

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**


0050/OM/2022

Dated: 19.05.2021 HQs, Islamabad

1. The Secretary,
Revenue Division,
Islamabad ... Respondents
2. The Director General,
Intelligence and Investigation FBR,
Islamabad
3. The Chief Collector of Customs,
KPK

Dealing Officer : Mrs. Sarwat Tahira Habib, Sr. Advisor
Appraising Officer : Dr. Sarfraz Ahmad Warraich, Advisor
Departmental Representatives : Mr. Athar Naveed, Addl. Director I&I
(Customs) Peshawar
Mr. Sohail Sarwar, Assistant Collector,
MCC, (Enforcement), Peshawar & D.I
Khan

FINDINGS/RECOMMENDATIONS

 This is an own motion investigation initiated through exercise of jurisdiction, conferred under Section 9(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance), after receiving news reports there are more than 02 lakh non duty paid vehicles plying in Malakand Division and adjoining areas of KPK.

2. Brief background of the issue is that, consequent upon passing of the amendment in the Constitution of Pakistan, by the Parliament in May, 2018; the areas of erstwhile FATA/PATA were merged with the provinces of KP and Balochistan. In post-merger scenario, despite better enforcement prospects, reportedly non-customs vehicles are still being transported throughout settled

*Date of registration in FTO Sectt:

areas of KPK, including erstwhile FATA/PATA, despite being liable to confiscation under existing provisions of the Customs Act, 1969. In order to fully comprehend the issue, reports were sought from Secretary Revenue Division, Director General I&I Customs and Chief Collector of Customs, KPK.

3. In response to notice, issued to Secretary, Revenue Division, in terms of Section 10(4) of the FTO Ordinance, read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act, 2013, Chief Collector (Customs) KPK, submitted partial report and requested for grant of more time, as data from provincial Motor Registration Authorities (MRAs) was required. Finally, vide letter dated 06.06.2022, Chief Collector Customs KPK forwarded reports, from Collectors of Customs (Enforcement) D.I. Khan and Peshawar.

4. The report, upfront, took refuge under the ECC decision on use of NCP vehicles stating therein that, in order to address this issue, ECC, vide decision in Case No. ECC-72/13/2018 dated 31.05.2018, issued vide FBR's OM dated 08.06.2018, allowed use of NCP vehicles in erstwhile FATA/PATA for a period of five years, ending on 30th June, 2023, subject to the conditions that **(i)** These vehicles be seized if they cross over to other areas of Pakistan from erstwhile FATA/PATA during the said period. **(ii)** On expiry of said period, residents of newly merged areas will have the options; **(a)** surrender the vehicles to Customs authorities. **(b)** to regularize vehicles on payment of leviable duty & taxes alongwith surcharge. **(c)** option to regularize vehicles under para above, shall be available only to such vehicles which have been verified/authenticated by local administration of pre-merged tribal areas and information of local number of such vehicles; alongwith details of make, model and chasis number, have been provided to

Customs authorities by 30th June, 2018. (d) Federal Board of Revenue will issue a separate notification to give effect to the aforesaid decision in due course.

5. Reporting on estimated number of NCP vehicles, plying in KPK, Chief Collector Customs KPK submitted that exercise, undertaken by the erstwhile MCC, Peshawar, in the light of ECC decision and Board's instructions, with due assistance from provincial authorities/local administration of newly merged Districts of KP, indicated that NCP vehicles, registered till October, 2018, were around 121,193, however, figures may vary keeping in view existence of large number of unregistered vehicles and constant smuggling of such vehicles into these areas. Chief Collector of Customs, KPK, further, reported that, after initiation of present Own Motion Case, letters to Commissioners/Deputy Commissioners of concerned districts were sent for provision of exact number of NCP vehicles, presently plying in Malakand Division and other areas of Khyber Pakhtunkhwa but requisite information was not communicated till date.

6. Chief Collector also reported that, with the fencing of Pak-Afghan border, influx of NCP vehicles from border areas in KP region is almost negligible, however, yet, Collectorate of Customs-Enforcement, Peshawar is targeting NCP vehicles smuggling attempts, in route to erstwhile FATA/PATA (especially Malakand Division). During the period July 2021 till 30th April 2022, Collectorate of Customs (Enforcement) Peshawar seized 131 vehicles. Collectorate of Customs Enforcement, D.I Khan also seized 64 vehicles during said period.

