

IN THE HIGH COURT OF SINDH, KARACHI

Special Customs Reference Application ("SCRA") Nos. 1129 to 1135 of 2023

Date

Order with signature of Judge

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

APPLICANT : **National Food Limited**
in all SCRAs Through Mr. Hyder Ali Khan, Advocate
a/w M/s. Hamza Waheed & Sami-ur-
Rehman, Advocates.

RESPONDENTS : **Collector of Customs**
in all SCRAs **Model Customs Collectorate of**
Appraisement – West & another
Through Mr. Faheem Raza Khuhro,
Advocate.

Date of hearing : **28.01.2025.**

Date of Judgment : **12.05.2025.**

J U D G M E N T

Muhammad Junaid Ghaffar, ACJ : -- Through these Reference Applications the Applicant has impugned a common Judgment dated 16.05.2023 passed by the Customs Appellate Tribunal, Bench-I, Karachi in Customs Appeal Nos.K-1679 to K-1685 of 2022; proposing the following question of law: -

“Whether the learned Tribunal was justified to hold that the prefabricated building structure imported by the Applicant is liable to payment of customs duties and sales tax?”

2. Precise facts as available on record reflects that the Applicant in the process of setting up a new Plant for manufacturing of foods products in the Special Economic Zone, Faisalabad, which has been declared as a Special Economic Zone vide Notification dated 03.10.2016 imported a consignment of overhead cranes and claimed exemption under Section 37 of the Special Economic Zone Act, 2012 (“**SEZ Act, 2012**”) read with SRO 41/2009 dated 19.01.2009 (“**41/2009**”) and further read with Chapter 9917(2) of the Customs Tariff

from customs duty and taxes as “Capital Goods”. The said claim of exemption was denied, and an adverse assessment order¹ was passed under section 80 of the Customs Act, 1969, against which the first appeal before the Collector of Customs (Appeals) and the second appeal before the Customs Appellate Tribunal have failed. Per learned Counsel for the Applicant, firstly, under the SEZ Act, 2012 read with SRO 41/2009, the Applicant is entitled for grant of such exemption. At the same time and alternatively, it has been contended that the exemption is otherwise provided under Chapter 9917(2) of the First Schedule to the Customs Act, 1969. According to the Applicant, the exemption available under Chapter 9917(2) (ibid) in respect of “Capital Goods” is identical to what it was provided in SRO 575(1)/2006 dated 05.06.2006, which has been interpreted by a Division Bench of this Court in the case of **Aisha Steel**² whereby, exemption on identical goods i.e. prefabricated buildings was granted. In the alternative, he has further argued that claimed exemption is independently available under Section 37 of the SEZ Act, 2012, read with SRO 41(I)/2009 as it has otherwise an overriding effect being a special provision, whereas in line with section 37 ibid an independent exemption has been provided through SRO 41(I)/2009, and therefore, the forums below have erred in rejecting the claim of the Applicant. On the hand Respondent’s Counsel has argued that the impugned order is a reasoned

¹ **Assessment Order dated 28.01.2022.**

The assessment has been made after opportunity of hearing provided to the CEO Mr. Amir Ahmed Butt of cleaning agent M/s Kashir Agency (C.H.A.L No. 1429) in accordance with the Office Memorandum issued from Board vide letter dated C. No 1(9)Mach/92 dated 01.03.2021, wherein, the matter has been clarified/decided in representation of M/s Orient Material that Pre-fabricated building is neither plant, machinery and equipment nor listed in clause (a) & (b) of the definition of Capital Goods as appended in Part-1 of 5th Schedule to the Customs Act, 1969 and hence is not entitled for exemption of duty in terms of PCT 9917(2). Moreover, S.R.O 41(1)/2009 dated 19.01.2009 is only admissible to Capital Equipment (plant, machinery, equipment and accessories) and the same is explained in detail in the said notification. Thus, keeping in view of the foregoing facts, the claimed exemptions of PCT 9917(2) and SRO 41(I)/2009 denied, acceptingly. (Due to system constraint income tax ATL can not be inserted in this particular GD hence 5.5% Income tax has been charged accordingly in different heads.)

