that annual turn over of Complainant during financial years 2003- 2004, 2004-2005, 2005-2006 & 2006-2007 was Rs.3.7 million, Rs.2.560 million, Rs.7.213 million & Rs.3.249 million respectively. Complainant lost the registration due to turn-over of Rs.3.7 million which was less than the required amount of Rs.5 million during the period 2003-2004.

4. Department further stated that Complainant submitted an application for restoration of registration which was forwarded to the Central Registration Office, CBR, Islamabad on 10-01-2007 but it was not acceded to vide CBR's letter dated 12.3.2007. Complainant was accordingly intimated and advised to apply for fresh registration. Hence, no mal-administration was committed by the Department and requested to file the complaint.

5. During the hearing, Complainant reiterated the points stated above and prayed for restoration of registration with retrospective effect. Complainant stated that some other units were not deregistered although they did not fulfil the above said requirements. He added that he shall suffer unbearable big financial loss of Rs.19 lac and would be in deep troubles to run the factory if not allowed restoration at least from the year 2005-2006. He was particularly perturbed for the Department failed to forward his last application dated 12-03-2007 for restoration seeking benefit on the basis of performance during the year 2005-2006 (Rs.7.213 million).

6. When asked about pendency of the above said application, Assistant Collector promised to take up the case now with CBR forwarding the request duly recommended within two days and endorse its' copy to this office. He preferred to remain silent when inquired about the refund cases.

7. Assistant Collector did not forward copy of letter to CBR as mentioned in the foregoing paragraph although he was reminded over phone twice. Later he did not attend the hearings on 28-6-2007 and 03-07-2007 being on leave as stated by Dr. Ali Raza, Asstt. Collector who attended and requested for adjournment. He however, submitted copies of two letters including the letter sent by the Collector, Sales Tax to CBR for restoration of the Registration from 01-07-2005. Adjournment being the last chance was granted for 12-7-2007 but no one appeared from the Department on this date.

8. Meanwhile Department sent a letter dated 13-7-07 for re-fixing of hearing on the ground that last hearing was not attended as the notice was received late. On the above request of the Department, hearing was fixed on 28-7-2007 but it was also not attended by their any representative.

9. From the facts stated above it has been established that the Department, in accordance with the CBR's directive in the budget measures of 2004-2005, correctly but unilaterally deregistered the Complainant's unit as no intimation to this effect was given to them. The unit remained under impression that it continued to be a registered unit and kept on filing monthly sales tax returns regularly and also submitted summaries of invoices under section 26(5) of the Sales Tax Act. On the Complainant's part it remained registered because there was no negative response on receipt of monthly returns. After a gap of three years, intimation was given vide letter dated 23-03-2007 that the unit had been deregistered w.e.f. 01-07-2004. It was admitted by the Department that it was in its knowledge that during the year 2005-06 the annual turnover had exceeded the ceiling of Rs.5 million and the turnover was Rs.7.213 million but it did not restore the registration or ask the Complainant to apply for and obtained registration w.e.f. 01-07-2005.

10. This is clearly a case of maladministration on the part of the Department because the Complainant all the time presumed that it was a registered unit and was keen to remain so but the Department did not take appropriate action even when the turnover exceeded the ceiling. It was also an act of maladministration that under CBR's order the unit was deregistered but Complainant was not informed, although it might have published news in one particular newspaper as told. It has also been noticed that Departmental representatives attending hearings were neither fully conversant with the facts of the case nor they did fulfil the promises made before this office. They also sought several adjournments. Their attendance was not punctual and regular and when they did attend hearing they did not report any progress as promised by them.

11. It is therefore, recommended that CBR.

a) restore registration of M/s. Lion Box Factory with effect from 01-07-2005;

b) direct the concerned Departments to ensure that representatives of the Department attend hearings with punctuality and regularly.

c) Compliance be reported to this office within forty five days.

(Justice (R) **Munir A. Sheikh)**
Federal Tax Ombudsman

Dated: -2007

CASES RELATED TO INCOME TAX

BEFORE THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

COMPLAINT NO.1104/2006
(Assessment year 1998-99)

&

COMPLAINT NO.1121/2006
(Assessment year 1999-2000)

M/s Moosa Textile Mills (Pvt) Ltd.,
Faisalabad ...Complainant

Versus

Secretary,
Revenue Division,
Islamabad ...Respondent

Dealing Officer: ...Muhammad Daud Khan, Adviser

FINDINGS/DECISION

Present: Syed Saghir Tirmizi, Advocate &
Mr. Hassan Askari, Advocate for the complainant (ARs).
Mr. Masood Ahmad, DCIT, Faisalabad for the respondent (DR).

These two complaints are against the reassessments framed under sections 62/132 of the repealed Income Tax Ordinance of 1979 (hereinafter referred to as the repealed Ordinance). The complaints are against the estimation of receipts and additions out of the claimed overhead expenses. This is second round of litigation. Earlier the assessments framed for both years with somewhat similar additions to income were set aside for fresh assessment by the first appellate authority which decision was upheld by the Income Tax Appellate Tribunal. However, in the reassessment orders also more or less the same additions have been repeated without, according to learned ARs, supporting the same with proper, cogent or plausible material, and reasons for the rejection of assessee's accounting versions for the two years.

2. The taxpayer derives income from conversion of yarn into knitted fabrics. This is accepted by the department. However, for assessment year 1998-99 an addition of Rs.407,042 was made to the trading account by estimating the conversion receipts at Rs.8,268,192 against the declared Rs.7,279,786 and working out GP at the declared percentage of 41.25% at Rs.3,410,629 against Rs.3,003,587 declared. Addition from miscellaneous income was made at Rs.50,000 against Rs.100,000 as per original order.

Additions of Rs.141,595 were made from P&L account against such addition of Rs.172,680 as per original assessment order after allowing a partial relief of Rs.31,085 by the CIT (Appeals) vide his order dated 30-5-2002 under the Heads "Vehicle Running Expenses" and "Director Travelling" which were maintained by ITAT. Brought forward loss of Rs.2,549,568 was not adjusted against the income assessed because the same pertained to period when assessee's income was exempt from tax under clause (118-E) of Second Schedule to the repealed Ordinance, 1979. Income was thus assessed at Rs.254,920 against declared loss of Rs.424,802 for the year. Income for six months was assessed at Rs.127,460 as income was covered by the exemption for first six months of the year. The assessee feels aggrieved with the treatment meted out and hence this complaint for alleged maladministration in assessee's view.

3. For the assessment year 1999-2000 the taxpayer is aggrieved with addition of Rs.552,619 in the trading account, Rs.100,000 for miscellaneous income and adbacks out of P&L expenses at Rs.622,906. Income was assessed at Rs.389,508 against declared loss of Rs.886,017 and originally assessed income of Rs.297,348. An addition of Rs.100,000 from miscellaneous expenses was now made which was not made in the original assessment. Brought forward losses were ignored for same reasons as for last year i.e. same pertained to tax exempt period and were, therefore, in department's view not adjustable against the income of the period for which assessee's income was liable to tax. All this, in assessee's view, constitutes maladministration liable to action under the Establishment of the Office of Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance).

4. The learned ARs while arguing their case vehemently assailed the treatment meted out for both the years on all counts. According to them, sales are completely verifiable. Sales tax of Rs.441,798 for year 1998-99 (six months) and Rs.1,103,569 for 1999-2000 was withheld and deposited in government treasury under the Sales Tax Act 1990. There was no justification for adbacks from overhead expenses since all expenses were verifiable and pertained to assessee's business. The quantum of additions was anyway excessive. No notice as required under proviso to section 62(1) of the repealed Ordinance was issued for all such additions. Thus for 1999-2000 the taxpayer's complaint in respect of disallowances from overhead expenses is restricted to additions under five heads not mentioned in notice dated 28-3-2006 (stated on page 3 of the complaint). Similarly for this year (1999-2000) loss on sale of machinery at Rs.417,081 was disallowed for being allegedly unverifiable which was claimed to be wrong since the sale was claimed to be verifiable. Moreover the treatment meted out was stated to be wrong since it was without specific notice under proviso to section 62(1) of the repealed Ordinance. A full Bench decision of the Tribunal 1999 PTD (Trib) 1528 was cited to claim adjustment of the BF losses against the income assessed but no notice was taken of the same and loss disallowed without merit. They also complained that all the arguments/pleas raised during the reassessment proceedings were simply ignored which

was maladministration. Reference was made to this office decision cited as 2005 PTD 693. They, therefore, prayed for grant of reliefs as claimed in the complaints.

5. The learned DR challenged the jurisdiction of this office in the matter for both the years u/s 9(2)(a) & (b) of the FTO Ordinance. According to him, the matter pertained purely to assessment (which includes reassessment) and was, therefore, outside the jurisdiction of this office. He also informed that the taxpayer had filed appeal before the appellate authorities in accordance with the mechanism of appeal provided in the statute (repealed Ordinance of 1979) and, therefore, the jurisdiction of this office was specifically ousted u/s 9(2)(a) of FTO Ordinance as the matter was subjudice before court of competent jurisdiction [CIT(Appeals)]. He referred to a large number of President's decisions (copies on record) in which filing of complaint in such circumstances was held not to be proper. DR emphatically stated that President is the highest authority under the FTO Ordinance and his decision has to prevail on any other decision in the matter of implementation of FTO Ordinance. He specifically referred to President's decisions Nos. 118/2004, 974/2002, 975/2003, 665 to 671/2003, 60/2004, 14350L/2001. He also referred to decisions Nos. 12-K/2005 and 28/2005 of this office which prevented FTO from passing any order in the circumstances. He did not dilate upon merits of the treatment meted out on different counts because according to him, this office has no jurisdiction and, therefore, he was not required to discuss the merits of the additions made. He vehemently argued that as appeals have been filed by the taxpayer before the courts of competent jurisdiction the matter is now subjudice and propriety demanded that the assessee should pursue the remedy sought as per one system of appeals and not two simultaneously to avoid chaos, confusion conflicts in judgements etc and the resultant anarchy in administration of justice.

6. Responding to Learned DR's arguments the learned ARs argued that appeal was filed on 16-11-2006 and complaint was filed on 14-11-2006 and thus the disqualification u/s 9(2)(a) of the FTO Ordinance was not incurred. They relied on a number of decisions i.e. quoted as 2002 PTD 1828, 2002 PTD 1918, 2002 PTD 2646 = 86 Tax 375, 2004 PTD 1766, 2004 PTD 2017 in support of their contentions. Further they complained that copies of all the decisions of the President or of this office relied upon by the learned DR had not been supplied to them and, therefore, they were not in position to argue in respect of these cases since these were not reported decisions. DR, however, reiterated his argument and showed a bundle of decisions copies whereof had been supplied to the learned ARs during the course of proceedings as demanded by them. He, therefore, vehemently urged for the rejection of complaint.

7. The matter has been given due consideration. It is a fact that the whole complaint pertains to assessment/reassessment of income for which an elaborate system of appeals has been provided in the repealed Ordinance. It is now a well settled proposition that where remedy is available in the statute the same should be followed because this way the matter gets sorted out in the hierarchy of judicial forums provided in

the statute for the purpose. Same is not the position in respect of complaints filed in this office under FTO Ordinance where only a representation to the President is provided against FTO's decision. Moreover even otherwise propriety demands that remedy should be followed by an aggrieved person according to one system of appeal/relief etc. Multiplicity of appeals and their follow up simultaneously with different forum is to create conflict of judgements resulting in chaos and anarchy in judicial administration.

8. The learned ARs argument that appeals were filed subsequently to filing of these complaints and, therefore, no matter was subjudice at the time of filing of the complaints and thus the disqualification u/s 9(2)(a) is not incurred, is not in order. It is just playing tricks, with the wording of statute and of travesty therewith. The substance of the matter is that as per law [section 9(2)(a) of FTO Ordinance] the matters which are agitated before other courts or the courts of competent jurisdiction should not be simultaneously taken up before this office. No doubt on 14-11-2006 when the complaints were filed the matter was not subjudice before courts of competent jurisdiction as the appeals had not been filed till then but on 16-11-2006 (two days later) after filing of appeal the matter has become subjudice and is subjudice when it is being adjudicated upon. The learned ARs arguments are in the nature of hair-splitting, polemics and playing with the words ignoring the substance which cannot be permitted. The arguments and reasoning of the learned DR as per his rejoinder to AR's comments faxed on 26-1-2007are very forceful and carry weight in the context of the proceedings. Similarly learned ARs arguments that copies of some of the adverse decisions of the President in the matter have not been supplied to them is not forceful in the context because department is under no obligation to supply copies of all the unquoted decisions of President or other forums to all advocates, lawyers, ITPs before proceeding in a matter in light of the same. It is a fact that department has supplied copies of a large number of decisions of the President to the learned ARs (available on record) which disapprove filing of complaints before this office in the given circumstances. The taxpayer's appeals are thus pending and, therefore, it may follow remedies on issue it feels aggrieved there and has got no good case for any relief here.

9. The complaints filed here being incompetent are dismissed in limine. No finding is recorded on merits of the matters agitated which are left to courts of competent jurisdiction to decide according to law in due course of time.

(Justice (R) Munir A. Sheikh)
Federal Tax Ombudsman

Dated: -2007

BEFORE THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

COMPLAINT NO.1126/2006

Manzoor Hussain Carriage Contractor,
Jhang. ...Complainant

Versus

Secretary,
Revenue Division,
Islamabad ...Respondent

Dealing Officer: ...Muhammad Daud Khan, Adviser

FINDINGS/DECISION

Present: Mr. Muhammad Wasim, ITP for the complainant (AR).
Malik Muhammad Riaz, ITO E&IP Unit 19, Jhang for the respondent (DR).

This complaint is against income tax department's refusal to adjust the tax withheld from taxpayer's receipts and to issue refund for the excess thereof over taxpayer's alleged lawful tax liabilities. The tax years involved are 2003, 2004 and 2005. The refunds claimed amount to Rs.37,928, Rs.36,456 and Rs.54,434 respectively for the three years mentioned above. The learned AR explained that the taxpayer was a carriage contractor for transportation of sugar cane for Shakarganj Sugar Mills, Jhang. Tax @ 2% was withheld by the payer company for all the three years in accordance with the provisions of sub clause (2)(a) of Part III Division III of First Schedule of the Income Tax Ordinance 2001 (hereinafter referred to as the Ordinance), which was adjustable against the taxpayer's tax liability for the years and the difference/excess was to be refunded under the law. The returns filed u/s 114 were assessable u/s 120 of the Ordinance and deemed to be an assessment order issued to the taxpayer by the Commissioner on the day the returns were furnished [section 120(1)(a) and (b) of the Ordinance]. However, the department instead of refunding the excess amount of the tax deducted according to law, started proceedings to hold the taxpayer's receipts and deductions therefrom to be covered by the presumptive tax regime and hence not issuing the requisite refunds for all the three years. It was also complained that no opportunity of being heard was either provided to the taxpayer. According to learned AR, all this constituted an act of maladministration u/s 2(3) of the Establishment of Office of Federal Tax Ombudsman Ordinance 2000 (FTO Ordinance) and liable to corrective action by this office.

2. The learned AR referred to the provisions of the amended section 153(1)/(6) of the Ordinance and argued that his client's case was covered by clause (b) of

sub-section(1) of section 153 and, therefore, it was not liable to presumptive tax regime. He also referred to CBR Circular 1 of 2005 dated 05-7-2005 (para 23) which, according to learned AR, fully proved its case since the taxpayer was rendering services for carriage and transportation and not as such executing a contract which the department is vainly trying to prove in order to bring taxpayer's receipts within the ambit of clause (c) of section 153(1) of the Ordinance. He also referred to Circular No. I of 2006 (Income Tax) dated 1st July, 2006 (para 15) whereby the position in the matter was clarified for tax year 2006 and CBR Notification (Income Tax) SRO 794(1)/2006 whereby clause (27) was added to part II of Second Schedule and a reduced rate at 2% of the gross amount was prescribed with effect from 01-7-2006 where the goods were carried through transport vehicles against rate of 6% raised for such cases [falling u/s 153(1)(b)] vide Finance Act 2006. He referred to payer's certificate wherein the subject payments had been shown to be for transport services/charges. According to department's logic all payments/ receipts of all the payers if in pursuance of some contractual agreement could be termed as contract receipts and subjected to the presumptive tax regime which was not correct law – neither in spirit nor substance, he vehemently asserted. He also complained that the department was not following uniform policy in the matter and refunds in some cases of this nature had been issued in same jurisdiction. Discriminatory treatment was thus meted out in this case which was maladministration pure and simple.

3. The learned AR referred to this office decision in Complaint No.732/2005) for the tax year 2004 wherein taxpayer's view point on the issue had been accepted and the Revenue Division were required to issue the refund which has since been issued. Department's representation against this office findings was rejected by the Honourable President of Pakistan vide his order dated 23rd August, 2006 in case of another concern with similar facts (complaint No.733/2005). He also referred to this office decisions in complaints Nos. 874-876/2006 wherein taxpayer's view point on issue had been favoured. Department filed representation to the President but decision was still awaited. Reference was also made to Income Tax Appellate Tribunal decisions cited as [(2005) 91 Tax 203 (Trib)] = 2004 PTD 2749 and [(2006) 94 Tax 38 (Trib)] to further support the case. The issue, according to the learned AR, thus stands settled and there is no scope of any good argument to the contrary. He also argued that rate of withholding tax for execution of contracts was 6% and if the taxpayer is held to be executing contracts (as is being attempted) the payers (Shakarganj Sugar Mills) will be guilty of wrong withholding @ 2% (against the prescribed 6%) and liable to action under law while no such action has been taken in the case of the payer or for that matter anywhere else to the best of his knowledge. Even the taxpayer is not required to pay the difference (4%). The whole exercise is malafide only to deny refunds he thus vehemently argued.

4. The learned DR, on the other hand, stated that the case did not fall in the ambit of FTO's jurisdiction since there was no case of maladministration as such. The issue involved was at best of a contentious nature and the taxpayer could seek remedy in appeal. He supported his arguments with reference to present trend of decisions by the

Honourable President whereby this office is held not to be a court and where appeals lie against the acts of omission or commission of the revenue authorities, this office jurisdiction was ousted. He also argued that the action taken by the department was correct since the taxpayer was executing a contract for transportation of goods and hence covered by section 153(1)(c) of the Ordinance. He also argued that the President had not decided the case of the complainant in complaint No.733/2005 on merits but had only issued instructions for payment of refund and kept the discretion open with the Commissioner to amend the assessment with observations that nothing contained in this order (President's) or FTO's finding shall prejudice Commissioner's ultimate decision. The core issue i.e. whether withholdings from carriage contractors receipts for transport services are full and final discharge of taxpayer's liability or are adjustable against tax demand on income declared/assessed has not been decided by the President. According to the learned DR full opportunity had been provided to the taxpayer before passing adverse order u/s 170(4) of the Ordinance and learned AR's contention of not being provided proper opportunity was incorrect. He showed copies of show cause notices etc available on record.

5. The matter has been given due consideration. The complainant's AR's arguments appear to be forceful. Arguments and counter-arguments between the opposing parties apart the learned DR has not been able to clarify in a convincing manner that the action being pursued in the case is bonafide and in line with general policy of the department or CBR in the matter. Thus he has not been able to refer to the CBR (or any other higher revenue authority) pursuing the matter with the Shakarganj Sugar Mills (payers), or other sugar mills, or other big tax withholders for making deductions in such cases at 6% prescribed u/s 153(1)(c) or to any action u/s 163 for retrieval of loss of revenue. In other words it implies that the action of sugar mills or giant POL products distribution companies like say Pakistan State Oil, or government departments like say Food Department, and other deducting agencies for making deductions in cases of carriage contractors @ 2% which is the rate applicable to cases falling under clause (b) of section 153(1) and outside the ambit of presumptive tax regime, is accepted as correct by the department as a whole. DR also did not clarify as to what action has been taken in this case or other cases of this nature for not only retrieving the loss due to refunds issued under the instructions of FTO/President or otherwise but also for recovering the difference due to different rates in cases covered by clause (b) of section 153(1) and clause (c) of the same section which amounts to 4%. This will be a huge exercise and may involve billions of revenue but no action in a concerted manner appears to be taken which means the department as a whole considers the payment of this nature to be covered by the normal tax regime or clause (b) of section 153(1) of the Ordinance. CBR Circular instructions as per para 23 of Circular I of 2005, and later clarification vide para (15) of Circular I of 2006, and SRO 794(1)/2006 whereby reduced rate of 2% is prescribed for carriage/transport contractors by insertion of clause (27) in Part II of Second Schedule to the Ordinance to nullify the increase in rate for tax deduction vide

Finance Act 2006 in the cases of transport/carriage contractors falling u/s 153(1)(b) of the Ordinance all leave no doubt to the contrary in the matter and DR offered no good arguments to support department's case.

6. The learned DR's objection as to the jurisdiction of this office in the matter is not valid. It is a very clear case of maladministration as per section 2(3) of the FTO Ordinance - the decision being contrary to law, rules or regulations and departure from established practice or procedure in the cases of assessment of carriage contractors as discussed in detail above. It is also without valid reasons and not bonafide due to such action not being taken in cases of all or almost all carriage contractors all over the country. Apparently this treatment was meted out to deny the refund claimed by vainly attributing the taxpayer's receipts and tax deductions therefrom as covered by the presumptive tax regime while actually these were not. The department would have pursued the proceedings to their logical end in case it was bonafide of the view that the receipts fell u/s 153(1)(c) of the Ordinance and recovered or at least made efforts to recover the difference of 4% (6% - 2%). The DR could not also rebut learned AR's assertion to the effect that refunds in some cases of this nature (carriage contractors) had been issued in same unit (Jhang) which tentamounts to not following uniform policy in the matter and meeting out discriminatory treatment in some cases which is most undesirable, and is maladministration pure and simple needing corrective action by this office. This office has, therefore, proper jurisdiction in the matter. It is, therefore, recommended that -

(i) the tax paid by way of withholding as is in excess of taxpayer's liability under normal law for all the three years be refunded within 30 days of the receipt of these instructions by the Secretary Revenue Division;

(ii) compliance should be reported within 45 days.

(Justice (R) **Munir A. Sheikh)**
Federal Tax Ombudsman

Dated: -2007

BEFORE THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

COMPLAINT NO.550/2007

M/s Ateeque Power Looms,
Gojra ...Complainant

Versus

Secretary,
Revenue Division,
Islamabad ...Respondent

Dealing Officer: ...Muhammad Daud Khan, Adviser

FINDINGS/DECISION

Present: Mr. Zafar Iqbal, Advocate for the complainant (AR).
Mr. Tariq Najib, DCIT (Legal-II), RTO Faisalabad for the respondent (DR).

This complaint pertains to non-payment of income tax refund by the respondent department. The assessment years involved are 1997-98, 1998-99, and 1999-2000. The learned AR however, informed that refund of Rs.12,825 has since been paid to his client vide voucher No.18/17435 dated 29-5-2007. However, compensation for delayed payment had not been paid. The learned AR argued that the refund had been inordinately delayed and department was obliged to pay compensation for the delay due to their inaction in the matter over a pretty long period of time. He also submitted a calculation chart for the amount of compensation which amounts to Rs.11,687. He referred to provisions of sections 99, 100 and 102 of the repealed Income Tax Ordinance, 1979 and 170 and 171 of the Income Tax Ordinance, 2001 (the Ordinance) and claimed that non-payment of compensation was an act of maladministration on part of the department which has to be taken cognisance of by this office and department is to be directed to pay the compensation.

2. The learned DR controverted AR's arguments. He argued that refund was paid simultaneously with passing of refund order u/s 170(4) of the Ordinance and, therefore, the department owed no liability to pay the compensation being insisted upon by the learned AR. He specifically referred to the provisions of section 171(2) of the Ordinance and claimed that clause (c) of this section [171(2)] was applicable in this case and compensation would have been payable only if the refund has been paid after the end of the prescribed period of three months in section 171(1) of the Ordinance. Here the refund was paid simultaneously with passing of order and, therefore, no compensation is due to the taxpayer. He also argued that the department's failure to pass the order u/s 170(4)

within 45 days of the receipt of return i.e. by 19-10-2006 did not per se entitle the complainant to receive compensation for the delayed payment of refund. The taxpayer should have, according to him, gone in appeal under section 170(5)(b) of the Ordinance to seek remedy which he did not do. According to him, the department incurs no liability for compensation etc for the delayed passing of order u/s 170(4) of the Ordinance as per clear provisions of law (sections 170 and 171) and, therefore, the complaint was now frivolous since the impugned refund has already been paid while no compensation u/s 171 was due and hence no question of any relief by this office. Moreover the complaints involving the assessment years 1997-98, 1998-99 and 1999-2000 are time barred u/s 10(3) of the Establishment of the Office of Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) having not been filed within six months of the date on which the complainant (person aggrieved) first had the notice of the matter alleged in the complaint.

3. The matter has been thoroughly considered. The taxpayer's grievance against non-payment of refund stands mitigated. However, there is definitely an element of maladministration in the facts and circumstances of the case. Good administration pre-supposes payment of all refunds in time. It is definitely not good administration that department should not pass refund orders as required under law in time and expect taxpayers to first go in appeal and get appellate orders for passing of refund orders and only then the department will incur liability for compensation if refunds are not paid even after receipt of appellate orders. Appellate mechanism is provided in the tax legislation to sort out bonafide disputes between the taxpayers and tax collectors – it is not as such meant for appeals by all taxpayers on all conceivable points. Such a course will make working of the system very cumbersome if not totally paralysed. The learned DR had no valid excuse for the concerned office not passing the refund orders u/s 170(4) in time. He claimed that the same was due to heavy rush of work due to which some cases remained unattended. Hundreds of thousands of returns are received on last date or few dates preceding the same and it is administratively difficult to pass orders within 45 days in all cases of refund claims.

4. The learned DR's argument is intrinsically unsound because the administrative machinery is always expected to be geared up to meet the requirements of law and it should never be department's stance before any judicial/quasi judicial forum or office competent to hear complaints against the department that the law as it is cannot be effectively implemented due to inadequate administrative set up. Moreover, the learned DR could also not support his arguments with any figures at national level or even of local Faisalabad Unit to show that refund orders had been passed in say 90% of the cases and only 10% or so remained due to shortage of time and paraphernalia etc. Moreover in this case the refund order has been passed only at the end of May 2007 and only after filing of complaint in this office by the complainant and not suo moto in few days after the expiry of the prescribed period of 45 days. So maladministration is definitely involved and department cannot wriggle out of its liability to compensate the taxpayer by relying on technicalities.

The Members of AOA on 10th AOA Conference at Hanoi Vietnam on 25-28 April, 2007

5. State has to be fairest in its dealings with its citizens and while the taxpayers may seek protection behind technicalities to minimise their tax burdens, state officials cannot be permitted to do so or to avoid their lawful obligations to the citizens. Payment of refund has been inordinately delayed due to the inaction of the functionaries of the department and no one can be made to suffer for the inaction or malafides of others. The learned AR also informed that compensation was being paid by the department in similar circumstances in other cases and thus department was not meeting out uniform treatment in all cases which was also maladministration. He filed a list of such cases which is on record. The matter already stands decided by this office in favour of the taxpayer claimants in numerous decisions – most mentionable being in complaint No.1031/2005 dated 20-12-2006.

6. Learned DR's plea that the complaints involving assessment years 1997-98, 1998-99 and 1999-2000 are time barred u/s 10(3) of FTO Ordinance is not forceful in the facts and circumstances of this case. The department unjustifiably delayed the issuance of lawful refunds for the years and cannot be permitted to wriggle out of its liability to pay compensation for delayed payment due under law (sections 102 of repealed Ordinance of 1979 and 171 of the Ordinance). The refunds have since been paid. Taxpayer's grievance for department' failure to pay compensation thus actually arises on date of payment of refund (end of May 2007) since amount of compensation is as a matter of principle, logic, and even departmental practice to be paid alongwith the delayed refunds. Quantification of compensation is possible only after actual payment of refunds. There is thus no delay on taxpayer's part in claiming compensation. The amounts are petty and no foul play on part of taxpayer is suspected. The taxpayer's pleas are correct. It is, therefore, recommended that -

(i) Secretary Revenue Division is to ensure that compensation of Rs.11,687 be paid to the complainant u/s 171 of the Ordinance within 30 days of the receipt of these recommendations; and

(ii) compliance be reported within 45 days.