7. Chief Collector, KPK, with regard to enforcement measure, reported that Collectorate of Customs-Enforcement, Peshawar is

targeting NCP vehicles smuggling attempts round the clock. Anti-smuggling Units, Mardan and Noweshra are specially tasked to apprehend such vehicles on routes leading to Malakand. Customs Check Post, Shergarh is also operational on the boundary of District Mardan and Malakand on Mardan-Malakand Road. Special operations are also being done at Col. Sher Khan Inter-change. The biggest hurdle to Customs in this regard is the non-cooperation of Motorway Police who don't let Customs to check/chase vehicles on Motorway. Even they object on search on Toll Plazas. Customs have limited human and logistic resources. Each Anti-smuggling Unit has only one vehicle for patrolling. Customs Enforcement lacks HR, skill and physical writ over the areas. Collectorate of Customs Enforcement, D.I Khan is a newly established Collectorate, which started its operations as a separate Collectorate after 15.08.2021. Four tribal districts (i.e. Kurram, Orakzai, North Waziristan and South Waziristan) of erstwhile FATA/PATA areas fall within the jurisdiction of this Collectorate. Possible northward movement of NCP vehicles to Malakhand Division, through multiple alternate routes especially in tribal areas, unsettled legal status of vehicles, plying in tribal districts and strategically sensitive nature of these areas, makes it quite hard to fully control existing phenomenon of presence of NCP vehicles in Khyber Pakhtunkhwa province. Revocation of ECC/Federal Government's decision which granted aforesaid anomalous relaxation/ exemption, is the best solution to eliminate this phenomena in medium to long term.

8. Director General I&I (Customs), Islamabad reported that an exercise was undertaken by the erstwhile MCC, Peshawar, in the year 2018, regarding plying non-duty paid vehicles, to be verified by local administration and said requisite data is maintained by

Collectorate of Customs Enforcement Peshawar. However, on the basis of information through un-official sources, estimated number of NCP vehicles, plying in Malakand and other areas of Khyber Pakhtunkhwa, is around 2 to 3 lakhs. Directorate of I&I (Customs), despite limited resources, seized 50 non duty paid smuggled vehicles valuing Rs. 148 million during the current financial year. Moreover, so far NCP vehicles have been given a temporary area specific exemption till 30th June 2023. Resultantly the residents of those areas consider themselves entitled to use of these NCP vehicles under the special dispensation allowed by the ECC through its decision. This contention of residents, regarding usage of NCP vehicles in the erstwhile FATA/PATA, irrespective of their verification/ authentication status by the then local administration, also finds support in Hon'ble Peshawar High Court's recent judgment dated 31.03.2022, in W.P. No. 1809-P/2021 which has been challenged before Apex Court by the Collectorate of Customs Peshawar in the light of Board's Clarification C.No.2(2)I&P/2016, dated 02.02.2022.

9. Directorate General, further, reported that figures may vary but there will be around 2 to 3 lac NCP vehicles, including unregistered vehicles, plying within FATA/PATA. As compared to human resource strength of Enforcement Collectorates, Directorate of I&I Peshawar has only meager staff comprising of 28 personnels to perform anti smuggling duties in the whole province of Khyber Pakhtunkhwa. There is no presence of the Directorate in many areas. Cases are usually information based and routine checking and patrolling is not carried out. Apart from this, Directorate has no check post on any route. Despite limited resources and precarious law and order conditions, Directorate seized a good number of NCP vehicles during period, July 2021 to

April 2022. There are permanent check posts manned by police and other LEAs in the whole of Khyber Pakhtunkhwa including the erstwhile FATA/PATA districts but there are also multiple alternate/unfrequented routes which are used by smugglers. Network of Motorways is used by the smugglers and no permission to check vehicles on the Motorways, makes it difficult for the anti smuggling staff to seize NCP vehicles. Fencing of Pak-Afghan border which is also manned by security forces adjacent to districts of erstwhile FATA of Khyber Pakhtunkhwa province, has considerably reduced smuggling of NCP vehicles from border areas of Khyber Pakhtunkhwa.

10. To provide an opportunity of being heard on subject of present investigations to Enforcement Wing of FBR and Customs Enforcement Collectorates, hearing dated 11.08.2022, in the case, was fixed. Mr. Athar Naveed, Additional Director I&I (Customs) Peshawar, represented Directorate General of (I&I) Customs and Mr. Sohail Sarwar, Assistant Collector (Enforcement) Peshawar represented both Collectorates of Customs (Enforcement) Peshawar and D I Khan. Both DRs submitted that smuggling of vehicles though KPK has decreased after fencing of borders but still there was some smuggling going on through Zhob-South Waziristan-North Waziristan-Kohat-Mardan route and Zhob-D.I.Khan-Bhakkar route. Both Collectorates and Directorate have seized 261 vehicles in past one year and they will increase their efforts to seize more vehicles. Officers pointed out that there was lack of interagency cooperation with Provincial Excise and Motorway Police which hampers anti-smuggling effort. There is need for clear cut instructions by FBR regarding smuggling dumps in erstwhile FATA/PATA after June 2023.

