

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

Complaint No.1570/ISB/FE/2022

Dated: 22.04.2022 * HQ Islamabad

Syed Zia Majeed-ur-Rehman,
H. No.114, St. 08, Ghauri Town,
Pahse-I, Islamabad.

... Complainant

Versus

The Secretary,
Revenue Division,
Islamabad.

... Respondent

Dealing Officer	:	Dr. Arslan Subuctageen, Advisor
Appraising Officer	:	Mrs. Sarwat Tahira Habib, Sr. Advisor
Authorized Representative	:	Complainant in person
Departmental Representatives	:	i. Mr. Sabir Jamal, Secretary Customs (Tariff)
		ii. Mr. Shahid Bashir, Advocate of M/s Suzuki Islamabad Motors

FINDINGS/RECOMMENDATIONS

The Complaint was filed against RTO, Islamabad and M/s Pak Suzuki Motor Company Limited, in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance), for delay in delivery of vehicle beyond 60 days.

2. Briefly, the Complainant stated in his complaint that he has booked a vehicle Suzuki Cultus VXR (998CC) from M/s Suzuki Islamabad Motors, Islamabad, on 27.10.2021, which is still not delivered to him. The Complainant was asked to file additional FED and Sales Tax @ 17% equal to Rs.126,000/-, as the Federal Government has revised the sales tax rates for 1000cc vehicles upto 17% and 2.5% FED w.e.f. 15.01.2022 vide Finance (Supplementary) Act, 2022. The Complainant prayed that the additional amount of sales tax and FED is due to the delay in delivery of vehicle by M/s Suzuki Motor Company Limited. He has prayed that due to delay in delivery of more than 60 days from the date of booking, he had to pay additional amount as sales tax and FED which should be

refunded to him and to take action against M/s Pak Suzuki Motors for not meeting the delivery requirements.

3. The Complaint was referred to Secretary, Revenue Division, Islamabad, for comments, in terms of Section 10(4) of the FTO Ordinance, read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act, 2013. In response, FBR, vide blanket covering letter in all such cases submitted by Second Secretary (ST&FE-Policy), FBR, Islamabad, dated 07.04.2022 submitted that legislature in its wisdom has enhanced the rate of FED on motor vehicles. The new rate of Federal Excise Duty came in to force on 15.01.2022, when Finance (Supplementary) Bill, 2021, received Presidential assent. The said provision having become effective immediately must be enforced in its true letter and spirit. All Provisional Booking Orders (PBO) by the Auto Manufacturers/Dealers include certain clauses in them which provide for constructive notice to the prospective clients regarding possibility of changed prices/taxes/other Government levies. As regards delay in delivery time beyond 60 days of payment, the same does not pertain to FBR. Secretary Customs (Tariff), FBR, Islamabad, submitted parawise comments dated 09.06.2022, stating therein that according to clause (xivb) of SRO 656(I)/2006 dated 22.06.2006, the Complainant was ought to approach the designated authority i.e. EDB or IOCO for redressal of his grievance. As per SRO 656(I)/2006 dated 22.06.2006 amended vide SRO 837(I)/2021 dated 30.06.2021, Importer-cum-assembler or OEM shall pay KIBOR +3 percent per annum to the customer against late delivery exceeding 60 days of initial booking to the whole of the deposited amount, Statement details of reimbursement @ KIBOR + 3% against delivery beyond 60 days shall be submitted to EDB or IOCO. The rate of FED on motor vehicles came into force on 15.01.2022 when Finance (Supplementary) Bill 2021 received Presidential assent.

4. To proceed further in the matter, comments were called from M/s Suzuki Islamabad Motors, Islamabad and M/s Pak Suzuki Motors Company Limited, Karachi. M/s Pak Suzuki Motor, Karachi, did not submit any comments. However, Suzuki Islamabad Motors submitted reply stating that Complainant's instigations, against it, are baseless and could not be indulged into any accusation of misappropriation of any amount or malfunction on its part. It was further stated that the assurance of making delivery well within time is purely the responsibility of company. In the same way all the enhanced tax during the period of booking till delivery of vehicle is payable by the owner and tax is directly payable to the Government of Pakistan, the dealership/ manufacturer has nothing to do with the tax/levy imposed by the Government. If the delivery of the booked vehicle is delayed due to any reason, then per day penalty has been fixed by the Government, which the company is directly liable to pay to the owner of the vehicle.