(Justice (R) Munir A. Sheikh)
Federal Tax Ombudsman

Dated: -2007

BEFORE THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

COMPLAINT NO.558/2006

Ch. Anwar-ul-Haq,
M/s. Abdul Ghafoor & Brothers,
Grain Market,
Toba Tek Singh. ...Complainant

Versus

Secretary,
Revenue Division,
Islamabad ...Respondent

Dealing Officer: ...Muhammad Daud Khan, Adviser

FINDINGS/DECISION

Present: Mian Zafar Iqbal, Advocate for the complainant
(Rejoinder dated 30-08-2007 of the learned AR also received and is on record).

Mr. Faqir Hussain, DCIT (Legal-II), Faisalabad for the respondent (DR).

This complaint pertains to non-payment of income tax refund of Rs. 104,969/- for the assessment years 1993-94, 1995-1996, 1996-1997, 1998-1999, 1999-2000, 2001-2002, 2002-2003 and 2003 to 2006. It is, however, now informed by the department vide DG RTO FSD letter No. 234 dated 02-08-2007 and T.O. Enforcement 09 RTO Faisalabad vide letter No.222 dated 03-9-2007 that the impugned refunds for the assessment years 1993-1994, 1995-1996, 1998-1999, 1999-2000, 2001-2002, 2002-2003 and tax years 2003 to 2005 have since been paid vide vouchers Nos. 81/17550 and 12/17520 dated 30-07-2007 and 03-09-2007. It is also informed that refund for 1996-1997 (Rs.4,904/-) was issued on 30-09-1996 vide Voucher No.60/9532. Receipt of the refund vouchers is acknowledged. The taxpayer's grievance thus stands mitigated to good extent.

2. For the tax year 2006, taxpayer's claim of refund at Rs.75,221/- has been rejected vide order dated 30-07-2007. The taxpayer feels aggrieved In department's view this office jurisdiction in the matter is ousted u/s 9(2)(b) of Establishment of office of Federal Tax Ombudsman Ordinance 2000. (FTO Ordinance) as the taxpayer has right of appeal under the relevant legislation. The reasons for rejection are also claimed by the department to be valid. The refund claim was rejected due to difference in National Tax

Number (NTN) and names. It is thus informed that in the return for the tax year 2006 credit is claimed for tax withheld at Rs.95,628/- on imports in the name of Prime Traders, Prime Heights, 4-Saint Marry Park, Gulberg-III, Lahore at NTN 1804026-8 while the return for this year is filed at different NTN 0433222-9. The credit for tax withheld could not be allowed and hence no refund. The position is illustrated in TO's Enforcement 09 RTO Faisalabad letter No.101 dated 30-07-2007 addressed to the taxpayer (copy on record). There is thus, in DR's view, no maladministration and hence no need for any corrective measure by this office.

3. The learned AR, however, controverted DR's arguments. He stated that original NTN was allotted vide certificate dated 07-10-2000 with old ID Card No.270-32-173839 and in individual status. PRAL issued new NTN 1804026-8 vide certificate dated 24-05-2004 with new CNIC No. 35200-1576649-1 in the name of Prime Traders, Prime Heights, 4-Saint Marry Park, Gulberg-III, Lahore. The taxpayer approached PRAL and it issued new certificate on 15-02-2006 with NTN 0433222-9 with CNIC 35200-1576649-1. Old ID Card No. 270-32-173839) is as usual written on CNIC. There was no misrepresentation or attempt to claim undue refund. The customs authorities actually wrongly deducted tax because imports of computers were exempt from withholding tax. CBR has also allowed use of CNIC instead of NTN vide amended section 181 of the Income Tax Ordinance vide Finance Act 2007. Department has thus unlawfully passed order u/s 170 (4) beyond the prescribed time limit of 45 days which is in itself void, and refused refund for wrong reasons which constitute maladministration needing corrective action by this office.

4. The matter has been carefully considered. The department and taxpayer have taken diametrically opposite stands. The pleas regarding difference in NTN as stated by department and by AR in counter argument need to be sorted out. Commissioner is to do the needful under section 122-A of the Ordinance. Impugned refunds shall be issued only if taxpayer authentically proves that the tax amounts withheld from imports etc. belong to him and there is absolutely no clue to any attempted foul play for getting more than one refund for the same amount of tax withheld etc. For 1996-1997 refund of 4904 was already issued to the complainant vide voucher No.60/9532 dated 30-06-1998 as informed by TO Enforcement 09 vide letter No. 222 dated 03-09-2007. Show Cause Notice for appropriate action u/s 14(4) of the FTO's Ordinance is to be issued.

5. The learned AR further complained that no compensation for the delayed payment of refunds has been issued/paid. In department's view no compensation under section 102 of the repealed Income Tax Act 79 (r.o. of 1979) and 171 ordinance 2001 is payable in the facts of this case as refund was paid soon after passing of orders 170(4) of

the ordinance. However, it is, considered view of this office that department can not be allowed to benefit by belatedly passing order under section 170(4) of the ordinance and that compensation for delayed payment is to be paid if refund is not paid within 135 days (45 + 90) of filing of returns and refund applications. For years covered by r.o of 1979 requirement of application for refund was done away with u/s 100 and tax payer is entitled to compensation for delayed payment of refunds as laid down in section 102 of the r.o. of 1979. Forcing thousands of the taxpayers (particularly the small ones) to file appeals on a non-issue and not passing orders or paying refund in time is not good governess and is maladministration.

6. It is, therefore, recommended that -

(i) Secretary, Revenue Division is to instruct the commission to thoroughly examine the matter of refund for the tax year 2006 in light of discussion at paras 2 to 4 of this finding and if taxpayer's pleas on this behalf are found to be correct and the amounts for which credit is claimed belong to him and if there is absolutely no foul play the due amount of refund be paid within 45 days and

(ii) ensure that lawful amount of compensation (calculated by AR at 15304 + 2881 = 18189 which appears to be correct but the figures are to be rechecked for accuracy) is paid to the complainant within 15 days of the receipt of these recommendations; and

(iii) compliance be reported within 60 days.

(Justice (R) **Munir A. Sheikh)**
Federal Tax Ombudsman

Dated: -2007

BEFORE THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

COMPLAINT NO.845/2007

Mr. Tariq Mahmood, Proprietor,
M/s Tariq Engineering,
Faisalabad. ...Complainant

Versus

Secretary,
Revenue Division,
Islamabad. ...Respondent

Dealing Officer: ...Muhammad Daud Khan, Adviser

FINDINGS/DECISION

Present: None for the complainant.
(Letter dated 17-8-2007 of Mr. Kashif Dildar Bhatti, Advocate and AR received and is on record).
Mr. Muhammad Asif, DCIT (Enforcement-04) RTO Faisalabad for the respondent (DR).

This complaint pertains to non-payment of income tax refunds of Rs.24,365 for the tax years 2004, 2005 and 2006. DG RTO Faisalabad has vide his letter No.379 dated 16-8-2007 informed that refund of Rs.20,770 has since been issued vide vouchers Nos. 88/17399 dated 13-8-2007 and 61/17525 dated 11-8-2007. RCIT also informed that the refund claimed at Rs.5,378 for tax year 2005 involved double claim of the taxpayer and, therefore, amount of Rs.1,783 has been paid. The complainant's AR has also vide his letter dated 17-8-2007 acknowledged the receipt of the refund vouchers and requested for closure of proceedings. The taxpayer's grievance thus stands mitigated and the proceedings are closed. However, show cause notice u/s 14(4) of Establishment of the Office of Federal Tax Ombudsman Ordinance, 2000 is to be issued for a vexatious complaint for claiming double refund (Rs.3,595) for tax year 2005.

(Justice (R) Munir A. Sheikh)
Federal Tax Ombudsman

Dated: -2007

BEFORE THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

COMPLAINT NO.1076/2006

M/s Azad Chaudhry Goods
Transport Service Company,
Jhang. ...Complainant

Versus

Secretary,
Revenue Division,
Islamabad. ...Respondent

Dealing Officer: ...Muhammad Daud Khan, Adviser

FINDINGS/DECISION

Present: Mr. Muhammad Farooq, Advocate (AR) for the complainant.
Mr. Tanveer Murtaza, ITO Jhang (DR) for the respondent.

The complaint pertains to non-payment of refund of Rs.81,252 for the tax year 2005. The learned AR who attended on the extended date i.e. 20-12-2006 informed that the services which the taxpayer provided comprised of providing/supply of vehicles for carriage of goods to different concerns mostly beverage manufacturers. According to him this thing was clearly stated in the certificates of the payers including the major payer Coca Cola Beverage Pakistan Limited, Gujranwala who deducted Rs.50,404 from payment of Rs.2,520,346 against the supplies/services provided by the complainant. The certificates had been supplied to the income tax authorities but they did not issue the impugned refund rather passed adverse orders u/s 170(4) to refuse the claim. He further supplied a copy of refund voucher issued to the Public Goods Transport Company, Faisalabad Road, Jhang with exactly identical facts. The department was thus meeting out discriminatory treatment in two cases of identical nature which constituted maladministration necessitating corrective action by this office. He also referred to the provisions of section 153 (1)/(6) of the Income Tax Ordinance 2001 (hereinafter referred to as the Ordinance) and Circular No.1 of 2005 (para 23). According to him complainant's case fell in section 153(1)(b) since it rendered/provided services.

2. The learned DR informed that the complainant derives income from supplies and services. This is confirmed from certificate issued by the Coca Cola Beverage Pakistan Limited, Gujranwala who deducted Rs.50,404 on total payments of Rs.2,520,346 against supplies/services. The ITO issued a letter to the taxpayer No.80 dated 25-8-2006 for production of certain documents for sake of verification of tax

deduction and also to ascertain the exact nature of payments. The taxpayer replied on the due date i.e. 01-9-2006 but did not according to DR, clarify the matter regarding nature of its receipts, rather supplied photo copies of the tax payments challans already supplied. The taxation officer, therefore, passed an order on 11-9-2006 u/s 170(4) of the Income Tax Ordinance 2001 (hereinafter referred to as the Ordinance) and rejected the claim. The complaint is filed against this order. The order was appealable and the taxpayer should have filed appeal to the CIT (Appeals) u/s 127 of the Ordinance. The jurisdiction of this office was, therefore, according to him, ousted u/s 9(2)(b) of the Establishment of the Office of Federal Tax Ombudsman Ordinance, 2000 (hereinafter referred to as the FTO Ordinance). He, therefore, prayed for rejection of the complaint.

3. The facts of the matter have been considered. It is really perplexing that the department is issuing refund in one case and treating the tax withholdings as adjustable against the demand and issuing the refund of excess tax deductions over tax liability and treating the same as presumptive tax in the other case of allegedly same nature. The AR claimed that his clients are not carriage contractors but only supply vehicles for carriage of goods as and when needed by the users. The payment on account of supply of services are not covered by the presumptive tax regime as per law (section 153(1)(b) of the Ordinance). He referred the discussion in this office order in complaint No.874/2006 on this behalf. The DR vehemently defended the treatment meted out but did not confirm that uniform treatment was being meted out in all cases of this nature, or that why no enquiries had been made from the payers/deductors about the exact nature of the payments before arriving at proper conclusion as to the tax regime (presumptive or non-presumptive) to be applied. It is, therefore, recommended that -

(i) Secretary Revenue Division should direct the Commissioner concerned to examine the matter and pass a detailed speaking order on this behalf u/s 122A of the Ordinance within 30 days considering all the facts and circumstances of the case;

(ii) see if discriminatory treatment was meted out in two cases of allegedly same nature (the complainant and Public Goods Transport Company when refund of Rs.85,927 was issued) and

(iii) compliance be reported within 45 days.

(Justice (R) Munir A. Sheikh)
Federal Tax Ombudsman

Dated: 2007

BEFORE THE FEDERAL TAX` OMBUDSMAN
REGIONAL OFFICE, KARACHI

COMPLAINT NO.355-K/2007

Mir Javed Rehman
C/.o Independent News Corporation (Pvt) (Ltd,
Printing House I.I. Chundrigar Road,
Karachi. ...Complainant.

Versus

The Secretary,
Revenue Division,
Islamabad ...Respondent

Dealing officer: ...S. Asghar Abbas, Adviser

FINDINGS/DECISION

Present: Mr. Abid Hussain Shirazi, Advocate present for the complainant.
Mr. Bashir Ahmed Kalwar, DCIT, Karachi present for the respondents.

The complainant is a Director of M/s Independent News Paper Corporation (Pvt) Ltd and is an existing Income Tax assessee of Companies Zone-IV, Karachi on National Tax Number 28-03-0944704. The complainant is aggrieved by non-payment of compensation on delayed refund u/s 102 of the repealed Income Tax Ordinance 1979 read with Section 171 of the Income Tax Ordinance 2001 relating to the assessment years 1987-88, 88-89, 89-90, 91-92, 92-93, 93-94 and 1999-2000 by the taxation officer. The brief facts of the case are as under:-

2. The assessments for the years 1987-88 to 1993-94 and 1999-2000 were completed mostly under the Normal Law and the following refund were determined:

Assessment years	Date of order	Amount
1987-88	28.06.1990	696,889
1988-89	19.11.1989	76,993
1989-90	29.06.1994	1,05,012
1991-92	29.06.1994	287,792
1992-93	22.01.2003	247,059
1993-94	22.01.2003	175,205
1999-00	25.01.2000	40,596

3. It is alleged that in violation of CBR's directions to the assessing officer to issue the refund alongwith the assessment orders, the above stated determined refunds were not issued to the complainant despite repeated reminders. The complainant has referred to Board's Circular's No.10 of 1985 dated 10th August 1985 Circular No. 6 of 1994 dated 10.07.1994 and letter ITB-3(5)/86 dated 3rd July 1994 in this regard. The complainant's A.R. requested the concerned taxation officer and RCIT Corporate Region, Karachi in writing to direct the concerned officer to issue the refund alongwith compensation but received no response from the aforesaid officers of the Income Tax Department. He has provided details of 8 reminders in para 3 of the complaint. However, after serious and hectic efforts the refunds were issued by the department on 10.12.2005 and 18.01.2005 but no compensation was paid. The complainant's A.R. addressed letters to the concerned authorities for payment of compensation as provided u/s 102 of the repealed Ordinance 1979 read with Section 171(1) of the Income Tax Ordinance 2001. Here also details of letters have been given in Para 4 of the complaint. Subsequently the complainant received a letter from the taxation officer (Enforcement-VI) Companies Zone-IV, Karachi dated 02.12.2006 whereby the claim of compensation was rejected with the following observations:-

> *"(a) In any case where the refund is required to be made in consequence of any order on an appeal or a revision or an appeal to the High Court, on the date of receipt of such order by the Deputy Commissioner*
>
> *(b) In any case to which sub-section (5) of Section 99 applies, on the thirtieth day of June of the financial year next following the date on which the application for refund was made. And*
>
> *(c) In other cases on the date on which the refund order is made."*

The complainant also received a letter from the RCIT Corporate Region, Karachi dated 11.01.2007 who confirmed the rejection of the claim of compensation by the DCIT Enforcement VI, Companies Zone-IV, Karachi.

4. The complainant has alleged that the conduct of the Income Tax Department in of non-issuance of the refund alongwith the assessment order and non-payment of compensation admissible u/s 102 of the repealed Ordinance read with Section 171(1) of the Income Tax Ordinance 2001 was highhandedness, misuse of power, violation of legal provision, non-compliance CBR's Circulars which tantamount to maladministration. The complainant has prayed to vacate the aforesaid letter of taxation officer and RCIT Corporate Region, Karachi and hold that the complainant is entitled for compensation u/s 102 of the repealed Income Tax Ordinance 1979 read with Section 171 of the Income Tax Ordinance 2001.

5. In reply the respondents have forwarded the parawise comments of the Regional Commissioner of Income Tax, Corporate Region, Karachi alongwith the comments of concerned Commissioner of Income Tax Companies Zone-IV. It is reported that the complainant's claim regarding issuance of compensation was rejected for the reason that the claim did not fall within the ambit of section 102(2) of the repealed Ordinance as the complainant had neither filed applications u/s 99(3) of the said Ordinance, nor the refund orders were passed under the aforesaid section. It is pleaded that issuance of refund always occurs in consequence to an application to be moved by the taxpayer and thereafter order was to be passed by the department u/s 99(2) of the repealed Ordinance after necessary verification of the tax deducted and paid. It is also reported that the complainant never moved applications for issuance of refund u/s 99(2) of the repealed Income Tax Ordinance 1979 after getting the assessment orders.

6. The case has been discussed in detail with the representatives of both the sides. The Authorized Representative of the complainant contended that after the amendment of section 100 of the repealed Income Tax Ordinance, the condition of filing the refund application was waived and the refunds determined were to be issued alongwith the assessment orders. He further stated that letters were addressed to the taxation officers and the supervising authorities including the C.B.R., requesting them to issue the determined refund alongwith compensation but none of them bothered to consider the request of the complainant. He vehemently contended that non-issuance of compensation which was admissible u/s 102 of the repealed Income Tax Ordinance 1979 read with section 171(1) of the Income Tax Ordinance 2001 was blatant violation of law. The A.R. also pleaded that since the condition of filing refund application was dispensed with by the amendment made u/s 100 of the repealed Ordinance, no refund applications were filed by the complainant u/s 99 of the repealed Ordinance or u/s 170 of the Income Tax Ordinance 2001. The D.R. reiterated the pleas taken in the parawise comments.

7. The contention of the A.R. of the complainant that after amendment of Section 100 of the repealed Income Tax Ordinance 1979by Finance Act 1985 there was no need to file refund application u/s 99 of the said Ordinance is quite well founded. The amended Section 100 is reproduced hereunder:-

> *"100. Refund on assessment and appeal, etc- Whereas as a result of any order passed under section 59, 59A, 62, or 63 or in appeal, revision or other proceedings under the Ordinance (not being an order setting aside an assessment), refund of any amount becomes due to the assessee, the Deputy Commissioner shall, except as otherwise provided in this Ordinance, refund the amount to the assessee irrespective of whether he has or has not made any claim in that behalf"*

The A.R. also correctly pointed out that directions of the C.B.R. issued in this regard have not been followed by the officers of the department. The C.B.R. explained the amendment made in section 100 and issued Circular No.10 of 1985 dated 18th August 1985. The relevant para 10 of the said Circular is reproduced hereunder:-

> *"10. Refund on assessment and appeal etc. Section 100.-- Section 100 has been substituted by a re-worded section. In addition to the situations enumerated in the section as it stood before its substitution in which an application for refund is not required, the new section dispenses with the requirement of filing such a claim by an assessee in cases where the Income Tax Officer determines a refund in an order passed under section 59, 59A, 62 or 63. In such cases, the refund voucher should be issued alongwith the notice of demand, relevant IT-30 and order of assessment etc."*

The C.B.R. thereafter repeated the directions through Circular No.2 of 2000 dated 8th February 2000. The relevant extract is reproduced hereunder:-

> *"Section 100 of the Income Tax Ordinance 1979 provides the issuance of refunds in cases where refund became due as a result of an order of assessment, appeal, revision or other proceedings under the Ordinance irrespective of the fact as to whether assessee has or has not made any claim. The said section also provides for a payment of additional amount as compensation at the rate of 15% per annum if refund became due as a result of decision of Income Tax Appellate Tribunal and the tax was paid under section 85 read with section 129. There is another provision under section 102 for additional payment for delayed refunds at the rate of 15% per annum of the amount of refund due. If assessee is not paid refund within three months of the date it became due."*

The CBR reiterated the directions issued earlier through letter No.ITB-3(5)/86 dated 3rd July 1994. The relevant extract is reproduced hereunder:-

> *"Section 100 of the Income Tax Ordinance, 1979 was amended through Finance Act, 1985 whereby the condition of filing refund application was dispensed with in cases where refund is created by the assessing officers on IT-30. Refund Voucher is, therefore, to be issued alongwith the assessment order/demand notices in all such cases."*

8. In view of the above the complainant's allegation that Board's directions on the subject have been blatantly violated by the officers of the department is established.

9. The respondents have failed to substantiate their observations/pleas that:

"Issuance of refund always occurs in consequence to an application to be moved by the taxpayer by producing any provision of law." Or referring to any rules in this behalf.

The A.R.'s contention during the hearing of the case that no refund application was filed u/s 99 of the repealed Ordinance or Section 170 of the Income Tax Ordinance 2001 due to amendment of Section 100 by the Finance Act 1985 has not been repudiated by the Departmental Representative. The D.R. has not produced the prescribed refund applications submitted by the complainant. This is a glaring example of maladministration committed by the officers of the department and the following recommendations are therefore made:-

(i) The C.B.R. to direct the concerned Commissioner of Income Tax to cancel U/s 122A of the Income Tax Ordinance 2001 the order No.105 dated 02.12.2006 passed by the Taxation Officer and ask the R.C.I.T. Corporate Region, Karachi to withdraw his letter No.SO-I/RCCR/2006-2007/1895 dated 11.01.2007

(ii) The C.B.R. to direct the taxation officer concerned to work out the amount of compensation admissible u/s 102 of the repealed Income Tax Ordinance 1979 read with the provision of section 171 of the Income Tax Ordinance 2001 and make payment of compensation to the complainant relating to the delayed refund for the assessment years 1987-88, 1988-89, 1989-90, 1991-92, 1992-93, 1993-94 and 1999-2000 within 30 days of the receipt of this order.

(iii) The compliance be reported within 10 days thereafter.

(Justice (R) **Munir A. Sheikh)**
Federal Tax Ombudsman

Dated: -2006

BEFORE THE FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE, KARACHI

COMPLAINT NO.1159-K/2006

Late Ejaz Ahmed,
Through, Mst Rabia Ejaz Ahmed, Widow,
Resident of 16/17, civil Lines Khanewal,
Presently residing at A-16, K.D.A. Scheme No.1,
Off Ammer Khusro Road,
Karachi. ...Complainant

Versus

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

Dealing officer: ...S. Asghar Abbas, Adviser

FINDINGS/DECISION

Present: Mr. Muhammad Aleem, Advocate present for the complainant.
Mr. Javed Mohiuddin, D.C.I.T. Zone-A, Karachi present for the respondents.

The complainant an Association of Persons (AOP) derives income from business of manufacturing and sale of paper cones. The complainant is aggrieved by selection of its case for audit u/s 177 of the Income Tax Ordinance 2001 for the tax year 2005. The facts of the case are briefly stated as under:-

2. The return of income was filed by the complainant for the tax year 2005 declaring income of Rs.470,527. The case was selected for audit by the Commissioner of Income Tax Zone-A, Karachi under sub-section 4 of section 177 of the Income Tax Ordinance 2001 vide Notification No.1856 dated 1st February 2006. The selection was made on the ground that the complainant was issued exemption certificate u/s 153 of the Income Tax Ordinance 2001 for the tax year 2005. It is stated that the complainant applied for exemption certificates u/s 153 of the aforesaid Ordinance relating to the tax years 2004, 2005 and 2006 but the exemption certificates were never issued by the department. This fact was brought to the notice of the Commissioner concerned who after verification from records cancelled the notification No.1856 dated 1st February 2006 vide order No.287 dated 30th August 2006. The complainant's case was however, selected again for audit of income tax affairs relating to the tax year 2005 by the Commissioner of Income Tax Zone-A, Karachi vide notification No.304 dated 19.08.2006. The reasons/grounds for selection have been given in the said notification. It is alleged by the complainant that prior to tax year 2004, the audit for tax year 2003 had been completed by the department vide letter dated 03.11.2004. The Additional Commissioner of Income

Tax Audit Division-III Zone-A, Karachi again issued notice u/s 122(5A) of the Income Tax Ordinance 2001 for the tax year 2003. It is further, alleged that the respondents resorted to unlawful pressure on the taxpayer simply to withhold his refund claim relating to the tax year 2006. It is pleaded that as per section 120 o the Income Tax Ordinance 2001, the return filed by the taxpayer was deemed to be an assessment order on the date of filing the return. It is stated that the introduction of Clause (1A) in Section 120 of the Income Tax Ordinance 2001 by Finance Act 2005 confirmed that prior to tax year 2006, the return filed u/s 120 of the aforesaid Ordinance could not be selected for audit u/s 177. The complainant has alleged that the action of the taxation officer fell under the definition of maladministration as provided under sub-section 3 of Section 2 of the F.T.O. Ordinance 2000. The complainant has prayed to declare the selection of its case for audit u/s 177 of the Income Tax Ordinance 2001 for tax year 2005 unjust, arbitrary and illegal.

3. The respondents have forwarded the parawise comments of the Regional Commissioner of Income Tax, Southern Region, Karachi. It is reported that the complainant's case was selected for audit on the basis of detailed reasons/grounds which were communicated to it vide notification No.304 dated 19.08.2006. It is pleaded that the concerned taxation officer initiated proceedings in exercise of powers delegated by the Commissioner of Income Tax Zone-A, Karachi. It is also pleaded that the allegation regarding issuance of notice u/s 122 (5A) was misconceived as the power to amend the assessment was separate and distinct from audit u/s 177. The former was pure and simple assessment matter, for which legal remedies for appeals and review were provided within the Ordinance. The F.T.O. had no jurisdiction over such cases as provided in section 9(2)(b) of the F.T.O. Ordinance 2000. The complainant's return for the tax year 2003 was selected for audit but since it availed benefit of CBR's letter and revised the return by paying 20% more tax, the audit proceedings were closed for the tax year 2003. However, later on Additional Commissioner of Income Tax found that the assessment completed u/s 122 (3) on the basis of revised return was erroneous as well as prejudicial to the interest of revenue. He therefore initiated proceedings u/s 122 (5A) of the Income Tax Ordinance strictly in accordance with law.

4. It is further stated that the power to select a person for audit of income tax affairs was independent and separate from section 120 of the Income Tax Ordinance 2001. This issue has been clarified and resolved by the FTO in complaints No.488-K/2006 and 638-K/2006.

5. The case has been discussed with the above cited representatives of both the sides. The A.R. of the complainant has filed rejoinder on the parawise comments of the respondents. He has reiterated therein the allegation made in the complaint. He has pointed out that the complainant's case was selected again for audit by notification No.304 dated 19.08.2006 which was issued before the cancellation of the incorrect notification No.1856 dated 1st February 2006 through notification bearing No.287 dated 30th August 2006. The Commissioner should have first cancelled the original incorrect notification before reselecting the case through notification dated 19.08.2006. He has also contended in the rejoinder that notification No.304 dated 19.08.2006 was never served on the complainant or on him. The departmental representative attributed the aforesaid discrepancy to typing error. The D.R. has also filed written arguments of the concerned

Commissioner on the contents of the rejoinder of the A.R. It is reported that the notification No.304 wherein detailed grounds and reasons for selection were mentioned was issued through courier service. The D.R. has produced photocopy of the receipt No.00789765 regarding dispatch of the said notification. He has however, not produced any evidence to establish that the aforesaid notification was served on the complaint or on his Authorized Representative.

