

**THE FEDERAL TAX OMBUDSMAN  
ISLAMABAD**

**Complaint No.1105/QTA/CUST/2023**

Dated: 02.03.2023\* R.O. Quetta

**Mr. Noor Ahmed s/o Ghulam Muhammad,**  
C/o Mazhar Ali Khan, Advocate,  
Sadbar Jan Law Associates, Office 1-25/20  
Entrance Jinnah Cloth Market, Jinnah Road,  
Quetta.

... Complainant

*V e r s u s*

**The Secretary,**  
Revenue Division,  
Islamabad.

... Respondent

Dealing Officer	:	Mr. Tausif Ahmad Qureshi, Advisor
Appraisal Officer	:	Dr. Arslan Subuctageen, Advisor
Authorized Representative	:	Mr. Muhammad Rahim Mandokhail, Advocate
Departmental Representative	:	Mr. Inamullah Wazir, D.D I&I-Customs Karachi

**FINDINGS/RECOMMENDATIONS**

The above complaint was filed in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 against the Director, Directorate of Intelligence and investigation-Customs, Karachi on account of alleged pilferage of auto parts and fixtures of the seized vehicle under their custody.

2. Briefly, the vehicle of the Complainant was seized under Section 157(2) of the Customs Act, 1969 which was released vide Interim Order No. Coll.Adj-I/141/2020-21 dated 22.12.2022. The said interim order did not materialise for the reason that 73000 liters HSD was loaded in the vehicle which was confiscated vide Order-in-Original No. 652/2020-21, whereas the interim order was confirmed. Despite the Interim Order and Order-in-Original, the process for the release of the vehicle was not initiated on the pretext of pending auction of the confiscated HSD. Thus, the Complainant was compelled to move Sindh High Court at Karachi vide

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\*Date of registration in FTO Secretariat

CP No. D-3868 of 2022 for the implementation of the Interim Order as confirmed vide Order-in-Original. CP was allowed and accordingly the Director, Directorate of Intelligence and investigation-Customs, Karachi secured the adjudged amount of fine and penalty aggregating to Rs. 394,000/- Subsequently, the Complainant approached the store keeper, where the vehicle in question was parked. It transpired that the entire fixtures, parts, auto parts and accessories including tyres were missing, obviously stolen i.e., misappropriated in the effective custody of the Directorate of Intelligence and investigation-Customs, Karachi. A few tyres in worn out condition were however, hanging on the replaced wheel rims. Finding this huge loss to the vehicle, the Complainant filed application before the Director General, I&I-Customs, Islamabad with copy to the Director, Directorate of Intelligence and investigation-Customs, Karachi for taking notice of the matter and making good the losses sustained by the Complainant on account of missing parts, auto parts, accessories and tyres of his vehicle, but no response was given. The Complainant with the help of a mechanic got the vehicle examined, who prepared a list of parts, auto parts and accessories including dashboard that had been removed/stolen in the custody of the Director, Directorate of Intelligence and investigation-Customs, Karachi. The Complainant agitates that it is a case of highhandedness and misuse/abuse of powers at the hand of the Directorate of Intelligence and investigation-Customs, Karachi in whose custody the Complainant has been deprived of his property by way of misappropriation and stealing valuable parts, auto parts, accessories, dashboard and tyres of the vehicle. The Complainant emphasized that the matter being of glaring maladministration may be investigated and the Director, Directorate of Intelligence and investigation-Customs, Karachi be directed to compensate him by way of restoring all the misappropriated/stolen parts and get the same in as good running condition, as it was seized or in the alternate Rs. 10,000,000/- (ten million) be provided in the interest of law

and justice. Further prayed that directions may also be issued that the mechanic of the Complainant be allowed to carry out the task of repair and fixing of the missing parts, auto parts, accessories, dashboard and tyres of the vehicle under the supervision and at the cost of the Director, Directorate of Intelligence and investigation-Customs, Karachi. Furthermore, compensation of Rs. 5,000,000/- in terms of Section 22 of the FTO Ordinance, 2000 may also be awarded in the interest of justice and equity.