² Aisha Steel Mills Ltd. V. Federation of Pakistan (2011 PTD 569)

order, and no exception can be drawn, whereas the case of **Aisha Steel** (Supra) distinguishable.

3. Heard learned Counsel for the parties and perused the record. Before proceeding further, it would be advantageous to examine the relevant notifications / definition of “Capital Goods in SRO 575(I)/2006 and the one provided in Chapter 9917(2) read with Part 1 of the Fifth Schedule to the Customs Act, 1969. They read as under: -

GOVERNMENT OF PAKISTAN
MINISTRY OF FINANCE, REVENUE AND ECONOMIC
AFFAIRS
(REVENUE DIVISION)

Islamabad, the 5th June, 2006.

NOTIFICATION
(CUSTOMS)

S.R.O. 575 (1)/2006.- *In exercise of the powers conferred by section 19 of the Customs Act, 1969 (IV of 1969), and clause (a) of sub-section (2) of section 13 of the Sales Tax Act, 1990, and in supersession of its Notification No. S.R.O. 575 (1)/2005, dated the 6th June, 2005, the Federal Government is pleased to exempt plant, machinery, equipment and apparatus, including capital goods, specified in column (2) of the Table below, falling under the HS Codes specified in column (3) of that Table, from so much of the customs-duty, specified in the First Schedule to the said Act, as is in excess of the rates [provided that sales tax exemption shall not apply to Sr. Nos. [1, 5 [5A] 21, 22, 23, 28, 28A, 29 and 36] of the said Table], subject to the following conditions, besides the conditions specified in column (5) of the Table, namely :-*

[(i) the imported goods as are not listed in the locally manufactured items, notified through a Customs General Order issued by the Federal Board of Revenue (FBR) from time to time or, as the case may be, certified as such by the Engineering Development Board. This condition shall, however, not be applicable in respect of S. Nos. 1, 2, 6, 15, 20, 28, "[29,31 and 35A] of the Table, and for such machinery, equipment and other capital goods imported as plant for setting up of a new industrial units [provided the imports are made against valid contract (s) or letter (s) of credit and the total C&F value of such imports for the project is US \$ 50 million or above];

(ia). [Omitted]

(ii)

(iii)

Explanation.- Capital Goods mean any Plant, Machinery, Equipment, spares and accessories, classified in chapters 84, 85 or any other chapter of the Pakistan Customs Tariff, required for-

- (a) the manufacture or production of any goods, and includes refractory bricks and materials required for setting up a furnace, catalysts, machine tools, packaging machinery and equipment, refrigeration equipment, power generating sets and equipment, instruments for testing, research and development, quality control, pollution control and the like;
- (b) use in mining, agriculture, fisheries, animal husbandry, floriculture, horticulture, livestock, dairy and poultry industry; or
- (c) service sectors listed at S. No. 16 of the table below, and includes the items mentioned in clause (a) above.”

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SRO 575(I)/2006	PART-I OF THE FFITH SCHEDULE
<p>Explanation:- Capital Goods mean any Plant, Machinery, Equipment, spares and accessories, classified in chapters 84, 85 or any other chapter of the Pakistan Customs Tariff, required for-</p> <p>(a) the manufacture or production of any goods, and includes refractory bricks and materials required for setting up a furnace, catalysts, machine tools, packaging machinery and equipment, refrigeration equipment, power generating sets and equipment, instruments for testing, research and development, quality control, pollution control and the like;</p> <p>(b) use in mining, agriculture, fisheries, animal husbandry, floriculture, horticulture, livestock, dairy and poultry industry; or</p> <p>(c) service sectors listed at S. No. 16 of the table below, and includes the items mentioned in clause (a) above.”</p>	<p>Explanation:- Capital Goods mean any Plant, Machinery, Equipment, spares and accessories, classified in chapters 84, 85 or any other chapter of the Pakistan Customs Tariff, required for-</p> <p>(a) the manufacture or production of any goods, and includes refractory bricks and materials required for setting up a furnace, catalysts, machine tools, packaging machinery and equipment, refrigeration equipment, power generating sets and equipment, instruments for testing, research and development, quality control, pollution control and the like; and</p> <p>(b) use in mining, agriculture, fisheries, animal husbandry, floriculture, horticulture, livestock, cool chain dairy, poultry industry, IT sector, storage, communication and infrastructure development of SEZs by zone Developer.</p>

