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Chairman FBR and Federal Tax Ombudsman Discuss Ways to Remove Maladministration at FBR

Chairman FBR called on Hon'ble Federal Tax Ombudsman (FTO) Mr. Mushtaq Ahmad Sukhera at FTO Secretariat to discuss various issues relating to maladministration and remedial measures for improvement in administration of tax system.

The FTO office shared a paper on reforms



agenda with Chairman FBR for improvement in overall service provision of the FBR. Office of the Federal Tax Ombudsman has been identifying and proposing measures to address both, case specific and systemic issues in Tax Administration, from time to time.

According to the paper, on the customs side, the issues of grave concern include smuggling, mis-declarations under-invoicing and non transparent auctions. On the Sales Tax side, most pressing issues relate to maladministration in registration and allied matters (including fake registrations) and sanction of fraudulent refunds. On the Federal Excise side, evasion of duty through concealing purchase of raw mate-

rials/production of finished goods in records has been found to be major issue. On the Income Tax side, delays in refunds, coercive recoveries through attachment of bank accounts, tedious returns, static tax base, and escape of certain taxable activities from coverage of Tax are major areas of concern for the taxpayers-compla-



inants.

In majority of the complaints to the Hon'ble FTO, it was found that issues hit hard the public include coercive recoveries through attachment of bank accounts and delay in refunds. An in-depth analysis reveals that neglect, delay, inefficiency, ineptitude and corrupt motives of tax functionaries has a greater part to play in cognizable maladministration than problems in laws and procedures.

The Chairman FBR was directed to take immediate action to develop a comprehensive set of operational performance measures where personnel performance can be measured against predetermined

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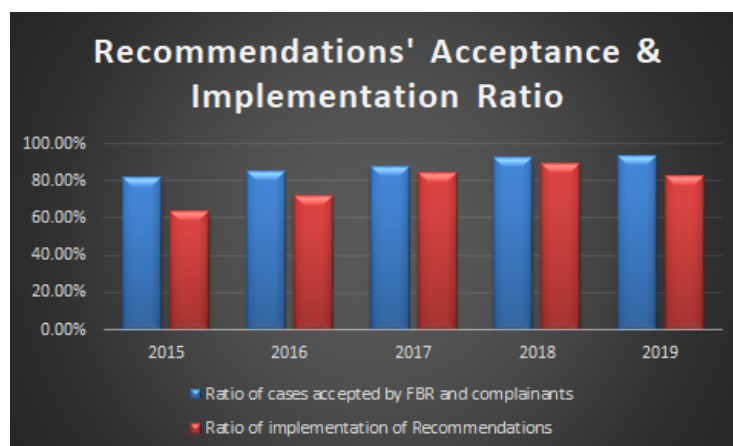
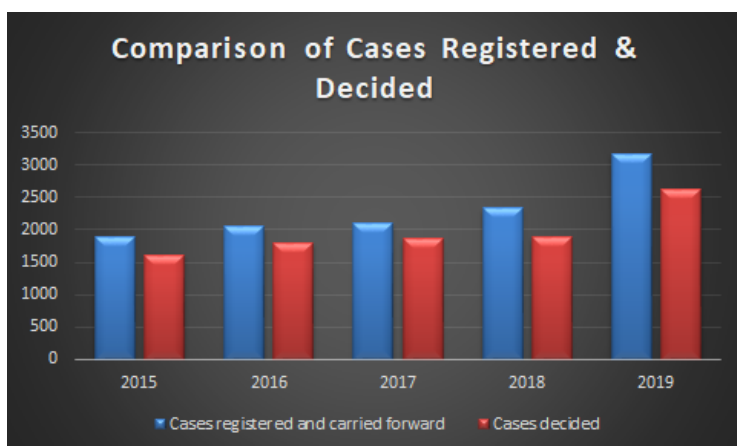
Federal Tax Ombudsman's Performance Highlights for the Year 2019 and its Comparative Analysis with Past Years

