

**PRESIDENT'S SECRETARIAT (PUBLIC)**  
**AIWAN-E-SADR**

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*Dated:28.12.2022*

1. **No.101/FTO/2022**
2. **No.134/FTO/2022**
3. **No.165/FTO/2022**
4. **No.166/FTO/2022**

<i>Federal Board of Revenue</i>	<i>Vs</i>	<i>M/s M.F. Enterprises</i>
<i>Federal Board of Revenue</i>	<i>Vs</i>	<i>M/s King Star Traders</i>
<i>Directorate of IPR Enforcement-South</i>	<i>Vs</i>	<i>M/s M.F. Enterprises</i>
<i>Directorate of IPR Enforcement-South</i>	<i>Vs</i>	<i>M/s King Star Traders</i>

**Subject:FOUR (04) REPRESENTATIONS PREFERRED BY FEDERAL BOARD OF REVENUE AND DIRECTORATE OF IPR ENFORCEMENT-SOUTH AGAINST REVIEW FINDINGS / RECOMMENDATIONS DATED 15.04.2022 PASSED BY THE LEARNED FTO IN REVIEW COMPLAINT NO. 2104 &2105/KHI/CUST/2021**

Kindly refer to your representations on the above subject addressed to the President in the background mentioned below:-

Four representations had been filed by the Federal Board of Revenue against the Orders of learned Federal Tax Ombudsman dated 01.12.2021 (Original) and 15.04.2022 (Review), which were found incompetent, non-maintainable and time barred and were rejected without calling the parties or hearing them.

2. Later on, an application was received from Ms. Nyma Batool, Director CPEC expressing her apprehension that the observations and directions made by the learned FTO in his orders are likely to affect several cases where the order of the learned FTO may be cited as precedent; and that it may further have implications upon her clean career.

3. Being aggrieved the instant petition has been filed by Ms. Nyma Batool, the then Director, Directorate of Intellectual Property Right Enforcement, Karachi at that time pleading that she has been condemned unheard which is against the fundamental rights and also the Supreme Court's judgment that "no one should be condemned unheard". If she had opportunity of personal hearing, she would have proved from the record of the case that she acted strictly in accordance with the provisions of the Customs Act, 1969 and the procedure envisaged under the Rules. Further, she has made the following submissions relevant to the case:

"1) *The complaint was not maintainable before the learned FTO as per section 9(2) of FTO Ordinance 2000,*

*since the case was already under going due process of law, and complainant was called for hearing in the*

*Directorate of IPRE south, Karachi, furthermore he had already filed writ petition in the High Court on identical grounds.*

2) *On confirmed information and Right holder's Enforcement Applications, goods were rightly detained under SRO 170(1)2017 of the Customs Rules, 2001, r/w section 15 of Custom Act 1969 and para 5(2) of the Import Policy Order 2020.*

3) *The Importer is allegedly a habitual smuggler of counterfeits who imported infringed watches of the most famous branded, their parts and other items. He later confessed on oath, and on stamp paper that his clearing agent had misused his power of attorney without his consent and instituted the fake complaints and writ petition. He submitted a surrender letter regarding all counterfeit goods, cancelled his power of attorney, withdrew the case from the High Court, and requested relevant forums to close complaints forwarded to FBR and the FTO;*

- 4) *During examination of seized goods under Section 80 of the Customs Act 1969 read with SRO 170(1)/2017 of the Customs Rule 2001 were found infringed/counterfeit and as such prohibited goods as per para 5(1)(a) of the Import Policy Order, 2020 read with Section 15 of the Customs Act, 1969. Thus, there was no question of allowing release of “banned good”.*
- 5) *SRO 786(1)/2014 of the Customs Rules 2001 empowers the Directorate of IPRE to detain good on receiving information/enforcement application and then conduct Joint Examination in presence of all stakeholders, etc. Further, proceedings are conducted as per Rules. If confirmed as counterfeit, Seizure order is forwarded to the concerned Collectorate for Adjudication and further necessary action.*
- 6) *Seizure Orders No. 29/2021 and 30/2021 dated: 30-10-2021 did not deal with confiscation but merely seizure in terms of Rule 681(4) of the Customs Rules, which were then forwarded to the Customs Collectorate for adjudication and outright confiscation; if goods are found counterfeit / infringed in terms of Section 156(1)(9) read with Section 179 of the Act.*
- 7) *With great respect, it is added here that the impugned findings / recommendations of the Hon'ble FTO and the impugned Order-in-Review will have a far reaching impact. It will become a precedent for all unscrupulous importers and customs agents to cite and clear all PROHIBITED/ BANNED ITEMS. It will further encourage them to implicate honest/ hard-working officers in false/fabricated inquires. Thereby ruining their careers and tarnishing their image. As a result no officer of Customs will then dare check under invoicing, mis-declaration, nor stop banned /prohibited goods from entering the country.*
- 8) *It is respectfully prayed that the impugned Orders of FTO dated 01.12.2021 and Orders in Review dated 15.04.2022 may kindly be set aside, as the Clearing Agent acted without consent of the actual Importer. The Importer, Mr Farooq, **has admitted on oath that he imported counterfeit goods, and he is surrendering the same and requesting all forums to close all cases, petitions, complaints filed on his behalf.** He submitted this on certified stamp paper before the Honorable High Court, all relevant officers in the FBR, the Appellate Tribunal and in the FTO with a copy to Directorate of IPRE South.”*

