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FEDERAL TAX OMBUDSMAN

Office of the Federal Tax Ombudsman

Annual Report

2008

DR. MUHAMMAD SHOAIB SUDDLE
HI QPM
FEDERAL TAX OMBUDSMAN

D.O. No.10(8)/2009-A-II
Islamabad, the 1st August, 2009

Dear Mr. President,

It is my proud privilege to present to you the 9th Annual Report as required under Section 28(1) of the Establishment of the Office of Federal Tax Ombudsman Ordinance, 2000.

2. I took over as Federal Tax Ombudsman on 3rd of June, 2009. I have given a good look to the working of the Office in consultation with colleagues and staff as well as representatives of taxpayers especially the lawyers and tax consultants. Although the performance of this Office has remained fairly satisfactory in the past, its working is highly constrained by a number of factors especially office accommodation, which is too small to meet even the bare minimum needs of the organizational set-up, the administrative structure, the skill-set of staff, the remuneration package, the procedural framework and also the critical office automation requirements. I have accordingly initiated a comprehensive review of these vital aspects with a view to efficiently meeting the qualitative and quantitative goals and objectives of this Office; particularly effective service delivery by establishing an electronic interface with the regional offices and the aggrieved taxpayers. For this purpose, I need your kind support and guidance.

With profound regards,

Yours sincerely,

(Dr. Muhammad Shoaib Suddle)

Mr. Asif Ali Zardari,
The President,
Islamic Republic of Pakistan,
Islamabad.

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CHAPTER – I

INTRODUCTION

The Office of the Federal Tax Ombudsman was established in September, 2000 through an Ordinance called "Establishment of the Office of the Federal Tax Ombudsman Ordinance, 2000" with Headquarters at Islamabad and two Regional Offices one at Karachi and one at Lahore. It was charged with the responsibility of speedy disposal of the grievances and complaints of the stakeholders.

The Headquarters of the Office of the Federal Tax Ombudsman is located at the Constitution Avenue, Islamabad. Due to inadequate space measuring 6000 sq. ft. provided to this Office in the Engineering Development Board Building, the officers and staff are sharing insufficient accommodation, which is affecting their performance and efficiency. Recently this Secretariat hired building at Flat No.02, United Plaza, Blue Area, Islamabad for its Accounts Branch and Record Room. Unless the accommodation problem is solved by providing additional accommodation in this Building by removing the WTO Wing of M/o Commerce, it would not be possible for the staff of FTO to function efficiently & smoothly. Alternatively, the office of the FTO may be allotted a piece of land in Islamabad for construction of its own office building. This requires consideration at the level of President of Pakistan.

REGIONAL OFFICES

The Regional Offices of Federal Tax Ombudsman are functioning at Karachi w.e.f. April, 2001, and at Lahore w.e.f. June, 2001. This Secretariat has recently established two new Regional Offices at Peshawar and Quetta keeping in view persistent demand of the stakeholders of the area.

PERSONNEL

At the time of creation of the office, the Federal Tax Ombudsman's staff strength of 243 posts was sanctioned by the Ministry of Finance. However, this Office in response to the Government's directive for restructuring and rightsizing reduced the strength to 146 posts. Now 48 more posts are created in Headquarters and its Regional Offices for smooth functioning of this Secretariat. The Federal Tax Ombudsman in his Head Office at Islamabad has a Secretary (BS-22), three Advisers, a Director General (BS-20), one Registrar (BS-20), three Directors, one Secretary to FTO (BS-19), one Deputy Registrar, one Assistant Director and their supporting staff to carry out the judicial and investigation work.

In the Regional Office of the FTO at Karachi, there are three Advisers and one Consultant drawn from retired Officers of the Income Tax, Customs Groups

and bureaucracy. The administration side is looked after by a Director, a Deputy Registrar, two Assistant Directors and their supporting staff. In Regional Office at Lahore there are three Advisers, one Director, one Deputy Director and an Assistant Director with supporting staff.

POWERS DELEGATED TO FTO

As enumerated in the last year's Annual Report, this office has encountered difficulties in efficient management of men and material due to the absence of special delegation of administrative and financial powers. The exercise of financial and administrative powers by the FTO was somewhat restricted under the earlier dispensation as contained in the Ordinance, 2000. Quite a number of cases relating to essential aspects of financial and administrative management had to be sent to the Finance Division for concurrence and approval. This was a time consuming and cumbersome process adversely affecting the efficient, effective, and independent functioning of the office. The position has been rectified and the powers have aforesaid been delegated by the Finance Division to the FTO thereby making the Office more independent of the Executive.

RULES AND REGULATIONS

The Rules for regulating the procedure for the conduct of business or the exercise of powers under the Ordinance as envisaged by Section 10(11) have already been framed as the "Federal Tax Ombudsman Investigation and Disposal of Complaints Regulations, 2001". The Service Rules for appointment of staff under Section 8 of the Ordinance were framed in consultation with Finance Division and Establishment Division, which have since been approved by the President of Pakistan.

INTERNATIONAL INTERACTION

The Federal Tax Ombudsman is a voting member of the Asian Ombudsman Association and the International Ombudsman Institute. The FTO has visited Alaska, USA and Hanoi, Vietnam during his tenure and participated in conferences on different types of themes relates to Ombudsman ship.

CHAPTER – II

PERFORMANCE DURING THE YEAR

The establishment of the office of Federal Tax Ombudsman has had notable impact on the public in general and the taxpayers in particular. During the last eight years this office received twelve thousand three hundred and fifty four (12,354) complaints against the Revenue Division and tax functionaries out of which twelve thousands one hundred and forty six (12,146) have been disposed of. The Federal Tax Ombudsman Mr. Justice (R) Munir A. Sheikh during his tenure from 8th December, 2004 to 6th December 2008 provided relief to 6,540 taxpayers. A consensus exists that the taxpayers are largely satisfied with the performance of the office of Federal Tax Ombudsman. Various stakeholders have appreciated the excellent work being done by the Federal Tax Ombudsman and his office particularly that of Implementation and Monitoring Section in providing justice to taxpayers and in meeting the objectives for which this institution was created.

The Federal Tax Ombudsman, Mr. Justice (R) Munir A. Sheikh, assumed his charge in December 2004. Since then considerable progress has been made in creating awareness in the public about the role and function of the Federal Tax Ombudsman and enlisting support of the stakeholders and winning confidence of tax paying community to come forward and express their grievances. For this purpose various Conferences, Seminars have been attended by the Federal Tax Ombudsman. He attended Ombudsman Conferences in New Zealand, Hong Kong, Vietnam and Alaska (USA). He participated in various T.V. talk shows and expressed his views on various aspects of this institution. Various decisions published in leading daily English and Urdu newspapers created awareness among the taxpayers. Decision of the Federal Tax Ombudsman on the complaints of the aggrieved taxpayers regarding Income Tax, Sales Tax and Customs etc were released to the press. These were given vide converge in view of tremendous interest shown by the readers. Newspapers also wrote articles on the working/performance of this institution and its impact on tax administration as well as taxpayers. During his tenure he was able to bridge the gap between the taxpayer and the tax collector. His recommendations given in the various complaints filed before him were thoroughly monitored by the Implementation and Monitoring section. However, the taxpayers have expressed their frustrations on the controversy raised by the Revenue Division regarding the jurisdiction of the Federal Tax Ombudsman. The FBR objected to his jurisdiction by filing representation before the President. This action caused delay in the implementation because once a Representation is filed, the Recommendation of the FTO have to be kept in abeyance following the directions of the President. As a result, the implementation process of this office is curtailed but the Revenue

Division is free to proceed with impugned action. This issue has created anomaly and frustration among the taxpayers and needs to be addressed.

In the last reports Federal Tax Ombudsman identified several irritants and maladies on the part of the functionaries of the Federal Board of Revenue and recommended appropriate steps for their eradication. However, the ones listed below still exist.

(i) General slackness in responding to taxpayer's applications/enquiries.

(ii) Subversion and disuse of prescribed office procedures.

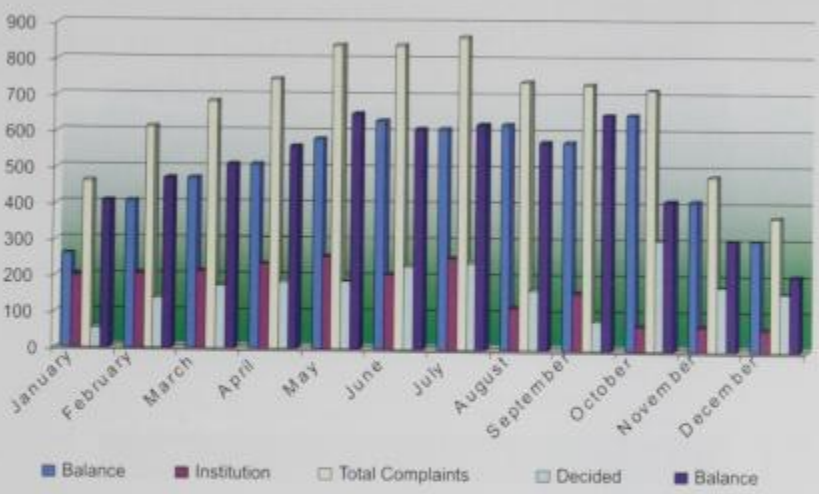
(iii) Unlawful decision-making.

(iv) Biased conduct of the functionaries.

Apart from this the Revenue Division and its departments showed positive response in a large number of cases. It is important to note that the Revenue Division, after receiving complaints for reply/comments, redressed the grievances of complainants in genuine cases and instantly informed the Federal Tax Ombudsman office about the action taken by them. During 2008 this commendable attitude was shown in around 850 cases.

During the year 2008, 2,050 complaints were registered. The balance of 261 complaints brought forward from the pervious year made the total number of complaints to 2,311. Out of which 2,103 complaints have been decided during the year 2008 leaving a balance of 208. A statement showing the month-wise institution, disposal, and balance of complaints is placed below:

Month	Balance of 2007	Institution	Total Complaints	Decided	Balance
January	261	202	463	56	407
February	407	207	614	141	473
March	473	213	686	174	512
April	512	235	747	184	563
May	583	257	840	187	653
June	633	208	841	230	611
July	611	253	864	240	624
August	624	117	741	165	576
September	576	158	734	82	652
October	652	68	720	306	414
November	414	69	483	177	306
December	306	63	369	161	208
Total		**2050**		**2103**	



The FTO, in addition to addressing grievances of taxpayers, carried out investigations to diagnose the causes of maladministration and recommended appropriate remedial measures aimed at changing the mindset and thus improving the working of Revenue Division. The office of FTO has also been proactive in forestalling recurrence of complaints by recommending disciplinary action to the Revenue Division against their delinquent functionaries. A statement showing the details of the disciplinary action taken by the CBR on the recommendation of the FTO is placed below:

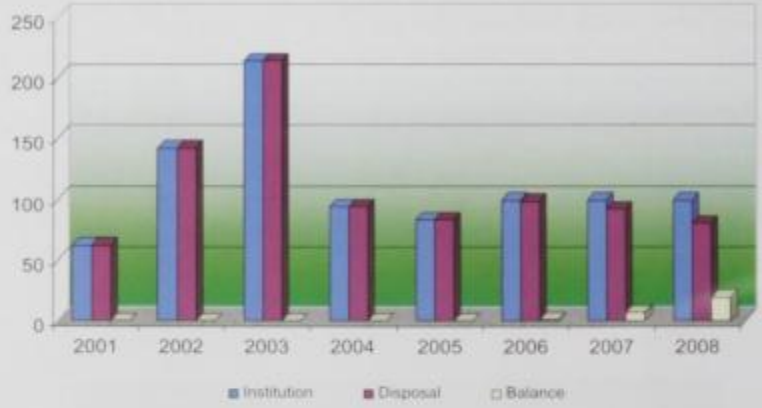
Sr. No.	SUMMARY Topics	Total Cases
1.	Warning/Charge Sheeted	03
2.	Censured	01
	Total:	**04**

REFUND & COMPENSATION CASES

YEAR	TOTAL CASES	REFUND & COMPENSATION ISSUED
2008	961	Rs.140.09494 Million

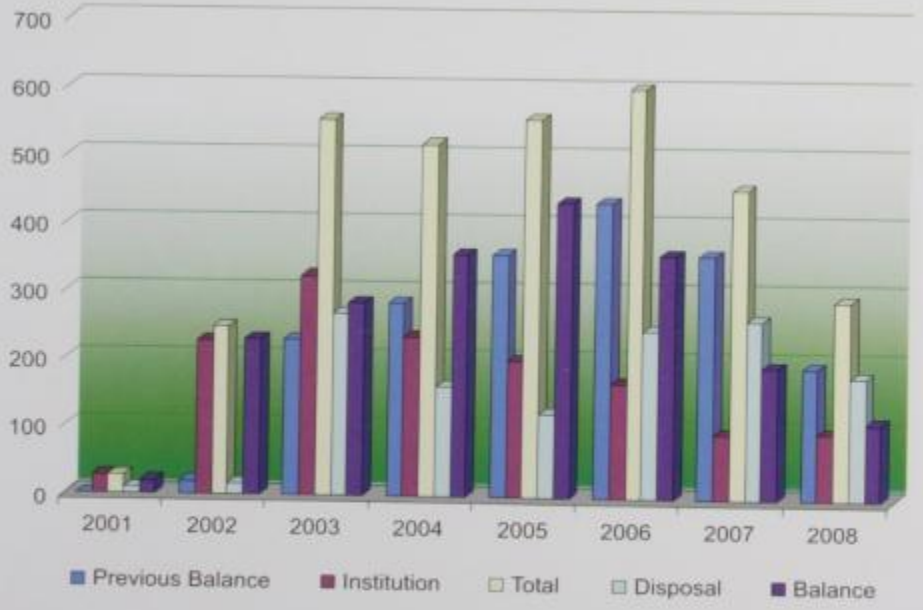
REVIEW APPLICATIONS
FILED & DISPOSED OF TILL DECEMBER 2008

Year	Institution	Disposal	Balance
2001	62	62	0
2002	142	142	0
2003	214	214	0
2004	94	94	0
2005	83	83	0
2006	99	98	01
2007	99	92	07
2008	99	80	19
Total	**892**	**865**	**27**



STATEMENT SHOWING THE PROGRESS OF REPRESENTATION MADE TO THE PRESIDENT TILL DECEMBER 2008

Year	Previous Balance	Institution	Total Institution	Disposal	Balance
2001	0	29	29	9	20
2002	20	227	247	17	230
2003	230	324	554	269	285
2004	285	234	519	162	357
2005	357	200	557	123	434
2006	434	168	602	245	357
2007	357	97	454	261	193
2008	193	99	292	179	113
Total		**1378**		**1265**	**113**



CASES RELATED
TO
SALES TAX & CENTRAL EXCISE

BEFORE THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

COMPLAINT NO.286/2008

M/s. Mughal Ittehad Engineering Industries,
Faisalabad. ...Complainant

Versus

The Secretary,
Revenue Division,
Islamabad. ...Respondent

Dealing Officer: ...Shamim Ahmad, Adviser

FINDINGS/DECISION

Present: Mian Manzoor Ahmad, Advocate & A.R. for the Complainant.
Mr. Saleem Akhtar, A.C. Sales Tax & D.R. for the Respondent.

The Complainant is an A.O.P. manufacturing machinery and spare parts for sugar mills. It is registered under the Sales Tax Act 1990 (the Act). The business address is Odeon Street, Sumundri Road, Faisalabad.

2. The complaint under consideration was filed against the rejection of refund claim of Rs.18,466,154 vide Sales Tax Order.In.Original No. 2010/2007 passed by the Asstt. Collector (refund) dated 16/08/07. The contents of the complaint are summarised as follows:

a. The above-mentioned claim of refund for the month of January, 2005 was filed with all the supportive documents, it was claimed.

b. The A.C. rejected the said claim vide his order referred to above. It was passed on 16/08/2007, as it was apparent from the date given at the end of order. But on the first page the date given was 17/05/07. It was further alleged that the rejection was made without giving any cogent reason and without issuing the Show Cause Notice (S.C.N). The O.I.O was passed after the passage of 129 days. Thus, it was hit by the limitation provided u/s 36(3) of the Act. It was further stated that this office had held that the limitation under the section under reference was mandatory.

c. The Adjudicating Officer passing the O.I.O wrongly observed that the Complainant was an exporter. This was factually incorrect. This observation also proved that he did not apply his mind and passed the impugned O.I.O in a mechanical manner without appreciating proper facts.

d. The S.C.N. stated to have been issued on 10/04/07 was never received by the Complainant. The claim of refund was rejected on the surmise that the

suppliers were showing abnormal tax profile. This excuse was not acceptable under the law as held by the Appellate Tribunal, Karachi.

e. It was prayed that the O.I.O be cancelled and the Respondent be directed to issue the refund along with compensation u/s 67 of the Act.

3. The A.C (Refund), Regional Tax Office, Faisalabad, in his written reply made the following submissions:

a. It was admitted that the Complainant filed a refund claim. However, supportive documents/stock statements showing consumption of raw material for producing the finished goods relating to taxable supplies were not furnished. The claim was processed through the STARR system which raised glaring objections i.e. the input tax was not verifiable, suppliers had abnormal tax profile and some units did not exist.

b. The Complainant made both the taxable and the zero-rated supplies. Therefore, it is very essential to find out the consumption of raw material which was used in the manufacture of taxable supplies. This data was not furnished. Proof of compliance of provisions of Section 73 of the Act was not produced either. Accordingly, the Complainant was served with S.C.N. dated 10/04/2007 and hearings were fixed on 18/04/2007, 08/05/2007 and 17/05/2007. Neither any body attended on behalf of the Complainant nor any reply was received. Therefore, the O.I.O under reference was passed on 17/05/2007.

c. It was contended that the provision of Section 36(3) of the Act did not operate in this case because the order was passed on 17/05/2007 i.e. within 37 days of the issuance of S.C.N. and was, therefore, not hit by the said provision. The judgment of the Customs, Excise & Sales Tax Appellate Tribunal was also quoted which held that the provisions of the said Section were not mandatory.

d. The Complainant was required to prove that its purchases had been consumed in the taxable supplies. But it could not substantiate its claim with supportive documents. Ample opportunity was provided to prove the veracity of the claim and furnish the arguments against the objections raised by the STARR system. This was not done. Therefore, the claim was rightly rejected.

e. It was prayed that the complaint be rejected as no maladministration was involved.

4. The case was examined during four hearings spread over a period of 1 month and 10 days. The case was discussed with both A.R. and the D.R. On the first date of hearing only the D.R. attended. He was asked to explain what was the correct date of the decision of the O.I.O., whether it was 17/05/07 or 16/08/07. He was asked to produce the evidence of the dispatch of the S.C.N. and the O.I.O.

5. On the date of second hearing, both A.R. and D.R. attended and the case was discussed with them. The A.R. claimed that neither the S.C.N. nor the O.I.O. was received. The O.I.O was obtained later on 18/08/07. He reiterated his claim that the

O.I.O. was hit by the provisions of Section 36(3) because it was passed after the passage of 129 days of the issuance of the S.C.N.

5.1 Another objection he raised was that the A.C. passed the impugned O.I.O. rejecting claim of refund of more than Rs.18 million. However, he did not enjoy the powers to pass the said order u/s 45(1)(iii). Under the said provisions, the A.C. could pass an order involving tax not exceeding one million rupees.

5.2 He also pointed out the mistakes in the O.I.O. Firstly, the Complainant was termed as an exporter which he was not. Secondly, the impugned O.I.O clearly noted that nobody attended for the Respondent (Complainant in this case). However on page 3 of the impugned O.I.O the remarks of the representative of the Respondent were recorded. How could a Representative make any remarks when he did not attend, it was argued. It was obvious that the Adjudicating Officer did not apply his mind and passed a mechanical order which had no relevance with the facts.

6. The A.R. produced the evidence regarding the service of the S.C.N., notice of hearing and the impugned O.I.O. This was found acceptable. He insisted that the date of the O.I.O. infact was 17/05/2007 as noted on the first page. The date of 16/08/07 was that of the dispatch.

6.1 On the merits of the case, the D.R. raised the following objections in addition to what had been stated in the written reply of the Respondent:

a. The Complainant had failed to provide the information about the output-input ratio of the raw material and the goods manufactured. This information was essential to determine the inputs in the taxable supplies and the zero-rated supplies.

b. Though the manufacturing expenses furnished by the Complainant showed electricity consumption amounting to Rs.1,328,779/-, the electricity bills obtained from Faisalabad Electric Supply Company showed total consumption of electricity amounting to Rs.141,545. Obviously, for manufacturing the goods which resulted in the sales of Rs.174,756,954/-, the electricity consumption was very low. It only indicated that declared sales were highly exaggerated.

c. The Complainant had not furnished purchase vouchers which could determine the claim of input tax.

d. The Income Tax Returns showed Net Profit of Rs.2,645,351/- which represented a Net Profit rate of 1.51% only which was very low.

7. The A.R. was asked to furnish the following details:

a. Nature of zero-rated supplies and their details with the explanation why were they treated as such.

b. Purchase and sale vouchers.

c. Documentary evidence of cartage and transport charges paid.

d. Electricity bills for the period.

e. Input & output ratio of the raw material consumed and the finished goods produced.

The case was adjourned.

8. On the next hearing, the following details were submitted:

a. The list of the buyers of the zero-rated sales and the taxable sales with the description of goods. However, it was not explained under what provision of law these supplies were considered as zero-rated and taxable respectively.

b. No purchase or sales vouchers were produced.

c. Photo copies of number of truck receipts (Bilty) were produced. All of them were from Lahore and none of them from Karachi. It is noted that the Complainant had shown lot of purchases of raw material from parties located in Karachi. No evidence of their transportation was produced. No evidence of cartage paid was produced.

d. Electricity bills of four different meters were produced. Only two of them pertained to the address of the Complainant as noted in para 1 above. In the remaining two sets, following address was given:

i. 243-RB, Faisalabad.
ii. 237-RB, Khudian Luckan, Faisalabad.

Obviously they cannot be considered as the electricity consumed by the Complainant. The total of two sets of electricity bills having the address of the Complainant amounted to Rs.283,158 which is not the same as pointed out by the D.R. but fell for short of the Complainant's claim of Rs.1,328,779.

e. No input and output ratio was furnished.

9. The case was examined in the light of the arguments given by the two parties and documents produced. Firstly, issue regarding the impugned O.I.O hit by the provisions of Section 36(3) of the Act is taken up. Although the D.R. insisted that the date of passage of the order should be taken as 17/05/07, his argument was not found acceptable. The date of 16/08/07 is the effective date of the passage of the O.I.O. However, on this fact the required investigation in the instant case is not suspended because of prime facie indication of evasion. The description of which follows. Reliance in this regard is placed on a complaint passed by this office bearing No.415/06 dated 22/11/06.

9.1 The other deficiencies found in the claim of the Complainant are summarized as follows:

a. No input-output ratio was produced. Thus the claim of the Complainant could not tested for its veracity, especially for the reason that the Complainant had made both the taxable and the zero-rated supplies.

b. No purchase vouchers were produced despite the fact that specific request was made in this regard. It is noted that truck receipts produced by the Complainant could not be construed as the purchase vouchers. Even they were not complete because none of them pertained to the raw material stated to have been purchased from Karachi.

Honourable Federal Tax Ombudsman with the Officers and Staff of the Federal Tax Ombudsman Secretariat, Head Office, Islamabad

c. The claim of electricity bills were obviously wrong as has been pointed out above.

d. The P&L Account for the relevant year showed some very abnormal expenses. Repair and maintenance expenses were shown at Rs.3,650,693/- and misc. expenses at Rs.3,655,535/-. The latter represented 24.96% of the total P&L A/c expenses claimed.

9.2 In the beginning of this order the status of the Complainant has been noted as an A.O.P. This information was picked up from the Income Tax Return for the Tax Year 2005 the Complainant had filed with the Income Tax department. Contrary to this fact, the letterhead of the Complainant's company on which a letter dated 06/05/2008 was addressed to this office requesting for adjournment showed its status as Private Limited Company. The letterhead on which another letter was addressed to the A.C. (Refund) did not show the Complainant as a Private Limited Company. It is also noted that the complaint under consideration was filed by Mr. Muhammad Ibrahim, who was shown as "Member of M/s. Mughal Ittehad Engineering Industries, Odeon Street, Faisalabad." The contradictions are too obvious to need any comment.

The incorrect declaration of the status of the Complainant lends further incredulity to various claims and statements made by him from time to time.

9.3 All the above-mentioned facts lead to the conclusion that the Complainant had failed to prove the genuineness of his claim of refund. Despite this observation, it is noted that the Respondent had also failed to examine the case in its proper context. None of the anomalies pointed out were considered by the Adjudicating Officer. Besides, the objection of the A.R. that the A.C. who passed the impugned order was not empowered to do so under the provisions of Section 45(1)(iii) is also correct. It is the considered view of this office that the case requires fresh investigation.

10. In view of above discussion, it is recommended that:

i. The competent authority to cancel the O.I.O bearing No.2010/2007 dated 16/08/2007.

ii. Thorough investigation be done to examine all the points and anomalies discussed above, findings of the investigation given and order passed on their basis. The order is to be passed by an authority which has the powers to do so under the provisions of Section 45 referred to above.

iii. The compliance of the above-mentioned recommendations should reach this office within 90 days of their receipt by the Chairman, F.B.R.

(JUSTICE (R) MUNIR A. SHEIKH)
Federal Tax Ombudsman

Dated: -2008

BEFORE THE FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE, LAHORE

COMPLAINT NO.956/2008

M/s Adam Sugar Mills Limited
4/Fordwah Chishtian
District Bahawalnagar. ...Complainant

Versus

The Secretary,
Revenue Division,
Islamabad. ...Respondent

Dealing Officer: ...Mr. Muhammad Akbar, Adviser

FINDINGS/DECISION

Present: Mian Abdul Ghaffar and Mr. Malik Muhammad Arshad, Advocates for the Complainant.
Mr. Muteen Alam A.C. Sales Tax, Multan and Mr. Basharat Hussain Alvi, Audit Officer, Revenue Receipts Audit, Lahore for the respondent.

The complainant had sold/supplied sugar against tax invoices at prices ranging from 20.8695 to 30.8260 per K.G during the period July 2005 to March 2006 and paid sales tax thereon. The other sugar mills situated in the area were also selling/supplying sugar at almost the same rates. During May 2007 the complainant's accounts were audited by Revenue Receipt Audit, Lahore. The audit team made no observation regarding valuation of sugar. The Additional Collector, Sales Tax, Multan issued the complainant a show cause notice dated 23.01.08 alleging that the complainant had supplied sugar @ 20 and Rs.21 per kg during the aforesaid period instead of the prevailing price of Rs.40 per kg. It was alleged that according to the newspaper sugar mills had raised the price of sugar from Rs.25 to Rs.40 per kg, sold sugar at Rs.40/- per kg but paid tax on price of Rs.18 and Rs.19 per kg and that the complainant had made short payment of sales tax of Rs.41292208/- during the period July 2005 to March 2006. On receipt of the show cause notice, the Additional Collector was requested vide complainant's letter dated 01.02.08 to provide evidence of sale of sugar by the complainant at Rs.18 to Rs.19 per kg and also supply a copy of the audit report. Audit observation No.12 dated 22.05.07 was made the basis for issuance of show cause notice. Audit report said that the sugar industry had raised the prices of sugar from Rs.25 to Rs.40 per kg and various newspapers had disclosed that sugar mills had sold sugar at Rs.40/- per kg but paid tax on Rs.18 to Rs.19 per kg. It was alleged that (i) the complainant had paid sales tax on a value of Rs.20 to Rs.21 per kg instead of Rs.40/- per kg, (ii) the complainant had issued invoices to unregistered persons, (iii) the complainant failed to provide bank statements and copy of bank accounts because of which it was difficult to ascertain the value of supply of sugar and the complainant had made short

payment of sales tax of Rs.41292208/-. The complainant submitted a detailed reply to the show cause notice rebutting the allegations and the contentions of the audit, which were factually wrong. No sugar was sold at the rate mentioned in the audit observations. The newspaper items could not be made the basis of determination of value of supply in terms of section 2(46) of the Sales Tax Act, 1990. The figures mentioned in the show cause notice were totally wrong. The calculation of sales tax was made @ Rs.40.25 per kg whereas according to Auditor and the department sugar was sold by the mills at the value ranging between Rs.25/- to Rs.35/-. Show cause notice was based on clipping of newspaper. The complainant provided proof that sugar was sold at a value ranging between Rs.22 to Rs.29 (excluding sales tax) and Rs.25.25 to s.35.53 per kg (including sales tax). The Additional Collector announced in the open court that the department had no case and that he would not take into consideration audit observations based on newspaper clippings and he would ascertain the value of supply from other sugar mills and asked the complainant to provide few tax invoices to ascertain the actual rate of supply. The complainant submitted 10 invoices which showed the value of sugar as ranging between Rs.21 to rs.29 per kg (excluding sales tax) and Rs.25.25 to 35.53 per kg (including sales tax). The Additional Collector also announced that he would refer the case to A.C, Bahawalpur to ascertain the actual value of supply and value of other sugar mills before taking any decision, but, surprisingly, the complainant received O-I-O No.140/08 dated 22.04.08 under which the liability worked out in the audit observations was adjudged against the complainant. The liability had been adjudged against the complainant at Rs.40.25 per kg for the entire period without any proof. The rate had been applied to the complainant and not to the other sugar mills of the area. The respondents had requested for reconciliation of some figures of demand, which were wrongly worked out but the same was not done. According to the impugned order the Additional Collector had obtained the prices prevailing in the open market but the said prices were neither provided to the complainant nor it was confronted with the same, nor was it associated with the market inquiry all of which amounted to 'maladministration' Although the respondents had incorporated the contentions of the complainant in para 3, 5 and 7 of the impugned order he did not take into consideration any of these contentions. Although the complainant had provided the tax invoices showing that sugar had been sold at Rs.29 per kg (excluding sales tax) Additional Collector did not recalculate the demand. He had passed the impugned order due to grudge against the complainant because the complainant had earlier filed a complaint of 'maladministration' against the Additional Collector which was proved. The respondents did not compare the prices of the complaisant with those of the other mills. The impugned order was unjust, biased, oppressive and fell within the definition of 'maladministration'. The impugned order dated 22.04.08 may be cancelled/set aside and the department be directed to scrutinize the records in order to ascertain the actual rate of supply by the complainant as well as other sugar mills without taking into consideration newspaper clippings. Action may be taken against the respondents for their bad behaviour towards the complaint. Any other relief deemed fit may also be provided.

2. In reply, the Additional Collector has submitted that the complainant had filed an appeal before Collector (Appeals) and had also filed complaint, which was not maintainable under section 9(2) of the FTO Ordinance, 2000 as the FTO had no jurisdiction to hear a case being subjudice or relating to determination of tax. The complainant was asked to supply relevant records of supplies/sale of sugar but he did not

provide the same. A.C was directed to provide market prices during the relevant period who presented the same at the hearing on 19.04.08. The matter was argued in the presence of complainant's AR which was acceded to keeping in view of the evidence as mentioned above. The audit observation was made on the basis of available records and the figures mentioned in the statement prepared during course of audit of the complainant. The instant case would not be decided on the basis of newspaper clipping if the complainant had provided sufficient proof. The counsel of the complainant was informed by the Additional Collector that if any proof i.e. sales tax invoices, bank statement or copy of final account was not provided by them the matter would be referred to the A.C, Bahawalpur. The complainant did not supply any documents. After announcement of the judgment on 19.04.08 the counsel of the complainant visited the office and handed over some invoices other than bank statements and copy of final accounts but at that time the case had been decided on the basis of arguments advanced by the parties. The complainant was provided sufficient opportunity to prove his bonafide by providing the relevant documents, sales tax invoices, bank statements and copy of final account but he could not prove the veracity of his claim. The case was, therefore, decided on the basis of rates prevalent in the market. The case was decided without any prejudice. According to section 2(46) of the Sales Tax Act, 1990 the value of supply in a case where for any special nature of transaction it was difficult to ascertain the value of a supply the open market price was to be adopted. In the first audit period the open market prices of sugar ranged between Rs.35 to Rs.38 per kg whereas the value of supply was assessed at Rs.35/- per kg on the lower side. All figures as provided by the complainant were checked and he was advised to prove his contentions through documentary evidence but the complainant failed to do so. The case had to be decided on the basis of rates of sugar of the market committee. The allegation of 'maladministration' was baseless. The burden of proof lay on the accused but it could not provide any evidence in support of its claim. If it had, the Additional Collector would have decided the case in the light of available records. The comparison of complainant's units with other mills was illogical. The complaint may be filed and the complainant may be advised to contest its appeal pending before Collector (Appeals).

3. During the hearing, the AR submitted that the DRRA conducted complainant's audit alleging that the complainant had supplied sugar @ Rs.20.21 per kg whereas the price of sugar on the basis of newspaper reports was Rs.40/- per kg. Drawing attention to the news item the AR submitted that in the first place the news item relating to imported sugar and not to locally manufactured sugar and secondly no liability could be created on the basis of unreliable newspaper report. The complainant had sold sugar at prices/value of Rs.21 to 35 per kg during the period from July 2005 to March 2006. On receiving the show cause notice the complainant addressed the Additional Collector, Sales Tax to provide evidence of under-valuation on the part of the complainant and also disclose the names of buyers to whom the complainant had sold sugar at a higher rate but instead of providing any evidence he forwarded to it only a copy of audit observation report based on a newspaper item. Reply to the show cause notice was given, explaining that supplies were made at values ranging from Rs.26 to Rs.35 (inclusive of sales) and not at Rs.18, 19 or Rs.20 per kg as alleged. The Additional Collector during hearing of the case asked for 10 invoices from the complainant. The invoices were supplied to the Additional Collector on 19.04.08, which showed prices/value of supply of sugar ranging from Rs.22 to Rs.35 per kg. Inclusive of sales tax, the prices would still be higher. The invoices were handed

over on 19.04.08, the last date of hearing, which also find mention in the last para of the impugned judgment. The Additional Collector had promised another hearing but surprisingly he passed an illegal order. Similarly, there was discrepancy between the amount chargeable and actually charged for which the complainant had requested for reconciliation, which was not allowed. The so-called market inquiry was conducted at the back of the complainant and the report of the market committee dated 24.04.08 was never confronted to the complainant, which was also evident from the fact that whereas the market committee report was dated 24.04.08 the case was decided on 19.04.08. The complainant was neither confronted with any evidence of higher value nor was it associated with the market inquiry. The market committee prices were daily prices, inclusive of tax and profit and other charges. The A.C forwarded the committee prices on 21.04.08 whereas the covering letter conveying committee's letter was dated 24.04.08. How could this be, when the judgment was passed on 19.04.08? The committee prices ranged from Rs.36 to Rs.38, inclusive of tax and other charges, yet the liability against the complainant was calculated at Rs.40/- per kg on the basis of newspaper item. The complainant had asked the Additional Collector to check complainant's record but he failed to do so. The DR submitted that the required sales tax registers, invoices and final accounts could be checked and the value of supply verified. The AR also added that no other mill was issued any show cause notice.

4. The DR, on the other hand, submitted that the impugned judgment did not rely on the newspaper report. It was based on open market price as revealed by the market committee. He said that no 'maladministration' was committed. Eight hearings were given to the complainant. Legal remedies of appeal were available and the complainant should pursue its appeal before Collector (Appeals). The AR submitted that the complainant had filed appeal later in point of time than the filing of complaint; appeal was filed before Collector (Appeals) on 27.05.08 whereas the complaint was filed in the FTO Secretariat on 07.05.08. He added that the respondents did not supply a copy of prices of committee to the complainant. The DR said that the complainant was verbally informed about it during hearing of the case. The AR submitted that the committee prices were not relevant as they included tax and profit. The liability against the complainant was calculated at Rs.40/- per kg illegally. The AR argued that according to section 2(46) of the Sales Tax Act, 1990 these prices were not applicable. The open market prices had to be exclusive of the amount of sales tax. The AR also submitted that the adjudication officer had not demanded any records from the respondents, for if he had, the same would have been supplied. The DR was asked to intimate if any formal letter was issued to the complainant demanding the records, he replied in the negative.

5. The case was first heard on 07.07.08. The hearing was attended by the complainant' AR and the DR of the concerned Collectorate. After the hearing was concluded, the Revenue Division submitted parawise comments of Director General, Revenue Receipts Audit (one of the respondent), which were received in this forum on 08.07.08. The same were endorsed to the complainant's AR for his reaction and the hearing was rescheduled.

6. In his comments, Mr. Basharat Hussain Alvi, Audit Officer, Audit Revenue Receipts, has submitted that the complaint had been lodged in the irrelevant forum by the complainant to harass the government officials. The complainant was found reluctant to

produce records for audit in time. While the record for the period 2005-06 was produced, the record for the year 2006-07 was not produced despite issuance of notice for production of the same in October 2007. The complaint was not maintainable. The complainant had issued invoices to unregistered persons and had no evidence of receipt of payment of its supplies under section 73 of the Sales Tax Act, 1990. In the absence of aforesaid proof, the audit had no way to ascertain the actual liability but to point out the difference of market price and the price supplied at the time of payment of sales tax by the complainant. It was evident from Daily Jang dated 13.05.06 that the spokesman of the sugar industry had stated that the production cost of sugar could not be met unless sugar was sold at Rs.40/- or Rs.42/-. The complainant had not produced full record at the time of audit. It was difficult to accept the correctness of sales tax accounts without examination of final accounts, the bank statement, which the complainant was requested to produce at the time of audit but it never produced the same. It was clear from the decision of the Additional Collector (Adjudication) that the same was also not made available to the prosecution despite providing sufficient time to do that. The Additional Collector's decision was based not on newspaper but on the rates of market committee. The commodity was sold at that time in the market at a price pointed out by the audit, which was rightly reported by the newspaper. As the records were not produced the observation was based on average price for a tax period, which was correct as per return filed by the complainant. Rates applied were not maximum. The liability was calculated by deducting sales tax paid from output tax to be paid without charging any rate or value applied by the complainant. The statement of Rs.20--21/- had no value. The decision made by the Additional Collector was based on facts and figures and the same was not maintainable under FTO Ordinance, 2000. The impugned order was appealable against which the complainant may file an appeal. The complainant had claimed double adjustment of input tax, inadmissible adjustment, was a non-filer in some cases, adjusted input tax without proof of payment under section 73 of the Sales Tax Act, 1990 and did not produce record for the year 2006-07. The complaint was baseless and filed on irrelevant grounds.

7. In a separate letter the auditor has submitted that under sub-section (1) of section 9 of the FTO Ordinance, 2000, the FTO was competent to investigate any allegation of 'maladministration' on the pat of Revenue Division or any tax employee. Since he was not a tax employee nor under Revenue Division, he did not fall within the ambit of Ordinance. In the aforesaid letter, he has also stated that the complaint was also not maintainable under sub-section (2) of section 9 of the Ordinance. He requested for exemption from attendance in the case.

8. At the next hearing, AR submitted that the liability was determined on the basis of newspaper clipping arbitrarily despite the fact that the news clipping related to imported sugar whereas complainant's sugar was locally manufactured. The period involved was 2005-06 and record for this period was provided. The price had to be determined under clause (c) of sub-section (2) of section 46 of the Sales Tax Act, 1990 i.e. open market price. The respondents failed to determine the open market price of locally produced sugar. The tax liability was calculated for the period 07/05 at Rs.4216679/- whereas if one took into consideration output tax chargeable, it would work out to Rs.3211679/-. None of the issues listed as grounds in comments submitted by the auditor were relevant to the issue involved. The complainant was prepared to produce the relevant record for

the year 2005-06, which could be rechecked. Mr. Basharat Hussain Alvi, the Auditor pointed out that the audit makes audit observations and it was for the department to examine, process the same and decide the case in the light of facts and law in force.

9. The arguments of the parties and the records of the case have been considered and examined. The main contentions of the complainant are that (i) it had been burdened with a huge liability of sales tax, additional tax and penalty vide impugned O-I-O No.140/08 dated 22.04.08 on the basis of a news item, which was inadmissible in evidence, (ii) the complainant was not confronted with higher values/price of sugar or the prevailing value/price of sugar in the open market, which was made the basis for determining the liability, (iii) the actual value of supplies made by the complainant as per tax invoices was not taken into consideration, (iv) the rate of supply and the value of supplies made by the complainant were not compared with that of other sugar mills in the same area, (v) the figures of demand were not reconciled before passing the impugned order, (vi) as against the price of Rs.40/- per kg of sugar adopted by the adjudication officer in the impugned order the complainant had been supplying/selling sugar at values ranging from Rs.20.8695 to Rs.30.8260 per kg against sales tax invoices during the relevant period, (vii) the respondents did not provide any evidence showing sale of sugar by the complainant at Rs.18 and Rs.19/- per kg, as alleged, (viii) the Additional Collector declared in the open court that the department had no case and that he would not take into consideration audit observations based on a news clipping, (ix) the Additional Collector had demanded few tax invoices from the complainant to ascertain the actual rate/value of supply, which were provided to him but he ignored them, (x) as against invoices showing value of sugar ranging from Rs.21 to Rs.29/- per kg, excluding sales tax and Rs.25.25 to Rs.35.53 per kg, including sales tax, the liability was adjudged by the Additional Collector against the complainant at Rs.40/- per kg for the period without any concrete evidence, (xi) the committee prices were obtained on 24.04.08 whereas the impugned order was passed on 19.04.08 and as such the committee prices were never confronted to the complainant, (xii) the newspaper item related to imported sugar and not to locally produced sugar.

10. The respondents, on the other hand, contend that (i) since the complainant had filed appeal before Collector (Appeals), Multan, FTO's jurisdiction was barred under section 9(2) of the FTO Ordinance, 2000, (ii) the complainant did not supply the relevant record of supplies and sale of sugar, which was sought from the complainant, (iii) the A.C, Bahawalpur provided market price during the relevant period, which was presented at the time of hearing on 19.04.08, which was acceded to by the complainant during the hearing, (iv) the audit observation was made on the basis of available record and collected figures mentioned in the statement prepared during the course of audit of the complainant, (v) the complainant was informed that if any proof i.e. sales tax invoices, bank statements and copy of final accounts were provided, the matter would have been referred to the A.C, Bahawalpur for analysis but the complainant did not provide the documents, (vi) the invoices were handed over by the AR after announcement of judgment on 19.04.08 without any bank statement and final accounts and the case was decided on the basis of arguments advanced by the parties, (vii) the Additional Collector had to decide the case on the basis of rates prevailing in the market, (viii) according to section 2(46) of the Sales Tax Act, 1990 in case where for any special nature of transaction, it was difficult to ascertain the value of supply, the value of supply would

mean the open market price. The open market price ranged from Rs.35/- to Rs.38/- per kg whereas the prosecution assessed the value of supply at Rs.35/- per kg on the lower side. The complaint of 'maladministration' was baseless.

11. As to the department's objection that FTO's jurisdiction was barred under section under section 9(2) of the FTO Ordinance, 2000, this is to point out that complaint in this case was filed in the FTO Secretariat on 07.05.08 whereas the appeal was filed before Collector (Appeals) on 27.05.08. Thus on the date on which the complaint was filed the case was not subjudice before any court of competent jurisdiction. The FTO is fully competent to take cognizance of cases involving 'maladministration'. As to Mr. Basharat Hussain Alvi, Auditor Revenue Receipts' objection that since under sub-section (1) of section 9 of the FTO Ordinance, 2000, the FTO was competent to investigate any allegation of 'maladministration' on the pat of Revenue Division or any tax employee, he was not a tax employee nor under Revenue Division he did not fall within the ambit of FTO Ordinance, this is to point out that under section 14 of the FTO Ordinance, 2000, the FTO has the power to require attendance of any person and to ask him to furnish information on such points or matters as, in the opinion of the FTO, may be useful for, or relevant to, the subject matter of investigation. The auditor's objection is, therefore, is not tenable.

12. A scrutiny of the case records reveals that based on audit conducted by the Revenue Receipts Audit the complainant was issued a show cause notice alleging that (i) it had paid sales tax on sugar at a value of Rs.20/21 per kg instead of the prevailing price of Rs.40/- per kg, (ii) it had issued sales tax invoices to unregistered persons, (iii) it did not provide bank statements and copy of final accounts for the period under audit and, therefore, an amount of Rs.41292208/- due to under-valuation was recoverable alongwith default surcharge and imposition of penalty. The case was contested by the complainant. The Additional Collector (Adjudication) rejected the arguments of the complainant and concluded that the demand raised by prosecution was genuine as per law and upheld the charges framed in the show cause notice directing the complainant to deposit the alleged amounts of sales tax alongwith default surcharge and penalty adjudged under section 33.

13. Further scrutiny of the case records reveals that although the Additional Collector (Adjudication) had based his findings against the complainant on the basis of so-called market prices obtained from the market committee, Bahawalpur but the same were never confronted to the complainant either in the show cause notice or during the adjudication proceedings. The respondents' contention that the complainant was informed of the market prices during hearing of the case before the adjudication authority is not supported by any concrete documentary evidence. The respondents' contention on this account becomes all the more dubious and suspicious when one scrutinizes two documents on record i.e. A.C's letter dated 21.04.08 under which he forwarded copies of the daily price report sheet obtained from the market committee, Bahawalpur to the Additional Collector (Adjudication) and the rate list supplied by the market committee, Bahawalpur to the A.C. How could the A.C forward his report to the Additional Collector (Adjudication) on 21.04.08 when the market committee supplied the rate list on 24.04.08? The case was finally heard on 19.04.08 and the impugned O-I-O No.140/08 was also passed on 19.04.08 i.e. the same day. It is, therefore, unbelievable that the market prices supplied by the market committee, Bahawalpur to the A.C on 24.04.08

were forwarded by him to the Additional Collector (Adjudication) on 21.04.08 and were confronted to the complainant during the hearing, which took place on 19.04.08. Again although the Additional Collector (Adjudication) had asked for few invoices from the complainant during hearing of the case, which invoices were supplied to him but he ignored the same while passing the impugned O-I-O. The Additional Collector (Adjudication) has observed in the impugned O-I-O that in his opinion it was not possible to ascertain the actual value of supply of sugar in the absence of record demanded from the complainant. During the complaint proceedings, the complainant's AR said that the record was never demanded from the complainant and challenged that if same was demanded the adjudication authority and the sales tax department should produce a written document or letter demanding it from the complainant. The DR could not produce any written document under which the adjudication authority or the sales tax department itself had demanded the record from the complainant. The complainant, however, added that it was prepared to give all the relevant records to the department to enable the adjudication authority to ascertain the truth in the matter. The Additional Collector could have requisitioned the relevant records from the complainant to ascertain the actual value of supply of sugar before passing the final order but he failed to do so.

14. In view of the foregoing position, it is observed that although the Additional Collector (Adjudication) has, while passing the impugned O-I-O, placed reliance on the prices of market committee, Bahawalpur, the committee market prices were never confronted to the complainant. All in all, the complainant's case has been decided by the Additional Collector (Adjudication) arbitrarily without confronting it with higher value/market prices, as aforesaid, without considering complainant's contentions, including the invoices submitted by it before him, and without providing it the proper opportunity of putting up its defense, which militates against the principles of natural justice and amounts as such to 'maladministration'. Accordingly, it is recommended that the Revenue Division direct the competent authority to:

i. Reopen the impugned O-I-O No.140/08 dated 19.04.08 under section 45A of the Sales Tax Act, 1990, set it aside and decide the complainant's case afresh on its merits in accordance with the provisions of law after confronting the complainant with evidence of higher value of sugar and after providing the complainant the opportunity of hearing to enable it to argue and defend its case before the authority. The complainant, for its part, will provide the authority the entire relevant record for the period in question, as promised during the complaint proceedings, to enable the respondents to analyze the same for necessary and required verification.

ii. Compliance be reported within 30 days of the receipt of this order.

(JUSTICE (R) MUNIR A. SHEIKH)
Federal Tax Ombudsman

Dated: -2008

BEFORE THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

COMPLAINT NO.1012/2007

M/s. N. Tex,
Faisalabad. ...Complainant

Versus

The Secretary,
Revenue Division,
Islamabad. ...Respondent

Dealing Officer: ...Shamim Ahmad, Adviser

FINDINGS/DECISION

Present: Mr. Muhammad Saleem Malik, Advocate & AR, for the Complainant.
Mr. Muhammad Azam, D.C. Sales Tax & D.R, for the Respondent.

The complaint under consideration was filed against the rejection of claim of refund amounting to Rs.270,443 vide Sales Tax Order-In-Original (O.I.O) No.45/2007 dated 07/05/2007. The contents of the complaint briefly are:

a. The O.I.O mentioned above was served upon the Complainant through U.M.S. This was for the first time that the Complainant came to know about the proceedings because no mandatory Show Cause Notice (S.C.N) was ever received, according to the complaint.

b. The entire procedure adopted by the Adjudicating Officer was stated to be against the established principles of procedure and law because:

   i) No S.C.N was served on the Complainant.

   ii) The Adjudicating Officer stated in her order that the S.C.N was properly served through Courier Service. It was clearly stated that she had checked the case records in this regard. This was a factually incorrect statement. Thus the provisions of Section 56 of the Sales Tax Act, 1990 (the Act) were not complied with. Contrary to this observation of the Adjudicating Officer, the department in its written reply stated that the Complainant was not found on the given address and it was reported by the Courier Service that his office had ceased working.

   iii) The Adjudicating Officer in her order relied on the guidelines issued by the C.B.R vide its letter C.No.2(I) ST-L&P/2000 (Pt) dated 24/02/2007. This letter provided the manner and the

conditions for processing the refund claims filed by commercial exporters. The contents of this letter were never notified which was required under the provisions of Section 10(2) of the Act.

c. It was prayed that the manner in which the O.I.O was passed be declared as maladministration and the O.I.O under reference be rescinded. Another prayer made was that the C.B.R may be directed to withdraw its letter referred to above.

2. The Deputy Collector, Collectorate of Sales Tax, Faisalabad in his written reply stated as follows:

a. The S.C.N was issued as per the directions of the C.B.R contained in its letter under reference. The S.C.N clearly stated the deficiency with which the refund claim of Complainant suffered. However, S.C.N was returned with the remarks of the Courier Service that the office of the Complainant had ceased working. As there was no response from the Complainant, his refund claim was rejected through the O.I.O.

b. The Complainant approached the Sales Tax department on 30/05/2007 for obtaining the copy of the S.C.N which was duly issued.

c. The assertion of the Complainant that the instructions issued by the C.B.R in its letter under reference constituted maladministration was challenged. It was explained that there were many complaints against the bogus refund claims made by the commercial exporters. For scrutinizing such claims the guidelines were issued.

d. It was emphasized that the S.C.N and the O.I.O were issued in accordance with the provisions of Section 56 of the Act.

e. It was predicted that the Adjudicating Officer passed the O.I.O in accordance with the provisions of law and therefore no maladministration was committed.

f. It was prayed that the complaint be rejected.

3. Both A.R & D.R attended and the case was discussed with them. The A.R reiterated that the office of the Complainant was located at 3rd Floor, Bismillah Centre, Street No.2, Yarn Market, Faisalabad whereas the D.R had himself admitted that the notice was sent on No.2, Ist Floor, Business Centre, Karkhana Bazar, Faisalabad. The Complainant had ceased to work on the latter address. It was not the fault of the Complainant that the S.C.N was returned unserved, he argued.

3.1 He also pointed out various defects in the O.I.O; especially regarding the wrong claim of the service of S.C.N. Another defect pointed out was that no deficiency in the refund claim of the Complainant was discussed in the O.I.O.

3.2 The A.R also discussed the provisions of Section 10(2) of the Act. He was of the view that the C.B.R was required to notify in the official gazette the contents of its letter

referred to above. As it was not done, the instructions be issued to C.B.R for rescinding the letter.

4. Narrating the circumstances in which the C.B.R issued its letter under reference, the D.R stated that a particular Collector of Sales Tax sought some clarification from C.B.R in respect of processing the refund claims of commercial exporters. In response, the guidelines in the said letter were issued. Therefore, there was no necessity for notifying the same.

4.1 The D.R presented the proof of the dispatch of the S.C.N through Courier Service and its return because the Complainant was not available on the given address. He challenged the claim of the A.R that the address had been changed. In support of his claim he pointed out that the complaint itself contained the address in which, according to the claim of the A.R, the business was not being carried out presently.

5. In view of the claim and the counter claim of the two parties, it was considered necessary that the correct address of the Complainant be established through documentary evidence. Therefore, as many as three adjournments were given.

6. The A.R admitted that he gave wrong address on the first page of the complaint under consideration. It was the address on which the Complainant was originally working and appeared on the Certificate of Registration issued by the Sales Tax department. However, he had applied for the change of address vide its letter dated 27/10/2001. This was duly received by the Assistant Collector Registration & Information on 12/11/2001. In support, he produced the original letter of the Complainant and it clearly showed the receipt by the Sales Tax department.

7. The D.R, on the other hand, produced copies of Return of Sales Tax submitted by the Complainant on 20/05/2007 which showed the old address. Similarly, a letter of the Complainant in respect of refund claim for the month of May 2005 was produced showing once against the old address. He on the basis of these documents concluded that the Complainant continued to retain the old address.

8. The arguments of the two parties both written and oral were considered. First of all the matter pertaining to the address of the Complainant is taken up. There is no doubt that there is confusion regarding the correct address of the Complainant as apparent from the documents produced by the two parties contradicting each other's claim. In the final hearing of the case, the A.R solemnly affirmed that the correct address of the Complainant is 3rd Floor, Bismillah Centre, St. No.2, Karkhana Bazar, Yarn Market, Faisalabad and all the correspondence from now on be sent on the above-mentioned address.

8.1 As stated in the written reply of the Respondent, the courier service returned the S.C.N because the Complainant was not found on that given address. This was considered to be good service by the Respondent. This is an incorrect assumption because, according to the relevant law, the S.C.N ought to have been served by affixture in the presence of two witnesses on the last known address of the Complainant if he was not available there. Admittedly, this was not done. Therefore, the service of the S.C.N was not a valid service. Thus the very basis on which the O.I.O was passed falls to ground.

8.2 It is noted with concern that the Adjudicating Officer made an incorrect statement in her order. It was stated that the S.C.N was properly served through Courier Service. Clearly, she was not aware of the fact that it was returned unserved and in the absence of service by affixture it was not a valid service.

8.3 Apparently the Complainant was making use of the two addresses as pointed out by the D.R. This led to lot of confusion and if it is factually incorrect, it casts doubt on the Complainant's motive. From now on the address given by the A.R on solemn affirmation and as noted in para 8 above should be utilized by the Respondent.

9. The arguments regarding the issuance of the C.B.R's letter were also considered. The provisions of sub-section (2) of Section 10 are reproduced for convenience of reference as follows:

> "(2) Notwithstanding anything contained in sub-section (1), the input tax incurred in shall be refunded not later than thirty days of filing of return in such manner and subject to such conditions as the Board may, by notification in the official gazette, specify."

It is clear that the C.B.R was required under law to notify in official gazette the *manner* and *conditions* of dealing with the refund claims. The guidelines issued by the C.B.R vide its letter under reference surely fall in the definition of manner and conditions as specified in the sub-section reproduced above. For this reason, the D.R's argument that only guidelines were issued and there was no need to notify them was found to be without any force. It is pertinent to note here that not only rules are supposed to be notified in the official gazette according to the provisions of Section 50 of the Act, but also the manner and conditions of determining the issuance of refund were to be notified as outlined by Section 10(2) of the Act. However, the prayer of the A.R that because the C.B.R failed to notify the contents of the letter, it should be rescinded was not found acceptable.

10. In view of the above discussion, it is recommended that:

i. The O.I.O bearing No.45/2007 dated 07/05/2007 be rescinded because it was passed without any basis.

ii. The Complainant be given a fresh opportunity to prove his refund claim.

iii. The C.B.R to notify in the official gazette the guidelines issued through its letter bearing C.No.2(I)ST-L&P/2000 (Pt) dated 24/02/2007.

v. The compliance of the above-mentioned recommendations should reach this office within 45 days of their receipt by the Chairman, F.B.R.

(JUSTICE (R) MUNIR A. SHEIKH)
Federal Tax Ombudsman

Dated: -2008

BEFORE THE FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE, LAHORE

COMPLAINT NO.1040/2008

M/s Yasrab Cotton Industries,
Kikri Khurd,
Mailsi. ...Complainant

Versus

The Secretary,
Revenue Division,
Islamabad. ...Respondent

Dealing Officer: ...Mr. Muhammad Akbar, Adviser

FINDINGS/DECISION

Present: Rana Muhammad Ishaq, Advocate for the Complainant.
Mr. Nadeem Ahmad, A.C., Sales Tax, Multan for the Respondent.

The Sales Tax Department, Multan conducted complainant's desk audit for the year 2004-05. The complainant had supplied the required documents; the audit was completed and audit report was concluded. As per the audit report only an amount of Rs.625/- was recoverable, which was paid on 29.06.05 alongwith principal amount by claiming immunity under amnesty scheme launched vide Notification No.520(I)/05 dated 06.06.05. All matters stood settled but after a lapse of more than two years the respondents issued a show cause notice dated 15.06.07 to the complainant. The aforesaid show cause notice was not served on the complainant. Resultantly, an ex-parte O-I-O No.363 to 383 dated 19.07.07 was passed, which too was not served on the complainant. The complainant learned about the impugned O-I-O on receipt of recovery notice. Against the impugned O-I-O, the complainant filed an appeal before Collector (Appeals) who did not touch the appeal file although complainant's counsel had argued the case before him on three different occasions. A staff member framed the impugned Order-In-Appeal, who did not bother about auditor's point of view and damaged Collector (Appeals)' status by not passing judgment on the merits of the case. It was alleged in the show cause notice that (i) the complainant was asked to provide information and records relating to purchase of cotton seed and sale of cotton seed and oil dirt for the period 2004-05 but it did not provide the information and records except electricity bills, (ii) the complainant was asked to intimate closing stock of cotton seed, cotton seed oil and oil dirt, quantity and value of cotton seed oil sold to the registered and unregistered persons during the period 01.07.04 to 30.06.05, advising it that if the said information was not provided within seven days it would be considered that the complainant had no stock of

cotton seed, cotton seed oil and oil dirt and that they had sold cotton seed oil to unregistered persons. Leveling these allegations, the department calculated sales tax payable by the complainant at Rs.185448/-. The first allegation was wrong because even para No.1 of the desk audit report acknowledged that the records were provided. The last line of page 2 of desk audit report also mentioned "month wise detail of supply of cotton seed and oil dirt is enclosed". As regards allegation No.2, the complainant provided the said information according to which the department rightly took no stock of cotton seed, cotton seed oil and oil dirt and completed the audit. While filing parawise comments, it was alleged by the department that the complainant did not provide month-wise production of supply and cotton oil seed in order to check whether it had supplied cotton seed oil to registered persons or otherwise, whereas the last line of page 2 of desk audit mentioned that "month-wise detail of supply of cotton seed oil and dirt is enclosed". The department had taken the position that it was mentioned in the desk audit report in para 3 thereof that later on if any discrepancy was found out it would be pointed out accordingly. This discrepancy was restricted to consumption of electricity units per Maund on the basis of 2.7 units per Maund and it did not provide any license to the department to make other observations/objections after more than two years. The auditor, after scrutinizing the relevant record, accepted adjustment of Rs.185448/- and issued audit report for 2004-05 accordingly. Nothing was shown as recoverable except an amount of Rs.625/-, which had been paid. The complainant had availed amnesty scheme dated 06.06.05 and the principal amounts of sales tax on cotton seed oil (Rs.212142) and oil dirt (Rs.4124) totaling Rs.216266/- stood settled and finalized after adjustment of Rs.185448/-. An amount of Rs.31500/- was paid on 29.06.05, including an amount of Rs.625/-. Nothing was left by way of additional tax or penalty. A valuable right had accrued to the complainant, which could not be disturbed through conjectures. There was no revenue loss as the tax had been deducted from electricity bills. Action now being taken amounted to double taxation, which was not admissible in law. Issuance of audit report was a judgment/decision framed by the competent authority and objections, if any, were to be made within 30 days, 60 days or at the maximum 90 days. Show cause notice was issued after more than 2 years, which was time barred (2007) 96 Tax 130 (S.C. Pakistan). The respondents had not demanded any record through notices. The complainant filed written arguments and additional comments but the respondents did not give any weight to them. The impugned Orders-In-Original No.363-383/07 dated 14.07.07 and Order-In-Appeal No.383 dated 18.04.08 be set aside and vacated. The department may be ordered not to recover the amount of tax through coercive measures.

2. In reply, Collector (Appeals), Multan has submitted that the complainant was required to file appeal against Collector (Appeals)' order before Customs, Sales Tax and Central Excise Appellate Tribunal, Lahore. FTO's jurisdiction was barred in terms of section 9(2) of the FTO Ordinance, 2000 in cases where legal remedies of appeal were available. The President of Pakistan in complaint No.1270-K/03 (M/s Shah & Co Karachi Versus CBR/Customs Department) had held that since legal remedy of appeal was available to the complainant against Collector (Appeals)' order under the relevant

legislation the FTO had no jurisdiction to investigate the matter raised in the complaint. The contentions of the complainant were properly considered. Its contention raised in the appeal memo had been reproduced in the O-I-A and as such the contention that the Collector did not touch the appeal was incorrect. According to SRO.488(I)/04 dated 12.06.04 the complainant was not entitled to claim adjustment of input tax against electricity bills in cases where oil was supplied to un-registered persons. During hearing proceedings on 15.01.08, the complainant's counsel submitted that the complainant did not contest the formula applied by the department to work out production of cotton seed oil and oil dirt but contested the disallowing of input involved against electricity bills as the same was admissible irrespective of whether the oil had been supplied to a registered or un-registered person under amended SRO.25(I)/06 dated 09.01.06, which had retrospective effect from 08.07.04. The omission of 'aa' had no retrospective effect. The complainant failed to prove that oil was supplied to registered persons. It had caused loss to the revenue by claiming inadmissible input tax. It was not a case of double taxation. Recovery of sales tax was not time barred. The arguments of the complainant were considered. The complainant had not alleged any 'maladministration'. It had merely requested that the show cause notice be declared void. The complaint may be dismissed and the complainant may be advised to file appeal before the Appellate Tribunal.

3. In reply, the Collector of Sales Tax, Multan has submitted that FTO's jurisdiction was barred in terms of section 9(2) of the FTO Ordinance, 2000 as legal remedy of appeal was available under the relevant legislation. The complainant failed to provide the purchase, production and supply records to ascertain compliance of SRO.488(I)/04 dated 12.06.04. The demand of Rs.625/- was based on available record. However, it was also mentioned in the desk audit report that if any discrepancy was found out later the same would be pointed out accordingly. The complainant did not provide month-wise details of production and supply of cotton seed oil to enable the department to check whether it had supplied cotton seed oil to registered persons or otherwise. The complainant had supplied oil to unregistered persons. It was not entitled to input tax adjustment against electricity bills as per SRO.488(I)/04 dated 12.06.04. The show cause notice was properly issued within the stipulated period. Opportunities of hearings were provided on 25.06.07, 03.07.07 and 10.07.07 by the adjudication officer but the complainant failed to attend the hearings. The arguments of the complainant had been discussed in the Order-In-Appeal. The contention of the complainant that he had provided complete records was incorrect. Similarly, the contention of the complainant that the desk audit had been completed and desk audit report was issued was again incorrect. The desk audit report enclosed by the complainant with the complaint was neither approved by the A.C nor it was issued to the complainant. Only the amount claimed by the complainant as input tax against electricity had been disallowed. No valuable right of the complainant had been negated. Show cause notice was issued within the stipulated period. The complainant failed to submit written arguments and additional grounds to the adjudication officer. The complainant had not alleged any 'maladministration' and had only requested that show cause notice be declared void. Being baseless, the complaint may be filed.