6. The facts stated above clearly show that the case has been dealt with by the respondents in a very casual and careless manner. The complainant's case was first selected for audit vide notification No.1856 dated 1.2.2006 without consulting the record of the case. Therefore the Commissioner had to cancel the said notification though another notification No.287 dated 30th August 2006. It is apparent from the record that the case was again selected for audit vide notification No. 304 dated 19th August 2006. It has been correctly pointed out by the A.R. that the said notification could not be issued before cancelling the original notification. The original notification was cancelled on 30th August 2006 and the second notification for selection of the case was issued on 19th August 2006. The department has not been able to produce any evidence regarding service of notification No.304 dated 19.08.2006 on the complaint or his A.R. Maladministration is established and the following recommendations are therefore made:-

(i) The C.B.R. to direct the competent authority to withdraw the notification No.304 dated 19th August 2006. However, the respondents may initiate fresh proceedings for selection of the case for audit u/s 177 of the Income Tax Ordinance 2001 for the tax year 2005 in accordance with law.

(ii) The compliance be made within 30 days of the receipt of this order.

(Justice (R) Munir A. Sheikh)
Federal Tax Ombudsman

Dated: -2007

President ICCI Mr. Nasir Khan presenting souvenior to Honourable Federal Tax Ombudsman on his visit to ICCI, Islamabad

CASES RELATED TO CUSTOMS

BEFORE THE FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE KARACHI

COMPLAINT NO.C-1006-K/2007

M/s Ahmed Fine Textile Mills Limited
Room No.808, 8th Floor
Saima Trade Tower
I.I.Chundrigar Road
Karachi ...Complainants

Versus

The Secretary
Revenue Division
Islamabad ---Respondent

Dealing Officer: Mr M Mubeen Ahsan, Advisor

FINDINGS/DECISION

Mr Muhammad Ismail, Complainant
Mr Afzal Awan, Advocate
Mr Imran Javaid, Consultant
Mr Imran Iqbal, Advocate
Mr Hassan Sardar, Deputy Collector of Customs (Appraisement)

The complaint has been filed against the Appraisement Collectorate of Customs alleging maladministration for not releasing the bank guarantee for Rs.5,184,811/- dated 04-08-1996 deposited under the Deferment of Duty Rules despite full payment of installments concluded in 2000. It has been stated that copies of bills of entry, pay order and duty bill were submitted to the Respondents and letters dated 28-06-2005, 20-07-2005 and 05-05-2007 were sent to the Principal Appraiser, the Additional Collector of Customs and to the Collector of Customs requesting for release of the bank guarantee but it has not been released and no formal order or reason for non-release communicated to the Complainants despite (applications and) personal visits to the offices of the Respondent.

2. It was reiterated that the latest letter dated 05-07-2007 was properly received and acknowledged in the Department's diary but no reply was received nor any action taken. Complainants had fulfilled all the conditions as per law and paid duty and taxes on import of Ring Spinning Frames but the bank guarantee has not been discharged. Thus a huge amount of the company has been blocked (since 1996) due to the non-

release of the bank guarantee.

3. It was stated the act of maladministration defined in section 2 of the Federal Tax Ombudsman Ordinance, 2000, includes "a decision, process, recommendation, act of omission or commission which is contrary to law, rules or regulations or is perverse, arbitrary or unreasonable, unjust, biased, oppressive or discriminatory or there is neglect, delay, incompetence, inefficiency in the administration of discharge of duties and responsibilities". It was requested that the acts of not responding to Complainants' letters, non-release of the bank guarantee dated 04-08-1996 and not issuing any formal order be declared as maladministration, the Respondent be directed to release the guarantee alongwith additional financial charges @ 1.5% per month which is recovered from the importers where there is a delay in non-payment of duty and taxes. If the Collector of Customs has any reservation for not releasing the security, the Complainants should have been informed in writing so that they could clarify their position before the Department or the Federal Tax Ombudsman.

4. The reply to the complaint by the Deputy Collector of Customs (Bank Guarantee Cell) Appraisement Collectorate was forwarded by the CBR which stated that:

(i) The complaint pertained to a matter where the Complainants attempted to evade leviable import surcharge and did not make the payment at relevant time. Therefore the complaint is not maintainable. They have approached the FTO with false statement by concealing the facts.

(ii) The exemption of customs duty and import surcharge on Ring Spinning Frames under SRO 1284(I)/90 claimed by the importer was not allowed because the frames were manufactured locally. Under the High Court's interim order dated 13-01-1992, the consignment was allowed release against insurance guarantee. Subsequently, as per direction of the Supreme Court, the Collector of Customs decided that exemption on imported machinery was not available to the importers and Complainants were required to make payment of customs duty and import surcharge alongwith 14% surcharge per annum for non-payment of revenue.

(iii) On the representation of APTMA the Federal Government decided vide SRO 1076(I)/95 to allow exemption to the extent of 70% of customs duty and sales tax and the balance 30% of duty and sales tax payable in installments; no concession or exemption was allowed on import surcharge. The Complainants availed the benefit

of this notification.

(iv) When the Complainants vide letter dated 04-11-2000 requested for release of bank guarantee it was found that they had not paid the amount of import surcharge of Rs.60,85,457/- besides an amount of Rs.65,980/- under the Deferred Payment of Import Duty Rules; a notice dated 18-04-2001 was issued but the importer failed to make the payment.

(v) The Federal Government had given concession of import surcharge vide an SRO dated 19-05-2005 available only to those cases where the importers had gone into litigation in the High Courts prior to 28-12-2004. The importer neither availed the benefit of the concession nor had gone into litigation and there was no question to allow benefit of the SRO dated 19-05-2005 to them. Due to non-payment of import surcharge and delayed payment surcharge under section 83 of the Customs Act, the guarantee cannot be released.

(vi) Complainants are required to pay import surcharge Rs.42,59,820/- and delayed payment of surcharge Rs.1,10,78,892/- under section 83 of the Customs Act.

(vii) Complainants had approached Federal Tax Ombudsman with unclean hands. The complaint is not maintainable and be rejected with the direction that importer should pay the outstanding government dues.

5. The Counsel for the Complainants submitted a rejoinder on the Respondent's reply. It was stated that this was the first time that they came to know the reasons for not releasing the bank guarantee. The learned Counsel stated that:

(i) The Federal Government allowed amnesty to the importers of Ring Spinning Frames vide SRO 1076(I)/95 dated 05-11-1995 for exemption of duty and taxes in excess of 30%. Collector of Customs, however, objected that this notification did not allow exemption to import surcharge.

(ii) CBR issued a letter dated 05-07-2004 clarifying that the term "duty" used in SRO No.1076(I)/95 included import and iqra surcharges chargeable at the time of importation. CBR also issued another SRO dated 19-05-2005 in this regard which was availed by the Complainants through an application dated 28-06-2005 but the

Department did not release the bank guarantee.

(iii) The allegation of evasion of import surcharge was vehemently denied as also the allegation that the Complainants had approached the Federal Tax Ombudsman with false statement by concealing facts. The contention of the Respondent was misleading and liable to be struck down. The payment of import surcharge was not made on the basis of an order of the High Court.

(iv) The complaint involves the implementation of SRO dated 19-05-2005 and CBR's letter No.5/1/Mach/95 dated 05-07-2004. Non-implementation of these orders amount of maladministration.

(v) With regard to the contention that tax concession would be applicable only if the Complainants had gone into litigation in High Courts prior to 28-12-2004, the factual position was that they had already gone into litigation long before 28-12-2004 and this condition was also met.

(vi) It was clearly the intention of the Federal Government to allow exemption of import surcharge in excess of 30% which should have been implemented by the Respondents. CBR's letter dated 05-07-2004 and the SRO dated 19-05-2005 clearly allowed exemption of import surcharge in excess of 30% and there was no justification for the field officers not to implement the same.

6. During the hearing of the complaint, the allegation of maladministration on the above grounds was reiterated by the learned Consultant and it was requested that the Respondent be directed to implement the decisions under SRO 1076(I)/95, CBR's letter dated 05-07-2004 and SRO dated 19-05-2005 and immediate release of bank guarantee of Rs.5,184,811/- be ordered.

7. He stated that from the Custom House comments on their complaint it came to their knowledge that the bank guarantee was not being released on account of non-payment of import surcharge, a fact never communicated to the importer. He stated that facts of the case were as follows:

(i) Consequent on the exemption of duty and sales tax in excess of 30%, a bank guarantee was furnished on 04-08-1996 for Rs.5,184,811/- under the Deferment of Import Duty Rules 1991; the payment was to be made in annual installments and bank guarantee was to be released on completion of full payment.

(ii) Full payment was made by year 2000 whereafter the bank guarantee should have been released. At this stage the customs raised the question of levy of 10% import surcharge which according to customs was not exempt under SRO 1076(I)/95.

(iii) Assistant Collector of Customs (Bank Guarantee Cell) vide letter dated 18-04-2001 raised demand of Rs.1,39,66,124/- comprising import surcharge and mark up @ 14%.

(iv) According to the ECC decision the concession was applicable to import surcharge also which was not mentioned in the concessionary SRO. CBR vide letter dated 05-07-2004 clarified that the term "duty" used in SRO 1076(I)/95 included import and iqra surcharge chargeable on the import of Ring Spinning Frame. This directive of the CBR was not implemented by the Custom House.

(v) The matter was again taken up with the CBR and, vide SRO dated 19-05-2005, it was clarified that import was exempt from import surcharge and iqra surcharge if the importer made the payment at the concessionary rate of 30% before 30-06-2005. This condition was complied with by the importer and payment was made on 28-06-2005, but the bank guarantee was not released. The bank guarantee did not cover the liability of import surcharge but for the customs duty and the customs authorities should have released the guarantee while pursuing their case for levy of import surcharge.

(vi) No intimation was given for the reasons of non-release, no show cause notice issued or order passed to justify the retention of the bank guarantee against import surcharge liability.

(vii) The conditions of bank guarantee have been fulfilled, full payment made, the guarantee has expired and the document is no longer of any use of the customs and there is not justification to retain it. If the customs officials still think there is some liability on account of import surcharge they should take a separate action to establish the liability and pursue the recovery.

(viii) The importer was exempted from import levies under SRO 1076(I) and the benefit of SRO 1076(I)/95 was taken in 1996. If the import surcharge was leviable at that time demand should have been raised in 1996 which in fact was done in 2001 when the time bar of three years had already become operative.

8. The Deputy Collector of Customs replied that action on CBR's letter No. 5/1/Mach/95 dated 5th July 2004 clarifying that term of "duty" included import and iqra surcharges at the time of import of Ring Spinning Frame was held in abeyance by the CBR vide its letter of even number dated 14-01-2005. Subsequently the matter was resolved vide notification dated 19-05-2005 under which those cases where the importer had submitted securities or bank guarantees for the import/ iqra surcharge at the time of clearance, had availed the benefit of SRO 1076(I)/95 and had subsequently gone into litigation in different High Courts prior to 28-12-2004. The exemption of import surcharge in excess of 30% was allowed in respect of those importers which fulfilled these conditions.

9. It was stated that the Department was of the view that after availing the benefit of SRO 1076(I)/95, the Complainants neither paid the import surcharge (they had paid iqra surcharge at the time of clearance) and had not gone to the Court of law against the levy of import surcharge; therefore they were not entitled to the benefit of import surcharge concession allowed vide SRO dated 19-05-2005. The Department had issued the demand in 18-04-2001, it was admitted that the bank guarantee deposited for the customs duty was due for release, and that after 2001 no show cause notice or order was issued by the Department.

10. From the facts of the case and the arguments put forward by the Complainants as well as the Respondent it is clear that exemption in excess of 30% of customs duty and sales tax on import of Ring Spinning Frames under SRO 1076(I)/95 was allowed by the customs authorities, payment was made in installments and full payment was made by the year 2000. But the bank guarantee furnished in 1996 was not returned to the importer. The customs were of the view that the tax concession was not applicable to the levy of import surcharge and iqra surcharge. CBR clarified vide letter dated 05-07-2004 that the term "duty" included import and iqra surcharges but implementation of this clarification was held in abeyance vide letter dated 14-01-2005.

11. The matter was finally decided by the CBR vide its notification dated 19-05-2005 and exemption in excess of 30% of the amount of import surcharge and iqra surcharge was allowed subject to the condition that importer shall make payment of the amount before 30th June 2005. Complainants' claim, and the customs accept, that the payment was made before the due date. But the customs officials are still of the view that the Complainants are not entitled to this concession because they had not gone into litigation prior to 28-11-2004. This argument is not acceptable primarily because of the fact that since concession of duty, sales tax and import surcharge was allowed on the import of Ring Spinning Frames, the Complainants too were entitled to the concession in customs duty and sales tax and similar concession on import surcharge cannot be denied to them. However, it is also a fact that the Complainants had filed a Constitution Petition

in the High Court of Sindh in 1992 with the request to direct the Collector of Customs to release the machinery (Ring Spinning Frames) without claiming any duty, sales tax or surcharge; an interim relief was allowed on 27-01-1992 subject to furnishing an insurance guarantee equal to the demand of the Department without payment of customs duty, surcharge and sales tax. This establishes the fact that the Complainants had gone into litigation in the Sindh High Court in 1992, long before 28-12-2004, the cut-off date mentioned in the SRO.

12. It has also been observed that after issuing a demand notice in 2001 for recovery of import surcharge etc, the matter was not pursued and the bank guarantee filed in 1996 not relating to the import surcharge due for release in 2000 after payment of full duty, sales tax and surcharge was not released. This is a clear case of inefficiency, inaction, inordinate delay in releasing the bank guarantee without pursuing the enforcement of an unjustified demand which too has become barred by time. Maladministration is established; this office has taken cognizance of the complaint due to the compelling reason that the Department has unjustifiably kept the bank guarantee for a long time and failed to respond to the applications of the Complainants to return the expired bank guarantee document.

13. It is recommended that FBR direct the Collector of Customs to

(i) finalize the matter allowing exemption of import surcharge in excess of 30% as notified by CBR vide SRO dated 19-05-2005;

(ii) withdraw the time-barred demand notice and release the bank guarantee to the Complainants.

(iii) The above action be completed within thirty days; and

(iv) compliance be reported to this office within fortyfive days.

(Justice (R) **Munir A. Sheikh)**
Federal Tax Ombudsman

Dated: -2007

SSZ

BEFORE THE FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE KARACHI

Complaint No. C-287-K/2007

M/s Zorain Enterprises
85-Moin Steel Market
Karachi ---Complainants

Versus

Secretary
Revenue Division
Islamabad ---Respondent

Dealing Officer: Mr M Mubeen Ahsan, Advisor

FINDINGS/DECISION

Mr Jawed Ahmad, Legal Advisor
Mr Amjad Puri, Importer

The complaint has been filed against alleging unnecessary and unwarranted detention of an imported consignment by the Directorate-General of Customs Intelligence and Investigation, Karachi, which had been allowed 'out of charge' by the customs, on the pretext of misdeclaration of value and quantity without any basis and cause. The Complainants have alleged that besides exercising powers beyond their jurisdiction under SRO 5(I)/2005, when the Directorate was asked to provide the basis for detention it failed to justify the same and merely informed that the act was supported by law, rules and regulations. They stated that they extended full cooperation for examination of goods, submission of undertaking and deposit of uncalled for post-dated cheque but the whole process was a torture, agony and loss of time for the importer. It also resulted in unnecessary payment of demurrage and container charges. It was submitted that the complaint had been filed for dispassionate and judicious consideration of the facts of the case and grounds stated therein.

2- It was stated that a consignment of spare-parts and accessories for automotive vehicles was imported vide IGM dated 30-05-2006 and a home-consumption Goods Declaration (GD) was filed on 02-06-2006 through the clearing agent M/s Khurram Brothers. GD was processed and completed by the Appraisement Collectorate; duty and taxes were paid on 06-06-2006 and 'out of charge' was allowed by the customs.

3- It was stated that at the time of delivery of the consignment the importer was informed that the Customs Intelligence had blocked it to check the description, quantity/weight and value and a letter dated 05-06-2006 was addressed to PRAL and PICT not to release the consignment without their permission. Their staff carried out examination of the consignment twice and found the goods in accordance with the declaration. This was sufficient reason to release the consignment but the Respondent turned their attention to the valuation aspect and to check the assessment of the

consignment. The clearing agent vide letter dated 07-07-2006 requested the Respondent to release the container on undertaking already submitted on 01-07-2006 on its demand. But it also demanded a post-dated cheque equal to double the C&F value of goods. To avoid demurrage/port charges etc the importer had no option but to deposit a post-dated cheque dated 19-01-2007 for Rs.356,230/- alongwith another undertaking with the Respondent, which vide letter dated 24-07-2006, withdrew the detention notice.

4- The Complainant stated that he had submitted copies of several orders of the Superior Courts and the Appellate Tribunal in identical cases where it was held that no officer of Customs Intelligence had the power to re-examine the goods already examined and assessed by appropriate Appraisement Officers and the Intelligence Officers were not appropriate officers for the purpose of sections 79,80 and 83 of the Customs Act. It was therefore alleged that the container was held from 05-06-2006 to 24-07-2006 unnecessarily and unlawfully by the Respondent for which the Complainants were burdened with Rs.52,894/- and Rs.27,100/- as port demurrage and container detention charges on account of illegal detention and none of their fault. It was alleged that the importer was not able to fulfill his business commitment which resulted in loss of revenue, market reputation and mental agony. It was requested that the Directorate-General of Customs Intelligence be advised to release the post-dated cheque as well as the undertaking, pay to the Complainants the demurrage and container detention charges and any other relief deemed fit and adequate be provided.

5- The Director of Customs Intelligence replied to the complaint that in pursuance of an information regarding import of new auto-parts suspected to be of Indian origin, the consignment was blocked to check the description, quantity, weight and value etc. On re-examination of the consignment no discrepancy was found but the auto-parts were found highly under-invoiced and representative samples were sent to the Director of Customs Valuation on 03-07-2006 for determination of fair value. In the meanwhile the consignment was released against an undertaking and post-dated cheque for Rs.356,230/-. The reply from the Valuation Department was awaited. It was added that in view of the CBR's direction for expeditious disposal of the complaints before the Federal Tax Ombudsman, the Directorate had returned the post-dated cheque alongwith the undertaking vide letter dated 05-03-2007 and the Complainants had already moved an application to the Hon'ble Federal Tax Ombudsman for withdrawal of the complaint.

6- Hearing of the complaint was fixed on 03-04-2007. Mr Junaid Ahmad Memon, Deputy Director Customs Intelligence, telephoned to inform that he had immediately to leave for Sukkur to attend the funeral of a close relative and requested for adjournment. Mr Amjad Puri, the importer, and Mr Jawed Ahmad, Legal Advisor, attended the hearing. Mr puri admitted he had sent an application to the Directorate of Customs Intelligence to withdraw the complaint because after return of the post-dated cheque and the undertaking, his grievance against the Department had been redressed and he did not want to pursue the complaint. It was therefore not considered necessary to conduct further hearing in the matter.

7. The contents of the complaint and the reply of the Director of Customs Intelligence have been examined. It has been noted with concern that the Respondent has not given any reason or justification to detain the consignment and has not explained the agency's authority for intervention which have been seriously challenged in the complaint. The following significant issues have emerged from the foregoing statements:

(i) In respect of a consignment which has been examined, assessment finalized by the customs, duty and taxes paid and 'out of charge' granted by the duly authorized customs officials, what authority does the Directorate-General of Customs Intelligence possess to detain the consignment and whether any power in this regard has been delegated to it by the Revenue Division.

(ii) When a consignment is detained by the Customs Intelligence on some information and on re-examination the goods are found to be in accordance with the declaration and the first examination report, what was the justification not to release it on the basis of the 'out of charge' already given by the appraising staff and further detain it for valuation check.

(iii) Once the matter has been referred to the Valuation Directorate, further action would be taken by the valuation officials to determine the correct value, ascertain short levy of duty if any and take action under section 32 of the Customs Act with due process. The Directorate clearly had no role to play after reference to the Valuation Department and there seems no justification to further detain the consignment.

(iv) The Director of Customs Intelligence has not quoted the authority, the procedure or the law under which a post-dated cheque for double the amount of C&F value was obtained from the importer before allowing release of the consignment. The complaint was referred by this office to the Revenue Division on 26-02-2007 and on its receipt the Customs Intelligence seem to have acted quickly, as admitted in para 4 of the reply, to return the post-dated cheque on 05-03-2007.

8- Since the Respondent has submitted no legal or procedural justification for detention of a duty-paid consignment in which no discrepancy was detected and in view of the issues raised in the foregoing paragraph it is a clear case of maladministration. It is recommended that CBR direct the Directorate of Customs Intelligence to

(i) submit explanation in respect of the issues mentioned above and furnish legal justification for its actions within thirty days of the receipt of this order;

(ii) CBR to take a serious view of the administrative excess committed in this case, examine the role of the Directorate of Customs Intelligence in cases of routine imports and exports not involving any misdeclaration or mis-statement and issue clear guidelines for the role of the Directorate in such imports and exports. This office be advised of the action taken within fortyfive days.

(Justice (R) **Munir A. Sheikh)**
Federal Tax Ombudsman

Dated: -2007

SSZ

BEFORE THE FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE KARACHI

COMPLAINT NO.C-501-K/2007

Society for Conservation & Protection
of Environment (SCOPE),
D-141, Block-2, P.E.C.H.S.,
Karachi ---Complainants

Versus

Secretary
Revenue Division
Islamabad ---Respondent

Dealing Officer: Mr M Mubeen Ahsan, Advisor

FINDINGS / DECISION

Mr Nadeem Ahmed Mirza, Consultant
Mr Haroon Malik, Assistant Collector of Customs (Preventive)

The complaint has been filed alleging maladministration against the confiscation of a vehicle and imposition of penalty on the Complainant. It has been stated that the Additional Collector of Customs (Preventive) ordered the confiscation of the vehicle of the Complainant and imposition of penalty. The Appellate Authority remitted the penalty, and held that the Complainant was an NGO, the third buyer of the vehicle, and there was no possibility of its being involved either in getting the vehicle registered against fake documents or being associated with the tampering of the chassis. However, he decided that the seized vehicle could not be allowed release as per policy of the Government.

2- It was stated in the complaint that:

(i) Complainant is an NGO named Society for Conservation & Protection of Environment (SCOPE) based in Karachi, registered under the Societies Act, 1860, engaged in programs and projects related to rural development, environmental protection, community development and providing drinking water in drought affected areas in association with Government of Pakistan Poverty Alleviation Fund (PPAF) and National Commission on Human Development (NCHD). SCOPE purchased a Toyota Land Cruiser Jeep, Registration No.BC 5243, chassis No.FJ 75-0100262, Engine No.IKZ-0147113 1991 Model from a dealer, M/s New Indus Automobiles who supplied the delivery receipt of the vehicle issued by the

Pakistan Coast Guards, Gwadar, of auction on 30.09.2003 through a Government Auctioneer.

(ii) The delivery receipt dated 13.9.2003 and Tax Payment Receipt showing payment of customs duty, sales tax, MAI & CVT dated 14.01.2004 submitted to the Motor Registration Authority were referred to the Coast Guards for verification which was done vide letter dated 11.02.2004 and on the basis of this verification the vehicle was registered in the name of the buyer, Mr. Noor Muhammad.

(iii) The vehicle was sold to Mr. Arif Suleman from whom the Complainant purchased the vehicle through New Indus Automobiles, Karachi, at the price of Rs.1,415,000/- and the vehicle was transferred by MRA in the name of the Complainant on 09.03.2004.

(iv) While the vehicle was in the use of SCOPE it was intercepted by the officials of Directorate of Customs Intelligence on 20.09.2005, the documents were submitted to the officials but the vehicle was detained for further verification on the presumption that it was a smuggled vehicle and its fake chassis number was welded as reported by the Laboratory of Sindh Police Criminalistic Division.

(v) Adjudication proceedings were drawn against the Complainant on the charge that the vehicle had been smuggled and its chassis plate has been tampered. The Consultant representing the Complainant appeared before the Additional Collector for hearing and submitted copies of eight reported judgments of the High Court. (The contents of reply to SCN and the gist of the reported judgments were not mentioned in the complaint). Additional Collector vide Order dated 21.12.2006 ordered confiscation of the vehicle and imposed penalty of Rs.100,000/- without examining the arguments submitted and authorities quoted by the Consultant. (Details not disclosed in the complaint).

(vi) It was alleged that the "order-in-original/appeal are contrary to law, rules or regulations or are a departure from established practice or procedure", SCN and the aforesaid orders "are perverse, arbitrary or unreasonable, unjust biased, oppressive or discriminatory" and "based on irrelevant grounds and administrative excesses". It was also stated that under Section 223 of the Customs Act it was provided that no orders, instructions or directions shall be given so as to interfere with the discretion of the appropriate officer of the customs in exercise of their judicial functions. It was argued that it was erroneous on the part of Respondents to rely on instructions of CBR. In support of these arguments the Consultant referred to the judgment of the Supreme Court in the case of M.A. Rehman v. Federation of Pakistan and others 1988 SCMR 691. The Consultant dilated on this point quite extensively and

quoted several authorities on the subject.

(vii) The learned Consultant further quoted judgments of the Supreme Court without articulating his arguments. He stated that the vehicle was purchased in the same shape i.e. the welded chassis number as it was auctioned by the Pakistan Coast Guards and there was no evidence to establish that it was a different vehicle with the same chassis number. He referred to another judgment of the High Court, PTCL 2005 C-1/712, wherein it was held that when there was no mens rea nor any evidence of tampering the chassis number by the bonafide purchaser, he should be given the benefit of doubt and the vehicle returned to Complainant.

(viii) It was further stated that no charge was established against the Complainant but the vehicle was not released due to welding of chassis plate by the first buyer. He also pleaded that neither the Directorate of Intelligence was empowered to seize the vehicle nor the Adjudicating Officer was empowered to confiscate the same as valid registration documents issued by MRA were provided by the Complainant as held by the judgment of High Court of Balochistan (NLR-2003-134).

3- It has been noted that the learned Consultant has made the allegations under the title of "Grounds" and literally copied the contents of sub-section (3) of Section 2 of FTO Ordinance without caring to intelligently apply the relevant charges. He has not cared to properly marshall his arguments but has profusely quoted authorities without identifying the grounds which supported his contention.

4- It was requested that this office declare the order-in-original/appeal being un-mindful, whimsical, contrary to the provisions of the Act, rules, passed on erroneous and forced construction of law and facts of the case, the same was bad in law and of no legal effect, restore the vehicle to the Complainant, award damages and the amount spent during the period of detention on traveling by the Complainant as compensation.

5- The Deputy Collector of Customs stated in reply to the complaint that on the request of the seizing agency the Pakistan Coast Guards had authenticated the documents which were presented by the person from whose possession the vehicle had been impounded. The vehicle was also sent to AIG, Karachi for forensic test of the chassis number. AIG opined through the examination report that a piece of iron sheet bearing present chassis No.FJ75-010026 had been found welded at the site of the original chassis number. In the meanwhile the Complainant approached the Directorate of Customs Intelligence and expressed his willingness to pay the custom duty and taxes but the offer was not acceded to. It was contended that impounded vehicle had been smuggled, it was registered and was being used under the cover of auction documents.

6- After describing the process of adjudication and appeal, the Deputy Collector stated that under Section 26 of the Sale of Goods Act it was provided that risk

prima facie passed with property and in the instant case the property had been transferred to the buyer and the buyer was obliged to satisfy himself prior to entering any contract of purchase of goods. He invited attention to the judgment of 1980 P.Cr.L.J.721 to the effect that in a case of Mercedez car the contention that the purchaser was an innocent person was not accepted, the law had placed onus on him which he had not discharged and he could not be held to be an innocent purchaser or a person acquiring possession of a car with lawful excuse. In the present complaint, no point demonstrated any act of omission/commission on the part of seizing agency, the adjudicating officer or the Collector (Appeals). It was stated that the complaint was "infructuous" in nature and therefore, it was requested, it may be dismissed.

7- During the hearing of the complaint the Consultant representing the Complainant stated as follows:

(i) The chassis number alleged to be fake and welded on the vehicle, was the same which was present on the vehicle when it was seized by the Coast Guards and auctioned by them; it was mentioned in the delivery receipt dated 15-01-2004 and on the delivery order dated 12-01-2004 issued by the government auctioneers. It was thus confirmed that the vehicle was the same which had been auctioned by the Coast Guards in accordance with the customs law and the Complainant was its third buyer from the car dealer.