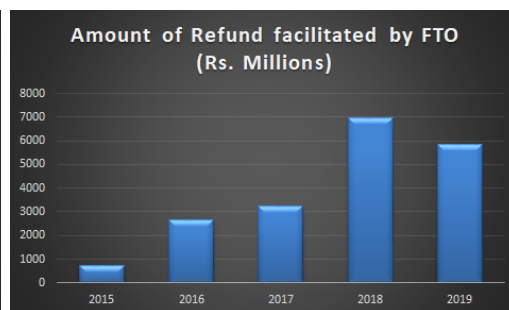
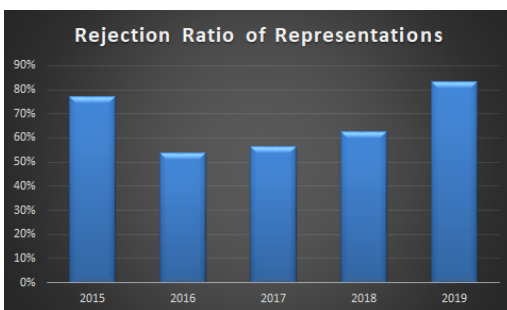
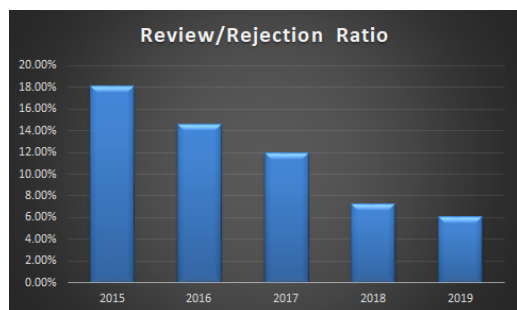
During 2019, 2510 fresh complaints were registered apart from 202 Own Motion cases. After adding 458 carry forward cases the total complaints summed up to 3171 as compared to 2096 compliant registered in 2018. During 2019, 2633 complaints were disposed off while in 2018, 1880 complaints were disposed off. It is heartiest to note that 93.92% FTO'S decisions were straightaway accepted by the taxpayers and FBR.

Likewise, 93.92% decisions of FTO were straightway accepted by complainants and FBR. 83.33% of the recommendations of the FTO were up –held in representations. Implementation status has been improved, 82.59% recommendations were implemented during 2019, stuck up refunds of RS. 5864.94 million were facilitated by FTO to taxpayers. Average time taken to dispose of a complaint has come down to 57 days against 60 days allowed under FTO ordinance, 2000.

A comparative analysis of performance with previous years is given below:

S. No	Activity	2015	2016	2017	2018	2019
1	Cases registered and carried forward	1892	2050	2101	2338	3171
2	Cases disposed of	1610	1807	1860	1880	2633
3	Ratio of cases accepted by FBR and complainants	81.86%	85.40%	88.06%	92.71%	93.92%
4	Ratio of Recommendations Challenged in Review and Representations	18.13	14.60%	11.94%	7.29%	6.08%
5	Ratio of Recommendations Challenged in the Representations	7.27%	10.46%	9.35%	3.88%	3.60%
6	Ratio of rejection of Representations	77%	53.90%	56.40%	62.69%	83.33%
7	Ratio of implementation of Recommendations	63.72%	72%	84.60%	89.60%	82.59%
8	Amount of Refund facilitated by FTO (Rs. Millions)	734.8	2672.75	3245	6986	5865
9	Outreach and awareness sessions	8	8	12	39	87
10	Average time for disposal of complaints (Working days)	63	49	47	45	57
11	Reports/Budget proposals and recommendations for improving tax administration, sent to FBR	3	4	10	22	34





Awareness Sessions/Press conferences/media interactions and any decisions on complaint(s) released to media for public awareness

(i) **Outreach sessions:** A vigorous outreach campaign was undertaken by the Federal Tax Ombudsman and Advisors to the FTO all over the country. FTO himself held meetings with important stakeholders at various cities. 87 sessions were conducted by Advisors during 2019 compared to 39 sessions to listen the grievances of taxpayers and disseminate information about taxpayer grievance redressal system of the FTO Office.