4. During the hearing, the AR was asked to indicate whether the complainant had filed appeal against Collector (Appeals)' order No.83/08 dated 18.04.08. He submitted that he had filed appeal before the Appellate Tribunal but on 27.06.08 after filing the present complaint in the FTO Secretariat. He reiterated that the complainant was neither served with a show cause notice nor the Order-In-Original and it had learned about it only on receipt of recovery notice dated 10.09.07. It was then it obtained a copy of the O-I-O and filed appeal before Collector (Appeals). The AR added that the show cause notice had called upon the complainant to submit reply within 10 days of its receipt but the show cause notice was dated 15.06.07 whereas the first hearing was fixed for 25.06.07 and the complainant was not even allowed tolerance time for receipt thereof. Practically, the respondents had not given ten days notice. Even the next hearings were fixed before expiry of ten days of the issuance of the hearing notices. He argued that the complainant had given written arguments to the Collector (Appeals), which were not considered. The complainant had paid Rs.625/-, which was pointed out for recovery by the audit. Collector (Appeals) did not apply his judicious mind as he depended upon his staff member's observations. A liability of Rs.185448/- was illegally created despite the fact that on 29.06.05 the complainant had paid Rs.31500/-, including Rs.625/- under amnesty scheme. The desk audit report was issued in May 2005 whereas show cause notice was issued on 15.06.07, which was barred by time. No liability was outstanding against the complainant. There were no loss of revenue. The ex-parte decision given vide the impugned O-I-O and non-consideration of complainant's arguments by the arguments amounted to 'maladministration'.

5. The DR stated that the show cause notice was served on the complainant at the given address and similarly, the O-I-O No.663 to 683 dated 19.07.07 was also issued to the complainant at the given address and, therefore, the contention that it had not received the show cause notice and the impugned O-I-O was incorrect. He produced courier receipts and placed them on record showing despatch of show cause notice and impugned O-I-O to the complainant. The DR added that the complainant had neither submitted any reply to the show cause notice nor had made any personal appearance. He also pointed out that the complaint was time barred as it had been filed after six months of the O-I-O dated 19.07.07. In so far as the recoverable amount was concerned, the audit report was reviewed by the A.C, who made his own observation and asked the auditors to check whether the complainant had sold oil to the unregistered person for, if the complainant had, it was not entitled to any adjustment. An amount of Rs.185448/- was recoverable because the complainant had taken an illegal adjustment. Show cause notice was issued within time as per the provisions of section 36(1) of the Sales Tax Act, 1990, which prescribed a recovery period of five years. Since the period actually involved was 2004.05, the show cause notice was issued on 15.06.07 within a period of five years. The case was subjudice before the Tribunal. Sufficient opportunities of hearings were granted to the complainant by the adjudication authority but the complainant neither submitted any reply to the show cause notice nor made personal appearance.

6. The AR argued that Rs.625/- was paid in compliance of the audit report. The liability created later was not relevant. Show cause notice should have been issued within 90 days or 180 days as it created a liability against a citizen. In so far as the amount of Rs.185448/- was concerned, the same was incorporated later. The DR stated that the complainant had obtained an unauthorized and incomplete audit report. The AR insisted that the same had been issued to the complainant, which was received by it. He also added that although it had been alleged that the complainant had not provided any documents the respondents had not served any notice on the complainant for submission of the same.

7. The arguments of the parties and the record of the case have been considered and examined. The complainant was issued a show cause dated 15.06.07 by the Deputy Collector proposing recovery of evaded sales tax amounting to Rs.185448/- under section 36(1) of the Sales Tax Act, 1990 and additional tax under section 34 of the Act and imposition of penalty under the appropriate provisions of law. The case was decided by the D.C vide Orders-In-Original No.363 to 383 dated 19.07.07 and the charges framed in the show cause notice were upheld on the ground that adjustment of input tax of Rs.185448/- was not admissible to the complainant as cotton seed oil had been sold to unregistered persons. Accordingly, the complainant was directed to deposit the aforesaid amount alongwith additional tax, besides penalty. Against the impugned O-I-O the complainant filed appeal before Collector (Appeals), which was rejected.

8. The complainant contends that neither the show cause notice nor the impugned O-I-O was served on it. The respondents, on the other hand, have placed on record courier receipts showing issuance of both the show cause notice and the O-I-O to the complainant at the given address. They, therefore, contend that the complainant did not bother to reply to the show cause notice nor did it make any personal appearance before the D.C despite the fact that the case was fixed for hearings on 25.06.07, 03.07.07 and 10.07.07 and hence there was no option but to decide the case ex-parte. As regards respondents' contention that the complaint was time barred as the same had been filed six months after the issue of the impugned order, the complainant contends that it came to learn about the impugned O-I-O upon receipt of recovery notice dated 10.09.07 and after obtaining copy thereof from the respondents filed appeal against the O-I-O before Collector (Appeals) who rejected the same vide Order-In-Appeal No.383/08 dated 18.04.08. Even if the complainant's version that he came to learn about the impugned O-I-O on receipt of the aforesaid recovery notice is considered, it is observed that he had first had notice of his grievance upon receipt of recovery notice dated 10.09.07 yet he did not file complaint of 'maladministration' within six months of the receipt of recovery notice. The recovery notice is dated 10.09.07 whereas the complaint was filed in the FTO Secretariat on 12.05.08. The complainant, however, contends that he has filed this complaint on 12.05.08 not only against the impugned O-I-O but also against Order-In-Appeal dated 18.04.08 passed by Collector (Appeals), Multan and that way the complaint was filed within time.

9. As regards respondents' arguments that since remedies of appeals were available to the complainant FTO's jurisdiction was barred in terms of section 9(2) of the FTO Ordinance, 2000 this is to point out that the FTO is competent to investigate complaints involving 'maladministration'. The position in this case, however, emerges as under:

The scrutiny of case record reveals that the complainant did not contest the impugned O-I-O, hence it was decided by the D.C ex-parte. As against complainant's contention that show cause notice was not served on it, the respondents contend that they had issued show cause notice to the complainant at the given address through courier service (receipts placed on record) and despite that it had failed to respond to the show cause notice or to make appearance before the D.C. The complainant needs to rebut respondents' contention on this account to make its plea that the case was decided at its back more convincing. The complainant also contends that he had raised various contentions before Collector (Appeals) but the Collector (Appeals) without applying his judicious mind and relying upon the advice of his subordinate staff did not give weight to these contentions. A perusal of the Order-In-Appeal No.383/08 dated 18.04.08 passed by Collector (Appeals) reveals that the Collector after identifying the following as the main contentions of the complainant passed his Order-In-Appeal on the merits of the case:

i) The department completed the Audit for the year 2004-2005 on the basis of record provided and adjustment of Rs.185448/- was accepted in the said audit report. In the audit report it was alleged that the appellant supplied 1088 mounds of cotton Seed Oil during 2004-05 involving sales tax of Rs.212142/- out of which Rs.26694/- had been deposited and the remaining amount of Sales Tax of Rs.185448/- had been adjusted against electricity. They paid the amount of Rs.31500/- in the light of audit observation after availing amnesty and thus all the liabilities were stood finalized after availing and paying balance amount of Rs.31500/-.

ii) That all the matters stood settled and finalized through audit. The issuance of audit report is a Judgment/Decision framed by the competent authority and objection if any to, it should be made within 30 days, 60 days or at the most 90 days and even if some valid reason recorded and approval obtained from the competent authorities may extend to 180 days but the show cause notice was issued after more than two years which is time barred. They referred the judgment of the Honourable Supreme Court of Pakistan in case of Collector of Sales Tax and Central Excise VS Pattoki Sugar Mills Ltd and other in Civil Petition No.813-L and 835-L of 2005 (2007) Tax 130 (SC.Pak) and Lahore High Court in case of M/s Super Asia Muhammad Din Sons (Pvt.) Ltd Vs Collector of Sales Tax, Gujranwala in W.P. No.13331 of 2006 decided on 07.11.06. The appellant also referred the SRO.25(I)/2006 dated 09.01.2006.

Dealing with the above-mentioned contentions, the Collector (Appeals) has, in the order passed by him, held that (i) the complainant did not challenge the formula/working of

sales tax as alleged in the show cause notice, (ii) under SRO.488(I)/04 the complainant was not authorized to adjust input against electricity bills as it had supplied oil to unregistered persons, (iii) the complainant was required to give solid evidence that it supplied oil to registered persons which it failed to do, (iv) the plea of the complainant that audit observation was a judgment/decision was not correct because audit report was observation of auditor, which was required to be approved by the seniors and an audit report was not a judgment or decision under section 45 of the Sales Tax Act, 1990, (v) even after approval, in case of any discrepancy, the contravention report could be prepared and sent to the adjudication officer for adjudication, (vi) the contention of the complainant that respondents' action was time barred was not tenable because the period involved was 2004-05 and the complainant had deliberately adjusted the input tax for which it was not entitled and the provisions of section 36(1) of the Sales Tax Act, 1990 were correctly invoked in the show cause notice which authorized recovery of sales tax for five years and, therefore, the action for recovery of evaded sales tax was not time barred, (vii) the desk audit report signed by the auditors provided by the complainant did not cover the aspect of inadmissibility of input tax; on the report submitted by the auditors to the A.C, the A.C had directed for compliance of SRO.488(I)/04 dated 17.06.04 which was done and the charge was accordingly framed out in the audit report whereas the complainant was relying on unapproved audit report.

10. It is observed that Collector (Appeals) has vide the impugned Order-In-Appeal dealt with the main contentions of the complainant and has given his findings on issues relating to the audit report, admissibility or otherwise of input tax adjustment and the alleged time-barred show cause notice on the merits of the case. As it is, no 'maladministration' is noted. It is also observed that against the impugned Order-In-Appeal 383/08 dated 18.04.08 the complainant has filed appeal before the Appellate Tribunal on 27.06.08. Although the appeal has been filed later in point of time than the filing of complaint in the FTO Secretariat, the complainant has raised therein more or less the same issues as have been raised before this forum. Since Collector (Appeals) has decided the case on its merits, the complainant should pursue its appeal filed before the Appellate Tribunal. The Appellate Tribunal, which is competent to deal with both points of law and fact, can deal with the issues raised in the appeal by the complainant comprehensively on the basis of relevant law and the available evidence and pass a judgment on the merits of the case after due consideration of the arguments of the parties to the dispute.

11. The complaint is disposed of with observations made above.

(JUSTICE (R) MUNIR A. SHEIKH)
Federal Tax Ombudsman

Dated: -2008

BEFORE THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

COMPLAINT NO.1196/2008

M/s. FOAR Innovative Technology (Pvt) Ltd.,
Rawalpindi.

...Complainant

Versus

The Secretary,
Revenue Division,
Islamabad.

...Respondent

Dealing Officer: ...Mr. Shamim Ahmad, Adviser

FINDINGS/DECISION

Present: Mr. Farooq Sultan, M.D. of the Complainant's Company.

Mr. Muhammad Mohyuddin Ismail, DCIT, RTO, Rawalpindi & Mr. Adnan Iqbal, A.C. Sales Tax, Rawalpindi, both DRs for the Respondent.

The Complainant is a Private Limited Company which operates a manufacturing facility capable of producing a complete plant fully automated and computer controlled. It was claimed that they are second only to the government owned industry with the name of Heavy Mechanical Complex (H.M.C.), Taxila.

2. The contents of the complaint are summarized as follows:

a. In February, 2006, the Complainant Company entered into a contract with National Logistic Cell (N.L.C) to manufacture, supply and erect an asphalt storage system, heating system and dust collection system. This equipment was to be inter-connected to core asphalt mixing plant imported from U.K. It was claimed that the manufacturing of the local portion of the plant saved foreign exchange and the cost was reduced by 50%. During the period under consideration (ended June 30th, 2006), the manufacturing was done for about six months. The manufactured plant was not yet delivered to the N.L.C. upto the said period.

b. The Director General, Revenue Receipt Audit (D.G. R.R.A.), Lahore conducted audit of the company for the period 2005-2006 and gave a clearance certificate, a copy of which was enclosed. However, it did not bear any date.

c. The case of the Complainant was selected for "composite audit". The Commissioner of Income Tax (Audit), RTO, Rawalpindi vide notice dated 22/10/2007 selected the case for audit u/s 177 read with sub-section (1A) of Section 120 of the Income Tax Ordinance, 2001 (the Ordinance) in which a number of queries were raised. Similarly, the Collector (Audit), in his notice dated 24/10/2007 informed the Complainant that his was case was selected for audit u/s 25 of the Sales Tax Act, 1990 (the Act).

d. The Complainant objected to this selection on the ground that the audit had already been done by the D.G. R.R.A., Lahore.

e. Regarding the audit of the case under the Ordinance, no objection *per se* was raised. The only objection raised was that the C.I.T. intended to treat the Complaint as Contractor and charge tax @ 6% on the receipts. This intention of the Respondent was challenged on the ground that the Complainant was a manufacturer and its income could not be subjected to Presumptive Tax Regime (P.T.R). It was argued that the mere fact of entering into a contract with N.L.C. did not make the Complainant a Contractor. It was a normal practice that all the manufacturers entered into contracts and that did not take away their status of a manufacturer. If the logic of the Respondent was to be accepted, H.M.C., Millat Tractors and many others will become Contractor and no manufacturer would be left in the country.

f. It was prayed that the tax authorities be stopped from wrongly applying the provisions of law.

3. Two written replies were received from the Respondents. One from the Sales Tax authorities and the other from the Income Tax department. The submission of A.C. Sales Tax is taken up first. At the very outset, following objections were raised:

a. The issue in hand pertained to the interpretation of law involving the jurisdiction of the officers who would re-audit the record of sales tax.

b. Matter pertained to the liability of tax which was beyond the jurisdiction of the F.T.O. u/s 9(2)(b) of the Establishment of the Office of the Federal Tax Ombudsman Ordinance, 2000 (the FTO Ordinance).

c. The honourable President of Pakistan in numerous decisions have held that that it was not the function of the F.T.O. to interfere in such routine matters as selection of cases for total audit etc. The matter in hand was similar in nature and hence the jurisdiction of the F.T.O. was ousted.

d. Only a Show Cause Notice (S.C.N) had been issued so far (dated 10/06/08) and no Order-in-Original (O.I.O) had been passed. Thus the matter was sub judice.

4. On the facts of the case, the Sales Tax department made the following submissions:

a. The selection for the re-audit was defended within the meaning of Section 25(2) of the Act.

b. The input tax was proposed to be disallowed because no supply had been made upto 30/06/06 and the materials were not consumed till then.

4. The Commissioner of Income Tax (Legal), RTO, Rawalpindi in his written reply raised the preliminary objection that the F.T.O. did not have the jurisdiction on the case within the meaning of section 9(2)(b) of the F.T.O. Ordinance because the matter pertained to assessment of income and determination of tax liability.

5. On the facts of the case following submissions were made:

a. Selection of the case for audit u/s 177 and issuance of notice within the meaning of sub-section (1A) of Section 122 of the Ordinance were defended.

b. It was asserted that assessment order for Tax Year 2006 u/s 122 of the Ordinance dated 26/05/2008 correctly treated the receipts of the Complainant as "Turn Key Contract" for supply of asphalt plant. Following reasons were given for the said treatment:

The contract involved:

i. Designing,

ii. Consultancy, because the Complainant was responsible for the satisfactory function of the supplied equipment.

iii. Supply of standard tools and accessories with the equipment.

iv. Installation of the plant.

It was argued that all the above-mentioned features of the contract proved that the Complainant was involved in a Turn Key Project.

6. Both A.R. and D.R. attended and the case was discussed with them. The complaint involved matters pertaining to both Sales Tax & Income Tax. The part of the complaint pertaining to the Sales Tax was still sub-judice because no O.I.O was so far passed on the date of hearing conducted on 22/08/08. Both the Complainant and the Respondent stated that the O.I.O of Sales Tax was about to be passed. With the mutual consent of the two parties, the case was adjourned for a month.

7. On the next hearing, the O.I.O bearing No.20 of 2008 dated 16/09/08 was produced. According to the said O.I.O. the main charge regarding the disallowance of the input tax amounting to Rs.434,160/- was dropped. Only two penalties u/s 33(1) amounting to Rs.10,000/- and another amounting to Rs.28,080/- u/s 33(19) of the Act were imposed. After some discussion, the Complainant did not press the imposition of the penalties. The matter regarding the Sales Tax part of the complaint stood resolved thus. Under the circumstances, there is no need to discuss the objections raised by the Respondents pertaining to the portion of the complaint which related to Sales Tax.

8. The matter regarding the treatment of the Complainant as a Turn Key Contractor under the Income Tax Ordinance and taxing its receipts under the P.T.R. within the meaning of Section 153(1)(c) of the Ordinance was discussed at length. The M.D. of the Company argued that the Complainant is primarily a manufacturer of asphalt storage system, heating system and dust collection system connected with the said plant. In this regard he produced pictures of various processes of the manufacture.

8.1 Rebutting the claim of the Respondent that it was a Turn Key Project, he stated that the N.L.C's project related to road building involving excavation of the area, filling it with earth, leveling it, compacting with steam road rollers and putting the aggregate base course. The contribution of the Complainant was restricted only to a part of the whole project. Therefore, it was a totally wrong conclusion that the work executed by the Complainant was on turn key basis.

9. The D.R., on the other hand, relied on a case cited as ITA 1356/IB of 1988-89 in trying to prove that it was a turn key project. He also reiterated the points raised in the reply that the contract of the Complainant with N.L.C. involved designing, consultancy and supply of equipment and installation.

10. The case was considered in the light of the arguments, both written and oral, of the two parties. No comments are required as far as the Sales Tax decision made through the O.I.O. bearing No.20/2008 dated 16/09/2008 is concerned because the Complainant had withdrawn its objection, in the matter.

11. Before the case of Income Tax is taken up on merits, the preliminary objection raised by the Respondent is examined. The provisions of Section 9(2) of the F.T.O. Ordinance are to be read in conjunction with Section 2(3) of the F.T.O. Ordinance. The assessment order for Tax Year 2006 u/s 122(5) dated 20/05/2008 was contrary to law, rules and regulations and perverse, arbitrary and unreasonable as would be apparent from the following paragraphs:

The definition of maladministration is wide and inclusive in nature and includes decisions, processes, recommendations, act of omission or commission which are contrary to law, rules and regulations and or perverse, arbitrary, unreasonable, unjust, biased, oppressive or discriminatory. Therefore, it is held that the Respondent committed

maladministration in passing the impugned assessment order and for this reason the jurisdiction of the F.T.O. is not ousted. The preliminary objection is overruled.

12. The nature of the business of the Complainant had been studied in depth. It is clearly that of a manufacturer and falls outside the purview of the P.T.R. within the meaning of Section 153 (6A) of the Ordinance. The fact that the Complainant entered into a contract with N.L.C. did not change the nature of its business.

13. The case decided by the I.T.A.T. relied upon by the Complainant was also studied. It defined the Turn Key project as follows:

> *"A turn key project is the one in which the contractor completes the project at his own in respect of every thing including starting from laying of foundation to set up the undertaking till is ready for production.."*

As has been pointed out above, the work of road building involved number of stages and works. The contribution of the Complainant was only limited to providing the asphalt storage system, heating system and dust collection system. Obviously different works were assigned to different persons and the work performed by the Complainant could not be termed as a turn key project.

14. In view of the above discussion, it is recommended that:

i. The competent authority to rescind the assessment order dated 26/05/2008, as the case of the Complainant fall outside the P.T.R.

ii. Examine the case afresh under the provisions of Section 122 of the Income Tax Ordinance by providing the opportunity to the Complainant and examining all the aspects of the Return of Income.

iii. Compliance of the above-mentioned recommendations should reach this office within 60 days of their receipt by the Chairman, F.B.R.

(JUSTICE (R) MUNIR A. SHEIKH)
Federal Tax Ombudsman

Dated: -2008

BEFORE THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

COMPLAINT NO.1228/2007

M/s Chiniot Enterprises (Pvt) Ltd.,
Haripur. ...Complainant

Versus

Secretary,
Revenue Division,
Islamabad. ...Respondent

Dealing Officer: ...Sayed Mohsin Asad, Adviser

FINDINGS/DECISION

Present: Mr. Sarwar Jadoon & S. Nazir for the Complainant
Mr. Sharifullh, Law Officer for the Respondent

Maladministration in the instant case has been alleged on grounds that a sales tax refund claim amounting to Rs.1,27,112/- filed by the complainants was rejected on grounds that during the verification of the supplier's invoice furnished with the refund application by the complainants, the computer system (STARR) indicated that the supplier, M/s Owais Trading Company, had an "abnormal profile". This led to the rejection of their refund claim on grounds that were legally not tenable.

2. It was *inter alia* as followed:-

(i) M/s Chiniot Enterprises (Pvt) Ltd were engaged in the manufacture of vegetable ghee, oil and allied products. They filed the sales tax refund claim for the tax period May-2005 for the receipt of the supply of tinplate sheets issued by M/s Owais Trading Company on which they paid sales tax amounting to Rs.1,27,112. They paid the tax amount through banking channels through Habib Bank. During the verification of invoice the STARR system indicated that the registered supplier showed the "abnormal profile".

(ii) An ex-parte order in original No. 242/2007 dated 07-02-1007 was issued by Assistant Collector Sales Tax refund Peshawar in which the refund claim of the complainant was rejected. The complainant filed an appeal against the order of the Assistant Collector before the Collector(Appeal) on 03-03-2007.

(iii) Numerous dates were given to enable the department to seek clarification from STARR but the STARR up to the last date of hearing i.e. 28-08-2007 failed to supply information and to provide the clarification asked for by the Collector Appeal. Subsequently the Collector Appeal after hearing both the sides issued order in appeal No. 502/2007 but dispatched vide C. No. ST-90/2007/1726 dated 12-09-2007 which was time barred by 25 days.

(iv) The Collector Appeal passed the order 502/2007 in which it was decided that since the STARR system raised objection on the relevant invoice as such the claim was not admissible. It was pertinent to note that in terms of Sales Tax Rules 2006, at Rule No. 39(4) it has been provided that the admissible refund claim received with supporting documents shall be sanctioned and paid in accordance with the provision of Sales Tax Refund Rules 2002. Section 8(A) was not applicable in this case as it was introduced in 2006. The unit provided the proof of payment by submitting the photocopy of Cheque dated 10-05-2005.

(v) Bank statement and supporting documents showed that the complainants complied with the provision of section 73 of the Sales Tax Act, 1990 on part of the complainant and it was for the department to reject their claim by providing contradictory proof thereof. In so far as the complainants were concerned they could show that they had received the supply, made by the importers, also made the payment through proper channel to the registered person, the said person was neither fake nor untraceable or black listed at the time of transaction.

3. It was prayed that the respondent department be asked to show as to under which provisions of law applicable at the time of issuance of the particular invoice dated 05-05-2005 the department was empowered to raise objection for non-payment of sales tax refund.

4. In response to notice under section 10(4) of the FTO Ordinance to the respondents, it was stated as follows:

(i) The appeal in the instant case was filed on 03-03-2007.

(ii) Due to non-completion of hearing proceedings within the time limit of ninety days, the Competent authority extended the same for further ninety days in terms of proviso of section 45-B of the Sales Tax Act, 1990.

(iii) The expiry of extended period was 02-09-2007, whereas the judgment was passed on the same dated i.e. 28-8-2007 at Camp office, which was dispatched on 12-09-2007, meaning thereby that the case was decided within the time limit.

(iv) The plea taken by the department from the very first hearing of the case, was that the STARR System showed Abnormal Profile of the complainant and the same remained unchanged throughout the entire litigation period. Further, the department never submitted any application for seeking adjournment so as to ascertain further the reasons for the deficiencies mentioned in the aforesaid STARR report. The matter regarding objection raised by STARR System had already been taken by this office with Collectorate of Sales Tax & Federal Excise, Karachi.

(v) The refund claim was rightly rejected in accordance with the Sales Tax Refund Rules, 2002. Under rule 6 of SRO 575(I)/2002 read with section 10(4) of the Act, the Officer Incharge refund in the matters of refund is under obligation to rely upon the documents/records which are necessary for his satisfaction. The report generated by the STARR System regarding "Abnormal Profile" of its supplier was the factor which bound the officer incharge refund not to sanction the refund of the complainant.

(vi) During the pendency of the case, this office had already initiated the process of verification from the Collectorate of Sales Tax & Federal Excise, Karachi. Accordingly, on 11-05-2007, 28-06-2007 and 01-08-2007, letters were forwarded to the said Collectorate but in response to the above letters, reply dated 29-8-2007 was received.

This Collectorate initiated verification of suppliers of M/s Owis Trading Co. Room No. 14, 1st Floor Al-Yousaf Chamber Nes Chaili Karachi having sales tax registration No. 12-00-4000-112-19. Several noticed dated 18-07-2007, 30-07-2007 has been issued to unit and 29-8-2007 for requisition of sales tax record. The response is still awaited.

The complainant has provided photocopies of documents but failed to provide the original record of Bank Statements as required under Section 73 of the Act.

5. It was prayed that keeping in view the submissions that the provisions of section 8 and section 73 of the Act in the matters of refund, which were mandatory in nature having overriding effect and bank statements along with other supportive documents as required under rule 6 of SRO 575(I)/2002, were necessary for the satisfaction of officer incharge refund as the same are the basic record showing the genuineness and admissibility of the claim, therefore, the refund claim of the complainant had rightly been rejected, the complaint being devoid of merits may be dismissed.

6. Case has been considered in the light of the arguments made and the facts on record. It is evident on the face of the record that the refund claim of the complainant was rejected because STARR System of processing pointed out that the supplier had an "abnormal profile". The proceedings held in the case relied only on this basic information. There is, however, no provision in the Sales Tax Act, 1990 that supports the

action that in case the STARR system indicates a routine observation of "abnormal profile" the claim has, perforce, to be rejected.

7. It is understandable that necessary conditions have to exist before the refunds are allowed but the sole reliance on the indications given by a computer programme would not be sufficient ground for rejection, more so because the terms "abnormal profile" has no where been defined.

8. At the time of hearing it was argued on behalf of the complainant that a concept of value addition was introduced vide the Finance Act SRO No.560(I)/2006. Whereby value addition on imports had to be computed in case these were supplied locally in order to qualify for refund. But this condition could be made applicable only to cases that were registered after the promulgation of the Finance Act, 2006 which introduced this change in the Rules. The refund claim as made for the tax period May, 2005, hence it was no applicable in case of the supplies made before the said introduction.

9. It is further observed that supply in the instant case was made by a commercial importer who was duly registered with the Sales Tax department and was, admittedly, submitting tax returns under the prescribed procedure on regular basis. The complainant had also furnished copies of sales tax invoices dated 05-05-2005 in which an amount of Rs.427,112 had been paid as sales tax. This sales tax invoice indicates the sales tax registration number of the supplier. The complainant in addition has also furnished a copy of crossed cheque issued in favour of Owais Trading Company establishing the fact that the transaction has been carried out through regular banking channel as required u/s 73 of the Sales Tax Act, 1990.

10. For the reasons as indicated above the decision to reject the claim of the complainant appears to have been taken without taking into consideration the full merits of the case. Maladministration has accordingly been established in terms of section 3(i) (a) (b) & (c) of the FTO Ordinance.

11. It is accordingly recommended:

i) that the refund claim made by the complainant shall be deemed to be pending and shall be considered in the light of the aforementioned findings at Para 6-8 ante not withstanding the "abnormal profile". In this exercise the complainant shall also be associated.

ii) Action to be completed in period of one month on the date of receipt of the recommendation.

(JUSTICE (R) MUNIR A. SHEIKH)
Federal Tax Ombudsman

Dated: -2008

BEFORE THE FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE, LAHORE

COMPLAINT NO.1263/2008

M/s Shahnawaz Textiles Ltd.,
6-KM, Manga Road, Raiwind,
Lahore. (Through Mr. Rashid Amjad Khalil, Director) ...Complainant

Versus

The Secretary,
Revenue Division,
Islamabad. ...Respondent

Dealing Officer: ...Mr. Muhammad Akbar, Adviser

FINDINGS/DECISION

Present: Mr. Muhammad Mehtab Chughtai, Advocate for the Complainant.
Mr. Nadeem Ahsan, D.C, Sales Tax, Lahore for the respondents.

The complainant claimed refund under section 10 of the Sales Tax Act, 1990 for the tax period September 2007 vide sales tax return filed on 23.10.07. On 13.12.07, the complainant filed complete documents, which were verified by the concerned Deputy Superintendent Sales Tax and were forwarded for feeding of soft copy (RCPS) in the department's computer for further processing. The computer staff informed the complainant that the data of return was not available in the computer system. The complainant had e-filed sales tax return in time, got its acknowledgement from the CBR's website but sales tax return data was not available in department's computer at the time of submission of refund file. On 18.12.07, the complainant requested the D.C (Refunds) to resolve the issue of non-availability of data. The D.C marked its request to computer programmer. The computer section advised the complainant to re-submit sales tax return and seek condonation of delay in submission of refund claim under section 74 of the Sales Tax Act, 1990. The application was submitted to the Collector of Sales Tax on 18.12.07 for condonation of delay, which was due to problem with department's computer. The complainant also applied for permission to file revised return on the same date. The Collector had the authority to extend the time for 30 days in case of justified delay under sub-rule (2) of rule 28 of the Sales Tax Rules, 2006. Although there was no change in the data contained in the original return and in the re-submitted return, the complainant provided the documents on 22.04.08 to the concerned D.C for verification of the same in connection with new return. To complainant's surprise, it received a letter from D.C (Refunds) Sales Tax on 08.05.08 intimating that the department had vide letter dated 31.01.08 intimated the complainant disapproval of its application for extension in filing of refund claim under SRO.1204(I)/07 dated 11.12.07, which was received back

un-delivered. The D.C acted beyond jurisdiction because the complainant had never filed request under the aforesaid SRO. He acted without jurisdiction as the issue of condonation was pending before the Collector. The Collector's failure to exercise his powers under Refund Rules and under section 74 of the Sales Tax Act, 1990 amounted to 'maladministration'. In a number of similar cases the Honourable Supreme Court, High Court and Appellate Tribunal had declared actions of the department void and unjustified being illegal, beyond jurisdiction and without lawful authority. In support of his contention, the complainant cited Lahore High Court's decision in the case of M/s Ehsan Yousaf Textiles Mills Ltd versus A.C. Sales Tax (GST 2003 CL 338), Lahore High Court's judgment in the case of Food Consultant Limited versus Collector C.E and S.T. Lahore and two others (GST 2004 CL 507) where all proceedings and consequent actions were adjudged to be unlawful and without lawful authority, Sindh High Court Karachi's judgment in NP Water Proof Textile Limited versus Federal of Pakistan through Secretary Revenue Division and FBR Islamabad and another GST 2005 CL 23 where it was held that the FBR should take serious and immediate measures to ensure that the actions taken by the tax official were strictly in accordance with law and Appellate Tribunal, Lahore's judgment in appeal No.181 to 185/03 and 1277/03 where it was held that the appeals filed by unauthorized persons were not maintainable. It was not a fault of the complainant that the data of the return did not appear in the department's computer at the time of submission of refund claim. The computer staff did not take any action to redress the issue. The Collector did not use the authority vested in him under the Refund Rules and section 74 of the Sales Tax Act, 1990 to redress complainant's grievance. The respondents may be directed to issue necessary orders for condonation of delay and entertain the refund claim. D.C's order conveying disapproval of application seeking extension in time for filing refund claim may be declared as being without lawful authority.

2. In reply, the Collector of Sales Tax and Federal Excise, Lahore has submitted that after manual verification the documents were not forwarded to the department rather the same were handed over to the complainant to enable it to complete further steps. Non-appearance of the particulars of monthly sales tax return might have been either due to improper dispatch of the same by a registered person or due to a fault in the system through which returns were e-filed. The complainant was required to follow the instructions displayed at the refund receipt counter regarding manual submission of claim. The complainant did not submit refund documents manually. Since the last date for filing refund claim supportive documents/RCPS had not expired, the complainant was asked to file the refund claim manually. The application for condonation was filed on 18.12.07. The complainant had conceded that he was directed to resubmit the return, alongwith data of return for 09/07. To resolve the problem the complainant was addressed on 31.12.07, at the given address, to submit the requisite documents for revised return but he did not respond. A reminder was issued on 09.04.08 which was responded to on 22.04.08 when the complainant informed the D.C that the complainant had shifted his office to another place. In the meantime a period of 90 days for which the Collector was empowered under section 26(3) of the Sales Tax Act, 1990 to grant permission for

filing revised return had expired. The FBR vide SRO.1204(I)/07 dated 11.12.07, issued under section 74 of the Sales Tax Act, 1990, had empowered the Collector of Sales Tax to condone the delay, upto 31.01.08, in filing of refund claims supportive documents/RCPS for the tax period from 07/06 to 09/07 with conditions and restrictions mentioned therein. Since SRO was issued on 11.12.07 and the complainant had requested for condonation of delay on 18.12.07, therefore, the complainant's application was regretted on 31.01.08 because of submission of revised return. The complainant was informed of the decision vide letter dated 31.01.08 because earlier intimation was received back undelivered. The complainant in his application submitted earlier had requested for revised return but later on changed the stance by saying that it did not want any change of particulars/data in the return for September 2007. This was done to challenge the decision of the competent authority which had disapproved the application for condonation of delay. The respondents complied with the provisions of the SRO while dealing with complainant's request. The competent authority had disapproved the request of the complainant. The D.C (Refunds), being member of the Committee constituted for the purpose, had been authorized by the competent authority (Collector) to convey the decision. That is why in the letter addressed to the complainant it was mentioned that the competent authority had disapproved the complainant's application for extension in filing supportive documents/RCPS relating to refund claim for the tax period 09/07. The complainant not only failed to submit the sales tax return properly but also did not submit refund claim supportive documents manually nor did he provide the record for revised return in time. It was all complainant's fault for which the respondents cannot be blamed. The complainant's case for condonation of delay was no more pending in the Collectorate. The complaint may be rejected.

3. During the hearing, the AR reiterated the arguments advanced in the written complaint. He added that according to Rule 28(2) of Sales Tax Refund Rules, 2006 monthly sales tax return filed by the claimant had to be treated as refund claim once all the supportive documents, including the requisite information in the format/software, were received. The complainant submitted the software also at the time of submission of other documents. The aforesaid rule 28 of the said Rules also laid down that refund supportive documents would be submitted within 60 days of the filing of return. The complainant submitted the return on 23.10.07 and supportive documents on 13.12.07 within sixty days. However, the refund file was returned by the department to the complainant on the ground that its return, which was e-filed did not appear in the department's system. On 17.12.07, the complainant addressed the D.C (Refunds) to resolve the problem. The D.C marked the papers to the computer programmer and the computer programmer verbally advised the complainant to submit a revised return as the data of return earlier submitted and acknowledged was not available in the system and also apply for condonation of delay in filing of refund claim. According to sub-rule (2) of rule 28 of Refund Rules, 2006, the Collector was competent to condone the delay in submission of refund claim for 30 days. On 18.12.07, the complainant requested the Collector to condone the time for one month to enable the complainant to file refund claim for the month of September 2007 but there was no response to this letter. In

response to department's letter dated 19.04.08 calling for documents in connection with revision of return the complainant submitted the documents 22.04.08. Since there was no change in the data the revised return was never submitted nor did the department allow filing of revised return yet the complainant's application for extension in filing supportive documents/RCPS relating to its refund claim for September 2007 was disapproved on the ground that the justification given by the complainant regarding delay in filing the said claim within stipulated period did not fall in the categories of reasons mentioned by the FBR in SRO.1204(I)/07 dated 11.12.07. The D.C who communicated disapproval was not competent to do so as the power vested in the Collector as mentioned earlier. The aforesaid SRO did include non-working of computer system in the Collectorate as one of the grounds for allowing extension, if delay in filing of the claim was due to it. The Collector was competent under the SRO, section 74 of the Sales Tax Act, 1990 and the Refund Rules [Rule 28(2)] to condone delay. He should have accepted complainant's request for condonation, especially when the return and the refund claim had been filed within the prescribed time limit.

4. The DR submitted that the complainant had filed application on 18.12.07 for condonation of delay in submission of refund claim under section 74 of the Sales Tax Act, 1990. It also applied for permission to file revised return again on 18.12.07. On 31.12.07 the complainant was addressed to provide relevant records to examine the question of revision of return. The letter was dispatched at the given address but there was no response. The case was initially reviewed favourably but later on it was regretted on the authority of the Collector. At the relevant time the computer was not working properly. The complainant should have submitted refund claims manually as was being done by the other parties. The DR placed on record specimen of some of the parties, which had submitted claims manually. The AR argued that the letter was not received by the complainant. He submitted that the complainant was again addressed on 09.04.08, which letter was responded to. The complainant provided documents on 22.04.08 in connection with revision of return. The AR emphasized that there was no change in the data of return nor was the filing of revised return ever allowed.

5. The arguments of the parties and the record of the case have been considered and examined. The complainant contends that (i) it had e-filed its sales tax return for the month of September 2007 on 23.10.07, claiming refund of Rs.95788/- and the same was duly acknowledged by E-Officer, sales tax and federal excise computerized system, FBR, vide acknowledgement dated 23.10.07, (ii) subsequently, on 13.12.07 the complainant submitted supportive documents for the said refund claim to the Collectorate, which documents were duly verified by the Deputy Superintendent Sales Tax Incharge, (iii) the documents were returned to the complainant on the ground that the data of return was not available in the department's system, (iv) on 18.12.07 the D.C (Refunds) was requested through a written letter to resolve the matter as the complainant had submitted the return and data within time. The D.C referred the matter to the computer programmer, who asked the complainant to file revised return and also apply for condonation of delay, (v) as advised, the complainant on 18.12.07 applied to the Collector for permission to re-submit the return and also to condone delay in filing of refund claim, (vi) the complainant

submitted documents in connection with revision of return on 22.04.08 in response to D.C's letter dated 09.04.08, (vii) the D.C (Refunds) on 08.05.08 intimated disapproval of extension in filing of refund claim despite the fact that the complainant had originally filed both sales tax return and the refund claim within time as prescribed in the rules, (viii) it was not complainant's fault that the department's computer was not working and had failed to upload data of complainant's return.

6. The respondents, on the other hand, contend that (i) the complainant applied to the Collector on 18.12.07 for permission to revise the return without providing the connected record, (ii) the permission for condonation of delay in filing of refund claim was not granted as the complainant had applied for revised return, (iii) according to the provisions of SRO.1204(I)/07 dated 11.12.07 condonation facility was not available in cases of revised returns, (iv) the complainant provided the required documents in connection with permission for revised return on 22.04.08 when the period of 90 days prescribed for granting permission for revised return had expired. The case was sent to the FBR for permission of revised return.

7. The scrutiny of the case record reveals that the complainant e-filed its sales tax return for the month of September 2007 on 23.10.07, claiming refund of Rs.95788/-. The FBR acknowledged receipt thereof (the acknowledgement receipt is on record). Subsequently, the complainant submitted refund supportive documents to the Collectorate on 13.12.07 within sixty days of the filing of return as required under the rules. These documents were duly verified by the Deputy Superintendent Incharge. The complainant also vide letter dated 17.12.07 requested D.C (Refunds) to let them file refund claim and resolve the issue as the complainant had already submitted its sales tax return, which was duly acknowledged by the FBR. The D.C marked the file to the computer programmer who advised the complainant to file revised return and also apply for condonation of delay. The complainant subsequently filed application seeking permission to file revised return and condonation of delay in filing of refund claim. The department has not denied that the complainant was advised by the departmental official to file revised return and seek condonation of delay, nor have they denied the receipt of return, which was filed on 23.10.07 and the submission of refund supportive documents, which were submitted on 13.12.07 within the prescribed time limit. Instead of advising the complainant to apply for revised return and to seek condonation of delay the respondents should have after receiving the refund supportive documents kept the refund file with themselves and should have waited for uploading of data of return in the computerized system of the department, which return had been received and acknowledged by the FBR. On appearance of data in the computerized system of the department, the respondents could have processed the refund claim and decided it on its merit. The respondents failed to do so. Had they done so, they would have found the complainant's claim as filed within time i.e. within sixty days of the filing of return without involving any delay or condonation thereof. Unfortunately, that did not happen. The complainant was advised to seek permission for filing revised return and to seek condonation of delay in filing the refund claim. It was not complainant's fault that the data of original return submitted by it was not uploaded in the department's computer and

the refund supportive documents submitted by the complainant were not retained by the department for processing the refund claim. Despite this, complainant's request for condonation of delay was rejected. While correspondence for permission to allow filing of revised return continued between the respondents and the complainant, its application for condonation of delay was considered and rejected under SRO.1204(I)/07, which provided that the extension shall not be allowed by the Collector to registered persons filing refund claims against revised returns. In the first place, the refund claim should have been entertained and processed as both the original return and the supportive documents had been submitted by the complainant within time and decided on its merits. Secondly, even if the department insists that there was delay in submission of refund claim, it was somewhat harsh to disapprove complainant's application for extension in time for filing the claim on the ground that the justification given by it regarding delay in filing the said claim within the stipulated period did not fall in the category of reasons mentioned by the FBR in SRO.1204(I)/07 for condonation of delay. The SRO empowers the Collector of Sales Tax having jurisdiction to allow extension upto 31.01.08 for furnishing refund claims pertaining to tax periods for 07/06 to 09/07 on the prescribed software alongwith supportive documents under Rule 28 of the Sales Tax Rules, 2006, if delay in filing of the claim and documents was due to:

(a) incorrect feeding of returns by the department.

(b) non-working of computer system in Collectorate or there was some error in the refund claim preparation software (RCPS).

(c) incomplete data in Computerized Risk-based Evaluation of Sales Tax (CREST) System: or.

(d) delay in getting certificate documents from other department or agencies despite the fact that the registered person applied for the same in time.

Provided that extension shall not be allowed by Collector to registered persons filing refund claims against revised returns and to blacklisted registered persons.

8. Clearly, the complainant's claim of refund got complicated because of the non-working of department's computer system as despite the facts that (i) the return was e-filed and it was acknowledged the same was not uploaded in the computerized system as a result of which the return data was not available for linking up the refund claim and (ii) the complainant was misguided by the staff to file revised return. The competent authority, while dealing with complainant's case, should have considered the fact that the complainant had e-filed the original return in question and the supportive documents, which documents were also verified, within time i.e. within sixty days of the filing of return and entertained the claim for processing on merits. Even if the complainant's case for condonation of delay was to be considered under the aforesaid SRO then the condition at item (b) of the SRO.1204(I)/07 was attracted in the complainant's case because it was due to non-working of department's computer system that the data of

return was not available in the system for linking up complainant's refund claim. The respondents' contention that condonation of delay was not allowed as the complainant had applied for revision of return is not tenable because the department had not yet approved complainant's application for filing revised return and complainant had practically not filed refund claim against the revised return, which had to be first approved by the department. Clearly, there is 'maladministration' on the part of the respondents in that the complainant's e-return, though submitted by it within time, was not uploaded in the department's computer and the supportive documents, though submitted within time and verified by the Deputy Superintendent Incharge were returned and not retained for processing complainant's claim after uploading the data of return in department's computer system. Thus in the first place, no delay was involved in complainant's case requiring condonation as the complainant had filed the return as well as the supportive documents within the prescribed period of sixty days of the filing of return and, secondly, even if the department felt that that there was delay in submission of claim (for no fault of the complainant), the complainant's case attracted item (b) of SRO.1204(I)/07 for grant of condonation thereof, especially when the department had not yet granted the complainant's request for filing the revised return. Unfortunately, the department failed to handle the case fairly, justly and competently, which amounts to 'Maladministration'. Accordingly, it is recommended that the Revenue Division direct the competent authority to:

i. Re-open D.C (Refunds)' order dated 31.01.08, rejecting complainant's application for condonation of delay in filing of refund claim, under section 45A of the Sales Tax Act, 1990, set aside the same and entertain complainant's refund claim on the basis of original e-return and the supportive documents, which were submitted by the complainant within sixty days of the filing of the return, as prescribed under the rules. Even if the case is required to be examined and decided in terms of the provisions of SRO.1204(I)/07 dated 11.12.07, the complainant should be allowed the benefit of item (b) of the aforesaid SRO (non-working of department's computer system), especially when the respondents had not yet approved complainant's application for filing revised return. Needless to say, the refund claim, once entertained, would be examined and decided by the respondents on its merits in accordance with the provisions of law.

ii. Compliance be reported within 30 days of the receipt of this order.

(JUSTICE (R) MUNIR A. SHEIKH)
Federal Tax Ombudsman

Dated: -2008

BEFORE THE FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE, LAHORE

COMPLAINT NO.1364/2007

M/s Omer Electronics,
6-Link Mcleod Road,
Lahore. ...Complainant

Versus

The Secretary,
Revenue Division,
Islamabad. ...Respondent

Dealing Officer: ...Mr. Muhammad Akbar, Adviser

FINDINGS/DECISION

Present: Mr. Shaukat Ali Ch. Advocate, for the complainant.
Mr. Tahir Habib Cheema, A.C. (Refunds), Sales Tax, Lahore for the respondent.

The complainant filed a refund claim of Rs.13,73,098/- on 16.07.2001 through sales tax return-cum-payment challan for the month of June 2001 in terms of Refund Rules, 2000. According to rule (4) of the said Rules monthly tax return was treated as refund application if supportive documents were received by the department. However, in the event of non-receipt of the documents, the officer Incharge was required to call for the same but he failed to do so. As a result, refund was not processed. An audit report dated 30.11.02 was issued alleging that the complainant had made purchases from M/s Poly Cott Weavers but the payment of Rs.91,53,986/- against those purchases was made after 120 days in violation of the provisions of section 73 of the Sales Tax Act, 1990. Thus an amount of Rs.13,73,098/- claimed as refund was held as inadmissible and recoverable under the appropriate provisions of law. Based on the audit report, the D.C. issued show cause notice dated 11.11.04. The complainant contested it vide reply dated 01.12.04. The D.C. (Adjudication) deciding the case vide O-I-O No.53/05 dated 21.05.05 vacated the show cause notice with the observation that payments made on purchases within 180 days could be condoned by the Collector and refund allowed. The complainant submitted the supportive documents to the D.C on 07.04.06. The D.C issued another show cause notice dated 20.11.06, which too was contested. The D.C vide Order-In-Original No.247/06 dated 30.12.06 held that (i) since basic source or origin of input was not verifiable, refund was not admissible, (ii) refund for the month of June 2001 was filed in 2006 after four and half years creating complications for the department to ascertain the veracity of input tax against invoices issued by the supplier, (iii) FTO's findings in complaint No.1345/01, which was cited by the complainant, were not

relevant. The D.C, therefore, rejected the claim and also imposed a penalty. The impugned O-I-O No.247/06 dated 30.12.06 was unlawful. The D.C had failed to consider or scrutinize the facts. The first show cause notice dated 11.11.04 was vacated by the adjudication officer vide O-I-O No.53/05 dated 07.04.06. There was no delay on the part of the complainant in filing the refund application. The delay, if any, was on the part of the respondents as they issued show cause notice on 11.11.04. In complaint No.1345/01 the FTO had held that the Collector should pursue the recovery of sales tax from the companies on which the legal responsibility lay under section 3 of the Act, being supplier of yarn. The D.C should have complied with FTO's decision. Non-acceptance of FTO's decision in the aforesaid complaint amounted to 'maladministration'. The respondents should have taken action against M/s Poly Cott Weavers for recovery of unpaid sales tax amount if it had failed to pay the same. The complainant had paid sale price through banking channels. The imposition of 100% penalty was unlawful. Earlier the complainant had prayed before the FTO through complaint No.361-L/07 dated 01.03.07 that O-I-O NO.247/06 dated 30.12.06 be declared null and void. The FTO decided the complaint vide findings dated order dated 05.05.07 directing the complainant to pursue the appeal before Collector (Appeals). The Collector (Appeals) vide appeal order dated 27.01.07 also ignored FTO's order in complaint No.1345/01. Refund could not be denied to a buyer if the supplier failed to discharge his legal obligation. The Collector (Appeals) did not consider this position and rejected the appeal on the ground that the said supplier did not exist, which made the basic source of input tax unverifiable. The adjudicating officer had also ignored FTO's findings contained in complaint No.1345/01. The department's viewpoint was that recommendation contained in para (ii) of FTO's findings in the aforesaid complaint disqualified the complainant from taking advantage of the judgment because it could not provide any documentary evidence to establish that fabrics were physically transferred from the supplier's premises to that of the complainant. In support of its contention the complainant cited various orders passed by the Appellate Tribunal in different sales tax appeals, which too were ignored. The physical verification report dated 13.11.06 generated by the A.C and the computer database could not be relied upon, especially when payment was made by the complainant under section 73 of the Sales Tax Act, 1990 against purchases, which were verified, admitted and declared to be valid under O-I-O No.53/05 dated 11.07.05. The department or the Collector (Appeals) did not demand any receipt or bill issued by the transport company to verify physical transfer of goods from the premises of the supplier to the premises of the buyer and subsequently to the port of shipment. Sales tax invoices did not provide any column for mentioning mode of transfer of goods. Board's letter dated 01.01.02, being not statutory, could not be relied upon nor was it provided to the complainant by the department to enable it to file comments thereon. Both the O-I-O and O-I-A may be declared illegal. The respondents may be asked to sanction refund claim of Rs.1373098/- alongwith payment of delayed refund in accordance with the provisions of section 67 of the Sales Tax Act, 1990. Penalty imposed by the adjudication officer may also be quashed being unlawful.

2. In reply, the Collector (Appeals) Lahore has submitted that the complainant should have availed remedy of appeal before the Appellate Tribunal. The documents submitted by the complainant and the citations made by it were duly considered before deciding the appeal. The citations quoted by the complainant had no relevance to the

case. The complainant failed to provide documentary evidence of physical transfer of goods from the account of the supplier to the account of the buyer as recommended in the cited judgment for ascertaining the admissibility of input tax. The complainant could not prove its purchases through physical transportation documents and no body was available to verify complainant's purchases. The input tax remained unverified and was correctly rejected. The responsibility for tracing a non-existent unit was not shifted on to the complainant. However, as the complainant failed to produce any documentary evidence of physical transportation of goods to prove that it had made valid purchases, the appeal filed by it was dismissed. The adjudicating authority in the O-I-O No.53/05 dated 11.07.05 remarked as *"All payments made on purchases within 180 days may be condoned by the concerned Collector and refund allowed accordingly if the same was denied only due to contravention of section 73 of the Sales Tax Act, 1990"*. The scrutiny of the refund claim filed by the complainant revealed that the claim was not according to the parameters fixed under "STARR" because computerized database and physical verification report raised objections on the genuineness of the purchases. Refund Sanctioning Authority had relied on computerized database and physical verification report issued by the Assistant Collector (Physical Verification Cell), Lahore. It was necessary as per rules and law to ascertain the veracity of input claimed. The complainant was duty bound to file refund claim alongwith complete supportive documents to the relevant refund section but it filed its claim after 4-½ years. The complainant did not qualify for the conditions given in the citations. The citations quoted by the complainant were not applicable in its case for reasons recorded in the Order-In-Appeal No.213/ST/2007 dated 09.10.07. The FBR had vide letter dated 01.01.2002 clarified that cases where some invoices were found fake refund was not admissible. The complaint may be dismissed.

3. In his reply, the Collector, Sales Tax, Lahore has submitted that the complainant had filed refund claim for the tax period June 2001 in March 2006 after a delay of over 4-½ years, without any justification. The input tax was claimed against invoice of M/s Poly Cott Weavers, which did not exist at the declared address. Since the supplier was not traceable for verification of the genuineness of transaction, the claim was liable to be rejected. Admissibility of the input tax rested on verification of the supplier. Refund could not be allowed on invoices, which were unverifiable. The impugned O-I-O was passed in accordance with the provisions of law. The O-I-O No.53/05 dated 11.07.05 only settled the allegation of violation of the provisions of section 73 of the Sales Tax Act, 1990 and had no relevancy to the instant case. The complainant, on the strength of said judgment, filed refund claim for the period June 2001. Upon verification it was found that the sole supplier of the complainant M/s Poly Cott Weavers was non-existent. The complainant's supplier had declared heavy transactions as per computer profiles and never deposited any amount into the government treasury throughout its business history. The complainant created legal complications for the department to ascertain the veracity of input tax against the invoice of its supplier. FTO's judgment in complaint No.1345/01 filed M/s Arzo Textile Limited Faisalabad had no relevance in the instant case. The complainant's refund was based on unverifiable invoice of the supplier. The penalty was legally imposed. The perusal of FTO's judgment in complaint No.1345/01 revealed that the recommendation contained in para 2(i) disqualified the complainant from taking

advantage of the judgment because it did not provide any documentary evidence to the department that could show that fabrics were physically transferred from the supplier's premises to buyer's premises. The supplier was not traceable. The department fulfilled its responsibility by trying to trace out the supplier to ascertain the genuineness of the transaction. The Appellate Tribunal's judgment dated 21.06.07 in sales tax appeal No.797/LB/05 was irrelevant because A.C (Physical Verification Cell) vide letter dated 13.11.06 issued physical verification report of the supplier which showed that the supplier was not traceable. The second order cited by the complainant i.e. No.2816/LB/01 was also not relevant as the period involved therein differed from the period involved in the present case. The order referred as 2007 PTD (Trib 445) Sales Tax Appeal No.171/05 decided on 08.10.05 was also not relevant. Board's letter dated 01.01.02 was clear regarding inadmissibility of refund/input tax against supplies made by suspect units. The complaint may be dismissed being devoid of merit.

4. Arguing the case the AR reiterated the arguments advanced in the written complaint. The complainant applied for refund vide return for the month of June 2001 on 16.07.01. If the complainant had not submitted the supportive documents then the officer Incharge could have called for the same in terms of rule 4 of the Refund Rules, 2000, which were applicable till 2003 but he did not do it. The department's contention that it was not for them to call for the supportive documents was wrong. They used to call these documents (see specimen of letter issued by the respondents to M/s Al-Macca Oil Mills calling for original supportive documents). The supplier M/s Poly Cott, Lahore existed upto 2003. It was operative even now. According to department's own record the supplier filed return upto June 2003. The AR submitted that no sales tax was paid by the supplier because it had a 'carry forward', which it could have adjusted against its next month's consumption. The complainant had paid sales tax through banking channels. The respondents checked through audit the records of the complainant. At the time of making purchases the supplier was neither suspended nor blacklisted. The claim was filed in time. The respondents took up a period of 4-½ years for conducting audit and adjudication. The complainant submitted the supportive documents immediately upon issuance of O-I-O No.53/05 dated 21.05.05. The respondents issued another show cause notice after seven months. The contention that the supplier did not exist was incorrect. In support of its contention the complainant argued that the respondents should pursue recovery of sales tax from the supplier and it cited FTO's decision contained in complaint No.1345/01 where it was ruled that the department should pursue the recovery from the supplier at their own end. As to the physical transfer of goods from supplier's premises to complainant's premises the AR submitted that at no stage the respondents asked for transportation documents. The complainant was a commercial exporter and the goods were taken directly to the Dryport. The AR added that if the relevant documents were not supplied the respondents could have asked for the relevant documents and the complainant would have supplied the same to establish that the goods were physically transferred from the supplier's premises to the complainant's premises. The shipping bills showed the vehicle number and the transfer of goods from the premises of the supplier to the Dryport. The complainant had relied upon Appellate Tribunal's decision reported as 2007 PTD Trib 439 where it was ruled that mere alleged absence from the business premises or un-traceability/non-existence of the supplier could not be made a ground to

Honourable Federal Tax Ombudsman with the Officers and Staff of the Federal Tax Ombudsman Secretariat, Regional Office, Lahore

reject the refund claim of the registered person but the same was ignored by the respondents.

5. The DR submitted that refund was always of the money deposited in the first instance. In the instant case there was no deposit of sales tax and as such the question of refunding the same did not arise. The supplier and the invoices issued by it were required to be verified but the supplier was non-existent. The complainant should have provided evidence to establish the physical transfer of goods from the supplier's premises to that of the complainant.

6. The complainant's AR offered that he was prepared to help the department in the task of verification of supplier and the invoices issued by it. He also added that the complainant was prepared to furnish the evidence/proof of physical transfer of goods from the supplier's premises to the complainant's premises.

7. The arguments of the two sides and records of the case have been considered and examined. Earlier the complainant had filed complaint No.361-L/07 against O-I-O No.247/06 dated 30.12.06. The complaint was disposed of vide findings dated 05.05.07 with the observation that the complaint was subjudice before a court of competent jurisdiction and the complainant was advised to approach the Collector (Appeals) for obtaining decision on its appeal. The Collector (Appeals) has since decided the appeal. The complaint now filed by the complainant gives the impression as if it was a review application. During the hearing, the AR was asked to indicate FTO's order against which this application (named as Review Application) had been filed. He requested that the application may be treated as a complaint of 'maladministration' against O-I-O No.247/06 dated 30.12.06 passed by D.C and Order-In-Appeal No.213/ST/07 dated 09.10.07 passed by Collector (Appeals). The complainant's AR has also given it in writing that it was only inadvertently that instead of the words "complaint under section 10 of the FTO Ordinance, 2000" the words "review application under section 14(8) of the FTO Ordinance" was written requesting that the same may be treated as complaint against the aforesaid impugned orders. Accordingly, the application is being treated as a complaint of 'maladministration' against the aforesaid impugned orders.

8. The complainant contends that (i) it had applied for refund of input tax amounting to Rs.1373098/-, which was rejected by the respondents arbitrarily, (ii) the complainant had remitted sale price to the supplier inclusive of sales tax through banking channels, the department had verified the same and also accepted and declared it as valid, (iii) at the time of making purchases the supplier was neither blacklisted nor suspended. It was, therefore, not the complainant's fault if sales tax remitted to the supplier was not deposited by it in the treasury, (iv) it was held in FTO's findings on complaint No.1345/01 that the Collectorate of Sales Tax should pursue recovery of sales tax from the suppliers on which legal responsibility lay under section 3 of the Sales Tax Act, 1990, being suppliers.

9. The respondents, on the other hand, contend that (i) refund for the month of June 2001 was filed in March 2006 after a period of over 4-½, which created complications for the department regarding verification of the supplier and of input tax against invoices

issued by the supplier. FTO's order in Complaint No.1345/01 was not relevant as in the instant case the complainant had deliberately delayed fling of refund to create a time lag of years so that verification of input tax could not be got done, (ii) the Collector (Appeals) in his order had with reference to FTO's findings in complaint No.1345/01 given in the case of M/s Arzo Textile Mills Limited had observed that the recommendation contained in para (ii) thereof also disqualified the appellant from taking advantage of the judgment because it did not provide any documentary evidence to the department showing that the fabrics were physically transferred from the supplier's account to that of the complainant's account.

10. The complainant further contends that (i) Collector (Appeals)' observation that aforesaid judgment of the FTO was not relevant because the complainant had filed claim after a period of 4-½ years rendering the department unable to verify the supplier and the invoices issued by it was not tenable because the delay took place not on the part of the complainant but on the part of the respondents who kept on conducting complainant's audit as well as adjudication proceedings against the complainant which lasted for a period of four years, (ii) if the supportive documents had not been submitted the respondents should have as per the proviso to sub-rule (2) of rule 4 of the Refund Rules asked for supportive documents within the specified period, which they failed to do, (iii) as regards Collector (Appeals)' contention that the complainant did not qualify for taking advantage of FTO's judgment because it did not provide any documentary evidence to the department that could show that the fabrics were physically transferred from the supplier's premises/account to the complainant's premises/account, at no stage the sales tax department or the Collector (Appeals) had demanded from the complainant any receipt or bill issued by the transport company to verify the physical transfer of goods from the premises of the supplier to the premises of buyer and subsequently to the port of shipment and as such the observation was unwarranted and beyond the spirit of appeal, (iv) the complainant was, however, willing to provide to the authorities the evidence/documents to establish physical transfer of goods from the supplier's premises to the complainant's premises and it was also willing to help the department verify the invoices and the input tax.

11. A perusal of the impugned O-I-O No.247/06 dated 30.12.06 reveals that while the D.C in the impugned order passed by him has observed that FTO's decision in complaint No.1345/01 had no relevancy to the complainant's case because the complainant had filed refund claim after a period of 4-½ years, without sounding out complainant's point of view on this issue, the Collector (Appeals) upholding D.C"s order has also added in the Order-In-Appeal passed by him that the complainant could not claim advantage of the decision as it did not provide evidence of physical transfer of goods from the supplier's premises to the complainant's premises in line with recommendation No.(ii) contained in FTO's findings in complaint No.1345/01. While the D.C did not call for complainant's explanation about the aforesaid delay of 4-½ years, the Collector (Appeals) did not consider complainant's contention that delay was not on its part but on the part of the department, which consumed a lot of time now conducting audit, now completing verification of complainant's compliance of section 73 of the Sales Tax Act, 1990 and now adjudicating the cases instituted against the complainant nor did he consider

complainant's contention that it had filed the supportive documents soon after the first adjudication was over. As regards Collector (Appeals)' finding that the complainant was not entitled to the benefit of FTO's recommendation because it did not provide documentary evidence to establish transfer of goods from the supplier's premises to that of the complainant in terms of FTO's recommendation (ii) of complaint No.1345/01, it is observed that the Order-In-Appeal does not disclose whether an opportunity or a chance was ever provided to the complainant to produce evidence to establish physical transfer of goods from the supplier's premises to that of the complainant.

12. Ignoring complainant's contentions that (i) it had remitted the sale price inclusive of tax to the supplier and had thus complied with the provisions of section 73 of the Sales Tax Act, 1990, (ii) at the time of making purchases the supplier was neither blacklisted nor suspended and (iii) not providing the complainant at the appellate stage the opportunity or chance to produce evidence to establish physical transfer of goods from the supplier's premises to the complainant's premises constitute acts of 'maladministration'. The complainant was willing to furnish evidence to establish the physical transfer of goods to show that the transaction was genuine and was also willing to help the department verify input tax. In view of the foregoing position, the impugned O-I-O No.247/06 and Order-In-Appeal No.213/ST/07 are not sustainable as these have been passed without taking into consideration the relevant factual and legal position. The aforesaid impugned orders, therefore, need to be set aside for deciding the complainant's case afresh on its merits in accordance with the provisions of law after providing the complainant the opportunity of furnishing evidence/proof of physical transfer of goods from the premises of the supplier to the complainant's premises and also providing it the opportunity to help the department verify the input tax. Accordingly, it is recommended that the Revenue Division direct the competent authority to:

i. Re-open the Order-In-Original No.247/06 dated 30.12.06 and Order-In-Appeal No. 213/ST/2007 dated 09.10.07 under the provisions of section 45A of the Sales Tax Act, 1990, set aside the same and decide complainant's refund case afresh on its merits in accordance with the provisions of law after considering all the arguments of the complainant and providing it the opportunity to help the department verify the input tax and to furnish evidence/proof to establish physical transfer of goods from the supplier's premises to the complainant's premises.

ii. Compliance be reported within thirty days of the receipt of this order.

