

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

Rep.No.57/FTO/2022
Date of Decision:29.12.2022

M/s Rehan Traders VS Federal Board of Revenue

Subject: **REPRESENTATION FILED BY M/S REHAN TRADERS AGAINST THE FINDINGS / RECOMMENDATIONS DATED 31.01.2022 PASSED BY THE LEARNED FTO IN COMPLAINT NO. 2675/ISB/CUST/2021**

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

This representation has been filed by M/s Rehan Traders on 08.03.2022 against the order of the learned Federal Tax Ombudsman (FTO) dated 31.01.2022, whereby it has been held that:

“In view of the details enumerated supra, it is evident that the Deptt has acted as per law and merits and the complainant has failed to make out a case of maladministration against the Deptt, therefore, the complaint stands dismissed. Case file be consigned to record.”

2. The complaint was filed against the Collectorate of Customs, Islamabad under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) for suspension of illegal Notice dated 30.11.2021 till settlement of the issue.

3. M/s Rehan Traders (the complainant) alleged that the Assistant Collector Customs (Recovery Cell), Islamabad Dryport issued illegal Notice dated 30.11.2021 under Section 202(2)(3) of the Customs Act, 1969 (the Act) for recovery of Rs.2,119,078/-, without showing any details and after laps of three and five years. He therefore took up the matter with the learned Federal Tax Ombudsman by filing complaint under Section 10(1) of the FTO Ordinance 2000 for suspension of the impugned Notice dated 30.11.2021 till the final disposal or settlement of the matter.

4. The learned Federal Tax Ombudsman called the comments of the Secretary Revenue Division, Islamabad. In response thereto, the Collector, Collectorate of Customs, Islamabad vide letter dated 06.01.2022 submitted that the audit team of the Directorate General Audit Customs & Petroleum, Lahore, during an audit of the Deputy Collector of Customs (Import), Islamabad Dryport observed that M/s Rehan Traders short realized the Government revenue to the tune of Rs.2,118,694/- due to misclassification of imported goods cleared against various Goods Declaration (GD). After issuance of Demand Notice dated 07.02.2011, hearing Notices dated 26.09.2012 and 03.01.2013 were issued to the complainant on his registered address i.e. M/s Rehan Traders, Shop No.02, Makkah Market, Z-875, Railway Road, Rawalpindi and a copy to his Clearing Agent i.e. M/s Ocean Port Link, Customs Clearing Agent, Service Road, BBI Airport, Rawalpindi. Thus, Show Cause Notices (SCNs) dated 06.09.2012 and 07.09.2012 were duly issued to him and his Customs Clearing Agent on their above registered addresses. After completion of all legal formalities, the cases were adjudicated and Order-in-Originals (O-in-Os) dated 28.02.2013, 29.02.2013, 25.05.2015 and 08.09.2015 were also issued to the complainant with copy to his Customs Clearing Agent. He failed to deposit the Government dues, therefore, the Attachment Officer in terms of the Customs Recovery Rules had been appointed to attach his moveable/immovable properties. Accordingly, Attachment Officer issued the subject Notice dated 30.11.2021 for recovery and attachment of his moveable/immovable properties on the same address.

5. Considering the respective stances, the learned Federal Tax Ombudsman proceeded to pass the above mentioned order, which is assailed by the complainant.

6. The hearing of the case was fixed for 06.12.2022. The case was adjourned on the request of the complainant's Counsel, whereas, Dr. Kaukab Farooq, Additional Collector and Ms. Hudaa Khalid, Deputy Collector, Islamabad represented the FBR. Today, 20.12.2022, Sheikh Qamar Shahzad, Advocate and Mr. Aasim Shafi, Advocate have appeared on behalf of the complainant, whereas Dr. Kaukab Farooq, Additional Collector Custom and Ms. Hudaa Khalid, Deputy Collector, Islamabad have represented the FBR.

7. The learned FTO thrashed the matter vide para 4 of the order as follows:-

“4. During hearing, AR and the DRs averred to their written arguments. The AR submitted a rejoinder dated 18.01.2022 stressing that SCNs/Hearing Notices were not served upon him. A copy of the rejoinder was also provided to the DRs. The DRs denied the stance taken by the AR and provided as evidences, copies of all SCNs/Hearing Notices and Demand Notices, all addressed to the complainant on his registered address as well as on the registered address of his Clearing Agent M/s Ocean Port Link and inspite of repeated Notices sent by the Deptt, he never bothered to answer. To further establish the Deptt's point of contention, the DR provided photocopy of the relevant pages of dispatch register of Islamabad Dry Port which establishes the Departmental stance that all Notices were dispatched to him on his registered address, which is the same as on the Attachment Notice, which he has assailed before this forum.”

These are findings arrived at on due consideration of the record and no cavil could be found with such approach to the matter.

8. It is established on record that after the Audit observation made in 2009/2010 pointing out that the complainant (importer) short realized the Govt revenue to the tune of Rs.2,118,894/- due to misclassification of imported good cleared against various Goods Declarations in 2009. Accordingly, Show Cause Notices (SCNs) were issued to the complainant dated 06-09-2012 and 07-09-2012 but he did not even bother to respond the SNCs. Consequently, after completing all legal formalities, the cases were adjudicated and Order-in-Originals (O-in-Os) were issued vide dated 28-02-2013, 29-02-2013, 25-05-2015 and 08-09-2013 respectively. Again, he failed to deposit the Govt dues, therefore, in terms of Section 202 of the Customs Act, 1969 read with Recovery Rules SRO.450(1)/2001, the duly appointed Recovery Officer issued Notice dated 30-11-2021 to attach the moveable/immovable properties of the complainant. On receipt of Notice dated 30-11-2021, the complainant instead of filing an appeal before the competent authority /forum available under the law, he took the matter to the learned FTO. The complainant should have availed the remedy under the law explaining his stated defence that none of the Notices issued by the department were delivered to the complainant. Such an option can still be availed advancing valid grounds. In such circumstances, this representation is liable to be disposed of accordingly.

9. Accordingly, the Hon'ble President, as per his decision above, has been pleased to dispose of the instant representation of the complainant.

-Sd-
(Muhammad Saleem)
Director (Legal)

M/s. Rehan Traders,
Shop No. 02, Makkah Market,
Z-875, Railway Road, Rawalpindi 03200222214

The Chairman,
Federal Board of Revenue,
Islamabad.

Copy for information to:

1. The Registrar, Federal Tax Ombudsman, Islamabad.
2. The Secretary (Legal Customs), FBR, Islamabad.
3. The Collectorate of Customs, 24 Mauve Area, G-9/1, Islamabad.
4. Mr. Abdul Wahab, St.No.16, Sector No.3, H.No.478, Airport Housing Society, Rawalpindi. 03365279013,
5. Master file

-Sd-
(Muhammad Saleem)
Director (Legal)