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GOVERNMENT OF PAKISTAN
 MINISTRY OF FINANCE, ECONOMIC AFFAIRS,
 STATISTICS & REVENUE
 (REVENUE DIVISION)

Islamabad, the 19th January, 2009.

NOTIFICATION
 (CUSTOMS)

S.R.O. 41(1)/2009.- *In exercise of the powers conferred by section 19 of the Customs Act, 1969 (IV of 1969), and clause (a) of sub-section (2) of section 13 of the Sales Tax Act, 1990, and in supersession of its Notification No. S.R.O. 316(1)/2007, dated the 12th April, 2007, the Federal Government is pleased to direct that **capital equipment (plant, machinery, equipment and accessories)**, if not manufactured locally, shall be exempt from the whole of customs-duty and sales tax if imported for the development of projects in the Special Industrial and Economic Zones and for establishing projects in these Zones, subject to the following conditions, namely:-*

- i. locations and perimeters shall be notified by the Board of Investment of Investment Division;*
- ii. the benefit of this notification shall be admissible only for capital equipment (plant, machinery, equipment and accessories), and not for raw materials;*
- iii. the goods imported under condition (ii) for the zones will not be removed without the permission of the FBR within five years of their importation:*
- iv. in case of partial shipments of machinery and equipment for setting up a plant, the importer shall, at the time of arrival of first partial shipment, furnish complete details of the machinery, equipment and components required for the complete plant, duly supported by the contract, lay out plan and drawings; and*
- v. Board of Investment (BOI) shall certify in the prescribed manner and format as per Annex-A that the imported goods are bona fide project requirement. In case the clearance of the imported goods is through Pakistan Customs Computerized System (PaCCS), the authorized officer of the BOI shall furnish all relevant information online to PaCCS against a specific user ID and password obtained under section 155D of the Customs Act, 1969 (IV of 1969). In already computerized Collectorates or Customs stations where the PaCCS is not operational, the Project Director or any other person authorized by the Collector in this behalf shall enter the requisite information in the Customs Computerized System on daily basis, whereas entry of the*

data obtained from the customs stations which have not yet been computerized shall be made on weekly basis.

Explanation. In this notification,-

- (a) the expression "**machinery**" means,-
- (i) *machinery and equipment operated by power of any description, such as is used in industrial process;*
 - (ii) *apparatus and appliances, including metering and testing apparatus and appliances specifically adopted for use in conjunction with machinery and equipment specified in sub-clause (i);*
 - (iii) *mechanical and electrical controls and transmission gear adapted for use of goods specified in sub-clause (i); and*
 - (iv) *component parts of machinery and equipment, as specified in sub-clauses (i), (ii) and (iii), identifiable for use in or with machinery; and*
- (b) *the expression "not manufactured locally" means the goods which are not listed in the locally manufactured list, notified through a Customs General Order issued by the Federal Board of Revenue from time to time or, as the case may be, certified as such by the Engineering Development Board."*

4. From perusal of the aforesaid two notifications and Part-I of the 5th Schedule to the Customs Act, it reflects that insofar as the definition of "Capital Goods" is concerned, it is *pari materia* to each other and we do not find any difference as contended on behalf of the Respondents and so also observed by the Tribunal. The said definition of capital goods and claim of exemption under SRO 575 has been examined in the case of **Aisha Steel** (supra), which reads as under:-