(ii) There was no charge of smuggling or of welding the chassis number against the Complainant. The adjudicating officer ordered confiscation of the vehicle with reference to SRO 574(I)/2005 dated 06-06-2005 and on CBR's instructions dated 08-03-2006. These instructions for not releasing smuggle goods, were issued after the seizure of this vehicle, not retrospectively applicable, and not relevant to this case because the vehicle was lawfully disposed off as state properly.

(iii) Collector (Appeals) in paragraph 5 his order wrote "I also believe that a known NGO would also not knowingly involve itself in purchasing a vehicle with tampered chassis". In spite of these remarks he only remitted the penalty but did not order to release the vehicle.

(iv) Consultant reiterated the decision of the Appellate Tribunal in an identical case where the seized vehicle had not been examined by any motor vehicle examiner to determine whether chassis frame was the same as shown or otherwise.

(v) Consultant also referred to the decision of Federal Tax Ombudsman in complaint No.C-313-K/2005 at paragraph 15 that "the burden cast on the Complainant under section 187 of the Act

Honourable Federal Tax Ombudsman presenting souvenior to Linda Lord Jenkins, State Ombudsman Alaska at USOA, Alaska

was discharged by him". He also referred to the decision of the Supreme Court, 2007 SCMR 10, that when Collector of Customs challenged the decision of the High Court for imposition of compensation @ Rs.1000/- per day for the period of unauthorized detention of the vehicle, Supreme Court was pleased to dismiss the petition and also recommended to initiate appropriate proceedings against the officers involved in the matter.

8- Assistant Collector of Customs replying to the verbal arguments of the learned Consultant and in continuation of his reply to the complaint stated as follows:

(i) It was admitted that the Chassis number welded on the vehicle was the same as shown in the Police's forensic report and documents of auction and the MRA. However, it was not the same vehicle which had been auctioned by the Coast Guards but another vehicle which was not legally imported on which the same chassis number was welded to cover up the possession of this vehicle as one which had been auctioned by the Coast Guards.

(ii) On inquiry it was stated that the engine number of the vehicle confiscated by the Additional Collector of Customs (Preventive) and auctioned by the Coast Guards and had not been checked.

(iii) He alleged that while the confiscated vehicle was auctioned for Rs.5,55,000/-, the NGO had purchased it for Rs.14,00,000/- which clearly showed that it was not the same vehicle.

(iv) His main argument was that the vehicle purchased by SCOPE was not the same vehicle which had been auctioned by the Pakistan Coast Guards and the same Chassis number had been illegally welded to cover up the possession of illegal imported vehicle.

9- The statements made by both the sides, their arguments and the authorities quoted by them have been examined. It transpires that the Respondent had raised two major points viz.

(i) Although a vehicle of 1991 Model was auctioned by Pakistan Coast Guards in Gwadar in 2003 wherein chassis number had been welded but the seized vehicle was not the same as the one auctioned by the Coast Guards. The documents verified by the Coast Guards had not been disputed but it was argued that this was a different smuggled vehicle on which the same chassis number was welded. There is no reliable evidence to support the contention which is a mere presumption.

(ii) It was argued that the vehicle was auctioned in Gwadar in 2003 for Rs.550,000/= whereas it has been purchased in Karachi from a show room through a dealer for Rs.1,400,000/=. The price difference is not

understandable to the customs authorities. The Collector (Appeals) had recognized that the Appellant, an NGO, was the third buyer of the vehicle and there was no possibility of NGO being involved either in getting the vehicle registered against fake documents or associating itself with the tampering of the chassis thereof. The Collector therefore, remitted the penalty but did not allow its release.

10- From the above analysis it is clear that the Department has acted only on a baseless assumption that the vehicle was not the same which was disposed of lawfully by the Coast Guards. The Adjudicating Officer ordered the confiscation of this vehicle on the ground that the chassis number of the vehicle had been tampered. He has not applied his mind to the crucial facts of the case and has arbitrarily, unjustly, in excessive use of power ordered confiscation without justification. There was no evidence to disprove that the vehicle was the same vehicle with tampered chassis number which was disposed off by the Pakistan Coast Guards in 2003. The Collector (Appeals) appreciated the fact that an NGO would not get involved in an unlawful activity, he remitted the penalty, but failed to do full justice under the customs law. Maladministration is established.

11- It is felt necessary to point out that the learned Consultant has not clearly and specifically stated the allegations but has repeated certain portions of the sub-section (3) of section 2 of the Ordinance and the same is true about the prayers made by him. This tendency reflects adversely on the formulation of complaint, the grounds of grievances and the specific requests made for redressal of specific grievances. The learned Consultant is advised to desist from this tendency and restrict his submissions to specific facts and clearly spelled out arguments and the prayer.

12- It is recommended that FBR reopen the case under section 195 of the Customs Act and direct the Collector of Customs to

(i) restore the vehicle to the Complainant within fifteen days; and

(ii) compliance reported to this office within thirty days.

(Justice (R) Munir A. Sheikh)
Federal Tax Ombudsman

Dated: -2007

MAH

BEFORE THE FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE KARACHI

COMPLAINT NO.C-542-K/2007

M/S Idress Steel
Through Mr S M Younus, Attorney
Maaz Consultant, 2-A, 1st Floor
State Life Building No.7
G Allana Road
Karachi. ...Complainants

Versus

Secretary
Revenue Division
Islamabad ---Respondent

Dealing Officer: Mr M Mubeen Ahsan, Advisor

FINDINGS/DECISION

Mr S M Younus, Consutlant
Mr Irfan Javed, Deputy Collector of Customs (Appraisement)

The complaint relates to alleged unsympathetic and uncooperative attitude of the Deputy Collector of Customs (Appraisement) Group-III for not refunding duty and taxes on shortage of weight of imported goods despite lapse of 16/17 months, not responding to Complainant's letters and reminders, and not taking any action on personal requests and without any reason. It was stated in the complaint that a consignment of Iron and Steel weighing 135.080 MT gross was imported in August 2005, but 100% weighment under the supervision of the customs staff it was found to contain 131 MT gross although number of coils were the same as manifested; there was shortage of 4.080 MT. The delivered weight was endorsed by the examining officer on the back of the GD. A claim for refund of Rs.23,536/- for excess customs duty paid with relevant documents was filed on 09-12-2005. The supplier had accepted the shortage in weight and issued a credit advice for the short shipped goods which was furnished to the Department on 13-02-2006.

2- The Complainants sent letters and reminders dated 09-09-2006, 10-10-

2006 and 12-02-2007 to the customs quoting the findings/decision of the Federal Tax Ombudsman in complaints No.510-K/2001 and 439-K/2001 that in a similar situation the claim of refund was held to be justified. They tried their level best to get the refund of excess customs duty but their efforts failed to resolve the issue. The attention of customs authorities was invited to CBR's circular letter No.4(18)/CC/2003 dated 23-09-2003 directing the Collectors of Customs to make refund within reasonable time i.e. three months and, where refund was not admissible, to communicate the reason within fifteen days but the CBR's instructions were not adhered to and the field officers ignored the instructions of the highest authority which amounted to insubordination. It was stated that according to CBR Circular the refund should have been paid about thirteen months back but while the taxpayers were helpless, the unsympathetic customs officers were fearless and thought that they were not accountable. It was requested that the agency be directed to make refund without further delay and disciplinary action be taken against officers and staff responsible for such a long delay in not settling refund claim and not answering to their letters.

3- In reply to the complaint, CBR forwarded a copy of a letter of Collector of Customs that the refund claim of Rs.23,536/- filed by the Complainants had been sanctioned and the importer has been informed to collect the cheque. In response to this reply, the Consultant vide letter dated 09-06-2007 confirmed the receipt of the cheque. It was stated by the Consultant that the Collector had avoided comments on the allegations made in the complaint which led to the presumption that the allegation had been accepted. He was legally bound to explain the reasons of such long delay and inattention of nearly eighteen months and not answering even a single letter. It was requested that this office should not take a lenient view of this attitude and if the customs officials have unfettered power it was wrong to presume that the power gave them a blank cheque. They were answerable for their misdeeds and should discharge their functions in accordance with law and their dis-obedience had caused distress and embarrassment to the taxpayers. The learned Consultant stated that the behaviour and conduct of the Respondent be discouraged in order to streamline their administration to be fair, just and swift.

4- During the hearing of the complaint the learned Consultant reiterated the facts stated in the complaint and in his rejoinder but the Deputy Collector had no explanation from the Department for delay in payment of refund and for not replying to even one letter sent to it.

5- From the facts and statements recorded above it is established that due refund of customs duty on excess weight was not paid for about eighteen months till a

complaint was lodged in this office. In reply to the complaint the Respondent has only reported issue of cheque but has not given any reason why importer's letters, reminders and personal requests were completely ignored by the officials of the Department. This is a very sad state of affairs and the taxpayers genuinely feel frustrated and helpless when their letters and applications are just not replied. This is a clear case of maladministration and the primary responsibility lies with the Deputy Collector/Assistant Collector/Principal Appraiser incharge of the Group.

6- It is recommended that CBR direct the Collector of Customs to

(i) investigate into the matter, fix responsibility for inaction and for not responding to the letters of the importer and take suitable disciplinary action against the defaulting officials; and

(ii) explain why an incomplete reply to the complaint was submitted to this office without commenting on the allegations for delay in payment of refund and merely intimating issue of a cheque to the Complainants.

(iii) The above actions may be completed within thirty days and compliance be reported to this office within fortyfive days.

(Justice (R) **Munir A. Sheikh)**
Federal Tax Ombudsman

Dated: -2007

SSZ

BEFORE THE FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE, LAHORE

COMPLAINT NO.704-L/2007

M/s Majid & Company
15-Robert Road, Nila Gumbad,
Lahore. ...Complainant

Versus

The Secretary
Revenue Division,
Islamabad. ...Respondent

Dealing Officer Mr. Muhammad Akbar (Advisor)

DECISION/FINDINGS

Present: Mr. Omar Arshad Hakeem and Mr. Waseem Ahmad, Advocates for the complainant.
Mr. Asif Abbas, D.C., Customs, for the respondents.

The complainant imported a consignment comprising 40 pieces of 12 Bore Pump Action Shot Guns from China and sought clearance from the Customs Air Freight Unit (AFU), Lahore vide Goods Declaration dated 27.11.06 at a declared unit value of US$ 40 per piece. The respondents were requested to assess the goods in terms of section 25 of the Customs Act, 1969 and to follow, in case of difference of opinion regarding value, the procedure as prescribed under section 25(4) read with section 25(6) of the Act. They did not apply the relevant provisions of law or the rules made thereunder and passed an arbitrary provisional assessment order under section 81 of the Customs Act, 1969, finalizing the value of goods on the basis of evidential value of identical goods at US$ 75 per piece and the difference between the declared and assessed value was secured against bank guarantee. The offending goods were detained till finalization of proceedings under section 2(kk) of the Act. The complainant filed a writ petition in the Lahore High Court against the provisional assessment order. The High Court directed the respondents to pass a speaking order after complying with 'sequential order' of valuation as laid down in section 25 of the Act. The complainant argued its case before D.C, Customs but without applying the provisions of section 25 of the Act in a sequential order and without considering the judgments of the superior courts cited before him passed a final assessment order dated 28.05.07. The failure to apply proper law and to pass a speaking order amounted to 'maladministration'. The value of imported goods for purposes of assessment was to be determined under section 25 of the Act. According to sub-section (1) of section 25 of the Act, the value of imported goods was to be taken as the transactional value i.e. price actually paid or payable for the goods when sold for export to Pakistan. While determining the genuineness of the 'transaction price' the authority had to ensure that the price was uninfluenced by other consideration such as relationship between the buyer and seller (clandestine relationship between them) or by

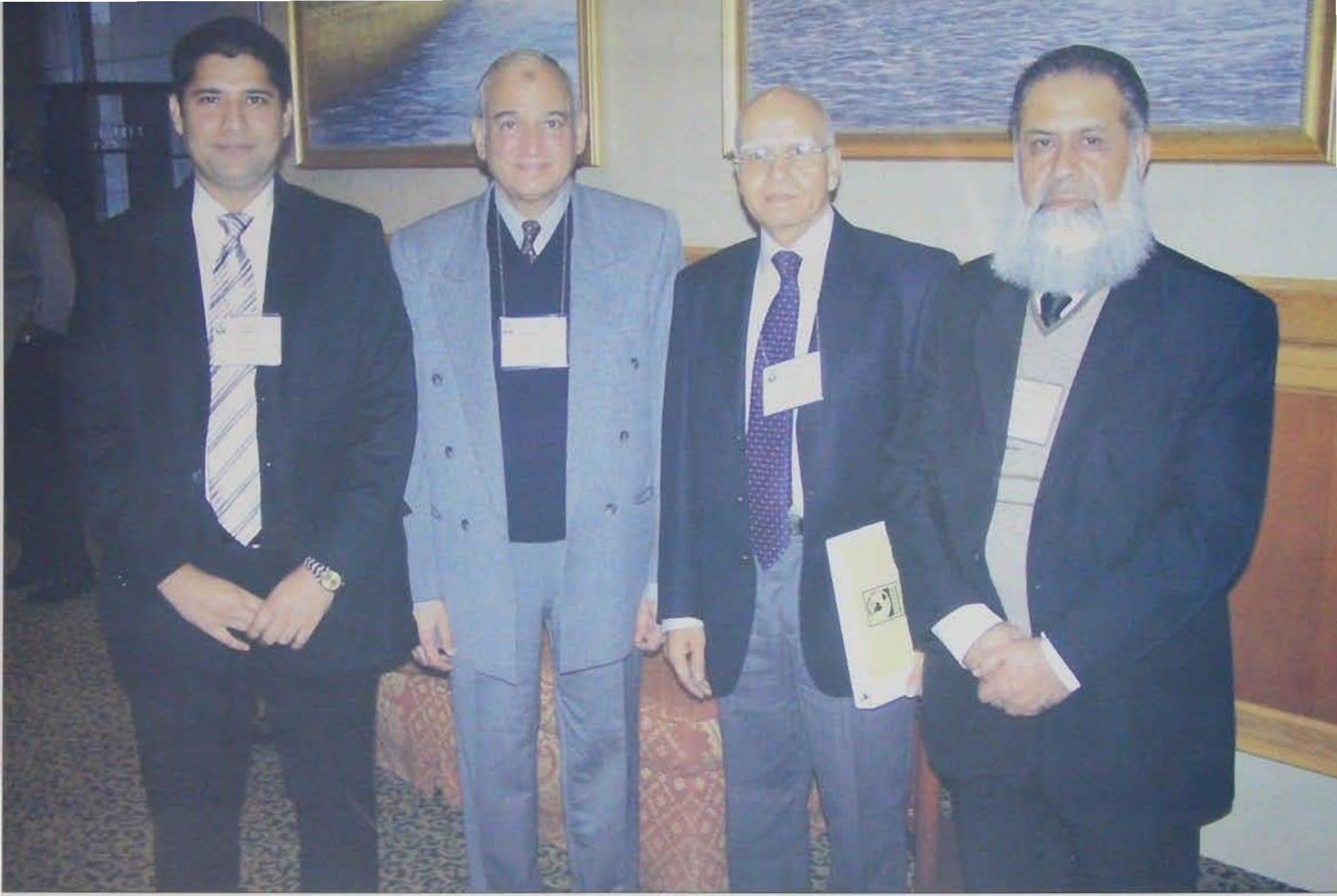
other considerations or conditions. There was no evidence in this case that the declared value was influenced. The complainant's case did not fall within the ambit of sub-section (6) of section 25 of the Act and the impugned final assessment order invoking direct application of the aforesaid section was ultra vires of the Act. While determining the value of goods sub-sections (1), (5), (6), (7), (8), (9) of section 25 of the Act were to be applied sequentially. The direct application of Goods Declaration No.1430 dated 14.12.06 for enhancement of declared transactional value of complainant's goods from US$ 40 to US$ 82.50 was illegal. The complainant was condemned unheard as it was not confronted with the aforesaid Goods Declaration during hearing of the case. If transactional value was unacceptable then clear evidence had to be produced demonstrating that the invoice was not genuine. The value of goods could not be enhanced on the basis of value of contemporaneous goods. No evidence was produced for non-acceptance of transactional value, which was supported by documents. The respondent failed to appreciate the spirit behind the concept of 'valuation' under the GATT Code, which was different from the concept of 'notional value' under Brussels Definition of Value (BDV). Transactional value had to be accepted unless it was found fraudulent and influenced. The respondent also did not follow the ratio laid down in judgments passed by the superior courts, which were cited before him. The FTO in his judgment reported as 2004 PTD 2017 held that ignoring the decisions of the superior courts amounted to an arbitrary conduct and entailing 'maladministration'. The final assessment order dated 28.05.07 may be declared null and void and set aside.

2. In reply, the Collector of Customs, Lahore has submitted that the complaint was not entertainable under section 9(2)(b) of the FTO Ordinance, 2000 as the respondent had passed an appealable order involving valuation of goods after due process of law and the complainant had the remedy of filing first, second and third appeals before appropriate appellate forums. The complainant's contention that the respondent had deviated from the provisions of section 25 of the Act was baseless. While making provisional assessment under section 81 of the Act and releasing non-offending goods, the complainant was facilitated pending finalization of the case. The orders of High Court were followed in letter and spirit. The final assessment order dated 28.05.07 was passed after examining complainant's written representation and after hearing it. Section 25 of the Act was applied in a sequential order in conformity with law. The provisions of section 25 of the Act read with Customs Rules, 2001 were fully adhered to. The complainant was given full opportunity to substantiate its declaration of value but it failed to do as brought out in the assessment order. The contention that the complainant was not heard was baseless. Not only did the complainant submit through its counsel a written statement but also appeared before the respondent on several hearings. As per section 25 of the Act read with Valuation Rules, 2001, the complainant was bound to make full disclosure of its transactional value but failed to do so. On its failure, the assessment officer, after due process applied section 25 of the Act in sequential manner and assessed the goods accordingly. Complainant's transaction value was rejected not on the basis of value of some contemporaneous goods but solely on the ground that the complainant was unable to show the veracity of its declaration as brought out in assessment order dated 28.05.07. The assessing officer respected superior courts and Honourable FTO's judgments. The accusation of ignoring their decisions was unjustified. The complaint may be dismissed being devoid of merit.

3. During the hearing, the AR disclosed that although the complainant had filed appeal against the impugned final assessment order before Collector of Customs

(Appeals) but while the appeal was filed before Collector (Appeals) on 27.06.07 the complaint was filed in the FTO Secretariat on 18.06.07 prior to filing of appeal. He reiterated that the declared value of US$ 40 per shot gun was correct. The transaction was made through banking channels and by opening an L/C. The respondent enhanced the value first to US$ 75 per piece provisionally on the basis of G.D No.6331 dated 07.02.07 and subsequently to US$ 82.50 per piece on the basis of G.D No.1413 dated 14.12.06. The goods should have been assessed in the manner as laid down in section 25(10) of the Customs Act, 1969. The respondent did not follow the sequential order. Reliance was made by the complainant on decision in the case of M/s Rehman Omar versus Collector of Customs, Karachi reported as 2006 PTD at 909, which laid down that the provisions of section 25 of the Act were to be followed in sequential manner as provided in sub-section (10) of section 25 of the Act and resort to sections 25(5) & 25(6) of the Act could only be made when the value could not be determined under section 25(1) of the Act and where no evidence was shown that disputed transaction was false or was the outcome of any fraudulent activity the transactional value had to be accepted. Even if there were some contemporaneous imports imported at a higher price the authority had to show that the complainant's invoice was not genuine. The respondent failed to demonstrate or furnish evidence as to how and on what basis he did not accept the transactional value as declared by the complainant, which should have been accepted under section 25(1) of the Act. The complainant's argument was not even discussed or dealt with in the final assessment order. The contemporaneous import of higher value could not be made the basis of rejection. The goods were assessed at US$ 82.50 per piece on the basis of import value of G.D. No.1430 dated 14.12.06, which was never shown to the complainant. The complainant, in fact, was not confronted with the aforesaid document. The import data base was not relevant. Even the Appellate Tribunal had ruled that the original documents should be confronted. The Lahore High Court in its judgment PTCL 1989 CL 144 ruled that the documents relied by the assessing authority and not disclosed to the assessee could not be used against him. The Appellate Tribunal vide judgment reported as 2004 PTD (Trib) 2898 also ruled that burden of proof vis-à-vis the value of imported and exported goods was on the department. The department needed to provide evidence to the party concerned. Burden of proof was also on the person who made such allegation. The judgments of superior courts cited before the respondent were ignored. Reliance was also placed on judgment 2006 PTD 635 and PLD S.C 75 ref (i) where it was laid down that assessment on the basis of identical goods could be made only when assessment on the basis of declared value was not possible, (ii) since in that case the invoices submitted by the importer were neither incorrect nor any other reasons existed for deviating from normal basis of assessment, the petition was accepted and the case was remanded for fresh decision and (iii) where power was given to do a certain thing in a certain way, the thing must be done in that way or not at all.

4. The DR submitted that the respondent had passed a speaking order in compliance of the High Court's judgment that final assessment should be made in terms of the sequential order under section 25 of the Act. According to rule 109 of the Valuation Rules, 2001 the complainant was asked to explain how the freight of imported goods was more than cost of goods (para 6 of the assessment order) but it could not give any cogent reply. It was also asked to get the invoice attested from the embassy of Pakistan in China but it did not do so. The respondent followed the sequential method after having failed to get the complainant to establish and validate the correctness of its



Honourable Federal Tax Ombudsman with his member delegates from Pakistan at 28th United States Ombudsman Association Conference, Alaska

invoices/declared value. As for court judgment reported as 2006 PTD 909 (Karachi High Court) the respondent did follow the same.

5. The AR, however, submitted that the respondent did not even confront the complainant with the argument that freight was higher than the cost of goods. He did acknowledge that he was asked during the adjudication proceedings to get the invoice attested from the Pakistan Embassy in China but he could not do so because the CBR had asked the Pakistan Embassy not to attest such invoices. When asked to produce CBR's orders prohibiting such attestation the AR could not produce any. He, however, insisted that the complainant was not confronted with original Goods Declaration No.1230 dated 14.12.06 under which goods were imported at US$ 82.50 per piece. The disclosure of import data base, he argued, was irrelevant.

6. The arguments of the two sides and records of the case have been considered and examined. The respondent's contention that the complaint is not entertainable under section 9(2)(b) of the FTO Ordinance, 2000 in that the complainant has the remedy to file appeal against the impugned appealable assessment order is misconceived because the FTO is fully competent to investigate complaints involving 'maladministration'.

7. The complainant imported 40 pieces of 12 Bore Shot Guns from China and sought clearance thereof vide Goods Declaration No.25389 dated 27.11.06 from AFU, Lahore declaring the value as US$ 40 per unit/piece. Since the department doubted the declared transaction value the complainant requested for provisional release of goods under section 81 of the Customs Act, 1969. The request was acceded to and the value was provisionally finalized on the basis of evidential value of identical goods imported vide Goods Declaration No.6331 dated 07.08.06 at US$ 75 per piece and the difference between the declared and assessable value was secured through a bank guarantee. The offending goods were, however, detained till finalization of proceedings under section 2(kk) of the Act. Following the provisional assessment made vide order dated 17.03.07, the complainant filed writ petition No.3594/07 in the Lahore High Court seeking release of goods in view of order dated 17.03.07 and requested that determination of value of goods may be made according to 'sequential order' as laid down in section 25 of the Customs Act, 1969. The complainant raised in the aforesaid writ petition two issues namely the entitlement and availability of quota of import fixed by the Ministry of Commerce and determination of value in sequential order under section 25 of the of Act. In regard to the valuation aspect of the case (subject matter of this complaint) the Honourable Court observed that *"-----petitioner has the remedy to make submission before the Deputy Collector as to the determination of value of his goods in terms of sequential order as contemplated in section 25 of the Customs Act, 1969"*. The D.C after hearing the complainant has passed a final assessment order dated 28.05.07 and the complainant has vide the present complaint challenged the value finalized by the respondent vide the aforesaid assessment order passed by him.

8. The complainant contends that (i) the respondent did not pass a speaking order nor did he determine the value in the manner as laid down in section 25 of the Act, (ii) enhanced the declared value without showing why the declared value was not acceptable and without following the sequential order laid down in sub-section (10) of section 25 of the Act, (iii) complainant's goods did not fall within the ambit of sub-section (6) (similar goods) and should not have been assessed at an enhanced value

without showing why the declared value was not acceptable under section 25(1) of the Act, (iv) the complainant was condemned unheard inasmuch as, besides not determining the value under section 25(1) of the Act, the complainant was not even confronted with evidential value of US$ 82.50 per piece as per G.D No.1430 dated 14.12.06 nor was it confronted with the question that freight of goods was more than the value of goods to enable it to rebut the same.

9. The respondent, on the other hand, submits that (i) final assessment order dated 28.05.07 was passed after following the sequential order as laid down in section 25 of the Act in compliance of High Court's order dated 30.04.07 and after hearing the complainant, (ii) as per section 25 of the Act, read with Valuation Rules, 2001, the complainant was bound to give a full disclosure of the transactional value but he failed to do so in that it was unable to show the veracity of its declaration as discussed in the impugned order, (iii) during assessment proceedings, before passing the final assessment order, the complainant's AR was asked to produce attested price list of the company (supplier) from the Pakistan Embassy in China to confirm and verify the genuineness of the transaction value but he failed to do so, (iv) AR's intention was invited to rule 111 of the Valuation Rules, according to which, the appropriate officer could satisfy himself as to the truth or accuracy of any statement, information, document or declaration presented for valuation purposes, (v) the impugned order discloses that the CIF value of the consignment declared by the complainant was US$ 1600 out of which US$ 911 (57% of the value) represented freight only. Per unit cost of goods minus the freight element came to US$ 17.25, which was quite low as compared to evidential value of identical/similar goods, (vi) the complainant's AR could not substantiate the accuracy/truthfulness of its declaration and since the declared value was not found genuine the other method of determining value was resorted to and the value was enhanced from US$ 40 per piece to US$ 82.50 per piece on the basis of value of similar goods imported vide G.D No.1430 dated 14.12.06 in terms of the provisions of section 25(6) of the Act, (vii) the import data was shown to the AR but he insisted on acceptance of declared value without substantiating the authenticity and accuracy of declaration as envisaged in section 25 of the Act.

10. Under section 25 of the Customs Act, 1969, the custom value of imported goods, subject to the provisions of section and the relevant rules, is the transaction value, that is the price actually paid or payable for the goods when sold to Pakistan subject to conditions laid down therein. The aforesaid section provides for various methods of valuation which, as is evident from sub-section (10) thereof, are to be applied in a sequential order to determine the correct value. Sub-section (10) of section 25 is reproduced as under: -

"Sub-sections (1), (5), (6), (7), (8) and (9) define how the customs value of imported goods is to be determined under this Act. The methods of customs valuation are required to be applied in a sequential order except reversal of the order of sub-section (7) and (8), at the importer's request, if so agreed by Collector of the Customs".

The methods other than the one mentioned under sub-section (1) of section 25 of the Act are to be resorted to only when it is concluded that the invoice price is not genuine and hence not acceptable under section 25(1) of the Act. The law relating to similar or identical goods as provided in sub-sections (5) & (6) of section 25 of the Act comes into play only when the value cannot be determined under section 25(1) of the Act.

