

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Yahya Afridi, CJ
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Miangul Hassan Aurangzeb

Civil Petition No. 1277-K of 2022

*[Against order dated 08.11.2022 of the
High Court of Sindh, Karachi passed in
C.P.No. D-5641/2022]*

*The Collector of Customs, Collectorate of Customs
Appraisement, Karachi.*

... *Petitioner*

Versus

M/s M.M. Steel, Sialkot and another.

... *Respondents*

For the Petitioner:

Mr. Muhammad Khalil Dogar, ASC.
Mr. K.A. Wahab, AOR.
Saad Atta Rabbani, Addl. Collector.
Farhad Ullah, Dy. Collector.
[through video-link from Karachi]

For the Respondents:

Nemo.

Date of Hearing:

24.10.2025.

JUDGMENT

Muhammad Shafi Siddiqui, J. Respondent No.1 has imported the consignment of Iron and Steel scrap as held, in the impugned order, to be damaged and unserviceable machine rollers, *vide* BL No. MEDUML793962 dated 16.06.2022. On its arrival/de-stuffing, respondent No. 1 submitted an application for mutilation of consignment (goods) under section 27A of the Customs Act, 1969 (hereinafter called as '**the Act**'). On the receipt of the application for mutilation the goods were inspected in terms of section 27A of the Act read with Rule 592, which is meant for mutilation or scrapping of the goods, issued under S.R.O. 450(I)/2001 dated 18.06.2001 (hereinafter called as '**Customs Rules of 2001**'). The request of the respondent No.1 was turned down *vide* letter dated 16.09.2022 on the ground that the

consignment of “rollers” does not qualify for mutilation under section 27A of the Act read with rule 592 of the Customs Rules of 2001.

2. Being aggrieved of the said rejection, respondent No.1 filed constitutional petition before the High Court of Sindh at Karachi, wherein it had prayed for a declaration that the refusal for the mutilation of goods, which request was made before filing of goods declaration, is illegal, malafide, arbitrary and as it does not assign any valid reason is hit by section 24A of the General Clauses Act. The respondent No.1 also sought direction that the concerned officers be directed to pass orders for mutilation/scrapping of consignment. The comments of the respondents (petitioners before us) were called and the petition was heard and the impugned order was passed, whereby the petition was allowed. Aggrieved of it, the petitioner-department filed this petition for leave to appeal.

3. We have heard the learned counsel and perused the material available on record. Notice was issued to respondent No.1, but there is no attendance.

4. Section 27A of the Act was substituted via Finance Act, 2010 and was subjected to few amendments since then. The petitioners in their comments before the High Court has not taken a specific ground that the request for the mutilation was not made before filing of goods declaration, which is required in terms of section 27A of the Act. We, therefore, proceed with the understanding that the application for mutilation was filed prior to the filing of goods declaration. The consignment reached on 16.06.2022, the request however, for mutilation was received by the office on 10.09.2022 and consequently the consignment comprising of rollers were inspected for mutilation under section 27A of the Act read with rule 592 of the Customs Rules of 2001, which was regretted. Section 27A of the Act allows mutilation

or scrapping of goods as are notified by the board and in the manner as prescribed by the rules. Only such goods which are found in consonance with the requirement of section 27A of the Act read with the relevant rules shall be subjected to duty on such rates as may be applicable to the goods as if they had been imported in the mutilated form or as scrapped.

5. Perusal of the impugned order, specially its page four (as the paras are not numbered) reveals that the goods were imported in unserviceable form and were thus patently scrapped and hence do not come within the parameter of section 27A of the Act and restrictive list prescribed by rule 592.

6. There are no two views that the list available under rule 592 is restricted and not inclusive of "any other item" except those identified therein. Since the goods were imported on 16.06.2022, therefore, the amended version of rule 592 as it stood at the relevant date, shall apply, specially when the request for mutilation was made. Rule 592 was subjected to few amendments and omissions, however, the "rollers" were never identified by the said rule in any form (serviceable/unserviceable).

