

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

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M/s Prime Industries Components, Karachi
Versus
Federal Board of Revenue

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REPRESENTATIONS AGAINST FINDINGS / RECOMMENDATIONS DATED 22.03.2016 PASSED BY THE
FTO IN COMPLAINT NO. 451/KHI/CUST/(91)/1427/2015 & 452/KHI/CUST/(92)/1428/2015

I am directed to refer to your respective representation on the above subject and to say that the Honorable President has been pleased to pass the following orders:

2. This order clubs together the following two representations filed by Complainant – Mr. Hussain Abbas against the single FTO findings dated 22.3.2016:

1. No.71/FTO/2016- COMPLAINT NO. 451/KHI/CUST/(91)/1427/2015
2. No.72/FTO/2016 - COMPLAINT NO. 452/KHI/CUST/(92)/1428/2015

3. The aforementioned representations have been filed against recommendations of FTO dated 22.3.2016, whereby it has been recommended that:

“In such view of facts and circumstances, the complainant has failed to make out case of maladministration against the deptt. Therefore, the investigation of complaint lacking any element of maladministration is closed and case file consigned to record.”

4. The brief fact of the case are that the complaint has been filed against alleged maladministration on the part of Examination Officers (Eos) of MCC Port Muhammad Bin Qasim contending that in the month of Sept 2015 the complainant imported a consignment of miscellaneous items from China and declared the same u/s 79 of the Customs Act, 1969 vide GD No.KPPI-HC-14225 dated 14.9.2015. The GD was marked to Asif Shah EO who allegedly completed examination in piecemeal in 09 days. He disputed the declared quantity ignoring the invoice and packing list. The complainant sought re-examination which was allowed on 3.10.2015 and GD was entrusted to Muhammad Rauf Khan EO who completed re-examination on 17.10.2015 and with delay of 03 days GD was sent for assessment on 20.10.2015 which was completed on 30.10.2015. According to the complainant as per practice and procedure of the deptt processing of GD should not take more than three days. The complainant alleged that on account of delay in processing of GD, he had to pay Rs.269,120/- as port demurrage charges and Rs.151,000/- as detention of the container. According to the complainant the record of port revealed that the EO re-grounded the container twenty times and for each re-grounding Rs.4000/- were charged by the shipping company.

5. The complainant pleaded that miscellaneous toy items are neither banned nor restricted under the Import Policy Order or under the Act. The delay in examination of consignment was intended to extort more revenue and to malign the complainant in the eyes of custom authorities. The complainant alleged that Muhammad Rauf Khan and Asif Shah EOs, despite having been transferred to MCC Appraisement (West) retained their post at MCC Port Muhammad Bin Qasim with connivance of higher authorities of the deptt, to fleece the innocent importers for their undue gain. The complainant apprehending retaliation on account of filing of the complaint, prayed for stern action against the EOs and AC Examination. He also pressed for issuance of guidelines/instructions/circulars to the deptt for streamlining the process of examination and also to direct the AC Examination and EOs to pay the delay and detention charges and to issue Delay & Detention (DDC) and further to restrain the AC Examination and EO from taking coercive action.

6. Responding to the notice of complaint issued u/s10(4) of the FTO Ordinance, the deptt filed parawise comments contending that the consignment of assorted/miscellaneous articles required 100% examination which was time consuming. However, examination was completed as soon as possible. According to the Department,

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during examination it was found that quantity, description and HS Code of various goods/items were incorrectly mentioned in the GD. The complainant did not accept the examination report and requested for re-examination in his presence. After approval of competent authority re-examination was conducted which consumed much time as the goods were assorted in nature which attracts assessment as per description, usage and commercial attributes under the Valuation ruling. The Department alleged that the Complainant did not properly declare the description and commercial attributed of the goods and also did not provide proper packing list indicating weight of each items. Re-examination was thus completed on 17.10.2015 and much time was consumed in preparation of the examination report.