5. During hearing, Complainant, AR from M/s Suzuki Islamabad Motors and DR from Customs Wing appeared and reiterated what had been submitted in Complaint and parawise comments respectively. The DR from M/s Suzuki Islamabad Motors, Islamabad, stated that provisional booking order, issued to the Complainant by M/s Suzuki Islamabad Motors, includes a declaration on behalf of the Complainant which reads "I hereby declare that I have read and understood all terms and conditions contained on reverse side of this provisional booking form and accept the same in total without any reservation and undertake to abide by the same and amendment thereby". The Complainant stated that he had suffered a lot of mental and financial hardship on account of extra financial burden due to delayed delivery of vehicle which was finally delivered to him on 17.05.2022 and Suzuki Motors is responsible for the same. Complainant invited attention to Revenue Division's Customs Notification SRO 656(I)/2006 dated 22.06.2006 and its amending

notification SRO 837(I)/2021 dated 30.06.2021 wherein it has been notified, vide clause (xivb) of paragraph 2 of the Customs Notification SRO 656(I)/2006 that *"the importer-cum-assembler or Original Equipment Manufacturers (OEM) shall pay KIBOR plus 3% per annum to the customer against delayed delivery exceeding 60-days of initial booking on the whole of the deposited amount and that details of such reimbursement, at KIBOR plus 3% per annum against delivery beyond 60-days, shall be submitted to EDB or IOCO bi-annually"*.

6. Arguments of the Complainant and DRs heard and written submissions also perused. It is evident that Car was provisionally booked on 27.10.2021 and was to be delivered within 60-days of provisional booking with end date on 26.12.2021, much before the enforcement of the Finance (Supplementary) Act, 2022 dated 15.01.2022 wherein, vide para 6(1)(b), the FED @ 2.5% ad val. was imposed on vehicles upto 1300cc, similarly, amendment regarding sales tax was made in the Eighth Schedule to the Sales Tax Act, 1990, in its Table-1, Column 1, at Sr. No.72 (motor cars), for the expression 1000cc, the expression 850cc was substituted resulting in charging of ST @ 17% on vehicles of more than 850cc. Complainant's pointation towards Revenue Division's Customs Notification SRO 656(I)/2006 and its amending Customs Notification SRO 837(I)/2021 dated 30.06.2021 is relevant, whereby it has been notified vide clause (xivb) of para 2 of the Notification that the importer-cum-assembler or OEM shall pay KIBOR plus 3% per annum to the customer against delayed delivery exceeding 60-days of initial booking on the whole of the deposited amount.

Findings:

7. Evidently the vehicle was delivered to the Complainant by M/s Pak Suzuki Motor Company Ltd, Karachi, through its authorized dealer at Islamabad on 17.05.2022 after a delay of more than 5 and half

months against the permissible period of 60 days as envisaged in clause (xivb) of para 2 of Customs notification SRO 565(I)/2006. Rate of ST&FED was enhanced to 17% and 2.5% respectively, on vehicles exceeding engine capacity of 850CC, vide Finance (Supplementary) Act, 2022, w.e.f. 15.01.2022, at the time of supply of vehicle, vide Section 5 of the Sales Tax Act, 1990 and was accordingly charged from the buyer, however, M/s Pak Suzuki Motor Company Limited, Karachi is bound and liable to pay to the Complainant KIBOR +3 percent per annum against late delivery exceeding 60 days of initial booking on the whole of the deposited amount, while complying with the mandatory condition of SRO 656(I)/2006 as detailed supra.

Recommendations:

8. FBR to direct:-

- (i) Chief Customs (Tariff & Trade), FBR, to direct M/s Pak Suzuki Motor Company Limited, Karachi, to pay to the Complainant, compensation of KIBOR +3 percent per annum on whole of the deposited amount at the time of initial booking within a period of 45 days and submit statement details to EDB or IOCO, as per law;
- (ii) Member Customs (Ops) to issue directions to all Customs field formations to withdraw the facility given in Table I & II of special exemptions/concessional rate of Customs duty at import stage provided vide para 1 of SRO 656(I)/2006 in case the due amount of KIBOR +3 percent is not paid to the Complainant by M/s Pak Suzuki Motor Company (Ltd), Karachi within the given time frame and as per law; and
- (iii) report compliance within 60 days.

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

Dated 04:07 2022
MR/gg

Approved for reporting