FEDERAL CONSTITUTIONAL COURT OF PAKISTAN
(Original/Appellate/Advisory/Review Jurisdiction)

Present:
JUSTICE AMIN-UD-DIN KHAN, CHIEF JUSTICE
JUSTICE AAMER FAROOQ

C.As.567, 568 & 569/2011
AND
F.C.P.L.A.1576/2026
[against the judgment dated 16.11.2010 passed by the High Court of Sindh, Karachi in C.P. Nos.D-2330/2008, & D-308/2009 and Judgment dated 14.05.2026 passed by the Lahore High Court, Lahore in W.P. No.63821/2022]

Federation of Pakistan thr. Secy. Revenue Division/Chairman FBR & others *[in C.A.567/2011]*
Collector of Customs *[in C.A.568/2011]*
Federal Board of Revenue thr. its. Chairman & another *[in C.A.569/2011]*
M/s. Orient Material (Pvt.) Ltd, through its authorized Officer *[in F.C.P.L.A.1576/2026]*

...Appellants /Petitioners

Versus

Aisha Steel Mills Limited. *[in C.A.567/2011]*
M/s. Huffaz Seamless Pipe Industries Ltd. and others *[in C.A.568 & 569/2011]*
The Federal Board of Revenue, through its Chairman & others *[in F.C.P.L.A.1576/2026]*

...Respondent(s)

For the Appellants/ Petitioners	:	Mr. Muhammad Khalil Dogar, ASC Mr. M.D. Shehzad Feroz, ASC Mr. Ishtiaq Ahmed, ASC Mr. Imtiaz Rashid Siddiqui, ASC
For the Respondent(s)	:	Mr. Shehzad Cheema, ASC Mr. Sarfraz Cheema, ASC
Research Assistance by	:	Dr. Muhammad Mumtaz, Research Officer
Date of Hearing	:	11.11.2026

JUDGMENT

AMIN-UD-DIN KHAN, CJ.- These matters arise from divergent High Court judgments concerning exemption or concession on imported prefabricated industrial structures. The appeals against the High Court of Sindh's judgment dated 16.11.2010 in Constitutional Petitions Nos. D-2330 of 2008 and D-308 of 2009, allowing the claims, were transferred from the Supreme Court of

Pakistan following the Constitution (Twenty-seventh Amendment) Act, 2025. The connected petition, filed directly before this Court under Article 175F(1)(c), challenges the Lahore High Court's judgment dated 14.05.2026 passed in Writ Petition No.63821/2022, declining M/s Orient Material (Private) Limited's claim.

2. Briefly stated, the respondent-company imported prefabricated structures for a steel rolling mill at Bin Qasim, Karachi, and claimed concession under Serial No.21 of S.R.O. 575(I)/2006. The Revenue's rejection dated 02.09.2008 was challenged through Constitutional Petition No. D-2330/2008. The High Court of Sindh held that the structures qualified as plant and capital goods and that the aggregate import value attracted the exception to the local-manufacture condition. It quashed the rejection and directed grant of the admissible concession. Hence, the Revenue's challenge.

In F.C.P.L.A. No.1576/2026, the connected matter, M/s Orient Material (Private) Limited claimed exemption under PCT heading 9917(2) for prefabricated steel structures imported for its ceramic manufacturing unit in the Faisalabad Special Economic Zone. Following a judicial remand, the FBR rejected the claim on 07.10.2022 for lack of mechanical linkage with production machinery. The Lahore High Court upheld that decision and dismissed Writ Petition No.63821/2022 on 14.05.2026. Hence, Orient's petition.

3. We have heard learned counsel for the parties and carefully examined the record in light of their respective submissions.

4. The principal question is whether imported prefabricated industrial structures qualify as "plant", "capital goods" or "capital equipment", and whether mechanical integration with production machinery may be required without statutory authority. The claims must be examined under their respective frameworks: S.R.O. 575(I)/2006, as amended, in *Aisha Steel Mills etc.*; and the Special Economic Zones Act, 2012, PCT heading 9917(2), its incorporated definition of "capital goods" in Part I of the Fifth Schedule to the Customs Act, 1969, and the alternative exemption under S.R.O. 41(I)/2009 in Orient's case. Corresponding

expressions warrant consistent interpretation unless their text, context or purpose differs materially. The claimant bears the burden of establishing entitlement, but strict construction neither permits conditions absent from the law nor allows equitable enlargement of an exemption. The maxim *a verbis legis non est recedendum*—there must be no departure from the words of the law—governs both entitlement and its limits.