4. In view of the grievances of the petitioner that she would be directly affected by the adverse findings she was called for hearing on 13.12.2022 as also the FBR and the complainant. Mr. Khuwaja Khurram Naem, Chief F&C has appeared on behalf of FBR Head Quarters and Ms. Nyma Batool, Director CPEC and Ex Director IPRE South Karachi whereas, the complainants has not appeared despite service of notice.

5. M/s M.F Enterprises, Karachi and M/s King Star Traders (the complainants) alleged that they imported a consignment containing miscellaneous items like batteries, calculators, watches of various kinds, etc and filed the Goods Declaration vide GD No.39488 dated 30.08.2021. Before clearance, the Directorate of IPR placed hold on the consignments in sheer violation of the SRO 170(1)/2017 dealing with process of how the goods relating to IPR were dealt with. Further, neither the Reference Filer filed complaint on the proper format prescribed under SRO 170(1)/2017 dated 16.03.2017, nor deposited a security of Rs.500,000/- or 25% of the value of the impugned consignments as required under the SRO. Despite repeated requests and personally approaching the concerned Director for the release of the consignments, the same had not yet been done and the consignments were still on hold. They, therefore, took up the matter with the learned FTO by filing complaints U/S 10(1) of the Ordinance, 2000.

6. The learned Federal Tax Ombudsman called the comments of the Secretary, Revenue Division, Islamabad. In response thereto, comments were filed vide letter dated 29.10.2021 wherein it was averred that on 30<sup>th</sup> August, 2021 Enforcement Application was filed by the "Brand Production System" informing that different branded counterfeit watches like Casio, Citizen, Seiko, Boss, Ferrari, etc, their parts and empty boxes were attempted to be imported vide GCS No.KAPE-HC-39488 dated 30.08.2021 by the complainants. The Enforcement Application was filed in the “Prescribed Format” with Pay Order/Bank Guarantee and Indemnity Bond of Rs.500,000/- under Rule 680 of SRO 170(1)/2017 for the consignment. The Swiss federation of Watches had already filed complaint in advance with bank guarantee. Stating that the consignment arriving was carrying first copies of counterfeits and could be sold as originals. M/s Osiris had also filed an Enforcement Application

with all the requisites. The vessel was under surveillance and was being tracked. The consignment was accordingly put on hold by the Director IPRE, Karachi in the light of Rule 681 of SRO 170(1)/2017 and as signatories of World International Property Ordinance (WIPO) are bound to entertain and take action against all counterfeits imported or being exported. The Collector/Additional Collector Examination of the concerned Port was also intimated about consignment being a suspected of IPR infringement. On 13.09.2021, a letter was issued to the Deputy Collector Examination for Joint Examination of the consignment in the presence of the representative of the Directorate and the Right-holders on 16.09.2021. Thus, a Joint Examination was conducted of the subject consignments and samples received in the IPR office consisted of Citizen, Patek Phillipe Rado Citizen, Calculators, empty boxes, etc. the samples and report revealed that besides these watches, there were counterfeit / infringed watch parts and goods of several other International Brands in the consignment, like **Hugo Boss, Swister, Fossil, Bvlgari, Emporia Armani, Omega, Frank Mueller, Rolex** etc;. Request for Re-examination was called by M/s Brand Protection Services against the other brands with a request of quantity. During the examination, the Clearing agent, Mr. Waseem Tanoli, interrupted the re-examination proceedings by threats, hurling abuses; He then attacked, pushed and slapped the Representative of the Swiss Federation of Watches. His men fled with the files of Directorate of IPR. Incident Report forwarded to all concerned quarters. That the Clearing Agent used delaying tactics in finalization of the case. Proper hearing opportunity was granted to the complainants; as per record, several letters dated 14.10.2021, 15.10.2021, 18.10.2021, 22.10.2021 and again on 25.10.2021 were sent to the Importer/clearing agent for the Joint Examination, but no response was ever received nor did he join the proceedings, till much later. Finally, the re-examination took place on 27.10.2021, in the presence of all the stake holders and case was accordingly finalized by forwarding seizure report, vide Order No. 29/2021 dated 30-10-2021 read with corrigendum dated 10-11-2021. The goods were out rightly confiscated being infringed and counterfeit by the Adjudicating Authority vide its O-in-O NO. 01 and 02 dated 22-01-2022. That the right holders Patek Phillips SA, Rolex SA and Rado Uhren AG Citizen, Casio, Hublot, Hugo Boss, Omega, Movado, Seiko, Mattel, etc filed Suits Nos. 14/2021, 01/2022, 02/2022, 03/2022 & 04 / 2022 in the Intellectual Property Tribunal Sindh and Balochistan at Karachi for destruction of counterfeit watches and parts. The Tribunal vide its order dated 24-12-2021, (Annex Z1) restrained both M/s MF Enterprises and M/s King Star Traders from import, sale and purchase of the infringed goods. The IP Tribunal also restrained Customs Authorities from releasing the goods.

