

BEFORE

**THE FEDERAL TAX OMBUDSMAN
ISLAMABAD
Complaint No.1608/QT/CUST/2022**

Dated: 25.04.2022 R.O. Quetta

Mr. Iqbal Asad Khan s/o Iqbal Athar Khan,
C/o Mazhar Ali Khan, Advocate,
Sadbar Jan Law Associates, 1-25/20,
Entrance Jinnah Cloth Market, Jinnah
Road, Quetta.

... Complainant


V e r s u s

The Secretary,
Revenue Division,
Islamabad.

... Respondent

Dealing Officer	:	Mr. Justice (R) M. Nadir Khan, Advisor
Appraising Officer	:	Mrs. Sarwat Tahira Habib, Sr. Advisor
Authorized Representative	:	Mr. Mazhar Ali Khan, Advocate
Departmental Representative	:	Abdul Haye Sheikh, Add Director I&I (Customs), Quetta


FINDINGS / RECOMMENDATIONS

 Facts leading to filing of complaint are that on, 09.02.2003, the staff of the Directorate of Intelligence and Investigation (Customs, Excise & Sales Tax), Quetta (the Directorate) intercepted one Toyota Master Ace Surf Van (the vehicle) Regn: No.WAA-007/Quetta near Askari Park, Quetta-Chaman Road. On demand a computerized registration certificate No.NC0005412 purportedly issued by MRA Quetta showing the lawful registration of Toyota Liteace Van was produced. It was alleged that in the registration documents the vehicle was mentioned as "Toyota Liteace Van" whereas physically the same was found as "Toyota Master Ace Surf Van" and the chassis number of the vehicle was also found tampered. The Complainant claimant of the vehicle produced photo copy of Bill of Entry IGM No.2063/93 dated 18.10.1993 Index No.26 & Cash No.6481 dated 27.10.1993 which was sent to the Appraisement Collectorate, Customs House Karachi for verification. In response it was confirmed that a used Toyota Liteace Van with Chassis No.CR21-0008846, Engine No.0294782 (1874CC) Model 1984 was

* Date of registration in FTO Secretariat

imported vide subject bill of entry. Tampering of chassis number was also confirmed by the FSL. Accordingly, a Show Cause Notice was served upon the Complainant and vide Order-in-Original (O-in-O) No.137/2003 dated 05.04.2003 the vehicle was outrightly confiscated. The O-in-O was challenged by filing of Appeal before Customs Appellate Tribunal (the Tribunal) which resulting in setting aside of O-in-O vide Judgment dated 03.05.2019.

2. During above proceeding of the case the vehicle being treated as tampered was sold to the office of Accountant General of Balochistan Quetta (A.G) against token money of Rs.188,701/-. The Complainant approached the Hon'ble High Court of Balochistan by filing of Constitution Petition No.1233/2020 praying that in view of the factual and legal position, the Directorate may be directed to immediately restore the vehicle REGN: WAA-007/Quetta, to the Complainant without further delay in condition in which it was seized on 03.02.2003. However, the petition was withdrawn, whereafter the complaint has been filed in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance). The Complainant relying on Judgment of Hon'ble Supreme Court reported in 2007 SCMR 10 prayed as under: -

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- "1. to get the vehicle estimated from the Toyota Zarghoon Motors in the presence of the Complainant, and pay to the complainant equivalent amount as may be tendered by the Toyota Zarghoon Motors for the complete repair and renovation of the vehicle, including engine, tyres and whatever it may require;
 - 2. to pay to the complainant compensation @ Rs.3,000/- per day for the unauthorized detention of the vehicle from 03.02.2003 till date."

3. Responding to the notice in terms of Section 10(4) of the FTO Ordinance read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act, 2013, the Directorate filed parawise

comments. The Directorate pleaded that the delay in disposal of the case was on the part of the Tribunal which decided the appeal after lapse of twelve years. According to the Directorate as the chassis of vehicle in-question was confirmed to be tempered hence the same was sold to the office of A.G against token money of Rs.188,701/- but in pursuance of the order of Appellate Tribunal dated 03.05.2019, it was called back vide letter dated 10.09.2021 for handing it over to its lawful owner. The Directorate denying the allegation that the Complainant was harassed by the Seizing Officer and the vehicle was kept in illegal custody since 03.03.2003 contested the prayer of the Complainant contending that demand of the Complainant is not based on any legal provision nor any maladministration has been committed by the Directorate. Hence, complete repair and renovation of the vehicle by Toyota Zarghoon Motors cannot be funded by the Directorate. The Directorate alleged that the Complainant converted Toyota Liteace Van into Toyota Master Ace Surf Van as per his own whims and wishes. The Directorate in no way is under an obligation to compensate him.

4. The AR/Complainant on being supplied copy comments/reply did not opt to file rejoinder. During hearing the parties supported averments of their pleadings.

5. Submission of the parties considered in light of facts and circumstances emerging from record which reflect that the vehicle being suspected to be smuggled/non duty paid and tempered was intercepted by the staff of Directorate. During scrutiny the Directorate found that the as per documents the description of imported vehicle was "Toyota Liteace Van" whereas, the detained vehicle was found to be "Toyota Master Ace Surf Van" FSL confirmed that the vehicle was tempered. The adjudicating authority confiscated the vehicle, whereafter the vehicle was sold to the office of A.G on token price. The Complainant (claimant of the vehicle) filed appeal challenging confiscation of vehicle and succeeded to get the O-in-O dated

15.04.2003 set-aside vide Judgment dated 03.05.2019 i.e., after almost 16 years. During this period the vehicle was in official use of A.G.

6. In such view of facts seizure of the vehicle by the staff of Directorate being suspected to be smuggled and tempered cannot be termed as wrong-full act. Further after confiscation of vehicle being held to be tempered was sold to the office of A.G. This again does not reflect violation of law/rules. The vehicle remained in use of office of A.G and it was not being used by the Directorate, whereas, office of A.G was using the vehicle allotted/sold by the Directorate as per law. Hence, the vehicle was not kept in illegal custody by the Directorate or office of A.G.

7. As stated hereinabove the appeal filed by the Complainant was decided by the Tribunal after almost 16 long years, during this period the vehicle remained in use of office of A.G and condition of vehicle deteriorated for which the Directorate cannot be held responsible as the action taken by the Directorate from detention of vehicle to allotment/sale to the office of A.G was in accordance of law rules for valid reasons and the Complainant failed to establish any malafide or malice on the part of the Directorate in the affair to establish maladministration as defined under Section 2(3) of the FTO Ordinance. Hence, claim of the Complainant for compensation from the Directorate is found to be unjust.

8. However, it is a matter of record that the subject appeal before Learned Appellate Tribunal, in this case, remained subjudice for almost sixteen (16) years which is a big question mark on performance of the Directorate as no serious efforts were made for early completion of subject proceedings.

Recommendation:

9. In view of supra, FBR is to:-

- (i) Direct Member Legal (Customs) to conduct a detailed analysis of all those cases which are pending at the Appellate Tribunal level for more than five (05) years and frame an effective policy and issue necessary guidelines to all field formations for quick disposal of all such cases; and
- (ii) Report compliance within 60 days.


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

Dated: 20-06-2022
Aakash/gq/aq

Approved for reporting