

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

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M/s Bless Marketing, Lahore  
Versus  
Federal Board of Revenue

REPRESENTATION PREFERRED BY M/S BLESS MARKETING, LAHORE AGAINST FINDINGS /  
RECOMMENDATIONS DATED 12.5.2016 PASSED BY THE FTO IN COMPLAINT NO.  
52/LHR/CUS(01)/116/16

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

2. This representation dated 30.5.2016 has been filed by the complainant – Mr. Shaukat Asmat against the findings of FTO dated 12.5.2016 whereby it has been recommended that:

“In view of what has been stated and discussed above, the Complainant has not been able to justify the delay in filing this complaint. Furthermore, he committed an offence of massive under invoicing which should have been dealt with by issuance of a show cause notice followed by an appealable adjudication order.

The complaint thus having failed on merits and also being time-barred is dismissed and file consigned to record.”

3. The brief fact of the case are that the complainant imported a consignment of auto parts of miscellaneous vehicles from Japan, excluding Toyota vehicle parts. The Goods Declaration (GD) was filed on 3.7.2008 at Mughalpura Dryport, Lahore. Allegedly assessment of this GD was unlawfully done under Valuation Ruling No.Misc/01/2007/VIA dated 29.5.2008, meant for 125 items of Toyota cars. This ruling was later set aside by the Lahore High Court in W.Ps No.14211/2008 and 9263/2008. The consignment was released provisionally u/s 81 of the Customs Act, 1969 which required finalization within six months but was done on 24.7.2009 i.e. after more than a year. Presently the deptt has issued a short recovery notice, which as per the complainant is unlawful. He has requested that the final assessment order dated 24.7.2009, due to which short recovery has surfaced, may be declared illegal.

4. The complaint was sent to the Secretary Revenue Division in terms of Section 10(4) of the Ordinance. In response, the Model Customs Collectorate Appraisement [MCC(A)], Lahore submitted comments dated 9.2.2016 intimating as under:-

- i. that the consignment of auto parts of Japan origin were assessed provisionally under the description (other auto parts) as per Valuation Ruling C. No. Misc/01/2007/VIA dated 29.05.2008, issued for Toyota replacement parts;
- ii. provisional assessment under Section 81 of the Act was carried out in line with the forestated valuation ruling, read with the minutes of the meeting, issued by the Assistant Collector (Appraisement), Group-IV, Customs House, Karachi;
- iii. provisional release was allowed against an undertaking by the importer to the effect that he shall pay the differential duties and taxes, if any, as a consequence of final assessment. The case was then referred to the Directorate General of Customs Valuation, Karachi which, vide letter C.No.Misc/49/2008-chi VIA/641 dated 14.4.2009, advised to finalize the assessment on the basis of criteria of assessable value of auto parts advised by Appraisement Karachi in consultation with the Chief Collector Customs (South) Karachi and the importer viz PASPIDA. In consequence, short recovery of Rs.147,732/- surfaced in the impugned GD;
- iv. The final assessment order dated 24.07.2009, was passed in consonance with the measures postulated under the Customs Law, Rules and Regulations.

With the above arguments, the MCC(A) Lahore has requested for dismissal of the complaint.

5. The Departmental Representative (DR) when asked to explain this delay in the finalization of assessment has admitted that the time for finalizing the GD in a provisional assessment case, was six months, and could be extended upto 90 days by the Collector, which was done in this case, and that six month's period expired on 11.1.2009 and 90 days extension lapsed on 11.4.2009. It was further argued that the remedy of appeal was available to the complainant when the assessment was finalized on 24.7.2009 which he did not avail. The question, however, remains that the period beyond six months plus 90 days is not covered by law. Provisional assessment in this case, required to be finalized before 11.4.2009, was finalized on 24.7.2009.

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6. A perusal of the record indicates that the cause of grievance had first arisen in July 2009. The complaint has been filed after a period of more than six years. This undue and unexplained delay invites the limitation bar under the FTO Ordinance. The AR while justifying this delay, has intimated that he came to know of the case only when recovery notice dated 27.4.2014 was issued. The DR has clarified that the assessment order was passed on 24.7.2009 by which 29 cases in total, were disposed of on the same issue. The name of the present Complainant, M/s Bless Marketing, appeared at serial No.22. This final assessment order issued by the Deputy Collector (Group-IV) vide C.No.V-CUS-MISC-173(G-IV)/2008/530 dated 24.7.2009, was not challenged at any appellate forum or in any court by the complainant.

7. During the hearing the AR has referred to another final assessment order C.No. V-CUS-MISC-082(G-IV)/2008/789 dated 26.2.2010 passed by the Deputy Collector Group-IV Lahore Dryport, by which the same issue of value, increased on the basis of valuation advice dated 29.5.2008, had been set aside and the case was decided in favour of the complainant by upholding that the value of Toyota parts could not be applied to parts of other vehicles. This was done on the basis of recommendations of the FTO in another complaint. The AR further stated that the complainant had presumed that the present case also stood resolved in the light of this decision and hence he did not agitate the issue at that point in time.