(ii) **Media campaign:**

1. SMS service was integrated with CMIS software to send SMS messages to stakeholders. Awareness Campaign was launched via Pakistan Telecommunication Authority (PTA) to disseminate free of cost Urdu SMS messages to all the mobile users of Pakistan for awareness about mandate and services of FTO's office.
2. FTO's Quarterly Newsletter is being published regularly and disseminated to government offices, Chambers of Commerce and Industry and selected embassies of Pakistan abroad.
3. News stories relating to the performance of FTO Office are regularly being released to major newspapers/news channels of Pakistan and are included in the Quarterly Newsletter of FTO's Office. These were also shared on the FTO's social media platforms especially on Facebook page having more than 60 thousands followers.
4. As part of awareness campaign, hanging information boards, duly reflecting functions of FTO's Office, have been placed at all the FBR formations, offices of CC&I in major cities as well as State Bank branches across the country.

Future Plans/Targets to enhance accessibility

1. Advertising Agencies have been appointed for launching awareness campaign of FTO's Office through print, electronic and social media.
2. The hanging information board designed for creating awareness, as mentioned earlier, will now be placed in all the branches of commercial banks in nine major cities of Pakistan during 2020.
3. A Public Service Message with time duration of 20 seconds has been designed for airing on all the TV channels via Pakistan Electronic Media regulatory Authority (PEMRA).
4. A study relating to Knowledge, Aptitude and Practice (KAP) survey under a development project of FTO Secretariat titled "Public Awareness & Advocacy Project about Dispute Resolution Mechanism" was assigned to Pakistan Institute of Development Economics (PIDE). However, due to present lockdown/Covid-19 situation across the country, it could not be performed. Now it is planned to carried out during the upcoming financial year (2020-21).
5. At the beginning of the year, target of three awareness sessions per two months was assigned to every Advisor. It was expected that over 200 sessions will be conducted during 2020 by 12 advisors. Now in view of COVID-19 outbreak, the number of such sessions will be lower, but still hoped to be more than 100 to 125.
6. Presence of facility of filing online complaints on the website of the FTO Office and availability of dedicated android application 'Wafaqi Tax Mohtasib' for mobile phones, available on Play Store are the measures which have increased the accessibility of public to FTO Office. 336 complaints were filed through online system and 05 through mobile application. The mobile application itself had been downloaded 5223 times during 2019 and is expected to be availed more during 2020.
7. In order to enhance the presence of footprint of FTO office in print and electronic media, more attention is being paid to disseminate the information. As a result the presence has enhanced significantly in the current year as shown in Annexure-II.
8. Existing website of FTO has been redesigned with modern design and functionalities, new menu bar, comprehensive "Contact Us" list, Google map integration for our location and facility of translation to Urdu language. The new version is in pre-launch stage under Quality Assurance (QA) process and will improve easy and better accessibility of FTO office to complainants and taxpayers.

Proposals to Reform the Tax Administration

Office of the Federal Tax Ombudsman has identified and proposed measures to reduce systemic issues in Tax Administration after consultation and feedback from the chambers, business forums, advisory bodies and complaints during the last one year.

Majority of complaints received in FTO office pertain to delays in issuance of refunds, which cause severe liquidity problems to business. FTO has recommended suitable amendments in Sales Tax Act and Income Tax Ordinance that may include payment of disputed amount at the first and second stage appeals, even if, the department opts to go to third tier of

registration, as soon as the application for de-registration is received.

A number of complaints handled in FTO office related to abrupt attachment of bank accounts and coercive measures for recovery of tax arrears, where notices were not received by the tax payers. Moreover, when the commissioner (appeal) remands the case, the procedure for de-attachment takes quite some time to activate the bank accounts of the concerned tax payers/assesses. FTO has proposed suitable amendments in the Income tax Ordinance, 2001, to restrict resort to attachment of bank accounts unless the case under



appeal/reference as most of the refunds delayed fall in the category of less than Rs. 0.100 million causing wide spread trust deficit in fairness of FBR.