7. We do not agree with the observation of the Division Bench of the High Court when it is expressed by the Bench, that those were unserviceable goods. Reason being that it was never the case of the respondent/importer that the goods were imported in unserviceable condition. For convenience we would like to reproduce the prayer clause of the Constitution Petition No.D-5641 of 2022, on which the impugned order was passed:

"I. *Declare that the refusal of request, made before filing of Goods Declaration for Mutilation/Scrapping of the consignment in terms of section 27-A of the Customs Act, 1969, is illegal, mala fide, arbitrary, unlawful, void ab initio, contrary to the provisions of Section 24A of the General Clauses Act and ultra vires the Act as well as the Constitution of Pakistan, 1973.*

- II. *Direct the Respondent No. 2/ its officers to allow mutilation/scrapping of the consignment of the Petitioner forthwith.*
- III. *Set aside/ quash letter dated 16.09.2022 issued by the Respondent No. 3 without assigning any plausible reasons.*
- IV. *Restrain the Respondents, their officers from taking any adverse/coercive action against the Petitioner in a manner contrary to the law, including but not limited to auction of the impugned consignment, attachment of bank accounts, suspension of Petitioner's IUD, blocking of Petitioner's NTN / User ID or any criminal action till the pendency of this petition.*
- V. *Direct the Respondents to issue delay and detention certificate in respect of the impugned consignment in accordance with law;*
- VI. *Grant any other relief deemed just and appropriate in the circumstances of the case.*
- VII. *Grant costs of the petition."*

The outright request for the mutilation itself suggest that those goods were serviceable goods and hence ought to follow the procedure prescribed under section 27A of the Act read with rule 592 of the Rules of 2001. Rule 592 provides that the "identified goods" (old and new items) if imported in serviceable conditions along-with scrap consignment or imported separately as the scrap and found serviceable may be mutilated and scrapped as the case may be within the meaning of section 27A of the Act. The rule is then followed by short list identifying the categories of good; the rollers admittedly not included. As far as the impugned order is concerned (as in terms of the reasoning provided), that the rollers were imported in unserviceable conditions (which is not even the case of the importer-respondent), hence the mutilation rule is not applicable, is totally contrary to the facts of the case. The relevant reasoning in the impugned order is as under:

"Be that as it may, Rule 592 only provides for a mechanism for mutilation or scrapping of goods which are found to be "serviceable", inserviceable, or patently scrap goods do not fall within the restrictive list prescribed by Rule 592. The impugned goods from the photographs available, coupled with the facts that the goods have been dismantled gives us reason to believe that the impugned goods patently cannot be used for any purpose other than melting.

The observation was primarily on the basis of photographs which too is not acceptable. The impugned order further opined that *"decades old rule which include the list of 9 items is beyond comprehension not to re-use thousands of other unserviceable items which could be imported for re-use of the material, which could be an important step towards achieving better and green environment, which aspect could not be ruled out"*.

8. The rules, specially subject rule has undergone many changes and it cannot be said that the legislature and/or FBR were not conscious about the list and its contents. Had it been the intention of legislature, as opined by the High Court, there was no wisdom in providing list of "goods" with the said rule.

The said rule 592 was amended from time to time such as on 27.06.2011, 08.08.2017 and it was lastly amended through S.R.O. 1540(I)/2018 dated 21.12.2018 which shows the consciousness and it stood as of now and reproduced hereunder:

"592. Goods allowed for mutilation or scrapping. - *The following old and used items, if imported in serviceable condition along with 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;

(vii) tyres or tubes;

(viii) front Cabin/half Cut HTV/LTV/Cars, with or without chassis number for which Master bills of Lading were issued upto fifteenth July, 2017; and

(ix) Industrial inputs as approved by the Collector in the analysis certificate in terms of rule 2(f) of SRO.327(I)/2008, dated 29.03.2008.”

The relevant rule, as it appears, suggest that it is restricted and not inclusive of other items, as incorrectly viewed in the impugned order. The respondent did not get his industrial input approval too via any analysis certificate, hence no case is made out even on this count.

9. In view of the above, we convert this petition into appeal, allow the same and set aside the impugned order; consequently the order of rejection for mutilation, stands restored.

Chief Justice

Judge

Judge

Islamabad:
24.10.2025

Approved for Reporting
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