

FEDERAL TAX OMBUDSMAN SECRETARIAT
Regional Office, Peshawar

Review Petition

Dated: 18.03.2022*

In

Complaint No.2634/PWR/CUST/2021

The Secretary,
Revenue Division,
Islamabad.

...Petitioner

V e r s u s

Mr. Hazrat Usman & Other,
Wana South Waziristan.

...Respondent

Dealing Officer	:	Mr. Ziauddin Wazir, Advisor
Appraising Officer	:	Mrs. Sarwat Tahira Habib, Sr. Advisor
Authorized Representative	:	None
Departmental Representative	:	Mr. Muhammad Irfan Wahid, Collector MCC DI Khan.

ORDER-IN-REVIEW

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The Review Petition (RP) has been filed by the Department (Petitioner) Under Section 14 (8) of the Federal Tax Ombudsman Ordinance, 2000, (FTO Ordinance) read with Section 13(1) of the Federal Ombudsmen Institutional Reform Act, 2013 seeking review of order dated 16.02.2022, whereby FBR was to direct the Collector, Collectorate of Customs (Enforcement), DI Khan to urgently approach the Hon'ble Peshawar High Court, Peshawar for grant of stay in the subject Custom Reference. In case stay is not granted by the Hon'ble Peshawar High Court, Peshawar in 15 days, implement order of the Customs Appellate Tribunal, Lahore dated 21.10.2021.

2. The Department (Deptt) has filed Review Petition with the following submissions:-

* Date of Registration in FTO Sectr

- (i) The learned Appellate Tribunal has passed an interim order dated 21.10.2021 allowing provisional release of admittedly on-duty paid/smuggled goods, which cannot be given sanctity of (yet to be issued) final order under section 196(1) of the Customs Act, 1969 as the Customs Appeal No. 109/LB/2021 of the complainant still pending (subjudice) before the Tribunal.
- (ii) Moreover, the appellant Collectorate has also filed a Customs Reference No. 49/2021 dated 30.11.2021 against the aforesaid provisional order of the Customs Appellate Tribunal, which is subjudice before the Hon'ble Peshawar High Court, Peshawar and therefore, the jurisdiction of the FTO is barred in terms of the explicit provisions of sub-section 2 (a) of section 9 of the Establishment of the Office of Federal Tax Ombudsman Ordinance, 2000 which reads as under:
- (a) The Federal Tax Ombudsman shall not have jurisdiction to investigate or inquire into matters which –
- (b) Are subjudice before a court of competent jurisdiction or tribunal or board or authority on the date of the receipt of a complaint, reference or motion by him.
- (iii). The order of the Hon'ble President of Pakistan in decision No.77/FTO/2019 dated 21.05.2020 in FTO complaint. No.1519/KHI/ST/2019 relied upon by the honorable FTO in the impugned order, is, on the other hand, primarily based on the principal of promissory estoppels as the stance of the Department (IR authorities) regarding non-issuance of refund claim on account of pendency of any proceedings before any other forum had become irrelevant in the light of FBR's approval for issuance of e-RPO despite having full knowledge of pendency of reference before the High Court. The President's aforesaid decision/order cannot, therefore, be construed as and held to be an order having the force of "judgment in term" for other FTO complaints involving subjudice matters.
- (iv). That the impugned goods being notified goods in terms of S.R.O 566(I)/2005 dated 06.06.2005 under section 2(s) of the Customs Act, 1969 and banned (green cardamom) due to Indian origin in terms of para 5(2)(a) of the Import Policy Order, 2020 cannot be released on redemption fine in terms of serial a & d of SRO No. 499(I)/2009 dated 13.06.2009 which states that no

option shall be given to pay fine in lieu of confiscation of the smuggled goods falling under clause (s) of section 2 of the Customs Act, 1969 and goods of goods of Indian Origin are banned in the Import Policy

- (v). *In the given circumstances wherein law has been strictly followed by the Collectorate, the department cannot be held to have committed maladministration as defined in section 3 of the Federal Tax Ombudsman Ordinance, 2000.*
- (vi). *Since the Collectorate has rightly exercised its right of appeal against the orders of the learned Tribunal before the honorable Peshawar High Court, Peshawar alongwith the stay application, it is not in a legal position to implement the impugned order of the Tribunal which is contrary to law and would set a bad precedence, if implemented.*

The Deptt prayed that the Findings/Recommendations of the Hon'ble FTO in the subject complaint may kindly be reviewed and recalled being not tenable under the law.