(JUSTICE (R) MUNIR A. SHEIKH)
Federal Tax Ombudsman

Dated: -2008

BEFORE THE FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE, LAHORE

COMPLAINT NO.1536/2008

M/s Seven Seas Industries,
K.L.P Road,
Sadiqabad. ...Complainant

Versus

The Secretary,
Revenue Division,
Islamabad. ...Respondent

Dealing Officer: ...Mr. Muhammad Akbar, Adviser

FINDINGS/DECISION

Present: Rana Muhamamd Ishaq Khan, Advocate for the Complainant.
Mian Muhammad Lateef, Collector, RTO, and Mr. Nadeem Ahmad, A.C, Sales Tax Multan for the respondent.

The complainant, a cotton ginner, applied for refund of sales tax of Rs.216997/- on 21.07.07 for the period 2006-07. The Deputy Collector, Sales Tax (Refunds) instead of sanctioning the refund issued a show cause notice on 22.10.07 to the complainant alleging that refund claim was time barred as the same was not applied on software (RCPS) within 60 days of the monthly return under rule 28(1) Chapter-V of Sales Tax Rules, 2006. Although the rules meant for cotton ginners were in force but the D.C did not consider complainant's verbal and written contentions and rejected the claim as time barred vide O-I-O No.25/07 dated 01.01.08. He committed 'maladministration' as he had previously rejected the refund claim of M/s Hamid Nawaz and Sons Cotton Ginners and also did not consider the fact that number of other cases were being processed and refunds were being issued subject to furnishing undertakings by the claimants. Mr. Muhammad Lateef, Collector (Appeals), decided the case of M/s Hamid Nawaz and Sons, Cotton Ginners, vide O-I-A No.220/08 dated 07.03.08 on the basis of parawise comments filed by the D.C. In both cases, the allegations incorporated in the show cause notices were the same. It was held in the case of M/s Hamid Nawaz and Sons Cotton Ginners that their case was not time barred and Collector (Appeals) directed the D.C to reprocess the refund claim of the aforesaid unit in the light of Special Procedure for Processing of Refund Claim filed by persons engaged in making zero-rated supply of ginned cotton for the year 2006-07. The Collector (Appeals) did not record the arguments at the time of hearing and did not deal with the case himself. He left everything to Muhammad Ali Gold, Steno/Assistant to Collector (Appeals), Multan who handled the case as he wanted, which was an act of 'maladministration'. In the complainant's case also, respondent Nos.1 and 3 announced that complainant's case would also be decided in the light of O-I-A No.220/08 passed in the case of M/s Hamid Nawaz and Sons, Cotton Ginners. However, the case was decided against the complainant contrary to the verbal

announcement. Respondent No.4, Mr. Sardar Muhammad, Despatcher, with the connivance of respondent No.3, tried to save O-I-A No.630/08 dated 15.05.08 under despatch dated 15.05.08. The O-I-A was delivered to the complainant in the third week of June 2008. It was done to save O-I-A No.630/08 from being barred by time. The despatch record could be seen to determine the actual date of despatch. The impugned O-I-A No.630/08 was liable to be set aside and cancelled as the appeal was filed on 06.02.08 and the impugned order was issued on 15.05.08/15.06.08. The ginners were not governed by Sales Tax Rules, 2006 but were governed by Special Procedure for Ginners 2006-07. The impugned O-I-O No.25/07 dated 01.01.08 and O-I-A No.630/08 may be set aside and cancelled and refund of Rs.216997/- may be ordered to be issued.

2. In reply, the Collector (Appeals) has submitted that the complainant was required to file appeal against the O-I-A before the Customs, Sales Tax and Federal Excise Appellate Tribunal. The FTO had no jurisdiction in cases where legal remedy of appeal was available. In this regard section 9(2) of the FTO Ordinance, 2000 was quiet clear. The President of Pakistan in C.No.1270-K/03 had held that since legal remedy of appeal was available to the complainant against Collector (Appeals) under the relevant legislation the FTO had no jurisdiction to investigate the matter. The facts in case of M/s Hamid Nawaz & Sons, Cotton Ginners, referred to by the complainant were the same but the periods involved in that case and in the case of the complainant were different. In the case decided vide O-I-A No.220/08, the period involved was prior to June 2006 when Refund Rules, 2006 notified under SRO.555(I)/06 dated 05.06.06 were not in field/force. Therefore, the provision of Rule 28(1) of Chapter-V of Sales Tax Rules, 2006 (in which RCPS alongwith supporting documents were required to be submitted within 60 days of the filing of return) were not applicable to refund claims pertaining the period prior to 05.06.06. Therefore, the benefit of O-I-A No.220/08 passed in the case of M/s Hamid Nawaz & Sons Cotton Ginners was not granted to the complainant. All the appeal proceedings were conducted by Collector (Appeals) himself. Mr. Muhammad Ali Gold, Steno/Assistant, was not posted in the Collectorate of Appeals' office. During hearing proceedings, the complainant's counsel pointed out a case of similar nature of M/s Hamid Nawaz and Sons, which was decided in favour of the aforesaid unit vide O-I-A No.220/08 but it was not announced that the complainant's case would be decided in favour of the complainant, as alleged. The facts of complainant's case were considered by Collector (Appeals) and the appeal was disposed of/ decided on merits as the period involved in the other case i.e the case of M/s Hamid Nawaz and Sons was different. In the case decided vide O-I-A No.220/08 the period involved was prior to June 2006 notified under SRO.555(I)/06 dated 05.06.06. Therefore, the provision of Rule 28(1) of Chapter-V of Sales Tax Rules, 2006 (in which RCPS alongwith supporting documents were required to be submitted within 60 days of the filing of return) were not applicable in the refund claim pertaining to the period prior to 05.06.06. Therefore, the benefit of O-I-A No.220/08 was not granted to the present complainant. The O-I-A was signed on 14.05.08 but the month in the O-I-A was inadvertently written as 15.04.08 instead of 15.05.08 by the Despatch Clerk. However, the O-I-A had been issued within 180 days i.e within the prescribed period as the appeal was filed on 06.02.08 and the O-I-A was issued on 15.05.08. The complaint may be dismissed. If the complainant was aggrieved by orders passed by the appellate forum, it should file appeal before the Appellate Tribunal Lahore under section 46 of the Sales Tax Act, 1990.

3. During the hearing, the AR submitted that the complainant had filed appeal against the O-I-A No.630/08 before the Appellate Tribunal on 18.07.08 after filing the complaint in the FTO Secretariat on 08.07.08. The respondents rejected complainant's case merely on mere technicalities. Show cause notice was issued by the D.C after 93 days of the filing of refund claim and hence it was time barred. The respondents used to give the claimants receipts for refund claims received indicating that the same would be processed under Rules 5 and 11 of Refund Rules, 2002. The respondents were to process the case within ten days, which was not done. Against the aforementioned O-I-O No.25/07 dated 01.01.08, the complainant filed appeal before Collector (Appeals) who rejected complainant's case vide O-I-A No.630/08 dated 15.05.08. The D.C rejected the claim as time barred for failure to file documents under Chapter V Rule 28(8) of Refund Rules, 2006 whereas the claim of refund was to be processed under Refund Rules, 2002. In other cases of similar nature, refunds were processed and sanctioned on furnishing of mere undertakings. In another case of similar nature namely that of M/s Hamid Nawaz & Sons, Cotton Ginners, decided vide O-I-A No.220/08 it was held that Rules 2002 were not applicable. The Collector (Appeals) in that case held vide O-I-A No.220/08 that the party's case should be processed under special procedure for cotton ginners but complainant's case was rejected as time barred despite the fact that both show cause notices contained the same allegations. Show cause notice issued to the complainant did not confront it with the period of refund (complainant's refund). Mr. Muhammad Ali, Steno/Assistant wrote the Order-In-Appeal. The AR submitted that he would not press the argument that Collector (Appeals)' order was time barred as the Collector (Appeals) had the power to extend the time limit.

4. Mr. Nadeem Ahmad, A.C, submitted that the case was decided vide O-I-O No.25/07 dated 01.01.08 after issuance of show cause notice to the complainant. He added that the complainant did not attend the three hearings held in the case. In comments filed by the complainant before the adjudication officer, it was admitted that it could not file the refund claim in time and that it was merely a procedural mistake, which should be condoned. The case was decided on its merits in the light of provisions of law. If one looked at the date of the O-I-O i.e. 01.01.08 the present complaint was time barred as it was submitted before the FTO after six months of the passing of the O-I-O, which was passed on 01.01.08, as aforesaid, whereas the complaint was filed on 08.07.08. There was no 'maladministration' as alleged against the adjudication authority. Both cases were rejected under Sales Tax Refund Rules, 2006. No refund was being allowed in time barred cases on undertakings, as alleged.

5. Mian Muhammad Lateef, the then Collector (Appeal) submitted that O-I-A was not time barred as it was passed within the prescribed period. He added that in the case decided in favor of Hamid Nawaz & Sons, Cotton Ginners, the period of refund claim was 09/05 to 02/06 whereas the period involved in the complainant's case was October 2006 to March 2007. Sine the new rules had come into force on 05.06.06 the same were applicable in complainant's case. The allegation that Mr. Muhammad Ali, Steno/Assistant wrote Orders-In-Appeal was baseless as the Steno/Assistant was not even posted in the Collectorate of Appeals at the time the O-I-A was passed. He added that the complainant's case was decided on its merits in accordance with the provisions of law after giving the opportunity of being heard.

6. Mr. Nadeem Ahmad, the other DR, submitted that had the complainant's case been not found time barred, it too would have attracted Special Procedure for Processing of Refund Claims filed by persons engaged in making zero rated supply of ginned cotton for 2006-07, read with Sales Tax Refund Rules, 2006. He added that the receipt for claims received by the department produced by the complainant was on an old format (not updated). The complainant's case was to be processed under the provisions of Refund Rules, 2006 read with special procedure for Cotton Ginners Rules.

7. The arguments of the parties and the record of the case have been considered and examined. The main contentions of the complainant are that (i) the D.C, Sales Tax (Refunds), Multan and Collector (Appeals), Multan rejected complainant's refund claim for failure to submit prescribed supportive documents within 60 days of the filing of return in terms of rule 28(6) of Chapter V of Sales Tax Rules, 2006 (in which RCPS alongwith supportive documents was required to be submitted within 60 days of the filing of return) without considering the fact that the complainant's case was required to be processed under Special Procedure for Processing of Refund Claims filed by persons engaged in making zero rated supply of ginned cotton for 2006-07 rules, (ii) in an identical case of M/s Hamid Nawaz & Sons, Cotton Ginners, despite the fact that the allegation in the show cause notice issued to it were the same as in the case of the complainant, the Collector (Appeals) disposed of the case of Hamid Nawaz & Sons, Cotton Ginners, with the direction to the respondent Collectorate to re-process the refund claim in the light of Special Procedure for Processing of Refund Claims filed by persons engaged in making zero rated supply of ginned cotton for 2006-07 rules whereas complainant's case was rejected as time barred, (iii) the Collector (Appeals) did not apply his mind in deciding the case. He left it to one Muhammad Ali Gold, Steno/Assistant to Collector (Appeals), Multan who processed complainant's appeal and wrote the O-I-A, (iv) both respondent Nos.1 and 3 had declared during hearing that the complainant's case would be decided in the light of O-I-A No.220/08 passed in the case of Hamid Nawaz & Sons, Cotton Ginners, but the complainant was surprised to receive impugned O-I-A No.630/08 dated 15.05.08 deciding the case against it contrary to verbal announcement, which amounted to 'maladministration', (v) respondent No.4, Mr. Sardar Ahmad, Despatcher Collector (Appeals), in connivance with respondent No.3, tried to save O-I-A No.630/08 dated 15.05.08 by pre-dating it as 15.04.08 from being time barred. The O-I-A was, in fact, despatched to the complainant on 15.06.08 and hence it was time barred because the appeal in the case had been filed on 06.02.08, (vi) the impugned O-I-O No.25/07 and O-I-A No.630/08 may be set aside/cancelled/amended.

8. The respondents, on the other hand, contend that (i) the complainant was required to file appeal against Collector (Appeals)' O-I-A No.630/08 dated 15.05.08 before Customs, Sales Tax and Federal Excise Appellate Tribunal. The FTO had no jurisdiction in cases where legal remedies of appeal were available in terms of section 9(2) of the FTO Ordinance, 2000. The President of Pakistan in complaint No.1270-K/03 had held that since legal remedy of appeal was available to the complainant against Collector (Appeals) under the relevant legislation, the FTO had no jurisdiction to investigate the matter raised in the complaint, (ii) the case of M/s Hamid Nawaz & Sons, Cotton Ginners, was distinguishable from the complainant's case because the period involved in the former case was different from the period of refund involved in the complainant's case. In the case decided by O-I-A No.220/08 (M/s Hamid Nawaz and Sons) the period

involved was prior to June 2006 when Refund Rules 2006 issued under SRO.555(I)/06 dated 05.06.06 was not in field/force. Therefore, the provisions of rule 28(1) of Chapter V of Sales Tax Rules, 2006 (in which RCPS alongwith supportive documents were required to be submitted within 60 days of the filing of refund) were not applicable to refund claims pertained to the period prior to 05.06.06. As such the benefit of decision contained in O-I-A No.220/08 could not be granted to the complainant, (iii) the Collector (Appeals) himself conducted all proceedings. Muhammad Ali, Steno/Assistant, was not even posted in the Collectorate of Appeals at the time of passing the order and as such the question of his processing the case and writing Order-In-Appeal did not arise, (iv) the facts of the complainant's case and the relevant legal position were considered while deciding the appeal on merits, (vi) the O-I-A was signed on 14.05.08 but the month in the O-I-A was inadvertently written as April instead of May by the despatch clerk. However, the O-I-A was issued within 180 days i.e. within the stipulated period.

9. The complaint in this case was filed on 08.07.08 prior to filing of appeal before the Appellate Tribunal on 18.07.08. Thus the complainant's case was not subjudice before the Tribunal on the date the complaint was filed in this Secretariat. Respondents' contention that the FTO did not have jurisdiction in the case because it is a case in respect of which remedy of appeal was available is misconceived because the FTO is competent to take cognizance of matters in respect of which 'maladministration' has been alleged. However, the position in this case emerges as under: -

The complainant had filed refund claim for an amount of Rs.216977/- for the period 2006-07. Its claim was rejected both by the D.C vide O-I-O No.25/07 dated 01.01.08 and by Collector (Appeals) vide O-I-A No.630/08 dated 15.05.08. 'Maladministration' has been alleged on the ground that the complainant's appeal was processed and O-I-A was written by Muhammad Ali, Steno/Assistant and not by the Collector (Appeals) himself. The complainant's AR has not been able to produce any evidence to establish this allegation. The then Collector (Appeals) who was present at the hearing categorically stated that Muhammad Ali, Steno/Assistant was not even posted in the Collectorate of Appeals at the time the impugned O-I-A was passed. The AR could not rebut this statement properly. In the absence of any evidence, the aforesaid allegation is not established nor has there been any 'maladministration' on that account. The Collector (Appeals) also denied having announced during hearing of appeal that complainant's case would be decided along the lines of case of M/s Hamid Nawaz and Sons. The complainant's AR could not produce any evidence to establish that such an announcement was ever made. The complainant has also alleged in the complaint that Collector (Appeals)' order was time barred because it was passed by him beyond the period prescribed for passing such order in section 45B of the Sales Tax Act, 1990. During the hearing, however, the complainant's AR submitted that he would not press this point realizing that the Collector (Appeals) had the authority to extend the time limit under the aforesaid section. The complainant's AR quoted rule 5 of Sales Tax Refund Rules, 2002 under which the respondents were to decide the refund cases within 10 days, whereas, according to him, the show cause notice issued after expiry of 93 days of the filing of refund claim was time barred. Asked to quote the rule under which show cause notice involving objections and contraventions was required to be issued by the D.C within ten days, the complainant's AR could not cite any such rule and as such it is not possible to consider his contention on that account. As regards AR's allegation that the

respondents were in similar cases allowing refunds on furnishing of guarantees, the respondents explained that no refund was being given on undertakings in time barred cases. The complainant has alleged that whereas in the case of M/s Hamid Nawaz and Sons, Cotton Ginners, the Collector (Appeals) had accepted that the case was not time bared and ordered vide O-I-A No.220/08 that the aforesaid unit's case may be processed under the special procedure for cotton ginners rules, he did not give the same verdict in the case of the complainant despite the fact that the cases were identical in nature. In this regard the legal and factual position has been explained by the Collector in the impugned O-I-A, the relevant portion of which is reproduced below:

> *".....The contention of the appellant that a case of similar nature had been decided in favour of the party vide Order-In-Appeal No.220/2008 by this forum, has been considered. It is observed that in the instant case the appellant were required to submit the refund claim on the prescribed software (RCPS) along with supporting documents whereas in the case referred by the appellant, the respondent-Collectorate admitted that they neither asked for submission of RCPS. Although the facts of that case which had already been decided in favour of the party and in the instant case are same yet the period involved in that case and in the instant case is different. In case decided vide Order-In-Appeal No.220/2008, the period involved was prior to June, 2006 when the Refund Rules, 2006 notified under S.R.O No.555(I)2006 dated 05.06.2006 were not in field/enforced. Therefore, the provisions of Rule 28(1) of Chapter V of Sales Tax Rules, 2006 (in which the RCPS along with supporting documents were required to be submitted within sixty days of the filing of return) were not applicable on the refund claims pertaining to period prior to 05.06.2006. Therefore, the benefit of Order-In-Appeal No.220/2008 cannot be granted to the appellant".*

10. In view of the foregoing position, it is observed that no 'maladministration' has occurred. The D.C (Refunds) passed O-I-O No.25/07 dated 01.01.08 on the merits of the case. Against the aforesaid O-I-O, the complainant had filed appeal before Collector (Appeals). The Collector (Appeals) has given clear-cut findings on the main issue involved on the merits of the case and has passed an appealable order. It is also observed that the complainant has also filed an appeal before Customs, Excise and Sales Tax Appellate Tribunal, raising therein the substantially same issues as are being agitated here. Since the D.C (Adjudication) and Collector (Appeals) have passed orders on the merits of the case in accordance with the provisions of law, the complainant should pursue its appeal filed before the Appellate Tribunal to seek remedy of its grievances. The case involves questions of fact and law. The appellate authority, being competent to deal with points of fact and law, can examine the case in the light of facts of the case and the relevant provisions of law and pass a judgment on the merits of the case after considering the pleas of the complainant.

11. The complaint is disposed of with observations made above.

(JUSTICE (R) MUNIR A. SHEIKH)
Federal Tax Ombudsman

Dated: -2008

BEFORE THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

COMPLAINT NO.1562/2008

M/s. Horizon Textile,
Faisalabad. ...Complainant

Versus

The Secretary,
Revenue Division,
Islamabad. ...Respondent

Dealing Officer: ...Mr. Shamim Ahmad, Adviser

FINDINGS/DECISION

Present: Mian Manzoor Ahmad, Advocate, & AR for the Complainant.
Mr. Saleem Akhtar, A.C Sales Tax & D.R, for the Respondent.

According to the complaint under consideration, the Complainant, an A.O.P., "is a manufacturer exporter of fabrics" and is a Registered Person under the Sales Tax Act, 1990 (the Act). The address given was 369-A, Gulistan Colony, Millat Chowk, Sheikhupura Road, Faisalabad. The contents of the complaint are summarised as follows:

a. The Complainant leased "20 Nos. power looms of 108" and "48 Nos. power looms of 105" installed at Sajjad Industrial Estate, Chak No. 117-JB Dhanola, Barnala Road, Faisalabad from one Mr. Muhammad Akram s/o Jamal Dine and five others (the lessors) on 13/12/03 vide lease agreement of the same date .....".

b. He started manufacturing and filed the Sales Tax Returns regularly. After a while he shifted his office from P-157, Younis Plaza, Mehr Sadiq Market, Railway Road, Faisalabad to the weaving unit situated at the address given in a above.

c. Thereafter the lease agreement was terminated on 30/06/2007 and the new lessee was M/s. Jamal Fabrics. According to the complaint, this was notified to WAPDA and the electricity bills showed the GST Registration No. of the new lessee.

d. After the cancellation of lease, the Complainant shifted his office from the leased premises as noted above to 369-A, Gulistan Colony, Millat Road off Sheikhupura Road, Faisalabad and informed the Collector of the

change of address vide his letter dated 26/01/2008. However, no proof was attached for the service of the letter.

e. A letter was also written to C.B.R. for change of the address. This letter was dated 14/05/2008. Necessary evidence was produced for filing this letter. A letter of C.B.R. dated 05/06/2008 addressed to Complainant in which the change of the address was notified was also provided.

f. In the meantime, the Complainant came to know that the sales tax staff visited the old premises on the address given in sub-para (a) above and did not find the Complainant's manufacturing facility there. This happened because, according to the complaint, the Complainant had already left the premises as on 30/06/2007. According to the complaint, the Complainant came to know that a Show Cause Notice (S.C.N) had been issued for which the date of hearing was fixed for 02/11/2007. As his advocate was not available in Faisalabad on that date, a request for adjournment was made vide application dated 01/11/2007. According to the complaint, nothing had been heard afterwards from the Respondent. Neither he was intimated about the next date of hearing nor any information was provided.

g. After lapse of sometime, the Complainant was informed that he was black-listed. The copy of the order was not provided despite a request made through a letter dated 02/04/2008.

h. It was claimed that the above-mentioned sequence of events proved that the Respondent committed maladministration on following counts:

   i. Audit was never undertaken.

   ii. Order black-listing the Complainant was passed ex-parte without conducting any enquiry as provided in the Act or providing the opportunity to the Complainant of being heard, thus violating the basic legal principle of *audi alteram partem*.

   iii. Order was never communicated to the Complainant.

i. It was prayed that the order black-listing the Complainant be set aside because it was passed without providing any opportunity to the Complainant.

2. The Asstt. Collector, Sales Tax, R.T.O., Faisalabad, in his written reply stated as follows:

a. Though the Complainant got himself registered as a manufacturer, exporter and wholesaler, he did not possess any manufacturing facility of his own which made the entire enterprise suspect.

b. The Complainant did not follow the procedure prescribed for change of address. The only time it was adopted by the Complainant was when he wrote to the CBR on the prescribed form dated 14/05/2008. According to the claim of the Complainant the premises was left on 30/06/2007. In other words, he notified the CBR after 11 months of leaving the premises. The fact of the matter is that it was done after it came to the knowledge of the Complainant that he had been black-listed already. The order of black-listing was passed on 29/01/2008.

c. The Complainant himself admitted that he was informed that the sales tax staff visited his premises. Therefore, he was aware of the activities on the premises. He was also aware of the notice dated 22/10/2007 for which adjournment was sought vide letter dated 01/11/2007. It was emphasized that the application on which the request for adjournment was submitted bore the address on which the department had sent all communications. (The same address as noted in para 1(a) above). It clearly showed that as on 01/11/2007 the address of the Complainant was the one noted above and his claim that he left the premises on 30/06/2007 was a misstatement. The department intimated the Complainant regarding the hearing vide letters dated 21/09/07, 05/10/07 and of final hearing on 02/01/2008 through Courier Service as per prescribed procedure u/s 21 of the Act. However, the Complainant did not bother to appear before the Adjudicating Officer. The department was left with no option but to pass the order black-listing the Complainant and it was duly despatched through Courier Service. The receipt of the same was also enclosed. The claim of the Complainant that he never received the copy of the order was contested. It was further stated that the department was prepared to issue its fresh copy to the Complainant if he applied for it.

d. Regarding the absence of audit, it was submitted that the Complainant was asked to furnish the complete records through the S.C.N. which was never provided.

e. The Complainant allegedly supplied goods worth Rs.113 million and deposited tax of Rs.1 lakh only. The ratio came to 0.098% which clearly indicated that the business was not above board. His activities facilitated the exporters to claim illegal refund.

f. It was stated that the correct facts were not furnished by the Complainant and the contents of the complaint were baseless and void.

g. It was prayed that the complaint be rejected.

3. Both A.R and D.R attended and the case was discussed with them at length. The main thrust of the A.R's arguments was that neither the S.C.N. nor other notices which were allegedly issued by the Respondent were received for the simple reason that the Complainant had changed his address. Explaining this point, the various changes of addresses alongwith their dates were given as follows:

a. Younis Plaza, Second Floor, Mehr Sadiq Maket, Railway Road, Faisalabad from 26/03/2003 to 13/12/2003.

b. Horizon Textile, Sajjad Industrial Estate, Chak No. 117-JB, Dhanola Faisalabad from 13/12/2003 to 30/06/2007.

c. 369-A, Gulistan Colony, Millat Road Off. Sheikhupura Road, Faisalabad from 01/07/07 to date.

The A.R. stated that, according to the claim of the Complainant, they were serving notices on the address given in (b) above. After the date given above, they had already left the premises. They ought to have served the notices on the new address given in (c) above. As this was not done, the Complainant never received the notices and could not be held responsible for non-compliance. The change in the addresses were duly notified to Collector, Sales Tax, F.B.R. and the WAPDA.

3.1 It was also emphasized that the Complainant was a genuine manufacturer and the allegations leveled against him were baseless. The business was closed after 30/06/2007 because there were losses and presently the Complainant was working as a broker.

4. The D.R. argued that the manufacturing facility of the Complainant never existed. He just undertook sham transactions to get the benefit of sales tax adjustments and refunds. In support of his argument, he discussed the contents of the alleged Lease Agreement dated 30/12/2003 for leasing the power looms. In para 6 it stated that 20 power looms of 108" and 48 power looms of 105" were leased out. After few lines, the same agreement stated that 68 power looms of 105" were leased out. The contradiction was too obvious to need any comment. Pointing out another anomaly he stated that the Tax Profile of the Complainant stated that he started working from 14/05/2003 whereas the said lease was entered on 13/12/2003. How was he manufacturing the goods prior to the leasing of the said power looms, a period which spread out to 7 months, he enquired.

4.1 Another argument the D.R. gave was that the sales of the Complainant, excluding exports, were declared at Rs.112,662,967/-. The sales tax paid amounted to Rs.112,432/- which represented only 0.099% of the turnover. He also pointed out that after the product allegedly manufactured by the Complainant was zero-rated, his sales suddenly dropped

down. For the period July 2003 to June 2004, they were declared at Rs.64,895,398. After the zero-rating of the product, the sales went down to Rs.7,239,902/- for the period July 2005 to June 2006. He also brought on record the fact that electricity consumption of the premises at Sajjad Industrial Estate, Chak No.117, JB Dhanola, Faisalabad where the manufacturing activities were allegedly being carried out remained almost the same despite such drastic falls in sales. All these facts, he argued, pointed towards the fact that the Complainant was never a manufacturer.

4.2 Challenging the claim of the Complainant that the changes of address were notified to WAPDA, it was stated that no bill shows such a change. On two bills there was over writing and on the 3rd the Sales Tax Registration No. of the Complainant was hand written. He emphasized that it was forged.

4.3 With regard to the service of notice, he argued that they were all properly served. The S.C.N. dated 21/09/2007 was served on the address given in para 1(a) above. This was the last known address. The compliance date was fixed at 03/10/2007, which the Complainant chose to ignore. However, in his letter dated 01/11/2007 written on his letterhead giving the same address as pointed out, he acknowledged the receipt of the S.C.N. under reference and sought adjournment of hearing because his Advocate was out of station. The adjournment was granted and number of letters were sent to him on the given address. If he chose not to respond it was not the fault of the sales tax department. From the letter quoted above (01/11/2007) it was clear that it was the correct address. His claim that he wrote a letter on 15/02/2006 to the A.C. Registration Faisalabad with the request to change his address from Sajjad Industrial Estate to Younis Plaza was challenged. He stated that it was never despatched much less received by the sales tax department. On inquiry, the A.R. could not produce any evidence of its despatch. The only time the Complainant, requested for the change of address was vide form STR-2 on 14/05/2008 which was duly granted by the F.B.R. vide their letter dated 05/06/2008. However, by this time, the order of black-listing had already been passed. The D.R.'s argument was that the change of address on which the entire edifice of non-service of the S.C.N. and the other notices was built by the Complainant fell to the ground.

5. The arguments of both the parties were duly considered. The D.R. brought on record cogent facts which indicated towards the fabricated transactions of the Complainant. However, it not considered necessary to give any decision on this aspect of the case because the only point before this office is whether the principle of *audi alteram partem* was violated or not in issuing the S.C.N. and various other notices. It is abundantly clear from the fact stated above that the Respondent took more than due care in issuing the S.C.N. and notice which followed later. The letter of the Complainant dated 01/11/2007 referred to above, clearly showed the receipt of the S.C.N. which belies the claim that the S.C.N. was never received. Moreover, the address on the letter of the Complainant was given as Sajjad Industrial Estate and the Respondents were justified in

sending notices on this address. It is clear that request of the Complainant made to F.B.R. for change of the address was an afterthought. By then the black-listing order had already been passed. Therefore, no maladministration on the part of the Respondent is discernible and the complaint is rejected.

6. However, before parting with this order it is considered of vital importance to comment on the Respondent's claim that the Complainant never existed. This being the case, it is important to investigate how registration was granted to the Complainant in the first place. The certificate of registration dated 21/02/2004 clearly stated that the Complainant was a manufacturer and exporter. It was signed by no less an officer than the Assistant Collector, Sales Tax, Registration and Information Division. Regretfully it is noted that this is not a solitary case. This office has come across a large number of cases in which the Respondent had claimed that the business activities of the Complainant never existed and registration was obtained to carry out the illegal activities. From this statement it follows that there are serious flaws in the process of grant of registration. Rules provide an elaborate procedure which is to be carried out before registration is granted. Clearly in such cases the prescribed procedure is not adopted for reasons which better be left unsaid. On this aspect of the case, following recommendations are issued:

i. Investigation should be made to determine the circumstances under which certificate of registration in case of M/s. Horizon Textile, Faisalabad was issued on 21/02/2004.

ii. The process of registration requires streamlining and fine-tuning. The F.B.R. is the right forum to devise the necessary methods in this regard. It should be ensured that no bogus registration certificates are issued in future. If at all they are issued, action should be taken against the officials responsible for issuing bogus registration. The procedure adopted for streamlining and fine-turning the method be reported to this office.

iii. The compliance of the above-mentioned recommendations should reach this office within 90 days of their receipt by the Chairman, F.B.R.

(JUSTICE (R) MUNIR A. SHEIKH)
Federal Tax Ombudsman

Dated: -2008

BEFORE THE FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE, LAHORE

COMPLAINT NO.1723/2008

Mr. Hafeez-ur-Rehman,
Prop; Shafique Traders,
19/5-N, Gulberg-II,
Lahore. ...Complainant

Versus

The Secretary,
Revenue Division,
Islamabad. ...Respondent

Dealing Officer: ...Mr. Muhammad Akbar, Adviser

FINDINGS/DECISION

Present: Mr. Muhammad Bashir Malik, Advocate for the complainant.
Ms. Tahira Javed, A.C, S.T, Lahore for the respondent.

The complainant was engaged in the business of sale and purchase of BOPP/Plastic Film. Being registered with Sales Tax Department, he provided to the department full particulars of sales and purchases in its monthly sales tax returns and summaries. The respondents issued a show cause notice dated 12.02.2005 to the complainant. On the basis of report submitted by the staff of Sales Tax and Central Excise Audit-I, Lahore, the name of the complainant was included in the list of suspected units. He filed an appeal before Collector Sales Tax (Adjudication), who vide Order-In-Original No.50/2005 vacated the show cause notice and cleared complainant's name. The Sales Tax Department did not delete the name of the complainant from the list of suspected units despite the fact that the Additional Collector (Adjudication)'s order was received by the department. A request for issuance of NOC vide letter dated 08.07.08 was filed before Collector Sales Tax, Lahore. Instead of issuing NOC, A.C Sales Tax (Blacklisting Cell) issued letter dated 13.08.08 calling for various documents. The complainant submitted a detailed reply to the aforesaid letter but the A.C, Sales Tax, instead of considering the contents of complainant's letter, issued another letter dated 28.08.08 for inquiry/audit of records under section 21(2) read with Sales Tax Rules regarding blacklisting and suspension of sales tax registration of the complainant under Sales Tax Act, 1990. The complainant intimated that he had discontinued sales and

purchases of BOPP/Plastic Films in the year 2005 and necessary intimation regarding closure of business was given to both the Income and Sales Tax Departments. The complainant had applied for de-registration of sales tax registration on 14.12.05. Complainant's records were audited by the Lahore Audit office. Photocopies of sale and purchase registers were duly stamped and signed by the audit office Lahore. Issuance of show cause notice for proper audit/inquiry in the case was against law and facts. The DRRA had conducted complete audit of the complainant. Neither the complainant was de-registered, nor was it issued the necessary NOC. The complainant was neither confronted with any notice nor was any written order passed/issued as per Rule 12. The A.C Sales Tax had neither followed the legal procedure nor adopted proper course for non-issuance of NOC. No inquiry was made by the Sales Tax Department, which was mandatory as per the provisions of sub-rule 3 of rule 12. No intimation regarding suspension of complainant's registration was ever communicated by CRO and Sales Tax Data Base. Non-issuance of NOC in the complainant's case amounted to 'maladministration'. Necessary directions may be given for issuance of NOC. Any other relief deemed fit may be granted.

2. In reply, the Collector, RTO, Sales Tax & Federal Excise Wing, Sales Tax House, Lahore has submitted that request dated 08.07.08 for issuance of NOC was received in the office of Collector. The A.C (Blacklisting Cell) issued letter dated 13.08.08 to the complainant for audit/inquiry under rule 34 of clause "N" of General Order No.03/04, read with Section 21(2) of the Sales Tax Act, 1990, following the procedure for removal from blacklisting or suspension. The complainant applied for de-registration on 14.12.05. He was issued a notice for providing records vide letter dated 28.12.05, followed by a reminder 21.12.06, but the complainant had failed to provide the requisite records. De-registration could not be finalized due to non-provision of records by the complainant. Audit officers of DRRA (Director General Revenue Receipt Audit) were not departmental auditors and the audit conducted by them was not approved by any officer of the department. Furthermore, they were not authorized to conduct any audit/inquiry regarding de-registration of a registered person. The audit team visited the declared office address of the complainant on 31.07.03 and found that the complainant did not exist at the declared address. Furthermore, on scrutiny of returns profile, it was observed that the complainant was involved in issuance of fake and flying invoices. The name of the complainant was included in the list of blacklisted persons under section 21(2) of the Sales Tax Act, 1990. For inquiry, two notices dated 05.11.03 and 09.12.03 were issued but were received undelivered as mentioned in the O-I-O No.50/2005 dated 11.06.2005 also. The complainant had still not provided records for undertaking proper audit/inquiry. The CRO was intimated about it. The name of the complainant was included in the list of

blacklisted persons on website. The department had not refused issuance of NOC. The complainant should provide records for proper audit/inquiry. The complainant may be directed to follow the procedure as laid down in the Sales Tax Act, 1990. The complaint may be rejected.

3. During the hearing, the AR submitted that the respondents had issued the complainant a show cause notice dated 12.02.2005 alleging issuance of fake invoices, non-existence of complainant's unit and making supplies of Rs.55.00 Million as against initial capital of Rs.550,000/-. The show cause notice was vacated vide O-I-O No.50/2005 dated 11.06.2005 and the charges against the complainant were dropped. The complainant closed its business in June 2005. The respondents had also included complainant's name in the list of suspected units. The respondents should have excluded his name from the list of suspected units following vacation of show cause notice referred to above. The AR added that the complainant's name was included in the list of suspected units without issuing any show cause notice to it. He added that at the relevant time no legal provision existed for blacklisting because such provisions were introduced in the Sales Tax Act, 1990 only in the year 2004. STGO No.03/04 was also issued in the year 2004. He further submitted that he had applied for de-registration in the year 2005 but no action was taken for de-registration despite the facts that (i) de-registration had to be completed within three months subject to fulfillment of various conditions, (ii) the audit of the complainant had already been completed by the DRRA in the year 2005. He pointed out that the complainant applied for de-blacklisting on 08.07.08. The respondents asked for records for conducting scrutiny and audit. The complainant had submitted reply to respondents' letter dated 21.08.08 pointing out that the complainant had already been audited and there was no need for further audit or submission of records but the complainant's reply was ignored. He reiterated that the respondents may be directed to issue the NOC and also decide complainant's request for de-registration.

4. The DR submitted that the complainant's name was first included in the list of suspected units on 18.09.2001. On a visit, the complainant's unit was found non-existent at the given address. She added that the complainant had applied for de-registration on 14.12.05 and he was asked by the department on 28.12.2005 vide letter No.IV-ST/De-Reg/02/2005/12/5420/638 to furnish certain records and documents to enable the department to conduct audit before taking decision on de-registration but the complainant did not submit the documents. The DR also pointed out that the show cause notice dated 12.02.2005 involved only the period from July 2000 to September 2001 but the complainant was required to produce records as prescribed under section 21(2) of the Sales Tax Act, 1990 read with STGO No.03/04 for the entire period. She further

submitted that before the year 2004 the Collectorate used to issue a list of suspect units. As regards the issue of NOC i.e. deletion of complainant's name from the list of suspected units the complainant was addressed vide letters dated 13.08.08 and 28.08.08 to supply relevant records but the record had not so been supplied. She added that the audit conducted by the DRRA was restricted to the period 2004-05 whereas the audit had to be conducted for the years 2002, 2003, 2004 & 2005. She stated that as soon as the complainant supplied records, which were called from him the audit and scrutiny of the records would be undertaken and completed and decision both in respect of complainant's requests for de-registration and de-blacklisting would be taken.

5. As a result of the ensuing discussion it was agreed between the AR and the DR that (i) they would hold a meeting in which the department would identify the relevant records required to be submitted by the complainant to the respondents in connection with scrutiny and audit of records before taking decision on complainant's requests for de-registration and de-blacklisting, (ii) the complainant would submit the relevant records and upon submission of such records the respondents would undertake the necessary scrutiny and audit and decide complainant's requests for de-registration and de-blacklisting in the light of the audit reports and the provisions of law. If, however, the respondents were of the view that complainant's requests for de-registration and de-blacklisting were liable to rejection, they would issue show cause notice to the complainant, disclosing the grounds on which the requests were considered liable to rejection, enabling the complainant to defend his cases before the competent authority. In any case, the competent authority shall decide complainant's requests for de-registration and de-blacklisting on their merits in accordance with the provisions of law within a period of 1-½ month of submission of records.

6. The arguments of the parties and the record of the case have been considered and examined. The complainant applied for de-registration on 14.12.2005. The respondents asked the complainant vide letter dated 28.12.05, followed by a reminder dated 21.12.06, to submit various records as identified in the aforesaid letter dated 28.12.05. According to the respondents, the complainant did not submit any records and hence they were unable to conduct audit and decide the complainant's requests for de-registration in the light of findings of audit. Similarly, the respondents contend that in regard to complainant's request for de-blacklisting him he was asked to submit the relevant records vide letter dated 08.07.08 but the complainant failed to submit the relevant documents and records asked for. The complainant's AR, on the other hand, contends that the complainant's audit had already been conducted by the DRRA and that even the allegations framed against him vide show cause notice dated 12.02.05 were vacated by the Additional

Collector vide his O-I-O No.50/05 and that as such the complainant qualified both for de-registration and de-blacklisting. Whatever be the relative position of the two sides, the fact remains that complainant's requests both for de-registration and de-blacklisting remain un-decided to this day. However, the two sides agreed to the follow the course of action as outlined in paragraph 5 supra. Accordingly, the two sides should follow the agreed course of action, which is set out below:

i. The respondents and the complainant will hold a meeting in which the respondents would identify to the complainant the relevant records required to be submitted by him for scrutiny and audit by the respondents.

ii. The complainant, for his part, would submit the relevant records. Upon submission of such records, the respondents should conduct scrutiny/audit and decide complainant's requests for de-registration and de-blacklisting in the light of the audit reports and the relevant provisions of law. If, however, the respondents after completion of scrutiny and audit are of the view that complainant's requests for de-registration and de-blacklisting were liable to rejection, they would issue a show cause notice to the complainant, disclosing the grounds on which the requests were considered liable to rejection, enabling the complainant to defend his case before the competent authority. In any case, the competent authority shall decide complainant's requests for de-registration and de-blacklisting on their merits in accordance with the provisions of law after providing the complainant the opportunity of both written and oral defense within a period of 1-½ month of the submission of records, as agreed between the two sides.

iii. In the event of any adverse decision against the complainant, he will have the right to seek remedy of his grievances from a forum of competent jurisdiction.

iv. Compliance be reported within 45 days as indicated in (ii) above.

(JUSTICE (R) MUNIR A. SHEIKH)
Federal Tax Ombudsman

Dated: -2008

BEFORE THE FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE, KARACHI

COMPLAINT NO.1409/2007

M/s Elahi's (Private) Limited
606, Land Mark Plaza,
Moahmad Bin Qasim Road,
Karachi. ...Complainant

Versus

The Secretary,
Revenue Division,
Islamabad. ...Respondent

Dealing Officer: ...Mr. M. Mubeen Ahsan, Advisor

FINDINGS/DECISION

Present: Mr. Saqib Elahi, Complainant

Mr. Manzoor Hussain, Assistant Collector of Sales Tax
Mr. Aalay Jaffer, Deputy Superintendent of Sales Tax

The Complainants have filed this complaint alleging maladministration against the Sales Tax Department on account of inordinate delay in issuance of De-registration certificate for their company. It has been stated in the complaint that the application for de-registration was sent on 24-05-2005 and the Complainants' Consultant sent several reminders, requests and follow-ups for over two years for De-registration. Audit for the purpose of de-registration was carried out in September 2005, audit observation was issued on 16-05-2006 i.e. more than seven months after the conduct of audit, and reply to the audit observation was submitted on 25-05-2006.

2. It was stated that after one year, a show cause notice dated 24-05-2007 was issued regarding some discrepancies during the period 2004-05 and adjudication order dated 21-06-2007 was passed raising tax liability of Rs.2,208/-. The amount was paid on 28-07-2007. In the last communication dated 29-11-2007 sent to the Department, the Complainants intimated that they could not allow the application to be kept pending any more and if the de-registration certificate was not issued by 15-12-2007 they would have no choice but to apply to the Federal Tax Ombudsman. It was requested that Sales Tax Department be ordered to issue De-registration certificate as despite best efforts for over two years, they have not been able to get the company de-registered.

3. The Additional Collector of Sales Tax (Headquarters) submitted a one-line reply through the Federal Board of Revenue that "after processing of the case, needful has been done, Sales Tax De-Registration of the unit has been approved and sent online to the Federal Board of Revenue, Islamabad, for issuance of certificate" and "as such, the grievance of the complainant has been redressed".

4. During the hearing of the complaint, the Director of M/s Elahi's (Pvt) Limited reiterated the facts already mentioned in the complaint and submitted a letter dated 13-

02-2008 under which the following additional submission were made:

(i) Sales Tax Department took two years and seven months to approve the application. This was evident from the photocopy of a document dated 11-01-2008 but he has not received any intimation from the Local Registration Office or the Central Registration Office.

(ii) The delay has caused financial loss and mental anguish because to wind up their company they needed the sales tax de-registration certificate and there was no delay in providing relevant papers to the Department.

(iii) It was requested to assign damage for delay caused by the Department in extra fee for audit work for two years and extra payment to their Sales Tax Consultant. Invoices of Rs.23,000/- paid to M/s Z. Lakhani and Company and Rs.20,000/- to M/s S.M. Law Associates were submitted with the letter. The Complainants stated they have not received the certificate as yet.

(iv) The Respondent has not given any reason for taking two years and seven months to decide de-registration on its own file. Department did not mention what steps were taken and the relevant laws and rules were not quoted and only one-line reply has been sent in response to the complaint. It was alleged that this was a highly objectionable and unacceptable approach of the Respondent and clearly portrayed an attitude of perverse, arbitrary, oppressive and discriminatory treatment, it betrayed failure to exercise power under the Sales Tax Act and had brought into sharp focus the neglect, inattention, delay, incompetence, inefficiency and ineptitude in the administration of duties and responsibilities, which amounted to maladministration under sub-section (3) of section 2 of the Federal Tax Ombudsman Ordinance, 2000.

(v) The Director of the firm finally requested that since his case has been subjected to extraordinary delay and he had to pay substantial amounts to the Auditor and the Legal Consultant for which he has produced invoices, adequate compensation in the form of financial award be granted to him. He further urged that disciplinary action be taken against the officials responsible for the delay and requested that this office make serious recommendation on this account so that the defaulting officials did not escape the consequences of delaying action in this case.

5. The Deputy Superintendent of Sales Tax representing the Department only replied that audit was carried out under Rule 11 of the Sales Tax Rules 2006. He had no explanation to offer for inordinate delay in completing the process of de-registration and could not inform this office why certificate of de-registration has not so far been sent to the Complainants.

6. The submissions made by the Complainants and the facts of the case have been examined. The following position emerges from the investigation of the complaint:

(i) The application for de-registration was submitted on 24-05-2005.

(ii) Deputy Collector (De-Registration) sent a letter dated 27-05-2005 to the Complainants to furnish 20 sets of documents. Whether these documents were prescribed for a sales tax registered unit or whether they were really required for audit has not been explained.

(iii) After one year the Assistant Collector sent the audit observation dated 16-05-2006 which was replied by the Consultant through a five-page letter dated 25-05-2006.

(iv) Deputy Collector of Sales Tax intimated the Complainants vide letter dated 09-09-2006 that a contravention case had been forwarded to the Additional Collector (Adjudication).

(v) Assistant Collector (Adjudication) issued a show cause notice on 24-05-2007 and decided the case vide order dated 21-06-2007 ordering recovery of Rs.2,208/-.

(vi) Recovery notice was sent on 16-07-2007 and payment was made on 28-07-2007.

(vii) No further action for de-registration was taken by the Department; after receipt of the complaint in this office and reference to the Department vide notice dated 27-12-2007, the de-registration was allowed and communicated to the FBR on 28-01-2008.

7. This is a clear case of maladministration on the part of the Sales Tax Department; the allegations of neglect, inattention, delay, incompetence, inefficiency and ineptitude and harassment by the Sales Tax Department are established. Despite the Additional Collector's letter dated 11-01-2008 that de-registration has been approved and sent to the Federal Board of Revenue to issue a certificate, the certificate has not been sent even after lapse of two months. A very serious notice of this complaint be taken to identify the officials responsible for the delay of more than two and a half years in processing the de-registration application after demanding 20 sets of documents, completion of audit in one year, another year spent in adjudication and even after the payment of the demanded amount the unit was not de-registered and now it has been de-registered but the certificate has not been sent to the Complainants. The helplessness of the Complainants and the grave inefficiency of the sales tax officials are appalling. The Complainants' demand for compensation of extra expenditure for audit and professional services is justified.

8. It is recommended that FBR direct:

(i) the Collector of Sales Tax to deliver the de-registration certificate to the Complainants within seven days and report compliance to this office within fifteen days failing which action against the Collector shall be taken under section 12 of the Establishment of the Office of the Federal Tax Ombudsman Ordinance, 2000;

(ii) the Collector of Sales Tax be asked to show cause within thirty days why compensation of Rs.45,000/- be not awarded to the Complainants under section 22 of the Federal Tax Ombudsman Ordinance, 2000 for the loss and agony suffered by them on account of grave maladministration committed by the Collectorate.

(JUSTICE (R) MUNIR A. SHEIKH)
Federal Tax Ombudsman

Dated: -2008

BEFORE THE FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE, KARACHI

COMPLAINT NO.1158/2007

M/s Adil Industries (Pvt) Limited,
Head Office Suit No.1,
Mezzanine Floor, Namco Centre,
Campbell Street,
New Challi, Karachi. ...Complainant

Versus

The Secretary,
Revenue Division,
Islamabad. ...Respondent

Dealing Officer: ...Mr. M. Mubeen Ahsan, Advisor

FINDINGS/DECISION

Present: Mr Saleemuddin, Advocate
Mr Kaleemullah, Assistant Collector of Sales Tax, Hub

The complaint has been filed against the Sales Tax Department allegedly on account of misinterpretation and misapplication of amendment dated 12-12-2006 (introducing sub-section (2) of section 45 of the Sales Tax Act). It has been stated in the complaint that the show cause notice was served on 26-01-1999 but adjudication order was not passed within 180 days as a result of which the show cause notice became illegal as the deadline for lawful proceedings expired on 24-07-1999. It was argued in the complaint that on completion of the legitimate deadline any further proceedings would be nullity, illegal, invalid, void and without jurisdiction and lawful authority. It was further stated that the amendment brought on 12-12-2006 could not be given retrospective effect in cases for which the deadline expired prior to 30-06-2006.

2. The learned Counsel for the Complainants stated that the rights conferred under the statutes could not be taken away by later legislation except by express words or by necessary implication. In support of his argument he quoted several authoritative judgments by superior courts emphasizing the point that retrospective effect to statute be given either by express and very specific words or the same may be inferred from the language employed. The learned Counsel has stated that the amendment dated 12-12-2006 was misinterpreted and incorrectly applied. He argued that the amendment was applicable to the cases in which the final deadline fell on or after 30-06-2006 and in other cases in which the deadline for completion of the order expired earlier than 30-06-2006 was not applicable to such cases.

3. The learned Counsel further stated that when the Department failed to finalize the order within 180 days of the first issue of show cause notice or on the expiry of legitimate deadline limitation in 2002, the Department lost the right to proceed any further in this matter and thus the Complainants should be deemed to have obtained the right of benefits

Honourable Federal Tax Ombudsman with the Officers and Staff of the Federal Tax Ombudsman Secretariat, Regional Office, Karachi

which could not be taken back through any device or subsequent amendment of law because once a matter attained finality, a vested right was created in favour of the party.

4. It was further stated that all cases whose deadline expired on any date earlier than 30-06-2006 were immune from the benefit of the amendment extending the date to 31-12-2006. The date for completion of case expired more than eight years back and the deadline for issue of order expired in 2002, the case which had attained finality could not be reopened on any pretext, the Complainants had acquired vested right on 24-07-1996 or at the most in 2002 which could not be withdrawn by any amendment in law. The Federal Tax Ombudsman and the President of Pakistan have held similar views in the matters of limitation; the Lahore High Court has held that limitation of period was mandatory, retrospective application of amendment dated 12-12-2006 was totally erroneous and illegal.

5. The learned Counsel concluded that the notice dated 21-06-2007 and order-in-appeal dated 18-08-2007 were illegal and ultra vires to the Sales Tax Act. The amendment dated 12-12-2006 was incorrectly applied to this case because the amendment was applicable only to those cases whose deadline had not expired on 30-06-2006.

6- The Additional Collector of Customs Sales Tax and Federal Excise, Quetta, replied to the complaint as follows:

(i) During the course of audit of sales tax record for the period 1996-97 several discrepancies were found as given hereunder.

(ii) Complainants had suppressed the sales amounting to Rs.17,527,125/- in the tax period 1996-97 on which sales tax amounting to Rs.3,154,882.50 was recoverable under section 36 alongwith additional tax under section 34 of the Sales Tax Act.

(iii) Comparison of the sales tax challans and the sales value shown in RT-I statement it was found that the sales exceeded the amount of sales shown in the challans by Rs.1,489,869/-. The Complainants thus suppressed the sales value and Rs.161,393/- was recoverable under sections 33 and 34 of the Sales Tax Act.

(iv) In March 1997 an amount of Rs.292/- was claimed as input tax on the purchase of Automotive Battery which was inadmissible in terms of Clause (a) of sub-section (1) of section 8 read with SRO 1053(I)/93 and recoverable under section 36 of the Act.

(v) Show cause notice was issued to the Complainants on 26-01-1999 as to why an amount of Rs.3,316,576/62 should not be recovered from them together with additional tax and why penal action not be initiated for violation of sections 33 and 34 of the Sales Tax Act.

(vi) The hearing memos dated 30-11-2001, 20-12-2001 and 24-12-2001 were sent to the Complainants but nobody attended the hearing in response to the show cause notice and a final hearing was fixed for 07-01-2002.

(vii) The Complainants accompanied by the Consultant appeared before the

adjudicating officer and submitted written reply to the show cause notice and the adjudicating officer directed the Department and the Inspector incharge of Adjudication Branch sent a letter to the Senior Auditor of Sales Tax, Hub, on 09-01-2002 to furnish comments on the reply within 10 days. The comments were supplied on 18-01-2002. The parawise comments were forwarded to the Collector of Customs, Quetta, for investigation of the issue as well as the outcome of the appeal filed by the Department before the Hon'ble High Court of Balochistan in a similar case of the Complainants.

(viii) The Deputy Collector of Sales Tax vide letter dated 27-05-2002 asked the firm of Chartered Accountants to provide break-up of sales of Rs.59,111,131/- shown in the audited accounts of the Complainants' company. The Chartered Accountants vide letter dated 06-06-2002 confirmed that sale of Rs.59.111 million pertained to the manufacturing operation and that their report had been forwarded to the Additional Collector (Adjudication) vide letter dated 04-07-2002.

(ix) Memos were issued to the Complainants for hearing on 22-11-2005, 31-01-2006 and 06-11-2006. On the Complainants' request final hearing of the case was fixed on 21-11-2006. The case was adjudicated vide order-in-original dated 30-11-2006 and the Complainants were directed to pay sales tax amounting to Rs.3,155,174/- together with additional tax under section 34 and penalty under section 33 of the Sales Tax Act. With regard to the time-bar, the period of all pending adjudication cases had been extended upto 31-12-2006 under sub-section (2) of section 45 of the Sales Tax Act.

(x) The Complainants filed an appeal before the Collector (Appeals) under section 45 B of the Sales Tax Act.

(xi) There was no denying the fact that there occurred delay but the Federal Government had amended section 45 of the Sales Tax Act by inserting sub-section (2) which was circulated to all the Collectorates vide letter dated 12-12-2006. The amendment was follows:

> "Notwithstanding anything contained in sub-section (4) of section 11 and sub-section (3) of section 36 or any other provision of the Act or any other law for the time being in force and notwithstanding any decision or judgment of any forum, authority of court, the time for adjudication in all the case pending as on 30-06-2006 shall be deemed always to have been extended upto 31st December 2006 from the date on which time limit prescribed under sub-section (3) of section 36 expires."

The above amendment provided legal protection to the delay in all the cases pending on 30-06-2006.

(xii) The Collector (Appeals) after taking into consideration the amendment under which the FBR had extended the date for decision of the pending cases upto 31-12-2006 the appeal was dismissed being not maintainable and the order was confirmed.

7. The Additional Collector further stated that the Complainants had a right to file an appeal against the order of the Collector (Appeals) before the Appellate Tribunal. He

added that under sub-section (1) and sub-section (2) of section 9 of the Office of Federal Tax Ombudsman Ordinance, 2000, it has been laid down that the matters which were subjudice before any competent forum or related to the assessment of income, wealth etc the jurisdiction of the Federal Tax Ombudsman jurisdiction was barred; he requested that the complaint be dismissed.

8. The Counsel for the Complainants stated during the hearing that the show cause notice was issued on 26-01-1999 and under sub-section (4) of section 11 of the Sales Tax Act it was necessary for the officer of the Sales Tax that order should be made within 90 days of the issuance of show cause notice or within such extended period as the Collector for reasons to be recorded in writing extend the period by 90 days. Thus, according to him, the order should have been passed within 180 days of 26-01-1999 and the Additional Collector of Sales Tax should have decided the case by 24-07-1999. The learned Counsel further argued that under sub-section (1) of section 36 of the Act the show cause notice could be served within five years. He argued that since the show cause notice was issued in respect of the alleged evasion of sales tax for the year 1996-97 this period too expired in 2002.

9. It was further stated that while the show cause notice was issued in 26-01-1999 and reply was sent on 22-02-1999, no hearing was conducted and no decision was given by the Additional Collector who had issued the show cause notice. The hearing was conducted in November 2006 and the order was passed on 30-11-2006 seven years after the issue of the show cause notice. It was contended that this was unjust and unreasonable to keep the matter pending for such a long time whereas the matter should have been decided within a reasonable period of time after the issue of the show cause notice.

10. It was further stated that sales tax was being paid by the company on the Polypropylene Bags for cement leviable to sales tax whereas the Polyethylene Bags which were purchased from the market and supplied to the purchaser were not liable to sales tax. However, in the accounts of the company both supplies were recorded. The Department has relied that both supplies were liable to sales tax and exempt from sales tax to determine that sales tax amounting to Rs.161,393/- was payable by the firm. This position was explained in the reply to the show cause notice and was not pursued.

11. It was argued that show cause notice issued in January 1999 would not be valid after July 1999 and it was wrong to consider his case as pending in 2006 when blanket extension was allowed by the CBR vide letter dated 12-12-2006 as stated by the Collector (Appeals) in paragraph 9 of his order dated 18-08-2007.

12. It was further stated that the purchases and supplies of Polyethylene Bags which were sales tax exempt were duly declared in income tax returns and if the manufacturers had any intention to evade tax they would have also concealed the supplies from the income tax returns.

13. The Senior Auditor of the Sales Tax Department stated that hearing notices dated 30-11-2001 and 20-12-2001 were issued to M/s Adil Industries (Pvt) Limited but nobody attended the hearing. A final notice dated 24-12-2001 was also issued by the Additional Collector which too remained unattended. He further stated that under sub-section (2) of section 45 of the Sales Tax Act introduced in the Budget of 2006, for all pending cases as on 30-06-2006 the time for adjudication was extended upto 31-12-2006 and under this blanket provision the case was decided by the Additional Collector.

14. It was further stated that the Complainants should have addressed their grievance in an appeal before the appellate forum of the Appellate Tribunal instead of voicing their grievance before the Federal Tax Ombudsman. It was added that under sub-section (2) (b) of section 9 of the Federal Tax Ombudsman, the Ombudsman did not have jurisdiction over cases of assessment of tax liability or interpretation of law rules and regulations.

15. The Complainants had stated that the notice dated 24-12-2001 claimed to have been issued to them was not received and according to the Department's records it was delivered and diarised on 27-12-2001. This clearly proved that the notice was received by them and was not an after thought to build the case against them.

16. The Counsel for the Complainants invited attention to the decision in Complaint No.561/2006 where it has been held by the Federal Tax Ombudsman about the applicability of section 9(2) (b) of the Ordinance. The Federal Tax Ombudsman has been pleased to order that the argument was plainly unsound as it proceeds upon the erroneous assumption that it was a case of interpretation of law whereas it was a simply application of clear and unambiguous terms of law established on record. He also quoted the decision of the President of Pakistan in Complaint No.805/2003 where it has been held that the time-limit under section 36(3) of the Sales Tax Act was mandatory and the Federal Tax Ombudsman's decision was sustained.

17. The submissions made by both the sides have been examined. The learned Counsel for the Complainants has argued that the decision should have been made within 90 days or 180 days after the issue of show cause notice in January 1999 and that even the period of five years under sub-section (1) of section 36 of the Sales Tax Act expired in 2002. Therefore, according to him, the limitation of show cause notice under sub-section (1) of section 36 of the Sales Tax Act also expired in 2002. He has argued that the extension allowed by the CBR vide order dated 12-12-2006 was not applicable to this case.

18. The adjudicating officer and the Collector (Appeals) have relied on sub-section (2) of section 45 of the Sales Tax Act, which was added by the Finance Act 2006. The learned Counsel of the Complainants has repeatedly (and wrongly) mentioned about the amendment brought on 12-12-2006 without referring either to the text of amendment or to the relevant section of the Sales Tax Act. The Additional Collector has also referred to the extension allowed by CBR vide letter dated 12-12-2006. The factual position is that sub-section (2) of section 45 of the Sales Tax Act, quoted at sub-para (xi) of paragraph 6 above, was added by Finance Act 2006 and assented by the National Assembly on 30-06-2006. This new sub-section laid down that the time for adjudication of cases pending on 30-06-2006 shall be deemed to have been extended upto 31-12-2006 regardless of provisions of sub-section (4) of section 11 and sub-section (3) of section 36 of the Act. With this enactment all the cases should be deemed to have been extended upto 31-12-2006 and the time-limitation would not apply to such cases. In view of the legal position explained above the complaint is not maintainable and is therefore rejected.

(JUSTICE (R) MUNIR A. SHEIKH)
Federal Tax Ombudsman

Dated: -2008

BEFORE THE FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE, KARACHI

COMPLAINT NO.1199/2007

M/s Saleem Enterprises,
Through Nadeem & Company,
B-3,2nd Floor, Pak Chamber,
West Wharf Road, Karachi. ...Complainant

Versus

The Secretary,
Revenue Division,
Islamabad. ...Respondent

Dealing Officer: ...Mr. M. Mubeen Ahsan, Advisor

FINDINGS/DECISION

Present: Mr Nadeem Ahmad Mirza, Consultant

Syed Mohsin Ali Shah, Assistant Collector of Sales Tax

The complaint has been filed against the rejection of claims of sales tax amounting to Rs.9,970,545/- for the months of April 2002 to June 2002 and September 2002 by the Assistant Collector of Sales Tax Refund (Group IX) vide orders-in-original No.37,38 and 39/2007 dated 18-05-2007, upheld by the Collector (Appeals) vide orders-in-appeal No.508/2007, No.509/2007 and No.510/2007 dated 26-09-2007. It has been stated that the Complainants are a commercial exporter of Textile Goods, with no in-house facility/capacity for manufacture of goods, duly registered with the Sales Tax Department. They received 27 orders from foreign buyers of Dubai, UAE, Saudi Arabia, Malaysia & Singapore for supply of various varieties of Polyester Fabrics, Ladies Suits, Sarees and Shawls and Cotton Garments for a total amount of $2,139,692/51.

2. The Complainants placed orders on credit basis for supply of the goods in export packing to seven registered suppliers of Karachi and goods were delivered in export packing directly at the respective wharf/port without involvement of any cartage charges. The goods were covered by 84 invoices of Rs.74,205,249/- including the amount of Sales Tax Rs.9,970,545/-, which were shipped against 27 invoices for $2,139,692/51 after completion of formalities and documentation and verification by the officials of the Export Collectorate who found the goods in accordance with the declaration. The Complainants submitted the monthly sales tax return-cum-payment challans for April, June and September 2002 declaring the zero-rated exports of goods worth Rs.628,776,577/; they had made taxable purchases of Rs.74,696,115/- involving input tax Rs.9,970,545/-.

3. It was stated that the requisite documents claiming refund of input tax were deposited alongwith original bills of export, which were checked by the Deputy Collector (Refund), photocopies of the bills of export were retained and original bills were returned. On receipt of the sale proceeds, duty drawback claims were filed in the Collectorate of Exports which were processed and sanctioned and sent to the bank for payment.

4. It was stated that the Complainants had paid to the suppliers the cost of goods inclusive of sales tax through negotiable instruments, namely crossed/payee's account cheques/pay orders as required under section 73 of the Sales Tax Act which were encashed and credited in the buyer's accounts as per copies of the documents submitted as evidence of payment. Complainants submitted supportive documents to the claims on 02-07-2003, 09-03-2003 and 10-03-2003. On receipt of these documents it was mandatory for the Respondent to sanction and pay the input tax relating to the goods actually shipped within one month of the submission of the supportive documents under Rule 7 of the Sales Tax Refund Rules. But the sanctioning authority did not process the claims without any valid reason despite repeated personal requests.

5. It was contended that since the delay in processing and sanction of refund claims was without any valid justification/reason, the same were withheld till end 2005 on the plea that the suppliers were of suspected nature and the Collectorate had either declared them blacklisted or had suspended their registration. The date of suspension/blacklisting of the suppliers was not communicated and the reason why the Complainants be held responsible for the act of the suppliers was also not disclosed. While waiting for refund, they received three show cause notices (SCNs) dated 02-10-2006 and 31-10-2006.