FTO proposed Section 170(5)(b) to be deleted from the Income Tax Ordinance 2001, as it amounts to encourage the inefficiency of the tax department. Default in deciding such cases, beyond the statutory period, should be treated as serious negligence of the dealing officers/officials and mechanism for time-bound processing of refunds may be devised and strictly adhered to.

FTO Office has observed that de-registration application remain pending for years together giving chance of misuse by unscrupulous persons for issuing fake invoices. FTO has proposed to provide for immediate disabling of the registration in electronic system, pending final de-

litigation has been established at least in the first appellate stage and Shortest possible time limit may be prescribed in the statutes itself for ensuring the de-sealing of bank accounts of taxpayers/assesses.

There is dire need to broaden the tax base. Therefore, FTO has recommended formation of an effective administrative strategy supported by legislative cover to achieve the goal of ensuring maximum number of return filers in the country.

In this regard, FTO has proposed to bind the heads of the government departments, autonomous bodies and large scale organizations in private sector like banks to get the certificate of filing of returns from the employees falling in the tax net at the end of last date of filing of return, and link the promotions/ increments of such employees to the production of these certificates. FBR to bring those in tax net

who pay more than certain amount of WHT, using the WHT data for broadening of tax base and all individuals, whatever the level of their income may be, should be facilitated to file simple and easy tax returns made available both in English and Urdu. There should be an incentive of Rs 1,000 for filing a return, to be paid as cash payback in the bank account of the filer. This will start the process of documentation of households and their earning levels at national level.

Tax exemption is available to the persons having DOMICILE of the FATA /PATA areas of KPK by inserting Clause (145) in Second Schedule to Income Tax Ordinance 2010. This news exemption is going to be widely abused as any person having domicile or these areas and doing business in taxable territory can claim exemption under the said clause. Therefore, it is proposed that exemption on the basis of area, which has been deleted, Articles 246 and 247 from Constitution through 25th Amendment, may be reconsidered because taxation on the basis of domicile may result in abuse of the process of law.

It has been learnt that taxpayers are not showing interest in availing ADR forum. One of the reasons for disinterest, could be that FBR is also a party to dispute. In order to make available a neutral forum, it proposed that ADR function may be entrusted to FTO.

In the online system of filing of returns etc "IRS" does not have any prescribed format for filing refund application and it accepts ordinary refund application, however : Section 170 of Income Tax Ordinance 2001 stipulates that, for seeking refund of excess of amount of tax paid, an application is required to be e-filed in "the prescribed form and verified in prescribed manner". Therefore, Section 170 may be suitably amended to remove this anomaly, the FTO report states.

FTO office finds that Section 122A of the Income Tax Ordinance as the Zonal Commissioner –IR(CIR) provides mechanism to the Zonal Commissioner-IR (CIR) to suomoto call for record of any proceedings in which erroneous order has been passed by the Assessing Officer, however if the CIR rejects the request of taxpayer in this regard, taxpayer has no other legal remedy available under the Ordinance except filing the complaint of maladministration. The superior courts as well as the Hon'ble FTO in C.NO.388/KHI/(145)/585/2017 has held that information provided by the taxpayer is a sufficient cause for the CIR to initiate proceedings under the above provision of law. However, the CIR's continued to keep rejecting requests of the taxpayers on the ground that powers are to be exercised suomoto. It may be pointed out that the revision is also available under Section 195 of the Customs Act 1969 whereby the FBR or Collector Customs can call for record of any proceeding and after making such enquiry revise the faulty order. However, as 'suomoto' action is not specified, the action is always initiated by the Collector at the request of the aggrieved taxpayer. Therefore, it is proposed

that section 122A of the Ordinance may be amended to include the words "or on application filed by the taxpayer" after the word "suomoto".

Section 124 of the Income Tax Ordinance, 2001 provides for giving appeal effect to the orders of various appellate authorities, but regarding non-compliance of the said provisions, no action/penalty is proposed. FTO has proposed that penal provisions may be added so that said provisions be implemented and action be taken against the officers who do not give appeal effect in such cases.

