

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

Federal Board of Revenue
Versus
Mr. Rasool Jan, Quetta

**REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS
/ RECOMMENDATIONS DATED 10.05.2017 PASSED BY THE FTO IN COMPLAINT NO.
16-22/OTA/CUST(12-18)/14-20/2017**

I am directed to refer to your representation No. 1(14-20)S(TO-II)/2017, dated 07.06.2017 on the above subject and to say that the President has been to pass the following order:

2. This Representation dated 07.06.2017 has been filed by the Agency-FBR against the findings of the FTO dated 10.05.2017, whereby it has been held:

"During hearing on 25.04.2017 it was agreed between the parties that the Department would approach the High Court of Balochistan for stay of orders of the Tribunal and for early hearing. If no stay is obtained by deptt within 45 days, it would implement Tribunal's order for refund of sale proceeds.

The complaints stand disposed of in the above terms".

3. The brief facts of the case are that these seven complains have been filed by same Complainant invoking jurisdiction of FTO under Section 9(1) of the FTO Ordinance, 2000 against the alleged maladministration of Model Customs Collectorate, Customs House, Quetta withholding implementation of order dated 25.11.2016 passed by the Customs Appellate Tribunal whereby orders of adjudication authority and Collector (Appeals) about confiscation of consignments of pine-nuts (Chalgoza) have been set aside and appeals filed by the Complainant have been allowed. According to the Complainant on receiving orders of the Tribunal, he filed refund claim on 19/20 December 2016, but no action has taken by the Department.

4. In response to the notice issued under Section 10(4) of the Ordinance, the Department has filed parawise comments wherein the facts as narrated by the Complainant have not been disputed. The Department has informed that against the orders of the Tribunal, Customs Reference Applications have been filed in the High Court of Balochistan and hearing was fixed for 16.08.2017. The Department submitted that as the matter was subjudice the complaints may be dismissed. Thus FTO has issued aforementioned findings.

5. The instant Representation has been filed by the Agency. The Agency has argued that the impugned order dated 25.11.2016 passed by the Appellate Tribunal without considering the factual position and ground realities and without examining any admissible evidence. The said order has been passed without taking into consideration the place of seizure and the modus operandi of the unscrupulous claimant, whose entity is not known.

6. The Agency has expressed that the vital fact that in all seven cases the transporting vehicles intercepted on an un-frequent route adjacent to Pak-Afghan border were found non registered/ non Custom paid and were eventually confiscated outrightly in favour of state. The status of all these seven vehicles being non duty paid foreign origin were being smuggled into the country also lead to conclude that the goods loaded on the said vehicles are also of foreign origin which were being smuggled through un-frequented routes from Afghanistan. Furthermore, the drivers had no documents in possession showing place of loading, owner's name and destination.

7. The Agency has mentioned that with the issuance of aforementioned judgment the Respondents have been favoured with reaping windfall and undue advantage causing huge loss of revenue to National Exchequer. It may also be gathered from the adjudication proceedings vide Order in Original No. 471/2015 dated 31.12.2015 that none of the claimants/ owners of the goods and vehicles should produce any valid document in respect of goods (Chilgoza and the Vehicles) which proved conclusively that the same were brought into the country by illegal means and warranted outright confiscation under the provisions of Customs Act, 1969.

8. The Agency has pointed out that in the wake of aforesaid judgment of the Appellate Tribunal, the National Exchequer would be deprived of its legitimate revenue by means of such controversial judgment which needs to be declared as void and illegal.

9. The Agency has prayed that in the light of above mentioned facts, law points and grounds that the impugned findings/ recommendations dated 10.05.2017 passed by the FTO being jurisdiction bar, Quetta may be set aside in the interest of justice.

10. On the other hand, the complainant has filed comments indicating that a bare perusal of para 3 of the impugned order of the Federal Tax Ombudsman is sufficient to understand the worth of the instant representation. It is pertinent to mention that had there any force in the Customs Reference Application filed by the Collector, the Honorable High Court would have stayed or suspended the operation of the Judgment of the Customs Appellate Tribunal dated 25.11.2016.

11. It is therefore, prayed that viewed in light of the above and the legal position that the order of the Customs Appellate Tribunal dated 25.11.2016 is still in field and the Honorable High Court of Balochistan at Quetta has not

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stayed or suspended the same, the appellate forum may dismiss the ill-conceived representation and also issue direction for compensation to the Respondent-2 in the high interest of law and justice.

12. After perusal of record and examination of all documents, it has been pointed out that order of the Customs Appellate Tribunal was passed on 25.11.2016. The legal remedy available with the Agency was to approach the High Court of Balochistan. The Agency has intimated that the department filed customs reference application before the Honorable High Court against the judgment dated 25.11.2016 besides stay applications were also filed for grant of ad-interim stay against the said judgment. However the respondents filed complaint before the FTO Quetta. Whereby the FTO passed findings/orders dated 10.5.2017.

13. It has been noted that the complainant has filed complaint before the FTO Quetta on 28.3.2017 vide FTO Diary No.77 dated 28.3.2017. On the other hand, the Agency has informed that the department filed customs reference application before the Honorable High Court against the judgment dated 25.11.2016 besides stay applications were also filed for grant of ad-interim stay against the said judgment. However the respondents filed complaint before the FTO Quetta. Whereby the FTO passed findings/orders dated 10.5.2017. The aforementioned scenario indicates that the Complainant has filed complaint before FTO on 28.3.2017 when the matter was subjudice before the High Court Quetta. Collector Custom (Mr. Ammanullah Tareen) vide his comments dated 13.4.2017 filed before FTO Quetta has prayed that the complaint may be dismissed as the matter is subjudice in the Honorable High Court of Balochistan, Quetta and the complainant may be directed to appear before the relevant forum i.e. Honorable High Court of Balochistan, Quetta. This fact proves that FTO Quetta has taken the case while the matter was already subjudice and pending before Honorable High Court.

14. It is pointed out that Section 9(2)(a) of the FTO Ordinance 2000 provides that FTO shall not have jurisdiction to investigate or inquire into matters which are subjudice before a court of competent jurisdiction or tribunal or board of authority on the date of the receipt of a complaint, reference or motion by him.

15. 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.

16. It has been settled by the Supreme Court of Pakistan in case of Mst. Kaniz Fatima reported in 2001 SCMR 1493, that where a particular statute provides self contained machinery for determination of questions arising under the statute and law provides a remedy by appeal or revision to another forum fully competent to give any relief, any indulgence to the contrary by any other forum is bound to produce a sense of distrust in statutory forums and writ petition will not be maintainable without first availing the alternate statutory legal remedy. The FTO has no jurisdiction to set aside the order where the forum of appeal is available to the complainant. Thus the impugned findings are not sustainable and the representation is liable to be accepted.

17. Accordingly, the President has been pleased to accept the instant representation of FBR-Agency and to set aside the impugned findings/recommendations of FTO.

(Zulfiqar Hussain Awan)
Director General (Legal Affairs)

The Chairman,
Federal Board of Revenue,
Islamabad.

No.118/FTO/2017 dated 05.10.2017

Copy for information to:

1. Mr. Rasool Jan, S/o Nazar Gul, C/o Sadbar Jan Law Associates, 1-25/20, Jinnah Road, Quetta.
2. The Registrar, Federal Tax Ombudsman, Secretariat, 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 General (Legal Affairs)