6. The Consultant requested the sales tax authorities to provide certain documents and answer several questions regarding the contravention reports and SCNs to enable him to submit written rebuttals and argue the case. A long list of queries and questions requiring response from the Department was submitted with the complaint. It was stated that the Deputy Collector, instead of supplying the requisite documents, directed his Senior Auditor to forward comments on the provisional replies. The Deputy Collector was immediately informed that the (Auditor's) comments were contrary to the queries and without the requisite documents. No comments or documents were furnished to the Complainants or the Consultant and hearing memos were issued for 11-11-2006, 29-11-2006, 19-12-2006, 15-02,2007, 22-03-2007, 10-04-2007 and 25-04-2007, on each date the Consultant attended the hearing. The Respondent rejected the refund as inadmissible vide three O-I-Os dated 18-05-2007 on the basis of presumptions, conjectures, and without valid evidence.

7. The vires of the orders was challenged in appeals under section 45-B of the Sales Tax Act before the Collector (Appeals) and hearings were fixed for 12-07-2007 and 21-09-2007. The Consultant attended each hearing to represent the Complainants whereas the representative of the adjudicating Assistant Collector did not attend. The Collector (Appeals) passed orders on 26-09-2007 upholding the orders-in-original as correct in law, brushing aside the provisions of Sales Tax Act as well as the dictums and principles laid

down by the Appellate Tribunal/the High Court/the Supreme Court. The orders were passed after the expiry of stipulated period of 90 days without any extension.

8. It was further stated that orders-in-original were passed by the Assistant Collector of Sales Tax having power to adjudicate upon cases of refund not exceeding Rs.1 million whereas the refund amounts were Rs.1,028,876/-, Rs.1,714,735/- and Rs.7,196,934/-. Thus the SCNs and orders-in-original had been passed without jurisdiction. It has been laid down by the Supreme Court in judgments in a number of cases that if a mandatory condition for the exercise of jurisdiction by a Court, Tribunal or authority is not fulfilled, then the entire proceedings become illegal for want of jurisdiction/powers. SCNs should have been issued within 14 days under Rule 8 of Sales Tax Refund Rules 2000 and 2002 from the date of receipt of supportive documents whereas the same were actually issued on 20-10-2006 and 30-10-2006; counted from the dates of submission of supportive documents i.e. 02-07-2003, 09-03-2003 and 10-03-2003, SCNs were barred by three and half years and four years. Therefore, no proceedings could be undertaken against time-barred SCNs as laid down by the Supreme Court of Pakistan and the orders-in-original were void ab initio and wrong.

9. It was further argued that in the SCNs no charge or contravention of any law was mentioned. Therefore, the orders-in-original and the orders-in-appeal too were void ab initio as held by the Supreme Court in the judgment, PTCL 2002, CL-1, that since SCNs were vague and not in conformity with the law, therefore the same had no legal effect. Under sub-section (4) of section 11 of the Sales Tax Act, the case has to be decided within 90 days of the receipt of the contravention report or within the period extended by 90 days. Accordingly, the cases should have been decided by 18-04-2007 and 28-04-2007 whereas the judgments were passed on 18-05-2007 after the expiry of stipulated period. Similarly the appeals were filed on 19-06-2007 and should have been decided within 90 days under section 45-B of the Act. Extension of 90 days was not made by the Respondent prior to the expiry of the initial period and the orders-in-appeal were passed on 29-04-2007. The Complainants recounted several decisions of the superior courts and the Federal Tax Ombudsman, and referred to the decision of the President of Pakistan that the direction about the time-limit was mandatory and not directory in nature.

10. The following judgments and decisions were quoted in support of the contention of the Complainants:

(i) Federal Tax Ombudsman in complaint No.958-L/2005 recommended that the order-in-original passed after the expiry of the stipulated period be cancelled.

(ii) Supreme Court decision in Chittaranjan Cotton Mills Limited Vs Staff Union PLD 1971 S.C. 197 and in Raunaq Ali's case PLD 1973 S.C. 236, held that where inferior tribunal or court has acted without jurisdiction such action amounts to usurpation of power, it is a nullity and has no legal effect.

(iii) The decision of the Member (Judicial) of the Appellate Tribunal that the

information downloaded from the STARR cannot be held as reliable information and after obtaining such information the Department was duty bound to establish through independent evidence that the units with which the Complainants were dealing were fake and the Complainants were duly apprised about these facts. Under the circumstances the order to the extent of disallowing input tax adjustment was not justifiable.

(iv) The Appellate Tribunal in case of Collector of Sales Tax and Central Excise (Enforcement), Karachi Vs Welfare Trading Company held that the Refund Rules 2002 did not prescribe the condition of proof of payment, and the verification of the deposit of tax claimed as refund under section 10(4) does not mean that the refund is to be denied due to non-deposit by the supplier. It was argued that under section 3(3) of the Sales Tax Act, the liability to pay the tax shall be of the person making supplies. This view was confirmed by High Court of Lahore in 2000 PTD 399 which was accepted by the Supreme Court in PLD 2001 S.C. 600. The Complainants' case was that the supplier had not deposited the tax during the period the Respondent had made purchases but they admitted that the goods purchased under the invoices were actually exported and the suppliers were not blacklisted at that time.

(v) Federal Tax Ombudsman has held in innumerable Findings/Decisions that to deposit tax in government treasury collected from the buyer the responsibility rested with the supplier who acted as an agent of the exchequer under section 3(3) (a) of the Sales Tax Act.

11. It was argued that if the suppliers' status reflected in STARR as "blacklisted, registered person showing abnormal tax profile and scrutiny for verification of input tax", the respective Collectorate which had issued registration certificate should have proceeded against the suppliers under section 11 and sub-section (e) of section 37-C of the Sales Tax Act. No provisions of the Act direct the Respondent to disallow an admissible refund of the claimant on the basis of acts of commission of suppliers.

12. It was stated that it was the responsibility of the Complainants under the Sales Tax Act that he should hold sales tax invoices issued by the suppliers under section 23 of the Sales Tax Act, file monthly returns under section 26, claim zero-rating under section 4, claim refunds under section 10(2), pay the suppliers the cost of goods in addition to sales tax through negotiable instruments under section 73 of the Act and subsequently file supportive documents specified in Rule 9 of the Sales Tax Refund Rules 2000 and 2002. Not a single contravention in this context has been made out in the show cause notices/orders-in-original by the Assistant Collector of Sales Tax.

13. It was further argued that the Assistant Collector of Sales Refund rejected the claims of the Complainants on the basis of invoices issued by seven suppliers during the months of April, June and September 2002 on the pretext of the suppliers' status as "blacklisted, registered person showing abnormal tax profile and scrutiny for verification of input tax". At the same time the Collectorate sanctioned refunds to 83 exporters named

in the complaint and paid refund amounting to Rs.141,676,458/- on the invoices issued by the same suppliers prior to and after April 2002 to November 2003. Similarly the refund due for the months of May to July 2002 was sanctioned to M/s Decent Exports, Karachi, alongwith additional tax which was adjusted towards adjudged recovery of sales tax vide order dated 14-04-2005; thus this act was tantamount to discrimination which was barred under the Constitution of Pakistan.

14. It was requested that the impugned orders-in-original and orders-in-appeal be set aside being whimsical, contrary to law, suffering from lack of power, limitation and being of no legal effect, and direction be given to the Respondent to pay to the Complainants refund of Rs.9,970,545/- claimed for the months of April, June and September 2002 and pay compensation @14% per annum, from the date of expiry of the specified time under section 10 of the Sales Tax Act read with Rule 7 of the Sales Tax Refund Rules 2000, under section 67 of the Act and any other relief deemed fit and adequate be granted.

15. The Assistant Collector of Sales Tax (Refund) replied to the complaint raising the objection that the Complainants were 'required' to appeal under section 46 of the Sales Tax Act before the Appellate Tribunal, there was no maladministration on the part of the Respondent and the complaint did not fall within the purview of the Federal Tax Ombudsman Ordinance,2000.

16. In the parawise comments it was stated that;

(i) The claims for the tax period April, June and September 2002 were submitted on 10-03-2003, 02-07-2003 and 09-03-2003 without supportive documents such as proof of payment in shape of bank cheques/pay orders and bank statements showing transfer of amount from business account of the buyer to the business accounts of the suppliers and the Bank Credit Advice etc.

(ii) The processing of claims through computerized system revealed that the suppliers of the Complainants appeared under objection as blacklisted, registration suspended, registered person showing abnormal tax profile, and (under) scrutiny for verification of input tax. The claims were deferred for penal proceedings and (three) SCNs were issued in October 2006 which were received back undelivered.

(iii) The Consultant's vide letter dated 26-12-2006 requested that all correspondence for M/s Saleem Enterprises be addressed to him and therefore SCNs alongwith copies of various hearing notices were sent to the Consultant on 17-01-2007.

(iv) The Complainants were provided ample opportunity of hearing but they had no evidence or documents to contest the charges contained in the SCNs and there was reason to believe that refund had been claimed on self generated invoices pertaining to non-existent suppliers. Unless the deposit

of tax into the treasury was established no credit for any adjustment or refund could be allowed.

(iv) The argument that the liability to pay sales tax was on the suppliers under section 3 of the Sales Tax Act was against the provisions of section 10(4) of the Act requiring verification of deposit of tax claimed as refund. The intention of the sales tax law is that the tax deposited in government treasury during manufacture and sale of goods specifically exported be refunded to the exporter.

(v) The contention that the suppliers were not blacklisted at the time of issuing invoices was not acceptable because it could not be argued that the fraudulent person be treated as fraudulent only prospectively and all his past wrong doings be neglected.

(vi) CBR issued a list of persons who had not deposited the amounts of tax in government treasury and it could be identified that against the fake and flying invoices no amount was deposited in the treasury. Similarly sections 21(2) and 21(4) of the Sales Tax Act authorized the Collector to blacklist a person found to issue fake invoices, evade tax and commit tax fraud.

(vii) The suppliers were showing manipulated heavy transactions and not paying due tax in the exchequer. It was therefore concluded by the adjudicating authorities that the objections raised by the STARR system had neither been removed through substantive documents nor had the Complainants provided any ground to over-rule the system's objection despite providing ample opportunity of hearing. The indifference shown by the Complainants in disclosing their true whereabouts added credence to the objection that both the Complainants and the suppliers were in fact the same intending to defraud the government exchequer on the basis of non-genuine claims. The charges contained in the SCNs were found true and fully established and the refund claims were rejected by orders-in-original No.37/2007, 38/2007 and 39/2007 dated 18-05-2007.

(viii) The Collector (Appeals) passed three appellate orders after providing sufficient opportunity of hearing to the Complainants and concluded that he they had failed to meet the requirements of law under sections 7 and 10 of the Act read with Sales Tax Refund Rules 2002.

(ix) The date of service of SCNs should be taken for determining limitation and not the date of original SCNs as endorsed by the Collector (Appeals). A further extension of 90 days was obtained from the competent authority before passing the orders-in-original on 18-05-2007. If the Complainants were aggrieved with the orders-in-appeal, they should have filed appeals before the Appellate Tribunal.

(x) The proviso regarding empowerment of adjudication authorities under section 45 of the Act related to the recovery of tax involved or the amount erroneously refunded. No monetary limit has been prescribed for issuing of SCN about the inadmissibility of the claim liable to rejection.

(xi) The contention that the SCNs should have been issued within 14 days of the receipt of the supportive document was not well-founded. Federal Tax Ombudsman in his Findings in Complaint No.887-K/2007 has categorically held that this time-limit was for the reply to be given by the Complainants to whom the notice has been issued.

(xii) It was stated that there was no maladministration on the part of the Respondent and the complaint being without merit be dismissed.

17. The Consultant representing the Complainants stated during the hearing that after filing of the claims for refund of sales tax and the supportive documents in March and July 2003, no action was taken by the Department. Therefore, a Complaint No.C-640-K/2006 was filed and in compliance with the recommendations of the Federal Tax Ombudsman action was initiated by issuing show cause notices in October 2006.

18. The learned Consultant argued that under Rule 8 of the Sales Tax Refund Rules it was mandatory for the Department to issue SCN within 14 days of the receipt of the claims but no action was taken in violation of this provision. He further stated that out of three SCNs issued by Deputy Collector, one notice pertained to claim of more than Rs.25 lacs which exceeded the authority of the Deputy Collector. However, all these three cases were finally decided by the Assistant Collector who was again not authorized to decide these cases.

19. The learned Consultant invited attention that in one show cause notice an objection was raised that in the shipping bills the Mate Receipt Numbers did not match with the Mate Receipt Numbers recorded on the STARR. Another objection was that the suppliers of the claimant were blacklisted. He argued that there was basically no allegation against the Complainants but against the suppliers. The Department has a huge country-wide network to trace/identify each of its registered suppliers and verify the particulars of the claims for refund and the Complainants should not be made answerable for the blacklisting of the suppliers, SCNs were legally invalid because no charge against the Complainants was framed, as declared by the Supreme Court Judgment PTCL 2002 CL-1. In all these three cases the orders-in-original were passed on 18-05-2007 after the expiry of 180 days (no extension was sought or granted) and, therefore, these orders were also invalid under sub-section (4) of section 11 of the Sales Tax Act.

20. It was further stated that orders-in-appeal were passed by the Collector (Appeals) without taking into consideration the facts of the case, the law points and the precedents and the judgments of the Superior Court. These orders were also passed long after the expiry of the mandated period of 90 days. Collector (Appeals) rejected the appeals with the remarks "I do not consider it necessary to take into account the law points raised by the learned counsel; law has to be used to serve the ends of justice and not to perpetuate

unlawful activities. I conclude that the arguments advanced by the learned counsel and the precedents quoted by him are irrelevant and untenable. Consequently, I hold that the impugned order is correct in law and on facts and there is no reason to interfere with the same. The appeal is rejected accordingly". These remarks need no elucidation to highlight the misuse of authority, the illegality of the orders, and the perverse attitude of the officers deciding the fate of the tax-payers.

21. The learned Consultant referred to the Appellate Tribunal's orders in appeal No. 255/2001 and 309/2001 dated 14-06-2006 where in para 15 it was remarked that the order-in-original was framed "after 45 days from the date of show cause notice", "the time of passing the order- in-original" was 45 days and the order-in-original was barred by limitation period mentioned in the statute and was liable to be annulled on this score. The President of Pakistan on representation of CBR, PTCL 2005 CL 843, has held that the contention of the Department that the time-limit under section 36(3) of the Sales Tax Act was merely directory and not mandatory did not seem to be valid and where inaction on the part of a public functionary within the prescribed time is likely to affect the rights of a citizen, the prescribed time is deemed directory but where a public functionary is empowered to create liability against a citizen only within the prescribed time it is mandatory. With these remarks the Federal Tax Ombudsman's decision was sustained. An order on similar lines was passed by the Federal Tax Ombudsman in Complaint No.958-L/2005. He observed that it was established fact of law that a decision has to be made within the mandatory period, it was binding on the Department to decide the claims of refund applied for, and the concerned officials had no right to ignore this limitation; they were required to abide by the same and any deviation of the prescribed time-limit rendered the decision as void and of no legal effect.

22. The learned Consultant invited attention to the judgment of the Appellate Tribunal in Appeal No.797/LB/2005 wherein the orders to the extent of claim for input against invoices issued by the suspected units were set aside. It was held that the information downloaded from STARR was not reliable and after obtaining such information the Department was duty-bound to establish through independent evidence that the unit/appellant was justifiably blacklisted. He further stated that the deposit of the sales tax should have been verified by the Department itself because the purchaser who had paid sales tax against valid invoices was not responsible to submit proof or evidence of payment to the government by a supplier who was the registered agent of the Sales Tax Department.

23. The learned Consultant further stated that on the one hand the Complainants' refund claims have been rejected on the basis of invoices issued by seven suppliers for supplies made in the months of April, June and September 2002 on the pretext that these suppliers were blacklisted showing abnormal tax profile and required scrutiny for verification of input tax. On the other hand the Collectorate sanctioned refund of Rs.141,676,458/- to 83 exporters named in the complaint on the basis of invoices of the same suppliers before and after April 2002 to November 2003.

24. Assistant Collector replied that the proper forum to address the grievance was the

Appellate Tribunal and not the office of the Federal Tax Ombudsman. He further stated that under section 45 of the Sales Tax Act the monetary limit has been prescribed for assessment of tax, charging of default surcharge, imposition of penalty and recovery of amount erroneously refunded or any other contravention; it did not relate to the cases where rejection of refund claim or sanction thereof was involved. Assistant Collector could adjudicate upon the cases without any monetary limit. The time-limit for issuing orders-in-original was extended by the Collector on 12-04-2007 and therefore the adjudication orders issued in May 2007 were issued within the extended time-frame.

25. The contents of the complaint, the arguments put forward by both the sides and statements made at the time of hearing have been related in the foregoing paragraphs. It transpires that against the exports made in April, June and September 2002, claims for refund of sales tax and supportive documents were filed in March and July 2003, but no action was taken to decide the claims for refund of sales tax amounting to Rs.9,970,545/- on the pretext that the suppliers were suspected and blacklisted. A complaint No.640-K/2006 was filed in this office and vide Findings/Decision dated 28-08-2006 it was recommended that the "pending refund claims of Rs.9,970,545/- should be processed and settled on merits in accordance with law and facts" and in "case of adverse decision, a speaking order should be passed after due process". Deputy Collector of Sales Tax thereupon issued three SCNs in October 2006 and the Assistant Collector vide three identical orders-in-original dated 18-05-2007 rejected the claims on the plea that the suppliers were blacklisted as reported by STARR system and refund was not admissible.

26. This office has not taken into consideration the legal objections raised by the learned Consultant regarding the time-limit prescribed under law for issue of SCNs and adjudication orders and the legality of Assistant Collector's adjudication of cases for refund of more than rupees one million. The complaint has been examined taking cognizance of the grave maladministration committed by the sales tax authorities despite clear recommendation of this office to decide the cases in accordance with the law and facts. It is significant that the supportive documents for the refund claims were filed in 2003 but the Department did not take any action to scrutinize the documents and returns of the suppliers although soon after blacklisting a thorough inquiry of the purchases, sales, input/output tax adjustment, payment of sales tax should have been undertaken by the Department. The claims were kept pending without action till the Decision of this office was issued in August 2006.

27. Thereupon the Assistant Collector of Sales Tax rejected the claims on the ground that the suppliers were blacklisted. Before deciding the cases he referred the matter to the Auditor who only raised objections on the Consultant's reply to the SCNs transferring the burden of inquiry and proof to the claimant instead of performing his own official duties to carry out a thorough audit of the suppliers' accounts. The Assistant Collector of Sales Tax passed identical orders reproducing the reply to the SCNs and adverse comments of the Auditor without any analysis or any reasoning in rebuttal of the arguments of the Consultant, entirely relying on the status of the suppliers appearing on STARR as "blacklisted, registered person showing abnormal tax profile, scrutiny for verification of input tax". Collector (Appeals) also reproduced the contents of the appeal and the

comments of the Departmental Representative and rejected the appeal on the ground that the refund had not been validated by computerized risk assessment system.

28. It is established that the refund claims were kept pending for three years without any action, without audit and scrutiny of the accounts of the suppliers, SCNs were issued more than three years after filing the refund claims, which were summarily rejected by the Assistant Collector and the Collector (Appeals). DR has argued that under Rule 8 the claimant was required to reply to SCNs within 14 day; at the same time the Department could keep the claims pending indefinitely (under section 10(4) of the Act) for investigation. This reflects the perverse and oppressive attitude of sales tax officials who deem it their right to delay the disposal of the claims without limit with no legal justification.

29. It is significant that the Consultant has given the names of 83 companies to whom refund was allowed by the Department on the supplies made by the same suppliers during the same tax periods which proved that a discriminatory treatment has been meted out to the Complainants whose claims have been rejected, clearly without scrutiny, audit and verification of payment of sales tax to and by the suppliers in the government treasury or adjustment against their own tax liability.

30. It is a clear case of grave maladministration on the part of the Assistant Collector of Sales Tax and Collector (Appeals) who rejected the claims without any justification. It is recommended that Federal Board of Revenue

(i) in exercise of powers under section 45A of the Sales Tax Act, set aside the orders-in-original No.37/2007,38/2007 and 39/2007 dated 18-05-2007 passed by the Assistant Collector of Sales Tax and orders-in-appeal No.508/2007, 509/2007 and 510/2007 dated 26-09-2007 passed by the Collector (Appeals);

(ii) direct the Collector of Sales Tax concerned to conduct a thorough scrutiny and audit of the suppliers also taking into consideration the claim of the Consultant that sales tax has been refunded to 83 exporters on supplies made by the same suppliers and a discriminatory treatment has been meted out to the Complainants; and after ascertaining the factual position decide the cases afresh fairly and justly, strictly in accordance with law and on merits;

(iii) the action be completed within thirty days; and

(iv) compliance be reported to this office within forty five days.

(JUSTICE (R) MUNIR A. SHEIKH)
Federal Tax Ombudsman

Dated: -2008

CASES RELATED TO INCOME TAX

BEFORE THE FEDERAL TAX OMBUDSMAN ISLAMABAD

COMPLAINT NO.1639/2008

M/s Hassan Weaving Factory,
Faisalabad. ...Complainant

Versus

Secretary,
Revenue Division,
Islamabad. ...Respondent

Dealing Officer: ...Mr. Muhammad Daud Khan, Adviser

FINDINGS/DECISION

Present: None for the complainant.
(However, letter from Mian Zafar Iqbal, Advocate received and is on record).

Mr. Safdar Hussain Bhatti, ACIT/T.O. Enforcement 16 RTO Faisalabad for the respondent (DR).

This complaint pertains to non-payment of income tax refund of Rs.8,000 for the tax year 2007. DG RTO Faisalabad has however, vide his office letter No.1566 dated 10-9-2008 informed that the impugned refund had since been issued vide refund voucher No.90/113 dated 09-9-2008. The DR reconfirmed the issuance of the refund and furnished photo copies of the refund voucher and UMS receipt No.609 dated 15-9-2008 which are on record. He, therefore, claimed that the taxpayer's grievance has since been redressed and now no further action in the matter by this office is needed.

2. It was however, complained to this office by the AR of the complainant vide his letter dated 20-10-2008 that the taxpayer had not received the refund voucher as intimated by the department but only a photo copy thereof which the taxpayer had naturally not been able to encash. This matter of issuance of the photo copy of the refund voucher instead of original refund voucher was brought to the notice of Commissioner (Enforcement) RTO Faisalabad who referred the matter to the Additional Commissioner,

RTO Faisalabad for investigation. These are reportedly under way but no response has been intimated upto date (20-10-2008). The taxpayer, therefore, wants issuance of original refund voucher or payment of refund amount to the complainant any way.

3. The matter has been considered. It is really unfortunate and a very poor reflection on working of the concerned office. This malpractice is sometime resorted to by the unscrupulous elements in the tax offices to 'teach lesson to the refundees who try to get refund in transparent manner". The matter needs serious probe and guilty officials i.e. person incharge of issuing the envelope containing the refund voucher and this supervisory officer, are to be properly punished for such serious and apparently wilful fault. It is, therefore, recommended that -

(i) the Secretary, Revenue Division to ensure delivery of the original refund voucher and payment of cash refund to the complainant within 15 days of the receipt of these recommendations;

(ii) ensure that if it happened due to wilful fault or gross negligence the officials at fault are properly punished after observing the due procedure and process of law within 30 days; and

(iii) report compliance within 45 days.

(JUSTICE (R) MUNIR A. SHEIKH)
Federal Tax Ombudsman

Dated: -2008

BEFORE THE FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE, KARACHI

COMPLAINT NO.1655/2008

M/s. Industrial Clothings (Pvt) Limited,
Through : M/s. Faruq Ali & Co.,
222-A, Karachi Memon Cooperative Housing Society,
Justice Inamullah Road, Near Hill Park, Karachi. ...Complainant

Versus

The Secretary,
Revenue Division,
Islamabad. ...Respondent

Dealing Officer: ...Mr. Asad Arif, Adviser.

FINDINGS/DECISION

Present: Mr.Muneer-Uz-Zaman, Advocate : for the Complainant.

Mr. Asim Siddiqui, DCIT, Income Tax : for the Respondent

The complainant, a private limited company engaged in the manufacture and export of gloves, is aggrieved by the orders passed under section 170(4) of the Income Tax Ordinance, 2001 (hereinafter referred as the Ordinance) by the Taxation Officer for the assessment years 1994-95 to tax year 2003.

2. Brief facts of the case are that the complainant was sanctioned refund of Rs.1,567,369 for the assessment year 1994-95 to tax year 2003 whereafter it applied for additional payment for delayed refund in terms of section 171 of the Ordinance. In response thereto, however, the respondent issued a show cause notice dated 18.06.2008 for each of the years involved asking the complainant to explain by 25.07.2008 as to why the claim for additional payment for delayed refund may not be rejected as it was not found in accordance with law. It is stated that the learned A.R of the complainant, vide his application dated 24.07.2008, requested the Taxation Officer to allow 15 days time for explaining the position and making compliance of the show cause notices but the Taxation Officer, without intimating the complainant about the rejection or otherwise of the application for adjournment, passed the impugned orders for each of the years involved. It is further contended that the show cause notice was issued under section 170(4) which itself is illegal and *ultra vires* as it is beyond the scope of this section and that the impugned orders have been passed without affording an opportunity of hearing to the complainant thereby violating the principle of natural justice and are, therefore, illegal.

3. Replying to the allegations in the complaint, the Director General, Regional Tax Office in his written report has stated that the claims for compensation of the taxpayer for the assessment years 1994-95 to 2003 have been rejected by passing a speaking order under section 170(4) of the Ordinance after providing an opportunity of being heard. It is stated that the date of compliance of the show cause notice was 25.07.2008 and since no compliance was made on this date nor any application for adjournment was received, therefore, the Taxation Officer rightly proceeded to pass the impugned orders.

4. Parties have been heard and the record produced has been examined.

5. The learned A.R of the complainant has furnished a copy of his application dated 24.07.2008 addressed to the Taxation Officer requesting for time of 15 days and this application has been duly acknowledged by the Taxpayers Facilitation Centre by affixing the official seal thereon. When this was shown to the D.R, he conceded that the application for adjournment was duly received but was probably not forwarded by the Taxpayers Facilitation Centre to the concerned Taxation Officer.

6. In the above circumstances, the contention of the Commissioner that no compliance was made on the due date and no adjournment application was received is not correct. Before proceeding to pass the impugned orders, the Taxation Officer should have given a finding on this application which he failed to do. Under the circumstances, it is evident that no proper opportunity of hearing was provided to the complainant though it is an old maxim of law that no one should be condemned unheard. The principle of natural justice requires that hearing be granted to a person being condemned unless the relevant statute specifically excludes such an opportunity. Since the impugned orders have been passed without providing opportunity of hearing to the complainant as required by law, therefore, these are not sustainable. All these orders being contrary to law and principle of natural justice tantamount to maladministration. In the circumstances, it is recommended that:

i). FBR to direct the concerned Commissioner to invoke the provisions of section 122A of the Ordinance in respect of orders dated 26.07.2008 passed under section 170(4) of the Ordinance for the assessment years 1994-95 to tax year 2003 and

ii). to direct the concerned Commissioner to re-examine the matter afresh and decide it on its merits within 45 days of the receipt of this order in accordance with law and facts of the case after providing a reasonable opportunity of hearing to the complainant.

iii). Compliance be reported within 07 days after doing the needful in terms of (i) & (ii) above.

(JUSTICE (R) MUNIR A. SHEIKH)
Federal Tax Ombudsman

Dated: -2008

BEFORE THE FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE, KARACHI

COMPLAINT NO.1634/2008

M/s. Shalimar Builders (Pvt) Limited,
Through: Muhammad Mehtab Khan (Advocate),
1st Floor Rizvi Chambers,
Akbar Road, Karachi. ...Complainant

Versus

The Secretary,
Revenue Division,
Islamabad. ...Respondent

Dealing Officer: ...Mr. Asad Arif, Adviser

FINDINGS/DECISION

Present: Mr.M.Mehtab Khan, Advocate : for the Complainant.

Mr. Asim Siddiqui, DCIT, Income Tax, for the Respondent

The complainant, a private limited company engaged in the business of builders, is aggrieved by the penalty order under section 183(b) of Income Tax Ordinance, 2001 (hereinafter referred as the Ordinance), passed by the Taxation Officer of the Income Tax Department.

2. Brief facts of the case are that for the assessment year 2001-02 the complainant filed its return of income wherein a loss of Rs.1,028,992 was declared. The assessment for this year was completed ex-parte under section 63 of the repealed Income Tax Ordinance, 1979 (hereinafter referred as the repealed Ordinance) and income was determined at Rs.3,400,000. The complainant felt aggrieved by such order and filed an appeal before the Commissioner (Appeals) who allowed some relief but the complainant, still feeling dissatisfied, preferred an appeal before the Income Tax Appellate Tribunal against the order of the Commissioner (Appeals). The Tribunal, vide order dated 15.03.2006, set aside the entire assessment with the direction to the Assessing Officer *"to examine the contentions of the assessee regarding projects undertaken in Gulistan-e-*

Johar or elsewhere (and), *thereafter, treatment be accorded on the basis of actualities on factual and legal plane."* It is stated that pursuant to the above order of the Tribunal, the original demand stood eliminated and no fresh notice of hearing under section 61 or 62 of the repealed Ordinance was received by the complainant and also no order under section 124 of the Ordinance read with section 62 or 63 of the repealed Ordinance giving appeal effect was received. However, the complainant has been served with the impugned penalty order under section 183 of the Ordinance imposing a penalty of Rs.537,442 for alleged non payment of original tax demand. On receipt of this order, the complainant, vide letter dated 17.08.2008, informed the respondent that it has not been served with any appeal effect order and if such an order has been passed, it may be provided with a copy thereof which was not done. Thereafter, the complainant also wrote a letter dated 17.06.2008 to the Commissioner Tax Facilitation Division (TFD) to provide a copy of the assessment order, the notice of demand and IT-30 but the said Commissioner has also not provided any such documents although it is the jurisdiction of Commissioner TFD to serve the assessment order on the taxpayers. The complainant also wrote a letter dated 30.06.2008 to the Taxation Officer, IP Division to provide certified copies of the order sheets for the assessment year 2001-02 but he has also not given any response. It is stated that thereafter the Taxation Officer (Enforcement), vide letter dated 15.07.2008, threatened the complainant to make payment of the outstanding demand failing which its properties will be attached whereupon the complainant, vide letter dated 25.07.2008, asked again for the copy of appeal effect order but again no response has been received. The learned A.R of the complainant has contended that the impugned penalty order is illegal as the complainant has not been served with any appeal effect order after its remand by the Tribunal and since there is no tax demand in the field, therefore, the order imposing penalty for the non-payment thereof is a nullity and without jurisdiction. It is, therefore, prayed that it be declared that the impugned penalty order passed under section 183(1)(b) of the Ordinance is illegal and without jurisdiction and accordingly be vacated.

3. Responding to the above, the Commissioner of Income Tax (Enforcement and Collection) in her written report has stated that the *"impugned order under section 183(1)(b) for non payment of outstanding arrear demand was passed well within legal plinth"* and that *"allegation that no appeal effect order has been served is not correct."*

4. Parties have been heard and the record produced has been examined.

5. The Commissioner in her written report has not elaborated as to how the allegation is not correct as she has neither confirmed that pursuant to the order of the

Tribunal, an order under section 124 was duly passed resulting in some tax demand for non payment of which the imposition of penalty was justified nor she has sent a copy of such order nor any evidence that such order under section 124 of the Ordinance was served upon by the complainant. At the time of hearing, the D.R also was unable to show that any such order was passed nor he has produced any evidence regarding service of such order upon the complainant. It has, therefore, not been proved and established that there was some tax demand in the field which was outstanding against the complainant and non payment of which justified the imposition of penalty. In these circumstances, the impugned order passed under section 183(1)(b) of the Ordinance for the assessment 2000-01 is contrary to law, arbitrary and unreasonable which tantamounts to maladministration. It is, therefore, recommended that:

i). FBR to direct the concerned Commissioner to cancel the order passed under section 183(1)(b) of the Ordinance for the assessment year 2000-01 by invoking the provisions of section 122A of the Ordinance within 15 days of the receipt of this order and;

ii). compliance be reported within 07 days after doing the needful in terms of (i) above.

(JUSTICE (R) MUNIR A. SHEIKH)
Federal Tax Ombudsman

Dated: -2008

CASES RELATED TO CUSTOMS

BEFORE THE FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE, LAHORE

COMPLAINT NO.273/2008

M/s Uni Build Associates (Pvt.) Ltd,
Uni Tower, Lawrence Road,
Lahore. ...Complainant

Versus

The Secretary,
Revenue Division,
Islamabad. ...Respondent

Dealing Officer: ...Mr. Muhammad Akbar, Adviser

FINDINGS/DECISION

Present: Mr. Omer Arshad Hakeem and Mr. Waseem Ahmad, Advocates for the Complainant.
Mr. Yasin Murtaza, A.C, Customs Dryport, Lahore for the respondent.

The complainant had entered into a contract with C & W (Communication & Works) Department, Government of the Punjab, for installation of Air-Conditioning unit in Lahore General Hospital. After award of contract, the Medical Superintendent of Lahore General Hospital addressed two letters to the CBR to seek clarification as to whether or not the Air-conditioning unit being imported by the complainant on account of Lahore General Hospital was exempt from payment of customs duty and sales tax. The Secretary Customs (Exemption), CBR vide his letter dated 05.07.04 clarified that if goods came in the name of Lahore General Hospital and were destined to stay in the Hospital the same were classified under HS 9914.0000. The Secretary Sales Tax (Tariff), CBR ruled vide letter dated 25.06.04 that under serial No.46A of the Sixth Schedule to the Sales Tax Act, 1990, the goods imported by the Federal/Provincial Government were exempt from payment of sales tax; the import of Air-conditioning unit by M/s Uni Build (Pvt.) Limited to be installed at Lahore General Hospital was, therefore, exempt from sales tax. Upon receipt of the aforesaid rulings, the complainant established two Letters of Credit dated 13.01.05 and 18.01.05. It was clearly mentioned in column 10 of the L/Cs that these were being established by the complainant on account of Medical Superintendent of Lahore General Hospital through XEN PWD. Clearance of consignment imported through G.Ds dated 30.04.05 and 02.05.05 was sought under claim of exemption of customs duty in terms of Heading 9914.0000 and exemption from the whole of sales tax was sought in terms of serial No.46A of the Sixth Schedule to the Sales Tax Act, 1990. The exemption from customs duty and sales tax was allowed because the complainant had complied with the prescribed conditions of exemption. The

M.S Lahore General Hospital also submitted to the department undertaking that the equipment would be used for the purpose for which it was imported. As a result of post-audit of the import documents the Directorate of Revenue Receipt Audit (DRRA) issued two audit observations dated 12.10.05 and 02.02.06. Based on these audit observations, the D.C issued two demand notices dated 02.08.06 and 12.02.07 asking the complainant to show cause why duty and taxes short paid should not be recovered from them as the goods which were got cleared were not exempt. The complainant submitted replies to the demand-cum-show cause notices issued by the D.C. The D.C did not decide the case. The principal appraiser issued hearing notices and raised various queries. The complainant apprised the principal appraiser that (i) the subject air conditioning plant was imported for installation in Lahore General hospital through a contract with PWD and the imported plant was correctly classified under PCT heading 9914.0000, (ii) the customs duty and sales tax were exempted by the CBR vide rulings dated 05.07.2007 and 25.06.04, (iii) customs duty was correctly exempted by the assessing staff on the strength of undertakings of M/s Lahore General Hospital, (iv) the said plant had been installed at Lahore General Hospital which was verifiable. Despite that, the principal appraiser issued an illegal O-I-O No.01/08 dated 12.01.08 without appreciating the merits of the case and without being competent to pass the impugned order. The aforesaid action amounted to 'maladministration'. The impugned O-I-O deserved to be cancelled. The principal appraiser was not competent to pass order when demand-cum-show cause notices had been issued by the D.C. The Customs Act, 1969 did not allow a subordinate officer of BPS-16 to assume jurisdiction of a senior officer of BPS-18. The issuance of hearing notices by the principal appraiser was beyond jurisdiction. The principal appraiser also ignored rulings issued by the CBR. An identical audit observation No.15 dated 26.09.06 was contested by the D.C. Show cause notices suffered from factual infirmities inasmuch as the amount of short-realized duty and taxes and the value of goods were incorrectly worked out. Show cause notices did not invoke the provisions of any statutes, which rendered them void. The impugned order was hit by limitation period of 90 days as prescribed in section 179 of the Customs Act, 1969. The aforesaid prescribed period was mandatory as held by the Lahore High Court in judgment in writ petition No.13331/06 and also by Division Bench of Lahore High Court in STR No.68/06. The impugned O-I-O No.01/08 dated 12.01.08 may be declared illegal and unlawful and the same may be set aside.

2. In reply, the Revenue Division has submitted that since the complainant had filed an appeal against the O-I-O before Collector (Appeals) and because the impugned order determined liability of duty and taxes the complaint was not maintainable in terms of clause 9(2)(a)&(b) of the FTO Ordinance, 2000. The complainant imported consignments comprising chillers and cooling towers vide different G.Ds and got them cleared free of duty and taxes in terms of PCT Heading 9914, read with Sixth Schedule to the Sales Tax Act, 1990. It, however, paid advance income tax at 6% at the time of clearance of goods. According to the DRRA, the benefit of PCT heading 9914 was admissible on imports made by Hospitals run by the Federal Government or Provincial Government. The subject consignments were imported by a third party i.e. the complainant and were not

imported directly by the Lahore General Hospital and as such exemption was incorrectly extended resulting in short-realization of government dues amounting to Rs.4,168,809/-. The case was decided vide O-I-O No.1/08 dated 12.01.08 after issuing show cause notices dated 28.08.06 and 12.02.07 and after affording opportunity of personal hearing to the complainant. The CBR vide its letter dated 05.07.04 had clarified to the M.S Lahore General Hospital that the goods had to come in the name of Lahore General Hospital as import and should be destined to stay in the Hospital in order to avail benefit of PCT heading 9914. The complainant had to comply with various conditions. The clarification issued by the Secretary Sales Tax was not in conformity with the conditions laid down in PCT heading 9914. The clarification was also in contradiction to the one issued by the Customs Wing of the CBR. Column 10 of both the L/Cs described "M/s Uni Build Associate (Pvt.) Ltd. Uni Towers Lawrence Road, Lahore Pakistan Account Medical Superintendent Lahore General Hospital, Lahore through XEN PWD3". Mere mentioning of the name of the M.S on the L/Cs did not entitle the complainant to exemption of customs duty and sales tax. The exemption from customs and sales tax was available subject to fulfillment of prescribed conditions. The undertaking given by M.S did not carry any legal authority in terms of the provisions of PCT heading 9914 as the import was made by the complainant and not by the Hospital, which was a pre-requisite for entitlement to any exemption. The release was allowed erroneously. Show cause notices were issued by the D.C in exercise of the powers vested in him under section 4 of the Customs Act, 1969. The principal appraiser was the appropriate officer in terms of section 32(3) of the Customs Act, 1969, read with SRO.371(I)/02 dated 15.06.02. He decided the case on merits. Show cause notices and subsequent hearings were conducted in terms of section 32(3) of the Customs Act, 1969 rather than section 179 of the Customs Act, 1969. The principal appraiser had also sought clarifications on various issues from the complainant but it failed to reply to the queries. In the cited case, the import was made by M.S of DHQ, Sahiwal Hospital and the applicant as per the appropriate column of the L/C was M.S Sahiwal on account of M/s Uni Build Associates (Pvt.) Ltd. That is why the Collectorate contested audit observation. Recovery of legitimate government dues should not suffer on account of mere technicalities. A time limit of three years was prescribed for issuance of demand-cum-show cause notices under section 32(3) of the Act and as such the case was not hit by time limitation. No 'maladministration' was committed. The complaint may be dismissed being devoid of merit. The complainant may be asked to pursue its appeal before Collector (Appeals), Lahore.

3. During the hearing, the AR submitted that before opening L/Cs the M.S Lahore General Hospital inquired from the CBR about the admissibility of exemptions under Customs and Sales Tax Acts. The CBR confirmed availability of exemptions. Column 10 of the L/Cs showed the name of General Hospital i.e. Uni Build Associates (Pvt.) Ltd to the account of M.S Lahore General Hospital. Two show cause notices were issued. One of the show cause notices mentioned only G.D No.19 dated 02.07.05 but did not cover G.D No.124 dated 06.07.05 while demand on the basis of two G.Ds had been impugned in the O-I-O. The DR remarked that audit observation No.5 covered two G.Ds namely

G.D No.19 and G.D. No.124 and together they involved duty and taxes amounting to Rs.1673086/-. The AR submitted that the demand-cum-show cause notices were issued by the D.C but case was decided by the principal appraiser which constituted 'maladministration'. The impugned order says that the appeal could be filed against the aforesaid order under section 193 of the Customs Act, 1969. Appeal under section 193 of the Act could be filed only when orders were passed under sections 79, 80 and 179 of the Customs Act, 1969. The impugned order was not passed under any of these sections. Again the order passed by an officer below the rank of an A.C. was not appealable under section 193 of the Customs Act, 1969. Show cause notices did not invoke the relevant provisions of law. The AR cited Supreme Court's judgment reported as PTCL 2002 CL 2 where it was ruled that demand notices in the absence of statutory show cause notices were without lawful foundation, things required by law to be done in a certain manner must be done in the same manner as prescribed. Show cause notices were illegal. In support of his contention the AR drew attention to FTO's findings reported as 2003 PTD 2386 in complaint No.39/03 dated 05.04.03. The order passed by the principal appraiser was sketchy, lop-sided and non-speaking inasmuch as it failed to deal with the arguments of the complainant.

4. The DR submitted that the L/Cs were in the name of M/s Uni Build Associates (Pvt.) Ltd. The applicant for L/Cs was not the Lahore General Hospital. Rulings issued by the CBR dated 05.07.04 showed that the goods had to be in the name of General Hospital. According to heading 9414 goods were to be imported by the Hospital run by the Federal Government and the same could not imported by someone else on behalf of the Hospital. The Hospital should have itself opened the L/Cs. As for sales tax, serial No.52 of the Sixth Schedule clearly laid down that the import had to be made by a Hospital run by the Federal Government. The Hospital should have imported the goods directly and not through a third party. Income tax department did not allow any exemption to the complainant and the complainant had to pay income tax. The audit had observed that the benefit of heading 9914 was wrongly extended. The D.C. issued show cause notices as he was competent to exercise the powers of a subordinate officer in terms of section 4 of the Customs Act, 1969. The principal appraiser was the appropriate officer in terms of section 32(3) of the Customs Act, 1969 read with SRO.371(I)/02 dated 15.06.02. Section 32(3) of the Custom Act allowed recovery within three years. In terms of the contract the complainant firm was to install the equipment at its own cost, meaning thereby, that the customs duty and sales tax had to be paid by it. The principal appraiser decided the case upholding audit observations. After passing order under section 32(3) of the Customs Act the principal appraiser allowed the complainant to file appeal against it before Collector (Appeals). The complainant had already filed appeal. Although section 193 did not admit appeal against section 32(3) of the Act but as per practice such appeals were being entertained by Collector (Appeals). The DR admitted that although section 32(3) of the Customs Act was not invoked, the word 'omission' was used in the show cause notices, which was sufficient. The Supreme Court in its judgment had ruled that the exchequer should not suffer due to mere technicalities. FTO's jurisdiction was barred under section 9(2) of the FTO Ordinance. The AR argued that according to section

9(2)(a) of the FTO Ordinance, 2000 FTO's jurisdiction was ousted only if a case was subjudice before a court of competent jurisdiction. He also added that since Collector (Appeals) could not entertain appeal against an order passed by an officer lower in rank to the A.C the appeal was practically not pending before Collector (Appeals). The complainant, the AR submitted, had filed the appeal later than filing complaint in the FTO Secretariat. The expression 'omission' was being stretched to cover up non-mentioning of section 32(3) of the Customs Act in show cause notices. Specific sections and sub-sections and the ingredients thereof should have been invoked in the show cause notices. The AR stated that he would be satisfied if the competent authority re-decided the case denovo and passed a speaking, appealable order because, as it is, the order passed by principal appraiser was sketchy, lop-sided, arbitrary and non-speaking, which failed to deal with the arguments of the complainant. While deciding the case afresh, the AR added, the competent authority should enlist all of its arguments, including objections to the show cause notices, deal with them and then decide the case on its merits.

5. The arguments of the parties and record of the case have been considered and examined. The complainant imported Air-conditioning and chilling units on the account of Lahore General Hospital for installation in the aforesaid Hospital. To begin with, the goods were allowed release without payment of duty and taxes. Subsequently, however, the DRRA vide its two audit observations opined that exemption was incorrectly allowed. As a result, the D.C Customs issued two show cause notices calling upon the complainant as to why short-realized amounts of duty and taxes be not recovered. Show cause notices were, however, decided by the principal appraiser.

6. The complainant contends that (i) since goods were imported on account of Lahore General Hospital and those were destined to stay in that Hospital and all the conditions were complied with and the exemption had been allowed by the CBR through its two rulings, the goods so imported attracted exemptions. The bills of entry indicated the name of Lahore General Hospital. The complainant also provided installation certificate to the department (ii) the principal appraiser who passed the impugned O-I-O was not competent to decide the case as the show cause notices were issued by the D.C, (iii) the show cause notices so issued were vague, (iv) the principal appraiser, who decided the cases, passed sketchy and lop-sided order which did not deal with any of the complainant's following contentions even though the O-I-O incorporated the same:

(a) The subject air conditioning plant was imported for installation in Lahore General Hospital through a contract with PWD and the imported plant was correctly classified under PCT heading 9914.000.

(b). The customs duty was exempted by the CBR under C.No.17(5)98-Cus-Exm dated 05.07.2007 and ST was exempted under C.No.1(23)STT/2004 dated 25.06.2004.

(c) The customs duty was correctly exempted by the assessing staff on the strength undertaking of M/s Lahore General Hospital.

(d) The said plant had been installed at Lahore General Hospital where it was operating properly and the same could be verified at any time.

(v) the impugned order was also flawed in that in its preamble the complainant was advised that in case it was aggrieved by it, it may file appeal against the order before Collector (Appeals), Customs, Federal Excise and Sales Tax, Lahore under section 193 of the Customs Act, 1969. Section 193 of the Customs Act did not admit appeals against orders passed by an officer of Customs below the rank of an A.C. Although the complainant had filed appeal before Collector (Appeals) but the appeal so filed could not be entertained by Collector (Appeals) under section 193 of the Customs Act as the order had been passed by an officer below the rank of an A.C, (vi) again, appeals under section 193 of the Customs Act were admitted against orders passed under sections 79, 80 and 179 of the Customs Act. Since the impugned order had not been passed under any of the aforesaid sections, how could the appeal lie before Collector (Appeals) under section 193 of the Custom Act? (vii) the mandatory time limit of 90 days provided under section 179 of the Customs Act, 1969 was violated and hence the order was void on that account also.

7. The respondents, on the other hand, contend that (i) the goods were not imported directly by the Hospital. Since the import was made by the complainant the benefit of exemption was not available, (ii) the principal appraiser was competent as per serial No.3(ii) of Notification SRO.371(I)/02 dated 15.06.02 to decide the case as he was the appropriate officer under section 32(3) of the Customs Act, 1969, (iii) the D.C issued show cause notices because he was empowered to do so under section 4 of the Customs Act to exercise the powers of a subordinate, (iv) various clarifications were sought from the complainant but the complainant failed to give reply, (v) since the complainant had filed appeal before Collector (Appeals) and the impugned order determined a liability the complaint was not entertainable under section 9(2) of the FTO Ordinance, (vi) since the complainant was not entitled to exemption it had paid income tax to the income tax department, (vii) the clarification issued by the Secretary, Sales Tax, CBR, was not in conformity with the conditions laid down in law.

8. As regards respondents' contention that FTO's jurisdiction was ousted in terms of section 9(2)(a)&(b) of the FTO Ordinance, 2000, this is to point out that the appeal against the impugned order was filed by the complainant before Collector (Appeals) on 11.02.08 subsequent to filing complaint in the FTO Secretariat on 08.02.08 and as such the matter was not subjudice before a court of competent jurisdiction on the day the complaint was filed. The FTO is competent to investigate complaints involving 'maladministration'. The complainant's contention that the impugned order is hit by time limitation of 90 days as prescribed under section 179(3) of the Customs Act, 1969 is not sustainable because the case, as has also been clarified by the respondents, did not fall within the purview of nor was decided under section 179 of the Customs Act. A close scrutiny of the case records shows that subsequent to audit observations, demand-cum-show cause notices were issued by the D.C but the order was passed by the principal appraiser. The impugned order has been passed in a rather slip-shod and lop-sided manner for it is both sketchy and non-speaking. Although it enlists the arguments of the

complainant and also acknowledges that complainant's verbal arguments were considered before deciding the case yet it fails to deal with complainant's contentions. In fact, the principal appraiser, who decided the case against the complainant, failed to record any findings on any of the issues raised before him. As indicated above, the complainant had raised many a plea before the adjudicating officer but none of them has been dealt with or rebutted by the deciding officer. Each plea advanced should have been properly dealt with, and if it was not found acceptable, it should have been turned down with reasons. The snappy conclusion drawn in the impugned order by the principal appraiser is not supported with reasons. The complainant's arguments have been arbitrarily shut out, flouting due process of law and the principles of nature justice. The failure to pass a speaking and well-reasoned order, without assigning reasons for rejecting complainant's arguments, amounts to 'maladministration'.

9. Furthermore, the impugned order is silent about the provisions of law or the sections of the Customs Act under which it has been passed. However, it advised the complainant that it may file an appeal against the order under section 193 of the Custom Act, 1969. Under section 193 of the Customs Act appeals can be filed before Collector (Appeals) against orders passed under sections 79, 80 and 179 of the Customs Act. The impugned order is flawed in that it does not disclose, as aforesaid, the provisions of law/sections of the Customs Act under which it has been passed. Section 193 of the Customs Act stipulates that a person aggrieved by any decision or order passed under the aforesaid sections by an officer of Customs not below the rank of an A.C may prefer an appeal to the Collector (Appeals). Thus 'maladministration' is further compounded by the fact that the principal appraiser, being lower in rank than an A.C, misdirected the complainant vide preamble of his order to appeal against the impugned order before Collector (Appeals) under section 193 of the Custom Act despite the fact that the aforesaid section does not admit appeals against orders passed by officers below the rank of an A.C. 'Maladministration' is established. Accordingly, it is recommended that the Revenue Division direct the competent authority to:

i. Reopen O-I-O No. 01/08 dated 12.01.08 under section 195 of the Customs Act, 1969, set it aside and pass a fresh speaking order on the merits of the case in accordance with the provisions of law after dealing with all of complainant's arguments, including the argument that the show cause notices were vague and after providing it the opportunity of hearing. The order should also disclose the correct name of the appellate forum from which the complainant may seek remedy as provided in law, if it finds itself aggrieved by the order so passed.

ii. Compliance be reported within 30 days of the receipt of this order.

(JUSTICE (R) MUNIR A. SHEIKH)
Federal Tax Ombudsman

Dated: -2008

BEFORE THE FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE, KARACHI

COMPLAINT NO.863/2008

M/s Nadeem Impex
Through its Proprietor
Mr Mansoor Ellahi Shamsi,
122-Wazir Mansion,
Nicol Road, Karachi. ...Complainant

Versus

Secretary,
Revenue Division,
Islamabad. ...Respondent

Dealing Officer: ...Mr. M. Mubeen Ahsan, Adviser

FINDINGS/DECISION

Present: Mr. G. A. Khan, Advocate for the Complainant
Mr Masood Sabir, Assistant Collector of Customs (Appraisement)

The Complainants are engaged in the import of Electric Saver Lamps of Chinese origin from a manufacturer on regular basis, and in terms of an Agreement executed on 05-01-2005, fused and defective bulbs can be returned to the shippers who are required to replace them free of charge. The Complainants stated that out of 70 consignments imported during 05-05-2005 to 12-11-2005, they returned 88752 bulbs to the shipper which were replaced free of charge in March 2007. The classification of the "Replacement of defective Energy Saver Lamps" was claimed under HS 9916 but the Custom House informed them that the goods were not entitled for benefit under HS 9916 and were classified under HS 8539.3910 chargeable to duty and taxes. They further stated that the value of the replaced bulbs was arbitrarily enhanced without any basis from $50,314/- to $113,706/- and no reason was disclosed to reject the declared transaction value; the Department did not disclose which method of valuation from sub-section (1) to sub-section (9) of section 25 of the Customs Act was adopted bypassing various methods for the determination of value and identifying a particular method of valuation.

2. The Complainants alleged that they were kept completely in dark with respect to (i) Reasons of ignoring the classification claimed under HS 9916 and adopting HS 8539.3910; (ii) Reasons for enhancement of value and disclosure of method of valuation; and (iii) Reasons for adopting a particular method of valuation without disclosing its nature. However, in view of the fact that heavy demurrage had already accumulated, they had no option but to make payment on the basis of enhanced value on 17-05-2007 under protest pending decision at the appellate forum.

3. An appeal was filed before the Collector (Appeals) on the following grounds:

(i) Classification under HS 9916 could not be rejected as the imported consignment completely followed the prescribed conditions.

(ii) The examination report recorded that the export of fused and defective bulbs was undisputed and constituted the basis of classification under HS 9916.

(iii) Examination report at the time of import clearly demonstrated that imported bulbs were in conformity with the exported goods which qualified classification under HS 9916.

4. The Collector (Appeals) was requested to set aside the determination of classification and valuation of goods and refund the recovered taxes. He allowed the appeal, and vide order dated 04-09-2007, set aside the classification of the Department and accepted their plea that the goods were classifiable under HS 9916.

5. It was stated that after the expiry of appeal period, the Complainants applied on 16-02-2008 for refund of duty and taxes amounting to Rs.30,43,136/-. A number of personal visits were made to the customs officers but they always got the reply that the relevant file was not available. It has been requested that the Respondent be directed to return the excess duty and taxes immediately, allow mark up @ 1.5% per month from the date of the order-in-appeal, and any other relief deemed proper in the circumstances of the case be allowed.

6. The Federal Board of Revenue forwarded parawise comments on the complaint from the Assistant Collector of Customs (Group-VI) who stated that the benefit of concessionary PCT heading 9916 was refused as it did not fulfill the conditions, the re-import of replacement of goods was delayed beyond one year and four days, and there was no need of any formal order as the matter pertained to the grant or otherwise of the concessionary heading 9916 and not to assessment of duty and taxes. It was further stated that the assessment was made by the Department on the strength of Valuation Ruling dated 26-02-2006.

7. Assistant Collector further stated that the Department was of the considered opinion that the grounds of appeal and the prayer made by the Complainants was not legal and justified. No refund of duty was due in the case as section 19-A of the Customs Act laid down that, unless proved otherwise, it would be deemed that full incidence of customs duty and other levies had been passed on to the buyers as a part of the price of such goods. The defect of the imported goods was detected after the items were acquired and put to use by the end consumers to whom duty and taxes had been passed on; no refund was due to the importer. The Complainants were given a chance vide letter dated 21-05-2008 to prove that the effect of duty and taxes had not been passed on to the consumers through a certificate of Chartered Accountant but they replied vide letter dated 23-05-2006 that the information called for had no relevance with the order-in-appeal passed by the Collector (Appeals).

8. It was further argued that the order-in-appeal dealt only with the admissibility of

special PCT heading 9916 and did not address the question of payment of refund as claimed by the Complainants. It was prayed that the complaint being devoid of merit, malafide and vexatious be dismissed.

9. M/s G. A. Khan and Company, vide letter dated 16-06-2008, submitted a statement of objections on the Department's comments stating that the complaint had been filed after inaction of the Department for seven months and twenty days and non-compliance of the appellate order which has not been challenged before the next higher forum and no reasons have been given for the inaction. Since the appellate order was in the field the Department should have complied with it. The learned Counsel contested the claim that there was no need to issue formal order as it would mean that the right of the aggrieved person to seek redressal at the higher judicial forums would be abrogated. It was also totally against the express provisions of section 24A of the General Clauses Act.

10. The learned Counsel further stated that the Valuation Ruling dated 26-02-2006 was specific to a GD dated 22-06-2006 and was not applicable to the consignment imported vide IGM dated 16-03-2007. The High Court judgments had clearly laid down that any exercise for determination of transaction value has to be made afresh in each case of import under sub-sections (1) to (9) of section 25 of the Customs Act by application in sequential order and reasons for switching over to the next sub-section have to be recorded and disclosed to the importer. With regard to the provisions of section 19-A of the Act it was clarified that incidence of tax was fully passed on to the buyers and the Energy Savers Lamps were sold with the guarantee of replacement if found defective. In order to meet this kind of eventuality a new HS Code 9916 was created by the Finance Act 2005-06 to cover the goods supplied free of cost as replacement of identical goods previously imported within warranty period not exceeding one year and were subject to duty at zero per cent. Therefore, it was argued, such replacement goods were also exempted from payment of sales tax.

11. It was stated that the Complainants had never asked for return of tax already transferred to the buyers/consumers but had agitated for return of taxes levied and paid on replacement of goods supplied free of charge by the shipper which were not subject to payment of customs duty and sales tax on the basis of the aforesaid arguments. When the appeal had been allowed by the Collector (Appeals), its consequential benefits should automatically and fully accrue when no contrary order of higher legal forums has been obtained.

12. The Assistant Collector of Customs submitted further comments on the rejoinder as follows:

(i) The Complainants have failed to establish that the incidence of duty and taxes was not passed on to the consumers as required under section 19-A of the Customs Act. The order of the Collector (Appeals) did not dilate upon this issue and merely condoned the delay of four days. "The effect of a substantive provision of law cannot be undone through a quasi- judicial order".

(ii) The Complainants failed to prove that defective bulbs were actually

replaced to the consumers. They should produce a list of distributors and retailers with full details and copies of the invoices/credit notes for replacement.

(iii) In a situation of replacement it would seem that the importer was only acting as a go-between the manufacturer and end consumers.

(iv) The declared value of goods imported free of charge was not transaction value at all and it was incumbent on the Department to determine a fair assessable value under section 25 of the Customs Act and Rules made thereunder.

(v) Under sub-section (2) of section 25, the onus of providing the details of costs and charges lay on the importer which he failed to do and the Department was entitled to move to the next sub-section of section 25 to determine the value of goods which was done accordingly.

(vi) The Valuation Ruling dated 26-02-2006 was applicable on import of identical goods. The Valuation Rulings are invariably consensus documents issued after consulting the importers' association etc.

(vii) The importer is not entitled to the benefit under PCT heading 9916 (for reasons not clearly mentioned by the Assistant Collector).

13. During the hearing of the complaint, the learned Counsel stated that the Collector of Customs (Appeals) in his order No.680/2007 dated 04-09-2007 allowed the Complainants' appeal for classification of the goods under HS 9916. He referred to the detailed remarks in the second part of paragraph 5 of the order-in-appeal No.680/2007 dated 04-09-2007 where the implications of the PCT heading 9916 allowing the importer to return the defective goods to their foreign supplier and import replacement thereof free of duty/taxes were elaborated. The Collector (Appeals) concluded his order as follows:

> "The departmental representative has admitted that the appellants fulfil all conditions except the condition no.1 above: that the goods should be reimported within one year of the date of original import. Therefore, the principal issue for me to decide is whether the delay occurring in reimport of the goods was beyond the control of the appellants and whether the same should be condoned. Before addressing the aforesaid issue, it may be appropriate to appreciate the context and purpose of creating the new PCT heading 9916. Obviously, it is a trade friendly measure inasmuch as it allows importers to return the defective goods to their foreign suppliers and import replacements thereof free of duty/taxes. The conditions (reproduced above) attached to this facility are meant to forestall its misuse. Another notable point about this facilitative measure is that the same extends to all categories of goods which also indicates the intention of the legislature. Obviously, time for detection of defect in respect of any imported goods is dependent on its nature: in some cases defects may be detected immediately whereas in other cases the importer may take time to detect the defect. In case of consumer goods, like energy saving lamps imported in the

instant cases, defects are not detected until the goods are actually put to use. That is why the law provides authority to the Collector to extend the limitation period in genuine cases. In my opinion, the instant case is pretty genuine inasmuch as the percentage of defective reported energy saving lamps is reasonable and, as per the departmental representative, the appellants fulfill all other requirements laid down under HS code 9916. Under the circumstances, it would be against the principles of natural justice set by precedents of superior courts of law through repeated judgments as well as spirit of law to deny benefit of the facility to the appellants on the ground of time bar. Therefore, I order classification of the goods under HS Code 9916. The appeal is allowed accordingly."

14. The learned Counsel argued that in view of the clear provisions of PCT heading 9916 the replacement of identical goods previously imported within the warranty period should have been allowed by the Collector of Customs (Appraisement) because the goods did not militate against any of the four conditions laid down under this heading.

15. The Assistant Collector of Customs stated that the scenario in which the replacement consignment was imported by the Complainants was totally different because the defective bulbs which had been returned to the supplier did not meet the conditions of PCT 9916. He stated that the warranty cards with the sold bulb did not indicate the circumstances in which a defective bulb was to be restored to the purchaser by another bulb.

16. It transpires from the above that the Department is not implementing the decision of the Collector of Customs (Appeals) and not allowing the benefit of HS Code 9916 to the import made by the Complainants. It has been contended repeatedly that the duty and taxes were passed on to the consumers and therefore the importer was not entitled to the duty concession on import of replacements of defective Energy Saver Bulbs and, consequently, the decision of Collector (Appeals) has not been implemented. It needs to be understood that the two situations are quite different. The Complainants are not claiming refund of duty and taxes on the Bulbs sold in the market and returned by the consumers. They have claimed exemption of duty on the replacement consignment of Energy Saver Bulbs classified under the following PCT heading 9916, Chapter 99, Sub-Chapter IV, introduced by the Finance Act 2005-06:

PCT Code	Description	CD (%)	ST (%)
(1)	(2)	(3)	(4)
9916	Sub-Chapter-IV Import of Replacement Goods Goods supplied free of cost as replacement of identical goods previously imported including goods imported within warranty period not exceeding one year or such extended period as allowed by the Collector of Customs, subject to the following conditions: (i) the goods were imported in pursuance of firm contract sale, and not under a contract of sale or return, on approval; on consignment	0	E

	for sale or on similar terms; (ii) the goods at the time of importation were not in accordance with the terms of contract in respect of their description, quality, state or condition or had been damaged or defected; (iii) the goods were not used except in circumstances in which limited use was indispensable to reveal any inherent defect in the imported goods or to establish that they do not confirm to the conditions of the contract; if the goods are returned abroad, they are returned to the supplier and if they are not returned, they are deposited with customs for further disposal.		

Clearly in view of the decision of the Collector (Appeals), the Complainants are entitled to the duty concession specifically provided for replacement of identical goods. They are also entitled to the refund of duty etc paid by them on the import of consignment of replacements.