FTO report states that currently FBR is collecting advance/adjustable tax withholding on sale & purchase of immoveable properties u/s 236C, 236K and 236W of Income Tax Ordinance, 2001 and CVT (to the extent of ICT). All the three above mentioned referred sections of law are, however, followed by an "Explanation" which reads as under; "For removal of doubt, it is clarified that the person responsible for registering, recording or attesting transfer includes person responsible for registering, recording or attesting transfer for local authority, housing authority, housing society, cooperative society and registrar of Properties."

An analysis conducted by FTO office, however, reveals that present explanation is not sufficient to cover all areas comprehensively where internal transfers are neither placed before the Registrar of properties nor reported to the concerned tax offices, nor the transfer fee charged by the management is declared to tax authorities. It is therefore, proposed that Following under lined addition in the Explanation be made to rectify the shortcoming:- " For removal of doubts, it is clarified that the person responsible for registering, recording or attesting transfer includes person responsible for registering, recording or attesting transfer for local authority, housing authority, housing society, Co-operative society, "Public and private real estate projects registered/governed under any law, joint ventures, private commercial concerns" and registrar of Properties"

FTO report states that Section 26 of the Federal Excise Act, 2005 provides for the seizure of counterfeit cigarettes or beverage besides the seizure of conveyance which has been used for the movement of offending goods. However, there is no provision regarding time limit of issuing show cause notice, which results in inordinate delays. FTO proposed that the law may suitably be amended to provide a time limit for issuing show cause notice to avoid unnecessary delay.

Tax administrations world over, ensure to protect the legitimate rights of tax payers. Such measures go a long way in bridging the trust gap between taxpayers and tax collectors. In order to safeguard and strengthen the Taxpayers' rights, It is proposed that a Taxpayers' Bill of Rights, be issued to ensure fairness and quality treatment to taxpayers, guaranteeing privacy and confidentiality to their declarations.

Chairman FBR meeting with FTO **Continued from Page 1**

standards and objectives. A tenure based policy for lower and middle level functionaries should also be developed and implemented strictly to ensure transfer to other sections/offices after a term of three years. FBR needs to pay more attention to the regime of periodic spot inspections. In case of malpractices and corruption, swift disciplinary action should be initiated and completed.

According to the paper of reform agenda, FTO Office has recommended Inter-wing and Intra-wing IT based linkages, involving periodic third party evaluation, for fast track & real-time cross checking of mis-declarations and frauds as many fraudulent activities have resulted due to late updating of data or changes in modules.

FTO Office recommended simplification of returns forms and an option to file the returns manually with facility of uploading scanned images and punching of data by the functionaries of the respective circles to avoid miss enlisting in the Active Tax Payers list and unattended refunds.

All major tax administrations of world have a charter or bill of taxpayer's rights. The FTO pointed out that proposals on the subject were sent to FBR which is long overdue and needs prompt attention to ensure fairness and quality treatment to taxpayers.

It was also expressed that the root cause of dis-satisfaction of Tax Payers to the services of FBR is inattention and delays which needs prescribing time lines for ensuring the de-sealing of bank accounts after resolution of issue and shortcoming in the documents should be intimated within a specified period to the applicant of refund and facility of tracking its status. Similarly, in order to stop misuse of registration for issuing fake invoices, immediate disabling of the registration is required in electronic system, pending final de-registration, as soon as the application or compliant on de-registration is received.

In order to ensure increase in filing of returns by employees of government and autonomous bodies it has been proposed that FBR may propose to the concerned Authorities/ Establishment Division, to issue instructions to bind the heads of government departments, autonomous bodies and large scale public sector organizations to get the certificate of filing of returns by the employees falling in the tax net at the end of last date of filing of returns, and link the increments of such employees to availability of these certificates and this may require suitable legislation.

The FTO expressed his views on the provisions of the Sales Tax and Federal Excise Acts that have remained dormant and electronic monitoring system is yet to see the daylight and insisted that parameters of audit selection may be rationalized so that more focus is laid on large entities rather

than small taxpayers. Audits should also include the investigative work to detect the evasion through study of input/output standards of utility bills as well as production capacity of machinery etc.

