

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

Federal Board of Revenue
Versus
Mr. A. Shaker Khan, Quetta

17 OCT 2017
M(L)

REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS / RECOMMENDATIONS DATED 05.05.2017 PASSED BY THE FTO IN COMPLAINT NO. 07-09/OTA/CUST(03-05)/06-08/2017

I am directed to refer to your representation No. 1(06-08)S(TO-II)/2017, dated 16.06.2017 on the above subject and to say that the President has been to pass the following order:

2. This Representation dated 16.06.2017 has been filed by the Agency-FBR against the findings of the FTO dated 05.05.2017, whereby it has been held:

"FBR to direct:

- (i) Collector, MCC, Custom House, Quetta to get refund applications processed in accordance with law in terms of order passed by the Tribunal and upheld by Hon'ble High Court of Balochistan; and
- (ii) Report compliance within 45 days".

3. The brief facts of the case are that three identical complaints have been filed by same Complainant under Section 10(1) of the FTO Ordinance, 2000 against MCC, Custom House, Quetta for withholding refund of sale proceeds of three consignments of wheat four seized by FC which were confiscated through Order in Original No. 213/2008, No. 214/2008 and No. 349/2008 and auctioned by Department but subsequently the Customs Appellate Tribunal, Bench -1, Karachi vide common order in Appeal No. 116/2009 set aside orders of confiscation and ordered return of wheat flour or sale proceeds to the Complainant. The Commandant FC through Additional Collector Customs, MCC, Quetta filed reference applications under Section 196 of the Customs Act, 1969 which were dismissed by the High Court of Balochistan.

4. As the wheat flour had already been auctioned the Complainant filed applications for refund of sale proceeds but neither sales proceeds were refunded nor the applications were disposed of by Model Customs Collectorate, Customs House, Quetta whereupon the Complainant has sought intervention of the FTO for redress of his grievance.

5. In response to the notices issued under Section 10(4) of the Ordinance the Department has filed parawise comments wherein the facts stated by the Complainant were not denied. The Department pleaded that series of letters were written to HQRS FC, Quetta requesting for providing auction documents and information whether any appeal has been filed against the judgment dated 13.11.2013 of High Court of Balochistan but no reply has been received. The delay was on the part of the FC.

6. The Department contended that although final details of the case are yet to be received from FC, however, perusal of available record on file indicated that the claim of refund was not admissible in terms of Section 33 of the Act.

7. The Complainant on being supplied copy of parawise comments filed rejoinder, wherein the contentions of the Department have been rebutted contending that the Deputy Collector Customs has recorded a note on the file that no appeal had been filed against the judgment of High Court of Balochistan whereupon Collector Customs directed the concerned staff of R&R Section and treasury branch to recheck the calculation of refund amount. The Complainant pleaded that refund claim was not barred as copy of judgment was delivered on 20.05.2014 and refund application was filed on 18.02.2015.

8. During the course of hearing the parties supported averments of their pleadings and relied upon the documents filed in support thereof.

9. Submissions of the parties have been considered in the light of documents available on record and relevant law. At the very outset, it is observed that the objection raised by the Department about claims being hit by limitation provided under Section 33 of the Act on due consideration reflect that Section 33 of the Act does not apply to refund of sale proceeds of auctioned goods. Rather it deals with customs duties or charges claimed to have been paid or over paid through inadvertence, error or misconstruction. Hence, sub section 3 of Section 33 of the Act specify limitation for claiming refund of custom duties and charges referred to in sub section (1) of Section 33 of the Act.

10. The DR made an attempt to bring the matter within ambit of Section 201 of the Act, which though relates to procedure for sale of goods and application of sale proceeds but it also is found to be irrelevant as it regulates procedures for auction/ sale of goods, other than confiscated goods, whereas in the instant case the goods were confiscated and order of confiscation was vacated after goods were auctioned, therefore, the procedure provided in

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