36. From a perusal of the preamble of the S.R.O. it is seen that the Notification has been issued to convey the decision of the Federal Government to exempt plant, machinery, equipment and apparatus including capital goods specified in column (2) of the Table falling under HS Codes specified in column (3) of the Table subject to the conditions listed. The explanation in which capital goods have been defined has restricted its meaning to plant, machinery, equipment, spares and accessories in three sectors, Serial No.21 provides concession and exemption to machinery, equipment and other capital goods imported by an industrial undertaking under respective HS Codes and the condition is that such exemption

is available if they are imported for setting up any industry whereas Serial No.34 provides exemption to prefabricated buildings and sheds and the condition for the applicability of exemption/ concession is that such prefabricated buildings and sheds are imported by certain specified sectors. A plain reading of this serial may lead to the conclusion that the exemption in respect of prefabricated buildings and sheds are only available to such prefabricated buildings and sheds which are imported by the medical sector, hotel, and tourism and industries and wholesale and retail stores. However, we are of the opinion that the entire S.R.O. has to be read as a whole to arrive at the intent of the authority. A perusal of the table reveals that Column No.2 of the table describes the items to which the exemption/concession is being provided and in Serial No.34 in Column No.2 prefabricated buildings and sheds have been mentioned. We now go back to the preamble where it has been provided that the exemption is in respect of plant, machinery and equipment and apparatus including capital goods specified in column (2) of the table below. The immediate interpretation which can be made of this preamble is that any item/goods specified in column (2) of the table will either be a plant, machinery, equipment or apparatus or capital goods and therefore the natural conclusion is that since prefabricated buildings and sheds have been specified in column (2), therefore, they fall either in the definition of plant, machinery equipment and apparatus or capital goods and their import therefore, subject to other conditions, will be entitled to exemption/concession under other serial numbers also despite the fact that in column (5) the condition attached is that the exemption and concession will be available only if they are imported by the three sectors mentioned above. Despite arriving at this conclusion we have reviewed the judgments relied on by the learned counsel for the petitioners and have seen that in almost all of them plant and machinery and capital goods have been exhaustively defined. We will now discuss these judgments briefly one by one.

43. From the above discussion about the interpretation of Serials Nos.21 and 34 of the S.R.O. 575(I)/2006 and the relevant extracts from the judgments relied on by the learned counsel there is no doubt left in our minds that the prefabricated factory buildings and sheds imported by the petitioners fall within the definition of plant, equipment, machinery and capital goods and therefore qualify for exemption/concession prescribed under S.R.O. 575(I)/2006 dated 5-6-2006.

44. However, the question which now arises is that if the prefabricated buildings and sheds imported by the petitioner fall within the definition of plant, equipment, machinery and capital goods then why has the condition been specified in Column No.5 at Serial No.34 of the S.R.O. 575(I)/2006 that it will only be available to prefabricated buildings and sheds if imported by sectors specified at Serials Nos.7, 8 and 17 which relate to hospitals and medical or diagnostic institutes; hotels (three stars and above), tourism, sporting and other recreation services related projects as approved by the Ministry of Tourism; and goods imported for establishing wholesales/retail chain stores. A perusal of Serial No.7 and Serial No.17 leads to the conclusion that since in iv those sectors the machineries which qualify for exemption have been specifically mentioned and the exemption/concession has been allowed to the mentioned machineries only and since at Serials Nos.7 and 17 the prefabricated buildings and sheds were not mentioned, therefore, for prefabricated buildings to qualify for exemption/concession in these sectors it was necessary either to include them in the list of machinery in that serial itself or mention them in serial 34 that they will be exempt/entitled to concession if imported by sectors specified in serial Nos.7 and 17. A perusal of Serial No.8 also reveals that in Serial No.8 it is seen that stringent condition has been provided in Column No.5 at Serial No.8. Therefore, we are of the opinion that if prefabricated buildings are imported by sectors specified in Serial No.8 then condition specified in column 5 at Serial No.8 will not be available as no such condition has been specified in Serial No.34 and such machinery will qualify for exemption/concession even if condition specified in column 5 at Serial No.8 has not been followed but the other prescribed conditions

have been fulfilled. We are therefore of the considered opinion that the prefabricated buildings and sheds are integral part and fall within the definition of plant, equipment, machinery and capital goods as specified in Serial No.21 of the S.R.O. 575(I)/2006 dated 5-6-2006 and therefore the contention of the respondents in both these petitions that the prefabricated buildings and sheds do not fall within the definition of machinery and capital goods cannot be sustained.