3. The comments of the Complainant on the Review Petition are reproduced as under;

- (i) *That the goods along with vehicle bearing Registration No. LEA 6592(Peshawar) seized by the respondent for alleged provision of the customs Act.*
- (ii) *that the Collector customs (Adj) confiscated the goods along with vehicle vide Order In Original No. 145/2021 dated 21.05.2021.*
- (iii) *That being aggrieved, the appellant filed appeal before the Appellate Tribunal Lahore, wherein the Divisional Bench released the goods on leaviable duty/tax plus 20 percent redemption fine and the vehicle also released according to SRO 499 vide Judgment C.A. No. 109/LB.2021.*
- (iv) *That the said judgment were pending in the office of the respondent for long time, then the appellant filed complaint in FTO for implementation of the said order. The hon'ble FTO give*

recommendations to implement the order within 45 days and give report to the FTO office.

- (v) Now the respondent filed the review petition before this hon'ble FTO on the same ground which has been already mentioned in reply of complaint which is already decided.*
- (vi) That the review petition is pending before this hon'ble forum in which no date has yet been fixed so far.*
- (vii) That the appellant may be allowed to agitate any other ground at the time of hearing.*
- (Viii) It is, therefore, humbly prayed that the review petition of the respondent may kindly be dismissed being meritless, just waste the precious time of this hon'ble FTO.*

Complainant prayed that the RP may kindly be dismissed being meritless, just waste of the precious time.

4. Complainant could not attend hearing due to his engagement in Customs Appellate Tribunal in Islamabad. Collector Customs (Enforcement) DI Khan (DR) attended the hearing. He reiterated the arguments contained in his written Review Application date 15.03.2022. According to him, the matter being subjudice before honorable Peshawar High Court is outside jurisdiction of honorable FTO under Section 9(2)(a) of FTO Ordinance 2000. He also questioned the relevance of honorable President of Pakistan decision (No77/FTO/2019 date 21.05.2020) in FTO complaint No 1519/KHI/ST/2019. He invited attention to the seized goods which are banned under import policy and cannot be released by Customs Appellate Tribunal (CAT), Peshawar. He contended that there is no maladministration on part of Customs, DI Khan, therefore, the

Findings/Recommendation order dated 17.02.2022 may be recalled. During hearing, it transpired that the goods seized are perishable food item i.e. almonds, cardamom, dry raisin, packed milk etc. Collector informed that the goods could not be auctioned due to stay granted by High Court against its auction. The complainant telephonically informed the office that the impugned good have already been auctioned in May 2022. Collector was not aware about the auction and subsequently informed on phone that dairy milk is auctioned in November, 2021 (before expiry date) and the rest of the items are auctioned on 12.05.2022. The seized goods are food items come under purview of perishable are supposed to be auctioned immediately to obviate chances of its deterioration and consequently unfit for human consumption. Impugned goods seized on 24.03.2021 are auctioned after fourteen months.

FINDINGS:

5. Record perused, DR heard. The deptt filed a review petition on plea that FTO has no jurisdiction in subjudice matters the Honorable President decision is irrelevant and that the impugned goods being notified/banned cannot be released on redemption fine. The Findings/Recommendation of FTO does not deliberate on merits of pending reference on legal issues before Honorable Peshawar High Court, Peshawar. Honorable President of Pakistan guidelines vide order No.77/FTO/2019 dated 19.05.2020, are quite clear on the subject. These guidelines are relevant in cases where the deptt has shown laxity to defend the case successfully and did not implement the judgment in absence of interim injunction. The contention of Collector is not correct. Matters such as importability of impugned goods are to

be decided by Honorable Peshawar High Court, Peshawar. Deptt under the rules had the option from date of seizure of perishable goods to auction the same without waiting for outcome of adjudication and keep the sales proceeds. They had also option at subsequent stage to seek stay against release of goods from date of filing reference before honorable court. It is failure of the MCC DI Khan by not taking timely action after seizure of impugned goods and again later not implementing CAT's Judgment dated 21.10.2021, in absence of any interim injunction.

6. In view of above, the Deptt could not come forward with any cogent ground therefore, the RP is rejected.

Asif

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

Dated: 14-7-2022
Abidhussain/gq/J.S

Approved for reporting