17. With regard to the second issue raised in the complaint about the valuation of goods, the Department has relied upon a Valuation Ruling No.872/2006 dated 26-02-2006 wherein reference has been made to a Goods Declaration dated 22-06-2006. This ruling is intrinsically faulty. If it has been issued (on 26-02-2006) as an advice for goods declared on 22-06-2006, it would be meaningless because the Valuation Ruling cannot be given four months in advance of a specific import. Alternatively, if reliance has been placed on the evidence of value in Goods Declaration dated 22-06-2006, the ruling is again wrong because its declared customs value cannot be made the basis of advice four months prior to the import. Consequently this Valuation Ruling cannot be given any credence because it is manifestly irrelevant. Even if it were a correct Ruling, it would still not be applicable because it was issued about an year prior to the import made in March 2007.

18. It has been stated by the DR that the onus of providing the details of cost and charges lay on the importer which he failed to do. According to the Customs Rules, the action lies with the appropriate customs officer. Rule 109 of the Customs Rules (Chapter IX) lays down that "Where the appropriate officer has reason to doubt the truth or accuracy of the particulars or of documents produced in support of the declaration, such officer may ask the importer to provide further explanation, including documents or other evidence". Rule 112 further provides that "(i) Whenever the appropriate officer is unable to accept the transaction value without further inquiry, he shall give the importer an opportunity to supply such further detailed information as may be necessary to enable him to examine the circumstances surrounding the sale". The customs authorities have not shown any evidence that they inquired from the importer about the declared value, gave the reasons for not accepting the transaction value, and provided the opportunity of hearing; entire reliance has been placed on one year old faulty Ruling which was not applicable in the time-frame of the present import.

19. Additionally, where one method of valuation cannot determine the customs value of the goods, the appropriate officer shall move to the next sub-section; he has to demonstrate to the importer the evidence relied upon and the reasons for not accepting the transaction value. Even in case of an applicable Valuation Ruling (not in this particular case) the importer is entitled to the opportunity of rebutting the value determined by the customs/valuation officials and of hearing, and to present the documents and evidence to support the declared value. It seems that the customs officials have not reconciled with the elaborate system of valuation of goods contained in the section 25 of the Act and feel more comfortable and content with the Valuation Rulings. It needs to be emphasized that the determination of customs values by the Directorate-General of Customs Valuation under section 25A of the Customs Act has also to be done within the framework of section 25 of the Act after following the methods laid down therein.

20. It is established from the foregoing investigation that the Customs authorities have failed to implement the decision of the Collector (Appeals) allowing classification of goods under HS 9916 (and consequent duty concession). (However, there is no justification for mark up @ 1.5% per month as requested by the Complainants). Secondly, the valuation of goods is also arbitrary, contrary to Customs Act and Rules, it is unjust, and based on irrelevant grounds. On both the counts maladministration as defined under section 2(3) of the Establishment of the Office of the Federal Tax Ombudsman Ordinance, 2000 is established.

21. It is recommended that Federal Board of Revenue direct

(a) the Collector of Customs (Appraisement) to

(i) to allow the concession under HS 9916 as decided by the Collector of Customs (Appeals);

(ii) and refund the duty charged on the consignment imported free of charge in replacement of defective Energy Saver Bulbs; and

(b) the Director General of Customs Valuation to review the customs value determined by the assessing officials after affording the Complainants the opportunity of rebutting the basis of value determination; presenting evidence in support of declared value and hearing and decide the customs value of the goods.

(c) The above action may be completed within forty five days; and

(d) compliance be reported to this office within sixty days.

(JUSTICE (R) MUNIR A. SHEIKH)
Federal Tax Ombudsman

Dated: -2008

BEFORE THE FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE, LAHORE

COMPLAINT NO.950/2008

M/s Aamir Brothers,
Chaudhary House, Naqi Road,
Nila Gumbad,
Lahore. ...Complainant

Versus

The Secretary,
Revenue Division,
Islamabad. ...Respondent

Dealing Officer: ...Mr. Muhammad Akbar, Adviser

FINDINGS/DECISION

Present: Mr. Omar Arshad Hakeem, Advocate for the Complainant.

Ms. Farah Farooq, A.C., Customs, Lahore for the respondents.

The complainant imported three consignments of bicycle chains and tyres/tubes from China and filed G.D. No.5620/2007 dated 11.10.07, G.D No.2036/07 dated 09.08.07 and Ex-Bond G.D. No.5242 dated 07.06.07 for clearance thereof. It had declared the value of chains @ US$ 0.18/pc. The Directorate General of Customs Valuation & PCA Karachi vide Valuation Ruling 4977 dated 20.10.06 had determined value of bicycle chain of China origin @ US$ 0.50/pc in terms of section 25-A of the Customs Act, 1969. The complainant requested the respondents that the goods may be provisionally assessed in the light of another case of G.D No.15661 dated 19.04.07 wherein the Honourable Lahore High Court had ordered provisional release of the goods on cash payment of customs duty on declared value and to secure the difference through post-dated cheque. The goods were assessed provisionally in the light of complainant's request @ US$ 0.50/pc by charging cash duty on US$ 0.18/pc and securing the difference through indemnity bond and post dated cheque. After provisional assessment, the respondent issued a hearing notice wherein she informed the complainant that in order to finalize the provisional assessment under section 81 of the Customs Act, 1969, the hearing had been fixed on 12th March, 2008. Before the date of hearing and without affording an opportunity of hearing the respondent passed final assessment orders holding that *"inspite of the lapse of stipulated time period as envisaged under section 81 of the Customs Act, 1969, the importer has failed to provide any rebuttal of the valuation ruling in question. The importer and the custom clearing agent were issued hearing notice vide endorsement No.474 dated 03.03.2008 but no body appeared. Moreover the*

orders/decisions of the Honourable Lahore High Court are applicable to the specific case in which the writ petition was filed. Therefore, the assessment has got finality @ USD 0.50/pc. The bank guarantee section is directed to en-cash post dated cheque deposited at the time of provisional assessment".

2. The impugned final assessment orders passed by the respondent were malafide, unlawful, arbitrary and illegal and the respondent was guilty of 'maladministration' within the meaning of section 2(3) of the FTO Ordinance, 2000 as although the hearing of the cases had been fixed for 12.03.08 the respondent passed the impugned final assessment orders on 10.03.08 before the date of hearing. The impugned orders were also non-speaking, perverse, arbitrary, unreasonable, unjust, biased, oppressive. The action of the respondent was a clear example of neglect, inattention, incompetence, inefficiency and ineptitude in administration. The impugned orders were liable to be quashed on this score only. The instant complaint may be accepted and recommendations may be made to CBR that the impugned final assessment orders dated 10.03.08 be declared illegal and unlawful and set aside.

3. In reply, the Collector, Model Customs Collectorate, Customs House, Lahore has submitted that since the matter related to assessment of imported goods it fell outside FTO's jurisdiction in terms of clause 9(2) of the FTO Ordinance. In the instant case, the importer had the right to appeal before Collector (Appeals) under section 193 of the Customs Act and to file request for revision before Collector of Customs under section 195 ibid. In another identical case involving GD No.5137 dated 09.05.07, the importer challenged the final assessment order before the Lahore High Court without availing the remedies under the aforesaid provisions of law and the Court vide orders dated 24.03.2008 dismissed the petition being without any merit. The Honourable Court also observed that constitutional petition without exhausting remedies provided by the statute did not lie in the circumstances. The importer had now filed an application before Collector of Customs for reopening the case under section 195 of the Act. As stated by the complainant, the goods were assessed provisionally under section 81 of the Act on its own request as valuation Ruling of a higher value issued under section 25-A of the Act by the Directorate General of Customs Valuation and PCA Karachi was in field. The complainant had based his request on another case wherein the Honourable Lahore High Court had granted interim relief to another importer M/s Nauman Traders. However said orders were binding in the specific case only and not generally to all similar imports made by other parties. The assessment was made provisionally on the request of the importer by charging cash duty on D.V and securing the difference through indemnity bond and post dated cheque inspite of the fact that valuation ruling of higher value was issued by the concerned office. The importer was duty-bound to raise objections on valuation Ruling before the Director General of Customs Valuation and get the value fixed, revised or cancelled. However, the complainant did not adopt this course of action and kept the matter pending during the period of 180 days as stipulated in section 81 of the Act. According to the said section in case the assessment was not finalized within the stipulated period, the provisional assessment shall become final. The assessment orders were passed in respect of ex-bond GD Nos.5242 dated 11.06.07 and GD No.2036 dated 09.08.07 as the provisional determination had attained finality in terms of section 81(4)

of the Act. As regards GD.No.5620 dated 11.10.07 the case was fixed for hearing on 12.03.2008 but in the office record the same date was inadvertently not mentioned on the hearing notice, therefore, the situation led to the final assessment order under section 81 of the Act. However, the final assessment orders had been passed correctly on merit in the light of facts/documents available on record as the importer failed to provide any revision/cancellation of the relevant valuation ruling issued by the Directorate General. The complaint may be filed.

4. During the hearing, the AR submitted that the complainant imported three consignments of bicycle chains and tyres/tubes from China and filed G.D. No.5620/2007 dated 11.10.07, G.D No.2036/07 dated 09.08.07 and Ex-Bond G.D. No.5242 dated 07.06.07 for the clearance thereof. The complainant had declared the value of subject chains @ USD 0.18/pc. A dispute had arisen regarding valuation of goods. As against the declared value of US$ 0.18/pc, the Customs Department insisted on fixing the value at US$ 0.50/pc. Subsequently, goods were assessed provisionally in the light of complainant's request at US$ 0.50/pc by charging cash duty on US$ 0.18/pc and securing the difference through indemnity bond and post-dated cheque. The respondent passed three orders Nos.478, 480 & 482 dated 10.03.08. Before passing the orders, in order to finalize provisional assessments under section 81 of the Customs Act, 1969, the respondents fixed 12.03.08 as the date of hearing asking the complainant to attend the hearing alongwith documentary evidence. The complainant turned up on the fixed date of hearing i.e. on 12.03.08 to attend it but, surprisingly, the cases had been decided on 10.03.08 before arrival of the actual date of hearing. This was tantamount to depriving the complainant of its inherent right to defense. The respondent neither enlisted the complainant's contentions nor dealt with them in violation of the principles of natural justice. .

5. The DR submitted that the office record file was silent about the date of hearing. The office copy of the hearing notice did not indicate any date of hearing and the cases were decided in terms of section 81 of the Customs Act, 1969. The complainant had the right to file appeals. In fact, they had already filed appeals before Collector (Appeals) and they may pursue their cases before Collector (Appeals). The AR when asked to indicate as to when the appeals were filed submitted that the same were filed on 05.05.08 whereas, he pointed out, the complaint was filed in the FTO Secretariat on 28.04.08 before the filing of appeals. He added that Collector (Appeals) had also granted interim stay against coercive measures for recovery. The DR explained that in the case involving G.D 2036 provisional assessment was finalized on 11.08.07 and the period of six months as stipulated in sub-section (2) of section 81 of the Act had expired on 11.02.08. In the case of G.D. No.5620, the provisional assessment was made on 10.10.07 and the stipulated period of six months expired on 18.04.08. The orders were passed on 10.03.08. In this case the time period had not expired. The case involving G.D No.5242 was provisionally assessed on 11.06.07 and the stipulated period of nine months expired on 11.03.08. The DR added that in another case the affected party had requested the Collector to reopen the case under section 195 of the Customs Act, another remedy which was available to the complainant. The complainant could also approach the Collector for reopening the assessment orders.

6. The arguments of the parties and the records of the case have been considered and examined. The complainant imported three consignments of bicycle chains and tyres/tubes from China and filed G.Ds for clearance thereof. It had declared value of chain at US$ 0.18/pc. The Collectorate insisted on pitching the value of bicycle chain of China origin at US$ 0.50/pc in the light of Directorate General Valuation Advice dated 20.10.06. However, the goods were provisionally assessed at US$ 0.50/pc by charging cash on US$ 0.18/pc and securing the difference through indemnity bond and post-dated cheques. The main contention of the complainant is that after provisional assessment the respondent issued a hearing notice wherein it was informed that in order to finalize the provisional assessment under section 81 of the Act, its cases would be heard on 12.03.08. On the notified date of hearing, the complainant showed up to attend it but came to learn that final assessment orders had already been passed on 10.03.08, without affording the opportunity of being heard to the complainant. The complainant had, therefore, been condemned unheard through non-speaking, arbitrary assessment orders, which were passed at the back of the complainant without enlisting its contentions and arguments, which the complainant was ready to forward on 12.03.08, the date of hearing. The respondent, on the other hand, contends that (i) the FTO did not have jurisdiction in the case in terms of section 9(2) of the FTO Ordinance, 2000 as the case involved a matter which related to determination of liability of tax or duty and valuation of goods and in respect of which legal remedies of appeal or revision were available under the relevant legislation, (ii) the complainant had filed appeals before Collector (Appeals) under section 193 of the Act and should pursue them before the appellate forum or to file requests for revision before the competent Collector under section 195 of the Act, (iii) the assessments were made provisionally on the request of the complainant, inspite of the fact that a valid valuation ruling of higher value was already in the field. The complainant did not get the valuation advice revised or cancelled from the Directorate General of Valuation. Instead, it kept the matter pending during the stipulated period of 180 days as envisaged under section 81 of the Act. According to the aforesaid section in case the assessment was not finalized within the stipulated period, the provisional assessment would get finalized. The assessment orders were passed in respect of ex-bond GD No.5242 dated 11.06.07 and GD No.2036 dated 09.08.07 as the provisional assessment had attained the status of finality in terms of section 81(4) of the Act. As regards GD.No.5620 dated 11.10.07 the case was fixed for hearing on 12.03.2008 but in the office record the same date was inadvertently not mentioned on the hearing notice, therefore, the situation led to the final assessment orders under section 81 of the Act. However, the final assessment orders had been passed correctly and on merits of the case.

7. A perusal of the records of the case indicates that the respondent had in order to finalize the assessments issued a hearing notice with reference to G.D Nos.5242, 2036 and 5620 for 12.03.08 asking the complainant to attend the hearing alongwith documentary evidences but, oddly enough, all the three final assessment orders were passed on 10.03.08, two days before the actual date of hearing without hearing the complainant, rather arbitrarily. The complainant was thus deprived of the opportunity of hearing though it was notified for 12.03.08, as mentioned earlier. Clearly, deciding the cases before the date of hearing and without affording the complainant the opportunity of being heard is tantamount to 'maladministration' inasmuch as the negation of

complainant's right to defense militated against the principles of natural justice. Had the complainant been actually heard, the complainant would have argued its case and put up its defense and the respondent could have then weighed the arguments and complainant's contentions in the light of law and decided the assessment cases on their merits. Unfortunately, the cases were decided on 10.03.08 before the date fixed for hearing i.e. before 12.03.08. Clearly, the complainant is genuinely aggrieved by this arbitrary and unjust act of the respondents.

8. As to the respondent's contention that the FTO's jurisdiction was barred in terms of section 9(2) of the FTO Ordinance, 2000 as the complainant had the opportunity to file appeals before Collector (Appeals) and had filed appeals before Collector (Appeals) or, alternatively, file applications for reopening the cases before Collector Customs under section 195 of the Customs Act, this is to point out that appeals before Collector (Appeals) were filed by the complainant on 05.05.08 whereas the complaint was filed in this Secretariat on 28.04.08 on which date no appeal was pending or subjudice before Collector (Appeals). The complainant has filed this complaint against the respondent exclusively for 'maladministration'. In cases which are not subjudice on the day the complaint is filed and which involve 'maladministration', the FTO is fully competent to investigate allegations of 'maladministration'.

9. It has been clearly brought out in the preceding paras that the respondent committed 'maladministration' by deciding the assessment cases on 10.03.08 before the complainant could avail the opportunity of hearing, which was notified for 12.03.08. The respondent's contention that office copy of the hearing notice did not mention 12.03.08 as the date of hearing is not convincing. This was, if anything, a lapse on the part of the office of deciding officer for which the complainant should not be made to suffer. As it is, the complainant has been stripped of its right to reasonably defend its cases. The impugned orders passed in the complainant's case militate against all norms of natural justice. 'Maladministration' is established. Accordingly, it is recommended that the Revenue Division direct the competent authority to:

i. Reopen all three assessment orders namely 478, 480 & 482 dated 10.03.08 under section 195 of the Customs Act, 1969, set aside the same and decide these cases afresh on their merits in accordance with the provisions of law after providing the complainant the opportunity of being heard so as to enable it to defend its cases.

ii. Compliance be reported within 30 days of the receipt of this order.

(JUSTICE (R) MUNIR A. SHEIKH)
Federal Tax Ombudsman

Dated: -2008

BEFORE THE FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE, KARACHI

COMPLAINT NO.1105/2008

M/s Commercial Metal
410, Progressive Plaza
Beaumont Road
Civil Lines, PIDC
Karachi. ...Complainant

Versus

Secretary,
Revenue Division
Islamabad. ...Respondent

Dealing Officer: ...Mr. M. Mubeen Ahsan, Adviser

FINDINGS/DECISION

Present: Mr Tanweer Ashraf, Advocate representing the Complainants

Mr. Moeen Afzal Ali, Assistant Collector of Customs (Appraisement)
Mr. Junaid Ahmed, Deputy Director of Customs Intelligence & Investigation
Mr. Farrukh Sajjad, Assistant Director of Customs Valuation

The complaint has been filed against the Collector of Customs (Appraisement) for not refunding the amount of Rs.4,791,667/- which was deposited on 27-12-2005 on the direction of the adjudicating officer but was allegedly encashed in 2007 without verification report from SGS/Valuation Department as ordered by the adjudicating officer. It has been alleged that the customs authorities encashed the pay order without the knowledge of the Complainants, the Valuation Department was required to verify the commercial invoice through SGS but 36 months have elapsed since the date of order i.e. 26-12-2005, and the Complainants have received no intimation about the verification of the invoice. The allegations made in the show cause notice were set aside by the adjudicating officer but further action on valuation was left open till receipt of Valuation Department's findings.

2. The facts of the case stated in the complaint are as follows:-

i) The Complainants imported a consignment of Iron & steel Cobble Plates, Slabs and Billets and filed bill of entry on 11.10.2005 under HS Code 7207-1190 and, after examination and payment of duties and taxes, the

goods were cleared on 12-10-2005.

ii) After the clearance of the goods, the Complainants received a notice dated 24.10.2005 from the Directorate-General of Customs Intelligence directing them not to release the imported goods without prior permission.

iii) The goods were examined by the staff of the Directorate who took out samples and sent them to various Departments to ascertain the description, value and PCT classification.

iv) On the request of the Complainants the Directorate-General allowed release of goods subject to furnishing of the Pay Order for Rs.4,791,667/- on the clear understanding that the Pay Order would not be enchased till the final disposal of the case, and, if the Directorate failed to establish misdeclaration of value or PCT heading, the Pay Order would be returned.

v) Instead of releasing the goods a Show Cause Notice dated 10.12.2005 was served on the Complainants alleging misdeclaration of PCT heading, goods being of sub-standard quality in violation of Import Policy, and under-valuation of goods. (Pay Order was returned by the Directorate of Intelligence).

vi) In case of another importer who wanted to import Steel Cobble Plates, the Secretary (Customs Tariff), CBR had enquired from the Collector of Customs about the classification of the goods. The Collector had replied to the CBR that the goods were covered under PCT heading 7207 liable to 10% customs duty.

vii) During the hearing of the case before the Additional Collector of Customs, the Principal Appraiser and the Appraising Officer stated that the relevant import invoices had been forwarded to the Valuation Directorate for verification of authenticity and genuineness through SGS whose reply was awaited.

viii) The adjudicating officer passed a detailed Order No.3/2005 dated 06.12.2005 vacating the Show Cause Notice with the direction that the goods be allowed release after ensuring that the Pay Order of the differential amount of duties and taxes was deposited in the Collectorate and "Further legal course shall ensue on receipt of the report of valuation findings from Valuation Department". The goods were released on 28-12-2005 after deposit of the Pay Order for Rs.4,791,667/-.

ix) When the Complainants came to know that the Pay Order had been encashed, they raised objection through letter dated 05-11-2007 addressed to the Director General of Valuation, who, vide letter dated 01-12-2007, replied that the Directorate had finalized identical cases of goods vide Valuation Ruling No 840/2006, which was applicable on all such imports.

x) The Complainants took up the matter with the Department that the adjudicating officer had directed that further legal course should ensue on receipt of valuation findings, the Valuation Ruling No.840/2006 was not relevant and only the invoice had to be verified with the SGS about its authencity. They requested the Collectorate to refund the Pay Order but the Department vide letter dated 29.3.2008 admitted encashment of pay order in the light of the Directorate's letter dated 01-12-2005.

3. The Complainants stated that encashment of the pay order was in violation of the order-in-original, more than two years had passed since issue of this order but the Valuation Department had not informed them about the verification from SGS, and the encashment of pay order amounted to abuse of power by the Respondents. It has been requested that the Department be directed to refund the amount of Rs.4,791,667/- as the Show Cause Notice had already been set aside by the adjudicating officer, and Rs.10 million be paid as damages.

4. The Assistant Collector of Customs Appraisement, Group-III, in reply to the complaint, raised objections that the matter related to the valuation of goods, no maladministration was involved, etc. and, therefore, the complaint did not fall within the jurisdiction of this office.

5. He stated that the Additional Collector of Customs (Appraisement) had decided that the classification was correct and the valuation aspect be verified through the Valuation Directorate. The Proprietor of the Complainant firm agreed to pay the differential amount of duties and taxes through a pay order. He alongwith other importers accepted the value of $380/MT as confirmed by the Director General of Customs Valuation vide Valuation Ruling 840/2006. Therefore, the Pay Order of Rs.4,791,667/- was encashed.

6. It was further stated that the Complainants had approached the Collector after 2-1/2 year for refund of the amount and they were informed that the pay order was correctly encashed and no refund was admissible. He further stated that the values were determined by the Directorate of Valuation under Section 25A of the Customs Act and no other importer had protested against the ascertained value including the Complainants.

7. The Deputy Director of Customs Valuation stated in his reply that the Collector (Appraisement) had forwarded various invoices of Cobble Plates for verification of declared value through SGS but the value of this item could not be finalized by SGS. The Directorate-General issued a Valuation Ruling applicable to the importation of the goods of the same period. The representative of the Complainants was informed about the valuation criteria of the goods vide letter dated 01-11-2007.

8. The Director of Customs Intelligence also submitted parawise comments but before doing that he raised preliminary objections about the jurisdiction of this office to investigate into the complaint. He stated consignment was detained on 24-10-2005, the Proprietor of the firm met the Director General on 22-11-2005 and agreed to pay the differential amount of duties and taxes on value of the unit $380/MT against the declared

value of $340/MT. Four importers also submitted pay orders pending final decision.

9. During the hearing of the complaint, the Counsel for the Complainants stated that the case was adjudicated by the Additional Collector in 2005 vacating the Show Cause Notice and allowing release of goods with the condition of depositing a pay order of Rs.4.7 Million pending the verification of commercial invoice by the Valuation Department through SGS. This verification has not been conducted by the Department. He stated that the disposal of the pay order was contingent on the verification of the commercial invoice already sent to the Valuation Department. But the Collector unilaterally encashed the pay order in 2007 without even informing the importer and without issuing any order.

10. The learned Counsel emphasized that the Additional Collector of Customs in his judgment under para 15 of the order clearly stated that final decision about the security shall ensue on receipt of report of the valuation findings from the Valuation Directorate. He argued that for the last three years the matter has remained pending with the Appraisement Collectorate, the Valuation Department or the Directorate of Customs Intelligence and no decision has been taken. He requested that the amount of pay order should be refunded alongwith compensation for three years' detention of the pay order.

11. The Deputy Collector Customs (Appraisement) replied that on the basis of Valuation Ruling No.840 dated 25-11-2006, the assessment was finalized and the pay order was encashed. He admitted that verification report of the commercial invoice was not received nor any intimation about assessment finalization and encashment of the pay order was communicated to the importer.

12. The Deputy Director of Valuation stated that the commercial invoice of this import alongwith other invoices was received in the Department and referred to SGS but SGS did not give any satisfactory answer. Therefore on the basis of available data an exercise was conducted by the Department, the values of goods decided and Valuation Ruling issued to the Collectors for completion of assessment. He stated that the ruling was not specific to the importer but was applicable to all imports. The Deputy Director Customs Intelligence stated that in case of 7 or 8 imports the problem of valuation had cropped up and all the importers agreed to pay the duty and taxes in accordance with the valuation determined by the Valuation Department.

13. The learned Counsel stated that the Customs have relied upon the Ruling but it was the right of the Complainants to receive a copy of Valuation Ruling before finalization of assessment. The Deputy Director Valuation replied that on receipt of their letter dated 05-11-2007, the Assistant Director of Customs Valuation vide reply dated 1.12.2007 had supplied a copy of the Valuation Ruling No.840 of 2006.

14. The contents of the complaint and submissions made by the Respondents have been examined. It transpires that the Additional Collector of Customs vacated the show cause notice on 26-12-2005, but did not decides the valuation aspect, and secured the amount of differential duty and taxes pending further legal action on receipt of valuation findings from Valuation Department. Under-invoicing was one of the allegations and it

was the duty of the adjudicating officer to ascertain the customs value himself or obtain advice from the Valuation Department before deciding upon the allegations made in the seizure report/show cause notice. The decision for release of goods was correct but the direction of securing the differential duty only meant that it was not a complete adjudication order. This is a serious lapse on the part of the adjudicating officer because the order should cover all aspects of the case and keeping the valuation aspect open was totally unjustified.

15. A significant fact that emerges from this investigation is that the role of the Customs Group for completion of assessment on the basis of the Valuation Ruling has disappeared and no formal/online order showing the basis of valuation and finalization of assessment is being issued. It has been reported that following the receipt of Valuation Ruling, action is left to the Bank Guarantee Section and no intimation is given to the importer. Clearly there is need of upgrading the online system, designing a format for completion/finalization of assessment by the concerned Group under intimation to the importer and direction to the Bank Guarantee Section to adjust/encash/return the security amount.

16. It has been established that in the present case valuation aspect has not been decided by the adjudicating officer on the basis of the Valuation Ruling of the Valuation Department. It is recommended that Federal Board of Revenue

(i) issue instructions to the Collectors of Customs to ensure that in cases of disputes/provisional assessment of imports, appropriate orders for finalization of assessment by the concerned Group/assessing officials should be issued;

(ii) direct the Additional Collector of Customs to examine the Valuation Ruling No.848/2006 with a view to complete the valuation aspect of his adjudication order;

(iii) allow the Complainants to represent their case and afford them the opportunity of hearing, issue a speaking order regarding the valuation of goods and finalization of assessment and decide the application for refund of the amount of Rs.4,791,667/- filed by the importer.

(iv) The above action be completed within thirty days; and

(v) compliance be reported to this office within forty five days.

(JUSTICE (R) MUNIR A. SHEIKH)
Federal Tax Ombudsman

Dated: -2008

BEFORE THE FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE, KARACHI

COMPLAINT NO.1111/2008

Mr Mahmood Hasan
467, Jail Road
Hirabad – People Wali Gali
Hyderabad ...Complainant

Versus

Secretary,
Revenue Division,
Islamabad. ...Respondent

Dealing Officer: ...Mr. M. Mubeen Ahsan, Adviser

FINDINGS/DECISION

Present: Mr Mahmood Hasan, Complainant

Mr Moeen Afzal, Assistant Collector of Customs (Appraisement)
Mr Masood Sabir, Assistant Collector of Customs (Appraisement)

The Complainant stated that he is a Pakistani by birth and now a U.S. citizen presently visiting Pakistan. He feels aggrieved by the assessment of Rs.627,032/- as customs duty and taxes on a 1995 model Toyota Corolla vehicle he purchased from UNICEF in 2007. He has stated in the complaint that he spent a lot of money on the vehicle to make it roadworthy. When he approached the customs authorities to assess the customs duty they assessed the aforesaid amount. The Complainant felt that the assessment was unfair and unjust. In most of the cases customs duty etc on cars older than 10 years was about 2% and this vehicle was about 13 years old. He requested that the customs officials be directed to calculate correct amount of duty on the car which he might be able to pay. He requested that his application be treated urgently as he was likely to soon return to USA.

2. The Assistant Collector of Customs in his parawise comments raised the objection that there was no maladministration on the part of the Department; the issue raised in this complaint was regarding the assessment of duties and taxes in which the jurisdiction of the Federal Tax Ombudsman was barred; the sale permission had been granted by the Ministry of Foreign Affairs for a period of three months only, revalidated for one month

vide letter dated 13.12.2007 and, therefore, the permissible period had elapsed and the Complainant has no locus standi to file this complaint.

3. It was further stated that the calculation of duties and taxes was made correctly and in conformity with law. Due depreciation has been granted and the amount of duty and taxes Rs.631,609/- was correct as evident from the calculation sheet. The Complainant has failed to give any legal basis for not agreeing to the assessment and was unable to substantiate the reasons for his disagreement. The Department could not go beyond the policy letter of the Ministry of Foreign Affairs. It was requested that the complaint being devoid of any merits be filed.

4. During the hearing of the complaint, the Complainant protested against the discrimination in the duty and taxes leviable on vehicles purchased from UN affiliated agencies vis a vis countries like Iran and some other countries in Category-3 (of the relevant notification) where no taxes were payable after three years.

5. The Assistant Collector of Customs explained that under SRO 447(I)/2004 dated 12.06.2004 the duty and taxes leviable on diplomatic and privileged persons and agencies was prescribed by the Revenue Division. This notification was amended by another notification dated 01.01.2005 under which the countries/agencies were divided in three categories for tax reduction on diplomatic vehicles after five years based on reciprocity. This vehicle of Category-I was sold after expiration of five years from the date of importation; 50% duty and taxes should be leviable at the prevailing rate of exchange and duties and taxes on value determined in foreign currency and the due amount worked out to Rs.631,609/-. When it was pointed out to the Assistant Collector that the value and rates of exchange and duty and taxes prevailing at the time of importation should have been applied, he stated that the assessment could be revised on the lines prescribed in the relevant notification.

6. Mr Mahmood Hasan, Complainant, stated that he may be allowed an opportunity to produce evidence that the customs authorities had allowed different concession on several other vehicles belonging to the same category of vehicles and he would not like to be given an adverse treatment by the customs. He was allowed a week to produce evidence of assessment in similar cases.

7. On the next hearing on 17-07-2008, the Complainant submitted a copy of the order of this office in Complaint No.1275-K/2007 dated 20-02-2008. He stated that a Mitsubishi Pajero 1996 Model was originally assessed to duty, sales tax and income tax amounting to Rs.2,485,641/-. The matter was investigated by this office. The Federal Tax Ombudsman in his Decision/Findings recommended to the CBR to assess the old vehicle after allowing value reduction and duty concession in accordance with law. The Customs

reassessed it and the total amount came to Rs.1,280,937/-. The Complainant urged that since the vehicle purchased by him was as old as the vehicle relating to this complaint, the same treatment of reduction in valuation for assessment purpose be allowed.

8. The Assistant Collector of Customs requested that the objections already made in the reply to the complaint about the maintainability of the complaint be taken into consideration. Secondly, he stated, the permission to sell the vehicle was revalidated for one month vide order dated 31-12-2007 which had expired. Mr. Mahmood Hasan stated that he applied to the Customs for assessment within one month and therefore there was no delay on his part. He was not satisfied with the assessment and had a legal right to represent to the appropriate authority. Assistant Collector further stated that there was suspected tampering of the registration number on the original sale permission letter issued by the Ministry of Foreign Affairs produced by the Complainant. This point has been referred to the Ministry for clarification. He further stated that the assessment had been rightly made on the basis of the prevailing price of the vehicle, exchange rate and duty etc.

9. The submissions of both the sides have been examined. The complaint has been made against the alleged excessive assessment of a thirteen years' old car which has sold by UNICEF more than five years after its importation. The order of this office produced by the Complainant relates to a vehicle which was five years old at the time of importation and was entitled to value-reduction for assessment of duty and taxes. The vehicle in this case is 1995 model imported the same year and value-reduction would not be applicable.

10. The complaint has been examined with a view to determine whether the prescribed procedure of determination of tax liabilities has been correctly applied or not. The system for disposal of the vehicles imported in Pakistan free of customs duty and sales tax by diplomats and privileged persons and agencies, and assessment of duty and taxes was prescribed by the CBR vide SRO 447(I)/2004 dated 12-06-2004. This SRO was amended by an SRO dated 01-01-2005 under which the tax relief to imports was divided into three categories. The Complainant's car purchased from UNICEF falls in (item (ii) of) Category-I with the following provisions:

(i)	if sold or otherwise disposed of before the expiration of five years from the date of importation; and	100% of duty and taxes shall be leviable at the prevailing rates of exchange and duties taxes on value determined in foreign currency at the time of importation.
(ii)	if sold or otherwise disposed of	50% of duty and taxes shall

after the expiration of five years from the date of importation	be leviable at the prevailing rates of exchange and duties taxes on value determined in foreign currency at the time of importation.

11. It transpires that the assessing officials have not applied the method prescribed by the CBR in consultation with the Ministry of Foreign Affairs. It seems that the Customs authorities have calculated the value of the vehicle and the amount of duty and taxes at the current exchange rate and current rates of duty and taxes. This is not in conformity with the provisions referred to in the foregoing paragraph. It has been clearly laid down that for vehicles disposed of more than five years after importation, 50% duty and taxes shall be leviable at the prevailing rates of exchange and duties on value determined in foreign currency **at the time of importation.** This will also be in consonance with the provisions of section 30 of the Customs Act. Clearly the customs action is contrary to law and departure from established procedure without any valid reason which amounts to maladministration.

12. It is recommended that Federal Board of Revenue direct the Collector of Customs to:

(i) reassess the vehicle on the basis of the value of Toyota Corolla car of 1995 model on the exchange rate prevailing on the date of importation and assess the duty and taxes on the rates prevailing at that time; and

(ii) allow 50% reduction in duty and taxes as provided under the rules notified by the CBR, and intimate to the Complainant the amount payable by him.

(iii) As regards the alleged tampering of the registration number on the permission letter of the Ministry of Foreign Affairs, the customs authorities should satisfy themselves about the genuineness of the letter and its contents for taking action under law.

(iv) Action on (i) (ii) and (iii) may be completed within thirty days; and

(v) compliance be reported to this office within fortyfive days.

(JUSTICE (R) MUNIR A. SHEIKH)
Federal Tax Ombudsman

Dated: -2008

BEFORE THE FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE, KARACHI

COMPLAINT NO.1112/2008

M/s B P Industries Limited
A-30, SITE, Karachi. ...Complainants

Versus

Secretary,
Revenue Division,
Islamabad. ...Respondent

Dealing Officer: ...Mr. M. Mubeen Ahsan, Adviser

FINDINGS/DECISION

Present: Mr. M Afzal Awan, Advocate for the Complainant
Mr. Muhammad Anwar, Deputy Collector of Customs (PACCS)
Mr. Taslim Akhtar, Assistant Director of Customs Valuation
Mr. Altaf Ahmad, Principal Appraiser, Valuation

M/s. B.P. Limited, SITE, Karachi, manufacturers of Bakery products, have filed this complaint against the Demand Notice for Rs.579,112/- dated 14.05.2008 (for recovery of alleged short-levied duty and taxes) issued by the Assistant Collector Customs (Securities), Model Customs Collectorate, CARE, Karachi. The facts of the case are as follows:

i) The Complainants imported 4600 pieces of Starch Trays at the declared value of Euro 2.38 per piece vide bill of lading dated 07.11.2006.

ii) Goods declaration was filed on 20-12-2006 (not 12-06-2006 as stated in the complaint) and assessment was provisionally made under Section 81 of the Customs Act at $ 2.5117/Kg after obtaining post-dated cheque of Rs.579,112/- and indemnity bond as security for the disputed amount.

iii) They received the aforesaid Demand Notice dated 14.05.2008 that the assessment had been finalized and the post-dated cheque was liable to be encashed.

iv) A detailed representation dated 16-05-2008 was made to the Collector of Customs, Director of Customs Valuation and the Assistant Collector of Customs (Securities) requesting them to withdraw the demand notice apprehending that the Respondents shall block the customs clearance of

their imports for no fault or negligence on their part.

v) It has been alleged that opportunity of hearing was not granted to them. It is a well settled law that if the customs authorities disagree with the transaction value they should give the importer an opportunity of hearing before passing the final assessment order. Failure to do so was an act of maladministration.

vi) The Respondents are legally required to issue a final assessment appealable order within 180 days under section 81 of the Customs Act. Since no such order was passed the declared value became the final value.

vii) The Respondents have failed to substantiate that the transaction value of Euro 2.30 per piece under Section 25(1) of the Customs Act was not the transaction price and, therefore, the determination of customs value other than the declared value also amounted to maladministration.

2. It has been stated by the Complainants that "a decision, process, recommendation, act of omission or commission which is contrary to law, rules or regulations or is perverse, arbitrary or unreasonable, unjust, biased, oppressive or discriminatory or there is neglect, delay, incompetence, inefficiency in the administration of discharge of duties and responsibilities" have been defined as maladministration under Section 2(3) of the Federal Tax Ombudsman Ordinance, 2000. It was thus alleged that the issue of demand notice for Rs.597,112/- amounted to maladministration on the part of the Respondents.

3. The Complainants stated that they had approached this office with the prayer that the following acts be declared as acts of maladministration:-

i) The issuance of the demand notice dated 14-05-2008 for Rs.579,112/- without passing any final assessment order.

ii) The issue of the Demand Notice without giving opportunity of hearing as required under law.

iii) The non-communication of any reason or reservation for not accepting the invoice price.

It was requested that since the Respondent failed to pass final assessment order within six months, the declared price be declared as final and any other relief deemed fit be granted.

4. The Deputy Collector Customs (PaCCS) Group-II, in reply to the complaint raised preliminary objections that the matter pertained to determination of value and duties/taxes and was outside the jurisdiction of the Federal Tax Ombudsman. It was stated that under sub-sections (3) and (4) of Section 81 of the Customs Act read with the "Explanation" the provisional assessment (including the secured duty and taxes) attained

finality after expiry of the stipulated period. Additionally, the Complainants have not exhausted the legal remedy of review before the Director General of Customs Valuation under Section 25D of the Act. It was requested that the subject complaint be dismissed.

5. With regard to the facts of the case it was stated that the recovery notice was issued when the Complainants' bank refused to encash the post-dated cheque submitted as security. It was added that the computerized record and evidential GD were shown to the Complainants and opportunity of hearing was provided before provisional assessment. Valuation Department also provided opportunity of hearing a number of times before finalization of assessment but the Complainants did not respond to the notices. Therefore, Valuation Department vide decision dated 08.06.2007 advised finalization of provisional assessment as per valuation data/evidence available with the Collectorate and under provisions of sub-section (3) and (4) of Section 81 and the "Explanation", the assessment was finalized. It was stated that the Department acted within the ambit of law and procedure and the allegation of maladministration was misconceived.

6. It was further stated that the Complainants failed to substantiate the declared value under sub-section (1) of section 25 of the Customs Act; and provisional assessment was made under section 81(1) ibid after obtaining the security. After clearance of goods the Complainants did not make any representation or appeal before any forum which proved that they had no objection to the rejection of the declared value which was not considered payable value for assessment.

7. It was further argued that issue of an order was mandatory only where confiscation of goods and imposition of penalty was involved. Further, it has been held by the High Court of Sindh vide order dated 26-04-2006 that the date on which the endorsement is made on the note-sheet (on the basis of Valuation Advice) for finalization of original assessment is adequate to treat it as final. The Complainants had an opportunity to file a review application before the D.G. Valuation under Section 25D of the Customs Act or file an appeal under Section 193 of the Act. The argument that a final assessment order was a must was not correct. Section 81 of the Act does not provide for issuance of any order and provisions of its sub-section (3) call for forthwith adjustment of the security under sub-section (2) ibid.

8. It was also stated that under Section 10(3) of the FTO Ordinance, 2000, no complaint could be entertained after the expiry of six months from the date of "being first aggrieved." It was submitted that considering the submissions made above the complaint be dismissed.

9. The Authorized Representative of the Directorate-General of Customs Valuation also raised some legal objections which need not be repeated here. With regard to the facts of the complaint it was stated that the declared transaction valuation of Wooden Starch Trays imported from Germany was considered to be on the lower side and it was

felt necessary to verify the prices. The importer was asked to furnish requisite documents and sample of goods and three hearing notices were electronically transmitted but nobody appeared for hearing. He did not respond to the notices and the matter was decided on merits.

10. During the hearing of the complaint, the learned Counsel stated that the demand notice dated 14.05.2008 was issued by the Assistant Collector (Securities) intimating that the post-dated cheque had been returned unpaid and demanding the importer to pay the amount immediately failing which the imports would be blocked and recovery action would be initiated. He stated that the Customs authorities should have issued a final assessment order after finalizing the price of goods and determining the differential amount of duty and taxes due to the Customs.

11. The learned Counsel stated that Valuation Directorate claims to have issued hearing notices through the electronic computer system which they did not receive. However, even if the importer did not appear before the relevant Valuation Officer to contest or present his case, the advice given by the Valuation Department to the Appraisement Group was not made known either through electronic message or through a letter. The Customs Group did not pass any formal order of finalization of assessment as required under sub-section (4) of Section 81 of the Customs Act.

12. The learned Counsel stated that, firstly, since the department failed to finalize assessment within nine months of the date of provisional assessment, the assessment on the basis of declared value attained finality and the case should have been closed. Alternately, the customs authorities should have passed a speaking order showing the basis under which the value of goods had been converted to 'valuation on weight' instead of "valuation per piece" as declared, and the evidence on which the provisionally appraised value had been finalized to enable the importer to seek redressal of his grievance from the appropriate forum as repeatedly mentioned by the department in its parawise comments. Without the document, an appeal could not be filed before the Director General Valuation.

13. The Deputy Collector of Customs (Appraisement) replied that after referring the case to the Valuation Department, several hearing notices were issued to the importer electronically to appear for hearing in the month of February 2007 but nobody attended the hearing. Final hearing was fixed for 04.06.2007 before the Assistant Director of Valuation; on 06.08.2007 the Valuation Officer wrote a note that the assessment be finalized as per 90 days' data of identical/similar goods. (It seems that the final figure of value of goods/duty and taxes payable determined by the Valuation Department was not specifically mentioned in the last electronic message conveyed to the Group concerned). He stated that under the PACCS system of Customs working, there is no provision for issuing a formal order of assessment.

14. The Assistant Director Valuation submitted that the valuation was finalized on the

unit value of Euro 2.5117/Kg as mentioned in the assessment sheet electronically conveyed to the Customs Group stating that "The case may be finalized as per 90 days data of identical/similar goods (as per assessed notes) in the light of delineation of valuation work between MCC and Directorate Valuation." He stated that the direction had been given to the Customs Group to finalize the assessment on the basis of data available with them. He further stated that according to his view a formal assessment order should have been issued by the Group on the basis of advice given by the Valuation Department.

15. The learned Consultant reiterated that arbitrary blocking of clearance of goods or filing of goods declaration created serious problems for a large number of importers. Therefore, it was necessary that the FBR/the Collector of Customs should lay down a procedure under which notice for blocking and action to that effect should only be made after passing an order for finalization of assessment under Section 81 of the Customs Act.

16. The statements made and the arguments put forward by the Counsel for the Complainants, the Deputy Collector of Customs, PACCS, and the Assistant Director of Customs Valuation have been examined. The contention of the Customs Department is summarized below:

(i) The Customs Group-II, after provisional assessment and submission of security, referred the matter to the Valuation Department.

(ii) The appropriate Valuation Officer sent several electronic hearing notices to the importer but nobody attended. The Complainants stated they received no notice from the Valuation.

(iii) Assistant Director advised the Customs Group on 06-07-2007 to finalize the assessment as per 90 days data of identical/similar goods. (Clearly the final value was not determined and the matter was left to the Group).

(iv) The Deputy Collector of Customs stated that the new wording of section 81 of the Customs Act does not provide for issuance of an order and the provisions of it sub-section (3) require forthwith adjustment of the security.

(v) It is significant that the customs officials have argued that with the addition of "Explanation" under section 81 of Act, if final determination is not made, the provisional assessment including the amount of secured duty and taxes shall be included in the final assessment.

17. The Counsel for the Complainants has objected to the unit of value which was changed from per piece to per kg without explaining the basis of change. He has argued that date of hearing for final value determination was not communicated to the Complainant within the stipulated period and after provisional assessment on 20-12-2006, the demand notice was issued on 14-05-2008 i.e. after a lapse of 17 months. The Counsel also agitated against arbitrary blocking of clearance of goods and urged that this action should only be made after passing a legal formal order of finalization of assessment whether electronically or through a letter/notice.

18. From the foregoing facts it transpires that the customs authorities do not consider it legally necessary to inform the importer about the basis of value determination and the duty and taxes correctly chargeable, concerned Customs Group does not issue an assessment order, they consider it their authority to order recovery of import dues without meeting the legal obligation/procedure of assessment. They have also taken the position that if the determination of duty and taxes is not finalized within the prescribed period the appraised (higher) value automatically attains finality and the security is encashable. In short, it would mean, that the Customs officials' negligence and inaction shall justify arbitrary assessment at higher value, they are free to pass an order for recovery of duty etc, and the Bank Guarantee Section is at liberty to encash the security without prior notice. This approach is clearly arbitrary, unjust, unreasonable, contrary to the provisions of law, it disregards the fair system of provisional and final assessment where the importer's declaration is not acceptable, and contrary to the established practice of determining correctly payable duty and taxes within the legal time-frame, failing which provisional determination shall, on the basis of importer's declaration, be deemed as the final determination.

19. It is established that the correctly payable duty etc was not determined by the Customs Group or the Valuation Department and the Valuation Officer only sent an electronic message on 16-08-2007 to finalize the assessment as per 90 days' data of identical/similar goods without giving specific valuation advice or ruling. The Customs Group did not pass an order about the final determination of the import dues. (This date cannot be treated as the date of final determination of import levies). The Bank Guarantee Section/the Securities Section issued a notice dated 14-05-2008 for recovery of Rs.579.112/- when the post-dated cheque was returned unpaid. It is significant that the Customs officials have given a different meaning to the provisions of section 81 of Customs Act. They wrongly contend that if a final determination is not made within the specified period the provisional assessment inclusive of the security amount should be deemed to be the correctly payable amount. This interpretation is completely at variance with the provisions of section 81 ibid, which allows, that in case of assessment disputes, provisional determination of duty and taxes be made on submission of security by importer, and the Customs officials are required to complete the final determination of correctly payable duty etc within the stipulated time-frame failing which the provisional determination on the basis of the importer's declaration shall become final.

20. It may be added that after the provisional assessment, necessary action to finalize the determination of assessment lies with the Customs Group who may carry out necessary investigation, complete final determination with due process and issue a formal appealable order as laid down by the Federal Board of Revenue in para 66 of the CGO 12/2002. Thus the order for final determination of duty and taxes payable by the importer has to be passed by the concerned Customs Group.

21. As mentioned in paragraph 19 of this order, the electronic message of Valuation Department sent on 16-08-2007 cannot be termed as the date of final determination of import levies. The only notice dated 14-05-2008 was issued after about 17 months of the provisional determination of duty and taxes; it was a notice of recovery and not of final determination of duty and taxes whose period has already lapsed. This is a clear case of maladministration where the provisions of section 81 of the Customs Act, the procedure prescribed in the Customs Valuation Rules and the instructions contained in CGO 12/2002 have been violated. The Complainants have also expressed apprehension of blocking of imports on account of the warning contained in para 2 of Assistant Collector Securities' notice dated 14-05-2008.

22. It is recommended that Federal Board of Revenue direct the Collector of Customs to

(i) finalize the determination of duty and taxes on the basis of declaration made by the importer, quash the demand notice and return the post-dated cheque to the importer;

(ii) also direct the Collectors of Customs to formulate and notify the procedure for blocking the import/exports of filing of documents for Goods Declaration.

(iii) The above action may be completed within thirty days; and

(iv) compliance be reported within forty five days.

(JUSTICE (R) MUNIR A. SHEIKH)
Federal Tax Ombudsman

Dated: -2008

BEFORE THE FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE, LAHORE

COMPLAINT NO.1252/2007

M/s Spel Fujiya Limited,
127-S, Small Industrial Estate,
Kotlakhpat, Lahore. ...Complainant

Versus

The Secretary,
Revenue Division,
Islamabad. ...Respondent

Dealing Officer: ...Mr. Muhammad Akbar, Adviser

FINDINGS/DECISION

Present: Mr. Shahbaz Yar Khan, Advocate for the complainant.
Mr. Samiul Haq D.C. Customs, Peshawar for the respondent.

The complainant is a manufacture of Split Air-Conditioners. The Federal Government vide SRO.No.1050(I)/95 dated 29.10.1995 imposed a regulatory duty on parts and components imported by the complainant, which were being used for manufacturing Split A.Cs. Since parts and components imported by the complainant were exempt from payment of duty in excess of the rate specified in SRO.504(I)/94 dated 09.06.1994 the complainant challenged the legality of regulatory duty imposed vide SRO.1050(I)/95 vide writ petition No.47/96 before the Peshawar High Court. The Court vide order dated 07.05.1996 granted interim relief ordering that regulatory duty and sales tax would not be recovered provided the petitioner (complainant) furnished bank guarantees. The complainant tendered 14 bank guarantees amounting to Rs.1348500/- to clear/ex-bond its different consignments. The Peshawar High Court allowed writ petition filed by the complainant holding that SRO.1050(I)/95 dated 29.10.1995 would not be effective against goods which had been exempted from payment of custom duty by a valid exemption notification and the same was still intact and vide judgment dated 23.02.1997 for the reasons recorded in the identical writ petition No.1110/95 the respondents were directed to return the amount, if any, received by them. After acceptance of the aforesaid writ petition No.47/96 the complainant vide letter dated 07.05.1997, followed by a reminder dated 20.06.97, requested the Customs Department for release of bank guarantees. The request was denied on the pretext that Customs Department was filing appeal before the Supreme Court of Pakistan. In pursuance of Collector's letter dated 26.06.97, the Superintendent Customs and Central Excise,

Haripur Circle directed the complainant to revalidate the subject guarantees vide letter dated 07.07.97. The complainant replied that it had already applied for release of bank guarantees and the Superintendent was asked to provide a copy of stay order, if any. The respondents threatened to place an embargo if the guarantees were not revalidated. The complainant, therefore, extended/revalidated the bank guarantees. Later, the D.C, Customs Haripur directed the complainant to extend the bank guarantees vide letter dated 15.06.98 and the same were accordingly extended. Aggrieved by the judgment of the Peshawar High Court in favour of the complainant the Customs Department filed civil appeal No.872/97 alongwith 94 appeals of identical nature before the Supreme Court of Pakistan but the same were dismissed vide a self-contained judgment. The Apex Court in the case titled the Collector of Customs versus M/s Ravi Spinning Mills reported 1999 SCMR 412 dismissed civil appeal Nos.869 to 936/97 arising from the judgment of the Peshawar High Court dated 23.02.1997. The judgment passed by the Peshawar High Court in favour of the complainant had attained finality and the respondents were duty bound to return the amount of bank guarantees furnished by the complainant. Despite the fact that civil appeal filed by the department had been dismissed by the Supreme Court the A.C, Customs, Haripur vide letter dated 21.05.01 issued notice to the bank for encashment and enchased the bank guarantees in violation of Court's order. Dissatisfied with the judgment passed by the Supreme Court of Pakistan the respondents filed a consolidated review petition against 70 units, which review petition was also dismissed by the Apex Court. Thus the judgment passed by the Peshawar High Court attained finality and the Customs Department was duty-bound to refund an amount of Rs.1348500/- governed by the aforesaid bank guarantee. Soon after the dismissal of review petition by the Supreme Court the complainant vide application dated 23.03.07, followed by reminders, applied for refund of regulatory duty but the respondents failed to take any action. Since the respondents were not responding to any of the aforesaid requests/letters the complainant sent a legal notice dated 10.08.07 to the respondent No.1 through its counsel for payment of refund of the amount in question, followed by reminder dated 10.10.07 but to no avail. The respondents should be proceeded against for 'maladministration' and be directed to refund an amount of Rs.1348500/- illegally held by them alongwith financial costs incurred by the complainant. Any other relief deemed fit may also be granted.

2. In reply, the Collector of Customs, Peshawar has submitted that the judgment dated 23.02.97 in writ petition No.1110/95 (M/s Saif Textile Mills Gadoon Amazai) had been misquoted by the complainant as it related to import under SRO.108(I)/95 dated 12.02.95, issued specifically for the units located in Gadoon Amazai, Swabi. It had no relevance to the import made by the complainant under SRO.504(I)/94 dated 09.06.1994. Complainant's request was denied as imposition of regulatory duty under SRO.1050(I)/95 dated 29.10.95 was effective on ex-bonding of goods in terms of section

18(2) of the Customs Act, 1969. The Apex Court's judgment in M/s Ravi Spinning Mills reported as 1999 SCMR 412 had also been misinterpreted by the complainant because the operative portion of this judgment read as under: -

> *"The imposition of Regulatory duty by the government under Section 18(2) of the Customs Act, 1969 was effective and the same could be recovered from the importers at the time of filing of the bill of entry for consumption or on the date of ex-bonding of the goods from the bonded warehouse, if the notification imposing regulatory duty had come into effect on the date of presentation of the bill of entry or ex-bonding of the consignment from the bonded warehouse".*

The Apex Court further held that:

> *"We accordingly hold that in respect of the grounds by SRO No.108(I)/95 dated 12.02.1995 the Regulatory Duty imposed by the SRO.1050(I)/95 dated 29.10.1995 was not recoverable".*

A specific judgment of the Supreme Court of Pakistan in certain civil petitions announced on 29.11.1999 regarding SRO.504(I)/94 dated 09.06.1994 amongst others had held:

> *"Therefore, on the language of these SROs, it is not possible to hold that the exemption granted under these notifications also applied to the Customs duty levied in addition to the statutory duty under Section 18(2) of the Customs Act, 1969 or under other laws for the time being enforced".*

This judgment had further strengthened the stance of chargeability of regulatory duty on the import made through other concessionary SROs except SRO. No.108(I)/95 dated 12.02.1995. If the complainant had a judgment of Supreme Court in its favour contrary to the judgment referred to above it should produce the same. No applications were received from the complainant. Refund claim was vague. Even so the Collectorate was giving the complainant the opportunity of being heard.

3. During the hearing, the AR submitted that 10% regulatory duty was imposed on import vide SRO.1050(I)/05 dated 29.10.05. The respondents enforced the levy at the time of ex-bonding of imported goods. The same was challenged by the complainant in the Peshawar High Court vide Writ Petition No.47/2006. The complainant's goods were exempt from payment of Customs Duty and Sales Tax vide SRO.504(I)/94 dated 09.06.1994. Vide judgment dated 23.02.1997 the Peshawar High Court accepted complainant's writ petition No.47/96 for reasons recorded in judgment in writ petition No.1110/95. The Court directed the respondents to return the amount if received from the complainant. Despite court's order and complainant's request to refund duty and return

the guarantees the department did not respond. Instead the respondents asked the complainant to extend the bank guarantees, which was done. The department filed appeal No.872/97 against Peshawar High Court's judgment, which too was dismissed on 12.01.1999 by the Supreme Court. Despite that the respondents encashed bank guarantees on 25.01.01. Against Supreme Court's judgment the respondents filed review petition No.117/03 which too was dismissed on 17.01.03. The complainant filed refund applications and also served legal notices on the respondents but they had not responded to any one of them.

4. The DR submitted that in the writ petition No.1110/95 filed by M/s Saif Traders the High Court decided that the chargeability of duty or otherwise was dependent upon entry of imported goods into the territorial waters of Pakistan. The regulatory duty was enforced at the time of ex-bonding of imported goods from the bonded warehouse of the complainant. In the case of Ravi Spinning Mills, the Supreme Court held that imposition of regulatory duty under section 18(2) of the Act, otherwise could not be objected to in view of the provisions contained in section 31A of the Act and the same was recoverable on the goods imported into Pakistan in accordance with section 30 of the Act, notwithstanding the fact that the notification was issued under section 19 of the Act. In the same judgment the Supreme Court held that in respect of the goods which were exempted from payment of custom duty specified in the first schedule to the Act, either wholly or partially, under all SROs except SRO.108(I)/95 dated 12.02.95 the imposition of regulatory duty by the government under section 18(2) of the Act was effective and the same could be recovered from the importers at the time of filing of bill of entry for consumption or on the date of ex-bonding of goods from the bonded warehouses, if notification imposing regulatory duty had come into effect on the date of presentation of the bill of entry or ex-bonding of the consignment from the bonded warehouses. It was also left to the government to examine individual cases in the light of above observation. Notices were issued to 95 units for encashment and recovery. From the year 2001 to 2008 the complainant had no cause of action, it could have approached the relevant court for proceedings on account of non-implementation. The AR, on the other hand, stated that the respondents had committed 'maladministration' from 2001 onwards. The DR added that the President of Pakistan in complaint No.1158-K/06 had held that FTO's role was to identify 'maladministration' and not act as a law and constitutional court to determine the legality or constitutionality of an order. The AR submitted that the Peshawar High Court held in its judgment that the notification imposing regulatory duty would not be effective against the goods which had been exempted under an exemption notification. The decision was upheld by the Supreme Court in the case of Ravi Spinning. The respondents had filed appeal No.872 against the complainant but the Court dismissed the government's case. As regards the alleged failure on the part of the complainant to pursue its case the AR said that the complainant did not do so because the department had filed

appeals and review in the Supreme Court and the Supreme Court decided the department's review petition on 17.01.07. He submitted that the complainant had applied for refund vide application dated 23.03.07, followed by reminder dated 19.04.07, which were still pending. The DR submitted that the complainant was asked to appear before the Additional Collector on 18.12.07 but it did not. The AR submitted that the complainant did go and meet the Additional Collector who asked his subordinate to sit with the complainant and reconcile the matter. The exercise proved non-productive. The respondents, he said, did not respond to the applications or to the legal notices. He pointed out that the respondents issued notice for 14.12.07 after filing of the complaint.

5. The arguments of the two sides and records of the case have been considered and examined. The complainant contends that (i) parts and components imported by it for manufacture of Split Air-Conditioners were exempt from payment of custom duty in excess of rate specified in SRO.504(I)/94 dated 09.06.1994 and, therefore, the imposition of regulatory duty imposed on these parts and components vide SRO.1050(I)/95 was challenged by the complainant before the Peshawar High Court vide W.P.No.47/1996. In terms of High Court's interim order the complainant had tendered bank guarantee to the respondents. Subsequently, the Peshawar High Court allowed complainant's writ petition vide order dated 23.02.1997 whereby for reasons recorded in identical writ petition No.1110/95 the respondents were directed to return the amount, if received by them, (ii) the appeal and the review petition filed by the respondents against Peshawar High Court's judgment in writ petition No.1110/95 (M/s Saif Textile Mills Ltd Vs. Assistant Collector Customs) were dismissed by the Supreme Court of Pakistan. As a result, Peshawar High Court's judgment had attained finality, (iii) the department was bound to refund the amount of Rs.1348500/- for which the complainant had filed application dated 23.03.07, followed by reminder dated 19.04.07 but the respondents failed to do that. The complainant had also served a legal notice dated 10.08.07, followed by a reminder dated 10.10.07, for payment of refund but to no avail. By not making refund the respondents had committed 'maladministration'.

6. The respondents, on the other hand, contend that (i) the complainant had misquoted Peshawar High Court's judgment dated 23.02.1997 (M/s Saif Textile Mills Gadoon Amazai) as that judgment related to imports under SRO.108(I)/95 dated 12.02.1995, which was issued specifically for units located in Gadoon Amazai, Swabi. It was not relevant to the imports made by the complainant under SRO.504(I)/94 dated 09.06.1994, (ii) the complainant's request was denied as imposition of regulatory duty under SRO.1050(I)/95 dated 29.10.1995 was effective, (iii) the Apex Court's judgment in M/s Ravi Spinning Limited reported as 1999 SCMR 412 had been misinterpreted by the complainant. According to that judgment imposition of regulatory duty by Government under section 18(2) of the Customs Act, 1969 was effective and the same could be recovered from the importer at the time of filing of bill of entry for consumption or on the

date of ex-bonding of goods from the bonded warehouse, if notification imposing regulatory duty had come into effect on the date of the presentation of bill of entry or ex-bonding of the consignment from the bonded warehouse. The Supreme Court, however, held that in respect of SRO.108(I)/95 dated 12.02.1995 regulatory duty imposed by the SRO.1050(I)/95 dated 29.10.1995 was not recoverable, (iv) the Supreme Court of Pakistan in certain civil petitions vide judgment dated 29.11.1999 regarding SRO.504(I)/94 dated 09.06.1994 held that it was not possible to hold that exemption granted under these notifications also applied to the custom duty levied in addition to statutory duty under section 18(2) of the Customs Act, 1969 or under other law for the time being enforced. The above judgment, according to the respondents, strengthened the stance of chargeability of regulatory duty on imports made under other concessionary SROs except SRO.108(I)/95 dated 12.02.1995, which SRO related to imports by units located in Gadoon Amazai.

7. Even according to the notice dated 11.12.07 issued by the Additional Collector Customs to the complainant reveals that the respondents are of the view that the issue relating to concessionary SROs including SRO.504(I)/94 dated 09.06.1994 had been decided by the Apex Court of Pakistan vide judgment announced on 29.11.1999 in the light of which the regulatory duty imposed under SRO.1050(I)/95 dated 29.10.95 was chargeable on complainant's import made under SRO.504(I)/94 dated 09.06.1994.

8. The foregoing position indicates that the two sides hold opposite points of view. While the complainant feels that the case has been decided in its favour by the Peshawar High Court as subsequent appeals and review petition filed by the respondents were dismissed by the Supreme Court, the respondents contend that the Apex Court of Pakistan had held that regulatory duty imposed under SRO.1050(I)/95 dated 29.10.95 was chargeable on imports made under SRO.504(I)/94 dated 09.06.1994. Since the issues involved have been decided by the superior courts it is not for this forum to give its opinion on the subject matter or on the relative points of view of the respondents and the complainant. In the circumstances of the case, the complainant may, if so advised, consider filing an application for implementation of the judgment on which it relies in the court, which, according to it, passed the judgment in its favour.

9. The complaint is disposed of with observations made above.

(JUSTICE (R) MUNIR A. SHEIKH)
Federal Tax Ombudsman

Dated: -2008

BEFORE THE FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE, KARACHI

COMPLAINT NO.1557/2008

M/s Crescent Bahuman Limited
40-A, Off Zafar Ali Road
Gulberg-V
Lahore. ...Complainant

Versus

The Secretary,
Revenue Division,
Islamabad. ...Respondent

Dealing Officer: ...Mr. M. Mubeen Ahsan, Adviser

FINDINGS/DECISION

Present: Mr Afzal Awan, Advocate
Mr Imran Iqbal, Advocate

Mr Abid Hussain Hakro, Deputy Collector of Customs, PACCS
Mr Wahid Baksh Shaikh, Assistant Director of Customs Valuation
Mr Afaq Hameed, Principal Appraiser

The complaint has been filed against the Model Customs Collectorate of PACCS and the Director of Customs Valuation for not finally determining the value of goods provisionally released under Section 81 of the Customs Act, and instead of returning the post dated cheque (PDC) of Rs.340,000/-, initiating recovery proceedings against the Complainant. The facts of the case are that the Complainant imported a consignment of Aluminum Silicate and filed Goods Declaration on 03.09.2007. The appropriate officer of Customs provisionally released the goods under 81 of the Customs Act securing the differential duty and taxes against the security of PDC which was furnished with the clear understanding that if it was proved that the declared value under Section 25(1) of the Customs Act was not the correct customs value, the cheque shall be encashed; otherwise the same shall be returned to the importer.