3. The complaint was referred for comments to the Secretary, Revenue Division, Islamabad in terms of Section 10(4) of the FTO Ordinance, 2000 read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act, 2013. The Directorate submitted reply contending therein that the allegations made by the Complainant against the Director, Directorate of Intelligence and investigation-Customs, Karachi are contrary to the facts and law, hence denied. Moreover, the complaint is not maintainable and is hit by the provisions of Section 217(1) of the Customs Act, 1969, which envisage protection of action taken in good faith in pursuance of this Act or the rules. Further added that the complaint has been filed with ill motivated intentions to fraudulently claim an amount of ten million rupees on account of alleged mis-appropriation in the auto parts of impugned Oil Tanker bearing Registration No. TLL-903 and five million rupees as compensation by way of concealment of actual facts and unfounded grounds. Further contended that the dishonest approach of the Complainant can be gauged from the fact that value of the vehicle is not more than Rs. 1,720,000/- as determined by the Principal Appraiser based on invoice value and not on physical condition. The Complainant vide letter dated 12.04.2021 through his Counsel had requested that "value of vehicle was not assessed accordingly by the seizing agency which is very harsh and the same may be assessed in accordance with law from MCC Appraisalment/Directorate

of Valuation, Custom House, Karachi". The assessed value was accepted by the Complainant himself by depositing a fine of Rs. 344,000/- equivalent to 20% of said value of the vehicle for its release. Elaborating background of the case, the Directorate stated that the vehicle loaded with non-duty paid/smuggled 73,000 liters (approx.) of Iran origin HSD was seized on 04.11.2020 from the possession of the Complainant, when he produced irrelevant auction documents. The Collector of Customs (Adjudication-I) vide Interim Order dated 22.12.2020 allowed provisional release of impounded vehicle pending adjudication of the case against payment of 20% fine of the determined value of the vehicle under proviso of Section 157(2) of the Customs Act, 1969. The case was subsequently adjudicated vide Order-in-Original No. 652 of 2020-21 dated 18.03.2021, whereby seized HSD was confiscated outright and Interim Order in respect of the vehicle was confirmed. A personal penalty of Rs. 50,000/- (Rupees Fifty Thousand) was also imposed upon the Complainant. Aggrieved with the outright confiscation of the HSD, the Complainant assailed the Order-in-Original and preferred Customs Appeal No. K-7085/2021. The Appellate Tribunal vide judgment dated 03.01.2022 disposed of the appeal with the directions to the Director to pay sale proceeds of 73,000 liters of HSD. The Director, however, filed SCRA No. 147 of 2022 under Section 196 of the Act, 1969. The Complainant filed CP No. D-3868 of 2022 for implementation of the Appellate Tribunal's referred judgment. The honorable High Court of Sindh vide judgment dated 15.12.2022 confirmed outright confiscation of the HSD by the Collector (Adjudication) and accepted SCRA. Simultaneously, CP also was disposed of with the direction to release the vehicle in terms of referred Order-in-Original. The Complainant deposited adjudged amount of 20% redemption fine of Rs. 344,000/- and penalty of Rs. 50,000/- vide Challan No. 1026 date 18.01.2023 and the vehicle was released vide Release Order No. M-2958/DCI/Seiz/2020/3640 dated 19.01.2023. Here,

the Directorate admitted the filing of Complainant's application regarding pilferage of parts. However, it was reiterated that nothing has been removed from the vehicle as alleged in the application. The plea of the Directorate is that the vehicle has been parked in an open place at the Warehouse for more than two years, and the Complainant has attempted to take undue advantage of its prolonged parking and has contrived a baseless story of removal of auto parts worth millions of rupees from the vehicle having ascertained value of not more than Rs. 1.7/- million and accepted by the claimant. Further alleged that the so-called list has been prepared by the Complainant at his own without the knowledge of the ASO Wing of the Directorate of Intelligence and investigation-Customs, Karachi on the basis of which compensation of fifteen million rupees has been claimed. The Directorate has argued that in terms of Section 217 of the Customs Act, 1969, no suit, prosecution or other legal proceedings can be initiated against the Director, I&I-Customs, Karachi. Further that the complaint has been filed on the basis of unfounded grounds with dishonest approach to claim compensation of fifteen million rupees in respect of the vehicle having ascertained value of Rs. 1.7 million and that he is not entitled for any claim with regard to damages and compensation. The Directorate has prayed that the complaint being devoid of any evidential material, justification, force of law and substance may graciously be dismissed.

