

# IN THE PAKISTAN INFORMATION COMMISSION ISLAMABAD

APPEAL NO. 1095-05-2021

Mohammad Asif Gondal, Advocate

Versus

Federal Board of Revenue

Date of Hearing: 08-09-2021

Fawad Malik: Information Commissioner

## A. APPEAL

1. Mohammad Asif Gondal, Advocate filed an appeal on 27.5.2021 before the Pakistan Information Commission, under section 17 of the Right of Access to Information Act, 2017. The averments of the appeal are that a contravention case no. 14/2020 dated 02-12-2020 reported by Model Custom Collectorate, Islamabad and a Show Cause Notice No. CUS/COLL/ADK/383/2020/2087 dated 11-12-2020 was registered against the appellant. In order to defend the said case and notice, under the right of fair trial provided by the Constitution of Islamic Republic of Pakistan, he has sought the following information/record from the office of the Collector (Adjudication), Islamabad vide letter dated 24.12.2020 followed by the reminders dated 22.1.2021 and 10.2.2021:

- 1- *“Resume of evidence.*
- 2- *Copies of all concerned G.Ds and reports thereof.*
- 3- *All enclosed documents with G.Ds.*
- 4- *Statement on witnesses.*
- 5- *Statements all concerned persons including staff of M/S Gerry’s Danata, M/S Shaheen Airport Services, M/S Royal Airport Services.*
- 6- *Statements of Customs staff and PRAL Staff.*
- 7- *All other relevant documents.”*

## B. PROCEEDINGS

2. The notice of the Commission was responded by the collector vide letter dated 25.6.2021. The response of the organization is reproduced here under:

*“The appeal 1095/05/2021 dated 03.06,2021 annexed with Board’s letter referred above has been examined. It is stated that the matter is related with Contravention Case No. 14/2020 dated 02.12.2020 which is subjudice before the Collector of Customs (Adjudication), Islamabad. The complainant had previously filed a complaint No. WMS-HQR/0002384/21 dated 29.03.2021 with Hon’ble Federal Tax Ombudsman, Islamabad for provision of records in this contravention case. This Collectorate has already provided all available records*

APPEAL NO. 1095-05-2021

*to the Collectorate of Customs (Adjudication) Islamabad vide letter C. No. SI/Imp/Cant-14/2020/407 dated 27.04.2021 (Copy enclosed) for onward submission to the complainant via the office of Hon'ble Federal Tax Ombudsman, Islamabad.*

*As far as the record i.e. resume of evidence, statements of witnesses, statements of all concerned persons including staff of M/S Gerry Dnata, M/S Shaheen Airport Services, M/S Royal Airport Services, statements of customs and PRAL staff etc is concerned, the same pertains to criminal proceedings and being presently subjudice before the Special Judge Customs, Rawalpindi, cannot be submitted until the submission of the final challan to the said Court as required under section 173 of CrPC.”*

3. The appellant being not fully satisfied with the documents provided by the organization filed the rejoinder to the appeal. The relevant portion is reproduced here under:

*“That it is pertinent to mention here that out of total documents mentioned in the appeal of applicant, only few documents have been provided by respondent/Collector Customs (Adjudication) and following documents containing necessary and relevant information have yet not been provided by respondent and are required to be issued to the applicant without any further delay:*

- a. All enclosed attested documents with GDs (a) Invoice (b) Packing list and all others.*
- b. Attested Airway Bills.*
- c. Attested PRAL reports / records.*
- d. Attested Delivery Slips.*
- e. Attested Payment receipts.*
- f. Attested Godown Rent Vouchers.*
- g. Attested Delivery Slips.*
- h. Attested Payment Receipts.”*

4. Mr. Zia Farooqi, MIS Officer appeared before the Commission to represent the FBR on 11.08.2021, 31.08.2021 and 08.09.2021. When confronted with the rejoinder filed by the appellant he undertook to provide the rest of the documents but could not make it despite two opportunities provided by the Commission.

### **C. COMMISSION'S VIEW**

5. Admittedly, appellant is facing contravention case no. 14/2020 dated 02-12-2020 reported by Model Custom Collectorate, Islamabad and Show Cause Notice No. CUS/COLL/ADK/383/2020/2087 dated 11-12-2020 registered against him. In order to defend the said case and notice, under the right of fair trial provided in Article 10A of the Constitution of Islamic Republic of Pakistan, the appellant has desired the information and documents related thereto to meet the ends of justice.
6. The respondent organization in its reply has not claimed any exemption for the provision of the desired information and record except the resume of evidence, statements of witnesses, statements of all concerned persons including staff of M/S Gerry Dnata, M/S Shaheen Airport Services, M/S Royal Airport Services, statements of customs and PRAL staff etc, the same pertaining to criminal proceedings and being presently subjudice

APPEAL NO. 1095-05-2021

before the Special Judge Customs, Rawalpindi, cannot be submitted until the submission of the final challan before the said Court as required under section 173 of CrPC. Be that as it may, the organization must be mindful, it is mandatory that the challan, under section 173 CrPC has to be submitted before the court of competent jurisdiction within fourteen days from the registration of the case failing which the interim challan should have been submitted.

7. Apart from the statements of witnesses the organization has not objected the provision of the requested information and documents, either in the reply or during the course of arguments. The appellant has rather acknowledged provision of part of the information and record. For the outstanding record the appellant has expressed the request in more elaborated form in his rejoinder, handed over to the representative of the organization during the hearing on 11.08.2021. The Commission in the light of the Act is also of the considered view that the requested information and documents are the public record with in its meanings and the appellant facing trial before the Special Judge Customs, Rawalpindi holds the preferential legal right under Article 10A of the Constitution of Islamic Republic of Pakistan to have access to the record for a fair trial to meet the ends of justice and fair play.
8. Furthermore the right of access to the record and information in the matters of public importance is constitutional and statutory right of the citizens provided under the Constitution of Pakistan and the Right of Access to Information Act, 2017 respectively which cannot be denied or delayed at the whims of the government hierarchy.

#### **D. ORDER**

9. The appeal is partly allowed. The collector (Adjudication), Islamabad is directed to provide the appellant attested copies of all the outstanding record detailed in his application dated 24.12.2020 and rejoinder, except the resume of evidence, statements of witnesses, statements of all concerned persons including staff of M/S Gerry Dnata, M/S Shaheen Airport Services, M/S Royal Airport Services, statements of customs and PRAL staff etc., forthwith, but not later than seven days of the receipt of this order.

Mohammad Azam  
Chief Information Commissioner

Fawad Malik  
Information Commissioner

Zahid Abdullah  
Information Commissioner

Announced on 15.09.2021

Certified that this order consists of three (3) pages, each page has been read and signed.