11. The scrutiny of the provisional assessment order dated 17.03.07 discloses that while passing the provisional assessment order, it was observed by the respondent that scrutiny of import documents with specific reference to evidential data of identical/similar arms had revealed that the declared unit value appeared to be on the lower side in terms of the provisions of section 25(1), (2) & (3) of the Act and it was not the transaction value. The complainant was served with a notice dated 08.01.07 under section 25(4) of the Act asking it to substantiate its declared value as the real transaction value for customs purposes. The provisional assessment order also discloses that the complainant vide letter dated 25.01.07 without producing evidential record i.e. price lists from the manufacturer, performa invoice etc., insisted on acceptance of declared value despite the fact that identical goods were being assessed at higher values. The complainant's contention was that the goods had been imported against a firm letter of credit. The provisional assessment was, therefore, made on the basis of value of identical goods imported vide G.D No.6331 dated 07.08.06.

12. The value was finally determined vide final assessment order dated 28.05.07 on the basis of evidential G.D No.1430 dated 14.12.06 under which similar goods were said to have been imported at US$ 82.50 per piece. When asked why the complainant was not confronted with respondent's version that the cost of freight vis-à-vis the value of goods was higher than the price of goods, and, therefore, the value could not be determined under section 25(1) of the Act, the DR stated that it was done. Not only that, he further submitted that complainant's AR was also asked to produce attested price lists of the company (supplier) from Pakistan Embassy in China in support of its declaration of value. However, when asked, the DR could not produce any written evidence that the complainant was indeed confronted to explain why cost of freight was higher than the value of goods. As for producing attested price lists from the Pakistan Embassy in China, the complainant's AR did acknowledge that he was asked by the respondent to do so but he could not produce the same because the CBR had discontinued such attestation. When asked to produce CBR's orders discontinuing such attestations, he failed to do so. When the DR was asked whether the CBR had really discontinued the practice of attestation of price list by Pakistan Embassy in China he said he was not aware of it.

13. The crux of the issue is that as per the scheme of section 25 of the Act the value of goods has to be determined in a sequential manner. In the first instance the method of valuation as laid down in section 25(1) of the Act has to be addressed. It is only after it is established that the declared value is not correct or genuine transaction value within the meaning of section 25(1) of the Act the department could proceed to apply other methods of valuation, including the one laid down in sub-section (6) of section 25 of the Act, to determine the correct value. According to Rule 109 of the Valuation Rules, 2001 the appropriate officer who has reason to doubt the truth or accuracy of the price or of the documents produced in support of the declared value could ask the importer to provide further explanation, including documents or other evidences to substantiate the value. A notice dated 08.01.07 was issued to the complainant before making provisional assessment asking it to submit documentary evidences in support of its claim for assessment at the declared invoice value but it appears that the complainant did not produce the evidence in support of the declared value. It is, however, observed that the aforesaid notice did not identify specific documents, evidences and information that the department wanted the complainant to submit for determination of correct value in the case.

14. The final assessment order dated 28.05.07 was passed. The respondent claims that sequential order was followed. The question is whether or not the first method of valuation i.e. the one laid down in section 25(1) of the Act (read with sub-section (2) & (3) thereof) was fully addressed before moving on to other alternative methods of valuation. Before making provisional assessment the complainant was served, as aforesaid, with a notice to produce evidences in support of its contention that the value declared by it was a genuine one but the complainant did not furnish any evidence. In fact, the aforesaid notice was deficient in that it did not identify the specific evidence or document or information which was being sought from the complainant. However, before making final assessment, the respondent during adjudication proceedings again asked the complainant's AR to produce attested price lists of the company (supplier) from Pakistan Embassy in China so as to confirm and verify the genuineness of transaction value declared by the complainant. The complainant's AR was, however, under the impression that the CBR had discontinued such attestation and, therefore, did not attempt to obtain attested price lists of the supplier from the Embassy. The complainant also claims that before declaring that value was not acceptable under section 25(1) of the Act it was never confronted with respondent's contention that the cost of freight was more than the value of goods to enable it to give its explanation on that account. Not only that, the complainant's AR also contended that even when it was decided to determine the value in terms of section 25(6) of the Customs Act, 1969 the complainant was not confronted with evidential Goods Declaration No.1430 dated 14.12.06 under which similar goods were said to have been imported at US$ 82.50 per piece to enable it to counter that evidence. The DR could not produce any written evidence to show that the complainant was confronted with the aforesaid G.D before deciding the case. Since the complainant was under the impression that the CBR had discontinued the practice of attestation of price lists by the Pakistan Embassy in China and if that was a wrong and mistaken impression, it is only appropriate that the complainant should be given another chance to produce the attested price lists asked for by the respondent, alongwith any other evidences that the department may like to call for to be able to determine the correct value of goods. In case the department proves beyond doubt on the basis of concrete evidences/documents/information that the value was not determinable under section 25(1) of the Act only then it could move to alternative method of valuation as envisaged in section 25(6) of the Act.

15. In view of the foregoing discussion, the department needs to revisit the complainant's case to examine afresh the question whether or not the declared value was the genuine transaction value of goods within the meaning of section 25(1) of the Act. For that, the department should (i) confront the complainant in writing with all the evidences that it itself has to demonstrate that the declared value was not the genuine transaction value and (ii) invoke the appropriate provisions of law and ask the complainant to provide evidences, documents and information (identifying for the complainant specific documentary evidences/information required from it) so as to provide the complainant the opportunity to prove that the value declared by it was the actual transaction value within the meaning of section 25 of the Act. If, however, on scrutiny of the evidences available with the department and those asked for from and produced by the complainant, the department is led to believe that the invoice price was not a genuine transaction price and that it was a coloured, doctored or influenced price, only then the department will have the legal right to resort to determine value of subject goods under section 25(6) of the Act. In that eventuality also, the department will need to

confront the complainant with specific evidential G.D. No.1430 dated 14.12.06 under which similar goods are said to have been imported at US$ 82.50 per piece because the complainant's AR submitted during the complaint proceedings that the complainant was not even confronted with the specific aforesaid G.D at the time of making final assessment under section 25(6) of the Act.

16. The failure to clearly demonstrate that the value of the goods was not determinable under section 25(1) of the Act and resort to section 25(6) of the Act for determination of value on the basis of G.D No.1430 dated 14.12.06 without providing the complainant with the evidential G.D in question to enable it to counter it amounts to 'maladministration'. Accordingly, it is recommended that the Revenue Division direct the competent authority to:

i. Reopen the final assessment order dated 28.05.07 under section 195 of the Customs Act, 1969, set it aside and;

ii. Examine afresh the question whether or not the value declared by the complainant is the genuine transaction value of goods within the meaning of section 25(1) of the Act by (i) confronting the complainant with evidence showing that the declared value was not a genuine transaction value and (ii) invoking the appropriate provisions of law to ask the complainant to provide evidences, documents and information (identifying for the complainant specific documentary evidences/ information required from it) in support of its declared value and then decide complainant's valuation case in accordance with the provisions of law.

iii. In case it is found on the basis of scrutiny of all relevant evidences that the value is not determinable under section 25(1) of the Act and the department seeks to determine the value under section 25(6) of the Act, as it did in the final assessment order dated 28.05.07, the complainant should in the first instance be confronted with specific evidential Goods Declaration No.1430 dated 14.12.06 under which similar goods are said to have been imported at US$ 82.50 per piece to enable the complainant to rebut the same before finally deciding the valuation case.

iv. Compliance be reported within thirty days of the receipt of this order.

(Justice (R) **Munir A. Sheikh)**
Federal Tax Ombudsman

Dated: -2007

BEFORE THE FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE KARACHI

COMPLAINT NO.C-886-K/2007

M/s Amin Traders
6-24, West Wharf Road
Karachi ---Complainants

Versus

Secretary
Revenue Division
Islamabad ---Respondent

Dealing Officer: Mr M Mubeen Ahsan, Advisor

FINDINGS/DECISION

Sh. Zahid Hussain, Complainant
Mr Masood Sabir, Assistant Collector of Customs
Mr Zeeshanul Haq, Legal Affair Incharge KICT

The complaint has been filed against the refusal of the Terminal Operator KICT to allow waiver and refund the demurrage charges despite the Delay and Detention Certificate issued by the Assistant Collector of Customs for the period 24-02-2007 to 20-03-2007. It has been stated in the complaint that when the consignment imported by the Complainant vide Bill of Lading No.MOLU-534858067 landed at KICT, Goods Declaration (GD) was electronically filed on 24-02-2007 for clearance. The consignment remained under the customs processing/examination of the goods and finally it was released on 20-03-2007 after 25 days. Since the delay was due to customs processing, the Assistant Collector of Customs issued a letter dated 22-03-2007 to the KICT recommending waiver of the demurrage charges.

2- It has been stated that the goods were urgently needed and to avoid further delay, delivery of the goods was taken after payment of the demurrage charges amounting to Rs.48,717/- and at the same time the copy of the customs' letter was submitted to KICT for waiver of the demurrage. KICT staff kept on advising the importer to wait. Finally, a letter dated 21-05-2007 was sent to the Manager Finance, KICT, for refund of the entire amount of demurrage but the request was rejected by KICT vide letter dated 22-06-2007.

3- The Complainant stated that he sent a letter dated 03-07-2007 to the

Collector of Customs with copy to the KICT requesting the Collector to use his influence for refund of demurrage but no reply was received. It has been contended that it is a clear case of maladministration as held by this office in a number of complaints including the decision in Complaint No.367-K/2006. It has been requested that customs/KICT be directed to arrange refund of the demurrage charges of Rs.48,717/-.

4- The Additional Collector of Customs replied to the complaint and admitted the facts on record. It was stated that the final assessment was delayed due to a value difference and a contravention case against the Complainant was under adjudication. The goods were suspected to be banned under the Import Policy Order 2006-2007 and it was sent to the adjudicating officer for scrutiny and decision. The adjudicating officer, after examination, vacated the show cause notice and absolved the importer from the charges. The value was determined by the customs and the assessment was accepted by the importer who got the goods cleared on payment of additional duty and taxes amounting to Rs.63,231/-. It was further stated that KICT did not fall in the legal jurisdiction of the Revenue Division which has no authority to force the KICT by any means.

5- It was stated that customs authorities did not commit any act of maladministration but performed their duties within the confines of customs law and procedure and interest of revenue as already stated. The customs had done their best to help the importer and it was requested that the complaint against the Revenue Division may be filed being devoid of merits and the concerned quarters be directed to provide adequate relief to the Complainant.

6- During the hearing of the complaint, the Assistant Collector of Customs stated that the Delay and Detention Certificate was issued on 22-03-2007. The Complainant wrote a letter dated 03-07-2007 to the customs that the Delay and Detention Certificate had not been honoured and requested it to direct the KICT to waive the demurrage. KICT did not reply to the customs letters.

7- Mr Zeeshaul Haq of KICT Legal Affairs section attended hearing on 17-09-2007 submitted a brief letter dated 14-09-2007 stating that the matter involved in the complaint has been amicably resolved with Amin Traders, the Complainant vide letter dated 14-09-2007 has confirmed the resolution of the dispute and has written a letter to this office requesting for withdrawal of the complaint. The Complainant vide letter dated 15-09-2007 informed this office that the matter has been resolved with KICT, the cause of complaint has been settled and requested for withdrawal of the complaint.

8- It has been noted with concern that while the customs issued delay certificate in March 2007, the KICT neither complied with the certificate nor sent a reply

and when the importer sent a letter to KICT in July 2007, no action was taken. It has been a practice established over a long period of time that delay certificates issued by the customs are accepted by the port/terminal operators as a matter of routine and no dispute has normally arisen. The customs authorities did not pursue the matter and did not direct KICT to waive the demurrage on the basis of the customs' certificate. It is a clear act of inaction, inefficiency and disregard for established practice without any valid reason which constitute maladministration.

9- KICT is operating under a notification/order of the Revenue Division and is subject to the provisions of the Customs Act as well as the customs and is expect to follow the established practices relating to clearance/detention of cargo. The statement of the Additional Collector that KICT did not fall in the legal jurisdiction of the Revenue Division is not acceptable. It was perhaps under this misconception that KICT did not reply to the notice dated 08-08-2007 issued by this office nor its representative attend hearing on 06-09-2007. When a second notice was issued on 06-09-2007 under section 14 of the Establishment of the Office of Federal Tax Ombudsman Ordinance, 2000 requiring KICT to furnish reply to the complaint and attend hearing on 17-09-2007 an incomplete reply was submitted by a KICT staff member who had no knowledge about the decision/action of management. Complainant Mr Zahid Hussain only stated that since the matter has been amicably resolved with the KICT he has decided to withdraw the complaint. This office has taken a very serious view of the lack of proper response of KICT to the notices issued by this office.

10- It transpires from the above fact that KICT failed to take action on the delay certificate issued by the customs, and on receipt of the second notice from this office it has agreed to give some concession to the Complainant on the condition to withdraw the complaint although he is entitled to full remission in accordance with the practice established over a long period of time. The fact that the customs authorities also failed to implement their own certificate for delay in clearance betrays neglect, carelessness and ineptitude in the discharge of their duties and responsibilities which amount to maladministration.

11- Attention of the Revenue Division/Collector of Customs concerned is invited to the recommendation of this office at sub-para (iv) of paragraph 11 of the Decision/Findings of this office in Complaint No.C-367-K/2006 dated 02-08-2006 that CBR direct the Collector of Customs to suitably amend the Standing Order dated 02-10-1999 by specifically incorporating a condition that the Terminal Operators/ Port Authorities shall invariably accept the Delay and Detention Certificates issued by the customs and the demurrage charges shall be waived. It seems that this recommendation has not been implemented. The provision for remission of demurrage charges in accordance with the established practice has not been incorporated even in the PACCS

Honourable Federal Tax Ombudsman presenting a souvenir to the President of United States Ombudsman Association

Rules/Customs Rules vide SRO 704(I)/2007 dated 14-07-2007.

12- It is recommended that FBR

(i) make appropriate amendments in the Customs Rules/PACCS Rules to ensure that the Terminal Operators/Port Authorities accept the Delay and Detention Certificate issued by the customs for detention of consignments in cases when the importer is not at fault; and

(ii) direct the Collector of Customs to

(a) issue a show cause notice to KICT under the Licensing Rules and Chapter XXI Rule 442 of the Customs Rules notified vide SRO 704(I)/2007 dated 14-07-2007 to give reasons for not refunding demurrage charges in full and state why penal action not be taken under the Licensing Rules and under clause 1 of sub-section (1) of section 156 of the Customs Act; and

(b) decide on merits the issues of refund of the demurrage and imposition of penalty for violation of the aforesaid provision of Customs Act and Customs Rules after affording KICT the opportunity of hearing.

(iii) The above action be completed within fortyfive days; and

(iv) compliance be reported to this office within sixty days.

(Justice (R) **Munir A. Sheikh)**
Federal Tax Ombudsman

Dated: -2007

SSZ

BEFORE THE FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE, LAHORE

COMPLAINT NO.951-L/2007

Mr. Altaf Hussain
M/s Altaf Auto Store,
12-Naki Road, Nila Gumbad,
Lahore. .....Complainant

Versus

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

Dealing Officer Mr. Muhammad Akbar (Advisor)

DECISION/FINDINGS

Present: Mr. Altaf Hussain, the complainant.
Mr. Jamil Nasir Khan, D.C. Customs, Lahore and Mr. Riaz Hussain Bhatti PA, Customs Lahore for the respondents.

The complainant had earlier filed a complaint No.516-L/07 in the FTO Secretariat against illegal assessment of his goods at a higher value with the request that the goods may be ordered to be reassessed after reopening the assessment already done. In the wake of FTO's order the Deputy Collector issued the complainant a show cause notice violating FTO's decision inasmuch as he invoked in the show cause notice section 32 and section 156(1)(14) of the Customs Act, 1969 without any justification and fixed a date of hearing. The complainant appeared before the D.C on the date of hearing and provided three identical evidences of value. He also requested the D.C for supplying previous record for re-assessment but he got angry and adopted an insulting attitude unbecoming of an officer. Subsequently, the D.C passed an order imposing a penalty of Rs.10000/- on the complainant, which was unjust and unprecedented. The impugned order may be declared null and void and the D.C should be ordered to reassess the goods as per FTO's order. Neither before nor during the hearing did the department provide any evidence (of value) to the complainant which act violated Honourable FTO's order. Complainant's reply to the show cause notice was ignored. Two out of three identical evidences (of value) produced by the complainant were attributed to someone else. While G.D No.85 was shown as that of M/s Afzal and Company whereas the same was filed by M/s Ali-Traders Montgomery Road, Lahore. The other G.D. No.442 was filed by M/s Al-Noor Traders, Badami Bagh but the same was shown as belonging to King Electronics. This showed the malafide of the respondents. A penalty of Rs.10000/- was unjustifiably

imposed on the complainant. The show cause notice did not mention any illegal transfer of money abroad. In fact, in the complainant's case the payment was not transferred from Pakistan. The department did not possess any evidence of illegal transfer of money. All this was done as a vengeful reaction to FTO's decision. The complainant was subjected to discrimination. The D.C's impugned order may be declared null and void and he may be issued a contempt notice. The appealable order may be cancelled so that the case could be decided by the FTO.

2. In reply, the Collector of Customs, Lahore has submitted that the complaint lodged by the complainant was not tenable on the following grounds and reasons and that the same may not be entertained by the Honourable FTO:

i. The complainant had filed a complaint on the same issue before the Honourable FTO vide complaint No.516-L/07. The FTO's recommendations were fully complied with and implemented within the given time frame.

ii. An appealable and speaking order was issued after affording full opportunity of hearing to the complainant.

iii. Remedies of appeal were available to the complainant. He should file an appeal to seek redress of his grievance from the appropriate appellate forum.

iv. The complaint related to valuation of goods and did not fall within the jurisdiction of the FTO in terms of section 9(2)(b) of the FTO Ordinance, 2000. The contents of the complaint were untrue and factually incorrect.

The case was reopened by the competent authority in pursuance of FTO's recommendations in C.No.516-L/07 and was adjudicated vide O-I-O No.24/07 dated 04.08.07 after hearing the complainant. All the evidential record of identical/similar imports was retrieved from the System and was taken into consideration while issuing the O-I-O in the case. The complainant's allegations of unfair treatment and non-compliance of FTO's recommendations were totally baseless. Since it was proved that the goods in question were grossly under-invoiced and the complainant had presented untrue invoices a penalty of Rs.10000/- was imposed upon him in terms of section 156(1)(14) of the Customs Act, 1969. Complete import record of identical/similar goods was obtained from the system and was confronted to the complainant during hearing on 02.08.07. Complainant's written reply was discussed, examined and incorporated in the O-I-O. The copies of the G.Ds mentioned by the complainant in his reply to the show cause notice were not enclosed with the reply. However, available record of the G.D was checked and computer print was obtained from M/s PRAL. The penalty was imposed for presenting untrue invoice. The complainant failed to prove the genuineness of transactions through

any documentary evidence. All the evidences were placed before him. He was asked to prove his declared value as true transactional value by way of any documentary evidence like L/C or any other verifiable receipt showing payment of money to the exporter but he failed to prove the genuineness of his declared value. The complaint being baseless and devoid of merit may be dismissed.

3. During the hearing, the complainant's AR pointed out that his goods i.e. CV joints were valued at US$ 2.0 per piece and the total value for the entire consignment was determined at US$ 11200. The case was reopened as per FTO's order dated 24.07.07 made in complaint No.516-L/07 and a show cause notice was issued on 25.07.07. Despite issuance of show cause notice the complainant was not confronted with evidences of higher values. The respondents also concealed evidences of lower values. For example, in the case of G.D. No.85 dated 03.07.07 CV Joints imported by Ali Traders through LDP, the value was accepted by the department at $ 1.50 per 2 pieces. In the case of G.D No.442 dated 10.07.07 (Al-Noor Traders) the value was assessed at $ 1.50 per piece at LDP. In G.D No.19409 dated 23.06.07 (Azim International) CV joints were valued at $ 1.5 per piece. Similarly, in the case of G.D No.2646 dated 21.08.07 the value of the item in question was accepted at $ 1.5 per piece. The respondents, therefore, ignored the evidences of lower values. On the other hand, they did not confront the complainant with evidence of higher values nor did they hand over the relevant G.Ds, showing higher values, to the complainant. The evidence of higher values was not attached to the show cause notice nor was the evidence of higher values ever shown to him during the hearing. The value of goods in G.D. No.6014 dated 29.03.07, which was not given to the complainant, could not be $ 2.0 per piece as the value of another import of the same date was $ 1.5 per piece. As regards G.D. No.9883 dated 06.01.07 the value was $ 1.50 per piece or 80 cent per piece---there was a gap of less than three months between the two imports. Despite this position, the respondents imposed a penalty of Rs.10000/- on the complainant unjustly as a vengeful reaction to FTO's findings in complaint No.516-L/07. The Karachi Data which was relied upon by the respondents showed only the value of goods but did not show the quantity or description of goods with the result that one did not know how the imported pieces were assessed and what their unit values were. He added that in case of G.D No.3466 dated 27.11.06 of S.N. Traders goods per unit were cleared at 58 cents.

4. The DR stated that the case was reopened and processed in the light of recommendations made by the Honourable FTO in complaint No.516-L/07. An appealable order was passed. The data of values of the goods in question was retrieved from the system. The complainant received the data that pointed to higher values. In the hearing held on 02.08.07 the complainant was advised to provide documentary evidence in support of his contention that his declared value was correct but he failed to do so. Again the data of values was shown to the complainant's AR by Mr. Riaz Hussain, principal appraiser, who asked him to receive copies thereof but he refused to do so. On

04.08.06, the complainant did not turn up. On a query whether the G.Ds showing evidence of higher value were annexed to the show cause notice the DR replied in the negative but insisted that the same were shown to the complainant during adjudication proceedings. He added that the complainant also did not provide any evidence in support of the declared value i.e. L/C, transfer of money or any other verifiable receipt.

5. The AR submitted that the respondents did not indicate in the show cause notice that the documents in question i.e. L/C, verifiable receipt etc. were to be produced. In fact, the complainant was allowed no time at all to establish his case regarding transfer of money, mode of payment etc. The DR submitted that complainant's contention that he had a relative in Dubai who made the payment for goods was not tenable. He added that G.Ds of higher values were relied upon as discussed in the O-I-O itself. He added that when no documentary evidence was provided in support of declared value and the value was determined through an O-I-O and if there was difference of 30% between the declared and assessed values a penalty of 50% of the value of import was imposed. However, no such fine or penalty was imposed. Penalty was, however, imposed under section 156(1)(14) of the Act. He further submitted that the complainant had already filed appeal before the Collector (Appeals) and, therefore, FTO's jurisdiction was ousted. The AR submitted that G.Ds of lower values were shown to Mr. Riaz Bhatti in the presence of D.C but he brushed them aside. The G.D No.6014 dated 29.03.07 relied upon by the respondents was not applicable because the goods vide this G.D were imported after a period of 90 days vis-à-vis the complainant's import.

6. The arguments of the two sides and records of the case have been considered and examined. The complainant had earlier filed complaint No.516-L/07, which was disposed of by this forum vide findings and recommendations dated 23.06.07. The aforesaid recommendations are reproduced below:

Re-open and set aside the order of enhancement of value passed on complainant's G.D under section 195 of the Customs Act, 1969, confront the complainant through a show cause notice with evidence, material/data of higher value on the basis of which value is intended to be enhanced and decide the case afresh on its merits in accordance with the provisions of law by passing an Order-In-Original after providing the complainant (i) the opportunity of being heard and (ii) the opportunity of putting up in rebuttal of respondents' position the evidence of lower values of identical/similar imports

It is contended by the complainant that after reopening the earlier assessment made in the complainant's case at US$ 2.0 per piece of CV Joints imported by him the D.C issued a show cause notice dated 25.07.07 but did not confront the complainant with evidences of higher values. According to the complainant the evidential Goods Declaration No.6014 dated 29.03.07 and KCH G.D No.10791 dated 03.04.07 of identical/similar goods were not supplied to him nor were these attached with the show cause notice. Similarly, the

complainant argues that the evidences of lower values supplied by him to the respondents were totally ignored. As such, the complainant argues, the D.C violated the recommendations of the FTO according to which he was bound to confront the complainant through a show cause notice with evidence/material/data of higher values on the basis of which value of his import was intended to be enhanced and to provide the complainant the opportunity of putting up evidences of lower values of identical/similar goods. This, according to the complainant, amounted to contempt demanding action against the respondents.

7. The DR, on the other hand, contends that the evidence of higher values was provided and confronted to the complainant and he was shown evidential G.D No.6014 dated 29.03.07 and KCH G.D No.10791 dated 03.04.07 showing higher evidence of identical/similar goods. The complainant's AR challenged this and denied receipt of any such evidences of higher values. When asked to prove that the complainant was provided evidences of higher values so as to enable him to contest the same the DR placed on record a copy of the relevant note sheet of adjudication file, drawing attention to para 30 of the note sheet portion, which reads as under:

"Evidences of higher value and that of the value assessed are shown to the representative Mr. Altaf in the presence of the adjudication authority as well as in the office of the undersigned. He has refused to receive the evidences".

The DR also contends that the evidences of lower values which were provided by the complainant have been discussed and dealt with in the impugned Order-In-Original. The complainant, according to him, had in support of his contention quoted G.D No.85 dated 03.07.07, G.D No.442 dated 10.07.07 and G.D No.19409 dated 23.06.07 as evidence of lower values. The complainant did not enclose copies thereof with his reply to the show cause notice. However, according to the DR the records of G.Ds were checked from the data bank of PRAL and the position in respect of each G.D was discussed in para 6 of the impugned order: (i) G.D No.85 dated 05.07.07 (not 03.07.07 as indicated by the complainant) related to M/s Afzal Traders and the goods imported vide the aforesaid G.D were plastic tubes and, therefore, not relatable to complainant's import because the description of the goods did not tally with the description of goods imported by the complainant. Even otherwise, this G.D was beyond a period of 90 days and could not be relied upon, (ii) G.D No.442 dated 22.07.07 related to M/s King Electronics and it was again not relevant as the goods imported vide this G.D were cables/wires and (iii) G.D NO.19409 dated 23.06.07 related to M/s Azeem International. No doubt the description of goods in G.D. No.19409 was CVT Joints of Chinese origin and the G.D was within the relevant date but a single evidential G.D could not be made basis for assessment in view of numerous other G.Ds of identical goods. When asked as to why penalty of Rs.10000/- was imposed on the complainant the D.C stated that it was imposed under section 156(1)(14) of the Customs Act, 1969 for submitting untrue invoices.

8. A perusal of the case records reveals that although the respondents did cite and refer in the show cause notice G.D. No.6014 dated 29.03.07 and KCH G.D No.10791 dated 03.04.07 showing higher values of identical/ similar goods than the declared value of the complainant but the same were not attached to the show cause notice. Had these been attached with the show cause notice the complainant would have no reason to complaint about non-supply thereof. As regards the noting on the order sheet of the adjudication file, which shows that the evidences were shown to the complainant but he refused to receive them, it is observed that the file does not carry receipt of these documents under complainant's signature. This makes it doubtful whether the evidence of higher values was supplied to the complainant. As regards the evidence of lower values which the complainant claims that he had supplied to the respondents, it is observed that the adjudication officer has in his order attributed G.D No.85 dated 05.07.07 to M/s Afzal Traders and G.D No.442 dated 22.07.07 to M/s Kings Electronics involving import of plastic tubes and wires & cables whereas according to the complainant in the case of G.D. No.85 dated 03.07.07 CV Joints were imported by Ali Traders through LDP and the value was accepted by the department at $ 1.50 per 2 pieces and in the case of G.D No.442 dated 10.07.07 (Al-Noor Traders) the value was assessed at $ 1.50 per piece at LDP. Here also there is lot of confusion. The situation demands a re-look at these two G.Ds cited by the complainant in support of his contention. The best course of action for the respondents would have been to supply evidences of higher values to the complainant and obtain a signed acknowledgment/receipt from the complainant. The adjudication officer has in the impugned order cited six G.Ds showing higher values i.e. $ 2.0 or more but the question is whether the same were supplied to the complainant before passing the judgment? The complainant says that these were not supplied to him. These evidences should be supplied to him against a proper receipt. Evidential G.Ds of lower values, those of Ali Traders and Al-Noor Traders alongwith all other G.Ds of lower values of similar/identical goods referred to by the complainant during the complaint proceedings should be considered by the respondents for reappraisal of the case.

