

PRESIDENT'S SECRETARIAT (PUBLIC)
AIWAN-E-SADR, ISLAMABAD

(54)

M/s Al-Hamra Trading Company, Karachi
Versus
Federal Board of Revenue

REPRESENTATION PREFERRED BY M/S AL-HAMRA TRADING COMPANY, KARACHI
AGAINST FINDINGS / RECOMMENDATIONS DATED 1.10.2015 PASSED BY THE FTO
REVIEW PETITION NO.05/2011 IN COMPLAINT NO. 315/KHI/CUS (135)/1195/2010

I am directed to refer to your representation dated 31st October, 2015 on the above subject and to say that the President has been pleased to pass the following orders:

2. This Representation dated 02.11.2015 has been filed by Mr. Imran Rauf of M/s Al-Hamra Trading Company, Karachi against the findings in Remand of the FTO dated 01.10.2015, whereby earlier findings in Complaint No.1195/2010 and FTO's Order-in-Review in FBR's Review Petition No.05/2011 was substituted as under:-

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"In such view of the facts and legal position, no case of maladministration is made out against the Deputy Collector who, being quasi-judicial officer, acted in accordance with law. Hence there is no question of any compensation to the complainant. The complaint, being devoid of any merit, is accordingly closed and case file consigned to record. Before disposing of the case, it is, however, observed that Collector Customs should have consulted the legal wing in the FBR about filing of appeal or otherwise against the O-in-A dated 21.7.2010, passed by the Collector of Customs (Appeal). Earlier Findings/Recommendations in complaint No.1195/2010 and FTO's Order-in-Review in FBR's Review Petition No.05/2011 stand substituted by aforesaid Findings."

Chief(L-I),
S(Lit-SC)
S(L&Adm)
SS(T-I)
SS(T-II)
Chief(L-II)
S(L-IC)
S(LI-IC)
S(LDT)
S(LIDT)
PS

3. The learned FTO vide his findings dated 1st October, 2015, inter alia, has observed that Section 216 of the Custom Act, 1969, provides that no one is entitled to claim compensation for loss or injury except on proof of neglect or willful etc. Similarly, Section 217 of the Act, lays down the common law rule that where the government or their servants do or intend to do anything in good faith in pursuance of the provisions of any law under which they are authorized to act, shall not be liable civilly or criminally. In view of the legal position and facts explained above, nothing in the actions of Deputy Collector of Customs (Adjudication) smacks of mala-fide, vendetta, hostility or violation of importers' rights. His acts were bona-fide and lawful which are duly protected under Sections 216 and 217 of the Act. The FTO Ordinance too protects bona-fide acts of tax employees. It also provides for award of reasonable compensation to the tax employees u/s 14(4) read with Section 22(2) ibid against frivolous and vexatious complaints filed by unscrupulous persons to abuse the Ombudsman mechanism. Thus the above mentioned substitution has been made by the FTO.

4. The perspective of the case is that M/s Al-Hamra Trading Company, Karachi imported five consignments of "yellow sulphur clay" in powder form and first four consignments were cleared by custom authorities on the basis of declared description and value. The fourth consignment, on examination, founded that the imported material was "Branded Sulphur Powder" used as vulcanizing agent in tyre and rubber industry. Since description was found misdeclared hence contravention report was prepared and same was converted into a show cause notice. When importer failed to give plausible reason in defence, the impugned goods were confiscated vide O-i-O No.27884/2010 dated 21.06.2010. The importer filed appeal before Collector Appeals and also filed a request to Collector for release of the confiscated goods against a cheque to avoid demurrage and container rent and the same was rejected. Being aggrieved of this order, complainant filed complaint No.273/KHI/CUS(119)/1055/2010 on 30.6.2010 before FTO. Since matter being sub-judice, was not admissible, hence complainant requested to withdrawn the complaint and his request was acceded by FTO on 16.09.2010. Thus, complaint stood withdrawn.

P.T.O.

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5. The Collector of Customs (Appeals) accepted the declared description and unit value as correct. Since no appeal was filed by the Custom Department in Customs Appellate Tribunal so department issued online instructions to release the goods. Thereafter, complainant filed a fresh complaint No.315/KHI/CUS(135)/1195/2010 dated 30.09.2010 with the FTO praying for compensation and same was accepted by FTO vide order dated 12.11.2010. FBR filed a review petition No.05/2011 in the matter but same was rejected by the FTO as bereft of merit. Feeling aggrieved, FBR filed a representation to the Hon'ble President and as a consequence case was remanded back to FTO for application of independent mind in accordance with law. In the light of circumstances, FTO found that Section 216 of Custom Act, 1969 provides that no one is entitled to claim compensation for loss or injury except on proof of neglect or willful act. Similarly, Section 217 of the Act, lays down that where the government or their servants do or intend to do anything in good faith in pursuance of the provisions of any law under which they are authorized to act, not be liable civilly or criminally.

6. Through this Representation, complainant has agitated that impugned recommendations/findings dated 1.10.2015 are liable to be nullify on the ground that the FTO has re-opened the whole facts of the case which were determined in their own findings/recommendations dated 12.11.2010. Therefore, such recommendations/findings are against the principles of law of consistency and liable to be set aside on this ground alone. The Complainant stressed that the FTO cannot approbate and reprobate to their own decisions that once maladministration has been clearly declared in their early recommendations dated 12.11.2010 and how can they change their own instance and reopen the whole facts of the case. The Complainant further emphasized that it is well settled law that the govt functionaries cannot approbate and reprobate their own decisions and cannot change their instance by reopening the facts of the case which were earlier determined.

7. The Agency/FBR vide its comments dated 19.11.2015 have endorsed/supported the Order-in-Remand of learned FTO dated 1.10.2015 on the grounds that considering the provisions of Section 179 and 216 of the Act, time period given for adjudication in terms of Section 179 of the Act, the Complainant's contention may not be correct and learned FTO recommendations dated 1.10.2015 are just and in order as per prevailing law.

8. Perusal of record shows that the representation filed by the Complainant passed in review by FTO on reiterating the contention of Complainant in original as well as in review proceedings. Agency in his comments has supported impugned recommendations. No grounds stand made out for interference with the impugned findings and recommendations of FTO. No illegality has been committed by FTO and review has rightly been accepted by the learned FTO. Thus findings of FTO dated 1.10.2015 are sustainable and unexceptional. The representation of the Complainant is liable to be rejected as Complainant failed to make out a good case for interference.

9. Accordingly, the President has been pleased reject the representation of the Complainant and impugned recommendations of learned FTO should sustain.

Zulfiqar Hussain Awan
Director (Legal-II)

Mr. Imran Rauf,
M/s Al-Hamra Trading Company,
Room No.815, 8th floor, Uni-Plaza,
I.I. Chundrigar road, Karachi

No.78/FTO/2015 dated 8.6.2016

Copy for information to:

1. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
- ✓ 2. The Chairman, Federal Board of Revenue, Islamabad
3. Director to Secretary to the President.
4. Master file

Zulfiqar Hussain Awan
Director (Legal-II)

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