In order to effectively deter the smuggling, criminal prosecution should be initiated against the persons/owners of the show rooms of vehicles, fuel pumps of smuggled oil and storage godowns of other smuggled items and FBR should prescribe Model Auction Rules for auction through electronic means and prepare/operationalize an auction module in the WeBOC system to bring transparency and efficiency in the auctions.

Sales Tax Frauds: FTO Recommends Restructuring of the PRAL

Specific recommendation issued by the Federal Tax Ombudsman (FTO) to proceed against tax employees, particularly those in higher ranks, found involved in perpetration of sales tax frauds remained unimplemented by the Federal Board of Revenue (FBR).

In a past order, the FTO had observed that PRAL and Intelligence & Investigation (I&I) appear to have failed to devise an effective automated online system for registered sales tax persons. Complicity and collusion of rogue Tax employees with outside criminal elements is also not ruled out.

FTO had recommended restructuring of the PRAL transforming them into proactive agents of sales tax fraud prevention and detection and set up a task force to investigate all aspects of sales tax fraud.

To proceed against tax employees found involved in perpetration of fraud, particularly those in higher ranks. The FTO has given these instructions in a landmark public interest complaint tiled as Waheed Shahzad Butt Versus Secretary Revenue Divisions reported as 2014 PTD 1424 = 109 TAX 12. FBR had neither preferred representation before the President under Section 32 of the FTO Ordinance, 2000 nor any review has been filed before the FTO for reversal of findings/recommendations.

However, despite lapse of reasonable time implementation on the crucial recommendations issued by the FTO remained unimplemented.

FTO has asked the FBR to set up a task force to investigate all aspects of sales tax fraud and propose effective countermeasures. The board has also been asked to review Investigation and Intelligence staffing policy and ensure that only highly qualified professionals with demonstrated expertise in uncovering cases of online crime could be assigned key investigative roles.

FTO's Office Research Study Continued from Page 8

Sr. No.	Issue Highlighted in FTO's Report	FBR's Comments/Reply
6	Carelessness in ascertaining the address of person in giving him notice, not only required under the law, but also so to exercise fair safeguards to his property by giving him information before putting it to auction.	The record maintained in the state warehouses is comprehensive and also includes relevant details of the seized goods including proper addresses. Necessary instructions are being issued to the field formations for following the instructions in letter and spirit.
7	Need in improvement in mechanism to ensure service of notices.	Elaborate procedure is given in section 215 of the Customs Act 1969 for serving of notices (Annex-D). Necessary instructions are being issued to the field formations for following the instructions in letter and spirit.
8	Carelessness to ascertain and announce the contents of lots put in the auction.	According to rule 65(a) of the Auction Rules 2001 (Annex-E), before the start of bidding, the auctioneer shall announce the lot number/combination of various lot numbers and details of the goods. A common practice is that the auctioneer circulates a list of items placed in the auction to the bidders. The said list mentions the lot number, description, quantity. Instructions are being issued to the field formations that the auctioneer should be directed to get the list of goods to be placed in auction, verified from the customs authorities prior to the auction date in order to avoid discrepancies.
9	Departure from laid down procedure in the failure of the auctioneer to announce the lot number/combination of various lot numbers and the detail of the goods, under clause (a) of rule 65 of the Customs Rules, 2001.	As above at S.No.8.
10	Careless attitude of the entire chain engaged from drafting the reply to the officer who forwards the case.	In each Collectorate there is an officer designated with the task to deal FTO matters. Instructions have earlier been issued vide Board's letter dated directing the Collectorates to ensure proper handling of FTO matters. Fresh instructions regarding handling of FTO matters are being issued.
11	Non-responsive attitude of tax functionaries, when the complainant approaches such officer initially, till the complainant comes to the office of the FTO.	As above at S.No.10.
12	Departure from office procedures, which require diarizing of every letter received and its further travel in the section.	Secretariat instructions are to be followed while processing of files/correspondence. The Directorate General Training & Research-Customs is also being requested to arrange refresher course for Customs field formations for imparting training on this issue.
13	Lack of will and initiative to handle even simple investigations.	In each Collectorate there is an officer designated with the task to deal FTO matters. Instructions have earlier been issued vide Board's letter dated directing the Collectorates to ensure proper handling of FTO matters. Fresh instructions regarding handling of FTO matters are being issued.
14	Lack of will and initiative to take disciplinary action against the tax functionaries, who caused difficulty and even pecuniary loss to public.	FBR has taken disciplinary action against the functionaries under the law, in a number of cases pursuant to the recommendations of the FTO. However, more cases will be undertaken in this regard.