9. It is observed that the adjudication officer has imposed a penalty of Rs.10000/- on the complainant under section 156(1)(14) of the Customs Act, 1969 for under-invoicing. Is this penalty justified considering that previously complainant's goods were assessed at $ 2.0 per piece without imposing any penalty? The complainant had agitated the enhanced value and this forum made its recommendations dated 23.06.2007 recommending fresh decision on valuation after confronting the complainant with evidences and considering his points of view. Now a penalty of Rs.10000/- has been imposed which, according to the complainant is vengeful reaction against him for filing complaint against the respondents. Imposition of penalty could have been avoided considering that it was not imposed in the first place and the fresh decision as directed by this forum should have been restricted to implementation of recommendations regarding

determination of valuation of goods in question. Instead of mitigating the grievance of the complainant the imposition of penalty of Rs.10000/- has added to his problems.

10. The complainant requests that a contempt notice may be issued to the respondents for non-compliance of FTO's recommendations made in complaint No.516-L/07. The respondents claim that FTO's recommendations were complied with in that a show cause notice was issued and the case was decided vide O-I-O No.24/2007 dated 04.08.07. However, as discussed above, one is not sure whether the evidences of higher values were confronted to the complainant because although the respondents claim that those were, they are not in possession of any written receipt/acknowledgment from the complainant in token of having received the same. In the absence of any documentary evidence that the evidences were indeed supplied to the complainant, it is difficult to accept that these evidences were actually provided. In view of the foregoing discussion, one gets the impression as if all this happened due to some misunderstanding between the two sides. The application for issuance of contempt notice is treated as a fresh complaint against the impugned O-I-O passed by the D.C. However, it is noted that respondents' failure to confront the complainant with evidence of higher values and ignoring the evidences of lower values supplied by him amounts to 'maladministration'. In view of the foregoing discussion and the peculiar circumstances of the case, it is recommended that the Revenue Division direct the competent authority to:

i. Reopen impugned O-I-O No.24/07 dated 04.08.07 and set it aside under section 195 of the Customs Act, 1969 and decide the case afresh justly and fairly in accordance with the provisions of law after confronting the complainant with evidences of higher values (handover the evidences and obtain receipt from the complainant for record) so as to enable him to rebut the same and allow him to furnish all evidences of lower values, including those to which he referred during the complaint proceedings before deciding the case.

ii. Compliance be reported within 30 days of the receipt of this order

(Justice (R) Munir A. Sheikh)
Federal Tax Ombudsman

Dated: -2007

Press Clippings

PAKISTAN
ISLAMABAD

20 MAR 2007

وفاقی ٹیکس محتسب نے سی بی آر کو کراچی کی فیکٹری کا آڈٹ نوٹیفکیشن واپس لینے کا حکم دے دیا

اسلام آباد (اے پی پی) وفاقی ٹیکس محتسب جسٹس (ر) منیر اے شیخ نے سنٹرل بورڈ آف ریونیو سے کہا ہے کہ وہ میسرز سردار پیپر کون فیکٹری کراچی کے انکم ٹیکس آڈٹ کرانے کا نوٹیفکیشن واپس لے (باقی صفحہ 4 بقیہ نمبر 38)

بقیہ نمبر 38

۔ یہ ہدایات انہوں نے میسرز سردار پیپر کون فیکٹری کراچی کی شکایت پر فیصلہ دیتے ہوئے جاری کی تھیں۔ وفاقی ٹیکس محتسب نے سی بی آر سے کہا ہے کہ نوٹیفکیشن نمبر 304 بتاریخ 19 اگست 2006ء کو واپس لیا جائے اور سی بی آر آڈٹ کیلئے کیسوں کے انتخاب کا عمل دوبارہ شروع کرے۔ محتسب نے 30 دن کے اندر سی بی آر سے اس معاملے پر رپورٹ بھی طلب کی ہے۔

PAKISTAN
ISLAMABAD

وفاقی ٹیکس محتسب نے سی بی آر کو 20 لاکھ روپے پیشگی شکایت گذار کو واپس کرنے کی ہدایات دیدیں

اسلام آباد (اے پی پی) وفاقی ٹیکس محتسب جسٹس (ر) منیر اے شیخ نے ایک شکایت (باقی صفحہ 6 بقیہ نمبر 16)

بقیہ نمبر 16

پر سی بی آر کو 20 لاکھ روپے زر پیشگی شکایت گذار کو واپس کرنے کی ہدایات دی ہیں۔ کراچی کے شمع نثار نے وفاقی محتسب کو درخواست دی تھی کہ کلکٹر کسٹمز کراچی نے ان کی 20 لاکھ روپے کی زر پیشگی ضبط کرلی ہے۔ انہوں نے بیئر گلرز کی دو کھیپ کیلئے 15 لاکھ روپے کے مقابلے میں سب سے زیادہ بولی دی تھی۔ محکمہ نے شکایت گذار کو سیلفس شیٹ جاری نہیں کی اور ان کی زر پیشگی ضبط کرلی۔ وفاقی محتسب نے قرار دیا کہ زر پیشگی کو ضبط کرنا غیر قانونی اور بدانتظامی ہے۔ انہوں نے سی بی آر کو ہدایت دی کہ یہ رقم 15 دن کے اندر واپس کرکے محتسب کو 30 دن کے اندر رپورٹ پیش کی جائے۔

[redacted]
[redacted]

20 MAR 2007

وفاقی ٹیکس محتسب کی کاٹن ملز کیس میں سی بی آر کو قانونی تقاضوں کے مطابق فیصلہ کرنے کی ہدایت

اسلام آباد (این این آئی) وفاقی ٹیکس محتسب جسٹس (ر) منیر اے شیخ نے میسرز لطیف کاٹن مل لمیٹڈ کراچی کی شکایت پر سی بی آر کو ہدایت کی ہے کہ درخواست گزار کے کیس کا فیصلہ قانونی تقاضوں کو مدنظر رکھ کر کیا جائے۔ لطیف کاٹن مل لمیٹڈ کی طرف سے رقم کی واپسی کا دعوی کیا گیا تھا۔ وفاقی ٹیکس محتسب نے سی بی آر سے کہا ہے کہ کلکٹر سیلز ٹیکس کو ہدایت کی جائے کہ دستاویزات کی جانچ پڑتال کرکے سیلز ٹیکس ایکٹ کی دفعہ 45 اے کے تحت کیس کا از سر نو جائزہ لیا جائے۔ ٹیکس محتسب نے مسئلہ 30 دن کے اندر حل کرکے 45 دن کے اندر ٹیکس محتسب آفس کو مطلع کرنے کی ہدایت کی ہے۔

17 APR 2007

JANG
RAWALPINDI.

FEDERAL TAX OMBUDSMAN
Diary No 1777
07 APR 2007
ISLAMABAD

سی بی آر کے لیگل ونگ کی اپیلوں پر صدر پرویز مشرف نے محتسب کے فیصلے کو برقرار رکھا اور 612 اپیلیں تسلیم کر لی گئیں

سی بی آر کے لیگل ونگ کی طرف سے بھجوائی گئی ان اپیلوں پر صدر پرویز مشرف نے محتسب کے فیصلے کو برقرار رکھا اور 612 اپیلیں تسلیم کر لی گئیں

اسلام آباد (آن لائن) صدر جنرل پرویز مشرف نے وفاقی ٹیکس محتسب کے فیصلوں کے خلاف انہیں بھجوائی جانے والی 266 اپیلیں مسترد کر دی ہیں اور محتسب کا فیصلہ برقرار رکھا ہے۔ ایک رپورٹ کے مطابق وفاقی ٹیکس محتسب کے فیصلوں کے خلاف سی بی آر کے لیگل ونگ نے 2001ء سے 28 مارچ 2007ء تک 993 اپیلیں ایوان صدر میں صدر جنرل مشرف کو بھجوائیں تھیں۔ ان میں سے 570 براہ راست ٹیکسوں اور 423 ان ڈائریکٹ ٹیکسوں سے متعلق تھیں ان میں سے صدر نے 612 اپیلیں تسلیم کر لیں جبکہ 266 پر وفاقی ٹیکس محتسب کا فیصلہ برقرار رکھا اور انہوں نے سی بی آر کے موقف کو تسلیم نہیں کیا جو اپیلیں مسترد ہوئی ہیں ان میں 138 ڈائریکٹ ٹیکسوں اور 128 ان ڈائریکٹ ٹیکسوں سے متعلق تھیں۔ ٹیکس دہندگان نے سی بی آر کے خلاف گزشتہ سالوں میں 8774 درخواستیں وفاقی ٹیکس محتسب کو دی تھیں ان میں سے محتسب نے 7005 پر اپنا فیصلہ سنا دیا جبکہ 1769 ابھی بھی زیر التواء ہیں۔

Dir M-IC

Dir Admn

9.4.07

9/4/07

10/4

A.I. 2007

17 APR 2007

JANG
RAWALPINDI

وفاقی ٹیکس محتسب نے درآمد شدہ اشیاء کی غیر قانونی رکاوٹ کا سخت نوٹس لے لیا

اسلام آباد (پ ر) وفاقی ٹیکس محتسب جسٹس (ر) منیر اے شیخ نے کسٹم انٹیلی جنس کراچی کی ایک شکایت کنندہ کی درآمد شدہ اشیا کی غیر ضروری اور غیر قانونی رکاوٹ کا سخت نوٹس لیا ہے وفاقی ٹیکس محتسب نے یہ کارروائی میسرز زورین انٹرپرائزز کراچی کی شکایت پر کی ہے۔ جنہوں نے آٹو موبیل گاڑیوں کیلئے سپیئر پارٹس اور دیگر پرزہ جات کی ایک کھیپ درآمد کی تھی جس کو کسٹم انٹیلی جنس کراچی نے غیر قانونی طور پر روک لیا ہے حالانکہ شکایت کنندہ کی طرف سے ڈیوٹی ٹیکس اور پوسٹ پیڈ چیک کی ادائیگی میں کوئی کوتاہی نہیں کی گئی تھی وفاقی ٹیکس محتسب نے کہا ہے کہ محکمے کی یہ کارروائی بدعنوانی پر مبنی ہے وفاقی ٹیکس محتسب نے سی بی آر کو سفارش کی ہے کہ وہ کسٹم انٹیلی جنس کراچی کو ہدایت کریں کہ وہ ان اشیاء کو روکنے کے سلسلے میں وضاحت پیش کریں۔ نیز بدعنوانی پوچی دیگر کارروائیوں کے سلسلے میں اس حکم کے موصول ہونے کے بعد تیس دن کے اندر قانونی جواز پیش کریں وفاقی ٹیکس محتسب نے سی بی آر کو یہ بھی ہدایت کی ہے کہ اس کیس میں کی جانے والی زیادتی کا بہ نظر غائر جائزہ لیں نیز ایسے معمول کے کیس جن میں کسی قسم کی غلط بیانی یا غلط گوشوارہ ملوث نہ ہو ان میں کسٹم انٹیلی جنس ڈائریکٹوریٹ کے کردار کا معائنہ کریں اور ایسے درآمد برآمد کے کیسوں میں ڈائریکٹوریٹ کے کردار کے لئے واضح گائیڈ لائن جاری کریں اور 45 دنوں کے اندر یہ کارروائی کرنے کی ہدایت کی گئی ہے۔

23 JUL 2007

DAILY BUSINESS RECORDER
ISLAMABAD

FTO has powers to hear cases against FBR mal-administration

M RAFIQUE GORAYA

ISLAMABAD: The Federal Tax Ombudsman (FTO) Justice (Retd) Munir A. Sheikh has ruled that his forum has jurisdiction to hear all cases of mal-administration committed by Federal Board of Revenue officials.

The FTO gave this ruling on an objection raised by the Revenue Division that the complainants should go in appeal before the Appellate Tribunal under Section 46 of the Sales Tax Act before seeking remedy from FTO.

The FTO said there is no doubt that a complainant should seek the remedy with the Appellate Tribunal against decision of Collector (Appeals), however he is not barred to come before his forum because whenever mal-administration is committed, the FTO acquires jurisdiction.

He said the provisions of Section 9(2)(b) of the FTO Ordinance have to read in conjunction with the provisions of Section 2(3) of the Establishment of the office of FTO Ordinance 2000.

The former Supreme Court Judge said "the definition of mal-administration is wide and inclusive in nature and includes decisions, processes, recommendations, act of omission or commission which are contrary to law, rules and regulation and are

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perverse, arbitrary, unreasonable, unjust, biased, oppressive or discriminatory"

He said if the FBR officials declare a party as "bogus" in refund cases, then the onus of proving it squarely lies on the shoulders of the department, and if found bogus, it had to be black-listed.

ISLAMABAD.
01 FEB 2007

سی بی آر ادائیگیوں سے متعلق شکایات کی تصدیق کا عمل تیز کرے: وفاقی ٹیکس محتسب

ٹیکس سال 2003-04ء میں شکایت کنندگان کے ریفنڈ کلیم کا فیصلہ 30 دن کے اندر کیا جائے: جسٹس (ر) منیر اے شیخ

اسلام آباد (اے پی پی) وفاقی ٹیکس محتسب جسٹس (ر) منیر اے شیخ نے سی بی آر سے کہا ہے کہ وہ ٹیکس سال 2003ء اور 2004ء میں ادائیگیوں سے متعلق شکایات کی تصدیق کا عمل تیز کرے اور شکایات کنندگان کے ریفنڈ کلیم کا فیصلہ 30 دن کے اندر کیا جائے۔ وفاقی ٹیکس محتسب نے یہ ہدایات بدھ کو برما آئل مارکیٹنگ کمپنی کراچی کی درخواست پر جاری کی ہیں جس میں کمپنی نے مؤقف اختیار کیا تھا کہ کمشنر ٹیکس کراچی نے 95-1994ء، 01-2000ء، 02-2001ء، 03-2002ء اور 04-2003ء تک ان کے ریفنڈ کلیم ادا نہیں کیے۔ وفاقی ٹیکس محتسب نے سی بی آر سے کہا کہ وہ 30 دن کے اندر ریفنڈ ادا کرے اس کے ساتھ ادائیگی میں تاخیر پر اضافی ادائیگی بھی شکایت گزار کو ادا کی جائے۔ انہوں نے مزید کہا کہ ریکارڈ گم کرنے کے ذمہ داروں کا تعین کر کے ان کے خلاف ضابطہ کی کارروائی کی جائے اور اس ضمن میں 7 دن کے اندر رپورٹ وفاقی ٹیکس محتسب کو پیش کی جائے۔

02 MAY 2007

وفاقی ٹیکس محتسب نے نجی کمپنی کو ریفنڈ ادائیگی میں تاخیر کا نوٹس لے لیا، تحقیقات کا حکم

اسلام آباد (خصوصی رپورٹر) وفاقی ٹیکس محتسب نے سینٹرل بورڈ آف ریونیو کو میسرز سریٹا انڈسٹریز پرائیویٹ لمیٹڈ ہری پور کو سیلز ٹیکس ریفنڈ کی ادائیگی میں تاخیر کی تحقیقات کرنے کے احکامات جاری کر دیے ہیں۔ یہ احکامات انہوں نے گذشتہ روز سریٹا انڈسٹریز پرائیویٹ لمیٹڈ ہری پور کی طرف سے دائر کی جانے والی شکایت پر جاری کیے۔ وفاقی ٹیکس محتسب نے سی بی آر کے حکام کو ہدایت کی ہے کہ مذکورہ کمپنی کو ریفنڈز کی ادائیگی میں تاخیر کی تحقیقات کر کے اس کے ذمے داروں کے خلاف کارروائی کر کے ٹیکس محتسب کو 60 دن کے اندر رپورٹ پیش کی جائے۔ انہوں نے مذکورہ کمپنی کی درخواست پر تمام تر صورتحال اور ریکارڈ کا جائزہ لینے کے بعد کہا کہ سیلز ٹیکس ڈپارٹمنٹ پشاور نے جان بوجھ کر ریفنڈ کلیم کی ادائیگی میں تاخیر کی ہے۔ انہوں نے سی بی آر سے کہا کہ وہ اس کے ذمے داروں کی نشاندہی کرے اور شکایت گزار کو سیلز ٹیکس ایکٹ 1990 کے تحت مزید رقم ادا کی جائے اور ریفنڈ کی ادائیگی کے معاملے کی تحقیقات کی جائے۔

04 JUN 2007

DY. NO. 3004
0 JUN 2007

FTO directs CBR to refund Rs2m earnest money

M RAFIQ GORAYA

ISLAMABAD: Federal Tax Ombudsman (FTO) former Justice Munir A. Sheikh has directed CBR to refund earnest money of Rs 2 million to a complainant which he said was arbitrarily, unjustly, oppressively and unlawfully forfeited by the Collectorate of Customs, Karachi.

The FTO gave this direction on a complaint of one Shehzad Nisar, auction bidder, filed against a decision of the Collector of Customs, Karachi to forfeit his

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Rs 2 million earnest money.

The complainant stated that in a public auction conducted by the Department on Dec. 22, 2005, he offered the highest bid for two lots consisting of hair color and deposited Rs 2,000,000 as the earnest money against the total bid of Rs 15,000,000 on the same date. He, however, said the payment sheet for the balance amount was not issued to him despite repeated verbal and written requests and not even an acknowledgement was received.

He submitted that importers of the auctioned goods sent a legal notice on dated Jan. 25, 2006 to him threatening of the consequences if the goods were cleared by him.

He contended that this fact was brought to the notice of Collector of Customs on Feb 1, 2006 for appropriate action and the Collectorate's staff advised him to wait for the payment-sheet till the matter was sorted out with the actual importer.

The complainant alleged that neither payment-sheet was issued nor any reply/acknowledgement was sent by the Collector's office, therefore, under the circumstances he was left with no option but to request for refund of earnest money and filed a written refund application on March 11, 2006 to the Collector of Customs and sent reminders on June 7, 2006 and July 3, 2006, but there was no response.

He also said that instead the Deputy Collector of Customs, after a lapse of five months, sent him a letter on August 23, 2006 that the earnest money of Rs 2000,000 had been forfeited for failure to deposit the balance amount, which was contrary to facts and against the law. He argued that the goods were of perishable nature and the inordinate delay by the Department (the consignment) had lost its monetary value and it was worthless at present. He alleged that the CBR officials caused heavy financial loss to the government and disciplinary action should be initiated against them for negligence, inattention, delay, incompetence, inefficiency and ineptitude in the administration in discharging their duties and responsibilities.

The Assistant Collector of Customs replied to the complainant that after auction of the two lots mentioned in the complaint the bidder failed to deposit the balance amount within the time specified in the Rules despite several verbal and written reminders.

He said that Collector Customs received a representation dated Jan 6, 2006 from the Marraina International, the original owner of the consignment.

After hearing their counsel it was revealed that the owners had merely filed an application for restoration of the Trade Mark which had been accepted for advertisement and further processing. Their claim was rejected by the Collector being devoid of any legal foundation. The Assistant Collector of Customs argued that the bidder took advantage of the proceedings and despite reminders on Jan 28, 2006, June 1, 2006 and June 16, 2006 advising him to take early delivery of the lots, the complainant failed to respond, therefore, his earnest money was forfeited under Rule 69 of the Customs Auction Rules vide letter on August 23, 2006.

He said the bidder was provided ample opportunity to deposit the bid amount but payment was not made despite a lapse of over eight months.

In his findings, the FTO said that from the facts stated by the complainant and reply given by the Customs officials, it transpires that the goods actually imported on Jan 25, 2005 were put to auction on Dec 22, 2005, and earnest money Rs 2,000,000 was deposited by the highest bidder.

The highest bid of Rs 15,000,000 was approved by the Collector on Feb 29, 2005 but the party claiming to be actual importer sent a notice to the Collector of Customs on Feb 1, 2006.

The FTO said on the other hand, the customs officers sent a belated letter Aug 23, 2006 about forfeiture of the earnest money taking the stand that according to Auction Rules the highest bidder should have deposited the balance amount within seven days failing which the amount was liable to forfeiture.

On the other hand, the bidder had argued that payment-sheet was not issued to him by the Customs and the balance amount could not be deposited by the bidder on his own without the Auction Section's payment authorization.

The FTO noted the problem crucial to the complaint is that after depositing the earnest money, the payment-sheet for the balance amount was not delivered to the complainant despite his several reminders and he was verbally told to wait till the problem with the company claiming to be actual importer be sorted out.

He said since the complainant did not receive any payment-sheet or letter from the Department he filed a refund application on March 11, 2006 followed by reminders on June 7, 2006 and July 3, 2006 without any response.

"It seems that the complainant was forced into this position due to lack of any positive response from the customs and the apprehension of getting involved in any litigation between the customs and so-called importers who were staking their claim on the consignment through legal notices", he said.

The complainant had already deposited Rs 2000,000 as earnest money and was not willing to deposit another Rs 13,000,000 unless quick decision was taken and he was assured by the customs that auctioned goods would be delivered after payment.

The counsel for the complainant also quoted the instructions of the Additional Collector in letter No. 1/2003-ADC-III (PT-i) dated 30-11-2004 in support of the claim that Auction Section should display approved bid on Public Notice Board and in case of failure to complete the process within 10 days the offer should lapse and earnest money be refunded. The ruled that from the circumstances of the case it transpires that the decision to forfeit earnest money is arbitrary, unjust, oppressive and unlawful as the complainant has not been given a fair deal, disregarding his request for cancellation of auction and refund of earnest money, the order of its forfeiture was passed eight months after auction.

He said that mal-administration of the Department has been established. Therefore, the CBR direct the Collector of Customs to refund the earnest money within 15 days.

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DAILY BUSINESS RECORDER
14 APR

FTO criticises performance of tax departments

RECORDER REPORT

KARACHI: Federal Tax Ombudsman, Justice Munir A. Sheikh has criticised that the Federal Tax Departments had been identified with rampant inefficiency, corruption and oblivious to their basic duties.

While expressing his views at PHMA House here on Thursday, he said the departments seen as totally non-responsive to the expectations of the citizens and unconcerned with the policy targets set out by the government". Expressing disappointment, he said that never good governance had been felt so badly than now.

He attributed the establishment of the Federal Tax Ombudsman to the inefficiency, arbitrary decisions by tax officers, complexity of functions of tax departments, persistent delays in solving taxpayers' problems.

Justice Munir recalled that Federal Tax Ombudsman had been established with a view to enhance its credibility and efficiency to resolve problems of tax payers pertaining to federal taxes, i.e. grievances concerning to the income tax, customs, sales tax, wealth tax and federal excise.

He said Federal Tax Ombudsman had been established in 2002 through an ordinance aimed to enforce accountability, transparency, quick resolution of disputes, and investigate cases of mal-administration, identify the problems, and recommend solutions to Central Board of Revenue (CBR) to eliminate the malpractice.

He pointed out that taxpayers were not fully aware of the powers assigned to this institution and it is my intention to create greater awareness of the role of this institution amongst the taxpayers.

Justice Munir also pointed out that most of the complaints were regarding complicated tax problems of legal disputes, assessment of tax, refunds and rebates, while in a large number of cases the non-traceability or non-availability of the relevant records were the major reasons behind the taxpayers problems.

He apprised that since the establishment of this very institution, 9,293 complaints had been recorded by the taxpayers up to March 2007, of which 8,948 complaints had been disposed, while 345 complaints were in process.

04 MAY 2007

Another exemplary decision

According to a Recorder Report appearing on April 30, the Federal Tax Ombudsman (FTO), Justice Munir A. Sheikh (Retd) has advised the CBR officials to pass speaking orders on merit in accordance with the provisions of law after taking into consideration the written and oral submissions of the complainants/respondents. He pronounced this decision while disposing of two identical complaints from Lahore. What was common between the two was seizure of their cars in July 2006, by Customs officials on the charge of smuggling, under the provisions of Customs Act-1969 and Import Export Control Act. The complaints are stated to have been made to the FTO on the basis of the seizure reports, pointing out that the Additional Collector issued show-cause notices dated July 6, 2006, to which the complainants responded with detailed replies. Their cases were heard on different days, the last time on November 2, 2006, following which the complainants received an Order in Original (OIO) dated November 14, 2006. However, they contended that although the OIO did not pertain to them, it was applied mutatis mutandis and their vehicles were confiscated outright. They also argued that the impugned OIO was arbitrary, improper and non-speaking as it did not mention neither the contentions advanced in their written replies to the show-cause notices nor their verbal arguments.

In this regard, they also made a reference to section 24A of the General Clauses Act, 1897, under which it had become obligatory for an adjudication officer to exercise powers reasonably, fairly, justly and to give reasons for making the order. They stated in their complaint to the FTO, that they had challenged the reports of forensic science labs at Lahore and Islamabad. However, as they pointed out, ignoring their submissions, an adverse order was passed against them.

It will be noted that in his reply the Collector of Customs, Lahore, submitted that on the examination of chassis frames experts of the forensic science labs had revealed that the chassis number frames had been cut and welded, claiming that confiscation order was passed after considering material/evidence on record, and in accordance with the provisions of law. According to him, since the circumstances of the complainants' cases were identical in nature the OIO was applied in both cases.

However, notwithstanding all this, in his findings/decision, the FTO noted that the complainants' arguments contained in their written replies to the show-cause notices as well as their verbal arguments made through their counsel before the adjudication authority were neither discussed nor dealt with in the impugned order, which was mechanically applied mutatis mutandis to the complainants' case as well. Again, as he pointed out, in fact the complainants were condemned unheard, thereby asking the CBR to set aside the OIO dated November 14, 2006 in so far as it related to the present complainants only, under the provisions of Section 195 of the Customs Act, 1969, and to pass a fresh order. It will thus be noted that in keeping with the tradition of FTO office, Justice Munir A. Sheikh (Retd) set yet another example by refusing to condone the excesses committed by the tax authorities. Again, this is not the only case in which they have taken decision overlooking the demands of justice. As for the taxpayers' complaints filed with the FTO stood at 8,774 complaints against the CBR during the period under review. Out of these, direct and indirect tax complaints totalled 6,190 and 2,584 respectively. So far, the CBR has received a total 7,005 FTO decisions including 4,842 direct taxes cases and 2,163 indirect taxes cases. All in all, it will be noted that time has come for the CBR to learn the right lesson from FTO's decision and to set its house in order without undue delay.

16 JUN 2007 DAILY BUSINESS RECORDER ISLAMABAD

FEDERAL TAX OMBUDSMAN DY No. 3315 19 JUN 2007 ISLAMABAD

FTO asks CBR to examine role of Customs Intelligence

M RAFIQ GORAYA

ISLAMABAD: The Federal Tax Ombudsman, Justice Munir A Sheikh, has asked Chairman, Central Board of Revenue (CBR) to examine the role of the Directorate of Customs Intelligence in cases of routine imports and exports not involving any misdeclaration or misstatement, and issue clear guidelines for the role of the Directorate in such imports and exports.

The FTO gave this direction on a complaint of Zorain Enterprises , Moin Steel Market Karachi, which had alleged unnecessary and unwarranted detention, of an imported consignment, by the Directorate-General of Customs Intelligence and Investigation, Karachi, which had been allowed "out of charge" by Customs on the pretext of misdeclaration of value and quantity, without any basis and cause.

The complainant stated that he had submitted copies of several orders of the superior courts and the Appellate Tribunal in identical cases where it was held that no officer of Customs Intelligence had the power to re-examine the goods already examined and assessed by appropriate Appraisement Officers, and the Intelligence Officers were not appropriate officers for the purpose of section 79, 80 and 83 of the Customs Act.

