



FEDERAL TAX OMBUDSMAN SECRETARIAT

C.No.0017/OM/2021

Dated: 09-09-2021

To,

The Advisor Media & Awareness,
FTO, Secretariat,
Islamabad.

Copy of Findings/Recommendations in C.No.0017/OM/2021 is enclosed herewith for Publication.


(Arshad Mahmood Cheema)
Registrar

Federal Tax Ombudsman Secretariat
Islamabad
051-9214348

Encl: As above
Copy to:

- ✓ 1. MIS Manager, FTO, Secretariat, Islamabad.
2. Secretary to FTO.
3. Office copy.

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

0017/OM/2021

Dated: 02.04.2021 R.O. Quetta

The Secretary,
Revenue Division,
Islamabad.

... Respondent

Dealing Officer	:	Mr. Justice (R) M. Nadir Khan, Advisor
Appraisal Officer	:	Mr. Shahid Ahmad, Advisor
Departmental Representatives	:	i) Mr. Irfan Javed, Collector, MCC Quetta.
		ii) Mr. Malik Muhammad Ahmed, D.C Quetta.
		iii) Mr. Amjad Hussain Rajpar, Deputy Director, Directorate I&I-Customs, Quetta.
		iv) Syed Muhammad Raza, Deputy Director, Directorate I&I-Customs, Quetta.
		v) Mr. Hamid Hussain, D.C, MCC, Gwadar.

FINDINGS/RECOMMENDATIONS

This is an Own Motion (OM) investigation initiated while exercising powers conferred under Section 9(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) to investigate systemic maladministration of Model Customs Collectorate of Quetta/Gwadar and Directorate of Intelligence & Investigations (Customs) Quetta/Gwadar, by failing to follow prescribed legal procedure in the cases relating to seizure of smuggled goods which were otherwise liable to confiscation.

2. Responding to the notice under Section 10(4) of the FTO Ordinance read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act, 2013 the Collector, MCC (Enforcement & Compliance), Quetta submitted comments. It was contended that the Collectorate had lodged FIRs in the cases involving violation of Section 2(s) of the Customs Act, 1969 (the Act). Since January 2020,

* Date of registration in FTO Secretariat

so far 47 FIRs were lodged in the Court of Special Judge (Customs, Taxation and Anti Smuggling) and 37 persons were arrested. It was contended that the Collectorate received goods/vehicles detained by Frontier Corps/Police and other Law Enforcing Agencies (LEAs) wherein details of owners/offenders were not available. As a practice, contravention reports were made in such cases as lodging of FIRs against unknown persons would add unnecessary burden on the Collectorate which was already facing acute shortage of the staff. However, the Collectorate has taken up the issue with relevant law enforcement agencies regarding furnishing of details of individuals from whom unlawful goods were recovered/seized for further legal /criminal action, as per law.

3. The Collector, MCC Gwadar responding to the notice, contended that the jurisdiction of the Collectorate covers vast area with in hospitable terrain and peculiar law and order situation. In most of the cases, seizures were effected with the help of LEAs due to capacity issues of the customs staff as FBR had delegated powers of anti-smuggling to other agencies like Pakistan Coast Guards and Frontier Constabulary under Section 6 of the Act. It was averred that the Collectorate had lodged 15 FIRs from July, 2020 to March, 2021 relating to seizure of narcotics.

4. The comments submitted by the Directorate Intelligence & Investigation Customs, Quetta reveal that the Directorate has lodged 60 FIRs involving offences under Section 2(S) of the Act, during the year 2019 till to date. The Directorate was handed over the custody of smuggled goods and vehicles detained by other LEAs wherein the owner's details are mostly not available. Therefore, in such cases, seizure reports were framed for adjudication purposes but no FIR was lodged due to the non-identification of the accused persons. However,

the issue is being taken up with the LEAs regarding provision of details regarding individuals in future from whom the goods and vehicles are seized for initiating criminal proceedings.

5. The Directorate of Intelligence & Investigation (I&I)-Customs, Gwadar, apprised that only one FIR involving offence under Section 2(s) of the Act, was registered during the Year 2020 and submitted similar assertion as stated by the Directorate of I&I-Customs, Quetta.

6. The Collector, MCC (Enforcement & Compliance), Quetta furnished copies of letter dated 26.05.2021, whereby the Inspector General, Frontier Crops (North)/(South), Balochistan, SSP Adm, Deputy Inspector General Police, Quetta were requested that while detaining the Non-Customs Paid (NCP) vehicles, the person from whose possession those vehicles were recovered should be apprehended and handed over to the Deptt for initiation of criminal proceedings, as per law. The Collectorate also nominated officer/official for conducting joint checking/crackdown of NCP vehicles alongwith special teams constituted by the Police Deptt in various sub-division of Quetta District.

7. During investigation, the DR furnished copy of letter dated 25th May, 2021, issued by the Secretary (Enforcement & Coord), FBR Islamabad prescribing guidelines for lodging of FIR and forfeiture of property in terms of Sections 187 & 2(S) of the Act. The field formations were issued following directions:

- i) *Must lodge FIRs against the offenders wherein the value of seized smuggled goods is Rs. 5 million or more.*
- ii) *Proceedings for forfeiture of property has also to be initiated if the value of seized goods is Rs. 10 million or more.*
- iii) *For cases, wherein the value of seized smuggled goods is less than Rs.5 million, Collectorates may decide on case-to-case basis depending upon the previous history of the offenders, nature of offence and category of seized goods etc, regarding lodging of FIRs.*

The Collector was designated as the authority for authorization of registration of FIRs after conducting enquiry about legality and bonafides of seizure.

8. Arguments heard and record perused.

9. It is observed that after taking cognizance of the matter by this Office, FBR had issued guidelines for the field formations regarding lodging of FIRs and criminal prosecution in cases where value of seizure exceeds Rupees five million. Apparently the limit prescribed by the FBR is not in conformity with the statutory limit mentioned in Section 2(s) of the Act and penalty stated in Section 156(8) *ibid*. However, at least by issuing guidelines the field formations would be required to comply with the legal procedure including criminal prosecution before the competent court of law.

7 10. Where the goods had been seized with apprehension of the accused, the FIR be registered by nominating the accused. Almost the goods are seized from the custody of either carriers or smugglers wherein either no FIR is registered or if registered, then against unknown persons. This position clearly favours the accused involved in smuggling and reflect active connivance of the Dept'l officials. In order to curb the menace of corruption, it is appropriate and necessary to nominate the accused in the FIRs in smuggling cases so that strict action against the outlaws causing loss to the economy, is taken. Therefore, these recommendations be circulated to the field formations for robust and effective eradication of menace of corruption.

11. For what has been discussed above, though some action had been taken by the FBR by issuance of instructions dated 25.05.2021. However, there is a deficiency in the instructions regarding nomination

However, there is a deficiency in the instructions regarding nomination of the accused in the FIRs and the amounts mentioned therein.

RECOMMENDATIONS:-

12. FBR to issue instructions:

- (i) to the field formations that the accused be nominated in the FIRs where apprehended rather than simply mentioning the accused as "unknown";
- (ii) that the amounts mentioned in the letter dated 25.05.2021, be brought in conformity with the statutory limit, as prescribed in Section 2(S) read with Section 156(8) of the Act; and
- (iii) report compliance within 45 days.

Dated: 24/8/2021
Aakash/HUK

(Mushtaq Ahmad Sukhera)
Federal Tax Ombudsman

Certified to be True Copy



Deputy Registrar
FTO Secretariat
Islamabad