7. As mentioned above that despite notices the complainant has neither appeared nor responded. However, the petitioner and a senior officer of the FBR namely Khuwaja Khurram Naeem, Chief F&C has appeared to explain and highlight the implications involved in the matter qua the observations and the directions of learned FTO. During the long deliberations, the Chief F&C apprised of the implications/risks involved in the matter and the concerns of the FBR. He also produced a letter No.1(1)Cust.Jud./2022 dated 15<sup>th</sup> December, 2022 i.e.:

*“Subject: REPRESENTATION UNDER SECTION 32 OF THE FTO ORDINANCE, 2000, READ WITH SECTION 14 OF THE FEDERAL OMBUDSMAN INSTITUTIONAL REFORMS ACT, 2013, AGAINST THE HONOURABLE FTO'S ORDER-IN-REVIEW DATED 15.04.2022 READ WITH FINDING/DECISION DATED 01.12.2021 PASSED IN COMPLAINT NO. 2104/KH/CUST/2021 M/S M.F ENTERPRISES, KARACHI.*

*Kindly refer to the subject cited above and hearing held in your office today at 12:00 noon. It is submitted that in the instant case the goods imported were in violation of the Intellectual Property Rights' SRO 170(1)/2000 dated 16.03.2000. Pakistan being the signatory of World Intellectual Property Organization (WIPO) is bound to implement and protect the Intellectual Property Rights (IPR) of registered right holders.*

2. *The Director of Intellectual Property Rights Enforcement (IPRE), South, acted bonafide to discharge the duties, because non-enforcement of IPR is considered a violation of international commitments and can have repercussions for the trade and business ranking of the country, resulting in adverse economic implications. The goods have been confiscated vide Order-in-Original No. 02 dated 22.01.2022. The case is presently before the Intellectual Property Tribunal Sindh and Balochistan at Karachi vide Suit No. 14/2021 (copy enclosed), wherein interim order dated 24.12.2021 has been issued. The operative para of the said order is as follows: "Defendant No. 1 and*

2 are restrained from marketing, manufacturing and selling of their goods while infringing the trademark of Plaintiff: The Defendant No. 3 to 6, are also restrained to the extent from releasing the goods/articles pertaining to the Plaintiffs trade mark, till the next date of hearing. "

3. Foregoing in view, the FBR is of the view that conducting any inquiry against the Director (IPRE-South) in the instant case is not warranted.

Sd/-  
(Kh . Khurram Naeem )  
Chief (Facilitation &  
Compliance)"

8. Since the Federal Board of Revenue, the competent authority in such matters has expressed its views touching the national interest as also pointing out international commitments and implications involved, it is eminently a matter of extreme importance.

9. It has consistently been observed in the decisions of several representations that it is the departmental authority which is vested with the authority and jurisdiction to proceed departmentally against any official by holding inquiry etc. In the instant matter the departmental authority has justified and approved the actions and conduct of the petitioner and that any inquiry against the Director (IPRE-South) in the instant case is not warranted. That should suffice the redressal of grievance raised by the Petitioner.

10. Accordingly, the Hon'ble President, as per his decision above, has been pleased to order the disposal of the matter in the light of the above letter of FBR that no further action is warranted pursuant to the orders of the learned FTO.

-Sd-  
(Muhammad Saleem)  
Director (Legal)

1. The Chairman, Federal Board of Revenue, **Islamabad.**
2. Ms. Nyma Batool, Director, Directorate of IPR Enforcement-South, Custom House, Karachi.03322031295
3. M/s M.F. Enterprises, 3<sup>rd</sup> floor, Office No.346, Star City Mall,Opp Bambino Cinema Abdullah Haron road Saddar Karachi. 021-32259668 / 0300-8239426
4. M/s King Star Traders, 3<sup>rd</sup> floor, Office No.346, Star City Mall, Opp Bambino Cinema Abdullah Haron road Saddar Karachi. 021-32251341 / 0300-8239426

Copy for information to:

1. The Registrar, Federal Tax Ombudsman, Islamabad.
2. The Secretary (Legal Customs-I), FBR, Islamabad.
3. Master file

-Sd-  
(Muhammad Saleem)  
Director (Legal)