2. The matter was referred to the Direcrtorate-General of Customs Valuation, the hearing was attended on the date fixed by the Director, certain documents were submitted with the representations dated 12.11.2007 and 27.11.2007, and the Valuation Department was requested to finalize the value under Section 25 (1) of the Customs Act. However, the matter was kept pending and though the Respondents did not dispute the provisional assessment (on declared value), no enquiry was made and speaking order for final determination of value for assessment was not passed within the time frame under

Section 81(2) of the Act. Further, extension of time to the period of limitation under Section 81(2) ibid was also not granted. Therefore, the Complainant served a notice dated 17.6.2008 under Section 2 of the Federal Tax Ombudsman Ordinance to the Respondent to return the PDC as the time frame for the decision had lapsed.

3. It was alleged that instead of returning the PDC, the MCC PACCS initiated recovery proceedings for encashment of the PDC and sent Notice No.SI/MISC/04/2007 MCC dated 23.6.2008 with the remarks that after finalization of the case, the cheque was sent to the bank for encashment, which has been returned unpaid. The Complainant was asked to pay the amount of Rs.340,000/= immediately failing which the amount will be recovered alongwith penal action under clause 95A of Section 156(1) and Section 202 of the Customs Act read with Chapter XI of the Customs Rules. This notice was given without affording opportunity of hearing and without giving reasons or justification for not accepting the declared value. This action was unreasonable, unjust, biased, oppressive and an act of maladministration within the meaning of Section 2 of the Federal Tax Ombudsman Ordinance. It was stated that till the date of filing of this complaint, the Complainant had not received any intimation about release of PDC nor any formal order or reason for not releasing it despite the application dated 12-11-2007 followed by reminders dated 27-11-2007 and 17-06-2008. It was stated that if the Respondent had any reservations for not releasing the secured amount of Rs.340,000/- the Complainant be informed in writing or given an opportunity of hearing to clarify his position to meet the ends of justice.

4. The Deputy Collector of Customs, Group-II, raised objection in his reply that the complaint has been filed against the finalization of provisional assessment for which legal remedy to file a review before the Director General of Valuation under Section 25D of the Customs Act was available. Since the Complainant failed to avail the remedy, the complaint was barred under Section 9(2)(b) of the F.T.O. Ordinance. He further stated that the case pertains to determination of liability of tax/duty and valuation of the goods and it cannot be entertained by this office.

5. He alleged that the Complainant had approached this office with false statements and un-clean hands. The record shows that hearing opportunity was provided by the Valuation Department, the matter was investigated with the available data and the Pakistan Chemical & Dyes Merchants' Association (PCDMA) were also consulted. The decision of finalization of provisional assessment was communicated electronically to the Complainant but they failed to make the payment of the differential amount. Therefore, PDC was sent to the Bank but it was dishonored on account of insufficient balance. It was alleged that the Complainant has filed this complaint to achieve the goal of not paying the Government's revenue and to frustrate the recovery proceedings.

6. With regard to the contents of the complaint it was stated that action for recovery of Government's revenue cannot be termed as maladministration. The record shows that the Complainant failed to substantiate that the declared value was the true payable transaction value under Section 25(1) of the Customs Act. No corroborative documents / information was provided for adjustment as provided under sub-Section (2) of Section 25 of the Act. Therefore, the declared value was not acceptable. On the contrary as per data

of customs values maintained under sub-section 13(a) of Section 25 of the Act, the Department had bulk of higher value evidence. Therefore, the assessment was proposed at $1.1148/kg against the suppressed declared value of $0.1734/kg. The Complainant had failed to substantiate that the value of special grade Aluminum Silicate Abrasive of European origin could be as low as $0.1734/kg.

7. It was further stated that the provisional assessment was finalized within the stipulated period under sub-section (2) of Section 81 of the Act. Further, in terms of sub-section (4) read with the "Explanation" and sub-section (3) of Section 81, the Department is authorized to encash/adjust security deposit if the provisional assessment was not finalized within the stipulated period as envisaged in sub-section (2) of Section 81. Thus, it was argued, considering the provisions of sub-sections (2) and (4) and "Explanation" under Section 81 of the Act, the Complainant's claim that the declared value be accepted, and assessment finalized thereon and return of security was not in accordance with the statute. It was reiterated that even if the time stipulated under Section 81(2) of the Act had lapsed, there was no question to accept the declared value under Section 81(4) and the "Explanation".

8. The Deputy Collector referred the another Complaint No.520-K/2007 wherein the Federal Tax Ombudsman had directed the Complainant to adopt the course of remedies available through Section 193 and 194-A of the Customs Act. He stated that the Honourable Supreme Court had held, vide Order dated 10.02.2005 passed in Civil Petition No.911 of 2003 and order dated 10.11.2003 passed in Civil Petition No.775-K of 2003, that the merits of the case were not to be scrapped on sheer technicalities of time limitation. It was also stated that in the Constitution of Islamic Republic of Pakistan it has been laid down that "When any act or thing is required by the Constitution to be done within a particular period and it is not done within that period, that doing of the act or thing shall not be invalid or otherwise ineffective by reason only that it was not done within that period". It was, therefore, requested that subject complaint be dismissed.

9. The Assistant Director of Customs Valuation also raised objection about the jurisdiction of this office and stated that the Model Customs Collectorate had referred the matter through online computerized system to the Valuation Department for determination of customs value. Hearing opportunities were provided to the importer on 15-10-2007 and 28-11-2007 but nobody attended the hearing. The importer's statement that he attended the hearing was not true. The case was finalized on 31-05-2008 after confirmation of PCDMA vide letter dated 23-05-2008 that the assessment price of the consignment was correct to the best of their knowledge.

10. During the hearing of the complaint, the Deputy Collector of Customs stated that after determination of the value a message was sent to the Securities Section on 31-05-2008 to encash the security. On inquiry whether determination of correct amount of duty and taxes and charges was made and communicated to the importer, he stated that under the present PACCS software no such action is taken and the matter is passed on to the Securities Section to encash the security. He further stated that in the computer system now in operation in the PACCS there is no role for the concerned Group about the determination of duty, taxes and charges recoverable from the importer. Deputy Collector

did not furnish any directive of the appropriate authority that the assessment based on final determination was not the responsibility of the concerned Group/Appraising staff of Collectorate.

11. The Assistant Director of Customs Valuation submitted copy of a letter dated 28-01-2008 under which the extension of time-limit by 90 days under section 81(2) of the Customs Act was communicated to the Deputy Collector of Customs in respect of three imports, the third being the present case. A letter dated 16-05-2008 was sent to PCDMA alongwith a copy of the printout received from the Customs Group because other evidence of valuation was not available. PCDMA vide letter dated 23-05-2008 replied that assessment price was correct. He stated that the importer was invited electronically to attend hearing on 15-10-2007 and 28-11-2007 but no one appeared and only a written reply was received. He stated that the value ascertained on the recommendation of PCDMA was communicated to the concerned Customs officer on 31-05-2008.

12. The Counsel for the Complainants replied that the extension of 90 days under sub-section 81(2) of the Customs Act was not legally valid because there is no evidence to establish that the "circumstances of exceptional nature" were recorded by the competent authority and it has also not been shown that extension was communicated to the importer. He stated the Chemical was imported for manufacture of "Levis" brand jeans for export and the rate of duty being 5%, only Rs.50,000/- was the leviable duty. The Customs enhanced the value by more than six times but did not issue a show cause notice, they did not disclose the basis of enhancement, they held meeting with the PCDMA but did not invite the importer to examine and question the recommended valuation. He added the PCDMA's letter has no legal evidential basis. The value was enhanced by the Customs but the assessment was not finalized and no formal order was passed and communicated to the importer to enable him to contest the valuation at higher forums.

13. The learned Counsel stated that the importer has been importing this Chemical for a long time. The Customs authorities should have examined their computer record to identify past imports to ascertain the accepted trend of valuation from various sources. He stated even after the present case of import the same Chemical has been released by PACCS valued at $0.17 per kg.

14. The gist of the case is that after provisional assessment on 03-09-2007, the case was referred to the Directorate of Customs Valuation where it remained pending. The Respondent did not dispute the declared value, no inquiry was made, and no speaking order for final determination of the correct amount of duty and taxes was issued within six months under section 81(2) of the Customs Act. Complainants submitted representations to the Valuation Department but no action was taken and no evidence was demanded from the importer under sub-section (2) of section 25 of the Act. With regard to the extension of time-limit by 90 days, the Complainants did not receive any intimation; in all fairness this intimation should have been given to the importer also. Complainants contended that the determination of value and assessment was not done even during the extended period which expired on or about 02-06-2008. Assistant Director stated that the determined value was intimated to the concerned Customs officer

on 31-05-2008 and the Deputy Collector claimed that it was sent to the Securities Section on the same date to encash the security. The Deputy Collector also stated that there was no role for the concerned Group about the determination of duty, taxes and charges recoverable from the importer. On inquiry he did not furnish any directive of the appropriate authority that the assessment based on final determination of value and issue of a speaking order was not the responsibility of the concerned Collectorate.

15. Assistant Collector of Customs Valuation submitted copy of a letter No.1/67/2007-II/2497 dated 16-05-2008 addressed to PCDMA inquiring about the value of Aluminum Silicate Abrasive vide the two following paragraphs

> "2. The matter of determination of Customs Value of subject goods Aluminum Slicate Abrasive (Coasting) Special Grade, HS Code 2833.1900, (Copies of invoice & GD enclosed) imported from Netherlands is under investigation by this Directorate General".
>
> "3- You are, therefore, requested to forward the C&F/FOB Values of the above mentioned items at the earliest your co-operation in this regard shall be highly appreciated".

PCDMA replied vide letter dated 23-05-2008 as follows:

> "With reference to your letter No.1/67/2007-II/2497 dated 16 May, 2008 Assessment price of above consignment is correct to the best of our knowledge.
>
> The above details are submitted without any prejudice."

16. After the above the investigation/consultation with, the PCDMA, Directorate of Customs Valuation intimated the value to the Customs vide electronic message dated 31-05-2008 with the remarks:

> "Finalized as per recommendation of PCDMA."

On the basis of this message, the PACCS sent a message on the same date which read:

> "Please encash the security" (IHC-378403-030907)".

Valuation Department did not indicate any value in its letter to the PCDMA but the PCDMA replied that the assessment price was correct.

17. This whole exercise has been carried out without affording the importer the opportunity of hearing, without allowing him the chance to examine the invoice or evidence relied upon by PCDMA or the Valuation Department, and no speaking order was passed either by the Valuation Department, or the concern Group of the PACCS. On the other hand the importer has claimed that he has been importing the Chemical for manufacture of an internationally known brand of jeans and has recently imported the same Chemical. The MCC PACCS and Valuation Department do not seem to have

checked the past imports. The circumstances and the evidence under which the declared value of the Chemical was enhanced about 6 times but no adjudication proceedings were started for such a huge price difference have not been explained.

18. The manner in which the case has been processed by the Valuation Department, determination of correct valuation and duty etc not done by the concerned Group, and notice for recovery issued by the Securities Section betray arbitrariness, inefficiency, failure to timely complete the assessment after due process and issue of a speaking appealable order as prescribed by the Federal Board of Revenue in the Customs Rules and CGO 12/2002 is a clear case of maladministration.

19. This office is not concerned about the determination of value by the Customs and of import levies but it is surely within its jurisdiction to examine how this process has been carried out in the PACCS Collectorate and the Valuation Department and whether ends of justice have been met or not. Cognizance has therefore been taken of the neglect, delay, incompetence, inefficiency and ineptitude in the administration of the Collectorate of Customs and the Directorate of Valuation. Objections raised about the jurisdiction of this office are rejected as misconceived and as uncalled for.

20. Considering however, that against the declared value of $0.1734/Kg, the customs value was provisionally appraised at $1.1148/Kg, the huge difference being more than six times, this office is of the view that valuation aspect needs to be properly checked in accordance with law and the case be referred to the Director General of Customs Valuation for review under section 25D of the Customs Act.

21. It is recommended that Federal Board of Revenue direct

(i) the Collector of Customs to suspend the operation of notice dated 23-06-2008 issued by the Assistant Collector Securities;

(ii) direct the Director General of Customs Valuation to review the value determined by the valuation officials;

(iii) examine the valuation record of 90 days before and after the import of the consignment in question, afford opportunity to the importer to represent his case, examine the evidence relied upon, furnish his own evidence in support of declared value and, after hearing the importer, decide the correct value of the Chemical.

(iv) The above action may be completed within thirty days; and

(v) compliance be reported to this office within forty five days.

(JUSTICE (R) MUNIR A. SHEIKH)
Federal Tax Ombudsman

Dated: -2008

BEFORE THE FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE, KARACHI

COMPLAINT NO.1569/2008

M/s Tri Star Electronics
FL-17/12, Block 13-A
Hisar-e-Aman Society
Gulsah-e-Iqbal, Karachi. ...Complainant

Versus

Secretary,
Revenue Division,
Islamabad. ...Respondent

Dealing Officer: ...Mr. M. Mubeen Ahsan, Adviser

FINDINGS/DECISION

Present: Mr. Zia-ul-Hassan, Advocate for the Complainant
Mr. Muhammad Masood Sabir, Assistant Collector of Customs (Appraisement)

M/s Tri Star Electronics have filed this complaint against the Collector of Customs (Appraisement) for not finalizing the assessment of a consignment of "CD DVD PP CASES" imported from China vide IGM dated 28-07-2007 which was provisionally released under section 81 of the Customs Act against the security of a pay order dated 20-08-2007 for Rs.238,290/- with an Indemnity Bond. It has been alleged that the Customs authorities failed to decide the matter within the stipulated period and, therefore, provisional assessment on declared value attained finality under sub-section (3) of section 81. The Complainants have requested that the pay order and Indemnity Bond be returned by the Customs.

2. It has been stated in the complaint that the Respondent was required to make the final determination of (value and) leviable duty and taxes under section 81(2) of the Customs Act within the stipulated period of six months or extended period (by 90 days) by passing a speaking order after providing hearing opportunity to the Complainants under S.No.66 of CGO 12/2002. However, the Respondents neither conducted any meaningful inquiry to determine the value of goods nor did they finalize the assessment by passing a speaking order which amounted to maladministration.

3. The Complainants have averred that the declared value represented the actual consideration paid to the supplier which could be verified by examining their identical

imports assessed by the Model Customs Collectorate which was approximately the same as declared in the present consignment, which the Customs authorities arbitrarily and illegally refused to accept. It has been alleged that the enhancement of value without furnishing any evidence of identical goods imported in comparable quantities and the same commercial value was unjust, void and contrary to the provisions of law which amounted to maladministration under section 2(3) (i) (b) of the Federal Tax Ombudsman Ordinance, 2000.

4. It was further stated that according to section 25(4) of the Customs Act, if the appropriate officer was not satisfied with the transaction value and had any reservation, he was required to inform the importer in writing and give him an opportunity to justify the price difference; if the importer failed to justify the difference the appropriate officer could only then refuse to accept the transaction value through a speaking order in writing. It was stated that the Complainants were never approached to explain the circumstances of the sales nor the documents submitted by them were controverted/challenged nor any order as required under Rule 109 of the Customs Rules read with section 24A of the General Clauses Act was passed. The Customs authorities thus failed to discard the declared value by providing any lawful basis/evidence under section 25 of the Customs Act. The declared/transaction value thus attained finality under sub-section (4) of section 81 of the Customs Act.

5. It was also stated that no provision in the Customs Act empowered the importer to force the Customs authorities to decide the matter within the stipulated time-limit under section 81(2) of the Customs Act. Therefore, it is the primary duty of the Customs officials to decide the matter within the legal time-frame. Since no inquiry was conducted and no evidence of higher value was available with the Customs or the Valuation Department, the provisional assessment on declared value had attained finality and the post-dated cheque should have been returned to the Complainants under sub-section (3) of section 81.

6. The Complainants stated they sent a letter dated 04-07-2008 to the Collector of Customs (Appraisement) requesting him to finalize the assessment on the basis of declared value and return the pay order alongwith Indemnity Bond but received no response. They cited the CBR directive under S.No.66 of CGO 12/2002 which lays down the procedure and instructions about value finalization. It was alleged that non-compliance of the CBR order under the aforesaid CGO was not only the violation of the principle of natural justice but also infringement of section 223 of the Customs Act which requires all officers of Customs to follow the orders, instructions and directions of the CBR.

7. Reference was also made to the judgment of this office in the case of M/s Shakarganj Mills Limited, Karachi VS Secretary Revenue Division (2207 PTD 1519) and attention was invited to the following remarks:

"The entire reliance on the "Explanation" under section 81 betrays complete disregard for the elaborate system of provisional determination of tax liability which has developed over a long period of time and a progressive formulation of the procedure has been enacted under the four sub-sections of section 81. It cannot be the intention of the law makers and the government to place a premium on the delay, inaction, indecisiveness, lack of investigation, lack of any new valuation evidence, and failure of the Collectorate and the Valuation Department to determine with substantive reasons and justification the final assessment within considerably long period of nine months, to reward the Customs Officers for their inefficiency, neglect and lack of will or ability to decide pending valuation/assessment cases on substantive grounds and arbitrarily deprive the importer of the security deposited in the belief that a fair decision would be taken. If the customs authorities wanted to include the amount of security within the ambit of duty and taxes they should have done so only with adequate evidence and passed speaking order observing the due process."

8. Reference was also invited to the judgments in the following similar cases:

(i) M/s Fazal Illahi & Sons through Registrar Vs Deputy Collector of Customs and other (2007 PTD 2119).

(ii) M/s Wall Master Vs Collector of Customs and others (2005 PTD 2573).

(iii) M/s Household Products (Pvt) Limited, Karachi Vs. the Collector of Customs, Model Customs Collectorate of PACCS, Customs House, Karachi (FTO's Complaint No.C-1007-K of 2007).

It was requested that the Respondents be directed to finalize the assessment on the basis of the declared value and return the pay order dated 20-08-2007 for Rs.238,290/- and the Indemnity Bond.

9. The Assistant Collector of Customs (Appraisement) replied to the complaint raising objection that the Complainants have failed to identify any valid grounds for the alleged act of maladministration or targeted malice, bias or corruption against the Respondent and therefore the complaint was not maintainable. He stated that the complaint pertained to the issue of determination of valuation for the purpose of assessment and levy of duty and taxes which is beyond the jurisdiction of this office under section 9(2) (b) of the Establishment of the Office of the Federal Tax Ombudsman Ordinance, 2000.

10. He stated that the initial period of six months under section 81 of the Customs Act was extended by the Directorate-General of Customs Valuation for a period of three months on 16-02-2008. Since the case could not be disposed of within the extended time, the assessed value of the impugned goods stood finalized under section 81(4) of the Customs Act and the "Explanation" attached thereto. The Complainants were duly

informed vide letter dated 10-04-2008 and were asked to furnish revalidated pay order. Since the instant matter stood finalized lawfully, there was no cause of complaint for the importer.

11. It was further stated that the Department had strong reasons to believe on the basis of the evidential data of imports during the previous 90 days that the impugned goods were heavily under-invoiced. However, on the insistence of the importer the goods were released provisionally. It was added that the value of goods (DVD Casings/Sleeves/Wrapper Packing at $200/MT) was so low that it was less than value of plastic scrap at $350/MT. Therefore, the provisional assessment by the Department on a higher side was correct, lawful and was enforced through a legal course of action.

12. It was reiterated that the importer was duly apprised of the fact that the declared value was not acceptable on the basis of evidential import data of identical items. Further, in the presence of section 81(4) of the Act and the "Explanation" introduced through the Finance Bill 2005 there remained no valid ground to contest the legality of finalization of provisional assessment. It was added that the Department was not guilty of violation of CGO 12/2002 or of section 223 of the Customs Act and no charge of maladministration could be made out. It was requested that the complaint be filed without any consideration as it was false, fabricated, malafide, devoid of merits, vexatious in nature and, under section 9(2) of the Federal Tax Ombudsman Ordinance, 2000, outside the jurisdiction of this office.

13. During the hearing of the complaint, the Counsel for the Complainants stated that the complaint was forwarded to the Secretary, Revenue Division, on 31-07-2008, the Department's reply dated 05-08-2008 was forwarded by the FBR on 16-08-2008, and the date of hearing was fixed by the FTO's Office vide notice dated 21-08-2008. When these actions were taken by this office, he alleged, a show cause notice dated 27-08-2008 was issued by the Deputy Collector of Customs which reflected the malafide of the Department that while the matter was under consideration of the Federal Tax Ombudsman, the quasi judicial proceeding were initiated. A reply dated 01-09-2008 has been sent that the case was pending before the FTO for which hearing has been fixed on 04-09-2008. Since the matter had been processed under section 81 of the Customs Act, the show cause notice unlawfully issued after one year was barred by time may be withdrawn.

14. The learned Counsel stated that the assessment was not finally determined within the extended period as required sub-section (2) of section 81 of the Customs Act. It was a settled law that where the action is not completed within the extended period, the provisional determination of duty and taxes shall be deemed to the final determination. This decision has been taken by the FTO in a number of cases and, on a representation from the FBR, the President of Pakistan has upheld the FTO's decision.

15. The learned Counsel stated that another act of maladministration has been

committed by the Assistant Collector of Customs (Appraisement-II) in sending a letter dated 10-04-2008 to the Complainants that the provisional assessment had been finalized under section 81(4) of the Customs Act. He argued that when the period specified in section 81 had not expired, sub-section (4) could not come into play again and the appropriate customs or valuation officer should have determined the duty and taxes under sub-section (2) after due process.

16. The Assistant Collector of Customs replied that the declared value of the goods (DVD Casing) at $ 200/MT was considered quite low compared even to the value of DVD Scrap which was being imported at $350/MT. Therefore, the Customs appraised the value of DVD Casing at $ 600/MT and referred the matter to the Valuation Department. But the Department did not send any advice even during the extended period. Therefore, it was decided to finalize the value and a notice dated 10-04-2008 was sent to the importer. He stated that the finalization of assessment should have been done under sub-section (2) of section 81 and due to some inadvertence sub-section (4) was mentioned in the letter but the fact remained that intimation about the finalization was sent to the importer within the time specified under section 81. Under this notice the importer was requested to provide a pay order for the differential amount. Since no reply was received and realizing that the importer had not been given the opportunity of hearing, he issued a show cause notice on 27-08-2008 under sub-section (3) of section 32 of the Customs Act requiring the importer to explain why short-levied amount of Rs.238,290/- should not be recovered from him and hearing was conducted on 02-09-2008.

17. The learned Counsel replied that while the final determination of value was not done through due process under section 81(2) of the Customs Act, the notice dated 10-04-2008 sent by the Assistant Collector under section 81(4) of the Act lacked legal validity. He, thereafter, initiated quasi-judicial proceedings under sub-section 32(3) of the Customs Act by issuing a SCN dated 27-08-2008 for which hearing was conducted on 02-09-2008 and an adjudication order has been issued. It was absolutely unjust and unfair that while the matter was pending before the Federal Tax Ombudsman, the quasi judicial proceedings were initiated without waiting for the findings of this senior forum. This action also militated against the provisions of section 81 of the Act because the Customs officials having failed to abide by the provisions of section 81 invoked the provisions of section 32 of the Act which was legally not tenable.

18. The Counsel stated that High Court has given the ruling that where action has been taken under section 81 of the Act, subsequent action under section 32(3) was not legally justified. He submitted copies of the reported orders and invited reference to the Karachi High Court's judgment 2004 PTD 1979 in the case of Messrs Abdul Aziz Ayoob V Assistant Collector of Customs and 3 others reported (PLD 1990 Karachi 378) wherein it has been held that:

> " Here the goods having been provisionally released subject to post importation check, and corresponding order having been passed by the competent authority

under section 81 of the Act, the release of the goods could be under section 81 alone and neither sub-section (2) nor sub-section (3) of section 32 would be applicable. These sub-sections of section 32 in the Customs Act contemplate absence of levy or short levy or erroneous refund of any duty or surcharge, are attracted only and notices under one or the other sub-sections are issued exclusively, when a final assessment either wrongfully or erroneously has been made. If a case is not covered by section 32(2) or 32(3) no notices under those provisions can arise. A fortiori no periodicity for notices as contemplated in section 32 of the Customs Act would be attracted and a notice under section 81 ibid would be competent without any restriction as to limitation of time."

19. In the case of Hassan Trading Company Vs Central Board of Revenue Government of Pakistan (2004 PTD 1999) reliance has been on the above judgment and the following order passed:

"From a bare perusal of the judgment referred to above it is crystal clear that the Customs Authorities did not have the jurisdiction to issue a notice under section 32 of the Customs Act in a matter where provisional assessment was made and the only course available to the Customs Department was to finalize the assessment under section 81 of the Customs Act during the course of which the question of misdeclaration could have been raised and considered. It was further observed that the provisions of sub-sections (2) and (3) of section 32 of the Customs Act would be attracted only when a final assessment either wrongfully or erroneously had been made. This Court further went on to pronounce that where the goods were provisionally released under section 81 of the Customs Act, the Customs Department could have issued a notice under section 81 for any discrepancy which was found in the case subject to the period of limitation prescribed under section 81 of the Customs Act."

20. Arguments of both the sides have been examined. It has been observed that the Customs authorities routinely ignore the provisions of section 25 and of section 81 of the Customs Act, the Valuation Rules and FBR's direction under paragraph 66 of the Customs General Order 12/2002. It is noteworthy that section 25 and Valuation Rules provide for and emphasize the application of due process in cases of valuation disputes. Similarly, section 81 of the Customs Act provides for a flexible and progressive procedure allowing release of the goods on the basis of declared description and value and providing adequate time for the Customs officials to make investigation, and after hearing the importer, issue a speaking order determining the final value and consequent correct import levies on the goods giving reasons and quoting evidence of value so determined. The directive contained in Paragraph 66 of the CGO 12/2002 clearly specifies the steps to be taken in determination of final assessable value. It would be worth while to reproduce the instructions contained in sub-paragraph 2 of Paragraph 66 hereunder:

"In view of this position, the following instructions are for strict compliance by field formations:

(i) All cases of provisional assessments shall be finalized within a period of four months. Where assessment cannot be finalized within four months, owing to exceptional circumstances beyond the control of Custom Houses or Valuation Department, such period shall be extended by the Collectors of Customs or the Controller of Valuation, as the case may be, by a further period of two months recording reasons in writing. Such extension shall also be intimated to the importers.

(ii) Final assessment order shall be speaking one and shall also incorporate all the details and evidence on record on the basis of which value has been fixed or assessment has been finalized. This is necessary to enable the importer to file appeal with the appellate authority if he is not satisfied with the assessment order so made.

(iii) Where on the basis of final assessment any refund is due to the importer, the final assessment order shall also contain order for refund of the said amount and the importers shall not be required to make fresh requests for the refund.

(iv) Keeping in view the time constraint indicated above, refundable amount shall be paid expeditiously."

21. It is most surprising that the Customs officials do not as a rule comply with the clear directions contained in the Customs law for determination of value under due process. They prefer to take advantage of the "Explanation" given under section 81 that provisional assessment means the amount of duty and taxes paid or secured against the bank guarantee or post-dated cheque. This "Explanation" militates against the provisions of sections 25 and 81 of the Customs Act and, therefore, is not relevant.

22. From the facts of the case, the legal position, and the judgments of the High Court it transpires that (i) the Department failed to determine the duty and taxes etc correctly payable within the extended time, (ii) even after that it failed to communicate its decision to the importer, (iii) the notice dated 10-04-2008 sent by the Assistant Collector of Customs under sub-section (4) of section 81 of the Act did not constitute a genuine and legal intimation of finalization under sub-section (2) ibid, (iv) it was in fact recovery notice requiring the importer to send a pay order or revalidate the post-dated cheque. It is thus established that final determination of value and determination of duty, taxes etc correctly leviable after due process by the appropriate officer of Customs or the Valuation Department was not carried out.

23. It has been pointed out that when the complaint was filed in this office and

comments were called from the Respondent vide notice dated 31-07-2008, the Deputy Collector of Customs sent a show cause notice dated 27-08-2008 for recovery of the (allegedly) short-levied amount of Rs.238,290/- recoverable in terms of section 81(3) of the Customs Act read with section 32 of the Customs Act. Hearing was fixed after five days on 04-09-2008 and it has been stated by the Counsel for the Complainants that a hurried adjudication order was also passed on 04-09-2008. The adjudication proceedings are unlawful as clearly laid down in the judgments of the High Court that the provisions of sub-section (2) and (3) of section 32 of the Customs Act would be attracted only when a final assessment either wrongfully or erroneously is made. The quasi judicial proceedings initiated by the Deputy Collector of Customs are contrary to law, illegal and betray a semblance of targeted malice as he seems to be bent on penalizing the importer after having failed to determine the correctly leviable duty and taxes etc under section 81 of the Act with due process of law. This approach is not only illegal but also betrays the negative attitude of some Customs authorities who having failed to perform their duties in accordance with the prescribed time-frame revert to extra legal proceedings for recovery of dues not lawfully established. This is a clearly case of action contrary to law, a departure from established practice and prescribed procedure without valid reasons, it is arbitrary, unjust, oppressive. Maladministration is established.

24. It is recommended that Federal Board of Revenue:

(i) set aside the quasi judicial proceedings initiated vide show cause notice No.VB-110/2007-II dated 27-08-2008 and consequent adjudication order passed by the Deputy Collector of Customs (Appraisement) Group-II;

(ii) direct the Collector of Customs (Appraisement) to quash the notice No.VB-110/2007-II dated 10-04-2008 issued by the Assistant Collector of Customs (Appraisement) Group-II; and

(iii) further direct him to finalize the determination of duty and taxes on the basis of declared value under sub-section (4) of section 81 of the Customs Act and return the post-dated cheque and the indemnity bond to the Complainants M/s Tri-Star Electronics.

(iv) The above action may be completed within thirty days; and

(v) compliance be reported to this office within forty five days.

(JUSTICE (R) MUNIR A. SHEIKH)
Federal Tax Ombudsman

Dated: -2008

BEFORE THE FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE, KARACHI

COMPLAINT NO.1267/2007

M/s G.A. Parekh & Sons,
503 Lakhani Heights Parsi Colony,
Karachi. ...Complainant

Versus

The Secretary,
Revenue Division,
Islamabad. ...Respondent

Dealing Officer: ...Mr. M. Mubeen Ahsan, Advisor

FINDINGS/DECISION

Present: Mr Jawed Ahmad, Legal Advisor
Mr Farrukh Ahmad, Consultant

Syed Fawad Ali Shah, Deputy Collector of Customs, Model Customs Collectorate, PACCS

The complaint has been filed alleging maladministration against Model Customs Collectorate PACCS for issuance of unwarranted show cause notice and order-in-original, subsequent re-examination (of goods) to ascertain the correct position, causing unnecessary demurrage and container detention charges, for delay and commercial loss on account of the failure to fulfill business commitments besides the loss of market reputation and mental agony undergone by the Complainants.

2. It has been stated in the complaint that a consignment of motorcycle parts was imported from China, Goods Declaration for home consumption was filed and duty and taxes were paid on 20-01-2007 on the basis of the declared value in accordance with Model Customs Collectorate procedure. The Deputy Collector (Adjudication), on the basis of a contravention report, issued a show cause notice dated 09-02-2007 for the excess goods (found in the consignment). The clearing agent attended the hearing, denied the charges in reply dated 10-02-2007 to the show cause notice, requested for re-examination of goods which was not accepted, and the Deputy Collector (Adjudication) passed an order dated 14-02-2007. A request for re-examination of goods was also made to the Collector of Customs MCC vide letter dated 19-02-2007.

3. The Complainant filed an appeal before the Collector of Customs (Appeals) who issued interim order dated 01-03-2007 for re-examination of goods in the presence of the

Complainants' representative. The re-examination was held on 02-03-2007 when the quantities were found in accordance with the declaration in the GD. The order-in-original was set aside by the Collector (Appeals) vide order-in-appeal dated 24-03-2007. Consequently the Model Customs Collectorate allowed release of the goods on payment of additional duty and taxes on 29-03-2007.

4. It was stated that the Complainant was burdened with Rs.94,607/- as port demurrage/storage charges and Rs.59,400/- as container detention charges on account of incorrect first examination. He applied to the Collector of Customs, Model Customs Collectorate, on 24-04-2007 to 'arrange' for demurrage/storage charges as well as container charges, total Rs.147,264/-, paid due to wrong decision of the customs staff. He sent reminders dated 21-05-2007, 08-06-2007, 23-06-2007 and 25-07-2007. A reply dated 28-07-2007 was received asking the Complainant to submit delay and detention application on the prescribed form; the Complainant requested the Collector to issue the prescribed forms on 08-09-2007 followed by reminders dated 27-10-2007 and 08-11-2007 but got no reply.

5. It was alleged that the Deputy Collector (Adjudication) had played an irresponsible role and the Collector of Customs did not resolve the matter who could have got the goods re-examined and reopened the case under section 195 of the Customs Act. Another evidence of irresponsibility was established by the fact that for the same case two adjudication orders dated 15-02-2007 and 20-02-2007 were issued by same Deputy Collector. It was requested that the Respondent be directed to pay the demurrage and container charges which the Complainant had to pay due to the fault of the irresponsible customs staff and for not rectifying the incorrect decision.

6. The Collector of Customs, Model Customs Collectorate of PaCCS, Karachi, replied to the complaint that show cause notice under section 180 of the Customs Act was issued on the basis of excess quantity in the consignment reported by the examining staff and order-in-original was passed on 14-02-2007. Payment of extra duty and taxes Rs.302,816/- was ordered besides imposition of redemption fine equal to 50% of the value of offending goods and penalty of Rs.50,000/-. The goods were re-examined on the order of the Collector (Appeals) who set aside the order-in-original and ordered the release of the consignment. Collector further stated that he had already shown willingness to issue delay and detention certificate to redress the grievance of the importer.

7. The Legal Advisor representing the Complainants stated during the hearing that the customs staff who reported excess quantity had examined the goods without the presence of the importer or his authorized agent, the Deputy Collector of Customs turned down the request for re-examination and issued an order-in-original imposing penalty and fine in lieu of confiscation besides excess duty on the alleged excess quantity of motorcycles parts.

8. It was stated that the order-in-original issued on 14-02-2007 pertained to some

other consignment and the fine lieu of confiscation was issued on computer monitors. The issue of a wrong order was brought to the notice of the Deputy Collector who issued another order-in-original bearing the same date but actually issued on 20-02-2007 pertaining to fine and penalty besides demanding duty and taxes on excess goods.

9. It was stated that the whole matter was brought to the notice of Collector for rectification, requesting him to get the goods re-examined to verify whether there were really excess goods or not and to reopen the matter under section 195 of the Customs Act after satisfying himself about the actual quantity of goods. The Collector turned down the request and stated that this was not the practice in the customs although in a similar case the Collector of Customs had reopened the order-in-original No.2134 of 2007 taking cognizance of the fact that the Deputy Collector (Adjudication) had passed the order on the basis of an examination report which was found to be wrong. He had reopened the case under section 195 of the Customs Act and authorized the Additional Collector of Customs to adjudicate upon the case afresh.

10. The Collector of Customs (Appeals) got the goods re-examined which confirmed that the goods were according to the declaration and the Departmental Representative regretted that due to incorrect examination of the goods the appellant had to suffer heavy demurrage.

11. The learned Consultant stated that as a result of the delay on the part of the customs for a period of two months the Complainant was forced to pay Rs. 94,607/- demurrage and storage charges to the KICT and Rs. 59,400/- container charges to M/s Riazeda (Pvt) Limited. He stated that the amounts accumulated because the request to shift the goods in CPF warehouse was declined with the argument that shifting and storage in CPF warehouse was not provided for in the PACCS system. A number of letters were submitted to the customs to issue delay and detention certificate but none of the applications got any response. On the other hand, it was stated, both KICT and M/s Riazeda when approached for waiver of charges declined the request. He stated that the demurrage and container charges amounting to Rs.147,264/- were paid by the Complainant for no fault on his part but due to delay and illegal action of the customs. He requested that the customs authorities be directed to compensate him for the substantial amount paid to the shipping agent and the terminal operator. He further stated that despite the Collector's letter dated 18-12-2007 showing willingness to issue the delay and detention certificate to redress the grievance of the importer, the certificate has not been issued so far.

12. The Deputy Collector of Customs stated that the adjudicating officer was at liberty to accede to or not to allow the request for reexamination. With regard to the decision of the Collector of Customs not to reopen the matter under section 195 of the Customs Act, the Deputy Collector stated it was the discretion of the Collector and he must have exercised his power under his best judgment.

13. The Deputy Collector stated that a letter dated 28-07-2007 was sent to the Complainant to submit duly filled in delay and detention forms which could be forwarded to the concerned authorities; he admitted that the letter dated 08-09-2007 was received but no action was taken by the customs. Deputy Collector stated that the Department was willing to issue delay and detention certificate when the prescribed forms were completed and relevant period clearly specified. Since the Complainant was not aware of the forms to be filled, the Deputy Collector stated he would personally inform them about the forms to be filled. He further stated that he would make special efforts in this case with the KICT and M/s Riazeda to ensure that maximum possible remission of the charges collected by them should be refunded.

14. From the facts brought out above it is evident that due to the refusal of the customs authorities to re-examine the goods the adjudication proceedings were initiated and besides additional duty and taxes, fine and penalty were imposed and the importer had to pay substantial amount for demurrage and storage charges and the container detention charges to the terminal operator and the shipping agent. The correctness of the declaration has been established by the re-examination of goods under the order of the Collector (Appeals) who has set aside the order-in-original. It is established that the customs officials acted against the law and departed from the established practice of allowing re-examination when requested by the importer, an arbitrary and unjust decision was taken resulting in additional duty and taxes and storage and detention charges. The Complainant is entitled to remission of additional expenses paid to the terminal operator and to the shipping agent.

15. It is recommended that Federal Board of Revenue direct the Collector of Customs to

(i) issue delay and detention certificate within seven days of the receipt of this order;

(ii) ensure that maximum relief is provided to the Complainant and the amounts remitted by the two agencies refunded to them within thirty days; and

(iii) compliance be reported to this office within forty five days.

(JUSTICE (R) MUNIR A. SHEIKH)
Federal Tax Ombudsman

Dated: -2008

BEFORE THE FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE, KARACHI

COMPLAINT NO.1687/2008

Mr. Saqib Latif (Proprietor),
M/s. Kaysons Chemicals & Commodities,
Al-Ghazi Complex, M-2, Mezzanine Floor,
BC-7, Block-4, Clifton, Karachi. ...Complainant

Versus

The Secretary,
Revenue Division,
Islamabad. ...Respondent

Dealing Officer: ...Mr. Asad Arif, Adviser

FINDINGS/DECISION

Present: Mr.S.Mushtaq Kazmi, Consultant : for the Complainant.

M/s. Syed Fawad Ali Shah, Deputy Collector (PaCCS) & Altaf Ahmad, Principal Appraiser, Customs : for the Respondent

The complainant, an Individual engaged in import and supply of furnitures and fixtures, is aggrieved by the recovery action taken by the Customs Department for payment of customs duty in respect of an import made by the complainant and non-return of a post-dated cheque (PDC) submitted in respect of such import to the Customs authorities.

2. Brief facts of the case are that in 2005, the Collector of Customs, Model Customs Collectorate (MCC) and Appraisement Collectorate of Customs House, Karachi referred all cases of imports of Chinese furnitures to the Valuation Department for provisional determination of liability under section 81(1) of the Customs Act, 1969 (hereinafter referred as the Act) after securing the differential amount of duty between the assessed value and declared value against PDCs. Six of the cases of the complainant referred by the Appraisement Collectorate were finalized by it by accepting the declared value and accordingly PDCs in this regard were also released. However, in one of the cases relating to and referred by the MCC Collectorate in relation to GD No.AMS-1-HC-10476 dated 16.08.2005, the Valuation Department issued a letter dated 01.04.2006 asking the complainant to submit certain documents and also to appear before them for hearing on 19.04.2006. The complainant, accordingly, submitted the requisite documents and also appeared before them and the concerned authorities promised to finalize the case at an early date but thereafter, he did not receive any response, notice or order from the Customs authorities. Consequently, the complainant met the Collector (MCC) and also

the Additional Collector several times for return of the PDC of Rs.75,470 relating to the said GD dated 16.08.2005 but the PDC was not returned saying that it was not readily traceable. Then, after a lapse of two years, the complainant received a letter dated 29.04.2008 informing him that his PDC in relation to the above GD has been returned by the bank being out of date and requiring the complainant to pay Rs.75,470 or to face recovery proceedings under section 202 of the Act. Thereupon, the complainant immediately contacted the Director General (Valuation) as well as the Collector (MCC) and the Director General (Valuation) informed the complainant that a letter had been written to the Collector (MCC) to extend the valuation/finalization period by another 90 days in several pending cases including that of the complainant but the approval for extension of such time is still awaited. Thereafter, the complainant met the Collector (MCC) on 05.05.2008 who advised him to submit an application in writing which was accordingly done and the matter was pursued vigorously but the Collector (MCC) ultimately expressed his inability to do anything in view of the provisions of section 81(4) of the Act which lays down that if the final determination is not made within the period specified in sub-section (2) of section 81, the provisional determination shall, in the absence of any new evidence, be deemed to be final determination.

3. Thereafter, the complainant approached the Member (Customs) FBR to extend the time limit specified in section 81(2) in exercise of the powers conferred on him under section 224 of the Act and to direct the DG (Valuation) to finalize the valuation within such an extended period but the said Member (Customs) has not taken any action so far and hence the present complaint.

4. The complainant has contended that the Director General (Valuation) committed an act of maladministration by withholding his decision in one of the cases of the complainant relating to GD dated 16.08.2005 while he had cleared similar 06 such cases under his letter dated 15.08.2006. It is further stated that the documents required by the Valuation Department were submitted on 19.04.2006 on which date a hearing of the case also took place and that in terms of limitation prescribed under section 81(2) of the Act, the case of the complainant could have been finalized by the Director General (Valuation) by 15.05.2006 but, instead of finalizing the same within the prescribed time, the Director General (Valuation) unnecessarily wrote to Collector (MCC) on 21.04.2006 to allow extension which shows delay, inaction and an indifferent attitude of Director General (Valuation). Similarly, the Collector (MCC) also did not take any action on the letter written by the DG (Valuation) for the next two years and thus, he also committed an act of maladministration. It is contended that Collector (MCC) also misinformed the complainant verbally that the PDC was not traceable with him.

5. It is urged that the provisions of section 81(4) of the Act are not aimed at protecting the inefficient customs officials and/or at punishing the honest and innocent taxpayers for the inefficiency and maladministration on the part of the Customs officers. It is, therefore, prayed that the assessment on the basis of declared value in GD dated 16.08.2005 be ordered to be made as it had attained finality and the demand of customs duty and/or consequent recovery action by the Customs Department may be quashed being unlawful and not sustainable.

6. Replying to the allegations in the complaint, the Deputy Collector (PaCCS) in his written report has stated that the PaCCS's record shows that the complainant failed to provide any corroborative documents to substantiate that their declared value is true payable transaction value and he also failed to produce any information/documents about the "adjustments" envisaged in sub-section (2) of section 25 of the Act, and that considering the raw material/quality stuff used in the manufacturing of the imported furniture, the assessment was proposed at enhanced value but the complainant opted for the provisional assessment in terms of section 81(1) of the Act. In regard to the matter of release of the PDC, it is stated that it is *"under active consideration and hopefully matter will be resolved within a month's time after sorting out the matter with the Directorate General of Customs Valuation about the exact date of finalization of provisional assessment."*

7. The Director (Customs Valuation) has also sent a written report in which he has first raised an objection to the jurisdiction of this office on the ground that section 9(2)(b) of the establishment of the Office of Federal Tax Ombudsman Ordinance, 2000 provides that FTO shall not have jurisdiction to investigate or inquire into matters which relate to assessment of income or wealth, determination of liability of tax or duty, classification or valuation of goods, interpretation of laws, rules and regulations etc under relevant legislature and reference in this regard is made to the decisions of the President of Pakistan in complaint Nos.1386-L/2002 & 214-L/2002.

8. On merits, it is stated that in the wake of specific complaints against under invoicing, it was observed that the imports of furniture from China were at much lower values and the invoice prices were not in consonance with the market selling prices and consequently, extensive inquiries were carried out by the Directorate of Customs Valuation in a number of import transactions and determination of value indicating the substantial price differences was found. It is further stated that in certain cases, the Director General had recommended to accept the transaction value but the complainant's matter was finalized on the assessed value in terms of section 81(4) of the Customs Act, 1969 and subsequently, proceedings were carried out by the Collector of Customs (PaCCS) for the realization of the differential amount of duty and taxes. It is stated that for the processing of the GD of the complainant, the Collector (PaCCS) was requested for extension of time limit and since no reply was received to such request, the matter was eventually finalized in terms of section 81(4) of the Act. It is contended that the Directorate of Valuation has carried out necessary proceedings within its time frame and no delay has been caused by the Directorate.

9. Responding to the above, the learned A.R has contended that the complainant had promptly complied to the requisition contained in respondent's letter dated 19.04.2004 but instead of finalizing the fair value of the goods which could have been done within the prescribed limitation period upto 15.05.2006, the Directorate of Valuation unnecessarily referred the complainant's case on 21.04.2006 for the extension of time limit and thereafter, it neither pursued the said reference nor complied with the legal requirements of finalization of fair value within the prescribed time limit i.e. upto 15.05.2006. It is further stated that the Collector (PaCCS) in his written report has stated

that the matter of release of PDC is under consideration but if it was so, it is not understood as to how he could legally embark on recovery proceedings vide letter dated 29.04.2008. It is contended that this shows inconsistency and ambiguity on the part of the Collector (PaCCS). It is contended that since provisional assessment was not finalized by the Department within the stipulated period, therefore, the action taken by them for encashment of PDC furnished by the complainant for the differential amount for the release of goods is illegal. Reliance in this regard is placed on the judgments of Lahore High Court reported as 2008 PTD 1478 & 2008 PTD 1587. It is, therefore, prayed that the Collector of Customs (CARE) be directed that the PDC submitted by the complainant in relation to GD dated 16.08.2005 be returned to the complainant.

10. Parties have been heard and the record produced has been examined.

11. The objection raised by the Department in regard to jurisdiction of this office in the matter is not valid. It has repeatedly been explained that whenever maladministration is alleged independent of the controversy in the matter, there will be no bar to jurisdiction of the Federal Tax Ombudsman to look into the allegations and give recommendations accordingly. The allegations contained in this complaint do not relate to the assessment of income, wealth or determination of liability of tax or duty etc; as contended by the Collector but what is alleged is that recovery action taken by the respondent is against the provisions of law and rules which, if proved, tantamounts to maladministration which this office is competent to look into or inquire.

12. The facts stated above clearly show that there has been unnecessary delay due to incompetence, inefficiency and inaction in determining the assessment of duty and taxes within the time frame provided under section 81 of the Customs Act. The manner in which the case has been processed and dealt with by the Collectorate of Customs and Director General (Valuation) clearly establishes maladministration.

13. From the facts on record, it transpires that good declaration (GD) was filed on 16.08.2005 and a provisional assessment was made against the security of Rs.75,470 in a posted-dated cheque. The respondent did not address, dispute or question the provisional assessment as no inquiry was made for final determination and no order for final assessment was passed within the time limit prescribed in section 81 of the Act. The complainant has not received any order from the respondent nor the PDC was released nor any reason for non-release of this cheque was communicated.

14. The argument that after the expiry of the stipulated period, the provisional assessment attained finality as it included the amount of duty and taxes paid or secured as contemplated in the Explanation to section 81 is also not tenable as the same argument was also advanced in complaint No. C-85-K/2007 in which similar facts were obtaining but was rejected by this office with the following observation:

> *"The entire reliance on the "Explanation" under section 81 betrays complete disregard for the elaborate system of provisional determination of tax liability which has developed over a long period of time and a progressive formulation of the procedure has been enacted under the four*

sub-sections of section 81. It cannot be the intention of the law makers and the government to place a premium on the delay, inaction, indecisiveness, lack of investigation, lack of any new valuation evidence, and failure of the Collectorate and the Valuation Department to determine with substantive reasons and justification the final assessment within considerably long period of nine months, to reward the customs officers for their inefficiency, neglect and lack of will or ability to decide pending valuation/assessment cases on substantive grounds and arbitrarily deprive the importer of the security deposited in the belief that a fair decision would be taken. If the customs authorities wanted to include the amount of security within the ambit of duty and taxes they should have done so only with adequate evidence and passed speaking order observing the due process."

The Collector was accordingly directed to finalize the assessment in the above case on the declared value and return the PDC.

15. It may not be out of place to mention that the President of Pakistan has also upheld in his order dated 29.03.2008 on the representation against such findings of this office in complaint No.88-K/2007 that *"if the Collector fails to make final determination of duty within the prescribed time, the duty determined provisionally on the value declared by the importer becomes the final determination"*

16. In view of the facts and circumstances stated above, the allegation of maladministration has been established and it is accordingly recommended that:

i). FBR to direct the concerned Collector to withdraw the recovery letter dated 29.04.2008 issued to the complainant and;

ii). to direct the concerned Collector of Customs to finalize the assessment on the basis of declaration of the complainant and return to him the post-dated cheque for Rs.75,470 relating to GD dated 16.08.2005 within 15 days of the receipt of this order.

iii). Compliance be reported within 07 days after doing the needful in terms of (i) & (ii) above.

(JUSTICE (R) MUNIR A. SHEIKH)
Federal Tax Ombudsman

Dated: -2008

BEFORE THE FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE, KARACHI

COMPLAINT NO.1829/2008

M/s Zhongxing Telecom Pakistan (Pvt) Limited,
360, Street No.5, I-9/3, Industrial Area,
Islamabad. ---Complainant

Versus

Secretary,
Revenue Division,
Islamabad. ...Respondent

Dealing Officer: ...Mr. M. Mubeen Ahsan, Adviser

FINDINGS/DECISION

Present: Mr Afzal Awan, Advocate
Mr Imran Iqbal, Advocate

Mr Habib Ahmad, Deputy Collector of Customs (Appraisement)

The complaint has been filed against the order-in-original dated 11-08-2008 passed by the Deputy Collector of Customs, Appraisement Intelligence Branch (AIB) of the Appraisement Collectorate, ordering the enforcement of demand of Rs.24,598,669/- under section 32(3) of the Customs Act, 1969, without issuing a show cause notice and without hearing the Complainant's contention and viewpoint. It has been alleged that the issuance of this order is a decision contrary to law, it is perverse, arbitrary, unjust and oppressive, it betrays delay, incompetence, inefficiency in the administration and discharge of the duties and responsibilities of the Department, which constitute maladministration as defined under section 2 of the Federal Tax Ombudsman Ordinance, 2000.

2. Complainants stated that when they received a Recovery Notice dated 11-12-2007 for payment of Rs.24,598,669/- without receiving a show cause notice or order-in-original, their Counsel sent a letter dated 30-01-2008 to the Deputy Collector pointing out that no coercive action could be taken unless the importer had been given ample opportunity to defend his case and to understand what exactly was recoverable from him and requesting him to keep the Recovery Notice in abeyance till the final decision of the case after process of hearing. There was no reply to this letter; show cause notice was not issued but the Complainants received order-in-original dated 11-08-2008. Being aggrieved on receipt this order, the Complainants filed application dated 13-08-2008 to the Collector of Customs (Appraisement) to call for and examine the records of the proceedings under section 195 of the Customs Act and satisfy himself about the legality

or the propriety of the adjudication order passed by the Deputy Collector of Customs as principles of natural justice were not observed and full opportunity to defend the case was not given to them. It was requested that the case be reopened and decided afresh. However, the Collector did not reply to this letter nor did he pass a proper and legal order by exercising his authority under section 195 of the Act. It was alleged that the non-response to the applications of the Complainants to the Deputy Collector of Customs AIB and to the Collector of Customs (Appraisement) was tantamount to maladministration.

3. It was requested that issuance of the order-in-original dated 11-08-2008 without issuing show cause notice, without affording the Complainants the opportunity of hearing, and lack of response to the two applications made to the Deputy Collector of Customs and the Collector of Customs be declared as acts of maladministration and the Respondents be directed not to take any action under the Recovery Rules till the decision of this office and any other relief deemed fit may be allowed.

4. Deputy Collector of Customs, AIB, replied to the complaint that the application dated 13-08-2008 to re-examine the case under section 195 of the Customs Act was examined and a detailed reply was sent to the Counsel vide letter dated 30-08-2008. The contention that the order-in-original dated 11-08-2008 was passed without hearing was not correct. It was stated that show cause notice dated 21-05-2003 for recovery of Rs.24,598,669/- was issued to the exporter and hearing opportunity was granted to the exporter vide letters dated 12-06-2003, 29-06-2003 and 17-01-2004. The application dated 30-01-2008 for issuing a (fresh) show cause notice was examined. The Supreme Court of Pakistan in Writ Petition No.6490/1994 of M/s Triple-M has held that second show cause notice after three years was beyond the period of limitation and any order passed on its basis was not enforceable. Therefore, a fresh show cause notice was not issued.

5. Deputy Collector of Customs stated that since the show cause notice was issued in 2003 and hearing opportunity was granted, the adjudication proceedings could be finalized even at a belated stage without invoking limitation. He stated that the legal obligation to call for and examine the record as requested by the Complainants have been completed and there is no irregularity in the issuance of order-in-original. Since a reply to the importer's letter dated 13-08-2008 was sent on 30-08-2008, any allegation on this account was not correct since the liability has been adjudged against the importer and action under Recovery Rules has to be taken. Under section 9(2) (b) of the Federal Tax Ombudsman Ordinance, no complaint can be filed/entertained against/order decision in respect of which legal remedies of appeal review or revision are available and, therefore, the complaint be rejected.

6. It was brought out during the hearing of the complaint that the goods were released in January 2003 under section 81 of the Customs Act against a Corporate Guarantee as directed by the Federal Board of Revenue vide letter C.1(25)Mach/98 dated 31-10-2002. The learned Counsel for the Complainants contended that when the notice under section 202 of the Customs Act dated 11-12-2007 was received, it was realized that recovery proceedings were initiated without any lawful order by the Customs. The

learned Counsel sent a letter dated 30-01-2008 to the Deputy Collector of Customs AIB for issuance of a show cause notice because the Complainants had not received the show cause notice or order-in-original and were not aware of the hearings. The opportunity of hearing was not provided and adjudication order was passed for payment of the amount of Rs.24,598,669/-.

7. The learned Counsel stated that the goods were cleared under section 81 of the Customs Act and finalization of assessment within the stipulated period was not completed and communicated by the Department. Therefore, the declarations made by the importer in the Goods Declaration attained finality and there was no justification or legal validity for deciding the classification and higher assessment on a date (long) after the expiry of the period. It was stated that under sub-section (5) of section 179 of the Customs Act, the time-limit for adjudication extended up to 31-12-2006 had expired and the adjudicating officer had no power to pass the adjudication order under sub-sections (3) or (5) thereof. It was further argued that the adjudicating officer mentioned in para 3 of the order-in-original that the FBR vide its letter dated 15-02-2003 had held that the goods be treated as finished assembled exchange classifiable under PCT heading 8517.5000. It was alleged that this decision was taken by the FBR without hearing the importer and giving him an opportunity to represent his case.

8. It has been pointed out that there are several factual and legal infirmities in the adjudication order such as the reported presence of Mr M Afzal Awan during the hearings supposedly held in 2003 and 2004 whereas the services of Mr M Afzal Awan were hired in January 2008, the issue of show cause notice in a case processed under section 81 of the Act etc. Therefore it was a fit case for the appropriate authority to reopen under section 195 of the Customs Act and, after affording opportunity to the Complainants' authorized representative to represent the case, decide it on merits. It was added that since the consignment was released and the matter was pending for decision under the parameters of section 81 of the Customs Act, the issue of show cause notice under section 32 of the Act was contrary to law and without valid reasons.

9. The Deputy Collector of Customs AIB replied that the record of the Department and Complainants' letter dated 03-06-2003 clearly showed that show cause notice was received by them. The Complainants' Company was first asked vide letter dated 17-03-2003 to explain their position with regard to the FBR's decision (about the classification) dated 15-02-2003 but they did not reply. Thereafter, show cause notice dated 21-05-2003 was issued and hearings were conducted on 12-06-2003, 29-06-2003 and 17-01-2004 which were attended by Mr Sultan Advocate but order-in-original was not passed. With regard to the point why hearing was not granted on receipt of letter sent in January 2008, the Deputy Collector stated that the matter was five years old and several hearings had been conducted in 2003 and 2004 and there was no point in holding another hearing. He stated that Complainants' request to reopen the case under the provisions of section 195 of the Customs Act was still pending before the Collector of Customs and the matter was not yet closed.

10. From the submissions made in the complaint, the Department's reply and arguments put forward and detailed examination of all aspects of the case during the hearing, the following significant acts of maladministration have been established from the actions taken by the Department whose cognizance has been taken by this office under sub-section (3) of section 2 of the Establishment of the Office of the Federal Tax Ombudsman Ordinance.

(i) The goods were released under section 81 of the Customs Act against a Corporate Indemnity Bond under the direction of the FBR, which also decided the classification vide letter dated 15-02-2003. Valuation Department had already advised the Collectorate vide letter dated 15-01-2003 to finalize the value at the declared value with 5% loading. The Department should have finalized the assessment under section 81 of the Customs Act on the basis of classification and value of goods within the period specified in the sub-section (2) of section 81 ibid.

(ii) Instead of finalizing the assessment, the Deputy Collector of Customs issued show cause notice dated 21-05-2003 under section 32(3) of the Customs Act. This action was totally uncalled for and without legal validity. It is a settled law that where provisional assessment has been made under section 81 of the Customs Act, action under section 32 of the Act would not be legally tenable. Section 32(3) of the Act deals with any inadvertence, error or misconstruction; for any duty or charge not levied or short-levied or erroneously refunded, the person liable to pay any amount on that account is to be served with a notice within three years of the relevant date requiring him to show cause notice why he should not pay the amount specified in the notice. When the matter is already under process under section 81 of the Customs Act, it is not hit by sub-section (3) of section 32 because inadvertence, misconstruction short-levy could be detected only after assessment and not in a situation where provisional assessment was yet to be finalized. Thus the whole process of adjudication was without lawful authority.

(iii) It has been rightly pointed out that under sub-section (3) of section 179 of the Customs Act, the appropriate officer is required to decide the contravention cases within 90 days of receipt of the report or the period extended by 90 days. Under sub-section (5) of section 179, the time for adjudication in all cases pending on 01-07-2006 was extended up to 31-12-2006. It is thus established that, notwithstanding the illegality of the show cause notice, the adjudicating officer had no authority to pass the adjudication order on 11-08-2008 after the expiry of the extended period (and more than five years after the issue of show cause notice).The show cause notice and the adjudication order were both contrary to law and legally invalid.

11. It is a case of serious maladministration where the provisions of the Customs Act have been violated with impunity. The assessment of goods released provisionally under section 81 of the Customs Act in January 2003 was not finalized within one year of the

date of provisional assessment. Instead a SCN was issued in May 2003 without lawful authority. Deputy Collector AIB sent a Recovery Notice vide No.VB/1464-VI dated 11-12-2007 arbitrarily demanding payment of Rs.24,598,669/-. After lapse of five years, the adjudication order was passed on 11-08-2008 in violation of the time-limitation prescribed under sub-sections (3) and (5) of section 179 of the Customs Act. The adjudication order is not legally sustainable and the duty and taxes adjudged in the adjudication order too are not legally tenable.

12- It is recommended that the Federal Board of Revenue direct the Collector of Customs

(i) to set aside the order-in-original No.14/2008 dated 11-08-2008 under section 195 of the Customs Act, quash the Recovery Notice No.VB/1464/2002-VI dated 11-12-2007, and finalize assessment on the basis of declarations made on the GD;

(ii) conduct an investigation of

(a) failure to finalize the assessment of goods provisionally released under section 81 of the Customs Act within the stipulated period;

(b) the reasons for issuing an illegal show cause notice under section 32(3) of the Customs Act for a consignment provisionally released under section 81 be ascertained, and

(c) conducting four hearings in 2003 and 2004 but keeping the case undecided for about five years;

(iii) identify the officials responsible for the maladministration established in this investigation and take necessary disciplinary action against them under Government (Servant Efficiency and Discipline) Rules 1973

(iv) action on (i) be completed within thirty days; and

(v) compliance be reported to this office within forty five days; and,

(vi) action on (ii) and (iii) may be completed within sixty days and report sent to this office within three months.

(JUSTICE (R) MUNIR A. SHEIKH)
Federal Tax Ombudsman

Dated: -2008

BEFORE THE FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE, KARACHI

COMPLAINT NO.422/2008

M/s Western Computer (Pvt) Limited,
67B, C-I Gulberg-III,
Lahore. ...Complainant

Versus

Secretary,
Revenue Division,
Islamabad. ...Respondent

Dealing Officer: ...Mr. M. Mubeen Ahsan, Adviser

FINDINGS/DECISION

Present: Mr M Afzal Awan, Advocate

Mr. Agha Saeed Ahmad, Dy. Collector Customs (Law), Port Qasim
Mr Muhammad Amir, Deputy Collector of Customs, PACCS

The complaint has been filed against the Collector of Customs, MCC, Port Muhammad Bin Qasim and the Collector of Customs, MCC, PACCS, Custom House, Karachi, for (i) blocking the processing of the import consignments of the Complainants without notice (by both the Collectorates) and (ii) issue of a notice by the Deputy Collector of Customs, MCC Port Qasim, for recovery of Rs.323,130/95 which allegedly was in fact a notice of a time-barred recovery case under section 81 of the Customs Act.

2. It has been alleged that the blockage of documents/processing by the two Collectorates was unwarranted under law, there was no evidence of final assessment and it was an act of harassment towards the Complainants during the pendency of the adjudication which was (nothing but) a case of maladministration. It was exercise of excessive use of administrative power which amounted to maladministration as defined under sub-section (3) of section 2 of the Federal Tax Ombudsman Ordinance, 2000.

3. It has been further alleged that from the (PQA Customs) notice dated 28-01-2008 it appeared that the matter related to the year 2005; the first notice was shown to have been issued on 17-03-2007. There was no evidence of its service under section 215 of the Customs Act. The hearing memo was issued without any show cause notice and without supply of evidence for rebuttal by the Complainants, and no order-in-original had been passed till the filing of the complaint.

4. It was requested that an investigation be conducted to establish maladministration and recommendation be made to vacate the blockage of business of the Complainants till the adjudication was finally decided at the level of the Appellate Tribunal. It was also argued that the process of adjudication was barred by limitation under section 81 of the Customs Act and the Complainants were entitled for the cost of this action.

5. The Deputy Collector of Customs (Law), Port Qasim, raised preliminary objections in the reply that the complaint was not maintainable as it was filed by an unauthorized person, neither aggrieved nor authorized by the Board of Directors of the Company to represent it. It was further stated that a demand-cum-show cause notice dated 23-09-2006 was issued to the Complainants and at the time of filing of the complaint the matter was sub judice. He stated that in a similar complaint No.1130-L/2006 the Federal Tax Ombudsman had held that since the matter was under consideration before the adjudicating officer the complaint was premature.

6. It was further stated that the matter relating to determination of liability and interpretation of law, rules and regulations did not qualify for proceedings before this office, the complaint was not maintainable and was liable to be dismissed.

