

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

Rep.No.79/FTO/2022

Date of Decision: 12.01.2023

Federal Board of Revenue VS *Noor Muhammad*

Subject: REPRESENTATION FILED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS / RECOMMENDATIONS DATED 08.03.2022 PASSED BY THE LEARNED FTO IN COMPLAINT NO. 2722/PWR/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 Federal Board of Revenue on 05.04.2022 against the Order of the learned Federal Tax Ombudsman (FTO) dated 08.03.2022, whereby it has been held that:

“FBR to direct:

- (i) *the Collector, Collectorate of Customs (Enforcement), Peshawar to urgently approach the Hon'ble Peshawar High Court, Peshawar for grant of stay in the subject Customs Reference. In case stay is not granted by the Hon'ble Peshawar High Court, Peshawar in 15 days, implement order of the Customs Appellate Tribunal, Peshawar dated 30.05.2019. The complainant will also submit a suitable guarantee to the satisfaction of the Collector, Collectorate of Customs (Enforcement), Peshawar; and*
- (ii) *report compliance within 45 days.”*

2. The complaint was filed against the Collector (Enforcement) Customs, Peshawar under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) for acceptance of this application and the seized currency may kindly be released to the applicant as per judgment of the Customs Appellate Tribunal (CAT), Peshawar Bench issued in Appeal C.A No.118/PB/2015 dated 30.05.2019.

3. Mr. Noor Muhammad (the complainant) submitted that staff of Khyber Rifles seized foreign currencies i.e. US Dollars, Riyals and Dirhams worth PKR 36,550,150/- at Michni Post on 01.02.2014 on non-production of legal documents and he was charged for violation of Section 2 (s) 16 and 168 of the Customs Act, 1968 read with Section 3(1) of the Import and Exports Act, 1950 & Foreign Exchange Regulation Act, 1947. The case was referred for adjudication to the competent authority i.e. the Deputy Collector Customs (Adjudication). The competent authority confiscated the currency vide O-in-O No.505/14 dated 23.06.2014. However, he filed appeal before the Collector of Customs (Appeals), Peshawar who upheld the order of the Adjudicating Authority vide Order No.406/14 dated 16.12.2014. Afterwards, the complainant filed appeal before the Customs Appellate Tribunal (CAT). The Tribunal held the action of the Department of seizing the foreign currency unlawful and annulled the order of the Collector (Appeals) vide Order No.48/PB/2015

dated 30.05.2019. However, the Collector Customs (Enforcement) Peshawar filed a Reference in the Peshawar High Court against the judgement of the Tribunal but no stay order was granted. He 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 Federal Tax Ombudsman called the comments of the Secretary Revenue Division, Islamabad. In response thereto, the Collectorate of Customs (Enforcement), Peshawar, vide letter dated 06.01.2022 replied that the Deptt had filed Customs Reference against the orders of the Customs Appellate Tribunal before the Hon'ble PHC, Peshawar vide Reference No. 102-2019, which was still subjudice and as such Federal Tax Ombudsman was barred by jurisdiction under Section 9(2)(b) of the FTO Ordinance, 2000.

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 03.01.2022. Mr. Sajid Khan, Deputy Collector Customs, Peshawar has represented the FBR, whereas, Mr. Noor Muhammad, complainant and Ajoon Khan, Advocate have appeared.

7. The learned Federal Tax Ombudsman thrashed the matter vide Para-7 of the order as follows:

"7. After hearing both the parties and examination of record, evidently, the plea of the DR cannot be entertained on the point of jurisdiction, hence rejected. As no stay order is in field therefore, Department should refund the amount after obtaining surety bond from the Complainant of the amount equivalent to be refunded. The issue of implementation has already been decided by the Hon'ble President of Pakistan, issued guidelines vide order No.77/FTO/2019 dated 21.05.2020, passed in Complaint No. 1519/KHI/ST/2019, on the Representation filed by the Deptt. Relevant para is reproduced as under:

"It has been noted that order of the Appellate Tribunal Inland Revenue (ATIR) dated 09:12.2016, is now subject matter of reference pending before the Hon'ble High Court of Sindh but there is no stay/restraining order issued by the learned High Court. Since the order of the Appellate Tribunal is in the field, it is liable to be implemented.----- However, in order to be just and fair and to secure interest of the Department, the order of the Appellate Tribunal which is intact will be implemented within a fortnight subject to final outcome of the matter pending before the Hon'ble High Court Sindh. In case the order of the Appellate Tribunal is set-aside by the Hon'ble High Court, the department will be entitled to make recovery forthwith".

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

8. At the outset, the Departmental Representative has informed that the Peshawar High Court has already fixed the FBR's appeal filed against the order of the Customs Appellate Tribunal for hearing on 9th January, 2023. Meanwhile, both parties have agreed to put forth their respective stances before the Hon'able Peshawar High Court on 09.01.2023 for early decision of the case. In such circumstances, this forum need not to indulge in the subjudice matter already fixed for hearing. Thus, the representation has become infructuous and deserves to be disposed of accordingly.

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

-Sd-
(Anwar-ul-Haq)
Director General (Legal)

The Chairman,
Federal Board of Revenue,
Islamabad.

Mr. Noor Muhammad S/o Firdos Khan,
Gulabad Shaheen Muslim Town,
P/o Ganj Gate, Peshawar. 0315.5411929

Copy for information to:

1. The Registrar, Federal Tax Ombudsman, Islamabad.
2. The Chief (Legal-III), FBR, Islamabad.
3. The Collectorate of Customs (Enforcement) Customs House Jamrud Road, Peshawar. 091.9216037.
4. Mr. Ajoon Khan, Advocate, Jamal Khan Plaza, Flat No. 01, Opp Customs House University Road Peshawar. 0321.9099475
5. Master file.

-Sd-
(Anwar-ul-Haq)
Director General (Legal)