

No.13/2012-Law (FTO)
Government of Pakistan
Ministry of Law ,Justice and Human Rights

Islamabad, the ^{4th} October, 2013

From :- Arshad Ali Siddiqui
Section Officer (Law-I)

✓ To:- The Second Secretary (TO-II),
Federal Board of Revenue,
ISLAMABAD.

**Sub: REPRESENTATION UNDER SECTION 32 OF THE ESTABLISHMENT OF
THE OFFICE OF THE FEDERAL TAX OMBUDSMAN ORDINANCE (XXXV
OF 2000) IN COMPLAINT NO. 120/ISD/CUS(20)/1107/2011 (FBR VS
M/S ASIAN FOOD INDUSTRIES LTD LAHORE)**

I am directed to refer to your representation No.1(1107)S(TO-II)/2011 dated 3.2.2012 on the subject noted above and to say that the President has been pleased to pass the following orders.

2. Feeling aggrieved of O-in-O No.13/2011 dated 29.09.2011 rejecting rebate claim arising out of export of bubble gum to Afghanistan, complainant approached FTO. Agency (Revenue Division) objected to FTO's jurisdiction while supporting the O-in-O having been lawfully passed. FTO conducted hearing during the course whereof he was informed that an appeal has already been filed by complainant against the said impugned order. FTO found that fault laid with the Customs officials for failing to get the consignments laboratory tested. Following findings were recorded:

"Withholding the duty drawback on the goods already exported by the Complainant, against declarations duly accepted by the Customs at the time of export, is tantamount to maladministration."

FTO made following recommendations:

"FBR to direct the Collector Customs Peshawar to-

- (i) reopen the Order-in-Original No.13 dated 29.09.2011 in exercise of his powers under Section 193;
- (ii) settle 112 held-up duty drawback cases, as per law, within a period of 21 days."

3. This representation has been filed by Agency contending that FTO had no jurisdiction in the matter while recommendations completely overlook the factum of pendency of appeal with the Collector. Complainant in its comments has supported the findings and recommendations of FTO. Matter clearly pertains to determination of liability of duty against which remedy of appeal is provided for under the Customs Act 1969 and infact stands availed. Needless to state that the

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matter does stand reopened when an appeal is filed and no direction by FBR is required in this behalf. Even otherwise direction is to decide the cases in accordance with law in exercise of appellate powers. Recommendations are simply redundant and as such not sustainable.

4. Accordingly, the President has been pleased to accept representation of Agency and to set aside findings and recommendations of FTO with the observation that pending appeals filed by complainant against the O-in-O dated 29.09.2011 shall be decided expeditiously in accordance with law without being influenced by any observations in the impugned findings or this order. Compliance now to be reported to FTO's Secretariat within 30 days of the receipt of copy of this order.


(ARSHAD ALI SIDDIQUI)
Section Officer (Law-I)

Copy to:-

- 1 The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad,
- 2 Director (Legal Affairs-II), President's Secretariat (Public), Islamabad with reference to their No.451/FTO/2013, dated 1st October, 2013.
3. M/S Asian Food Industry Ltd through Malik Ahsan Mehmood, Advocate High Court, 33-C, Main Gulberg, Lahore.

(ARSHAD ALI SIDDIQUI)
Section Officer (Law-I)