

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

Rep.No.66/FTO/2022
Date of Decision: 29.12.2022

Federal Board of Revenue Vs Rana Enterprises

Subject: **REPRESENTATION FILED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS / RECOMMENDATIONS DATED 09.02.2022 PASSED BY THE LEARNED FTO IN COMPLAINT NO. 2735/KHI/CUST/2021**

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

This representation has been filed by Federal Board of Revenue on 16.03.2022 against the order of the learned Federal Tax Ombudsman (FTO) dated 09.02.2022, whereby it has been held that:

“in view of the forgoing; FBR is directed to –

- (i) *investigate the circumstances whereby a long delay of 2 years was made in processing the claim and proceed against the delinquent officers responsible for such delay;*
- (ii) *to determine whether any short payment has been made while settling the refund claim of the Complainant and if so, the same may be addressed under the relevant provision of law; and*
- (iii) *report compliance within 45 days.”*

2. The complaint was filed against the Collector, MCC Appraisement (West), Karachi in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 against non-issuance of sale proceeds of the Auctioned Consignments.

3. M/s Rana Enterprises (the complainant) alleged that the complainant imported consignments of light fixtures and parts thereof which could not be cleared in due course of time which was put to auction by the Customs Authorities and delivered to highest bidder. Although, the complainant vide their letter dated 23.07.2019 requested for payment of share of sale proceeds but the request remained unattended for more than 2 years. The complainant therefore took up the matter with the learned Federal Tax Ombudsman by filing complaint under Section 10(1) of the FTO Ordinance 2000.

4. The learned FTO called the comments of the Secretary, Revenue Division, Islamabad. In response thereto, the Collector Customs, MCC – Appraisement (West) Karachi submitted the parawise comments vide letter dated 27.01.2022. It was averred that the complainant imported two lots consisting of LED Lighting Fittings/Fixtures in December, 2016. However, due to non-clearance of lots within stipulated time, those were auctioned on 15.08.2018 and 14.05.2019 respectively. Although, the complainant submitted applications for grant of sale proceeds within the time stipulated under Section 201 of the Customs Act, 1969 but the requisite documents as stipulated understanding order No.16/2001 for processing of sale proceed claims were not provided alongwith those petitions. Whereas, documents in respect of one lot No.K-167/Aug/2017 were provided on 01.01.2022 and the cases of sale proceeds were promptly processed and the cheques were issued. The delay was caused only due to no submission of requisite documents by the importer.

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

6. The hearing of the case was fixed for 20.12.2022. Mr. Jawad Ul Hassan, Assistant Collector Customs, Karachi has represented the FBR, whereas, the complainant has not appeared despite notice. Needless to mention that Section 15 of the Federal Ombudsman Institutional Reforms Act, 2013 empowers the decision of a representation on the basis of available record without personal hearing of the parties.

7. The learned FTO thrashed the matter vide paras 4&5 of the order as follows:-
“4. The complainant also filed rejoinder wherein they have stated that the total amount due to them has not been paid and the Deptt has withheld a substantial part of the sale proceeds recovered over and above the invoice value. The Deptt vide comments, filed stated that the due share of sale proceeds has been calculated and paid to the Complainant under Section 201 of the Customs Act, 1969 as amended vide Finance Act 2020, dated 01.07.2020. The complainant is, however, of the view that amendments made vide Finance Act, 2020 in Section -201 of the Customs Act, 1969 cannot be applied retrospectively on a past and closed transaction that occurred in year 2018.
- 5. Be that as it may, it is evident that the complainant was made to suffer for more than 2 years and his grievance was partially addressed only after the instant complaint was filed with this office, which tantamounts to maladministration under Section 2(3)(i)(a) of the FTO Ordinance.”*

These are findings arrived at on due consideration of the record.

8. The recommendation (ii) of the learned FTO directing the FBR to *“determine whether any short payment has been made while settling the refund claim of the complainant and if so, the same may be addressed under the relevant provision of law”* is unassailable in the circumstances of the case. Suffice it to observe that as per record, the Department has already paid the share of the sales proceeds to the complainant as per Section 201 of the Customs Act, 1969 which states that *“in case wherein the goods declaration has been filed the share of the importer in the sale of the proceeds shall not exceeds the declared value of the goods”*. It may be appreciated that this provision was inserted vide Finance Act, 2020 to be effective from 01-07-2020, whereas, the complainant’s sale proceeds cases were processed in December, 2021 and January, 2022 respectively. Regarding direction (i), it is observed that the matter has been left to be taken by the Department itself. Needless to mention that in case, any departmental action is proposed against any official, he/she will be afforded due opportunity of showing cause and defence which will satisfy the requirement of due process of natural justice. In such circumstances, the 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 FBR.

-Sd-
(Muhammad Saleem)
Director (Legal)

The Chairman,
 Federal Board of Revenue, Islamabad.

M/s. Rana Enterprises,
 Plot No. 136-E, PECHS, Block-2, Karachi.

Copy information to:

- (1) The Registrar, Federal Tax Ombudsman, Islamabad.
- (2) The Secretary (Legal-Customs), Federal Board of Revenue, Islamabad.
- (3) The Collector, Collectorate of Customs Appraisement (West), Custom House, 2nd floor, Eduljee Dinshaw road, Karachi 021-99214166.
- (4) M/s Rana Enterprises, MC 834, Green town, Raza-e-Aam Society, Karachi. 021-34543148. 0301.8255549
- (5) Master file.

-Sd-
(Muhammad Saleem)
Director (Legal)