Findings:

11. The Customs Act, 1969, was extended to Federally Administered Tribal Areas (FATAs) in 1984 and to Provincially Administered Tribal Areas (PATAs) in 1975. Accordingly, duties & taxes were enforced via Border Customs Stations (BCS) in ex-FATA/PATAs but only at import stage. Inside ex-FATA/PATAs, neither Customs officials were deployed, nor customs provisions enforced, particularly with regard to smuggled non-customs paid vehicles. After passage of 25th amendment to the Constitution, in May, 2018, FATA/PATAs were merged with Khyber Pakhtunkhwa (KP) whereby all federal laws got extended to these areas automatically. Economic Coordination Committee (ECC), in its meeting held on May 31, 2018, approved certain tax concessions for ex-FATA/ATA residents.

12. Further, Federal Cabinet, in its meeting held on July 18, 2018, while promoting opinion that, in view of "the peculiar nature, geography as well as economic backwardness of erstwhile FATA/PATA, a phased approach for enforcement of federal tax laws was necessitated, thus, expanded scope of tax remissions, with regard to NCP vehicles, for a period of five years ending on 30th June, 2023.

13. Subsequently Collectorate of Customs, Peshawar sought information of NCP vehicles registered with local authorities. In response, provincial authorities provided details of about 155,000 NCP vehicles, registered with local authorities. However, phenomenon of smuggled vehicles has continued in these areas (particularly Malakand Division) and now, as reported and confirmed by the Director General I&I Customs, there are 2 to 3 lac NCP vehicles, including registered/un-registered vehicles. Prima

facie, differential number of vehicles was smuggled after June 2018 and smuggling of NCP vehicles is still going on.

14. After considering reports, submitted by Chief Collector of Customs, KPK and Director General I&I Customs, Islamabad, it is affirmed that smuggling of NCP vehicles is going on even after 30.06.2018, cutoff date, given in ECC decision. FBR formations, entrusted to enforce customs regulations, were required to seize all smuggled vehicles, being transported through settled areas without payment of duties/taxes. Ironically, despite having information that number of NCP vehicles has increased two fold in last 4 years, only 204 NCP vehicles were seized by Collectorate of Enforcement, D.I Khan and Peshawar while Director I&I Peshawar apprehended 57 vehicles in the period from 1st July 2021 to till June 30th 2022. Collectively, a total of 261 NCP were seized which is less than one vehicle per day. As per Enforcement Collectorate's own account, smuggled vehicles pass through settled areas before joining NCP lots in Malakand Division and there are 2 to 3 lac NCP vehicles in various areas of the KPK. Argument regarding lack of staff and role of other LEA's/non-cooperation by LEA's, is not convincing. These are purely operational issues supposed to be resolved by Department; and, hence, cannot support maladministration in performance. Failure by Customs Enforcement and Intelligence formations to intercept and seize vehicles, being transported through settled areas, despite having knowledge of same, tantamounts to maladministration.

Recommendations:

15. FBR to direct:-

- i. Chief Enforcement, FBR Customs (focal person) to collaborate with Inspector Generals of other LEA's/Police, entrusted to perform functions under the Customs Act 1969 and to chalk out a plan to seize all

smuggled vehicles, plying countrywide, except those registered with local authorities in FATA/PATA before 30th June 2018;

- ii. all Chief Collectors of Customs and Director General Intelligence & Investigation to launch a special countrywide Customs Anti-Smuggling Drive for seizure of NCP vehicles;
- iii. all Chief Collectors to ensure that tight border controls are in place so that smuggling of vehicles is prevented at the time of entry into Pakistan and that vehicles, crossing border, are effectively seized by LEA's, accordingly confiscated and timely auctioned as per law & rules; and
- iv. focal person to regularly send a monthly report to this Office, regarding status of NCP vehicles seized by Customs and other law enforcement, on or before the 5th of every month.

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

Dated: 21:9:2022
GQ/UF/AQ

*Approved for
reporting and press release*

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FTO Secretariat
Islamabad