5. The expressions "plant", "machinery", "equipment" and "capital goods", though overlapping, are not synonymous. Their separate use indicates that the concession extends beyond mechanically operated production machinery. Each must be construed according to the applicable definition, statutory context and qualifying industrial activity. To equate all four with "machinery" would erase the statutory distinctions and deprive the other expressions of independent effect. Under S.R.O. 575(I)/2006, "capital goods" include qualifying plant, machinery, equipment, spares and accessories classified in Chapters 84, 85 "or any other chapter" of the Pakistan Customs Tariff. Goods outside the machinery chapters are therefore not excluded merely by their classification, provided they satisfy the substantive description and prescribed conditions. Classification and concessionary entitlement are distinct inquiries; a prefabricated industrial structure may remain classifiable under heading 94.06 while qualifying as capital goods. Likewise, the specific inclusion of prefabricated buildings and sheds at Serial No.34 does not, by itself, preclude entitlement under Serial No.21 where its requirements are independently met. The entries must be read harmoniously according to their respective descriptions, beneficiaries and conditions. The maxim *expressio unius est exclusio alterius* cannot imply an exclusion unsupported by the notification as a whole, nor can inclusion under one entry dispense with compliance under another.

6. The determinative inquiry is functional. A building does not become plant merely because it houses manufacturing operations; nor is a structure performing a substantive industrial function excluded merely because it also provides shelter. Its design, operational purpose, relationship with installed equipment and enduring industrial use must be assessed together under the

governing statutory framework. This approach finds persuasive support in *Scientific Engineering House (P) Ltd. v. Commissioner of Income Tax*, (1986) 1 SCC 11; AIR 1986 SC 338, which emphasized an asset's function and recognized that "plant" extends beyond mechanically operated apparatus. Likewise, in *Commissioner of Income Tax v. Karnataka Power Corporation*, (2002) 9 SCC 571, paragraphs 5–9, a specially constructed generating-station building was treated as plant because it formed an integral part of the generating system. Though decided under different fiscal provisions, these authorities distinguish premises merely housing industrial activity from structures functionally participating in it. They justify neither blanket exclusion nor automatic inclusion of buildings as plant; entitlement turns upon the applicable statutory language and the function proved.

7. Viewed thus, the High Court of Sindh's conclusion in the matters concerning *Aisha Steel Mills Limited* is legally sustainable. Huffaz's pre-engineered steel structure incorporated crane-support arrangements and was assessed by its function within the industrial installation. The finding concerned a specific industrial component, not prefabricated buildings generally. Its exclusion merely because it was described as a building or classified outside Chapters 84 and 85 would disregard the notification's express coverage of qualifying goods under other tariff chapters. The reasoning in *Aisha Steel Mills Ltd. v. Federation of Pakistan*, 2011 PTD 569, supports the same approach: eligibility depends upon the governing definition, the structure's demonstrated industrial function and compliance with the prescribed conditions, rather than its designation alone. The relaxation of the local-manufacture condition through S.R.O. 554(I)/2008 and S.R.O. 1226(I)/2008 must be applied where the prescribed requirements are met. A notification's beneficial character does not, by itself, render it retrospective. Entitlement is governed by the notification in force on the relevant statutory date under section 30 or, where applicable, section 30A of the Customs Act, 1969. Applying a notification already operative on that date is prospective application, even if the contract was concluded or the letter of credit established before its issuance.

8. Orient's claim is governed by the SEZ Act: section 2 provides overriding effect; section 3(e) defines "capital equipment"; section 34 distinguishes statutory entitlements from additional benefits; section 35 protects incentives; and section 37(a), as applicable to the imports concerned, grants a conditional one-time import exemption. Read with the relevant fiscal provisions, this framework requires the Revenue to grant the concession upon fulfilment of the prescribed conditions and precludes its refusal on grounds unsupported by law. The Lahore High Court erred in denying Orient's claim to an existing concession for want of approval under section 34(2), which concerns additional benefits. Although any verification by the Board of Investment required by law remains necessary, approval for an additional incentive cannot be imposed as a condition of an existing statutory exemption.

