

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Suit No. 656 of 2020

DATE	ORDER WITH SIGNATURE OF JUDGES
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- For hearing of CMA No.4909/2020 (u/o XXXIX rules 1 and 2 CPC)

30.06.2020

M/s Ahmed Ali Hussain and Ghulam Nabi Shar, Advocates for the
plaintiffs

Mr. Anwar Kamal, Assistant Attorney General

Mr. Muhammad Khalil Dogar, Advocate files Vakalatnama as well as written statement on behalf of defendant no.3, which are taken on record.

Through instant application, the plaintiffs/applicants have sought permission of this Court and directions for the Defendant No.2 to allow mutilation and scrapping of the goods imported by it as scrap after such mutilation/scrapping, have the goods released to the applicant. Background of the case is that the plaintiffs/applicants imported consignment of the goods through bill of lading attached on page 19 onwards, described as Iron and Steel Re-Rollable Scraps, the commercial invoices could also be seen at various places in the file which also describe the goods as Iron and Steel Re-Rollable Scraps. Since there was still a danger that the goods in their current form if let to the applicant, may be used for any useful (other than scarp) purposes, as provided by the Customs Act, 1969, for good orders sake, a request was made to the Deputy/Assistant Collector of Customs, Port Muhammad Bin Qasim, Karachi for mutilation and scraping of goods under Section 27A of the Customs Act, 1969, to reduce any chances of the goods slippage as non-scarp material. Since the said request was denied by hand writing inscribed on inspection report at page 65, where the examiner observed that the imported consignment was though blend of cobalt/HR plates of secondary quality, however, they were neither old nor in used form,

therefore request under Section 27A could not be permitted particularly in the light of the Rule 592, which requires for any goods to be imported or scrapped to be old and used items. The said report is challenged through the instant suit, where the learned counsel for the plaintiff states that section 27A does not presupposes or requires that to mutilate/scrap imported goods have to be “old and used” items and to hinge mutilating/scrapping to these over-imposed conditions was not the intent of the primary legislation. Per learned counsel, this specific question in identical terms came up before a Divisional Bench of the Hon’ble Balochistan High Court in the case of M/s. Shaban Steel Industry v/s. Federation of Pakistan and others in C.P No.1117 of 2019 and others, where after a detailed and elaborated judgment, my lords reached to the conclusion that while “*Section 27A describes that mutilation and scrapping of goods should be prescribed by rules, but it does not permit the executive to add anything in the rules, which is not the intention of the Act. By adding the words “old and used items” in Rule 592 as a condition for mutilation and scrapping, the executive have exceeded their authority, which is an illegality*”. Counsel seeks similar treatment for his clients’ present imports.

Learned counsel for defendant No.3 has challenged reliance on the aforementioned judgment on the ground that the said judgment has been challenged before the Hon’ble Supreme Court (but no stay having been granted) and that goods in that consignment were of prime quality (and not secondary quality as in the case at hand) and that the consignment did not composed of 100% new goods. Last but not least the learned counsel has stated that the language of Rule 592 in its present form directs customs authority to only have “old and used items” scrapped/mutilated. Learned Asst. Attorney General supported the contentions of the learned counsel for Defendant No.3. I see these objections merely academic in nature and dismiss the same.

Heard the parties and reviewed the material present on record.

Section 27A as introduced in the 1969 statute through Finance Bill 2010 titled "Allowing denaturing or mutilation of goods" states that "*At the request of the owner, the denaturing or mutilation or scrapping of imported goods, which are ordinarily used for more than one purpose, may be allowed, as prescribed by rules so as to render them unfit for one or more such purposes and where any goods are so denatured or mutilated or scrapped they shall be chargeable to duty at such rate as may be applicable if the goods had been imported in the denatured or mutilated form or as scrapped.*" Language of Rule 592 which forms part of Chapter XXIV (added by Notification of the year 2011) titled "Mutilation or Scrapping of Goods" is as under:-

Goods allowed for mutilation or scrapping,- The following old or used items if imported in serviceable condition alongwith the scrap consignments or imported separately as a scrap and found serviceable, may be allowed mutilation or scrapping, as the case may be, within the meanings of section 27A of the Act, namely:-

- (i) pipes or tubes;*
- (ii) bars or rods;*
- (iii) sheets or strips, slab, plates;*
- (iv) beams, sections, channels or girders, used and pitted railway tracks;*
- (v) ship plates cutting of various sizes with rough edges and having welded joints;*
- (vi) foils or films; and*
- (vii) tyres or tubes."*

At the outset it could be noted that Section 27A talks about **goods** whereas Rule 592 is all about **items** which are two different species. While the former may include the later, but not vice versa. Section 2(I) of the 1969 Act defines goods to mean "all movable goods and includes (i) conveyance, (ii) stores and materials (iii) baggage, and (iv) currency & negotiable instruments", whereas word 'item', excepting Section 25 where it is used for the determination of Customs Values, it's not found anywhere else in the statute. Black's Law Dictionary defines 'goods' to mean items of merchandise, supplies, raw materials, or finished goods, whereas

'items' are given the meaning of a piece, fragment, fraction, member or individual constituent. In general terms 'goods' are things which are produced, then traded, bought or sold, then finally consumed, whereas 'item' refers to a distinct physical object, that's why Rule 592 lists out items (being pipes, tubes, bars, rods, sheets...tyres, tube, etc) as it does not refer to goods, so at best condition of old and used may be in relation to items, it definitely is not in relation to goods therefore the rule making authority failed to landscape goods in the ambit of Rule 592, hence in my humble view any conditionalities attached in the said Rule do not travel to goods for which the denaturing, mutilation or scrapping is sought under Section 27A. Even otherwise, if one reads 'items' to include 'goods', then the addition of words "old and used" in Rule 592 as held by the Hon'ble Balochistan High Court in the case of M/s. Shaban Steel Industry v/s. Federation of Pakistan and being violative of the doctrine of substantive ultra vires, which envisages that an authority can exercise only so much power as is conferred on it by law and an action of the authority is held to be intra vires when it falls within the limits of the power conferred on it but *ultra vires* if it goes outside this limit, are not enforceable. This view finds support from the principles laid down by the Hon'ble Supreme Court in the cases of THE COLLECTOR OF SALES TAX and others v/s SUPERIOR TEXTILE MILLS LTD. and others (PLD 2001 SC 600) where it was held that *In the event of conflict between the rule and a substantive provision of the parent Act, the former was void or inapplicable to the extent of inconsistency.* In the case of Khawaja AHMAD HASSAAN v/s GOVERNMENT OF PUNJAB and others (PLD 2004 SC 694) it was held that *If the rules framed under the statute are in excess of the provisions of the statute or are in contravention of or inconsistent with such provisions then those provisions must be regarded as ultra vires of the statute and cannot be given effect to.*

Offshoot of the foregoing is that the application is allowed. The defendants are directed to permit mutilation/scrapping of the subject

consignments in the presence of the parties, however subject to the satisfaction of the defendants as to the extent of mutilation and scrapping performance by the importer. This exercise be completed in no later than a week's time and expenses incurred be borne by the importer.

Judge

Barkat Ali, PA