

# **IN THE HIGH COURT OF SINDH, KARACHI**

Special Customs Reference Application ("SCRA") No. 725 of 2022

Present: *Mr. Justice Muhammad Junaid Ghaffar ACJ.*  
*Mr. Justice Mohammad Abdur Rahman,*

**Applicant:** Artistic Milliners Pvt. Limited  
Through Mr. Jam Zeeshan Ali,  
Advocate.

**Respondents:** The Collector of Customs (Export),  
PMBQ, Karachi & another  
Through Mr. Muhammad Bilal Bhatti,  
Advocate.

**Date of hearing :** 30.04.2025.  
**Date of Judgment :** 30.04.2025.

## **J U D G M E N T**

**Muhammad Junaid Ghaffar, Acting Chief Justice:** Through this Special Customs Reference Application, the Applicant has impugned Judgment dated 14.09.2022 passed by the Customs Appellate Tribunal Bench-I, at Karachi in Customs Appeal No. K-7904 of 2021 proposing the following two questions of law: -

- "i) Whether, under Rule 10(1)(e) of the Export Oriented Units and Small Medium Enterprise Rules 2008 ("**2008 Rules**"), Applicant is required to dispose of spares, which it has imported and consumed in its export oriented unit, within ten years of the date of importation and pay the entire amount of duties and taxes thereon?
- ii. Whether the second proviso to Rule 10(1)(e) of the 2008 Rules is applicable to capital goods, such as spares imported by Applicant for use in its export-oriented unit?

2. Heard learned Counsel for the parties and perused the record. It appears that a Show Cause Notice was issued to the Applicant on 19.05.2021; whereby, it was alleged that the Applicant is liable to pay duty and taxes for violation of various provisions of Customs Act, 1969 read with Export Oriented Unit Rules under SRO 327(I)/2008 dated 29.03.2008 precisely on the ground that the Applicant had imported spare parts free of duty and taxes by availing the said exemption and had failed to dispose of the spare parts by holding them unnecessarily for a period of more than 10 years to avoid payment of duty and

taxes. Though not clearly worded; but it appears that the precise allegation was that the said spare parts are mandatorily required to be disposed of before five years so that the duty and taxes become payable. The Adjudicating Authority passed the Order-in-Original on 08.10.2021; whereby, the matter was decided in favour of the Applicant and the Show Cause Notice was vacated in the following terms:-

“13. I have given due consideration to the submission of the rival both parties and have gone through the provisions of the Export Oriented Unit Rules, 2007. Rule 10(1)(e) of the said Rules, as was applicable at the relevant point in time, extends exemption of duties and taxes not only on import of plant, machinery, equipment, apparatus but also on capital goods. The said Rule as was applicable at the relevant point in time is reproduced below for quick reference: -

*"10(e) the exemption from custom duty, sales tax, federal excise duty and income tax, granted under the Board's Notification No. S.R.O. 326(I)/2008 dated 26th March 2008, shall also be applicable to plant, machinery, equipment and apparatus, including capital goods to be used solely within the limits of an Export Oriented Unit:*

*Provided that **plant, machinery, equipment and apparatus including capital** goods imported for the Export Oriented unit (EOU) shall be retained for a period of ten years from the date of importation.*

*"Provided further that disposal of plant, machinery, equipment and apparatus before the expiration of ten years shall be subject to following reduced rates of duty and taxes leviable at the time of importation, namely: -*

	Disposal period	Duty and Taxes
(i)	If sold or otherwise disposed of before the expiration of five years from the date of importation	Full
(ii)	If sold or otherwise disposed of after five years and before seven & a half years from the date of importation	50%
(iii)	If sold or otherwise disposed of after seven & half years but before ten years from the date of importation	25%
(iv)	If sold or otherwise disposed of after ten years from the date of importation	0%

15. To my understanding, the provisions of Rule 10(1)(e) is stated in a very simple and clear language. Without delving into the controversy that whether capital goods are included in the second proviso, the main part of this Rule reiterates that exemption granted under the Federal Board of Revenue Notification SRO 326(I)/2008 dated 26.03.2008 shall also be applicable to plant, machinery, equipment, apparatus & capital goods in addition to other input goods like raw materials, accessories, components, subcomponents etc. as given in the definition of input goods under Rule 2(1)(f) of the Export Oriented Units and Small & Medium Enterprises Rules, 2008.

16. The first proviso to the said Rule extends the exemption of duty and taxes on the import of plant, machinery, equipment, apparatus including capital goods, in case they are retained for 10 years. The second proviso deals with the disposal of duty and taxes free imported plant, machinery, equipment & apparatus during the

period so prescribed under this Rule. It clearly states that in case these goods are disposed off, sold or ex-bonded by the licensee, before the prescribed period the licensee, the licensee has to pay the duty and taxes in accordance to the rates given in the proviso. However there is no compulsion imposed by the law on licensee to dispose off plant, machinery, equipment & apparatus, in case they are no more in use. This proviso nowhere mentions that licensee shall be required to compulsorily dispose off plant, machinery, equipment & apparatus within the retention period of ten years if, they no more in use. If it had been the intention of the legislature, the law should have prescribed a mechanism to determine the status of the plant, machinery, equipment & apparatus by surveyors to ensure compulsory disposal of plant, machinery and equipment for payment of duties & taxes in accordance with the reduced rates of duties and taxes. As far as the argument of the departmental representative that licensees should make payment of duties and taxes once these are replaced; the same has no place in law. If there is no actual disposal of goods (as admitted in the contravention report/Show Cause Notice), no duties and taxes could be demanded from the licensee on the basis of imaginary disposal of spares.

17. Therefore, under the provisions of Rule 10(1)(e) there is no compulsion on licensee to dispose off plant, machinery, equipment, spares & apparatus, if they dispose off these goods after 10 years even if they are no more in use. I have therefore, no hesitation to hold that departmental interpretation of these rules is not in accordance with law and the contravention is framed unnecessarily on pressure of RRA.”

3. The Respondent department, being aggrieved, approached the Tribunal by way of further appeal and the Tribunal has concluded that the allegation in the Show Cause Notice was justified, and the appeal has been allowed. When the relevant provision of Rule 10(e) of the Export Oriented Unit Rules 2007 is examined, it does not appear that there was any restriction on the Applicant to dispose of the goods in question before the period of 10 years. In fact, the Rule provided different rates of duty and taxes payable on the retention period from five years onwards and in our considered view the Adjudicating Authority had come to a correct conclusion while vacating the Show Cause Notice. The Rule in question does not compel any premature disposal of the goods in question to necessarily attract imposition of duties and taxes. The law as well as the Rules are clear, and the Tribunal has seriously erred by setting aside the order of the Adjudicating Authority. The department has made an attempt to read into something in the Rule in question, which is not available, and per settled law this cannot be done.

4. In view of hereinabove facts and circumstances of the case, the proposed questions, as above, are answered in favour of the Applicant and against the Respondent Department. As a consequence thereof, this Reference Application is ***allowed*** and impugned judgment of the Tribunal is set-aside. Let copy of this order be issued to the Tribunal as required under section 196(10) of the Customs Act, 1969.

**ACTING CHIEF JUSTICE**

Ayaz /PS

**J U D G E**