The FTO said since the Customs Intelligence Directorate has not submitted any legal and procedural justification for detention of a duty-paid consignment in which no discrepancy was detected, the CBR should call explanation of Customs Intelligence Karachi in respect of following issues.

i. In respect of a consignment which has been examined, assessment finalised by the customs, duty and taxes paid and 'out of charge' granted by the duly authorsed customs officials, what authority does the Directorate-General of Customs Intelligence possess to detain the consignment, and whether any power in this regard has been delegated to it by the Revenue Division.

ii. When a consignment is detained by Customs Intelligence on some information, and on re-examination the goods are found to be in accordance with the declaration and the first examination report, what is the justification for not releasing it on basis of the 'out of charge' already given by the appraising staff and further detaining it for valuation check.

iii. Once the matter has been referred to the Valuation Directorate, further action would be taken by the valuation officials to determine the correct value, ascertain short levy of duty, if any, and take action under section 32 of the Customs Act with due process. The Directorate clearly has no role to play after reference to the Valuation Department, and there seems no justification to further detain the consignment.

iv. The Director of Customs Intelligence has not quoted the authority, the procedure or the law under which a post-dated cheque for double the amount of C&F value was obtained from the importer before allowing release of the consignment.

The FTO called upon the CBR to take serious view of the administrative excess committed in this case, and direct the Directorate of Customs Intelligence to furnish legal justification for its actions within thirty days of the receipt of this order.

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18 JUN 2007 DAILY BUSINESS RECORDER ISLAMABAD

FTO asks CBR to stop deductions not supported by law

M RAFIQ GORAYA

ISLAMABAD: The Federal Tax Ombudsman has directed CBR to stop decades-old practice of 40 percent deduction of sales proceeds as rents, 5 percent surcharges as donation to Motamar-e-Alam-e-Islami, and calculation of duties and taxes on the bid price of the auctioned rather than the import value of the goods.

Justice Munir, who is a former Judge of the Supreme Court, while hearing a complaint of Impex Industries, discovered that the department had been making these deductions on the auctioned goods since long, without a proper statute, legislation or ordinance and lawful authority.

In its complaint, Impex Industries contended that following a decree, dated 10.09.05, by the competent court that it was the owner of the auctioned goods it approached the Customs Collectorate for refund of the proceeds of the auctioned goods, but the department failed to respond.

The complainant also argued that the goods were auctioned for Rs 63.988 million and after deduction of customs duty, sales tax, income tax, etc, Karachi Customs should have refunded Rs 28.431 million to it.

However, the department worked out the balance proceeds at Rs 1.39 million only—worked out after making deductions on account of surcharge of 5 percent for donation to Motamar and 40 percent share of the sale proceeds for payment to the person holding goods in custody (warehouse owner).

During the hearing, the FTO asked the CBR officials to give specific replies to the questions relating to calculation of duty and taxes on the auctioned price rather than the ITP/import price or value, the legality of levy of 5 percent surcharge for donation to Motamar and legal basis for deducting 40 percent of the sale proceeds for remission to the person holding the goods (warehouse owner).

Analysing CBR replies on the touchstone of law, the FTO said that "in so far as the liability of 5 percent surcharge for donation to Motamar (MAI) and deduction thereof from the sale proceeds was concerned, the CBR

> P 15 Col 1

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contended that the Board was competent in terms of section 4 of the Customs Act, 1969 to issue General and Special Orders and that was why 5 percent surcharge for donation to MAI was to be deducted from the sale proceeds in terms of CGO No. 07 /79 dated 14.05.1979, the language of which was self-explanatory, and which was issued to give effect to the President order".

Section 4 of Customs Act 1969 lays down that an officer is competent to exercise powers and discharge duties as are conferred or imposed on him by or under Customs Act and the CBR may, by General or Special Order, impose such limitations or conditions on the exercise of such powers and discharge of such duties as it thinks fit.

The FTO observed: "It is not understood how Section 4 of the Act or the aforesaid CGO can be said to be the 'enabling provisions' for levy of 5 percent surcharge.

"If the intention is to convey that CGO No. 7/79 dated 14.05.1979 was issued by the CBR and the surcharge was being collected by the officers on the strength of this CGO, it begs a further question as to when and under what statute or legislation or enabling provision the surcharge in question was levied in the first place for which the GCO was issued to the Collectorate for its collection."

The FTO asked CBR officials to bring up enabling provisions in the Customs Act or a Statute, notification, ordinance or any other legislation whereby 5 percent surcharge was levied in the first instance before it was ordered to be collected as per CGO but they have failed to do so.

"No surcharge or levy can be collected unless it is levied under a specific Act, Statute or Ordinance or legislation" he pointed out.

He said that all that CGO No. 7/79 says is that it has been decided by the government that 5 percent surcharge will be levied on all auctioned goods, but it does not disclose the enabling provision under which 5 percent surcharge was actually levied by the government for collection as directed by aforesaid CGO.

He said that the CBR officials have, therefore, not been able to provide the legal basis for levy of the 5 percent charge which cannot be collected from the sale proceeds in the absence of any enabling provision for its levy.

As to the question why duty and taxes had been worked on the bid price rather than ITP/Import value of the consignment at the time of import, the department explained that it in terms of section 201 , read with annexure -A of Standing Order No. 16/01 dated 17.11.01 "the term sale proceeds is self-spoken that is why duty and taxes were calculated on the bid price" and further that actual sale proceeds are to be applied instead of any reference or indicative price.

The FTO observed that here again the department had failed to disclose the law under which duty and taxes are required to be levied on and deducted from the bid/auction price of the goods rather than on the declared ITP/import value of the consignment.

"Section 201 of the Customs Act 1969 does not envisage levy of duty and taxes on the bid price since the Standing Order cannot be a substitute for specific legislation on that account", he pointed out. The FTO said that in the absence, therefore, of specific legislation providing for levy of duties and taxes on the bid price and its deduction from the sale proceeds rather than the declared value/import price the CBR cannot levy duty and taxes on the bid price and deduct the same from the sale proceeds.

He said that they should calculate duty and taxes on the declared import and assessable value of the consignment since they are supposed to recover only customs duty and other taxes that are payable to the Federal Government in respect of such goods as stipulated in sub section (2) (c) of section 201 of the Customs Act 1969.

As regards charging/deducting 40 percent of sale proceeds for remission to the person holding the goods in bond, the CBR officials have explained that 40 percent was deducted from the sale proceeds for payment to the person holding goods in custody in terms of Annexure - A of Standing Order No. 16.01.

He pointed out that Section 201 of the Act does not prescribe this exorbitant rate and asked when was this rate of 40 percent prescribed and under what law? Just by saying that the rate is mentioned in Annexure A to the Standing Order does not help the department unless their contention is backed up by a legal sanction/legislation. He said that the CBR had failed to explain whether the rate of 40 percent was agreed between the concerned parties as part of contract at the time the goods were warehoused that if the goods were auctioned, 40 percent would be deducted from the sale proceeds. He said that in the absence of a legal basis fixing this rate and in the absence of a specific contract to that effect, 40 percent would be deducted from the sale proceeds was both illegal and unreasonable.

He said that the ends of justice would be met if the owner of the goods was asked to pay the rent for the entire period the goods remained warehoused rather than siphoning off 40 percent of the sale proceeds for payment to the person holding the goods. The FTO advised the CBR to determine such cases of refund of balance sale proceeds as under:

1. the duty and taxes should be calculated on the declared import value rather than the bid price of goods. The department may however levy the rates of duty and taxes applicable at the time the goods were moved out of the warehouse for auction.

2. 5 percent surcharge for donation to Motamar-e-Alame-Islami should not be levied and deducted from the sale proceeds because the department has failed to disclose the legal basis of the levy, as discussed above.

3. 40 percent of the sale proceeds should not be deducted from the balance of sale proceeds as the share of the person holding the goods in the absence of legal sanction/authority to levy the charge. Instead, normal warehouse rent should be charged from the concerned person/parties for the entire period the goods remained warehoused.

THE NATION
ISLAMABAD

09 AUG 2007

FBR asked to return cheques to aggrieved party

OUR STAFF REPORTER

ISLAMABAD- Taking stern notice of mal-administration of Customs Department Federal Tax Ombudsman (FTO) Justice (Retd) Munir A Sheikh Saturday asked the Federal Board of Revenue (FBR) to return the post-dated cheques worth Rs 0.821 million to the aggrieved party.

The FTO took the decision on the complaint of M/s Diamond Weld Rods Private Limited Karachi against Collector Customs, Port Qasim, who had not returned a post dated cheques of Rs 0.821 million to the complainant regarding the import of a consignment of 500 MT M.S wire rods from UAE.

The consignment earlier cleared by the Department on provisional basis against the security in question. The FTO ruled out that mal-administration has been established against the customs department.

Pakistan Observer
ISLAMABAD

09 AUG 2007

FBR asked to return post-dated cheque to the complainant

STAFF REPORTER

ISLAMABAD—Federal Tax Ombudsman (FTO) Justice (R) Munir A. Sheikh has asked the Federal Board of Revenue (FBR) to return the post-dated cheque to the complainant. This decision was taken by the FTO on the complaint of M/s Diamond Weld Rods (Pvt) Ltd. Karachi against Collector Customs, Port Qasim, who had not returned a post-dated cheque of Rs. 821,383 to the complainant regarding the import of the consignment of 500 MT M.S Wire Rods from UAE which was provisionally cleared by the department against the security in question.

The FTO. has ruled that Mal-administration has been established against the department. The FTO has recommended to the FBR to direct the Collector Customs to finalize the determination of assessment of duty and taxes on the basis of declared value, return the Post Dated Cheque within 15 days of the receipt of this order; and compliance in this regard be reported within 30 days.

Gross violation of 'reward rules' by ST official

SOHAIL SARFRAZ

ISLAMABAD: Sales tax officials have committed gross violations of "reward rules", including unjustified grant of cash reward of Rs1.004 million during 2004-2005.

The auditor general of Pakistan has highlighted these violations in the audit report of 2004-2005 committed by Collectorates of Sales Tax, Lahore and Rawalpindi causing huge loss to the national exchequer.

According to the report, a reward was framed in light of decision of Federal Tax Ombudsman (FTO) against Order-in-Original No176/92 in case of M/s Pan Islamic Industries.

The Collectorate of Sales Tax, Lahore sanctioned erroneously a reward of Rs 396,166 whereas a reward of Rs 39,166 was admissible. This resulted in irregular/excess sanction

> P 4 Col 4

Gross violation

> from page 1

of reward of Rs 357,000.

The case was pointed out to the department in 2005. The same was also discussed in departmental account committee (DAC) meeting held in November 2005. The DAC directed the Collectorate to review this case and inform the Audit by November 28, 2005.

However, sales tax department has so far taken no action in this regard.

In another case, the CBR's reward order of 1998 has allowed reward to officers and staff of the sales tax department on detection of sales tax evasion.

The Rawalpindi Collectorate sanctioned two cases for reward of Rs 258,792 and Rs 388,605 on 8th and 9th June, 2004, respectively against a routine case of late filing of returns by the Utility Stores Corporation (USC) of Pakistan. This is a government organisation and has no mala fide intention in concealing their sales.

In fact non filing of returns by USC was depicted by the Collectorate's computer data cell on which the Collectorate initiated an audit to justify for reward of Rs 647,397, which was not admissible.

The irregularity was pointed out by the Collectorate in June, 2005 and to the CBR in September, 2005. The case was discussed in DAC meeting on Nov 21, 2005 in which the Audit reiterated its contention that the government organisation against which reward was claimed had no mala fide intention in concealing sales tax.

The Collectorate requested for some time to re-verify position in this regard after going through details of the case. No further progress was intimated.

DAWN Islamabad, WEDNESDAY, SEPTEMBER 12, 2007

FBR told to decide case on merit

By Our Reporter

ISLAMABAD, Sept 11: Federal Tax Ombudsman Justice (retired) Munir A Sheikh has asked the Federal Board of Revenue (FBR) to decide the case of a complainant on merit, in accordance with the provisions of law.

This decision was taken by the ombudsman on the complaint of Al- Vera Enterprises, Sheikhupura, against the additional director customs intelligence, Lahore, who had levelled charges of tax evasion and inadmissible funds against the complainant.

The ombudsman has ruled that the respondent did not consider the final reply, submitted by the complainant to the show notice issued by the department. Therefore, the department's order amounted to maladministration.

The justice has recommended to the FBR to re-open the impugned order, in original (O-I-O) under the provisions of the Sales Tax Act, 1990, to appoint a competent adjudication officer, other than Dr Asif Mahmood Jah, the present incumbent.

It was recommended that to decide the case afresh purely on merit after taking into consideration the complainant's final written reply to the show cause notice and after enlisting verbal submissions, for which an opportunity of hearing should be extended and compliance in this regard be reported within 30 days.

FTO asks CBR to stop deductions not supported by law

> from page 1

contended that the Board was competent in terms of section 4 of the Customs Act, 1969 to issue General and Special Orders and that was why 5 percent surcharge for donation to MAI was to be deducted from the sale proceeds in terms of CGO No. 07 /79 dated 14.05.1979, the language of which was self-explanatory, and which was issued to give effect to the President order".

Section 4 of Customs Act 1969 lays down that an officer is competent to exercise powers and discharge duties as are conferred or imposed on him by or under Customs Act and the CBR may, by General or Special Order, impose such limitations or conditions on the exercise of such powers and discharge of such duties as it thinks fit.

The FTO observed: "It is not understood how Section 4 of the Act or the aforesaid CGO can be said to be the 'enabling provisions' for levy of 5 percent surcharge.

"If the intention is to convey that CGO No. 7/79 dated 14.05.1979 was issued by the CBR and the surcharge was being collected by the officers on the strength of this CGO, it begs a further question as to when and under what statute or legislation or enabling provision the surcharge in question was levied in the first place for which the GCO was issued to the Collectorate for its collection."

The FTO asked CBR officials to bring up enabling provisions in the Customs Act or a Statute, notification, ordinance or any other legislation whereby 5 percent surcharge was levied in the first instance before it was ordered to be collected as per CGO but they have failed to do so.

"No surcharge or levy can be collected unless it is levied under a specific Act, Statute or Ordinance or legislation" he pointed out.

He said that all that CGO No. 7/79 says is that it has been decided by the government that 5 percent surcharge will be levied on all auctioned goods, but it does not disclose the enabling provision under which 5 percent surcharge was actually levied by the government for collection as directed by aforesaid CGO.

He said that the CBR officials have, therefore, not been able to provide the legal basis for levy of the 5 percent charge which cannot be collected from the sale proceeds in the absence of any enabling provision for its levy.

As to the question why duty and taxes had been worked on the bid price rather than ITP/Import value of the consignment at the time of import, the department explained that it in terms of section 201 , read with annexure -A of Standing Order No. 16/01 dated 17.11.01 "the term sale proceeds is self-spoken that is why duty and taxes were calculated on the bid price" and further that actual sale proceeds are to be applied instead of any reference or indicative price.

The FTO observed that here again the department had failed to disclose the law under which duty and taxes are required to be levied on and deducted from the bid/auction price of the goods rather than on the declared ITP/import value of the consignment.

"Section 201 of the Customs Act 1969 does not envisage levy of duty and taxes on the bid price since the Standing Order cannot be a substitute for specific legislation on that account", he pointed out. The FTO said that in the absence, therefore, of specific legislation providing for levy of duties and taxeson the bid price and its deduction from the sale proceeds rather than the declared value/import price the CBR cannot levy duty and taxes on the bid price and deduct the same from the sale proceeds.

He said that they should calculate duty and taxes on the declared import and assessable value of the consignment since they are supposed to recover only customs duty and other taxes that are payable to the Federal Government in respect of such goods as stipulated in sub section (2) (c) of section 201 of the Customs Act 1969.

As regards charging/deducting 40 percent of sale proceeds for remission to the person holding the goods in bond, the CBR officials have explained that 40 percent was deducted from the sale proceeds for payment to the person holding goods in custody in terms of Annexure - A of Standing Order No. 16.01.

He pointed out that Section 201 of the Act does not prescribe this exorbitant rate and asked when was this rate of 40 percent prescribed and under what law? Just by saying that the rate is mentioned in Annexure A to the Standing Order does not help the department unless their contention is backed up by a legal sanction/legislation. He said that the CBR had failed to explain whether the rate of 40 percent was agreed between the concerned parties as part of contract at the time the goods were warehoused that if the goods were auctioned, 40 percent would be deducted from the sale proceeds. He said that in the absence of a legal basis fixing this rate and in the absence of a specific contract to that effect, 40 percent would be deducted from the sale proceeds was both illegal and unreasonable.

He said that the ends of justice would be met if the owner of the goods was asked to pay the rent for the entire period the goods remained warehoused rather than siphoning off 40 percent of the sale proceeds for payment to the person holding the goods The FTO advised the CBR to determine such cases of refund of balance sale proceeds as under:

1. the duty and taxes should be calculated on the declared import value rather than the bid price of goods. The department may however levy the rates of duty and taxes applicable at the time the goods were moved out of the warehouse for auction.

2. 5 percent surcharge for donation to Motamar-e-Alame-Islami should not be levied and deducted from the sale proceeds because the department has failed to disclose the legal basis of the levy, as discussed above.

3. 40 percent of the sale proceeds should not be deducted from the balance of sale proceeds as the share of the person holding the goods in the absence of legal sanction/authority to levy the charge. Instead, normal warehouse rent should be charged from the concerned person/parties for the entire period the goods remained warehoused.

FBR asked to decide refund claim

ISLAMABAD, July 23: Federal Tax Ombudsman (FTO) Justice (retired) Munir A. Sheikh has asked Federal Board of Revenue (FBR) to decide refund claim of a complainant and also examine show cause notices issued to him by the sales tax department, Karachi. The decision was taken by the FTO on the complaint of a Karachi-based M/S Sherkpak (Pvt) Limited; a manufacture, importer and exporter of knitted garments.

He had requested the sales tax department for refund of sales tax amounting to Rs237,093,8, withheld by the department. Moreover, the department had also issued 19 show cause notices to the complainant.

The FTO ruled that maladministration on the part of the department had been established. He has recommended to the FBR to direct Collector of Sales Tax (Enforcement) to personally look into the pending claims of Rs. 2,370,938, decide them within fifteen days and also examine 19 show cause notices issued to the complainant and decide them within fifteen days.

The FTO has also observed that besides all the claims of refund additional amount should also be paid to the complainant in accordance with the provision of sales tax act and compliance in this regard be reported to this office within thirty days of the receipt of this order.—PPI

FTO asks CBR to stop deductions not supported by law

M RAFIQ GORAYA

ISLAMABAD: The Federal Tax Ombudsman has directed CBR to stop decades-old practice of 40 percent deduction of sales proceeds as rents, 5 percent surcharges as donation to Motamar-e-Alam-e-Islami, and calculation of duties and taxes on the bid price of the auctioned rather than the import value of the goods.

Justice Munir, who is a former Judge of the Supreme Court, while hearing a complaint of Impex Industries, discovered that the department had been making these deductions on the auctioned goods since long, without a proper statute, legislation or ordinance and lawful authority.

In its complaint, Impex Industries contended that following a decree, dated 10.09.05, by the competent court that it was the owner of the auctioned goods it approached the Customs Collectorate for refund of the proceeds of the auctioned goods, but the department failed to respond.

The complainant also argued that the goods were auctioned for Rs 63.988 million and after deduction of customs duty, sales tax, income tax, etc, Karachi Customs should have refunded Rs 28.431 million to it.

However, the department worked out the balance proceeds at Rs 1.39 million only—worked out after making deductions on account of surcharge of 5 percent for donation to Motamar and 40 percent share of the sale proceeds for payment to the person holding goods in custody (warehouse owner).

During the hearing, the FTO asked the CBR officials to give specific replies to the questions relating to calculation of duty and taxes on the auctioned price rather than the ITP/import price or value, the legality of levy of 5 percent surcharge for donation to Motamar and legal basis for deducting 40 percent of the sale proceeds for remission to the person holding the goods (warehouse owner).

Analysing CBR replies on the touchstone of law, the FTO said that "in so far as the liability of 5 percent surcharge for donation to Motamar (MAI) and deduction thereof from the sale proceeds was concerned, the CBR

>P 15 Col 1

DAILY BUSINESS RECORDER
ISLAMABAD

30 JUL 2007

FEDERAL TAX OMBUDSMAN SECRETARIAT
DY. No 4251
31 JUL 2007
ISLAMABAD

Reducing declared value of goods

FTO orders Customs to give reasons

M RAFIQUE GORAYA

ISLAMABAD: Federal Tax Ombudsman (FTO) former Justice Munir A Sheikh has directed the Customs authorities to give reasons to the exporters for reducing the declared value of their goods as per instructions contained in serial No. 78 (1) of CGO 12/2002 issued by the Federal Board of Revenue (FBR).

He gave these instructions while disposing of a complaint of the International Apparel, West Wharf Road, Karachi, manufacturers and exporters of leather garments.

The brief facts of the complaint are that the said exporter forwarded a consignment for export of 460 pieces of leather women jackets to Johannesburg and the unit price of such goods was declared at $ 74 per piece.

However, after completing the formalities, when the GD (goods declaration) was presented for allowing shipment, the concerned appraiser evaluated the value of the goods for $ 65 per piece.

The complainant contended that he is a regular exporter and that during earlier period of February 2006 to May 2006, the declared value of the same product ranged between $ 69 and $ 75 per piece and the Customs authorities never objected to such valuation.

Replying to this complaint, the Collector Customs, in his written report, stated that the declared value of the complainant was found to be on the higher side compared to the values given in circular No. 184/26 dated 26.05.2006 by the Pakistan Leather Garments Manufacturers & Exporters Association (Plgmea).

He said that prices given by the association are being applied to and accepted by other exporters and the Price Control Committee

> P 4 Col 4

C. 1135-K06

1.8.2007

> from page 1

is constituted by the FBR to facilitate the exporters with the assistance of their representative associations to avoid lengthy litigation.

In his findings, the FTO said after the perusal of the record which shows that the consignment in question relates to the period of May 2006 and in the immediately preceding period from February 2006 to May 2006, the value of the similar goods declared by the complainant between $ 69 and $ 71 per piece was being accepted.

He said that even in regard to a shipment in August 2006, the value of the similar goods at $ 75 per piece was accepted as against the value fixed at $ 65 per piece by Plgmea vide letter issued in May 2006.

The FTO observed that the value suggested by Plgmea can be taken as a factor for the purpose of appraisement but if the complainant was disputing such value, then in terms of the provisions of section 199 of Customs Act-1969, the Customs authorities could have taken a sample of the goods for ascertaining the value thereof, and if it was found to be different from the value declared by the complainant then he should have been confronted with the necessary material and thereafter made the appraisement in accordance with law. The FTO said no such exercise was undertaken and thus the reduction in the declared value of the goods was made without sufficient basis and without affording an opportunity of hearing to the complainant which is violation of the principle of audi partem alteram which tantamount to mal-administration.

He asked the FBR to direct the concerned Collector of Customs to re-examine the matter and if it is found that the value declared by the complainant is not correct, then after providing reasonable opportunity of hearing to the complainant, a speaking order should be passed disclosing the basis and giving specific findings therein.

KPT must accept DDC to waive demurrage charges: FTO

RECORDER REPORT

ISLAMABAD: The Federal Tax Ombudsman (FTO), former Justice Munir A. Sheikh, has ruled that the Karachi Port Trust and Karachi International Container Terminal must accept the Delay and Detention Certificate (DDC) issued by the Directorate of Customs Intelligence for waiver of the demurrage charges for the period the imported goods were detained by the Customs Intelligence.

The FTO gave this ruling on a complaint of the Lahore based importers of goods, M/s Haris Trading International that the KPT was not accepting DDCs for waiver of the demurrage charges.

During hearing of the complaint, the KPT took the plea that resolution of disputes between importers and the Customs department takes years and the department issues DDC to cover up its own inefficiency without bothering about the inconveniences and inefficiencies caused to KPT.

It was further stated that for every ton of cargo left in the custody of KPT has a cost per day for storage, security, protection and handling.

Disposing of arguments of the KPT, the FTO said that goods are detained at the KPT premises for and on behalf of the customs authorities/ Revenue Division till it was decided whether on the import of goods customs duty was chargeable under the customs laws by the customs officers. Otherwise KPT had no authority under its own law to refuse the importers to receive the goods.

He said clearly the KPT was acting for and on behalf of the customs authorities relating to the payment of customs duty and the legal status of the KPT was that of an assignee or agent of the customs authorities. " For this limited purpose, it was as much part of the Revenue Division as its principal for whom goods were detained" he emphasized.

FTO said it is amazing that the Karachi Custom House and the CBR have not taken cognizance of a manifestly illegal and unjust, unfair and illegal policy of KPT of refusing to honour the DDC which has been an age-old practice in the KPT and all other ports of the civilized world.

He said KPT is performing a unique and extraordinary service in handling the flow of the bulk of importers and exporters of Pakistan and their role in the economic growth of this country should be better reflected in their attitude to the genuine problems of the importers and exporters.

The FTO asked Chairman CBR to direct the Director General Customs Intelligence & Investigation to ensure that delay and detention certificates are issued when a decision by an officer or the court of competent jurisdiction is taken in favour of the importer/exporter.

He further asked CBR Chairman to inquire into the reasons why the practice of waiving the demurrage and storage charges by the KPT/KICT on the strength of the delay and detention certificates issued by the customs was discontinued . "Clearly the importers should not be made to pay the penalty for long storage of goods in the port area because of the delay on the part of customs or on account of judicial process," he added.

He observed that the Revenue Division should take up the matter with the Ministry of Ports and Shipping. And, lay down the parameters under which the delay and detention certificates was issued by customs should be honoured by the KPT/KICT with a view to facilitate clearance of goods and not to enhance the cost of goods for the genuine importers.

C-961-K106

The Post
Corporate
B-5
SATURDAY, MARCH 3, 2007

FTO disposed of 90pc cases in six years

SAJID GONDAL

ISLAMABAD: The Federal Tax Ombudsman received 9,117 complaints from across the country against CBR of which 8,591 cases were disposed of, while remaining 526 cases are either pending or under procedural process.

The growing nature of corporate sector grievances, largely related to the inequitable application of taxation laws and the governments' desire to promote a just and equitable business environment in Pakistan, prompted the government to establish an independent FTO in 2000.

Talking to The Post, the FTO Director of Compliance and Monitoring, Chaudhry Jamil Ahmad said that the FTO had brought considerable relief to businesses during the last six years. "Businessmen have now found a level of comfort, missing in the past. This allows them too confidently and fearlessly makes investment decisions in the knowledge that an environment exists where they can expect equity, fair play and justice".

Jamil said that the regional offices of the tax ombudsman secretariat were fully operational in Lahore and Karachi and the response had indicated greater awareness and confidence of the taxpayers in the institution.

During 2006, 1,344 complaints were instituted, he said adding three carryover complaints had been with the FTO since 2005. Of these complaints, he said 1,051 were disposed of and 296 carried over in 2007.

According to Jamil Ahmad, the implementation rate of FTO decisions was more than 95 percent in 2006, while the remaining five percent were usually forward to the president for revision of FTO decision. Since 2001, around 1,085 cases were presented to the president for review on decision, out of which 850 appeals were decided and 335 are awaiting decision. As per FTO ordinance, the petitioner has given a right to appeal a review of a decision on case. The review appeal is also filed in FTO. During 2001-2006, total 704 review applications have been filed in FTO, of which 687 were disposed of after decision, while only 17 applications are in proceeding process.

DAWN Islamabad, THURSDAY, FEBRUARY 15, 2007

CBR asked to cancel firm's registration

ISLAMABAD, Feb 14: Federal Tax Ombudsman (FTO) Justice (Retd) Munir A Sheikh has asked the Central Board of Revenue (CBR) to cancel the compulsory registration of a unit.

