

No.50/2011-Law (FTO) -
Government of Pakistan
Ministry of Law and Justice

Islamabad, the ^{20th} May, 2013

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

✓ To:- Mr. Kaleem Arshad,
Second Secretary (To-I),
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. 28/ISD/CUS(05)/213/2011 (M/S AUTOMOBILE CORPORATION OF PAKISTAN (PVT) LTD KARACHI VS FBR)**

I am directed to refer to your representation No. 1(213)S(TO-II)/2011 dated 9.5.2011 on the subject noted above and to say that the President has been pleased to pass the following orders.

2. Complainant purchased 6 Mercedes Benz vehicles from Messrs Tools and Jigs (Pvt) Ltd stated to be a subsidiary of Kahuta Research Laboratories (KRL). Vehicles were imported by KRL and were cleared free of all Customs duty and taxes as "Defence Stores". The vehicles were then sold to some Afghan refugees residents of Azakhel, Refugee Camp, Nowshera. One of the vehicle was siezed and confiscated by Agency (Revenue Division) vide O-in-O No.131/2009 dated 07.07.2009. An appeal was filed by complainant which was rejected. However, a further appeal was allowed by Customs Appellate Tribunal on 13.07.2010 directing release of vehicles. Feeling aggrieved of inaction on the part of Agency despite the said judgment of Appellate Tribunal, complainant approached FTO. Agency reported that a reference has already been filed in the Peshawar High Court which is pending and as such complaint is not competent. FTO conducted hearing and recorded following findings:

"Non release of the vehicles without any stay order of the Hon'ble High Court, against the Appellate Tribunal's judgment in favour of the complainant, is evidently unlawful, arbitrary and oppressive, and is tantamount to maladministration."

FTO made following recommendations:

"FBR to-

- (i) ensure implementation of the judgment of the Appellate Tribunal forthwith and release the vehicles to its lawful owner without any further delay, without prejudice to the final outcome at the level of Peshawar High Court.

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- (ii) Investigate why the FBR officials are repeating maladministration again and again by refusing to implement orders/judgments of appellate fora, without any stay order of superior fora, and make effective arrangements to forestall the chances of repetition of any such violation in the future."

3. This representation has been filed by Agency reiterating that a reference was filed in High Court on 18.10.2010 and was pending on the date of filing of complaint i.e. 05.03.2011. FTO has relied on precedent case [No. 289/FTO/2007 corresponding Law Division's Summary No.14/2007-Law(FTO) in Complaint No.530-K/2006] decided by President on 31.01.2008. The said order reveals that after filing of the complaint FTO was informed that Agency is taking steps to file a reference. The present case is clearly distinguishable as reference was in fact pending on the date complaint was filed. This being so the bar laid down in Section 9(2)(a) of FTO Ordinance 2000 was squarely applicable. So far as the other recommendation is concerned, it has been categorically stated by Agency in reply to the complaint that no adverse proceedings had been taken regarding the remaining vehicles. Findings and recommendations recorded by FTO are not sustainable.

4. Accordingly, the President has been pleased to accept representation of Agency and to set aside findings and recommendations of FTO


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

Copy to:-

- 1 The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad,
- 2 Director (Legal), President's Secretariat (Public), Islamabad with reference to their No.37/FTO/2013, dated 6th May, 2013.
3. M/S Auto Mobile Custom Collectorate through Danish Ali Qazi and Isaac Ali Qazi advocates, 12, K-3, Phase-III, Hayatabad, Peshawar.

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

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