FTO's Office Research Study on Systemic Issues in Auction Division of Customs (FBR)

Federal Tax Ombudsman Office had conducted a research study on the Customs auction procedure. A number of issues were highlighted which were required to be rectified for better management of auctions. This study was a step toward identification of systemic issues. It is FTO's utmost desire to continue this work to cover as many areas as possible to suggest measures to rectify systemic problems through such case studies.

Pakistan Customs is responsible for collection of duties and taxes as well as regulation of flow of international trade of Pakistan. However, despite pursuing macro reforms agenda in taxation, still instances of maladministration in its functioning exist, causing hardship to public and taxpayers. Following documented instances of such maladministration were found in auction divisions of Collectorates of Customs.

Delay in amendment of delivery order, filing reply without verification of facts and delay in delivery of auctioned goods, delay in refund of sale proceeds and misplacement of record, auction of goods without clarity on law regarding their

disposal and without Lab test, delay in refund of earnest or bid money deposited as goods had already been auctioned in a previous auction, delay in refund of money deposited as goods could not be delivered in full, delay in refund of sale proceeds of goods auctioned, which were released subsequently by adjudicating or appellate fora, and auction without notice to the owner of seized goods.

Possible Reasons of Systemic Issues

The possible reasons of the systemic issues are lack of mechanism to hear and respond the grievance as soon as it arises; lack of competence, requiring continuous training and refresher courses, specific to demands of job; lack of accountability, which is the most serious flaw in the whole chain of administration; lack of supervisory control in the form of inspections to take notice of such matters which become part of records through recommendations of other agencies like office of FTO and evolving procedures for coping with these and need of prompt revising of rules and procedure, wherever need arises.

Systemic issues identified in Customs Auction Procedure and response of FBR

Sr. No.	Issue Highlighted in FTO's Report	FBR's Comments/Reply
1	Neglect, Inattention, Delay and Inefficiency. Grievance redressal cell are required to be established in each Collectorate with the objective to promptly address the grievance and issues of the taxpayers.	Instructions are being issued to all field formations with the directions to make these cells more effective in solving the day to day problems of the taxpayers. Further, the directions are also being issued to urgently make operational the grievance cells if these are not operative as yet in any of the field formation.
2	Sending reply to FTO without verification of facts	Field formations have already been instructed to thoroughly examine the FTO's related replies and response thereon shall be based on verification of facts, issue related thereon and applicable laws. These instructions are now being again circulated for compliance by the field formations.
3	Putting those goods in auction which have already been auctioned in previous auctions	The procedure for segregation of lots and proper tagging of the same with lot number and specification of goods is mentioned in para 33 of the Customs General Order No.12/2002 dated 15.06.2002. Necessary instructions are being issued to the Collectorates to ensure the correct implementation of these instructions.
4	Lack of time limit for refund of earnest or bid money, if the goods cannot be delivered due to goods having been already auctioned cancellation of auction variation b/w actual and declared contents.	At present the Auction Rules (Chapter-V of the Customs Rules, 2001) notified vide SRO 450(I)/2001 dated 18.6.2001 do not provide any time line for refund of earnest money in case auction is cancelled for any reason. An amendment in the said rules was made for refund of earnest money within thirty days of the date of rejection of bid.
5	Lack of interaction with all branches/divisions of a formation, possibly involved in some process to a case, before dispossessing someone from his property in auction.	Section 169 of the Customs Act, 1969 does empower the Customs Officer for sale of goods liable to confiscation. However, the existing law do not mention the word after due notice to the owner of goods in case of auction. Moreover, systemic solution is being envisaged whereby all relevant branches of a Collectorate stand informed of the auction proceedings.

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