4. DR attended hearing and reiterated the same arguments given in his reply. AR did not appear and sought adjournment on phone. DR was inquired about the inventory of the vehicle. He promised to produce the same on next date of hearing on 10.04.2023.

5. Both DR and AR attended hearing on 10.04.2023. DR produced inventory which was conspicuous by absence of any material and factual details. AR showed the pictures of the vehicle at the time of seizure which were in stark contrast to its present damaged, pilferaged and dilapidated

condition. The pictures were shown to the DR to which he could not give any satisfactory reply.

**Findings:**

6. From the available case record, contention of the respondent Directorate and the arguments put forth during the course of hearing by both AR and DR, it has transpired as under:

- a. The vehicle involved in the case impounded at the time of seizure was in perfect running condition which was taken into custody by the Directorate and parked within the State Warehouse of the Directorate. Now it is totally dysfunctional and structurally dissected. This fact has not been clearly denied by the Directorate.
- b. The seizure of the vehicle under Section 157 of the Customs Act, 1969 envisages the shifting of the burden of responsibility to the Directorate for its safe custody and presentation before any legal forum as and when required.
- c. The deposit of any goods in the State Warehouse is governed by strict procedures laid down under the Customs Laws and notified vide CGO 12/2002, dated 15th June 2002, laid down under Chapter-IX, Paras 32-33 ibid. The said procedure requires making proper inventory including all details, safe custody, regular stock taking and periodic inspections by the senior administration from time to time which in this case was neither asserted nor presented by the Directorate with documentary proof which gives credence to the belief that the vehicle was left unattended and without proper security in the premises of the Warehouse. The inventory provided by the Directorate was hopelessly sketchy, vague, and incomplete.
- d. The Directorate's assertion and contention that Section 217 of the Customs Act 1969 protects the Customs officer against any investigation, suit and prosecution or legal proceedings for anything done in good faith and in furtherance of this Act is nullified by the circumstantial evidence that the vehicle was damaged/pilferaged during the period after seizure till its release. If minor technical faults owing to long exposure of vehicle to the weather are taken into account, even then it cannot be justified by the Directorate how some mechanical parts were found removed from the vehicle.
- e. Since the vehicle remained in the custody of the Directorate due to protracted proceedings and was the source of bread earning

of the owner/claimant, therefore they are entitled for sufficient compensation under the FTO Ordinance.

- f. The pictures of the vehicle shown by the Complainant at the time of seizure and its present condition paint a horrible scenario. The vehicle appears to be in a ramshackled and ruinous condition. In this regard, the neglect, negligence and professional carelessness of the Directorate are unmistakably evident. Maladministration as defined under Section 2(3)(i)(ii) of the FTO Ordinance, 2000 is established against the Directorate.

**Recommendations:**

7. FBR to direct:

- (i) the Director General, Intelligence & Investigation-Customs, Islamabad to personally conduct a fact finding inquiry against the Director, officers and staff of the Directorate of I&I-Customs, Karachi for non-adherence to the prescribed warehousing procedure under the law, lack of proper record, inventory, inspections and stock taking in the instant case and take disciplinary proceedings under E&D Rules, 2020 against the officers and staff found responsible;
- (ii) the Director General, Intelligence & Investigation-Customs, Islamabad to pay compensation to the Complainant equivalent to the loss incurred on account of pilferage and removal of parts from the vehicle as determined by any mutually agreed third party;
- (iii) the Director General, Intelligence & Investigation-Customs, Islamabad to ensure that proper security arrangements and devices are installed to cover in and outside the warehouses to forestall the chances of pilferage and damage to the case and state property; and
- (iv) report compliance within 45 days.

  
**(Dr. Asif Mahmood Jah)**  
(Hilal-i-Imtiaz) (Sitara-i-Imtiaz)  
Federal Tax Ombudsman

Dated: 26.04.2023

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*Approved for reporting*