45. Since in C.P. No.D-308 of 2009 the only reason for disallowing the exemption/concession under S.R.O. 575(I)/2006 dated 5-6-2006 was that the prefabricated building did not constitute plant, machinery, equipment and capital goods as envisaged in Serial No.21 of S.R.O. 575(I)/2006 dated 5-6-2006 and therefore did not qualify for exemption under the said S.R.O., in view of our above opinion the petition is allowed and it is held that the consignment of pre-engineered/ prefabricated steel structure employing crane system equipped with top running crane system being integral component of industrial plants falls within the definition of plant, equipment, machinery and capital goods as envisaged in Serial No.21 and is therefore entitled to' exemption/ concession provided in Serial No.21 of the above Notification. The respondents are therefore directed to provide such exemption/concession to the petitioner and return their postdated cheques.”

5. From the above observations of learned Division Bench of this Court, it is clear that insofar as the definition of “Capital Goods” is concerned, it has been interpreted expansively to hold that Prefabricated Buildings and Sheds, so imported, fall within the definition of either machinery, plant, equipment, apparatus or capital goods; and therefore, qualifies for exemption under SRO 575(I)/2006. The Tribunal in this context appears to have been swayed by only reading Para-45 of the above judgment; wherein, in respect of one of the Petitions bearing No.D-308 of 2009, the contention of the Petitioner was accepted by holding that the consignment of prefabricated steel structure employing crane system equipped with top running crane system being integral component of industrial plants fell within the definition of plant, equipment, machinery and capital goods at Serial No.21 of the said SRO; hence entitled for exemption. We may clarify that this observation in respect of some attached crane system was only regarding one petition; whereas, in respect of other petitions as noted in paragraph 43 & 44, the exemption was also granted in respect of Prefabricated Buildings without any attachment of overhead crane. The learned Division Bench in para 43 has in clear and express words held that *“there is no doubt in our minds that the*

prefabricated factory buildings and sheds imported by the petitioner fall within the definition of plant, equipment, machinery and capital goods and therefore qualify for exemption/concession prescribed under SRO 575(I)/2006 dated 5.6.2006". We may also clarify that the remaining discussion in the said judgment is in respect of different Serial Nos. of the SRO and the exemption to different types of Industries mentioned against it. In fact, it was clearly held by the Court that if for one category of an industry mentioned against a particular Serial Number, prefabricated buildings are capital goods, then how is it possible to accept that it is not so for another category of industry. Therefore, once it has been held categorically by the Court that prefabricated buildings and sheds fall within the definition of plant, equipment, machinery and capital goods, then how could the department or for that matter the Tribunal can disagree with such view merely for change in the SRO or classification of goods under some special chapter (9917) of the Customs Tariff or under the 5th Schedule to the Customs Act. Till such time the definition remains the same, the dicta laid down in the case of **Aisha Steel** (supra) will remain applicable and any deviation thereof, in fact, is contemptuous on the part of the department. Accordingly, this aspect of the matter stands answered and the finding of the Tribunal in this context is hereby set-aside.

6. The other issue which has prevailed upon the Tribunal in disallowing the exemption is in respect of interpretation of the Explanation provided in Part-I of the Fifth Schedule to the Customs Act, 1969. The said Explanation has already been reproduced above in Para 2. However, insofar as the present Applicant is concerned their claim of exemption is not directly under Part-I (ibid); but under Chapter 9917(2) of the Customs Tariff which reads as under:-