7. In the parawise comments it was stated that:

(i) Since a show cause notice (SCN) dated 23-09-2006 for recovery of Rs.323,130/95 was issued, the computerized system of PRAL automatically blocked the clearance on maturity of the post-dated cheque. However, the Complainants' name was deblocked from the system on their request.

(ii) Complete and correct facts were mentioned in the demand-cum-SCN that the consignment (IGM dated 19-06-2005) was under-valued and the declared value did not represent the transaction value. The goods (Computer Desks) were released under section 81 of the Customs Act against post-dated cheque and indemnity bond for the differential amount of duty at (declared value) $5/PC and appraised value $15/PC. The Director General Customs Valuation issued a Valuation Ruling dated 17-05-2006 ascertaining the value at $24/PC under section 25(9) of the Act.

(iii) A SCN dated 23-09-2006 was issued for recovery of the short-levied amount. Several hearing memos from 09-10-2006 to 03-07-2007 were issued to the Complainants but no one attended the hearing and adjournments were sought on one pretext or another. These notices were served through registered post/courier service.

8. Since the Collector of Customs, PACCS, had not replied to the complaint nor did his authorized representative attend hearings on 12-05-2008, 20-05-2008 and 29-05-2008, the matter was again referred to him with a copy to the Secretary General, Revenue Division, for submission of reply and to deputize a representative to attend hearing.

9. In the meanwhile the Complainants through their Counsel submitted an application dated 17-05-2008 that despite the fact that this office had allowed deblockage till the finalization of the case it remained in place in the computer and non-compliance of the order was an act of defiance under section 12(2) of the Federal Tax Ombudsman Ordinance. It was requested that an order for deblockage be passed and appropriate action be initiated against the Collector of Customs, PACCS, Karachi, and Deputy Collector of Customs, Port Qasim.

10. The Deputy Collector of Customs, PACCS, submitted parawise comments dated 11-06-2008. He reiterated the objections already raised by the Deputy Collector of Customs, Port Qasim, which need not be repeated. He stated that the Complainants had approached this office with false statement and misleading information about the provision of law and procedure of the provisional assessment system in cases of consignments cleared through PACCS under Chapter-XVIA and amended provisions of sections 79, 80, 81, 25D, 193 and 215 of the Customs Act.

11. With regards to the substance of the complaint it was stated that:

(i) There was no bar on the Complainants to file GD. They were in default and had not made adjustment of the differential amount of Rs.174,148/- under sub-section (3) of section 81 of the Customs Act. Finalization of the assessment was transmitted electronically and a notice dated 31-12-2007 was also issued. Electronic record confirmed that proper hearing opportunity was given to the Complainants.

(ii) The issue of SCN and order-in-original is mandatory under section 180 of the Customs Act only in a case where confiscation of goods or imposition of penalty is to be made. In the light of Rules 440 and 441 of the Customs Rules there was no need to issue any notice or order.

(iii) The High Court in its order dated 26-04-2006 has held that even a note or an order on the note-sheet was enough to prove that the provisional assessment had been finalized. Further, the provisions of paragraph 66 of CGO 12/2002 were redundant in the cases of clearance of cargo through PACCS.

(iv) In terms of amended provisions of 81(3) and 81(4) of the Customs Act and Rules 440 and 441 there was no question of any adjudication.

(v) It was stated that there was no maladministration and the Complainants had approached this office with the only aim to delay and avert the payment of government's legitimate revenue.

12. During the hearing of the complaint, the Counsel for the Complainants stated that he wrote several letters to the Department to furnish copies of the SCN and the documents on the basis of which hearing notices had been issued but got no reply. He

further stated that the complaint was also directed against the Collector of Customs, MCC PACCS, Karachi, for unlawful blockage and the Collector be advised to provisionally deblock the User ID Number till the finalization of the complaint. It was recommended that during the interim period the Complainants' User ID be deblocked provisionally.

13. The Deputy Collector of Customs, Port Qasim, stated during the next hearing that the provisional release was allowed on or around 13-10-2005 and the case was referred to the Valuation Department on 22-10-2005. The Valuation Department issued Valuation Ruling on 17-05-2006, well within nine months of the date of provisional assessment. The processing Group issued demand-cum-SCN dated 23-09-2006. The Deputy Collector argued that the crucial date of the finalization of determination of value was the date on which the Valuation Ruling was issued i.e. 17-05-2006 and not the date of issue of demand-cum-SCN. In this regard he referred to the decision of the President of Pakistan vide Law and Justice Division's letter No.81/2007-Law (FTO) dated 31-03-2008 that far all practical purposes the final determination of duty was made on the date the Directorate of Valuation affirmed the value of goods and the demand-cum-SCN issued by the Customs on a later date was not the determination of the duty but only asking the Complainants to show cause against action for recovering/realizing the differential encashment of the post-dated cheque. He further stated that the User ID was de-blocked on 07-04-2008 on receipt of the complaint from the office of the Federal Tax Ombudsman.

14. The learned Counsel stated that the bills of entry of the Complainants were blocked without any notice of which they came to know when they filed the bill of entry on 17-01-2008. The Department did not send them any communication and they obtained the copy of the printout dated 12-01-2008 showing that in one case recovery was required from the Port Qasim Collectorate and in two cases from PACCS. Before the issue of this printout the Complainants had not received any order, any directive, any demand or any intimation about the outstanding dues. They were aware that some cases of finalization of assessment under section 81 were pending with the Customs Department on which action had not been completed and the cases had become barred by time.

15. The learned Counsel stated that the case was adjudicated by the Deputy Collector of Customs on 10-05-2008 raising demand of Rs.323,130/95 requiring the Complainants to pay the amount within fifteen days but the blockage had already been imposed in January 2008. The Department could have taken coercive action if payment was not made within the time prescribed in the adjudication order or stay not obtained from the appropriate authority. The learned Counsel reiterated that the blockage prior to adjudication was arbitrary, unjust and amounted to maladministration.

16. The learned Counsel further stated that the Deputy Collector (Law) of the Port Qasim Collectorate vide letter dated 07-04-2008 informed him that de-blocking had been allowed during the pendency of case before the Federal Tax Ombudsman but as stated in his application dated 17-05-2008 the blockage was not actually physically removed. He stated that in case of one import in January 2008 he had to visit the Port Qasim Customs on about 10 days and with great difficulty was able to file the import documents. The

factual position was that the blocking mechanism was still in place, even temporary de-blocking as intimated by the Deputy Collector (Law) was not allowed and, for a consignment imported in May 2008, the filing of bill of entry was not allowed by the Department. He reiterated his request that order may be passed for de-blocking of the business and appropriate action against the two Collectorates, PACCS and Port Qasim, be taken for defiance of the direction of this office and for contempt under section 16 of the Federal Tax Ombudsman Ordinance for prejudicing the proceedings of the complaint.

17. The Deputy Collector of Customs replied that according to the standard operating procedure (SOP) the entries of all those importers whose cases were referred to and decided by the Valuation Department and the dates of post-dated cheques had expired are blocked. This system has been inbuilt in the computer system and no officer of customs actually passes an order for this purpose. How this SOP has come into existence and what was its legal validity was not explained by the Deputy Collector.

18. The Deputy Collector stated that the Principal Appraiser and the Deputy Collector had heard the importer regarding the valuation of goods. Finally the Deputy Collector decided to obtain post-dated cheque for provisional assessment on 15-05- (year not indicated), the matter was referred to the Valuation Department through electronic system and on 23-11_____ the Valuation Officer/Deputy Director of Valuation replied "as per previous ruling issued in similar goods".

19. On inquiry the Deputy Collector stated that the final amount was not given by the Valuation Directorate. The same information was passed on to the importer. It was stated that from this message the valuation was identified by the importer as well as Department although no specific amount about final valuation was mentioned. Deputy Collector further stated that the computer system must have identified the final value and communicated it to the importer automatically because it is a built-in part of the software and no action on the part of the Customs Group was required. He further stated that in December 2007, the Assistant Collector of Customs (Securities) sent a notice to the importer intimating that the post-dated cheque had been returned with the remarks that the account had been closed and the importer was required to pay the amount of Rs.174,140/- immediately failing which the imports would be blocked.

20. The contents of the complaint, the detailed arguments put forward by the learned Counsel in writing as well as during prolonged hearings and submissions and statements made by two Deputy Collectors have been examined. The main allegation relates to the blocking of the electronic filing of the Goods Declarations at the Karachi port as well as the Port Muhammad Bin Qasim without any notice or order by the appropriate officer. The complaint also relates to the non-finalization of provisional assessment within the time-frame prescribed under section 81 of the Customs Act and, therefore, according to the Counsel for the Complainants, the assessment on declared value had attained finality. Consequently, it has been urged, the post-dated cheque be returned and the demand-cum-SCN issued by the Deputy Collector was not legally valid. This office has taken cognizance of the complaint to investigate those allegations. The contention of the customs officials that the matter is outside the jurisdiction of this office is too flimsy to be

given any credence.

21. The Department has taken the plea that the importer had grossly under-valued the goods (Computer Desks) at $5/per piece, the Customs Group had appraised the value at $15/per piece which was not accepted by the importer, provisional release was allowed under section 81 of the Customs Act. When the matter was referred to the Valuation Department the value was determined at $24/per piece vide Valuation Ruling dated 17-05-2006 within the stipulated period whose validity could not be challenged in the light of the judgment of the President of Pakistan. Since the determined value was much higher and the post-dated cheque did not cover the differential amount of duty and taxes, the Deputy Collector decided to issue a demand-cum-SCN dated 23-09-2006. About ten hearing notices were issued; the final hearing notice was issued on 31-03-2008 after this complaint was referred to the Respondents for comments. Even if the Complainants or their Counsel did not attend the hearing, there was no justification for delaying the adjudication by over two years.

22. The Customs officials have taken the plea that with the introduction of PACCS Rules vide notification SRO 704(I)/2007 they are no longer bound to abide by the provisions regarding valuation of goods under the Customs Act and the Customs Rules. The transaction value system of determining the customs values of imported goods have been comprehensively prescribed under section 25 of the Customs Act. This enactment under the Finance Act 1998 was made on the internationally recognized principles of the GATT Code of Valuation. The Customs officials are duty-bound to determine the value of goods in accordance with the provisions of section 25 of the Act and even the powers under section 25A of the Customs Act have to be exercised by following the methods laid down in section 25.

23. It also needs to be emphasized that Chapter 66 of Customs General Order 12/2002 has not become redundant. Unless so decided by the Federal Board of Revenue, the Customs officials ignoring these provisions (and calling them as redundant) are clearly committing disobedience of the Federal Board of Revenue's Customs General Order. Similarly the PACCS Rules incorporated in the Customs Rules have also to be followed alongwith the Valuation Rules in determination of the customs values after confronting the importer with sustainable evidence, affording him the opportunity of representing his case and of hearing, and passing an appealable speaking order. With the introduction of computerization, they seem to believe this whole exercise is no longer necessary and they have the authority to arbitrarily determine the value disregarding the laid down procedure.

24. The customs authorities often ignore the requirement of issuing an order about the finalization of provisional assessment under section 81 of the Customs Act which is a progressive legislation and should be implemented judiciously. This office is of the view that assessment on the basis of value determined by appropriate officials be finalized by the concerned assessing officials/Group and communicated to the importer. The action taken under sub-section (3) of section 81 ibid be intimated to the importer; where final determination is not made under sub-section (2), action under sub-section (4) be

implemented under intimation to the importer.

25. With regard to the allegation that in both the Collectorates of Port Qasim and PACCS, Karachi, the clearances of the Complainants were automatically blocked when the dates of the post-dated cheques deposited as security had expired, the Counsel for the Complainants has pointed out that the filing of customs documents was blocked in January 2008 whereas the order-in-original was passed by the Deputy Collector of Customs on 10-05-2008. This shows that blockage of documents had been imposed before the creation of demand of dues. It seems that Customs Group/Bank Guarantee Section do not issue any notice to the importer for recovery of outstanding dues intimating that if the dues are not paid within a specified period the processing of their documents/clearances of goods would be blocked. In fact the SOP should serve as an early warning system for the concerned customs officials to ascertain the latest position of the relevant case and recovery of dues and notify the defaulter to pay the dues immediately. It would be appropriate if the SOP is modified in the computer system so that the blockage does not take place prior to the completion of assessment and without issuing notice of the outstanding dues.

26. It is recommended that Federal Board of Revenue issue appropriate instructions to the Collectors of Customs to

(i) decide the cases of provisional assessment on the lines proposed at paragraph 24; and

(ii) revise the blocking procedure in the light of the proposal at paragraph 25;

(iii) direct the Director General of Customs Valuation to review the valuation of goods under section 25A of the Customs Act after affording the Complainants the opportunity to represent their case, contest the evidence relied upon by the Valuation Department, and hearing their arguments, and decide the valuation within thirty days; and

(iv) direct both the Collectors of Customs to deblock the filing of customs documents by the importer till the decision by the Director General.

(v) Compliance be reported to this office within forty five days.

(JUSTICE (R) MUNIR A. SHEIKH)
Federal Tax Ombudsman

Dated: -2008

BEFORE THE FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE, KARACHI

COMPLAINT NO.531/2008

M/s Brothers Enterprises (Pvt) Limited,
106, Anum Estate,
Shar-e-Faisal, Karachi. ...Complainant

Versus

The Secretary,
Revenue Division,
Islamabad. ...Respondent

Dealing Officer: ...Mr. M. Mubeen Ahsan, Adviser

FINDINGS/DECISION

Present: Mr Muhammad Rafiq, Advocate
Mr Muhammad Ahmad, Complainant
Mr Muhammad Rafi

Mr Muhammad Anwar, Deputy Collector of Customs (Appraisement)
Mr Yasser Kalwar, Assistant Director of Customs Valuation

The complaint alleging maladministration has been filed against the Customs Department for failure to finalize assessment of goods under section 81 of the Customs Act and refusal to return the post-dated cheque deposited as security. The Complainants imported a consignment of "Chemical Raw Material for Food Industry Malic Acid" from Japan at the declared value of $ 1.623/kg but the customs authorities did not accept the declared value. The goods were released provisionally under section 81 of the Customs Act and a post-dated cheque for Rs. 915,860/- was delivered to the Department as security for the differential amount of duty and taxes.

2. It has been stated in the complaint that the Department was required to make the final assessment of value under section 81(2) of the Act within a period of nine months extendable by 90 days by a speaking order after providing hearing opportunity as laid down under Paragraph 66 of CGO 12/2002. However, no meaningful inquiry was conducted and the value and assessment was not finalized through a speaking order despite several reminders. It was stated that the declared value represented the actual price paid to the supplier but the customs authorities refused to accept it and arbitrarily and illegally enhanced the value without furnishing any evidence of identical goods imported in comparable quantities at the same commercial level. It was alleged that their action was unjust, void and contrary to the provisions of law which amounted to

maladministration under sub-section (3)(i)(b) of section 2 of the Federal Tax Ombudsman Ordinance, 2000.

3. It was stated that under section 25(4) of the Customs Act, if the appropriate officer was not satisfied with the transaction value and had any reservation, he was required to inform the importer in writing and give him an opportunity to justify the price; if the declared value was not accepted, the appropriate officer should issue a speaking order in writing. However, the Complainants stated, they were never asked to explain the circumstances of the sale nor any order as required under Rule 109 of the Customs Rules read with section 24A of General Clauses Act 1897 was passed. It was argued that the refusal to accept the transaction value was illegal and contrary to the provisions of law and amounted to maladministration.

4. It was further stated that since no evidence of higher value was available in the Valuation Department or with the Customs, the provisional assessment on the declared value had attained finality and the post-dated cheque should have been returned to the importer under section 81(2) of the Act. The Complainants made repeated requests to the Customs and the Valuation Departments vide letters dated 15-03-2007, 05-04-2007, 07-04-2007, 08-01-2008 and 10-01-2008 to finally determine the transaction value of imported goods but without any result. They were neither heard nor the matter was decided within the stipulated time-limit under section 81 (2) of the Act.

5. It was further alleged that the clearance of their fresh consignments was blocked on account of non-payment of differential duties for which no formal notice was received by them. Subsequently the clearance was allowed for a limited period but without providing any formal order showing the basis for determination of higher value. CBR has prescribed in paragraph 66 of the CGO 12/2002 the procedure for finalization of the assessment within the prescribed period, laying down that a speaking final assessment order of the value and leviable taxes should be issued incorporating the details and evidence on record. The Collector and the Director of Valuation have been directed to ensure compliance of the order. But in this case the final assessment order was not passed; it was not only a violation of the principles of natural justice but also violation of section 223 of the Customs Act and defiance of the order passed by the Federal Tax Ombudsman in the cases of M/s Shakarganj Mills Limited, Karachi, M/s S. Fazal Ilahi & Sons, M/s Wall Master and M/s Household Products (Pvt) Limited, Karachi.

6. It was requested that the Respondents be directed to finalize the assessment on the basis of the declared (transaction) value and return the post-dated cheque and the Deputy Collector of Customs and the Director of Customs Valuation be directed not to impose embargo on the imports of the Complainants.

7. The Assistant Director of Customs Valuation raised the objection in his reply to the complaint that the Federal Tax Ombudsman did not have jurisdiction to investigate or

inquire into the matters relating to assessment of income or wealth, determination of liability of tax or duty, classification of valuation of goods, interpretation of laws, rules and regulations. He also referred to the judgments of the President of Pakistan in complaints No.1386-L/2002 and No.214-L/2002 that in the determination of value of goods and of tax liability the jurisdiction of the Federal Tax Ombudsman was barred and this office did not provide (forum for) appeal against unfavourable decisions of the tax authorities. It was further stated that the Complainants have approached this office without exhausting remedy available under section 25A (3) and section 25D of the Customs Act.

8. The Assistant Director stated that after due process and consideration the case was finalized and the customs value was determined at $ 4.40/kg on 19-12-2006 on the basis of evidence of identical imports of Japanese origin under section 25(5) of the Customs Act. Evidence of other similar goods' consignments of different origins were also examined but the same were not applicable and the direct evidence of identical goods was finally taken as the basis for determination of customs value.

9. It was further stated that the provisional assessment was made on 01-08-2006 and value was determined on 19-12-2006, well within the stipulated time of nine months. After the finalization of the reference, the quasi judicial proceedings lay with the Collector of Customs and option of review was available under sections 193 and 194A of the Customs Act, which have not been exhausted; the complaint is premature and not maintainable and liable to be rejected.

10. The Deputy Collector of Customs, Group-II, submitted separate parawise comments stating that under section 9(2) (b) of the Federal Tax Ombudsman Ordinance, no complaint can be filed in respect of a decision for which legal remedies were available. He stated that the decision of finalization of value was communicated to the Complainants through PaCCS and they had legal remedy to file an appeal before the Collector (Appeals) within thirty days. The determination of tax liability/valuation cannot be entertained under section 9(2) (b) of the Ordinance.

11. He stated that the Complainants had relied upon the CGO issued prior to the promulgation of PaCCS. The provisions of CGOs were redundant for goods released through the PaCCS, this case was processed under PaCCS procedure and was outside the jurisdiction of the Federal Tax Ombudsman. The Complainants have made false statement about the law and procedure regarding the provisional assessment of the consignments under PaCCS system. If any decision, information, notice etc is transmitted electronically through PaCCS, it is deemed to have been done under the Act and the user is required to follow the directions given in the electronic message. Further, the decision was communicated on 19-12-2006 and, therefore, the complaint against this decision was barred by time under section 10(3) of the Federal Tax Ombudsman Ordinance.

12. The Deputy Collector of Customs reiterated that the Complainants had failed to substantiate the declared value as the transaction value under section 25(1) of the Act. The assessment was made provisionally under section 81(1) of the Act by securing the differential amount of duty and taxes through a post-dated cheque and Indemnity Bond. The finalization of assessment was communicated to the In-Box of the importer which was confirmed by the Complainants' letter dated 10-01-2008 wherein it was admitted that the security cheque was returned due to insufficient fund. The Complainants did not take any action after the provisional assessment whereas PaCCS finalized the assessment and communicated it electronically within four months.

13. It was further stated that the provisions of CGO 12/2002 were not applicable on clearance of goods through PaCCS and order-in-original under section 180 of the Customs Act was mandatory only in a case where confiscation of goods or imposition of penalty was under consideration. The Respondents were authorized to encash or adjust the security deposit immediately after the expiry of the stipulated period and the Complainants' claim to accept the declared value and return the post-dated cheque was not in accordance with the law. Even if there was inaction on the part of the Respondents, the declared value could not be accepted.

14. During the hearing of the complaint the Complainants stated that they have been importing the Chemical from USA for a long time and have convincing evidence to show the correct valuation of goods declared on the GD. At the time of assessment the arguments put forward by one of the Directors were not taken into consideration and they were left with no choice but to accept the decision of the customs authorities to assess the goods provisionally under section 81 of the Act. They did not receive any intimation from the Customs or the Valuation and no opportunity was granted to them to contest the value, furnish their evidence and convince the customs/valuation officials of the genuineness of the declared value.

15. They sent several letters to the Collectorate of Customs and the Directorate of Valuation which seem to have been ignored as no action was taken. The customs should have finalized the assessment in accordance with the provisions of section 81 of the Act through due process but it was not done. The Complainants came to know of the arbitrary finalization of valuation and assessment when their post-dated cheque for customs was sent to the Bank for payment.

16. The learned Counsel for the Complainants stated that assessment was not finalized and order was not passed as required under the Customs Rules. He stated that the Valuation Department has quoted 10 evidences of valuation in their reply to the complaint but none of the instances was relevant because none of them was in accordance with the Rule 107(a) of the Customs Rules as they related to the period more than 90 days before and after the import.

17. The learned Counsel argued that the value adopted by the customs was not valid and the declared value was genuine; the importer was not given opportunity to represent his case, contest the higher value, submit valid evidence to the customs/valuation officials and, in accordance with the provisions of the section 25 of the Act and the Customs and Valuation Rules, to defend the declared value. Thus the Valuation Department as well as the Customs Collectorate acted arbitrarily and since they failed to finalize the assessment within the time-frame prescribed under section 81 of the Customs Act, they may be directed to finalize the assessment at the declared value. The Director of the Company stated that he did not receive the electronic communication and got no intimation of the value; clearly the valuation aspect was not taken into serious consideration.

18. The Deputy Collector of Customs stated that the entire position regarding the action taken by the Collectorate has been explained by the Deputy Director of Valuation and in his own reply to the complaint. He stated that after receipt of Valuation Advice within the statutory period, no action was taken by the Group concerned because the same intimation was sent to the importer through the electronic medium. When asked whether any speaking order about finalizing of value, the amount of final assessment and the order for payment/recovery of the differential amount was electronically sent to the importer, the answer was in the negative. From his submissions it appeared that there was no necessity to pass such an order under section 81 of the Customs Act and it was adequate for the Valuation Department to send its advice to the Customs Group, the matter should end there and the Securities/Bank Guarantee Section was automatically empowered to encash the post-dated cheque. With regard to several letters the Complainants claimed to have sent to the Customs/Valuation between March 2007 and January 2008 it was clear that no action was taken on these letters and no reply was sent.

19. The contents of the complaint, the arguments put forward by the Counsel for the Complainants, the detailed replies and verbal submissions of the Valuation and Customs Departments have been examined. The objections about the jurisdiction of this office are flimsy, irrelevant, of no legal validity, and over-ruled as such. This office has taken cognizance of this complaint on account of actions contrary to customs law and rules, departure from established practice without valid reasons, an action which is arbitrary, unjust, oppressive, and excessive use of administrative power by deciding to encash the post-dated cheque without due process of law and without issuing an appropriate order for finalization of value and assessment in accordance with the Customs Act and Rules and prescribed procedure. These deficiencies, inaction and inappropriate decision amount to maladministration as defined under sub-section (3) of section 2 of the Establishment of the Office of Federal Tax Ombudsman Ordinance, 2000.

20. The Complainants have rightly claimed that the Federal Board of Revenue's instructions contained in paragraph 66 of CGO 12/2002 were not followed and a speaking order was not issued by the appropriate officer. The relevant clauses (i) and (ii) of sub-para 2 of paragraph 66 are reproduced below:

"(i) All cases of provisional assessment shall be finalized within a period of four months. Where assessment cannot be finalized within four months, owing to exceptional circumstances beyond the control of Custom Houses or Valuation Department, such period shall be extended by the Collectors of Customs or the Controller of Valuation, as the case may be, by a further period of two months recording reasons in writing. Such extension shall also be intimated to the importers.

(ii) Final assessment order shall be speaking one and shall also incorporate all the details and evidence on record on the basis of which value has been fixed or assessment has not finalized. This is necessary to enable the importer to file appeal with the appellate authority if he is not satisfied with the assessment order so made."

21. It has also been pointed out with justification that, under sub-section (4) of section 25 of the Customs Act, if the declared value was not accepted under sub-section (1) ibid, the appropriate officer shall inform the importer of his reservations and give him an opportunity to justify the price difference. The Valuation and the Customs Departments have failed to comply with the clear instructions contained in the Customs Act and the CGO 12/2002. The Assistant Director of Valuation has also argued that the options of review were available under sections 193 and 194A of the Customs Act but he has failed to realize that these options would be available only where any decision or order was passed under various sections of the Act. When no such formal order was passed as clearly prescribed under paragraph 66 of the CGO 12/2002, the Complainants could not exercise the option of making an appeal before the Collector of Customs (Appeals) and the Appellate Tribunal.

22. The Deputy Collector of Customs has argued, strangely enough, that the CGOs were redundant for goods released through the PaCCS because any decision transmitted electronically should be considered as done under the Customs Act. He too has completely ignored the fact that no formal decision or order was passed and communicated. Whether the final value determined by the Valuation Department, without due process, was actually transmitted to the importer/Complainants is a mere presumption.

23. It has also been stated that the clearance of fresh consignments was blocked without any notice and the customs and valuation officials be directed not to impose embargo on the Complainants' imports. It has been reported that on expiry of post-dated cheques, guarantees or indemnity bonds the computer system automatically blocks the User ID of the importers and they are not allowed to file Goods Declarations for their imports. This seems to be a necessary step to identify the defaulting parties and for recovery of outstanding dues. However, the indiscriminate blocking of the documentation would create hurdle in the clearance of imports in the pipeline. It is recommended that the

blocking process be carefully examined and a proper procedure be prescribed by the Federal Board of Revenue/Collector of Customs to save those importers from blocking of documents who are contesting their current cases.

24. The computerized online system has been introduced at various customs ports and stations to accelerate and facilitate the clearance of goods and drastically reduce the time and expense in this process. However, it seems that the system does need certain improvements. In cases of disputes between the customs and the importers, the customs authorities should apply the procedure clearly laid down in the Customs Act, Rules and the General Orders. Otherwise it would be a strange phenomenon that the Customs Group which initiated provisional assessment under section 81 of the Customs Act does not play any role in finalizing the value and assessment, nor does it decide the recovery or refund of security deposited by the importer, and final action is supposedly left to the Securities Department which has nothing to do with the assessment.

25. From the foregoing facts it is established that the procedure prescribed under the Customs Act, Rules and CGO 12/2002 was not followed and speaking order for final assessment was not passed and, therefore, the provisional assessment on the basis of declared value has attained finality. The charge of maladministration is established.

26. It is recommended that the Federal Board of Revenue direct the Collector of Customs PaCCS to

(i) finalize the assessment at the declared value and return the post-dated cheque to the Complainants within thirty days; and

(ii) compliance be reported to this office within forty five days.

(iii) Collector of Customs may also be directed to devise a suitable procedure for blocking of User IDs as proposed in paragraph 23; a copy of the procedure be sent to this office within forty five days.

(JUSTICE (R) MUNIR A. SHEIKH)
Federal Tax Ombudsman

Dated: -2008

BEFORE THE FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE, KARACHI

COMPLAINT NO.611/2008

M/s.Impex Agencies,
Room No.13 – 15, Najmi Building,
Shara-e-Liaquat, Karachi. ...Complainant

Versus

The Secretary,
Revenue Division,
Islamabad. ...Respondent

Dealing Officer: ...Mr. Asad Arif, Adviser

FINDINGS/DECISION

Present: Mr. Noor Muhammad, Proprietor : the Complainant
Mr. Shafaqat Niazi, Deputy Collector, Customs, (Preventive) for the Respondent

The complainant, an Individual engaged in the business of import and export, is aggrieved by unlawful and illegal charges being collected by freight forwarders from the importers besides imposition of terms and conditions which are prejudicial to shippers and the failure of the Customs authorities to check their malpractices.

2. The complainant has stated that Pakistan International Freight Forwarders Association (PIFFA) levies charges for less than container load (LCL) imports which are neither lawful nor justified and tantamounts to exploitation of the importers. It is stated that the forwarders charge Delivery Order (D/O) charges of Rs.1,800 per Bill of Lading (B/L) which are not justified because it is the carrier which carry cargo for delivery and the forwarders do not render any service in this behalf. So also, the importers are charged documentation fee of Rs.4,000 per B/L which is also illegal because the consignees are not liable for any charges as the documentation is the liability of the carrier. Similarly, the importers are charged Rs.1,500/- per B/L for splitting which is illegal. It is stated that the freight forwarders issue number of House Bill of Lading (HBL), ships consolidated cargo under MBL/BOL as shipper and thus transfer ownership of goods to themselves. In view of this, to levy splitting charges of Rs.1,500/- is like adding insult to injury. Similarly, insurance is charged at Rs.500 per B/L which is again not justified because the consignee must get what the shipper delivered at load port and it is the carrier which is liable for short/excess cargo and consequences thereof. It is argued that collecting insurance charges without having an insurance license is a violation of Insurance

Ordinance, 2000 liable to fine and penalty. It is further stated that the forwarders also bill the importer for Terminal Handling Charges (THC) which is again illegal because the contractor is bound to deliver the goods at Container Freight Station (CFS) at his own cost. Then, another sum of Rs.560 per CBM is charged as COC charges but what this charge is and for what service rendered has never been explained and the amount is thus collected illegally without rendering any service. It is stated that in the Review Application No.91/07 in complaint No.C-42-K/07, the respondent had stated that all the above charges shall be merged and renamed as "Logistic Charges" and that rules are to be formulated by Pakistan International Freight Forwarders Association (PIFFA) and State Bank of Pakistan and that Chairman, CBR has directed the Ministry of Commerce and PIFFA to expedite the finalization of rules. It has also been stated in the said Application that the formulation of appropriate laws/rules regarding protection of the importers from unlawful charges and to provide positive measures to discipline and penalize those agents/companies which cause harassment to the genuine importers/exporters are under consideration at higher forum for comprehensive solution.

3. The complainant has vehemently contended that to allow freight forwarders to levy unlawful charges on the importers by terming them as "Logistic Charges" would not solve the problem. It is urged that mere change of nomenclature of such charges would not make them legal and these would continue to remain unlawful for reasons stated above. It is also contended that imposing on other stake holders "standard trading conditions" through Ministry of Commerce is also not justified. It is urged that calling Ministry of Commerce and PIFFA to frame rules for the importers without participation of other stake holders is most intriguing because in this way the freight forwarders are likely to exploit small importer/exporter more fiercely. The complainant has explained that salient features of the sector are that carriers offer over 20/30 percent freight discount to freight forwarders for service and profit to be shared with agents at destination. They issue House Bill of Lading (HBL) to shippers but ship the goods under Ocean Bill of Lading (OBL) in their own name thereby quietly transferring ownership of goods to themselves. They also collect unwarranted, unlawful and exorbitant charges for delivery. It is stated that in some instances, they collect the goods in exchange of ocean bill of lading and then vanish away leaving the shipper/consignee in the lurch.

4. It is further argued that State Bank of Pakistan through amendment in F.E Circular No.06/2006 also legalized/legitimized fraudulent transfer of ownership of goods to benefit freight forwarders at the cost of small shippers inasmuch as the said circular provides that cover cargo will only be released to freight forwarders at the port of discharge on presentation of bank endorsed original House Bill of Lading and that under no circumstances freight forwarders or agents of shipping company may surrender Master Bill of Lading to the carrier in Pakistan. It is urged that such provisions in the circular legitimize fraud and are prejudicial to small exporters in Pakistan and genuine buyers/importers abroad. The complainant has contended that the Chairman, FBR was

not justified to ask the Ministry of Commerce to formulate rules which are prejudicial to the other stake holders and that Ministry of Commerce is not justified to impose trading conditions which are beneficial to one party (Freight Forwarder) and prejudicial to another (Importer). It is also contended that State Bank of Pakistan is also not justified to legalize transfers of ownership to goods to benefit freight forwarders to the prejudice of small shippers/exporters. It is prayed that the respondent be directed not to impose trading conditions which are prejudicial to the stakeholders and to prevent transfer of ownership of goods prejudicial to all exporters in Pakistan and genuine importers abroad.

5. Replying to the allegations in the complaint, the Collector in his written report has stated that the issue of exploitation of trade by collecting unwarranted charges by various Freight Forwarders and Shipping Agents and preparation of rules to address these issues after taking on board all the stakeholders has already been taken up in the 4th meeting of National Trading Corridor, (NTC) held on 03.08.2007 which was chaired by Secretary General, Revenue Division. It is stated that in Review Application No.C-91/07, the FTO has already thrashed the issue and decided on 23.01.2008 that *"the decision of the Ministry of Commerce is to be awaited in the matter, therefore, the Revenue Division is directed to inform this office about the outcome of the exercise being undertaken in the Ministry of Commerce"*. It is contended that pursuant to the directions of FBR vide letter 28.03.2008, the Chief Collector has already held a meeting of all stakeholders and some of the problems like levy of port congestion charges have already been solved and that another meeting of stakeholders had been convened for 30th Apri, 2008 and the outcome thereof will be intimated to the Board as well as to the FTO.

6. In regard to the Freight Forwarders, the Collector has stated that prior to the amendment made in section 207 of the Customs Act, 1969, the Freight Forwarders were required to obtain license from Customs Department to carry out their business for the reason that they issued House Bill of Lading. However, through an amendment in 2007, the word "Bill of Lading" has been omitted from the said section as a result of which now there is no compulsion for the Freight Forwarders to obtain Customs House License to carry out the business. In spite of this, in view of the various complaints by the trade against the Shipping Agents and the Freight Forwarders, the Collectorate has taken up the matter in right earnest and to resolve the issues, a Steering Committee has already been set up in view of the recommendation of the FTO in complaint No.752/2007 and Board's letter No.2(41)-ICM/2005 dated 28.03.2008. A couple of meetings of this Committee have already taken place in which the present complainant was one of the participants and that further meetings will also be held to resolve the issues.

7. Parties have been heard and the record produced has been examined.

8. It appears that there is no regulatory system to regulate and check if any malpractice of Freight Forwarders comes to surface. Since freight forwarders are not

licensed by any Government agency, therefore, if there is any malpractice on their part, the aggrieved person of the trade has no forum to turn to for efficacious and speedy redressal of his grievances. There is, thus, an urgent need for having clear rules/regulations for the working of Freight Forwarders so that unscrupulous elements are not allowed to exploit the trade.

9. Since the matter is essentially linked with the functions of the Customs Department, it would be appropriate if the Revenue Division formulates rules for licensing of the Freight Forwarders, keeping a vigilance on their working and taking appropriate corrective action in case of deviation, violation or non-compliance of clearly defined (and notified) Rules. The Customs House should operate as the regulatory authority and examine the complaints of the affected persons and after due process, take appropriate decisions to redress the grievances of the parties.

10. In the circumstances, it is recommended that FBR:

i). to constitute a task force under the Chief Collector of Customs who should call all the stakeholders and after examining the problems of the trade, formulate rules for the freight forwarders to make it incumbent on them to work under a Customs License and propose a procedure for punitive action to maintain effective check on malpractices:

ii). the task force should also examine the charges being collected by the Freight Forwarders and highlighted by the complainant and ensure that no unjustified charges are levied so that the trade is saved from exploitation and also to ensure that no trading conditions are imposed which are prejudicial to the interest of the stakeholders.

iii). The above action be completed within three months.

iv) Compliance be reported within 07 days after doing the needful in terms of (i) & (ii) above.

(JUSTICE (R) MUNIR A. SHEIKH)
Federal Tax Ombudsman

Dated: -2008

BEFORE THE FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE, KARACHI

COMPLAINT NO.751/2007

M/s Pakistan Hosiery Manufacturers Association
Central Office, P.H.M.A. House
37-H, Block-6, P.E.C.H.S., Karachi. ...Complainant

Versus

Secretary
Revenue Division
Islamabad ...Respondent

Dealing Officer: ...Mr. M. Mubeen Ahsan, Adviser

FINDINGS/DECISION

Present: Mr. Naqi Bari, Chairman, Pakistan Hosiery Manufacturers Association
Mr. Yunus Bin Aiyoob, Secretary General, PHMA
Mr. Mr Junaid Ghaffar, Advocate, PHMA
Mr. Agha Faqir Mohammad, Advocate, All Pakistan Shipping Association
Mr. Samay Shams, Advocate, PIFFA
Mr. Adnan Ali, Advocate, PIFFA
Mr. M.H.Khokar, All Pakistan Ship Agents' Association
Mr. Amir Ali, Secretary All Pakistan Ship Agents' Association
Mr. Zahid Jamil, Advocate,
Pakistan International Freight Forwarder Association

Mr. Zahoor Akhtar Raja, Additional Collector of Customs (Preventive)
Dr. Iftikhar Ahmad, Deputy Collector of Customs

The Pakistan Hosiery Manufacturers Association (PHMA) filed a complaint regarding the malpractices of the Freight Forwarders and the unwillingness/failure of the Customs Department to take appropriate corrective/punitive actions against those who have acted against the interest of the Government and caused substantial losses to the affected exporters. PHMA specially drew attention to the complaints of the following Members/Exporters:

(1) M/s Chandna Corporation
(2) M/s Chippa International
(3) M/s Shahbaz Garments
(4) M/s Kinza Fashion
(5) M/s Mitex
(6) M/s Textile Source
(7) M/s F.J.International, Faisalabad

(8) M/s Jetex Industries (Pvt) Ltd, Karachi
(9) M/s M. Yahya M. Yousuf Bari, Karachi
(10) M/s Sylvana Garments, Karachi
(11) M/s Zainab Garments (Pvt) Ltd, Karachi

2. The main grievances of the Complainants are:

(i) The Shipping Agencies in collaboration with the Freight Forwarders/Consolidators issue Master Bills of Lading in the name of Consolidators, declaring them as shippers (instead of the original shippers). The consignees and shippers exchange the Bills of Lading among the shipping lines under the garb of "Surrender". The delivery of Bills of Lading is accordingly changed in the names of their agents at the port of destination violating the F.E. Rule 11 Chapter XII and Bill of Lading Act 1856.

(ii) The exporters and their banks are deprived of their legitimate ownership; a fake third party document called House Bill of Lading is handed over to the exporter. The cargo at the foreign destination is released to Forwarders/Consolidators' counterparts without getting the exporters' bills paid through the bank. The Forwarders/Consolidators receive the payment of export cargo and exporter receives delayed payment with undue discount or suffers total default.

(iii) The foreign buyers take the advantage of avoiding the C&F value and and purchase the goods through Consolidators/Forwarders on cheaper freight. The benefit of the malpractice goes to the shipping company as well as the Consolidator/Forwarder.

(iv) The PHMA obtained the House Bills of Lading and Master Bills of Lading from some reliable sources which indicate the fraudulent payments in league with the shipping company and the Consolidator/Forwarder.

3. In a letter from M/s M. Yahya and M Yousuf Bari, Mr Naqi Bari, Partner, reiterated that from time to time it was complained to the customs that the Shipping Lines in connivance with Consolidators/Forwarders were changing shippers'/consignees' names on Master Bills of Lading unauthorizedly but no punitive action was taken against the Shipping Lines or Shipping Agents. Due to the inaction of the customs, the malpractices of the Consolidators/Forwarders have increased. The exporters have been complaining to the Collectors of Customs that the malpractice deprived the exporters as well as their banks from ownership of goods and fake third party documents called House Bills of Lading were handed over to the exporters. This malpractice had now become disastrous as the Consolidators/Forwarders' counterparts in foreign countries release the cargo without getting exporters' bills paid by the banks. It was requested that this malpractice be checked by the customs.

4. It was stated that M/s M Yahya and M Yousuf vide letter dated 06-01-2005 had complained to the Collector of Customs (Preventive) regarding misappropriation of exported goods but no action was taken. A letter was sent to the Director Export Promotion Bureau which was forwarded to the Collector of Customs (Preventive). The Collector informed the Export Promotion Bureau vide letter dated 18-02-2005 that a meeting was held with the stakeholder i.e. Karachi Chamber of Commerce, Chairman PSAA, APSA, AUPKCAG to discuss the problems faced by the Shipping Agents and Clearing Agents in conducting their business. However, it was surprising that in the aforesaid vitally important matter no action was taken against the Shipping Agents and the Clearing Agents. None of the exporter or PHMA members were invited. The main focus on the meeting was on import cargo. It was alleged that this was an act of maladministration. The Complainants have approached this office to issue suitable directive to the customs authorities not to allow such malpractice to occur, the Bills of Lading be issued by the Shipping Lines in the names of shippers for consignees declared on Form-E as well as the Goods Declarations (GDs) and any change must be substantiated with NOC from the authorized bank. This would greatly relieve the exporters who were being deceived by the Consolidators/Forwarders.

5. M/s Zainab Garments (Pvt) Limited vide letter dated 26-04-2007 complained to this office that four consignments of total export value of US$ 108,078/03 had reached their destination but export bills had not been paid while the importer with the blessing of the Forwarders M/s Transasia Shipping Agency had got their consignments released in serious violation of Exchange Control Regulations. It was requested that this office intervene in the matter and compel the Shipping Agency and the Shipping Company to pay all the export bills immediately.

6. Secretary PHMA vide letter dated 20-07-2007 sent copies of 36 Master Bills of Lading alongwith relevant House Bills of Lading relating to several exporters' shipments wherein the consignees' names had been fraudulently changed by the Bill of Lading issuing authority. It was reiterated that the Chambers and the Associations as well as the exporters had made frequent complaints to the customs authorities but no action such as investigation and preventive and punitive steps had been taken with the result that the fraudulent practice was rampant causing huge losses to the exporters which established grave maladministration and acts of omission by the customs. It was requested that the information conveyed through this letter be taken into account.

7. It was alleged that the customs authorities had not taken appropriate measures to curb the malpractice, the Association and the Members/Exporters felt that there was neglect, inattention, delays, inefficiency and ineptitude in the customs administration in the discharge of its duties and responsibilities which amounted to maladministration and the exporters have been denied justice by the authorities. It was requested on behalf of PHMA that the matter be investigated and

(i) the Shipping Lines/Shipping Agents be directed to issue only one Master Bill of Lading signed by the Master of the vessel which should be handed

over to the exporter in accordance with the State Bank of Pakistan Rules Chapter XII Rule 11 for issuance and delivery of the Bill of Lading;

(ii) the names of the shippers and the consignees must always correspond to the names declared in Forms-E and the GDs; and

(iii) directive be issued by the customs to regulate the process of Consolidation/Deconsolidation (of the Bills of Lading) in consultation with the exporters' association so that the affected exporters who suffered huge loss in foreign exchange receive much needed relief from such hardship.

8. A notice dated 04-07-2007 was issued to the Secretary, Revenue Division, to submit reply to the allegations by 20-07-2007, the date for submission was extended to 06-08-2007 and again to 10-08-2007. CBR vide two letters dated 03-08-2007 sent copies of the Collector of Customs' letters dated 28-07-2007 and 02-08-2007 who had requested this office to direct the Complainants to send their complaints alongwith documents for necessary action by the Collectorate. This office sent another notice dated 23-08-2007 to the Revenue Division to the effect that the response of the Collector was not acceptable as it did not contain reply to the allegations and or/comments thereon and the Collector be directed to furnish the required reply/comments by 31-08-2007.

9. The Chief Collector of Customs, vide letter dated 06-09-2007, submitted a copy of Fact Findings Inquiry conducted by Additional Collector of Customs (Exports). The salient features of the inquiry report are as follows:

(i) Additional Collector first gave the highlights of his meeting with Mr Naqi Bari, the Central Chairman of PHMA, who stated that in order to boost export of LCL (Less Containers Load) cargo SBP vide Circular No.23 dated 29-02-1992 had allowed the banks to accept the House Bill of Lading of Cargo Forwarders and Shipping Companies/Shipping Lines;

(ii) They were also allowed to issue Master Bills of Lading for consolidated shipments made against advance payments or irrecoverable letters of credit containing the provision for issuing title documents showing Consolidators as Shippers and their agents abroad as Consignees. The Consolidators issued Master Bills of Lading in their own name as Shippers and their foreign counterparts as Consignees.

(iii) Consequently the title of the consignments changes from the Consignee to the Freight Forwarder who sends to its counterpart at destination and the same is passed on to the importer/buyer to get the delivery of goods without payment and without retiring Bill of Lading through the authorized dealer. The exporter thus is at the mercy of the buyer who delays payment, demands huge discounts and sometimes totally defaults in payment.

(iv) Mr Bari referred to the State Bank's Circular dated 15-05-2006 directing the dealers to verify the genuineness of remittance and containing instructions about mentioning the original ownership of the actual exporter etc but the Freight Forwarders and the Shipping Lines are not complying with SBP's directions. The exporters' demanded from the customs to intervene on their behalf being the licensing authority of Shipping Companies/Agents/Freight Forwarders and restrain them from changing the title of the goods on the Master Bills of Lading.

10. Additional Collector of Customs held a meeting with the officials of American President Lines (APL) who stated that they had a rate agreement with the Freight Forwarders to book cargo and for this reason their name was mentioned on the Mater Bills of Lading rather than the original consignees. In case the buyer made it a condition of contract for the cargo to be consigned by a particular Freight Forwarder, the latter submitted the draft Master Bill of Lading mentioning the name of the Shipper/Consignee. The exporter on his own came through the Freight Forwarder for a better freight arrangement. If the Freight Forwarders were cheating the exporters they should be identified and the Shipping Companies be directed not to do business through them. In the absence of such rules, the Shipping Companies could not be held responsible for the wrongs of a few Freight Forwarders/Consolidators. It was also stated that only a few exporters were raising hue and cry because they felt that their dubious practice of under-invoicing and bogus refund claims might be exposed.

11. The Additional Collector of Customs further stated that Freight Forwarders were now being licensed under Customs Agent Licensing Rules and 128 freight forwarders have been licensed so far. According to the viewpoint of the Preventive Collectorate there was a need for more stringent rules to regulate the sector because under the existing Customs Rules in the event of cancellation of license the security of Rs.50,000/- was liable to be forfeited but the exporter's loss would run in million of dollars apart from criminal culpability. The Custom House Agent Rules did not have provisions to restrain the Freight Forwarders from getting Master Bills of Lading issued in the names of consignees different from those mentioned in the House Bill of Lading. The Rules also did not make it mandatory for the Shipping Companies/Agents to transact business only with registered Freight Forwarders. It was sated that realizing the gravity of the situation the Collector of Customs (Preventive) had framed draft rules to regulate the Freight Forwarders' business which were sent to FBR vide letter dated 31-10-2007 for approval and notification. Pakistan International Freight Forwarders Association (PIFFA) shall also submit their own proposals to the Federal Board of Revenue.

12. The findings of the Additional Collector given in his report are as follows:

(i) The basic problem arises from the change of consignee's name to the Agent of the Freight Forwarder at the destination which results in clearance of cargo without payment of proceeds to the exporter.

(ii) Circulars issued by the State Bank are generally not properly implemented by the authorized dealers/banks.

(iii) When the exporters book cargo through Freight Forwarders nominated by the foreign buyers, they should ensure that the cargo is delivered/released to the actual buyers and the possibility of nominating a third party is eliminated.

(iv) Provisions of section 72-A of the Customs Act which delineate the responsibilities of the person incharge of a conveyance etc should be strictly implemented.

13. He made the following recommendations:

(i) Clear and concise Rules be framed to regulate the activities of the Freight Forwarders and shipping agents in accordance with the international practice.

(ii) State Bank should ensure that its Rules and Circulars are implemented comprehensively.

(iii) It should be made mandatory for the shipping agents to transact business with only licensed Freight Forwarders/Consolidators.

14. The Collector of Customs (Preventive) submitted parawise comments on the Complaint as follows:

(i) The Complainant had highlighted the malpractices of the Shipping Agents/Freight Forwarders by issuing House Bill of Lading, changing the names of consigners and consignees and releasing the goods without obtaining original documents with the active connivance of their counterparts abroad. As a result the remittances of Pakistani exporters remained held up without any lawful authority and caused huge losses to the exchequer. The Complainant had specifically mentioned the complaints of 11 exporters and the Collector had already taken serious action against the delinquent Freight Forwarders and Shipping Agents and in several cases the amounts were returned to the Complainants and the claims of other exporters had been settled.

(ii) The Collector was making every possible effort to sort out the issues under reference by resolving the dispute through negotiations by examining the documents for issuing show cause notices, approaching the State Bank of Pakistan to enforce its regulations to curb malpractices and to alleviate the problems of importers and exporters regarding the charges recovered by the Shipping Agents/Freight Forwarders under the garb of terminal handling charges.

15. The Secretary of Pakistan Ship Agents Association vide letter dated 05-09-2007 stated that the Freight Forwarding Industry existed and operated throughout the world and was a major integral part of movement of cargo by sea and air. The adverse problems of the shippers had occurred due to their accepting unfavourble demands from their buyers due to their inability to meet competition. These buyers have nominated unscrupulous Forwarders in the LCs or orders to their own advantage and to the disadvantage of consignors. Prominent or established Shippers were not the victims of such frauds as they judicially guarded their own interests.

16. The Pakistan Ship Agents Association submitted a copy of their Press Release which had appeared in the Daily Dawn of 05-09-2007. It was reported that there were many complaints from trade with regard to unlawful practice of Freight Forwarders who allegedly changed the title of export consignments by issuing House Bills of Lading to replace the Master Bills of Lading which resulted in the exporters' losing legal right for the consignments and encouraged foreign buyers to raise unreasonable objections on quality, quantity and delivery time. This caused huge financial losses to the exporters. The representatives of KCCI and PHMA pointed out that the Freight Forwarders were exploiting the trade by collecting unfair charges in clear violation of the State Bank Regulations. The Association agreed with the views of the Customs Department that it was for the shippers to judiciously guard their own interest and the exporters had incurred problems by accepting unfavourable demands from buyers who nominated unscrupulous Forwarders to their own advantage and to the disadvantage of the shippers.

17. The Advocate representing the All Pakistan Shipping Association submitted the following comments in the statement dated 18-09-2007:

(i) Section 207 of the Customs Act did not require a Freight Forwarder to obtain license for transaction of his business.

(ii) Forwarders handle services connected with export shipment, preparation of documents, providing cargo space, warehouse delivery and export clearance.

(iii) Freight Forwarders are agents for the exporters in moving cargo to overseas destinations. In some cases, the foreign buyers insist on engaging Freight Forwarders of their choice and small exporters have to accept such conditions.

(iv) Bills of Lading are issued by the Forwarders to the exporters as a receipt for merchandise which are referred as House Bill of Lading (HBL) which have no banking purpose.

(v) The carriers issue Master Bills of Lading (MBL) showing the Forwarders as the shippers and the carriers deliver the containers of the Forwarders to their agents at the port of discharge who deliver the consignments to the consignees named in the House Bills of Lading.

(vi) All carriers are required to issue Bills of Lading to the order of an authorized dealer (Bank) designated by the exporters. Thus the carrier is the carrier of consignment for the Forwarders whereas the Forwarders are the carriers for the exporters.

(vii) In order to regulate the functions of Forwarders/Consolidators, CBR be asked to appoint a committee comprising members of APSA, PSSA, PIFFA and engage a Maritime Lawyer to draft the proposals for incorporation in the Customs Act 1969.

18. The Collector of Customs (Preventive) stated in his letter dated 25-09-2007 that customs checked the documents and goods during the process of shipment and loading but the documents related to final transactions were checked and processed by the authorized banks. He stated that the Customs Agent's Licensing Rules 2001 were applicable to Clearing Agents and Shipping Agents but not to the exclusive business of Freight Forwarders.

19. The Collector further stated that the Bill of Lading was a document between the shipper and the carrier issued upon the shipment of cargo and customs staff was not involved or concerned with this process. The State Bank of Pakistan Manual Chapter XII, Rule 11, had made it mandatory that the Bills of Lading or any other document of title to cargo should be drawn only to the order of an authorized dealer designated for the purpose by the exporter. State Bank also allowed, vide Circular dated 29-02-1992, the Freight Forwarders to issue House of Bills of Lading subject to certain conditions and the authorized dealers were directed to accept House Airway Bill in case of air cargo and House Bills of Lading in the case of sea cargo issued by the cargo Forwarders. Thus the cognizance of any transgression of the aforesaid permission lay with the State Bank. The Collector stated that in case of any cheating in the documents of financial transactions, Civil Suits could be filed in the competent court of jurisdiction or the FIA could take cognizance if the commercial fraud was established through documentary and corroborative evidence. He further stated that for the business of Freight Forwarders, draft rules have been submitted to CBR and were being examined by the Ministry of Commerce.

20. The learned Counsel for M/s Transasia Shipping Agency submitted comments on the complaint of the M/s Chandna Corporation pursued by PHMA. The Counsel raised the objection that the Federal Tax Ombudsman did not exercise jurisdiction on the complaint which related to malpractice by private parties. The proper forum for action against violation of Foreign Exchange Regulation Act 1947 was the State Bank of Pakistan.

21. The learned Counsel stated that the issuance of House Bill of Lading was not a change of title. HBL is an internationally accepted and legal practice and the allegation of its encashment by the Freight Forwarders was baseless and false and no evidence had been produced before any appropriate forum agitating these claims. In the context of the exports of Pakistan, the complaint has come from a very few parties of the Hosiery sector

which belied its nature. Some of the parties mentioned in the complaint have already filed appropriate litigation in the courts of law. The learned Counsel repeatedly contradicted the allegation of fraud and falsity and emphasized that the complaint was outside the jurisdiction of this office.

22. The Counsel for the PHMA submitted written arguments reiterating the allegation that the customs officials have failed to perform their duties diligently, honestly, efficiently and in accordance with the various provisions of the Customs Act. The following arguments were put forward on behalf of the PHMA:

(i) The shipping agents were acting in total disregard to the provisions of section 53 of the Customs Act and allowing to enter the particulars in the Export Manifest different from those made in the Goods Declarations with the result that the particulars of Master Bills of Lading did not tally with those incorporated in the Export Manifest. Similarly the names of the consignees and full particulars of the consignments were not being recorded in the Bills of Lading and the allegation of malpractices was justified.

(ii) The modus oprenadi of the Shipping Lines and Agents in connivance with the Forwarders was completely illegal because all carriers and their Agents were required to issue the Bills of Lading to the order of the authorized dealer (Bank) whereas the Agents in Pakistan have been issuing Bills of Lading in the name of the Freight Forwarders without any permission from the Banks.

(iii) The Foreign Exchange Circular No.23 of 1992, primarily meant for Less than Container Load (LCL) shipments, clearly provided the guidelines not being applied by the Shipping Agents or the Freight Forwarders. Under this Circular the Shipping Agents would issue Master Bills of Lading for "Consolidated Shipments" against advance payment or irrevocable letter of credit, which must contain provision for issuance of documents for cargo consolidation and certificate by the authorized dealers. The conditions and restrictions in the Circular of State Bank of Pakistan were violated by the Shipping Lines and the Agents in Pakistan and there was no doubt that the working of the Shipping Agents was not in conformity with the Rules and Regulations of the Government and cognizance ought to be taken of such gross negligence which resulted in losses to the exporters.

(iv) The Shipping Agents could not absolve themselves from the fraudulent activity of the Freight Forwarders and a question arose why the Master Bill of Lading was issued by the Shipping Agents to the Forwarders despite the fact that not a single document from customs in respect of shipment was submitted in their names.

(v) The negligence, connivance and mala fide intentions of the Freight Forwarders and Shipping Lines was evident from the complaints from numerous members of the PHMA to whom part reimbursement was made by post-dated cheques and bank guarantees for the losses suffered by them. This was ample proof of their involvement in the illegal trade. But the Customs Department had failed to formulate and issue rules and guidelines to control and monitor the working of the Freight Forwarders who have been licensed by the customs and the Licensing Rules were not appropriate and proper for conduct of their business. In fact very strict rules need to be framed in consultation with the affected parties.

(vi) It has been claimed by the Shipping Lines that the exporters were using Freight Forwarders for attractive freight rates which must be stopped. The fact was that the affected parties have not entered into any agreement with the shipping lines and Freight Forwarders, and the exporters were not getting any benefit of the so-called subsidies in freight rates. It was also a fact that the Forwarders and the Shipping Lines were enjoying the benefit.

(vii) It was requested that Respondents be directed to initiate cases against the Shipping Agents for gross violation of sections 53 and 72A of the Customs Act and impose penalties as well as register criminal cases under clauses 39/39A of section 156(1) of the Act and also initiate proceedings under the Licensing Rules. It was proposed that measures be adopted to enable the members of the PHMA to recover hard earned money embezzled by the Freight Forwarders in league and connivance with the Shipping Agents. They may be directed to issue Bills of Lading strictly in conformity with the directions issued by the State Bank of Pakistan under Circulars No.23 of 1992 and No. 6 of 2006 read with the provisions of sections 53 and 72A of the Customs Act as mentioned on Form "E" and the Goods Declaration filed with the Department.

23. The Counsel for All Pakistan Shipping Association stated that the complaint was actually against one Freight Forwarder namely Transasia Shipping Agency, Suite No.501, 5th Floor Landmark Plaza, Opposite Jang Press, I.I.Chundrigar Road, Karachi, to whom the notice has not been issued. Notice has also not been issued to Pakistan International Freight Forwarders Association, 502 Kashif Centre, 5th Floor, Shara-e-Faisal, Karachi, which was the representative body of the Freight Forwarders.

24. Mr M. H. Khokhar representing the Pakistan Shipping Association stated that under section 207 of the Customs Act only the Customs Licensed Agents were authorized to issue Bills of Lading. He stated that while majority of the Freight Forwarders had obtained customs license, it was also a fact that a number of them were operating without customs license which was legally not correct. He invited attention to the State Bank's F.E. Circular No.23 dated 29-02-1992 under which the procedure of issuing House Bill of Lading was prescribed and F.E. Circular No.6 dated 15-05-2006 regarding the issue of Master Bill of Lading in favour of the Freight Forwarders. He stated that there was no

provision in the Customs Rules or the SBP Rules that the Master Bill of Lading should also indicate the names of the banks which were supposed to transact documents. The names of the banks were also not mentioned on the individual Bills of Lading issued by the Freight Forwarders.

25. He was of the view that this provided an opportunity for malpractice by some delinquent Forwarders. In the SBP Circular dated 15-05-2006 there was a provision that the cargo be released at the port of discharge on presentation of bank endorsed original House Bill of Lading. Similar specific provision might be available in the Customs Rules also but these instructions were not complied with by certain Forwarders and the customs officials do not specifically check compliance of these instructions.

26. The Additional Collector of Customs (Preventive) stated that Secretary Revenue Division/Chairman CBR chaired a meeting of the "National Trade Corridor (NTC) Committee on Trade Facilitation, Ports Dwell Time and Port Charges" at the CBR on 03-08-2007 to discuss the progress on decisions taken on a number of issues including 'Freight Forwarding Industry Regulation and Development' and the frame-work of 'Freight Forwarders Rules'. Mr M Javed Billwana, Chairman PHMA, Karachi, and Mr M Naqi Bari representing the KCCI also attended the meeting and explained that the Freight Forwarders were exploiting the trade by collecting unwarranted and changing names of the exporters and consignees. The issues related to title of goods due to the procedure of the House Bills of Lading was discussed at considerable length. Chairman CBR emphasized that recourse should be made to the internationally recognized norms and practices while formulating rules and regulations for the Freight Forwarding Industry. He stressed that there was a need for having clear rules/regulations for the working of Freight Forwarders so that unscrupulous elements should not exploit the trade. He directed the Ministry of Commerce and PIFFA to expedite the finalization of rules by taking into consideration all issues and creating a consensus of all stakeholders. He also directed that Regulatory Authorities should take note of the problems of the exporters with a view to redress them, which should result in reducing the cost of business.

27. During extended hearings of the complaint, the statements of the stake-holders and their Counsels and the actions and steps taken by the Additional Collector of Customs (Preventive) and Deputy Collector of Customs were recorded. The Chairman PHMA and his Counsel repeatedly voiced their continuing grievance about the malpractices of changing the names of suppliers and consignees in the Bills of Lading with the result that a large number of medium and small exporters were deprived of the sale proceeds of their consignments and had suffered losses, and the country was also deprived of the foreign exchange. As a corollary to the malpractices, even in cases where sale proceeds were remitted/paid, the exporters were forced to allow substantial discounts and other illegal charges. It has been alleged that several complaints have been made to the customs authorities in such cases but no concrete action was taken.

28. It has been stated by PHMA that besides the fact that proper policy frame-work has not been put in place and procedure has not been prescribed, not even preliminary steps have been taken to rectify the existing difficulties and redress the grievance of

medium and small exporters, especially of hosiery products. The Freight Forwarders and Shipping Companies/Agents were free to exploit the exporters to their advantage without any regulatory system to check the malpractices reported by the exporters. State Bank has prescribed checks to be exercised by the authorized dealers but they have not been complied.

29. The Complaint is mainly directed against the Customs who, it has been alleged, do not carry out their basic responsibility of checking the Bills of Lading which are legally a customs document. It has been emphasized that proper explanation and reply has not been given in the specific cases mentioned in the complaint of PHMA and the customs authorities have not even indicated what action did they propose to take to provide relief to them and penalize the exploitative agents

30. From the statements made during the proceedings it is established that Medium and Small exporters have no choice but to reserve shipping space through the Forwarders who have been permitted to issue HBL on the basis of the MBL issued by the Ships' Captain in the Forwarders' names. This problem is not faced by the large exporters who are not obliged to get a part of the container-load for export of their consignment. But the not so large exporters are left at the mercy of the Forwarders who, it has been alleged, issue Bills of Lading in favour of their own agents in foreign destinations who may or may not deliver the goods to the actual buyers. Another complicating factor is the insistence of some foreign buyers of imposing a condition on the Pakistani exporters to export through specific Forwarders.

31. Consequent on filing of this complaint, the Chief Collector of Customs deputed the Additional Collector of Customs (Exports) to conduct a 'Facts Findings Inquiry', who submitted his findings and recommendations which were sent to the FBR and a copy forwarded to this office. The Collector of Customs (Preventive) had sent the draft International Freight Forwarders Licensing Rules and mentioned in his letter dated 31-10-2006 to the FBR that Pakistan International Freight Forwarder Association (PIFFA) shall also furnish their new proposals for regulation of trade to curb trade malpractices. Whether any action has been taken to formulate and enforce the Freight Forwarders Rules and whether the Ministry of Commerce has finalized its task of finalizing the Rules in pursuance of the directive of Chairman FBR has not been brought to the notice of this office.

32. This office has taken cognizance of the complaint on account of the persistent complaints of PHMA against the customs authorities who have not taken action to redress their persistent grievances. The material provided to this office by the PHMA, the customs, Ship Association, PIFFA etc has been examined. Since the FBR and the Ministry of Commerce are already seized of the need to regulate the business of the Freight Forwarders, no further emphasis is necessary on this account.

33. The problem has been examined in depth and the following documents have been examined:

(i) Circular No.23 dated 29-02-1992 under which State Bank allowed the Shipping Companies/Shipping Agents to issue Master Bills of Lading for consolidated shipments against **advance payments or irrecoverable Letters of Credit** allowing issue of title documents under cargo Consolidated system showing Consolidators as shippers and their agents abroad as consignees.