8. Assumption of the AR about the extension of the final assessment order mentioned above, to his present complaint is not correct. Factually the FTO, in complaint No.286/LHR/CUS(18)/700/2009, while adjudicating on the valuation aspect of the consignment had recommended that his order would be restricted to the extent of the complainant. In compliance of FTO's order the case was reopened by the competent authority and decided in favour of the complainant but this cannot be made a basis for decision in favour of the present complainant by ignoring the final assessment order issued on 24.7.2009. The order of the FTO mentioned Supra, was an "order in Persona" and not "order in Rem", and thus cannot be extended to all identical / similar consignments. The DR has intimated that the final assessment order in the present complaint, issued on 24.7.2009 was meant for 29 units, and the name of the present complainant M/s Bless Marketing appeared at serial No.22. At this belated stage, the DR is, however not sure whether this recovery was conveyed through the system or in person to the complainant. According to him notices were sent to all the delinquent taxpayers, and majority of them had deposited the short paid amounts. Notice to the present complainant was also sent vide C.No. V-CUS-MISC-173(G-IV)/08/989 on 27.4.2014, which was not received back undelivered hence it was presumed that it had reached its destination. As the complainant did not respond, another notice for recovery was sent at his office address on 4.3.2015 which was received back with the remarks that the 'office is closed for the last one month'. Therefore, the notice was got delivered on the residential address.

9. The complainant appeared in person on 28.4.2016 and intimated that notice for recovery did not reach him as his office got shifted to another premises but admitted that the new address could not be conveyed to the Customs. Finally he got the intimation of this recovery through a letter of the Dryport Recovery Cell dated 4.3.2015 which was delivered at his residence.

10. The complainant has further clarified that this particular consignment, imported from Japan, contained only Honda parts, but is unable to intimate the declared and the provisionally assessed values of the consignment.

11. The DR has furnished a statement showing that the declared value of said consignment was US \$0.569 per kg. It was provisionally released at US \$2.50/kg. The final assessment was done @ US \$3.00 per kg which led to short recovery of Rs.143,121/- against which the instant complaint has been filed. This statement shows massive under invoicing. The DR has argued that the mere acceptance of provisionally enhanced value by the complainant at the outset was an ample proof of his confession of mis-declaration. The AR has again averred that recovery letter of the deptt dated 7.4.2014, statedly sent to many importers, was not received by the complainant. He demanded a proof of delivery of the said notice.

12. The case has been heard at sufficient length by FTO. Thus FTO has issued the aforementioned findings.

13. The instant representation has been filed by the complainant. The complainant has pleaded that G.D No.CDRY-HC-119 dated 3.7.2008, was assessed provisionally at US \$2.50/kg against the declared price of US \$0.0569/kg. This shows massive under invoicing, as the declared value of the consignment to the tune of US \$3712 (Pak Rs.258,261/-) got uplifted to US \$16285/- (Pak Rs.719,272/-).


14. The Complainant has intimated that provisional assessment was finalized on 24.7.2009 at US \$3/kg which resulted in further uplifting of the total value of the consignment to US \$19542/- (Pak Rs.862,393/-) providing for short recovery of Rs.143,121/-. The complaint has been filed on the pretext that the value which was supposed to be finalized within six months u/s 81 of the Customs Act, 1969, was finalized after almost one year, making this short recovery notice invalid.

15. The Complainant has prayed that he may be provided justice and his representation may be accepted by the President of Pakistan along with essential directions against the opponent in accordance with the prevailing law.

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16. On the contrary, the comments has been filed by FBR indicating that the provisional assessment u/s 81 of the Customs Act, 1969 was carried out in line with the fore-stated Valuation Ruling read with Minutes of Meeting issued by Assistant Collector, Appraisement Group-IV, Custom House, Karachi.
17. The Agency has argued that the provisional assessment u/s 81 of the Customs Act, 1969 was carried out in line with the fore-stated Valuation Ruling read with Minutes of Meeting issued by Assistant Collector, Appraisement Group-IV, Custom House, Karachi and recovery proceedings have been initiated under the relevant provisions of law in the light of Final Assessment Order dated 24.7.2009.
18. The Agency has appraised that the appeal filed by the complainant was dismissed by FTO on the ground that complainant has not been able to justify the delay in filing this complaint. Furthermore, he committed an offence of massive under invoicing.
19. The Agency has pointed out that the u/s 81 of the Customs Act, 1969 was carried out in line with the fore-stated Valuation Ruling read with Minutes of Meeting issued by Assistant Collector, Appraisement Group-IV, Custom House, Karachi and recovery proceedings have been initiated under the relevant provisions of law in the light of Final Assessment Order dated 24.7.2009.
20. The Agency has prayed that the instant representation being void ab initio, unsubstantiated, devoid of merits and without lawful authority may very be declined.
21. This representation has been filed by complainant repeating the arguments of his complaint. No new ground has been mentioned. 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.
22. In such circumstances, where remedy of appeal was available FTO could not interfere with the matter of assessment of tax and interpretation of law. Thus FTO having not gone beyond the scope and powers, the impugned findings are sustainable and unexceptional. Consequently, the Complainant representation is liable to be rejected as the complaint having failed on merits and being time barred is rightly dismissed by learned FTO. However, the complainant can seek remedy available to him from the relevant forums under the law if so advised.
23. Accordingly, the President has been pleased to reject the representation of the complainant and recommendations of learned FTO should sustain.

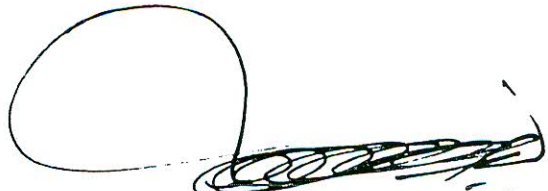
  
 Zulfiqar Hussain Awan  
 Director (Legal-II)

Mr. Shaukat Asmat,  
 M/s Bless Marketing,  
 R/o House No.705,  
 Gulistan Colony No. 19,  
 Mughalpura, Lahore

No.90 /FTO/2016 dated 31.08.2016

Copy for information to:

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

  
 Zulfiqar Hussain Awan  
 Director (Legal-II)

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