

IN THE SUPREME COURT OF PAKISTAN

(Original Jurisdiction)

PRESENT:

MR. JUSTICE IFTIKHAR MUHAMMAD CHAUDHRY, CJ

MR. JUSTICE GULZAR AHMED

MR. JUSTICE SH. AZMAT SAEED

CMA NO.2243 & 3683 OF 2012 IN SMC NO.16-2010

On Court notice:

For FBR: Dr. Rana Muhammad Shamim, ASC

Date of hearing: 4.3.2013

ORDER

The report (CMA No.1112 of 2013) has been submitted on behalf of the Federal Board of Revenue, which has been examined with the assistance of the learned counsel for the FBR.

2. The proceedings in the instant Suo Moto Case pertaining to the ISAF Container Scam commenced in the year 2010. During the course of the proceedings, allegations surfaced, which *prima facie*, constituted “mal-administration”, as defined by Section 2(3) of the Establishment of the Office of Federal Tax Ombudsman Ordinance, 2000, (hereinafter referred to as “the Ordinance”). Consequently, vide order dated 30.9.2010, a Reference in terms of Section 9 of the Ordinance, sent to the Federal Tax Ombudsman. In the said order, 14 specific questions were framed.

3. The Federal Tax Ombudsman submitted its report, giving the following Findings and following making Recommendations:-

FINDINGS:

- (i) *The quality of data held by PRAL was found to be highly unreliable. The available cross-checks within FBR were also found to be highly vulnerable to fraud and corrupt practices of various actors involved in Afghan transit trade.*
- (ii) *It was soon realized that the abuse was massive, though difficult to quantify with a high degree of precision.*
- (iii) *It was estimated that at least 7,922 transit containers were pilfered within Pakistan during the last almost four years. However, this could be just a tip of the iceberg.*
- (iv) *The estimated loss to national exchequer during 2007-June 2010, based on 7,922 containers, was worked out at Rs.19 billion.*
- (v) *It was gathered that the Customs procedural framework being highly porous suffered from serious vulnerabilities.*
- (vi) *While responsibility in general terms has been fixed, the individuals involved in various mega scams of recent years are to be indentified through criminal investigation for which a mechanism is provided under Section 17 of the FTO Ordinance.*
- (vi) *One-Customs manual clearance system was found particularly prone to huge transit scams.*

- (viii) *The senior management of Customs failed to take necessary steps to put in place appropriate countermeasures against repeatedly occurring scams.*
- (ix) *The Investigation of four mega scams of containers in past few years indicates a clear pattern. The phenomena of pilferage is not new, neither are the glossing over efforts by senior officers to provide cover up through creating hindrances in investigations, manipulation of record and data, diverting focus by 'fact finding committee.' Deliberate attempts to diffuse focus of investigation against corrupt and influential officials through 'fact finding committee' were clearly discerned.*
- (x) *In Lunar case the Collector who had failed to prevent wrong clearance of 52 containers laden with liquor was made part of the 'fact finding committee'. To frustrate the course of investigation by Director General (Intelligence and Investigation).*
- (xi) *The leadership of Customs rather than initiating appropriate disciplinary/criminal proceedings against the real culprits repeatedly tried to put a different gloss on these scams.*
- (xii) *The modus operandi in these mega scams remains the same; fake/forged documents, primitive and manual clearance and processing systems, wide discretion in the hands of unscrupulous customs officials, lack of transparency and effective accountability, involvement of seniors otherwise responsible for oversight.*
- (xiii) *The picture that emerges is of gross inefficiency, maladministration and corruption in an organization*

that is geared to further principally individual and communal self interest of a few individuals at the cost of Pakistan and her people.

- (xiv) *This report is an exploratory start-up to. Although it provides some answers, it raises many more questions. The report indentifies the work that needs to be done in future and provides a good roadmap for the way forward.*

RECOMMENDATIONS:

- (i) *Customs clearance and cross border certification and reconciliation procedures need massive improvement, consolidation and rationalisation.*
- (ii) *Cross checks need to upgraded, diversified and externalized.*
- (iii) *Transport system used for ATT needs to be organized on competitive basis, and transporters given a level-playing field.*
- (iv) *Only bonded carries should be allowed to transport ATT cargo. The vehicle fleet used for the purpose must be upgraded in terms of technology input for safe transpiration of transit cargo.*
- (v) *Security of cargo needs immediate enhancement through RFID seals, and live monitoring through GPS.*
- (vi) *ATT cargo should bear bar code embeddings for ease of detection, and to minimise the chances of its smuggling back into Pakistan.*

- (vii) *ISAF/UN/NATO should adopt the same technology and transport precautions as are being used by US Forces (e.g. RFID seals and effective tracking/monitoring though GPS)*
- (viii) *Collusion by and corruption of Customs Officials be effectively discouraged and deterred in a sustainable manner.*
- (ix) *A specialized and dedicated Collectorate needs to be created to deal exclusive with the entire cargo in transit to Afghanistan.*
- (x) *The definition of smuggling should be broadened to include in its purview any enroute pilferages of transit goods.*
- (xi) *The Directorate General (Intelligence and Investigation) needs to be suitably upgraded to act as an effective deterrent against actual and potential tax evaders and their accomplices within the Customs Department.*
- (xii) *For better administration, FBR should be split into two Boards, one dealing exclusively with Customs matters and the other dealing with taxes like income tax, sales tax and federal excise duty. If that is not found appropriate at this stage, a competent and honest senior officer of Pakistan Customs Service may be appointed as deputy chairman FBR. The measure will provide better focus on matters relating to management of Customs.”*

4. The said report *inter alia* indicated the quantum of the loss caused to the Public Exchequer. Such loss in fact is approximately

Rs.55 billion as was disclosed by Mr. Suleman Siddique, the then Chairman, FBR, which fact was incorporated in our order dated 22.11.2011. The report now filed by the FBR, indicates that to-date the amount recovered is only Rs.5,602,754/- which for all intents and purposes is insignificant, when examined *in juxta position*, with the loss to the Public Exchequer admittedly occasioned, as has been admitted by the FBR.

5. The performance of the FBR, as indicated by the report, now submitted is far from satisfactory. Despite elapse of almost one and a half year since the Report was compiled by the Federal Tax Ombudsman, no progress worth mentioning has been made for the recovery of the loss identified, which is regrettable.

6. It has also not been brought on record as to how far the Recommendations made by the FTO in his above mentioned report have been implemented despite the fact that a time frame in this behalf, having specifically been mentioned in Section 11(1) of the Ordinance.

7. Consequently, let the report be obtained from the Federal Tax Ombudsman as well as Chairman, FBR as to the extent of the implementation of the Recommendations of the FTO by the Department and further such reports shall also identify the *modus operandi* proposed and required to be undertaken to efficiently and expeditiously effect the recovery of the loss caused to the Public Exchequer. Such report should be filed within two weeks.

8. The Chairman, FBR, is directed to appear in person, on the next date of hearing. Re-list after two weeks.

Chief Justice

Judge

Judge

Announced on _____
at Islamabad

Judge