The decision came on the complaint of M/S Modern Silk Centre, Sargodha, who complained against the compulsory registration of the unit despite the fact that is annual turnover was less than Rs5 million.

The ombudsman in his short judgment issued on Tuesday observed that officials of the sales tax department have a tendency to act arbitrarily in complete disregard of the procedure prescribed by the CBR.

The officials, it said, did not consider necessary to apply due process and they have untrammelled authority to compulsory register a unit without going through the prescribed procedures.— **Our Reporter**

C. 762/06

6 BUSINESS RECORDER ISLAMABAD SUNDAY 25 FEBRUAR

FTO asks CBR to upgrade software

ISLAMABAD: Federal Tax Ombudsman (FTO) Justice Munir A Sheikh (Retd) has asked the Central Board of Revenue (CBR) to upgrade its software.

The FTO has taken this decision on the complaint of Gadoon Textile Mills, Peshawar against the Collectorate of Sales Tax, Peshawar for sales tax refund on zero-rated import of cotton yarn.

The FTO has directed the CBR to examine the contents of the complaints, the software faults mentioned thereunder and take immediate measures to rectify the same.

He has also asked the CBR to prescribe a procedure for verification from the suppliers. When objections are generated by the Starr and answered by the claimants and lay down the duties and functions of the field sales tax officials for immediate verifications of the sales tax invoices of respective collectorates and inter-collectorate transactions.

The FTO has also ruled that the outstanding claims for approximately Rs 16 million mentioned in the complaint be examined in consultation with the complainants/authorised representatives and decide the pending claims, press release added.—PR

C-1025/06

BUSINESS RECORDER ISLAMABAD MONDAY 5 FEBRUARY 2007

GST on old vehicles auction

FTO asks CBR for clear instructions

M RAFIQ GORAYA 23.02.2007

ISLAMABAD: The Federal Tax Ombudsman, Justice Munir A Sheikh, has advised Secretary, Revenue Division/CBR to issue clear-cut instructions with regard to payment of 15 percent GST on auction/disposal of old vehicles, since there are contradictory directions of CBR on this subject.

The FTO gave this advice on a complaint of Jameel Ahmed, of Azad Maidan Hirabad, Hyderabad, a copy of which was made available to Business Recorder here on Sunday.

The complainant was aggrieved by non-issuance of registration book by SP, Headquarters, Islamabad, for a vehicle purchased in auction from Islamabad Capital Territory Police, on 9.8.2004, even after making full payment of

He said that when he approached the Excise and Taxation Officer for transfer of the ownership of the vehicle, he was asked to produce the registration book issued by the SP, Headquarters Islamabad.

But when he applied for issuance of registration book he was asked by Police Department Islamabad to make payment of 15 percent GST as per directions of Central Board of Revenue under its letter, dated 23.08.2004, which stated as under:

"It is to clarify that sales tax @ 15 percent is to be charged on the value of vehicles at which they are auctioned. The sales tax so charged is to be deposited in any designated branch of National

> P 4 Col 7

C.998-R/06

FTO asks CBR for clear instructions

> from page 1

Bank of Pakistan under sales tax head of account 0220000".

However, the complainant contended that no sales tax was payable by him as he was exempt under item No 60 of the 6th Schedule of the Sales Tax Act 1990. He produced a copy of letter No. 5138 dated 27.07.2005 issued by the Deputy Collector (TFD) Karachi, which stated as under:

"It is to inform that exemption of Sales Tax on disposal of old vehicles is covered under item 60 of the Sixth Schedule of the Sales Tax Act 1990, Subject to the condition laid down therein (Copy of the relevant page of sixth schedule is enclosed for ready ref.).

In his findings, the FTO said that in his para-wise comments on the complaint, Collector, Customs, Sales Tax and Federal Excise, Hyderabad, dated 12.10.2006, stated that since the matter related to Motor Registration Authority and Islamabad Police, he was not in a position to offer comments on the grievances of the complainant.

The FTO found the Collector's reply vague, incorrect and evasive, and asked the Department to clarify whether the demand of sales tax @ 15 percent by police authorities was in accordance with law or not.

He said: "It is distressing to observe that in the subsequent comments dated 15.11.2006, the Department did not reply to the specific query made by FTO Secretariat"

However, the Secretary (ST-JUD-ADR) reported that in view of the provisions of Chapter XVII of the repealed Sales Tax Special Procedures Rules 2005, the sales tax was payable on old and used vehicles sold/auctioned by the government department/ autonomous bodies.

However, he said, that rules have been superseded by the Sales Tax Special Procedures Rules 2006, w.e.f. 1.7.2006. The amended rules do not have any provisions regarding charging of sales tax on such vehicles, sold or auctioned. He further reported that according to current legal position, the sales tax on vehicles was chargeable only on supplies by manufacturers of vehicles, importers of vehicles and vehicle dealers.

The FTO pertinently noted that the Secretary's comments were silent as to whether sales tax was leviable on the purchase of old vehicle or not. "The Revenue Division in its letter No. C.No.3 (72)STP-97(Pt-II) dated 02.08.2006 addressed to the Collectors conveyed the same instructions, as stated in the aforesaid comments", he added.

He observed that "in view of the above, it is confirmed that the clarification sought by the complainant as well as by this forum has not been provided, and maladministration is, therefore, established".

He advised CBR to examine the complainant's claim of exemption from levy of sales tax on purchase of old vehicl s through auction, and issue clear-cut instructions, within 15 days of the receipt of this order, to the SP Headquarters Islamabad as to whether sales tax is recoverable from the complainant or not.

Islamabad, Monday 29 January 2007, 9 Muharram 1428

BUSINESS RECORDER

Adjudicating officers must pass speaking orders: FTO

M RAFIQ GORAYA

ISLAMABAD: Federal Tax Ombudsman former Justice Munir A. Sheikh has ruled that adjudicating officers of the Revenue Division/Central Board of Revenue must pass speaking orders to dispose of cases of the tax payers after applying their mind to the facts and explanations according to law.

The FTO gave this ruling on a complaint of Island Textile Mills Ltd. M A Jinnah Road, Karachi. This was against an order-in-original dated 03.08.2006 passed by the Assistant Collector of Sales Tax on a report of Senior Auditor of the Sales Tax Department, a copy of which was made available to Business Recorder on Sunday.

The complainant alleged that the Senior Auditor with a view to delay the determination of sales tax refund claims of Rs934,708 and Rs920.644 submitted a false report to the AC alleging that the refund was not admissible due to : (a) invoice summary was not submitted by the supplier (b) supplier was a non-filer, and (c) refund claims exceeded declared sales tax in the summary of the supplier.

The complainant contended that the AC, Sales Tax (Refund) was

> P 4 Col 7

C. 953-K106

Adjudicating officers

> from page 1

not empowered under SRO 575(1) /2002 to reject the refund claim on the basis of STARR verification, and the order-in-original was passed without issuing show cause notice.

It was further stated that the complainants were exempt from furnishing a summary of their purchases and sales vide CBR SRO 525(1)/2005 dated 06.06.2005 under which manufacturers or suppliers of textile and some other articles were exempt.

The complainant also provided documentary proof that the suppliers were regular filers and summary of suppliers that the refund amount did not exceed the sales tax amount but adjudicating officer ignored them without assigning any reason.

In his reply Deputy Collector reiterated that the department acted according to the provisions of the Sales Tax Act, the admissible amount of refund was sanctioned and the inadmissible amount was rejected after providing full opportunity of hearing to the complainants, through an adjudication order. After examining record of the case, the FTO observed that "the adjudication order is a unique decision which is arbitrary, unreasonable, a total departure from the established practice of formulating an order and betrays neglect, incompetence, inefficiency and ineptitude as evidenced by the following:

(1) Show cause notice dated 20-06-2006 issued by the Deputy Collector in respect of refund claim of Rs1,180,655 for August 2005 stated that the amount of Rs246,947 was sanctioned and required the complainants to show cause why claim of Rs934,708 should not be rejected.

(2) Another show cause notice dated 20.06.2006 was also issued by the Deputy Collector in respect of the refund claim of Rs11,18,677 for September 2005 stated that the amount of Rs198,032 was sanctioned and required the claimant to state why the claim of Rs920.644 should not be rejected.

(3) In both the show cause notices non-sanctioned claims were found objectionable due to "Exceeds declared output. Invoice summary not submitted. No sales to claimant shown"

(4) Assistant Collector passed a short order dated 03-08-2006 of less than one page about the claim of September 2005. The objection said that the claim exceeded declared sales tax, that AR appeared for hearing and submitted reply to the show cause notice and without any analysis of facts or evidence, the claim for Rs871,419 was rejected.

(5) In para 4 of the order the claim of August 2005 for Rs91,403 was allowed and the amount of Rs843,305 was rejected without even a brief discussion of facts.

(6) Interestingly the claim for July for which no show cause notice seemed to have been issued was also decided by the same order allowing Rs127,048 and rejecting Rs1,800

Concluding his findings, the FTO observed that the Assistant Collector has passed a non-speaking summary order only repeating which has been stated in the show cause notice, making no mention of the reply of the complainants and evidential documents produced by them which makes a very poor demonstration of the administrative capability of the officer to examine the facts, apply his mind and take a meaningful decision.

He asked CBR to set aside the order-in-original under section 45A of he Sales Tax and re-examine the validity of the pending refund claims in the lights of the documents/evidence produced by the complainants and afford them the opportunit of hearing.

He further directed the department to decide the claims and also pass an order regarding additional payment claimed under section 67 of the Sales Tax Act within thirty days.

FEDERAL TAX OMBUDSMAN SECRETARIAT
DY. No
ISLAMABAD

C.487-467

DAWN
ISLAMABAD

29 JUL 2007

FBR told to reopen tax case

By Our Reporter

ISLAMABAD, July 28: Federal Tax Ombudsman Justice (retd) Munir A. Sheikh has asked the Federal Board of Revenue (FBR) to re-open the case of a complainant.

Justice Sheikh directed the FBR to re-open the order in original issued to the complainant, quash them as they were illegal and void, and implement the order of the appellate tribunal.

The decision was taken on the complaint of Adam Sugar Mills Bahawal Nagar, which was asked by the collectorate to deposit default surcharge and penalty for late payment of sales tax.

Ombudsman Sheikh has ruled that both the show cause notice and the order in original issued to the complainant were illegal and hence the collectorate established on act of mal- administration.

The justice recommended to the FBR to direct the competent authority to implement the decision. The compliance in this regard be reported within 30 days of this order, he added.

C.579-607

The Statesman

31 JUL 2007

FBR asked to consider payment of reward to complainant

Statesman Report

ISLAMABAD: Federal Tax Ombudsman (FTO) Justice (R) Munir A. Sheikh has asked the Federal Board of Revenue (FBR) to consider and determine the role and contribution of the complainant towards payment of reward money by the Collectorate of Customs, Lahore.

This decision was taken by the FTO. on the complaint of one Mansoor Ahmed S/o Saeed Ahmed, resident of Lahore against Collector Customs, Lahore who had requested in writing for payment of reward money as per rules on account of information provided by the complainant which led to the detection of tax evasion case by M/S Oyster Fibre Glass, a manufacturing Unit of Lahore.

The FTO ruled that the Department's failure to respond to the verbal and written requests of the complainant for payment of reward amounts to maladministration.

The FTO has recommend to the FBR to determine the contribution of the complainant as an informer, so as to ascertain the nature, quality and relevance of information supplied by the complainant after examination and close scrutiny of all relevant records, documents, materials provided by him and consider, payment of complainant's share of reward, in accordance with the relevant Reward rules and compliance in this regard be reported within 30 days of the receipt of this order.

Claims: FTO for quick verification

RECORDER REPORT

ISLAMABAD: The Federal Tax Ombudsman (FTO) Justice Munir A. Sheikh (Retd) has asked the Central Board of Revenue (CBR) to expedite the verification of payments/deductions relating to tax years 2003 and 2004 of a complainant and decide his claims of refund within 30 days. The decision was taken by the FTO on the complaint of Burma Oils Mills, Ltd. Karachi against Commissioner Tax, Karachi for non-issuance of refund and compensation relating to assessment years 1994-95, 2001-02, 2002-03 and 2003-04.

The FTO has asked the CBR to issue refund already determined relating to assessment years of 1994-95, 2001-02, 2002-03 and tax year 2003-04 within 30 days, decide the complainants claim of Additional Payment for delayed refund according to law within 30 days. He has also ruled that the responsibility for misplacing/loss of records be fixed, and appropriate disciplinary action may be initiated and finalised against the delinquent officers within 60 days.

C.1079-R/06

Daily AUSAF
ISLAMABAD.
1 JUL 2007

ٹیکس چوری کی اطلاع دینے والے مخبر کو انعامی رقم دلوانے کا نوٹس محتسب

اسلام آباد (نامہ نگار خصوصی) وفاقی ٹیکس محتسب نے کلکٹرز آف کسٹمز لاہور کی طرف سے ٹیکس چوری کی اطلاع دینے والے مخبر کو انعام کی رقم دلوانہ کرنے کا نوٹس لیتے

باقی صفحہ 5 بقیہ نمبر 36

بقیہ نمبر 36 وفاقی ٹیکس محتسب

ہوئے فیڈرل بیورو آف ریونیو سے کہا ہے کہ لاہور کے رہائشی منصور احمد ولد سعید احمد کی ٹیکس چوری روکنے کے کردار اور معلومات کا از سر نو جائزہ لے اور اگر قواعد و ضوابط کے تحت اس کے انعام کی رقم دلوائی جائے۔ یہ فیصلہ انہوں نے کلکٹرز کسٹمز لاہور کے خلاف منصور احمد ولد سعید کی شکایت پر کیا ہے۔ شکایت میں منصور احمد نے مؤقف اختیار کیا تھا کہ انہوں نے میسرز لوبیسٹر فائر گلاس لاہور کی طرف سے ٹیکس چوری کی معلومات فراہم کی تھیں اور اس کے عوض کلکٹرز کسٹمز لاہور کو انعام کی رقم کیلئے تحریری درخواست کی تھی۔ وفاقی ٹیکس محتسب نے کلکٹرز کسٹمز کی طرف سے درخواست پر کسی قسم کا ردعمل ظاہر نہ کرنے کو بدانتظامی قرار دیا۔

487-R/07

Pakis[illegible]

FTO asks FBR to resolve illegal assessment case

STAFF REPORTER

ISLAMABAD—Federal Tax Ombudsman, Justice (R) Munir A. Sheikh has asked the Federal Board of Revenue (FBR) to decide the case related to illegal assessments in accordance with the Provisions of law. The decision was taken on the complaint of M/s Altaf Auto Store, Lahore against Deputy Collector Customs for illegal assessment of his goods at a higher value with the request that the goods may be re-assessed after re-opening the assessment already done.

The FTO has ruled that the Department's failure to confront the complainant with evidence of higher values and ignoring the values of lower values supplied by him amounted to maladministration.

The FTO has recommended to the FBR to direct the competent authority to reopen and decide the case afresh justly and fairly in accordance with the provisions of law.

02 NOV 2007

THE NATION
ISLAMABAD

No mercy for corrupt employees

OUR STAFF REPORTER

ISLAMABAD - Federal Tax Ombudsman (FTO) Justice(R) Munir A Sheikh Thursday said there was no mercy for corrupt employees and FTO had powers to remove such officers from their services.

He was talking to Islamabad Chamber of Commerce and Industry (ICCI) President Nasir Khan who had invited him to discuss the issues related with tax department.

He further said FTO was very keen to resolve all the problems regarding business community as its one of the purposes was to facilitate the business class. He also emphasized on creating a liaison between taxpayers and tax collectors. FTO still received 10000 complaints against department and 95pc cases were resolved in short time, he said.

Philips International Company claimed for refund and FTO after verification returned the amount of 571 million with in three days," he revealed. He also informed that FTO had two regional and one central office in Lahore, Karachi and Islamabad now two more offices in Quetta and Peshawar would be established very soon.

Earlier, President ICCI said private sector was considered an engine of growth of any economy. He mentioned that in last few years, business friendly government policies were being formulated getting the input from various private stakeholders.

Appreciation Letter

BEFORE THE HONOURABLE FEDERAL TAX OMBUDSMAN, ISLAMABAD.

In Ref:- M/S MIAN ELECTRONICS, TALAB BAZAR, TOBA TEK SINGH-R.A

NO.73/2006 IN COMPLAINT NO.703/2006.

460

27 JAN 2007

Dear sir,

It is respectfully submitted before your honour in connection with above-stated complainant's case as under:-

1. That refund voucher No.97 dated 16-01-2007 amounting to Rs.8,615/- for the assessment year 1997-98, 1998-99 and 2000-2001 to 2002-2003 for compensation on delayed refund as claimed/due has been received in compliance to order passed dated 20-12-2006 by your honourable court.

2. That we acknowledge about receipt of refund voucher issued and are very thankful to your honourable office in this regard who is doing great job for the welfare of the taxpayers which is ideal one as compared with the other government departments in Pakistan in these days.

We again appreciate your honourable office.

Thanks.

Dated: 25-01-2007.

Truly yours,

(Mian Zafar Iqbal)

Advocate A.R,

23 Grain Market, Gojra.

RAZEE TRADING CORP.
53/3 [illegible] ROAD QUETTA, PAKISTAN
PHONES : (92-81) 836482-836483
FAX : (92-81) 822490

FEDERAL TAX OMBUDSMAN SECRETARIAT
DY. No 1406
20 MAR 2007
ISLAMABAD

17/03/RTC
17th, March 2007

Ch.Jamil Ahmed,
Director (Compliance & Monitoring)
Federal Tex Ombudsman,
State Enterprises Complex,
5-A Constitution Avenue,
Islamabad.

SUBJECT: COMPLAINT NO.670 AND 671/2006.

Dear Sir,

Please refer your letter dated 03-03-2007 addressed to Secretary Revenue Division Islamabad and copy to us, We are pleased to inform you that we have received the cheques No. 05819/581839 and 05819/581840 dated 17-03-2007 for Rs.438,965/- and Rs.85,813/- on account of Refund of Sales Tax from the Collectorate of Customs Quetta.

We appreciate your cooperation and efforts made in this case in order to provide us justice and our due right.

Thanking you.

Yours sincerely

Kamaluddin Ahmed

TMC

TAX & MANAGEMENT CONSULTANTS

A-3, Plot No. 125-U, Data Centre, Khalid Bin Waleed Road, Block-2, PECHS, Karachi.
Ph : 4384625, Fax : 4384630, Mobile : 0333-2108546, E-mail : taxes1@cyber.net.pk

Principal
Khushnood A. Khan
C.A (Inter).B.Com,A CFM.& ITP
ACFE (Certified Fraud Examiner) USA
(Member) Sales Tax Bar Association
Income Tax Bar Association

DCM

FEDERAL TAX OMBUDSMAN SECRETARIAT 6816 1 DEC 2007 ISLAMABAD

Ch. Jamil Ahmad
Director (I & M)
Office of Federal Tax Ombudsman
5-A, Constitution Avenue,
ISLAMABAD

Dated: 11-12-2007.

M/S. SUPER TRADERS

COMPLAINT NO. 325-K/2007

Dear Sir,

Kindly refer to your letter dated 08-12-2007, in Complaint No. as referred above.
In this connection, we are pleased to confirm that the Collector (Enforcement), Karachi, had very kindly already made compliance.
We, therefore, would like to recognize efforts made by this Honourable Forum in settlement of refund claim which is already received by our client.

Further, I would also appreciate timely action taken by the Collector (Enforcement) & Deputy Collector (Refund), Mr. Tariq Hussain Sheikh for taking interest in solving the tax payers' genuine problems.

Thanking you.

With best personal regards.

(Khushnood A. Khan)
Counsel for the Client

c.c. to Collector (Enforcement) Karachi

Capital
SPORTS CORPORATION (PVT) LTD.
P.O. Box 393, Kashmir Road, Sialkot - 51310 - Pakistan
Manufacturers of Soccerballs, Volleyballs, Handballs and other kinds of Sports Balls.

PHONES: +92-52-4265831
+92-52-4265833
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+92-52-4272516
FAX: +92-52-4265832
+92-52-3553790
E-MAIL: export@capital-sports.net
E-MAIL: cscpl@gjr.paknet.com.pk
URL: www.capital-sports.net

OUR REF. CSC/ BGS-CUST-AR-04/ 07 **DATED: 01.08.2007**

Ch. Jamil Ahmed,
Director (C&M),
Office of Federal Tax Ombudsman,
5-A, Constitution Avenue,
Islamabad

SUB: Complaint No. 1166/2006

Dear Sir,

We thank you very much for your letter dated 28th July, 2007. We confirm that all the pending securities have been released.

We take this opportunity to express our deep gratitude and thanks to the Federal Tax Ombudsman for the speedy adjudication and its implementation which has relieved us of the great financial burden and mental stress due to the unjust demand that was being made upon us.

Yours sincerely
For Capital Sports Corp. (Pvt) Ltd.

Khawaja Zakauddin
Chief Executive

Encls: As above

F.J. INTERNATIONAL

Exporters

All Kinds of Textile Products, Knitted & Woven Garments

Ref. No. _____ Date 21 JUL 2007

FEDERAL TAX OMBUDSMAN SECRETARIAT DY. No 1044, 23 JUL 2007 ISLAMABAD

Justice (R) Munir A Sheikh
Federal Tax Ombudsman Secretariat ,
State Enterprises Complex, 5-A Constitution Avenue,
F-5/1, Islamabad

Subject: **Letter of Thanks for considerate decision of the Honorable Federal tax Ombudsman.**

Honorable Sir,

I have received a copy of your considerate decision dated: 07-07-2007 regarding my complaint No. 562/2007 (Release of Containers without Original Shipping Documents). I am very happy to see the remarks given by the Honorable Justice® Munir.A.Sheikh, Federal Tax ombudsman (FTO) in his decision that the complainant has been victim of illegal practices by the Shipping Companies/Freight Forwarder who got the consignment cleared after submitting inadmissible documents.

Your honor, also express satisfaction, that as a licensing authority the Custom House (Additional Collector Preventive), Karachi took appropriate action against the Shipping Lines/Freight Forwarders involved.

Honorable Federal Tax Ombudsman (FTO) also emphasized to expedite the action taken by the CBR against Shipping Line/Freight Forwarder and also advise CBR to make some systemic changes in order to foreclose possibilities of such cases accruing in the future.

I am sure that your decision would prove greatly instrumental in solving my problem and the problem of the exporter's community at large.

I once again thank you for the just and considerate decision and prey that may Allah (Almighty) bless you with even more honor in your life.

Thanks with high regards.

Jamshed Akhtar
Managing Partner

23.7.07

D.M.C

23.7.07

Copy to : Director (C & M) Ch. Jamil Ahmed, Federal Tax Ombudsman, Islamabad.
Copy to : Syed Mohsin Asad, Advisor, Federal Tax Ombudsman, Islamabad
Copy to : Collector Of Customs (Preventive) ,Mr. Mohammad Yahya, Custom House, Karachi
Copy to : Additional Collector of Customs (Preventive) , Mr. Zahoor Akhtar Raja, Custom House Karachi
Copy to : Deputy Collector of Customs (Preventive) , Mr. Iftikhar Ahmed, Custom House, Karachi

25/8/07

Head Office: 96-B, Sheikh Colony, Jhang Road, Faisalabad-Pakistan. E-mail: jamshed@fsd.comsats.net.pk meetalone127@hotmail.com. Mob. 0300-8659638

~~**Sub Office:**~~ ~~Room # 10, 1st Floor Sitara Shopping Center, Near Ex-Kohinoor Grammar School,~~ Faisalabad - Pakistan.Tel: +92-~~41-8548416~~ Fax: +92-~~41-8721~~957.
2553930 2553930

for AA

The Consultax Pakistan

August 16, 2007

The Honorable Federal Tax Ombudsman,
State Enterprises Complex,
5-A Constitution Avenue,
Islamabad.

SUBJECT: FEDERAL TAX OMBUDSMAN OFFICE – SETTING STANDARDS

Dear Sir,

Kindly refer to your office letter dated 08-08-2007 regarding Complaint No.326-L/2006 filed by M/s Amana Textiles Lahore through which it has been conveyed that the President has upheld the decision of Federal Tax Ombudsman and the representation by the Revenue Division has been rejected.

The office of the Federal Tax Ombudsman since its inception has indeed rendered meritorious services. This office provided an appropriate platform to address the issues arising due to maladministration, ineptitude, inefficiency, delay and unnecessary coercive methods of tax recovery by the Revenue Division. The expeditious disposal of cases is ensured and the quality of decisions announced by this esteemed forum can very well be judged by the fact that even the President has upheld majority of the decisions.

We acknowledge the services of Federal Tax Ombudsman Office and pray to Almighty Allah for continuous and impartial working of this office in future too with the same zeal and spirit.

Muhammad Mahtab Chughtai
Partner

HEAD OFFICE
818-Landmark Plaza, Jail Road, Lahore
Tel: 042-5711189 Fax: 042-5711430
E-mail: consultax786@brain.net.pk
consultax786@hotmail.com

ASSOCIATE OFFICE
271-A, Al-Haq Plaza, Small G-Ground
Peoples Colony No. 1, Faisalabad
Tel: 041-8734312 Fax: 041-8736778
E-mail: taxnorm@fsd.comsats.net.pk

BISMILLAH AGENCIES

ROOM NO, 19, 2nd Floor, Usman Chamber, Weaver lane,
Modia bazaar, Karachi-Pakistan.
Mobile: 0300-2135410.

To, The Honorable FEDERAL TAX OMBUDSMAN DT: JAN 27, 2007.

Dear Honorable Sir,

Sub: "**THANK YOU FOR YOUR DECISION / FINDINGS for Complaint No: C 1087-K/06**."

THANK YOU VERY MUCH. ONLY the honorable Federal Tax Ombudsman gives me Justice,

Again the honorable Federal Tax Ombudsman gives fair justice.

I am happy Mr. Asad Arif (Advisor) listen my problem which create from Custom House Karachi (appraisement).

ONCE AGAIN thank you.

B.Regards.

Khyzar Iqbal,
(Proprietor)

THROUGH: T. C. S.

PAKISTAN HOSIERY MANUFACTURERS ASSOCIATION

(GOVERNMENT APPROVED SOLE REPRESENTATIVE BODY OF KNITTED GOODS & KNITTED APPAREL MANUFACTURERS)

ISO 9001:2000

17/7/07

Ref.No.2007/PHMA/(5)/423
Dated : 16th July, 2007

Justice (Retd) Munir A. Sheikh,
Federal Tax Ombudsman,
State Enterprises Complex, 5-A,
Constitution Avenue,
Islamabad - PAKISTAN,
Tele: 92-51-9211382
Fax: 92-51-9205553
E-mail: ftoisb@mail.com

FEDERAL TAX OMBUDSMAN SECRETARIAT
DY. No 3941
17 JUL 2007
ISLAMABAD

SUBJECT : APPRECIATION OF YOUR MOST PRAGMATIC FINDINGS / DECISION IN THE CASE OF OUR MEMBER M/S. F.J. INTERNATIONAL FAISALABAD.

Honorable Sir,

We have been informed by our member, M/s F.J. International, Faisalabad of your most pragmatic findings and decision in the matter of Complaint No. 562/2007 which we indeed greatly appreciate.

Honorable Sir, this momentous decision will indeed go a long way in further resolutions of the disputes relating to fraudulent practices of the Consolidator / Forwarders in connivance with Shipping Lines due to which several exporters have been suffering huge losses.

Once again we greatly laud your bold and pragmatic decision in the matter and wish to record our most earnest gratitude to you, Honorable Sir.

With highest regards,

Yours truly,
For Pakistan Hosiery Manufacturers Association

M. Naqi Bari
Central Chairman

PAKISTAN HOSIERY MANUFACTURERS ASSOCIATION
37 - H
BLOCK-6
P.E.C.H.S.
KARACHI.