

IN THE SUPREME COURT OF PAKISTAN, ISLAMABAD  
(ORIGINAL JURISDICTION)

Civil Misc. Application No. .534-K/2013 in S.M.C.16/2011

Application by Syed Adil Gilani, 5C, 2<sup>nd</sup> Floor Khayaban-e-Ittehad, Phase VIII, DHA, Karachi  
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Sub: Civil Misc. Application No. .534-K/2013 in S.M.C.16/2011 Suo Moto action regarding law and order situation in Karachi-Comments of Syed Adil Gilani on One Man Commission Report submitted in the Supreme Court by Mr. Muhammad Ramzan on 19-9-2013

Respectfully Sheweth;

The One Man Commission Report submitted in the Supreme Court by Muhammad Ramzan on 19-9-2013 has been examined in respect to the report regarding non recovery by Rs.55 Billion in ISAF case, based on FTO Commission report and statement of ex-Chairman FBR Mr. Salman Siddique in the Supreme Court.

Comments of various paragraphs of the report are given one by one.

*Para 32*

- I) *The computerized data of Customs reveals that a number of Afghan companies previously engaged in the import of transit goods have vanished after the report of the FTO, while a number of new big players have come in the field thereafter. The case in point is that of M/s. Pak Chaman who had transited over 531 consignments through Chaman but had filed no Goods Declaration since February 2011. This leads to the conclusion that the old companies apprehensive of their detections and penal proceedings have either stopped the business or have changed the name.*

**Comments:** This aspect of the report is confirmation that the FTO report on 7922 containers is correct. The exact numbers of missing containers would have been determined, had FBR completed the DG Intelligence & Investigations ( customs) , after their requests of 19<sup>th</sup> April 2103.

- II) *As per google.com, the Karachi – Chaman distance is 815.6 Km (time taken 9 Hr 14 Min) while Karachi – Peshawar distance is 1,367.9 Km (time taken is 16 Hr 47 Min). Even if the truck with two drivers travels at a speed of 45 Km/hr it could easily cover the two side passage of Karachi – Chaman at the most in 3 days and*

*Karachi - Peshawar at the most within 5 days. The arguments of Mr. Qazi, Customs Agent, especially about the difference between Karachi – Chaman and Karachi – Peshawar distances are found correct. Therefore, the assumption of equal days for both border Customs stations is debatable. In fact, the formula in terms of days applied by the then Hon'ble FTO should have been based on a range of minimum and maximum days, i.e. no truck / container could have returned before 72 hours and the trucks / containers taking more than 15 days or not shown received at the Border Station could have been presumed to have been missing, unless proven otherwise.*

**Comments:** The DG Intelligence & Investigations preliminary investigation report dated 19<sup>th</sup> April 2013 has supported FTO Report and in short [period on one month time, it has identified 3000 containers which did not reach Afghanistan. Documentary proof have been attached with 19<sup>th</sup> April 2013 DG Intelligence & Investigations preliminary investigation report. .

*Para 36. The findings of the then Hon'ble FTO in the Report submitted in January, 2011 are still under investigation by the FBR and NAB. No worth mentioning results of these investigations have come on surface. On the other side, the Customs Agents and Customs functionaries in Karachi complain undue harassment. It would be worthwhile to revisit the underlying assumptions / parameters of FTO Report and initiate investigations with the help of intelligence agencies regarding companies registered in Afghanistan but actually owned by Pakistani citizens, remittance of foreign exchange by hawala / hundi through Pakistan based money changers and containers brought in transit as Commercial Cargo but shown either returned to Ports within 72 hours or so far found missing in the records of Customs.*

**Comments:** The DG Intelligence & Investigations preliminary investigation report dated 19<sup>th</sup> April 2013 has supported FTO Report. But FBR did not accept the request of DG Intelligence & Investigations to continue the investigations.

According to DG Intelligence & Investigation report of 19<sup>th</sup> April 2013, on 3,000 containers which did not reach Afghanistan, the duty at Rs 2.4 million per container ( FTO working), DG Intelligence & Investigations Customs, FBR has identified loss of exchequers revenue of Rs 7.2 Billion. However, FBR for unknown reasons did not proceed to make efforts to recover this amount of Rs 7.2 Billion in last 5 months .

DG Intelligence & Investigations requested Chairman FBR for following permissions to complete the investigations;

“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”

Based on the investigations conducted so far the stance of the Honorable Supreme Court of Pakistan in the Suo Motu case 16/2010, is well established. Direct and incontrovertible evidence is available to establish pilferage of cargo, its quantum, revenue implications for affecting future recoveries, and for the determination of responsibility, within and outside the department.

The desealing record of the collect orates of Quetta and Peshawar is essential to continue this investigation. Although record has been provided by Quetta Collectorate, the Peshawar Collectorate has expressed its inability. Headquarters is requested to approach the Collectorate of Peshawar in this regard.

This is lengthy and cumbersome investigation; nonetheless it is an issue of national importance that has already been taken up by the Honorable Chief Justice of Pakistan. Whole hearted support of the Federal Board or Revenue would be required to complete the investigation, determine the beneficiaries and affect recoveries. We, however expect serious resistance to this investigation since certain high level officials of Customs will do their best to close down or impede this investigation.

Cooperation of other collect orates, PRAL and NADRA would be critical in provision of Information / record as and when needed, and where identification, arrests or conducting of raids may be necessary. The Directorate General would also require access to banking information to identify the actual beneficiaries of the pilferage of revenue. This is especially true since in this case of the supposed beneficiaries are Afghan nationals, while the real beneficiaries are Pakistanis involved in this illicit trade who hide behind as Afghan façade.

*Para 37. The Border Agents who had dealt with imports in transit and Afghan Companies and who have now evaporated be investigated to find out as who was the actual importer and whether all transactions between the importers and border agents had been made in foreign exchange which was later on*

*converted to Pak currency through the legal channels and paid to the Karachi based Customs Agents to cater the expenses including service charges*

**Comments:** This finding is substantiate the FTO Report on 7922 missing containers.

*Para 46 Again the estimates of total volume of smuggling are not available. However it can be safely assumed that a major chunk (over 60%) of merchandize imported by Afghanistan is meant for re-export / smuggling into Pakistan. Most of the goods brought in transit to Afghanistan either through Pakistan or Iran have no consumption in Afghanistan*

**Comments:** Paragraph 46 of this one man commission reports confirms much more than the what FTO Report has revealed. And this particular finding also negates the earlier comments of this one man commission that FTO Report is not based on facts. FTO Report of 7922 missing containers in 4 years, means on average about 5/6 containers per day did not reach Afghanistan.

Prayer:

The Hon'ble Supreme Court is requested to order FBR to complete the half done investigation of 19<sup>th</sup> April 2013 of DG Intelligence & Investigations (Customs), so that the losses incurred to exchequer may be as to ascertained, recovered according to the following findings of the 2 years 8 months old FTO Commission Report of 10 January 2011.


- (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 realised 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 identified through criminal

investigation for which a mechanism is provided under Section 17 of the FTO Ordinance.

- (vii) 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 committees'. Deliberate attempts to diffuse focus of investigation against corrupt and influential officials through 'fact finding committees' 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 tool. Although it provides some answers, it raises many more questions. The report identifies the work that needs to be done in future and provides a good roadmap for the way forward.

Transparency International Pakistan is striving for across the board application of Rule of Law, which is the only way to stop illegal and corrupt practices.

Yours obediently,

  
Syed Adil Gilani,  
Adviser

Transparency International Pakistan