7. The deptt pleaded that had the complainant accepted the examination conducted in the first place, the time spent in re-examination process could have been saved. As re-examination was conducted on the request of the complainant therefore, demurrage and detention charges accumulated for which the officials of dept cannot be held responsible. According to the deptt the container was grounded when it was necessary. The deptt resisted the allegation of the complainant that the EO and AC examination wanted to extort more revenue. The deptt pleaded that allegations were leveled to blackmail the officers/officials who have no intention to take any vindictive action. The Department assured that the staff shall avoid delay and take steps for smooth and early examination/assessment of such consignments in future. The Department also agreed to issue DDC for wavier of demurrage.

8. Complaint was fixed for hearing on 27.1.2016 by FTO. The complainant filed rejoinder pleading that delay of 09 days in examination was not justified merely on account of importation of miscellaneous items. The complainant alleged that declared items were reshuffled, their description and HS Code were forced in other descriptions and HS codes to make out charge of mis-declaration. According to the complainant, if declaration of the complainant was incorrect then proceedings for mis-declaration should have been initiated. He requested for second examination as a matter of right which was completed in 13 days. The complainant alleged that due to delay and wrong assessment, he not only suffered in terms of money but mental torture and agony was also caused to him. The complainant reiterating averments of his complaint pleaded that parawise comments do not contain any plausible explanation. That the deptt's assurance to avoid such delay in future and willingness to issue DDC show their admission.

9. Sequence of these events shows that it was not EO and AC (examination) who took time in examination, rather the complaint himself also left the matter unattended on different occasions from arrival of the container till finalization of assessment. Adverting to the re-grounding of container for twenty times, it would suffice to observe that according to procedure of QICT, once the container is grounded it will be considered re-grounded for each day till it is not lifted on completion of examination. In the present case, the goods were examined twice; once by the deptt as per routine and for second time on request of the complainant. The complainant could not rebut the explanation of the deptt. the grievance of complainant against the deptt in this behalf is unwarranted. The issue infact relates to the procedure adopted by QICT.

10. Outcome of above discussion is that the Complainant himself did not act fairly at the time of filing of GD. Duty and taxes were assessed by him as Rs. 487,492/- whereas the actual duty and taxes payable by him worked out to Rs. 1,568,399/- i.e. more than 3 times of his own assessment. As observed herein above, the Complainant himself left the matter unattended on different occasions which added to delay in progressing of GD. He also attempted to get released his consignment by paying much lesser duty and taxes than the actual amount payable by him. Therefore, he cannot seek equity as there can be no cavil to the legal proposition that one who seeks equity must do equity. Besides, the complainant though has alleged malafide on the part of AC examination and EO but he failed to bring on record any material to show that the process of examination and assessment was for corrupt or improper motives or for personal gain. Action to avert the attempted evasion of duty and taxes thus cannot be the cause of action against the officers/officials of the Department even if it causes some delay as acts done in good faith are covered by Sections 216 and 217 of the Customs Act. Thus FTO has issued the aforementioned findings.

11. The instant representation has been filed by the Complainant – Mr. Hussain Abbas who has prayed on behalf of the applicant that this forum to:-

- a. Declare that the impugned findings/recommendation dated 25.3.2016 are illegal, void ab initio, unlawful and without lawful authority having been passed without considering the facts of the matter and quash the same.



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- b. Take stern actions against the malafide action and highhandedness of Respondents and direct the Respondent No.2 (Secy FBR) to investigate into complaints of applicant and thereafter take departmental action against the respondents strictly in accordance with law and submit report in this regard before this Forum.
- c. Direct the respondent No.2 to issue guidelines/instructions/circulars to custom officials including officials of MCC, Port Qasim to streamline the import and examination stage so that the innocent importers like complainant may not suffer kind of loss of time, money and hassle especially completion of examination of goods has to be made within twenty four hours as prescribed under the customs laws and notification issued in this regard from time to time.
- d. Direct the respondent to pay the amount of Rs.269, 120/- and Rs.1,51,000/- paid by the complainant on account of delay detention charges and port charges as well as re-grounding charges of Rs.80,000/- (4000x20) from their personal pocket to mitigate the losses of the complainant.
- e. Direct the respondent No.3 to issue delay detention certificate in respect of delay occasioned to the consignment by the actions of the respondents.
- f. Any other reliefs, this august forum may deem fit and proper under the circumstances of the case.