“(2) Capital goods, as defined in the preamble of **Part-I of the Fifth Schedule to the Customs Act**, and fire-fighting equipment, except the items listed under Chapter 87 of the Pakistan Customs Tariff, imported for setting up of a Special Economic Zone (SEZ) by zone developers **and for installation in that zone by Zone Enterprises**, on one-time basis as prescribed in the **SEZ Act, 2012** and rules thereunder subject to such conditions, limitations and restrictions as the Federal Board of Revenue may impose from time to time, by,-

- (i) Zone Developers for setting up of a Special Economic Zone (SEZ) or Co-developer as defined in Special Economic Zone Rules, 2013, shall also be entitled to avail the same incentives and exemptions for the same period as available to the Developer under the SEZ Act 2012, subject to condition that the Developer of the SEZ relinquishes its rights to the incentives and exemptions in favour of the Co-developer; provided further that the respective Special Economic Zone Authority duly endorses such re-assignment, and ensures that such re-assignment shall not be misused.
- (ii) **Zone Enterprises for installation in that zone.”**

From perusal of the aforesaid special classification Chapter, it appears that an exemption has been provided to capital goods as defined in the preamble of Part-I of the Fifth Schedule imported for setting up of a Special Economic Zone by Zone Developers and for installation in that Zone by “**Zone Enterprises**” on one time basis as prescribed in the SEZ Act, 2012 and the Rules thereunder, subject to such conditions, limitations and restrictions as FBR may impose from time to time. It further provides that Co-developers as defined in Special Economic Zone Rules 2013 shall also be entitled to avail the same incentives and exemptions for the same period as available to the Developer under SEZ Act 2012. On a holistic view of this special classification and exemption, it reflects that it is not confined to SEZ Developers only as observed by the Tribunal; but is also available to a Co-Developer as well as **Zone Enterprises**. In essence, there are three different categories of the importers, who can avail this exemption, and it is nobody’s case that the Applicant is not a Zone Enterprise setting up its factory in an approved Zone in terms of the SEZ

Act, 2012. The Applicant has not claimed that it is a Zone Developer as has been misunderstood by the Tribunal; but is a **Zone Enterprise** whereas, exemption is available to both type of importers. Moreover, the finding of the Tribunal in respect of Para (a) & (b) of the explanation to Part-I of the 5th Schedule to the Customs Act, 1969, that both conditions are to be fulfilled simultaneously, is also flawed and irrelevant. As noted earlier, the exemption is not under Part-I *ibid*; but under Chapter 9917(2), whereas reference to Part-I is only in respect of definition of Capital Goods which already stands interpreted in **Aisha Steel** (Supra). This is also clarified upon examination of Serial Nos. 5, 9 to 13 of Part-I to the 5th schedule which otherwise provide for exemption to various types of imports / industries which do not fulfill para (b) of definition of Capital Goods. Hence, when 5th Schedule is read as a whole, the reference herein is not restrictive and is mere illustrative.

7. Similarly, The Tribunal's observations while dealing with Serial No. 19 of the 6th Schedule of the Sales Tax Act, 1990 in respect of exemption of sales tax that the Applicant is not a Zone Developer; but has set-up its industrial unit in Special Economic Zone; hence not entitled for any exemption is incorrect and without proper appreciation of law and facts. The said provision is *pari materia* to what has been provided under Special Classification Chapter 9917(2) and therefore, the Applicant is not only entitled for exemption of duties on the goods in question being Capital Goods under Chapter 9917(2) read with the preamble of Part-I of the 5th Schedule to the Customs Act, 1969; but so also from Sales Tax against Serial No.19 of the 6th Schedule to the Sales Tax Act, 1990.