9. Pakistan Customs Tariff (PCT) heading 9917(2), in Chapter 99 of the First Schedule to the Customs Act, incorporates the definition of "capital goods" in Part I of the Fifth Schedule, which extends to qualifying goods outside Chapters 84 and 85. The machinery provisions of Section XVI therefore do not exhaust the concession's scope. The departmental order dated 07.10.2022 imposed mechanical linkage without statutory basis. Plant and equipment may perform structural, protective, supporting or operational functions without mechanical attachment to production machinery. Likewise, the distinct categories in section 3(e) must each receive effect. The department thus erred in treating mechanical attachment as essential to the required industrial function.

10. Orient's alternative claim under S.R.O. 41(I)/2009 required independent consideration. The notification covers qualifying capital equipment comprising plant, machinery, equipment and accessories. Its specific definition of "machinery" cannot, without textual warrant, govern the other categories or curtail their independent scope. The conditions concerning local manufacture, certification, bona fide project requirements and removal remain enforceable according to their terms, but cannot be supplemented by a universal requirement of mechanical linkage absent from the notification.

11. The Lahore High Court could not distinguish *Aisha Steel Mills* merely because it concerned a different notification; any departure required a material difference in the statutory text, context or conditions of entitlement. It also accorded undue deference to the departmental committee. Technical matters may require expert assessment, but whether mechanical linkage is a statutory condition is a question of law. The requirement to prove mala fides or absence of jurisdiction beyond reasonable doubt was likewise misplaced. A misconstruction of law, imposition of an extraneous condition or failure to address a material issue may warrant judicial interference. Neither technical expertise nor an opportunity of hearing cures such an error. The Office Memorandums dated 22.01.2021 and 02.03.2021 cannot alter the scope of a statutory concession. Any power to prescribe conditions must be exercised within the enabling provision and in the prescribed manner. Circulation to assessing officers gives a departmental interpretation no legislative force. Customs authorities and appellate forums must determine entitlement independently under the governing law and its authoritative judicial interpretation.

12. Orient's objection to the competence of the Chief (Tariff & Trade) also required consideration. A judicial direction to the Board does not preclude implementation through a duly authorized officer. Section 8 of the Federal Board of Revenue Act, 2007 permits delegation of the Board's functions and powers; the relevant inquiry was therefore whether the determination rested upon a valid delegation or other lawful authorization. Competence could neither be presumed nor denied solely by reference to the officer's designation. The objection need not, however, be conclusively resolved, as the substantive errors of law identified above independently render the departmental determination unsustainable.

13. Section 24A of the General Clauses Act, 1897 required a fair, reasonable and reasoned determination consistent with the statutory purpose. The departmental order applied an erroneous legal standard and failed to address material grounds. The objection concerning alternative remedies is also unavailing, as the challenge concerns the legality of departmental instruments and

statutory interpretation, and arises from a determination made pursuant to judicial remand. These circumstances justified scrutiny under Article 199 of the Constitution.

14. We accordingly hold that prefabricated industrial structures cannot be excluded from the expression's "plant", "capital goods" or "capital equipment" merely because they are described as buildings, classified outside the machinery chapters or lack mechanical attachment to production machinery. Eligibility turns upon their demonstrated industrial function and compliance with the governing statutory description and prescribed conditions. Mere location within an industrial undertaking or Special Economic Zone does not confer exemption upon ordinary accommodation or unrelated civil construction.

15. Consequently, the appeals filed by the Federation and the Revenue authorities are dismissed, and the High Court of Sindh's judgment dated 16.11.2010 in C.P. Nos.2330 of 2008 and 308 of 2009 is upheld. Accordingly, Orient Material's petition is converted into an appeal and allowed. The impugned judgment of Lahore High Court and the departmental order dated 07.10.2022 are set aside. The Office Memorandums dated 22.01.2021 and 02.03.2021 are declared without lawful authority insofar as they categorically exclude qualifying prefabricated industrial structures or require mechanical linkage as a condition of eligibility. Securities, if any, retained in connection with the impugned demands shall be released. No order as to costs.

CHIEF JUSTICE

JUDGE

Announced in Open Court at Islamabad on 23/11/2026.

Approved for reporting

RajaAhsan/-