12. On the contrary, the FBR/Agency has filed comments on 20.05.2016 against the instant representation of the Complainant indicating that the applicant/ Complainant has filed the representation with same allegations, as contained in the complaint, which have already been examined by the FTO and has given an accurate finding/decision in this regard. There is nothing new in the representation and infact, prima facie, the contents of the representation show that the applicant/ Complainant have personal grudge with the concerned officers, who actually foiled the applicant/ Complainant's bid to clear the consignment at lesser self-assessment value of Rs.776,697/- only as against the finally assessed duties & taxes of Rs.2,220,542/-. The applicant/ Complainant approached this forum with un-clean hands, therefore, considering the law settled by the Supreme Court in its judgment reported as West Pakistan Tank Terminal (Pvt) Ltd. Vs Collector of Customs, Appraisalment and others (2007 SCMR 1318), the applicant/ Complainant does not deserve even equitable relief. The whole contents of the representation are nothing but misrepresentation of the facts besides concealment of facts, hence, the same are vehemently denied.

13. There is no question on the facts that the jurisdiction of the FTO is barred u/s 9(2)(b) to investigate or inquire into the matter which relate to assessment of income or wealth, determination of liability of tax, interpretation of law, rules and regulations relating to such assessment / determination in respect of which legal remedy of appeal or review or revision is available under the relevant legislation. In case the complainant was aggrieved of any action or inaction of the Agency, the complainant has the remedy to file an appeal to the Commissioner Appeals, Income Tax Tribunal, the High Court and the Supreme Court of Pakistan. Hence the matter was not within the jurisdiction of FTO, which is not an appellate forum. In such circumstances, where remedy of appeal was available, FTO could not interfere with and could not pass orders.

14. It is an admitted position that the matter involves the determination of tax liability and refundable amount on account of tax. Such matters are appealable before the Commissioner (Appeal), Appellate Tribunal (IR), the High Court and the Supreme Court. Where remedy of appeal is provided under the law the FTO has no jurisdiction to investigate the matter in the name of maladministration. In case the complainant was aggrieved of any action or non action on the part of official(s) of the Agency, it has the remedy to file an appeal at appropriate forum under the relevant law.

15. This representations has been filed by complainant repeating the contents of his complaint already pleaded before learned FTO. Nothing turns on the same as it fails to answer the reasonings of FTO and not even contain denial of the factual observations for his impugned findings. No grounds stand made out for interference with the recommendations of FTO. Undoubtedly FTO decision is based on sound reasonings and supported by the law. Thus, the representation is devoid of any merits and is liable to be rejected. FTO impugned findings do not warrant any interference. Consequently FTO recommendations are sustainable and unexceptional having no illegality or improbability.

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16. Accordingly, the President has been pleased to reject both the representations of the Complainant and recommendations of learned FTO should sustain.

Zulfiqar Hussain Awan
Director (Legal-II)

Mr. Hussain Abbas,
Proprietor M/s Prime Industrial Components,
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Bunder road, Nickol road,
Karachi.

No.71/FTO/2016 dated 31.8.2016
No.72/FTO/2016 dated 31.8.2016

Copy for information to:

1. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
2. Mr. Muhammad Khalid Hayat, Advocate, Suit No.32, 3rd floor, Fareed Chamber, Abdullah Haroon Road, Saddar, Karachi.
3. The Chairman, Federal Board of Revenue, Islamabad .
- ✓ 4. The Chief (Legal-I), Federal Board of Revenue, Islamabad.
5. Director to Secretary to the President.
6. Master file

Zulfiqar Hussain Awan
Director (Legal-II)

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