8. Finally, and notwithstanding the observations as above and that whether, exemption is available to the Applicant as claimed under Chapter 9917(2) read with Part-I of the Fifth

Schedule (ibid), it is of paramount importance to note that an exemption is also provided under section 37 of the SEZ Act, 2012 read with SRO 41(I)/2009 dated 19.01.2009 which is available for establishing projects in SEZ's. Such exemption has been provided in terms of Section 19 of the Customs Act, 1969 read with Section 13 of the Sales Tax Act, 1990 on the import of capital equipment (i.e. plant, machinery, equipment and accessories), whereas, in the said notification, it is only machinery, which has been defined and it is silent about as to what is plant, equipment and accessories. This very notification came for consideration before a Division Bench of this Court and vide Judgment dated 11.03.2024 in **Hayat Kimya Pakistan (Pvt.), Ltd.**³ and the Court has been pleased to hold that since plant, equipment and accessories are not defined in the notification; therefore, it cannot be restricted to what has been defined as "Machinery" in the said notification; hence, firefighting equipment import by a Zone Enterprises is entitled for exemption from customs duties and taxes in terms of SRO 41(I)/2009 read with Special Economic Zone, Act, 2012. The Court further observed that exemption is for all sorts of capital equipment which could be plant, machinery, equipment and accessories as well, whereas, Machinery, in the instant SRO is one of the capital equipment in addition to plant, equipment and accessories. therefore, the restriction in respect of exemption is only on machinery for which such stipulated conditions are applicable and not in respect of the remaining capital equipment. It was finally held that firefighting equipment as well as lighting equipment falls within the definition of capital equipment under SRO 41 and therefore, entitled for exemption from customs duties as well as Sales Tax as provided therein. Hence, in line with these findings, in our considered view, the claim of the Applicant for exemption under SRO 41(I)/2009 is

³ Judgment dated 11.03.2024 in C.P No. D- 8480 of 2019 (M/s. Hayat Kimya Pakistan (Pvt.) Ltd. V. Federation of Pakistan & others)

also valid by treating the goods in question as capital equipment as provided in the said SRO.

9. It further appears that in respect of some other importer FBR was asked to give its opinion on this issue and vide letter dated 2.3.2021 it has been explained by FBR that Pre-fabricated building is neither plant, machinery and equipment; nor listed in clause (a) and (b) of the Definition of Capital Goods, as appended in Part-I of Fifth Schedule to the Customs Act, 1969; and hence is not entitled for exemption of duty in terms of PCT 9917(2). This opinion of FBR is contrary to what has already been interpreted and settled by this Court in ***Aisha Steel*** (Supra); hence, is of no consequence. We are also surprised to note that this view of FBR has prevailed upon the Tribunal while disallowing exemption to the Applicant. It is needless to state that any such directions / opinion of FBR are not binding *per se* on the officers of the Customs performing *quasi-judicial* functions, at least not on the Tribunal as an Appellate Forum. Thus, in all those cases in which Customs Authority exercises a quasi-judicial function, it is not bound by the instructions and directions or orders of the board which interfere with its judicial discretion⁴. In this view of the matter, any interpretation placed by the Central Board of Revenue, on a statutory provision cannot be treated as a pronouncement by a forum competent to adjudicate upon such a question judicially or quasi-judicially⁵. It is well settled proposition of law that the Central Board of Revenue, or for that matter even the Federal Government, cannot control or curtail judicial adjudication power in the forums provided under the relevant law by giving a particular interpretation to a particular provision of the relevant law⁶. Therefore, in our considered view, the Tribunal has erred in this regard by placing reliance on the directions of FBR and

⁴ Assistant Director Intelligence v B.R.Herman (PLD 1992 SC 485)

⁵ Central Insurance Company v The Central Board of Revenue (1993 SCMR 1232)

⁶ The Central Board of Revenue v Sheikh Spinning Mills Ltd. (1999 SCMR 1442)

its interpretation in respect of Capital Goods viz a viz the exemption claimed by the Applicant, more so when in ***Aisha Steel*** (Supra) an interpretation in favor of the Importer has already been rendered by a Division Bench of this Court.

10. In view of hereinabove facts and circumstances of the case, the proposed question is answered in favour of the Applicant and against the Respondent. Consequently, thereof, this Reference Application is **allowed** by setting aside the orders passed by the forums below. Let a copy of this order be sent to the Customs Appellate Tribunal at Karachi under Section 196(5) of the Customs Act, 1969 and copy of this order shall also be placed in the connected cases.

Dated: 12.05.2025

ACTING CHIEF JUSTICE

J U D G E

Ayaz