(ii) SBP letter dated 10-05-2006 addressed to Chairman Towel Manufacturers Association of Pakistan (TMA) allowed issuance of Bills of Lading in the names of consignees on DA/DP basis.

(iii) Draft International Freight Forwarders Licensing Rules sent to CBR by the Collector of Customs (Preventive) vide letter dated 31-10-2006.

(iv) Additional Collector of Customs' "Fact Findings Report" on the complaint made by PHMA conducted under the directive of the Chief Collector of Customs.

(v) The Standing Trading Conditions for Freight Forwarders published by the Ministry of Commerce in its Pakistan Trade and Transportation Review 2006

34. A careful examination of written and verbal statements and documents examined by this office leads to the following main features of the problem:

(i) The procedure prescribed by the State Bank of Pakistan in 1992 and permission granted to the TMA has allowed the Freight Forwarders to issue HBL in the name of their counterparts in the ports of destination if the condition of advance payments or irrevocable letters of credit was fulfilled. It was the responsibility of the authorized dealers (Banks) to ensure compliance but it seems that there is no regulatory procedure to verify that the State Bank's directive was strictly complied with.

(ii) The draft rules forwarded by the Collector of Customs (Preventive) and the document of Standard Trading Conditions for Freight Forwarders published by the Ministry of Commerce on 10-01-2004 constituting Standing Committee with the name of International Trading and Transport Facilitation Committee (NTTFC) have addressed the working of the Freight Forwarders and protection available under the various rules and regulations but the interest of the clients of the Freight Forwarders namely the exporters has not been addressed. The Collector too has not examined this aspect and he has proposed to retain power only to suspend/revoke customs license in each case which was not likely to redress the grievance experienced by and complaints made by the exporters. Only under proposed Rule 14 (XIV) of the Rules has it been stated that "During the course of their conduct the title and ownership of goods with receipt of

HBL shall remain with the importer/exporter and at no stage it is transferred to any other person without the approval of the authorized bank or owner of the goods consigner/consignee without getting approval of bank true owner of goods". Under Rule 15 action in case of violation has been proposed which is insufficient to redress the grievances of the exporters suffering on account of malpractices.

35. It appears that the central point to the complaint, i.e. issue of MBL and HBL (allowed by the State Bank of Pakistan) under which the malpractices reportedly take place has not been grasped by the customs officials. The contents of the Draft Rules and Findings and Recommendation of the Additional Collector have not proposed any procedure to ensure payment of sale proceeds to the genuine exporters and penalize the Freight Forwarders/Shipping Lines/Shipping Agents for wrong delivery at the destination or unlawful discount charged/ demanded from them. Once the goods have been brought in the port area and loaded in the ship for export, the control of the shipper on these goods ceases to exist. It is the responsibility of the authorized bank and the customs agent i.e. Shipping Lines/Agents/Forwarder to ensure that the shipper is not deprived of the sales-proceeds or otherwise suffer for no fault on his part.

36. It has been recognized by this office that the main regulatory agency in the process of export and realization of sale proceeds is the Department of Customs while it is the responsibility of the authorized banks to verify timely receipt of foreign exchange sale proceeds. The Customs Export Collectorate deals with the exports on a daily basis and should be able to take notice of the grievances of the exporters. Similarly the Preventive Collectorate/the Appraisement Collectorate which issue various customs licenses for processing of documents, examination of goods, and allow loading, and Bill of Lading is a recognized customs document, the relief ought to be provided and punitive action be taken by the Customs Department and in such cases the relevant authorized dealer i.e. the Bank should also be associated.

37. The PHMA has brought into focus genuine complaints of exporters of Hosiery Products and highlighted 11 exporters named in paragraph 1. They have also produced documentary evidence of 36MBLs and HBLs to establish that the consignees' names had been changed by the BOL issuing authority. It has also been established that Freight Forwarders/Consolidators are not licensed by any government agency and some of them have indulged in malpractices on which no action seems to have been taken. It has also been observed that in the draft Rules for licensing of Freight Forwarders and the internationally recognized conditions for operation of Freight Forwarders, emphasis has been laid on the procedure for licensing and the measures to protect Forwarders but these documents do not contain any provisions to ensure that the State Bank Regulations regarding the Bills of Lading are complied with, the consignments are delivered to actual consignees at the ports of destination without undue discounts and the so-called port handling charges, frame-work for redressing the grievances of the shippers has not been prescribed and no penalties/punitive actions have been envisaged against the defaulting Freight Forwarders.

38. Similarly, the Collector of Customs and the Additional Collector of Customs (Preventive) have not given elaborate proposal in this context and even the penalties under clauses 39/39-A of section 156(1) of the Customs Act have not been included in the proposal. Whether the Ministry of Commerce has completed the assignment given to it by the Chairman CBR has also not been reported by the officers of the Customs Department. It is felt that the matter deserves immediate attention of the Chairman CBR. Since the matter is inevitably linked with the functions of the Customs Department it would be appropriate if the Revenue Division makes the Karachi Custom House the focal point for formulating the proposals for licensing of the Freight Forwarders, the function of maintaining vigilance over their working and taking appropriate corrective actions for deviations and non-compliance in clearly defined (and notified) Rules. The Custom House should also operate as the regulatory authority to examine the complaints of the shippers and after due process take decisions to redress the grievances.

39. It is recommended that Federal Board of Revenue

(i) direct the Collector of Customs to ensure that the cases identified by the PHMA in their original letter in respect of the exporters mentioned in paragraph 1 be examined carefully by the officers of the competent jurisdiction and necessary action taken under the relevant rules besides punitive action under the provisions of the Customs Act with due process of law.

(ii) Constitute a task force under the Chief Collector of Customs to examine the problems of the exporters highlighted by the PHMA, formulate the rules for Freight Forwarders to make it incumbent for them to work under a customs license and propose a procedure for monetary/punitive action and legal proceedings to maintain effective check on malpractices (because mere revocation of license would not be adequate answer to the grievances of the exporters;

(iii) the Task Force should also examine the working of Manifest Clearance, the filing of (import and) export manifest by each (arriving and) departing vessel, the process of checking entries in the Export Manifests with the documents (including Bills of Lading) received in the section and identifying deviation/non-compliance of the prescribed procedure.

(iv) The above action be completed within two months; and

(v) report compliance to this office within three months.

(JUSTICE (R) MUNIR A. SHEIKH)
Federal Tax Ombudsman

Dated: -2008

BEFORE THE FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE, KARACHI

COMPLAINT NO.1001/2008

M/s.Saleem Traders,
Through: M/s. Maaz Consultant,
Suite No.2-A, 1st Floor,
State Life Building No.7,
G.Allana Road, Kharadar, Karachi. ...Complainant

Versus

The Secretary,
Revenue Division,
Islamabad. ...Respondent

Dealing Officer: ...Mr. Asad Arif, Adviser

FINDINGS/DECISION

Present: Mr.S.M.Younus, Consultant : for the Complainant.
Mr. Junaid Akram, Assistant Collector (Customs), for the Respondent

The complainant, an Individual earning income as an importer, is aggrieved by the Order-in-Original dated 05.01.2008 passed by the Assistant Collector/Deputy Collector of Customs Department.

2. Brief facts of the case are that the complainant imported a consignment of Hot Rolled Coils, secondary quality, consisting of 231.100 M/tons which was selected by the Customs authorities for examination and on the basis of which the cargo was reported to be Cold Rolled Coil (CRC), secondary quality. The complainant, however, did not agree to such findings. Thereafter, a show cause notice was issued to the complainant alleging that he has mis-declared the description, quality, value and classification of the goods as the physical examination thereof revealed that the consignment consisted of Hot Rolled steel sheets in coil of secondary quality (as declared) weighing 176.680 Kgs and also Cold Rolled Steel Sheets of secondary quality which was not so declared and which consisted of 54.420 Kgs classifiable under PCT Heading 7209.1610 assessable @ US$ 0.3765/Kg whereas the importer has declared whole quantity (i.e.231100 Kgs) of the goods as HRC steel sheets of secondary quality the value of which was declared at US$ 0.3260/Kgs. It was, therefore, concluded that the importer has contravened the provisions of section 32 of the Customs Act, 1969, section 33 of the Sales Tax Act, 1990 and section 148 of the Income Tax Ordinance, 2001. It is stated that pursuant to such notice, the representative of the complainant, one Mr.Muhammad Anwar Tariq, attended the hearing

before the Assistant Collector and explained the factual and legal position contending that the declaration in Goods Declaration (GD) was made on the strength of valid shipping documents and that no statement or declaration was made which was false/untrue in material particular and that no mens rea, being essential ingredient of tax evasion, is involved which attracts the provisions of section 32 of Customs Act, 1969 (hereinafter referred as the Act), or penalty under item 14 of section 156(1) of the Act and requested that the material be reexamined in the presence of the representative of the importer. It is stated that after the proceedings, the impugned Order-in-Original was issued in a mechanical and conjectural manner holding the importer guilty of mis-declaration and ordering the release of the consignment on payment of redemption fine @ 50% of the value of offending goods which comes to Rs.1,260,585. It is contended that in the show cause notice, the declared value of the offending goods is mentioned at Rs.1,253,520 but in the Order-in-Original it is doubled to the Rs.2,521,170 and a false statement is also attributed in the Order-in-Original that the material was re-examined in the presence of the importer though no such examination was carried out in his presence. It is argued that the show cause notice issued by the Assistant Collector suffers from illegality inasmuch as section 32 of the Act, on which the case is framed, casts an obligation on the Revenue Department to prove the allegation through inconvertible evidence that the declarant made any declaration or statement before the Customs Officer which is false/untrue in material particular which in the instant case there is none. It is argued that the declaration of the description of the material was made on valid shipping documents and the respondent did not allege submission of fake or tempered documents nor he disputed the value of the material and hence no cause of contravention could be made. Reference in this regard is made to a judgment of the Sindh High Court, Karachi in CP No.D-1360 and misc.No.5096 of 5005.

3. It is further contended that the adjudication was made by the Assistant Collector who was not a competent officer within the meaning of section 179 of the Act which deals with jurisdiction and powers of the Customs Officer and which lays down that though there is no limit of adjudication in the case of an Additional Collector but a Deputy Collector can adjudicate cases involving value of goods up to Rs.800,000 and Assistant Collector upto Rs.300,000. It is urged that in the show cause notice, the signatory disclosed his designation as Assistant Collector but in the Order-in-Original, he mentions his rank as Assistant Collector/Deputy Collector and as such, it is not clear whether he is Assistant Collector or Deputy Collector but in any case, neither of these authorities was competent to adjudicate in the present case which involves value of goods at Rs.2,521,170. It is, therefore, contended that both the show cause notice as well as the Order-in-Original are without jurisdiction and thus liable to be quashed. Reference in this regard is made to Annual Report 2003 of this office in which at page No.37, it is held that *"the doctrine of ultra vires captures the idea that any action of a public official must be exercised within the jurisdiction conferred on that public official by its Enabling Act."* It is further argued that even if for the sake of argument, it is accepted that out of 231.100 tons, there was 54.420/ M.tons CRC secondary quality, the complainant cannot be charged for mis-declaration as the rate of duty chargeable is the same and in this regard reference is made to ruling No.101 of CGO-12/2000 issued by the FBR.

4. For the above reasons, it is contended that the Order-in-Original, being illegal, should be quashed and direction be issued that the amount of Rs.1,280,585 collected by the respondent as customs duty be refunded and the additional expenses incurred in the shape of wharfage, container detention charges and other miscellaneous expenses, in all amounting to around Rs.300,000, be ordered to be paid back alongwith interest @ 15% of the amount from the date of collection alongwith compensation of Rs.200,000.

5. Replying to the allegations in the complaint, the Assistant Collector in his written report has first raised a preliminary objection that in terms of section (9)(2)(b) of the establishment of the Office of Federal Tax Ombudsman Ordinance, 2000, no complaint can be filed/entertained against an order for which remedy of appeal or revision is available in the statute.

6. On merits, it is asserted that the mis-declaration of physical description of goods i.e. import of CRC under the garb of HRC is not only established but admitted by the complainant. It is urged that the whole consignment was re-examined on the request of the complainant and as a result of such re-examination, the extent of CRC was found to be 109.494 Kgs instead of 54.420 Kgs. It is contended that since there was no dispute about this factual position the complainant made no objection in this regard at the clearance stage nor filed any appeal against the impugned order. It is urged that the goods have now been released for home consumption which renders it impossible at this belated stage to resolve this fabricated factual controversy.

7. It is further contended that since the complaint has been filed against the Order-in-Original passed the Assistant Collector in compliance to which the complainant has cleared the imported goods without any objection and has not filed any appeal against the said order before the Collector in terms of section 193 of the Act within the stipulated period of 30 days which expired on 04.02.2008, therefore, in a bid to circumvent the legal position in the case, the complainant has filed the subject complaint to open a past and closed transaction and thus the complaint is liable to be dismissed. It is contended that there is no denial of the fact that high value CRC was imported by the complainant under the garb of HRC and this fact came to light during the checking of the consignment in terms of section 80(3) of Act which proved that the complainant's declaration and self-assessment was incorrect as the complainant made a false statement in respect of payable duty and taxes and attempted to clear the consignment with false declared particulars of the imported goods and, as such, the charge of deliberate short payment of revenue was established against the complainant.

8. As far as the objection of the complainant regarding monetary jurisdiction of the Adjudicating Officer is concerned, it is contended that the limit is specified with reference to the differential amount of duty and taxes involved in the offending goods liable for confiscation and not with reference to the value of goods and since the differential amount of duty and taxes was less than Rs.300,000, the Adjudicating Officer rightly passed the impugned Order-in-Original.

9. Responding to the above, the learned A.R of the complainant has contended that as per standing order No.3/97 dated August, 1997 issued by the Customs House, Karachi, it is the value of offending goods which is the criterion for determining the level of Adjudicating Officer for the purpose of section 179 of the Act and not the differential amount of duty and taxes and thus, the respondent has given an interpretation of the provisions of law which is contrary to the standing order No.03/97. The learned A.R reiterated that the impugned Order-in-Original is without jurisdiction. It is further contended that the examination of the consignment was done at the shed in three stages as firstly, the entire material was declared to be CRC secondary quality instead of HRC secondary quality. Then, in second examination out of 231.1001 M.tons, 54.420 Kgs was declared to be CRC and the rest HRC, secondary quality. It is further stated that despite request, the examination was not done in the presence of importer's representative and the quantity of CRC secondary quality, was suddenly enhanced to 109.494 Kgs.

10. Clarifying the above, the D.R has stated that the first examination was conducted by an official who was not well-versed and well-conversant with the subject and when the re-examination was conducted by another expert official, the quantity of CRC was found to be 109.499 tons which was never disputed by the importer at the time of payment of duty and clearance of goods.

11. Parties have been heard and the record produced has been examined.

12. The objection raised by the Department in regard to jurisdiction of this office in the matter is not valid. It has repeatedly been explained that whenever maladministration is alleged independent of the controversy in the matter, there will be no bar to jurisdiction of the Federal Tax Ombudsman to look in to the allegation of maladministration irrespective of the fact that a remedy under the statute has been provided. Wherever maladministration is alleged and proved, then the FTO can give recommendations and findings which may even affect the merits of case. What is alleged in the present complaint is that the impugned order has been passed arbitrarily and is against the provisions of law which, if proved, tantamounts to maladministration which this office is competent to look into or inquire.

13. However, the contention raised on behalf of the complainant that the impugned order was passed without allowing an opportunity of hearing and the goods were re-examined in the absence of the importer/his representative carries little weight. While rebutting these allegations, the D.R furnished copies of computer record containing History of Contravention of the case in which the relevant entry to rebut this allegation reads as under:

> *" Show cause issuance dated December 17, 2007 12.00 A.M, Adj Officer, Riaz Hussain, attended hearing Mr.Muhammad Anwar Tariq NIC No.42101-1752071-3 represented the importer and requested for reexamination of the whole consignment, as the importer was not agree with the examination report. The case was thoroughly considered and was sent for reexamination, to confirm the importer's point of view. The second examination report shows the quantity*

(calculated on the basis of 100% examination report, container wise in presence of the importer) of HRC 112,166 Kgs. CRC 109,494 Kgs. The total value of offending goods i.e Cold Rolled Steel Sheets in coil of secondary quality found undeclared, calculated on the basis of the criteria applied by the concerned group is Rs.241,682. The contravened goods are hereby released on redemption fine amounting to 50% of the value of the offending goods, and a penalty of Rs.10,000 is charged against the NTN."

14. The above would show that the importer was duly represented and the examination was also conducted in his presence and that is why no objection was raised at the time of payment of duty and clearance of goods regarding the quantity of CRC found on such re-examination.

15. Similarly, the argument raised on behalf of the complainant that the declaration of the description of the material was made on valid shipping documents which the Customs authorities have failed to prove as fake or tempered and, therefore, the provisions of section 32 of the Act are not applicable as no mens rea was involved is also not convincing and reference to the High Court's judgment in CP No.D-1360 is misplaced.

16. The relevant provisions of section 32 read as under:

"Untrue statement, error etc. (1) if any person, in connection with any matter of customs,

(a) makes or signs or causes to be made or signed, or delivers or causes to be delivered to an officer of customs any declaration, notice, certificate or other document whatsoever, or

(b) makes any statement in answer to any question put to him by an officer of customs which he is required by or under this Act to answer,

[knowing or having reason to be believe that such document or statement is false] in any material particular, he shall be guilty of an offence under this section.

(2) Where, by reason of any such document or statement as aforesaid or by reason of some collusion, any duty or charge has not been levied or has been short levied or has been erroneously refunded, the person liable to pay any amount on that account shall be served with a notice within [five] years of the relevant date, requiring him to show cause why he should not pay amount specified in the notice."

17. It was on the basis of physical re-examination of the whole consignment that it was found to contain 54.420 Kgs of CRC which are classifiable under a different heading assessable at a higher rate and which was not so disclosed in the GD. Thus, there was sufficient material on record to show that the complainant had made a mis-declaration having knowledge that it was false and thus, the requirements of sub-section (1) of

section 32 are fulfilled. The provisions of sub-section (2) of section 32 have also been applied in this case and these provisions can be invoked in consequence of mis-declaration/mis-statement without establishing commission of offence in its account.

18. A perusal of section 32 shows that sub-section (1) contains the definition of the offence constituted on account of making mis-declaration or mis-statement in connection with any matter of Customs. Sub-section (2) of section 32 takes care of retrieving the state revenue and provides complete mechanism for recovering the duty or charge which was not levied or was short levied or was erroneously refunded. From the language of sub-section (2) of section 32, it is clear that mere mis-declaration or mis-statement or collusion between the person making mis-declaration or mis-statement and Customs official is sufficient per se for making good the loss caused to the state revenue. No question of any guilty mind or mens rea is involved and no such condition is attached for invoking the provisions of sub-section (2) of section 32 of the Act.

19. The objection of the A.R of the complainant with regard to competency of the Adjudicating Officer in terms of section 179 of the Act to decide the case in hand is also misconceived. The relevant provision of the said section 179 reads as under:

> *"**179 Power of adjudication:** (1) Subject of sub-section (2), in cases involving confiscation of goods or imposition of penalty under this Act or the rules made thereunder, the jurisdiction and powers of adjudication of the officers of customs shall be as follows:*
>
> *"i) Additional Collector without limit*
>
> *ii) Deputy Collector not exceeding Eighty Hundred Thousand Rupees.*
>
> *iii) Assistant Collector not exceeding Three Hundred Thousand Rupees."*

20. It would thus be seen that the monetary limit fixed for various levels of officers are applicable only in those cases which involve confiscation of goods or imposition of penalty. In the instant case, a demand for escaped duty has been raised on account of mis-declaration and for that the Adjudicating Officer was fully competent. There is thus no force in this argument as well.

21. In view of the above, no case of maladministration has been made out requiring further action and the matter is, therefore, treated as closed.

(JUSTICE (R) MUNIR A. SHEIKH)
Federal Tax Ombudsman

Dated: -2008

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Press Clippings

KHABRAIN
ISLAMABAD

05 SEP 2008

وفاقی ٹیکس محتسب نے چنیوٹ انٹرپرائزز کے ریفنڈ کلیم پر فیصلوں کو کالعدم قرار دیدیا

شکایت کنندہ کے ریفنڈ کلیم پر قانون کے مطابق کارروائی عمل میں لائی جائے گی: منیر اے شیخ

اسلام آباد (اے پی پی) وفاقی ٹیکس محتسب جسٹس (ر) منیر اے شیخ نے فیڈرل بورڈ آف ریونیو کو حکم دیا ہے کہ میسرز چنیوٹ انٹرپرائزز لطیف آباد حیدرآباد کے ریفنڈ کلیم پر سیلز ٹیکس اینڈ فیڈرل ایکسائز کے حکامات اور اپیل پر حکامات کو کالعدم قرار دیا جائے اور شکایت کنندہ کی پیش کردہ دستاویزات کا جائزہ لے کر ریفنڈ کلیم پر قانون کے مطابق کارروائی کی جائے۔ وفاقی ٹیکس محتسب نے یہ فیصلہ گزشتہ روز میسرز چنیوٹ انٹرپرائزز لطیف آباد حیدرآباد کی سیلز ٹیکس اینڈ فیڈرل ایکسائز کی طرف سے جاری ہونے والے کالعدم ... کی شکایت کی سماعت کے بعد دیا۔ وفاقی ٹیکس محتسب نے اپنے فیصلے میں کہا کہ محکمہ کی بدانتظامی کا عمل ثابت ہو گیا ہے اس لئے ایف بی آر کو حکم دیا جاتا ہے کہ اس معاملے پر جاری کردہ تمام حکامات اور اپیل پر حکامات کو کالعدم قرار دیا جائے۔ محکمہ اس بات کو یقینی بنائے کہ شکایت کنندہ تمام ضروری دستاویزات اور کاغذات کی کاپیوں کے ساتھ متعلقہ دفتر میں پیش ہو گا جہاں سے ان کی تصدیق کرا کر دستاویزات علاقائی ٹیکس دفتر پشاور میں جمع کرا سکے۔ وفاقی ٹیکس محتسب نے ہدایت کی کہ شکایت کنندہ کے ریفنڈ کلیم پر قانون کے مطابق کارروائی عمل میں لائی جائے اور 60 روز کے اندر اس کی رپورٹ وفاقی ٹیکس محتسب کو پیش کی جائے۔

3/2/2008

روزنامہ آج

پشاور میں وفاقی ٹیکس محتسب کا ریجنل آفس قائم کرنے کا فیصلہ

[illegible]

پشاور (آج نیوز) سرحد چیمبر آف کامرس اینڈ انڈسٹری پشاور کے صدر شرافت علی مبارک اور وفاقی ٹیکس محتسب کے ڈائریکٹر جنرل سید ضیاء محبوب کے درمیان ٹیکس گزاروں اور ٹیکس افسران کے مابین تنازعات کے حل کے لئے مل کر کوششیں کرنے پر اتفاق ہوا ہے جبکہ ڈی جی سید ضیاء محبوب نے انکشاف کیا ہے کہ 2 ہفتوں کے اندر پشاور میں وفاقی ٹیکس محتسب کا ریجنل آفس کام شروع کر دے گا جس سے یہاں کی بزنس کمیونٹی کو تمام سہولیات فراہم ہو سکیں گی۔ یہ اتفاق رائے ڈائریکٹر جنرل سید ضیاء محبوب کے دورہ سرحد چیمبر کے موقع پر ہونیوالی ملاقات میں ہوا۔ اس موقع پر سرحد چیمبر کے صدر شرافت علی مبارک کے علاوہ سرحد (باقی صفحہ 6 بقیہ نمبر 18)

بقیہ نمبر 18 — سرحد چیمبر

چیمبر کے سابق صدر حاجی محمد آصف، سرحد چیمبر کی ٹیکس کمیٹی کے چیئرمین [illegible] اور سرحد چیمبر کے ممبران بھی موجود تھے۔ سرحد چیمبر کے صدر شرافت علی مبارک نے پشاور میں وفاقی ٹیکس محتسب کے ریجنل آفس کے قیام کو خوش آئند قرار دیتے ہوئے کہا کہ اس اقدام سے ٹیکس دہندگان کو ٹیکس سے متعلق شکایات کے حل کے لئے سہولیات میسر آ سکیں گی۔

ایف ٹی او نے نشریاتی آلات مالکان کے حوالے کرنے کی اجازت دیدی

اسلام آباد (آن لائن) وفاقی ٹیکس محتسب (ایف ٹی او) نے فیڈرل بورڈ آف ریونیو (ایف بی آر) اور کسٹم کلکٹر کو ہدایات جاری کی ہیں کہ درآمد شدہ نشریاتی آلات جن کی کلیئرنس روک دی گئی ہے اور جو 12 نومبر 2007 کے وزارت تجارت کے نوٹیفکیشن سے قبل (صفحہ 9 بقیہ نمبر 18)

237-K10 8

بقیہ 18 اجازت

درآمد کیے گئے ہوں کو پاکستان الیکٹرانک میڈیا ریگولیٹری اتھارٹی (پیمرا) کے این او سی کے بغیر ہی جلد از جلد ریلیز کر کے مالکان کے حوالے کیا جائے۔ گزشتہ روز جاری ہونے والی رپورٹ میں کہا گیا کہ سابقہ ایف ٹی او نے کسٹم حکام کی جانب سے درآمدی سامان کو بغیر کسی وجہ کے اپنی تحویل میں رکھنے کا از خود نوٹس لیا ہے۔ تفصیلات کے مطابق ایک اہم مقدمے میں احکامات جاری کرتے ہوئے کہا ہے کہ پاکستان کسٹم ٹیرف (ہارمونائزڈ سسٹم) کے تحت درآمد کیے گئے نشریاتی آلات جن میں ریسیورز، ایل این بی اور دیگر آلات شامل ہیں کو جلد از جلد چھوڑا جائے اور اس کے لئے پیمرا کے کسی بھی این او سی کی کوئی ضرورت نہیں۔ ایف ٹی او نے مزید کہا کہ وزارت تجارت نے گزشتہ سال 2007 میں 12 نومبر کو ایک ایس آر او نمبر 1150(1)/2007 جاری کیا تھا جس میں نشریات کے حصول اور اس کی تقسیم اور معلومات سیکٹر کی ترسیل میں استعمال ہونے والے آلات کی درآمد کو پیمرا سے حاصل کردہ این او سی سے مشروط کر دیا تھا جبکہ دوسری جانب اس ایس آر او سے قبل درآمد کیے جانے والے آلات کے لئے کسٹم حکام کو کوئی حق حاصل نہیں تھا دوسری جانب وزارت تجارت کی ہدایات اور پیمرا نے این او سی دونوں شرائط غیر قانونی تھیں۔ اس حوالے سے فیصلہ درخواست دہندہ سید کوثر عباس نقوی کی درخواست پر کیا گیا جس پر انہوں نے موقف اختیار کیا تھا کہ ماڈل کسٹم کلکٹریٹ (ایم سی سی) نے غیر قانونی طور پر درآمدی سامان اپنی تحویل میں رکھا جس سے انہیں شدید نقصان ہوا۔ اس وقت کسٹم حکام کے پاس ریسیورز، ایل این بی اور ریموٹ کے لئے رجسٹرڈ کے (450) کنٹینر موجود ہیں جن پر درخواست دہندہ کا موقف تھا کہ یا تو درآمد کردہ سامان کو جلد از جلد چھوڑا جائے یا پھر اسے دوبارہ برآمد کرنے کی اجازت دی جائے لیکن اس پر کوئی عملدرآمد نہیں کیا گیا اور نہ ہی کلکٹر کی جانب سے کوئی جواب دیا گیا۔ ایف ٹی او نے مزید کہا ہے کہ کسٹم ایکٹ کی شق (3)(1)31A کے تحت کسٹم حکام کو کوئی سامان روکنے کا اختیار موجود نہیں جبکہ سیکشن 19 کی موجودگی درآمد کنندگان کو اختیارات دینے کے پابند ہیں۔ ایف ٹی او نے اس موقع پر دونوں جانب سے (ٹیکس) کا موقف سننے کے بعد فیصلہ کیا کہ وزارت تجارت کی جانب سے جاری کردہ نوٹیفکیشن سے قبل آلات کی درآمد کے بعد کسٹم کی جانب سے سامان کو اپنی تحویل میں رکھنے کا کوئی جواز موجود نہیں تھا لہٰذا کسٹم حکام فوری طور پر اس سامان کو ریلیز کریں۔

وفاقی ٹیکس محتسب جسٹس (ر) منیر اے شیخ چین سے درآمد کردہ سامان کی غیر قانونی تحویل کا نوٹس

اسلام آباد (اے پی پی) وفاقی ٹیکس محتسب جسٹس (ر) منیر اے شیخ نے چین سے درآمد (صفحہ 38 بقیہ 38)

بقیہ 38 تحویل کا نوٹس

کردہ سامان کی غیر قانونی تحویل کا نوٹس لیتے ہوئے فیڈرل بورڈ آف ریونیو کو ہدایت کی ہے کہ رام کلوم زنگ کمپنی کے سامان کی روکی ہوئی کھیپ جاری کی جائے۔ واضح رہے کہ ایف ٹی او کے جاری بیان کے مطابق کمپنی نے محتسب کو شکایت کی تھی کہ چین سے درآمد کردہ سامان کی ایک کھیپ کو کلکٹر کسٹمز اپریزمنٹ ایسٹ کراچی نے غیر قانونی طور پر تحویل میں رکھا ہوا ہے۔ سامان میں ریڈیٹ اینگل پائپ جوائنٹس، ماچنگ پائپ جوائنٹس اور روونگ پائپ جوائنٹس شامل ہیں۔ وفاقی ٹیکس محتسب نے معاملے کا جائزہ لینے کے بعد کہا کہ تحقیقات ڈی جی کے فیصلے کے باوجود کسٹمز ڈیپارٹمنٹ درآمد کنندہ کو سامان کی کھیپ جاری نہیں کر رہا جو بدانتظامی کے زمرے میں آتا ہے۔ وفاقی ٹیکس محتسب نے ایف بی آر کو سفارش کی کہ کلکٹر کسٹمز کو ہدایت کی جائے کہ اسسٹنٹ کلکٹر کسٹمز کے جاری کردہ ڈیمانڈ سرٹیفکیٹ میں درج چارجز تحویل کے حساب سے جینگ ایجنسی اور کراچی انٹرنیشنل کنٹینرز ٹرمینل کو اسٹوریج چارجز اور دیگر چارجز کی ادائیگی کے بعد سامان کی کھیپ جاری کر دی جائے۔ ایف ٹی او نے ہدایت کی کہ اس فیصلے پر 30 یوم میں عملدرآمد کر کے 45 دنوں کے اندر محتسب آفس کو رپورٹ فائل کی جائے۔

Nawa-i-Waqt
RAWALPINDI

13 SEP 2008

[illegible]
فیصلہ [illegible] روز میں سنایا جائے
[illegible]

اسلام آباد (اے پی پی) وفاقی ٹیکس محتسب جسٹس (ر) منیر اے شیخ نے فیڈرل بورڈ آف ریونیو کو حکم دیا ہے کہ ممبر کسٹمز [illegible] درآمد کردہ مصنوعات کا تجزیہ جلد از جلد مکمل کرتے ہوئے تیس روز کے اندر 47 لاکھ 91 ہزار روپے کے ریفنڈ کے کیس کا فیصلہ سنایا جائے۔ یہ فیصلہ [illegible] کی درخواست پر سنایا گیا جس میں استدعا کی گئی تھی کہ شکایت کنندہ نے لوہے اور سٹیل کی کوائل، شیٹس، سکریپ (صفحہ 10 نمبر 2)

2 | محتسب | بقیہ

[illegible] آمدنی ٹیکس اور حلقہ [illegible] کی ہدایت پر 47 لاکھ 91 ہزار 667 روپے جمع کرائے گئے تھے تاہم محکمے نے حلقہ [illegible] کی ہدایت کو نظر انداز کرتے ہوئے [illegible] تصدیقی رپورٹ کے [illegible] کرائی گئی اور اب [illegible] کی جا رہی۔ وفاقی ٹیکس محتسب نے اپنے فیصلے میں کہا ہے کہ شواہد سے ظاہر ہوتا ہے کہ اس کیس میں [illegible] تحت کے تجزیہ کی بنیاد پر حلقہ [illegible] نے فیصلہ کیس سنایا اس لئے ایف بی آر کو حکم دیا جاتا ہے کہ کلکٹر کسٹمز [illegible] آمد شدہ اشیاء کا تجزیہ مکمل کرنے کی ہدایت کی جائے اور [illegible] اس تجزیہ کی بنیاد پر اس کیس میں [illegible] قانونی [illegible] پوری کرے۔ وفاقی ٹیکس محتسب نے ایف بی آر کو مزید ہدایت کی کہ شکایت کنندہ کو اپنا موقف پیش کرنے کا موقع فراہم کیا جائے۔ اشیاء کے تجزیہ کا حکم جاری کیا جائے اور ریفنڈ کیس کا فیصلہ سنایا جائے اور اس حکم پر عملدرآمد کو تیس روز کے اندر یقینی بنایا جائے اور اس کی رپورٹ [illegible] یوم کے اندر ٹیکس محتسب کو پیش کی جائے۔

1105-K/08

JINNAH
ISLAMABAD

16 SEP 2008

درآمد شدہ اشیاء کی ڈیکلریشن کی بنیاد پر محصولات کا تعین کیا جائے۔ وفاقی ٹیکس محتسب

اسلام آباد (کامرس رپورٹر) وفاقی ٹیکس محتسب جسٹس (ر) منیر اے شیخ نے فیڈرل بورڈ آف ریونیو کو حکم دیا ہے کہ کسٹم [illegible] کو جاری کردہ 5 لاکھ 79 ہزار روپے کا ڈیمانڈ نوٹس رد کرتے ہوئے شکایت کنندہ کو پوسٹ ڈیٹ چیک واپس کیا جائے اور درآمد شدہ اشیاء کی ڈیکلریشن کی بنیاد پر محصولات کا تعین کیا جائے۔ یہ فیصلہ [illegible] کی شکایت پر سنایا گیا جس میں شکایت کنندہ نے کہا تھا کہ انہوں نے جرمنی سے 4600 [illegible] درآمد کرے 2.38 [illegible] کی قیمت پر درآمد کی تھیں۔ اسسٹنٹ کلکٹر کسٹمز نے ان مصنوعات پر سیلز [illegible] ڈیوٹی اور ٹیکسوں کی مد میں پانچ لاکھ 79 ہزار 112 روپے کا ڈیمانڈ نوٹس جاری کیا ہے۔ وفاقی ٹیکس محتسب نے اپنے فیصلے میں کہا ہے کہ کلکٹر نے درآمدی [illegible] کے تعین کے لئے کوئی احکامات جاری نہیں کئے جو کہ کسٹمز ایکٹ اور [illegible] کی خلاف ورزی ہے اور بدانتظامی کے زمرے میں آتا ہے۔ وفاقی ٹیکس محتسب نے ایف بی آر کو حکم دیا ہے کہ کلکٹر کسٹمز کو درآمد کنندہ کی ظاہر کردہ قدر کے مطابق ڈیوٹی اور محصولات کے تعین کی ہدایت کی جائے اس سلسلے میں جاری کیا گیا ڈیمانڈ نوٹس رد کیا جائے اور درآمد کنندگان کو ان کا پوسٹ ڈیٹڈ چیک واپس کیا جائے۔

C-1112-K/08

DAWN 3 2 2003

Federal Tax Ombudsman to open office in Peshawar

Bureau Report

PESHAWAR, Feb 1: Federal Tax Ombudsman is opening its regional office in Peshawar to settle tax-related disputes between tax collecting agencies and the taxpayers.

Syed Zia Mehboob, director general Federal Tax Ombudsman, said this while speaking at a meeting at the Sarhad Chamber of Commerce and Industry (SCCI) here on Monday. The SCCI president, Sharafat Ali Mubarik, and a number of businessmen of the area were present on the occasion.

Speaking on the occasion, Mr Mehboob assured the local business community that they would provide maximum relief to the taxpayers, adding the opening of regional office in Peshawar would help reduce their problems.

He said that the Federal Tax Ombudsman had purely been established to address the concerns of the taxpayers and it was an effective body.

Zia Mehboob told the meeting that the Ombudsman's office had received 14,000 complaints, out of which 13,000 had been disposed of, which include over 1,000 complaints from NWFP.

PAKISTAN OBSERVER
ISLAMABAD

8-11-2008

FBR asked to decide case of complainant on merit

ISLAMABAD—Federal Tax Ombudsman (FTO) Justice (R) Munir A. Sheikh has asked the Federal Board of Revenue (FBR) to examine the case of the complainant and decide his case on merit.

This decision was taken by the FTO on the complaint of M/S Industrial clothing's (Pvt.) Ltd. Karachi against the Commissioner Income Tax to pass an impugned order under IT Ordinance 2001 against the complainant who was sanctioned a refund of Rs. 567369 for the assessment years 1994-1995 to tax year 2003 and applied for additional payment for delayed refund under the Ordinance.

The FTO has ruled in his decision that the impugned orders have been passed without providing opportunity of hearing to the complainant as required by law, therefore, these are not sustainable, says a statement issued by the FTO Secretariat here on Friday.

He has also ruled that all these orders passed by the Department were contrary to law and principle of natural justice which tantamount to maladministration.

The FTO has asked the FBR to direct the Commissioner Income Tax to invoke the provisions of the IT Ordinance, 2001 with regard to the orders for the assessment years 1994-1995 to tax year 2003 and also direct the concerned Commissioner to re-examine the matter and decide the case on merit within 45 days of the receipt of this order in accordance with law and facts of the case after providing a reasonable opportunity of hearing to the complainant and compliance in this regard be reported within 7 days.—APP

C. No. 1655-K/08

Pakistan Observer
ISLAMABAD

21 SEP 2008

FBR asked to revise blocking procedure

ISLAMABAD—Federal Tax Ombudsman (FTO) Justice (R) Munir A. Sheikh here on Saturday asked Federal Board of Revenue (FBR) to de-block filing of customs documents and decide the cases of Provisional assessment of complainant M/s Western Computer.

The decision was taken by the FTO on the complaint of M/S Western Computer (Pvt) Ltd, Karachi, an importer of computer desks, against the collector of Customs, MCC, Port Muhammad Bin Qasim and the Collectorate of Customs, MCC, PACCS, Customs House Karachi, which blocked the electronic filing of Goods Declaration of the importer at Karachi Port and M.B. Qasim Port without any notice or order by the appropriate authority.

The FTO has ruled that it would be appropriate if the SOP is modified in the computer system, so that the blockage does not take place prior to the completion assessment and without issuing notice for the outstanding dues.

The FTO has asked the FBR to direct both the collector of customs to decide the cases of the complainant about the Provisional assessments of his goods and revise the blockage procedure.

He has asked the FBR to direct D.G. Customs's Valuation to review the valuation of goods under Customs Act, Provide the complainant an opportunity to represent his case and decide the valuation within thirty days. The FTO has directed authorities concerned to de-block the filing of customs till the decision of Directer General and compliance in this regard be reported to this within forty five days.—APP

THE POST
ISLAMABAD

28 SEP 2008

FTO directs FBR to reopen Shahnawaz Textile case

ASSOCIATED PRESS OF PAKISTAN

ISLAMABAD: The Federal Tax Ombudsman (FTO) Justice ® Munir A Sheikh here on Saturday asked the Federal Board of Revenue to reopen order of Deputy Collector (Refund) issued to the M/s Shahnawaz Textile and decide his case on merit.

The decision was taken on the complaint of M/s Shahnawaz Textile Limited Lahore against the non-availability of data of Sales Tax at the computer of Sales Tax Department. The complainant had claimed refund under the Sales Tax Act 1990. The complainant had e-filed Sales Tax return in time which was verified by the department but the sales tax return date was not available in the computer at the time of the submission of refund claim.

The FTO has ruled that the department has committed an act of maladministration which did not upload e-return despite the fact that the e-return department did not fairly handle the case of the complainant.

He asked the FBR to direct the competent authority to reopen order of Deputy Collector (Refund) under Sales Tax Act 1990, entertain the refund claim of the complainant and decided his case on merit.

Starr 'abnormal profile' no reason for rejection of refund claims: FTO

M RAFIQUE GORAYA

ISLAMABAD: The Federal Tax Ombudsman Munir A Sheikh has ruled that sole reliance on the indications given by a computer programme would not be sufficient ground for rejection of a refund claim.

He said that there was no provision in the Sales Tax Act 1990 to support the action that in case the Starr system indicated a routine observation of "abnormal profile", the refund claim perforce be rejected. "The term 'abnormal profile' has nowhere been defined in the law," he added.

The FTO gave this ruling on a complaint of Chiniot Enterprises Ltd, Haripur, against rejection of its refund claim on the ground that the computer system Starr had indicated that the supplier had an 'abnormal profile'

The facts of the complaint were:

Chiniot Enterprises(Pvt) Ltd was engaged in the manufacture of vegetable ghee, oil and allied products. It filed the sales tax refund claim for the tax period May-2005 for the receipt of the supply of tinplate sheets issued by Owais Trading Company on which it paid sales tax amounting to Rs 127,112 through the banking channels.

During the verification of invoice the Starr system indicated that the registered supplier showed the 'abnormal profile'. An ex parte order in original was issued by Assistant Collector Sales Tax Refund, Peshawar, in which the refund claim of the complainant was rejected.

The Collector, Appeals, disposed of the appeal in which it was decided that since the Starr system had raised objection on the relevant invoice, as such the claim was not admissible. The plea taken by the department from the very first hearing of the case was that the Starr System showed 'Abnormal Profile' of the complainant and the same remained unchanged throughout the entire litigation period.

In his findings, the FTO said; "It is evident on the face of the record that the refund claim of the complainant was rejected because Starr System of processing, pointed out that the supplier had an 'abnormal profile' "

He said that there was, however, no provision in the Sales Tax Act, 1990 that supported the action that in case the Starr system indicated a routine observation of 'abnormal profile', the claim had, perforce, to be rejected.

He said it was understandable that necessary conditions had to exist before the refunds were allowed, but the sole reliance on the indications given by a computer programme would not be sufficient ground for rejection, more so because the terms 'abnormal profile' has nowhere been defined.

He said that supply in the instant case was made by a commercial importer which was duly registered with the Sales Tax Department and was, admittedly, submitting tax returns under the prescribed procedure on regular basis.

He said that the department had committed maladministration by rejecting the claim without taking into consideration the merit of the case. He directed the department to decide the case on merit in the light of his findings.

KAINAT
ISLAMABAD.

11 APR 2008

ایف بی آر برآمد کنندگان کے ریلیف کیلئے جامع قواعد مرتب کرے، وفاقی محتسب

بنک فورس تشکیل دے کر ایجنسیوں کو قواعد کا پابند بنایا جائے، پی آئی اے کی درخواست پر فیصلہ

اسلام آباد (اے پی پی) وفاقی محتسب جسٹس (ر) منیر اے شیخ نے برآمد کنندگان کی شکایات کے ازالے کیلئے فیڈرل بورڈ آف ریونیو کو حکم دیا ہے کہ وہ بنک فورس تشکیل دے اور سامان کی حمل عمل کرنے والے ایجنٹوں کیلئے جامع

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اختیار کیا گیا تھا کہ محکمہ کسٹم کراچی ان کے خلاف مناسب اقدام اٹھانے میں ناکام ہو گیا ہے جس سے نہ صرف برآمد کنندگان کو نقصان ہوا ہے بلکہ یہ حکومت پاکستان کے مفادات کے بھی خلاف ہے۔ وفاقی محتسب نے شکایت کا جائزہ لینے کے بعد ایف بی آر کو ہدایت کی ہے کہ پی آئی اے کی طرف سے جن امور کی نشاندہی کی گئی ہے ان کا بغور جائزہ لینے کیلئے متعلقہ افسران مقرر کئے جائیں اور متعلقہ قوانین کے تحت ضروری کارروائی عمل میں لائی جائے۔

Daily, Patriot, Islamabad.

28 AUG 2008

FBR asked to reassess custom duty, taxes on complainant's car

ISLAMABAD: Federal Tax Ombudsman, Justice (R) Munir A. Sheikh has asked Federal Board of Revenue (FBR) to reassess customs duty and taxes levied by Custom Department on the car of a complainant purchased by him from UNICEF in 2007.

This decision was taken by the FTO on the complaint of Mahmood Hassan against the alleged excessive assessment of custom duty and taxes by the custom Department, Hyderabad on the vehicle of the complainant he had purchased from a UN office.

The FTO has observed that customs Department inaccurate assessment of customs duty and taxes on the car purchased by the complainant from UNICEF is contrary to law and departure from established procedure without any valid reason amounts to maladministration.

He has recommended to the FBR to direct collector of customs to reassess the vehicle on the basis of the value of Toyota Corolla car on the exchange rate prevailing on the date of importation and assess the duty and taxes on the rates prevailing at that time, allow 50 percent reduction in duty and taxes as provided under the rules and intimate to the complainant the amount payable by him.

The FTO has also observed that as regards the alleged tempering of the registration number on the permission letter of the Ministry of Foreign Affairs, the customs authorities should satisfy themselves about the genuineness of the letter and its concents for taking action under law. He has also ruled that compliance be reported to this office within forty five days.–APP

PAKISTAN
ISLAMABAD

29 AUG 2008

وفاقی ٹیکس محتسب نے ایف بی آر کو فیصل آباد کی ٹیکسٹائل کمپنی کو 17 لاکھ 14 ہزار 907 روپے ری فنڈ دینے کا حکم دے دیا

اسلام آباد (اے پی پی) وفاقی ٹیکس محتسب جسٹس (ر) منیر اے شیخ نے ایف بی آر (باقی صفحہ 5 بقیہ نمبر 14)

بقیہ نمبر 14 — ایف بی آر

بورڈ آف ریونیو (ایف بی آر) کو فیصل آباد کی ٹیکسٹائل کمپنی کو 17 لاکھ 14 ہزار 907 روپے کا ری فنڈ دینے کا حکم دیا ہے۔ جمعرات کو وفاقی ٹیکس محتسب نے یہ حکم [illegible] کی شکایت پر جاری کیا۔ شکایت کنندہ کے مطابق فیصل آباد سیلز ٹیکس آفس نے سیلز ٹیکس ری فنڈ پیمنٹ آرڈر (آر پی او) سے غیر قانونی طور پر 17 لاکھ 14 ہزار 907 روپے منہا کر لیے۔ وفاقی ٹیکس محتسب نے قرار دیا کہ سیلز ٹیکس فیصل آباد نے [illegible] سیلز ٹیکس ایکٹ 1990 کا خیال نہیں رکھا گیا۔ ٹیکس محتسب نے قرار دیا کہ غیر قانونی طور پر رقم کی کٹوتی کی گئی اور ایف بی آر کو ہدایت کی گئی کہ وہ یہ رقم متعلقہ کمپنی کو واپس کرے اور 45 دن کے اندر اندر ایف بی آر عملدرآمد کے بارے میں اپنی رپورٹ وفاقی ٹیکس محتسب کو پیش کرے۔

Daily Express
ISLAMABAD

03 JUL 2008

ایف بی آر فریٹ فارورڈز کو لائسنس اجراء کیلئے قانون بنائے: وفاقی محتسب

ٹاسک فورس قائم کی جائے جو فریٹ فارورڈز کیلئے قوانین تیار کرے: ایف بی آر کو ہدایت

اسلام آباد (خصوصی رپورٹر) وفاقی ٹیکس محتسب جسٹس (ر) منیر اے شیخ نے ایف بی آر کو ہدایت کی ہے کہ فریٹ فارورڈز کو لائسنس کے اجراء کیلئے باقاعدہ قوانین بنائے جائیں تاکہ کسی کو بھی [illegible] کو استعمال کرنے کا موقع نہ [illegible]۔ یہ ہدایات وفاقی ٹیکس محتسب نے گزشتہ روز یہاں کراچی کی کمپنی [illegible] انجینئرز سے پاکستانی فریٹ فارورڈز [illegible] کی طرف سے غیر قانونی طور پر ٹیکس وصولی کے معاملے کی سماعت کرتے ہوئے (باقی صفحہ 5 نمبر 22)

بقیہ نمبر 22 — ٹیکس

انہوں نے کہا کہ فریٹ فارورڈز کے [illegible] کیلئے واضح قواعد و ضوابط کی موجودگی ضروری ہے انہوں نے کہا کہ ایف بی آر فریٹ فارورڈز کو لائسنس کے اجراء کیلئے قوانین بنائے [illegible] کی نگرانی کرے [illegible] ان کے خلاف [illegible] مناسب ہو گا۔

8.7.08

Hon'ble F.T.O.

DAWN 3 2 2003

Federal Tax Ombudsman to open office in Peshawar

Bureau Report

PESHAWAR, Feb 2: Federal Tax Ombudsman is opening its regional office in Peshawar to settle unresolved disputes between tax collecting agencies and the taxpayers.

Syed Zia Mehboob, director general Federal Tax Ombudsman, said this while speaking at a meeting at the Sarhad Chamber of Commerce and Industry (SCCI) here on Monday. The SCCI president, Sharafat Ali Muharib and a number of businessmen of the area were present on the occasion.

Speaking on the occasion, Mr Mehboob assured the local business community that they would provide maximum relief to the taxpayers, adding the opening of regional office in Peshawar would help reduce their problems.

He said that the Federal Tax Ombudsman had purely been established to address the concerns of the taxpayers and it was an effective body.

Zia Mehboob told the meeting that the Ombudsman's office had received 14,000 complaints, out of which 13,000 had been disposed of, which include over 1,000 complaints from NWFP.

THE NATION
ISLAMABAD
18 NOV 2008

FBR asked to return post-dated cheque

OUR STAFF REPORTER

ISLAMABAD — Federal Tax Ombudsman (FTO) Justice (Retd) Munir A Sheikh has asked the Federal Board of Revenue (FBR) to return the post-dated cheque and indemnity bond to the complaint.

The FTO took this decision on the complaint of M/s Tri Star Electronic of Karachi against the Controller of Customs (Appraisement) who did not finalize the assessment of a consignment comprising CD DVD PP cases imported from China.

The FTO ruled out in his decision that the quasi-judicial proceedings initiated by the Deputy Collector of Customs are contrary to law, illegal and betray a semblance of targeted malice as he seems to be bent on penalizing the importer after having failed to determine the correctly leviable duty and taxes under custom act with dew process of law.

He observed that this approach is not only illegal but also betrays the negative attitude of some customs authorities who, having failed to perform their duties in accordance with the prescribed timeframe, revert to extra-legal proceedings for recovery of dues not lawfully established.

The FTO has asked the FBR to set aside the quasi-judicial proceedings initiated by the Collector of Customs and consequent adjudication orders passed by the Deputy Collector of Customs (Appraisement) Group-II, direct the Controller of Customs (Appraisement) to quash the notice issued by the Assistant Collector of Custom (Appraisement) Group-II and finalize the determination of duty and taxes on the basis of declared value under the custom act and return the post-dated cheque and indemnity bond to the m/s tri star electronic. He has also ruled that action may be completed within thirty days and compliance in this regard be reported to this within forty-five days.

C.1569-K/2008

THE POST
ISLAMABAD

24 NOV 2008

FBR asked to issue refund vouchers to complainant

ASSOCIATED PRESS OF PAKISTAN

ISLAMABAD: Federal Tax Ombudsman (FTO) justice (Retd) Munir A. Sheikh has asked Federal Board of Revenue (FBR) to deliver Refund voucher and pay cash refund to the complainant.

This decision was taken by the FTO on the complaint of M/s Hassan weaving factory, Faisalabad against RTO Faisalabad for non-payment of income tax refund for the tax year 2007 to the complainant.

The RTO issued photo copies of refund Voucher instead of original refund voucher to the complainant.

The FTO has ruled that the matter needs a serious probe and officials involved may be properly punished for apparently willful fault. The FTO has asked the secretary Revenue Division to ensure delivery of the original refund voucher and payment of cash refund to the complainant within 15 days, ensure that if it happened due to willful fault or gross negligence.

C.1639/08

Pakistan Observer
ISLAMABAD.

02 DEC 2008

FBR asked to set aside O-I-O, quash recovery notice and finalize assessment

STAFF REPORTER

ISLAMABAD—Federal Tax Ombudsman, Justice (R) Munir A Sheikh has directed the Federal Board of Revenue (FBR) to set aside the order-in-original issued to the complainant under the Customs Act by Deputy Collector of Customs, quash the Recovery Notice and finalize the assessment of goods on the basis of declaration.

This decision was taken by the FTO on the complainant of M/S Zhongxing Telecom Pakistan (Pvt.) Ltd., Islamabad against the order-in-original passed by Deputy Director Customs for payment of Rs. 24598669 without issuing a show cause notice to the complainant. The FTO has ruled in his decision that it is a case of serious maladministration where the provisions of the Customs Act have been violated with impunity.

He has asked the FBR to direct the Collector of Customs to conduct investigation into the Departments failure in the finalization of assessment of goods, issuance of illegal show cause notice and take disciplinary action against the officials responsible for the maladministration. The FTO has also asked for completion of action and compliance of report in this regard.

C.1829-KL 8

Nawa-i-Waqt
RAWALPINDI

26 NOV 2008

نااہلیت کے باعث ٹیکس کا تخمینہ لگانے میں غیر ضروری تاخیر کی جاتی ہے

وفاقی ٹیکس محتسب نے ایف بی آر کو ٹیکس ریکوری کیلئے بھیجا گیا نوٹس منسوخ کرنے کی ہدایت کر دی

اسلام آباد (اے پی پی) وفاقی ٹیکس محتسب جسٹس (ر) [illegible]

C-1687-K08

DAILY BUSINESS RECORDER
ISLAMABAD

04 DEC 2008

FTO orders payment of drawback

ISLAMABAD: The Federal Tax Ombudsman, Justice Munir A Sheikh has directed Federal Board of Revenue (FBR) to pay drawback to the complainant, immediately after export, and conduct re-assessment and post-audit, subsequently.

This decision was taken by the FTO on the complaint of A A Corporation, Karachi, against Customs Collectorate, which did not decide the pending rebate claim of the complainant regarding an export consignment of lamination sheets.

The FTO ruled that this is a case of inaction, neglect, inattention, delay, incompetence, inefficiency and ineptitude and administrative excess, deliberately committed by the Customs authorities. Hence, maladministration has been established.

The FTO has asked the FBR to direct the Collector of Customs to decide and pay admissible drawback as prescribed under the Customs Rules, report the number of cases subjected to post-audit, and result thereof.

"The action on payment of admissible drawback may be completed within 15 days, and compliance in this regard may be reported to this office within thirty days."

He also ruled that copy of the post-audit report "may be sent to this office within thirty days".—PR

C-1714-K08

Appreciation Letter

The Director (C&M)
Federal Tax Ombudsman Secretariat,
Islamabad.

In Ref:- M/S TAHIR MEHMOOD POULTRY FARM RIJANA ROAD KAMALIA -COMPLAINT NO.570/2008.

It is submitted as under:-

1. That refund voucher already reported as issued/dispatched on 07.06.2008 through UMS has now been received on 04.08.2008 vide refund voucher No.35 book No039 dated 06.06.2008 amounting to Rs.4.650/- as claimed/due.

2. That we acknowledge about of receipt of refund voucher in question and appreciate the working and functioning of your honourable office and are very thankful in this regard which is providing speedy remedy, justice and is ideal one in our country in these days and circumstances.

It is requested that findings/recommendation dated 23.07.2008 made by the honourable FTO as intimated by your office letter dated 01.08.2008 may please be treated as complied with by the revenue.

Thanks.

Dated: 08.08.2008.

Truly yours,

(Mian Zafar Iqbal)
Advocate High Court,
Zafar Law Associates,
23 Grain Market, Gojra.

A copy of this letter is also submitted for information and acknowledgement to:-

The Taxation Officer, Enforcement-16, RTO, Faisalabad.

TMC **TAX & MANAGEMENT CONSULTANTS**

A-3, Plot No. 125-U, Data Centre, Khalid Bin Waleed Road, Block-2, PECHS, Karachi.
Ph : 4384625, Fax : 4384630, Mobile : 0333-2108546, E-mail : taxes1@cyber.net.pk

Principal
Khushnood A. Khan
C.A (Inter) B.Com,A CFM & ITP
ACFE (Certified Fraud Examiner) USA
(Member) Sales Tax Bar Association
Income Tax Bar Association

30/1/08

575
30

Justice ® Munir A. Sheikh

Date: 26-01-2008

Honourable Federal Tax Ombudsman,
Federal Tax Ombudsman Secretariat,
Regional Office,
Karachi.

Info copy: Mr. Shamshad Ahmad
Consultant to Hon'ble FTO
Regional Office, Karachi.

SUPERIOR STEEL CORPORATION
COMPLAINT NO. 899-K/2007

Honourable Sir,

We are grateful to your honour for redressing the grievances of our client as referred above filed vide Complaint No.899-K/2007.

Further, we would like to inform your honour that the Sales Tax Department has already refunded a sum of Rs. 3.352 (m) to our client.

Yours sincerely,

26/01

(Khushnood A. Khan)
Counsel for the Complainant

676/07

مورخہ ۶ فروری 2008ء

FEDERAL TAX OMBUDSMAN SECRETARIAT
DY No 218
06 FEB 2008
ISLAMABAD

بخدمت جناب چوہدری جمیل احمد صاحب

ڈائریکٹر ایڈمن ٹیکس محتسب اسلام آباد

جناب عالی

گزارش ہے کہ میری گاڑی کے سلسلے میں کسٹم نے اس چیک نمبر C-099257 کے ذریعے نیشنل بینک کو 12100 کی رقم ادا کر دی۔

کسٹم نے میری گاڑی ریلیز کر دی

اور این۔ او۔ سی۔ جاری کر دی

یہ سب آپ اور آپ کے محکمے کی توسط

سے ہوا۔ جبکہ لئے میں اور میرے بچے

آپ سب کیلئے دعا گو ہیں

شکریہ

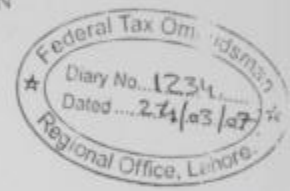
داد محمد ولد نور محمد

مکان نمبر 232 محلہ [illegible]

شیر شاہ [illegible] کراچی نمبر

BEFORE THE HONOURABLE FEDERAL TAX OMBUDSMAN ISLAMABAD
REGIONAL OFFICE LAHORE.

SUBJECT; COMPAINT NO. 160-L /07, ABID ATTA CHAKI DHOLEN
CHAK NO. 7 PATTOKI DISTT. KASUR.



Respectfully Shewth,

It is submitted that The Taxation Officer Of Income Tax Circle No 25 Kasur Zone A Lahore issued the due Refund to the Complainant after filling the Complaint in this Office . Detaile of the Refund is as under:-

Amount----------6910
Voucher No.----------50
Dated ----------12-01-2007

In this way the grievance of the Complainant has redressed due to this office. The Complainant has withdrawn the Complaint already dated 11-1-2007 collectively through AR. But once again I withdrawn the complaint as per advice of the Complainant and it is requested that please may filed/closed the Complaint under the law . The case has been fixed for hearing on 29-03-2007 and Please may exempted my attendance in this case . Power of attorney already filed alongwith the complaint.

Thanking You
Yours Truly,

Rana Mushtaq A Toor

Income Tax Practitioner(ITP.)

Asif Coloney Halla Road

Pattoki

Hon. 15/12/08

رجسٹرڈ Regd

FEDERAL TAX OMBUDSMAN SECRETARIAT
DY No 1786
12 DEC 2008
ISLAMABAD

عزت مآب جناب فیڈرل ٹیکس محتسب اسلام آباد

Dir (P&M)

کمپلینٹ نمبر 1009/2007

میسرز سردار خان اینڈ کو کنٹریکٹرز شہباز خیل میانوالی

جناب عالی

بحوالہ آپ کی چھٹی مورخہ 22/11/08 بابت عنوان بالا کے ضمن میں نہایت ادب سے گزارش ہے کہ حضرت ادارہ ہذا مال ایڈمنسٹریشن میں ملوث افسران کے خلاف کاروائی کا مجاز ہے۔

مال ایڈمنسٹریشن کا اندازہ تو اس بات سے ہو سکتا ہے کہ مورخہ 12/11/07 کو ریفنڈ کی درخواست دی جبکہ ریفنڈ مبلغ 474675/- روپے کا ملا 19/12/07 کو ملا جبکہ کمپنیشن کی ایک قسط مبلغ 76000/- روپے مورخہ 24/2/08 کو ملی اور دوسری قسط مبلغ 28243/- روپے مورخہ 22/11/08 کو ملی نتیجتاً ہمیں ریفنڈ تین/چار سال کی اذیت کے بعد ملا اور سرکاری خزانے پر مبلغ 104243/- روپے کا اضافی بوجھ افسران کے مال ایڈمنسٹریشن میں ملوث ہونے کی وجہ سے ہوا نہ کہ کسی کلرک کی وجہ سے

آپ کو اور آپ کے ادارے کو دعا دیتے ہیں نیز ان کو بھی جنہوں نے اسے قائم کیا

مورخہ 04-12-08

محمد حیات خان

محمد حیات خان مینجنگ پارٹنر

میسرز سردار خان اینڈ کو کنٹریکٹرز شہباز خیل میانوالی

FEDERAL TAX OMBUDSMAN SECRETARIAT
DY. No. 227
17 JAN 2009
ISLAMABAD

To

Honourable Federal Tax Ombudsman
Islamabad.

Reference: Adeel Yousaf Prop:Standard Industries,
Satiana Road, Chak# 226 RB,
Faisalabad.

17/01/09
Receptn
19/01/09

Sub **Withdrawal of Complaint No. 1801/2008**

Sir,

Please refer to the above; it is to submit that complaint was lodged by me for the issuance of refund of **Rs. 4,750/- for the Tax Year 2007**. The refund has been issued by the department and same has been received by the complainant vide **Voucher no.** 82 **Book no.** 510 **dated: -14.01.2009.**

2/Dis(Copy

Hence, after the redressal of the grievance I hereby concede to withdraw the complaint in the light of above facts.

I am thankful for implementing necessary action in this regard.

Adeel

Adeel Yousaf
Faisalabad.

Dated:- 14.01.2009

Muhammad Afzaal (A.R)
Tax Practitioner

Rs.39
10/11/09

CC to

Director General, Regional Tax office, Faisalabad.

KHAWAJA LAW ASSOCIATES

ADVOCATES & TAX CONSULTANT

To,

The Federal Tax Ombudsman,
Lahore.

Subject: COMPLANT NO. 1165-L/2008-M/S. ASKA PAPER PRODUCTS LTD.

Kindly refer to the subject cited above.

It is submitted that I, Irfan Ahmad Pasha (Adv.) (Authorized by the Tax Payer) do hereby declared that Tax Payer has received the admissible refund for the yr. under complaint.

The grievance stands redressed.

Hence the complaint may kindly be disposed off accordingly.

Thanking you.

Yours truly,

(IRFAN AHMAD PASHA)
ADVOCATE (HC)

Dated: 08.01.2009

Copy to:-

1. The Commissioner of Income Tax Enforcement & Collection Division-I, R.T.O. Lahore for Information.
2. The Taxation Officer of Income Tax Enforcement & Collection-II, Division-I, R.T.O. Lahore for Information.

12-Miccop Centre, 1-Mozang Road, Lahore, Ph No. 7321025 Fax No. 7234331