

THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Yousuf Ali Sayeed

Mr. Justice Adnan Iqbal Chaudhry

C.P. No. D – 1648 of 2021

[Service Long March Tyres (Pvt.) Ltd. versus Federation of Pakistan & others]

C.P. No. D – 1647 of 2021

[M/s. MMS Global versus Federation of Pakistan & others]

Petitioners : Service Long March Tyres (Pvt.) Ltd and M/s. MMS Global through M/s. Jawad A. Qureshi and Muhammad Yousuf Anwar, Advocates.

Respondent No. 1 : Federation of Pakistan through Ms. Mehreen Ibrahim, Deputy Attorney General for Pakistan.

Respondents 2, 3 & 6 : Nemo.

Respondent No. 4 : The Collector, Model Customs Collectorate of Appraisalment & Facilitation (East) through Mr. Muhammad Bilal Bhatti, Advocate.

Respondent No. 5 : The Collector, Model Customs Collectorate of Appraisalment & Facilitation (West) through Ms. Afsheen Aman, Advocate.

Date of hearing : 16-09-2026

Date of decision : 16-09-2026

ORDER

Adnan Iqbal Chaudhry J.- Both Petitioners are a “Zone Enterprise” within the meaning of Special Economic Zones Act, 2012 [SEZ Act]. The Petitioners imported ‘prefabricated structures/building’ for installation in the zone enterprise, filed a G.D. and claimed a one-time exemption from customs duties and taxes under section 37(a) of the SEZ Act read with PCT Code 9917(2), and under SRO 41(I)/2009. Pending consideration of the exemption, the customs department accepted security and released said goods to the Petitioners on a provisional determination under section 81 of the Customs Act, 1969. Soon thereafter, the customs

department informed the Petitioners that prefabricated structures/building do not qualify for exemption under aforesaid provisions, which are only in respect of 'plant, machinery and equipment' as clarified by the Federal Board of Revenue [FBR] by letters dated 22.01.2021 and 02.03.2021. These petitions were therefore filed to challenge FBR's interpretation of the exemption provisions *vide* letters of clarification dated 22.01.2021 and 02.03.2021 [impugned letters]. Both counsels acknowledge that due to the interim order operating in these petitions, the provisional determination made in respect of said goods under section 81 of the Customs Act was not finalized by the customs department.

2. Per learned counsel for the Petitioners, the clarification made by the FBR *vide* impugned letters was contrary to the case of *Aisha Steel Mills Ltd. v. Federation of Pakistan* (2011 PTD 569); and that while these petitions were pending, a learned Division Bench of this Court in *National Food Ltd. v. Collector of Customs* (2025 PTD 1391) has also declared the very letters impugned herein to be of no legal effect; therefore, the issue agitated by these petitions is a covered matter.

3. In *Aisha Steel Mills Ltd. v. Federation of Pakistan* (2011 PTD 569) it was held by this Court that 'prefabricated factory buildings and sheds' were covered by the definition of "*plant, equipment machinery and capital goods*" appearing in SRO 575(I)/2006 and thus qualified for exemption/concession in duty and taxes under that SRO. On the other hand, the impugned letters, which were issued by the FBR upon representations made by other importers claiming the same exemption, opine that "*prefabricated 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 Act, and hence is not entitled for exemption of duty in terms of PCT 9917(2)*". Though the goods subject matter of *Aisha Steel* and these cases are similar, learned counsel for the customs department submits that *Aisha Steel* is of no help to the Petitioners because that had interpreted a different SRO which is no longer in field.

4. The submission by learned counsel for the department that *Aisha Steel* is not relevant to exemption from customs duties and taxes under section 37(a) of the SEZ Act, PCT Code 9917(2) and under SRO 41(I)/2009, stands rejected by the case of *National Food Ltd. v. Collector of Customs* (2025 PTD 1391) decided by this Court in Reference jurisdiction. The determination in that case was:

- (i) that the definition of 'capital goods' in SRO 575(I)/2006 which was considered in *Aisha Steel*, and the definition of 'capital goods' in PCT Code 9917(2) read with Part-I of the Fifth Schedule to the Customs Act, are *pari materia*, therefore the customs department could not have ignored *Aisha Steel* while interpreting the words 'capital goods' appearing in PCT Code 9917(2);
- (ii) that the exemption from customs duties and taxes provided in section 37(a) of the SEZ Act read with SRO 41(I)/2009 is for "*capital equipment (plant, machinery, equipment and accessories), if not manufactured locally*"; it is not confined to 'machinery'; therefore, the definition of 'machinery' given in that SRO does not oust the exemption if the goods are otherwise 'capital equipment';
- (iii) as to the reliance placed by the customs department on FBR's letter of clarification dated 02.03.2021 to deny the aforesaid exemption, which is also the letter impugned in these petitions, it was held:

"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 Prefabricated 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."

5. Therefore, we agree with learned counsel for the Petitioners that the exemption provisions subject matter of these petitions have since been interpreted by this Court in the case of *National Food*, whereby it was also declared that the interpretation to the contrary made by the FBR *vide* letter dated 02.03.2021 (impugned letter), is of no consequence. That being so, we allow these petitions by directing the customs department to finalize the provisional assessment under section 81 of the Customs Act in respect of subject goods by adhering to the case of *National Food vis-à-vis* the exemption sought from customs duty and taxes, and not on the basis of FBR's letters of clarification dated 22.01.2021 and 02.03.2021. Petitions disposed of.

Office to place a copy of this order in the connected petition listed above.

JUDGE

JUDGE

**PS/SADAM*