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In the Anti-Dumping Appellate Tribunal, Pakistan
(Appellate Jurisdiction)

Present

Mr. Justice Mian Fasih-ul-Mulk
Mr. Ahmed Owais Pirzada

Chairman
Member

Appeal No. 330 of 2019

M/S M/s. Popular Steel Corporation,
Office No. 220, Loha Market Landa Bazar,
Lahore.

Appellant

VERSUS

1. National Tariff Commission,
Islamabad.

2. M/S AISHA STEEL MILLS LTD.,
Office 45 Down Stream Industrial Estate,
Karachi.

3. M/s International Steel Limited.
101, Beaumont Plaza, Beaumont Road,
Karachi.

For appellant

Respondents

For respondent
No. 1

For respondent
No. 2 & 3

Mr. Hassan Durrani, learned
counsel for appellant.

Mr. Ahmed Sheraz, Chief Legal
Advisor, NTC, Islamabad.

Mr. Iqbal Khan, Learned counsel
for respondent No. 2 & 3

Date of hearing

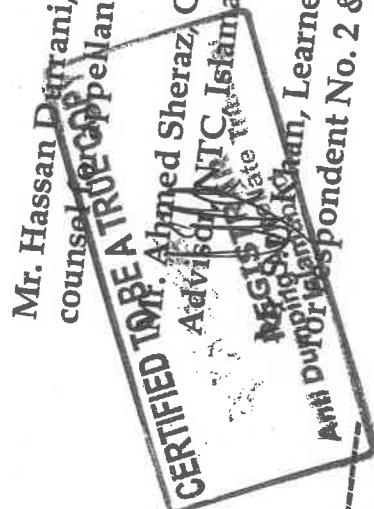
: 08-05-2019, 14-05-2019, 21-05-2019 and
22-05-2019

Date of judgment

: 29-05-2019

JUDGMENT

JUSTICE MIAN FASIH-UL-MULK: The appellant has challenged the order of Final Determination dated 19-01-2017 in the matter of Cold-Rolled Coils imported from People's Republic of China & Ukraine and Final Determination dated 08-02-2019 hereby in the matter of Galvanized Steel Coils/Sheets into Pakistan originating in d/or exported from the People's Republic of China before this Tribunal on -04-2019, being aggrieved. This single judgment will dispose of three other appeals before this Tribunal bearing Nos. 327 of 2019 dated 22-04-2019, 328 of 2019 dated

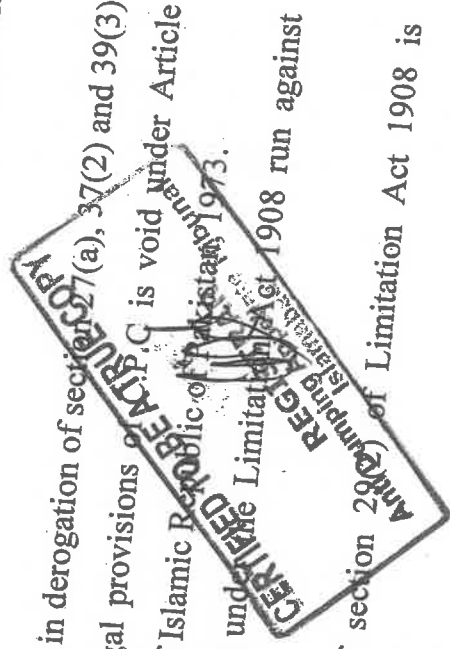


29-04-2019, 329 of 2019 dated 29-04-2019 in the matter of Cold Rolled Coils/Sheets, Color Coated Steel Coils/Sheets as common question of law is involved in all these appeals.

2. We have heard Mr. Hassan Durrani, learned counsel appearing for appellant, Mr. Ahmed Sheraz, Chief Legal Advisor National Tariff Commission and Mr. S.U. Khan, Learned Counsel for Respondent No. 2&3. Following issues arise in the light of their submissions:-

ISSUES

1. Whether the code of Civil Procedure is applicable under section 72 of ADAT, 2015.
2. Whether notices were served properly under section 27(a), 37(2) and 39(3) of ADAT, 2015 along with order 5 rules 20, Order 29 Rule 2 and order 48 Rule 2 of C.P.C?
3. Whether compliance only with substituted service was sufficient to discharge NTC's obligation to serve the notices properly under the mandate of C.P.C.
4. Whether the order passed in derogation of section 27(a), 37(2) and 39(3) and ADAT 2015 and legal provisions of 10A of the Constitution of Islamic Republic of Pakistan is void under Article 10A of the Constitution of Islamic Republic of Pakistan 1973.
5. Can the limitation period under the Limitation Act 1908 run against void orders.
6. Whether the provision of section 29 of Limitation Act 1908 is applicable to a special law.
7. Whether the appellate Tribunal has the jurisdiction to enlarge the limitation period.
8. Whether the NTC satisfied its obligation to lay down the Anti-Dumping Duties Act of 2015 that lapsed on 25-06-2015, before the National Assembly within the prescribed duration of 120 days provided in the section? However, for the sake of this question the ability of the legislature to legislate retrospectively is not contentious.



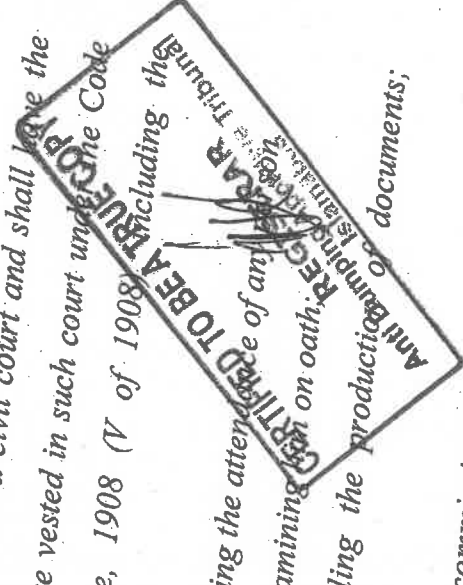
3. The contention of Mr. Hassan Durrain, Learned Counsel for appellant was that the Appellants Tribunal for the purposes for deciding an appeal shall be deemed to be a Civil Court and shall have same powers as are vested in such court under the code of Civil Procedure so the Limitation Act 1908 will apply to the proceedings under Anti-Dumping Duties ACT, 2015. The learned Chief Legal Advisor of the Commission opposed his view and submitted that whole CPC is not applicable whereas some provisions of CPC are applicable.

4. After hearing both the side, we consider it pertinent to reproduce the provision of Law relating to the powers of tribunal.

Section 72 of the ACT

72. *Powers of the Appellate Tribunal.*----- The Appellate Tribunal shall, for the purpose of deciding an appeal, be deemed to be a civil court and shall have the same powers as are vested in such court under the Code of Civil Procedure, 1908 (V of 1908) including the powers of---

- (a) enforcing the attendance of any witness and examining him on oath.
- (b) compelling the production of documents; and
- (c) Issuing commission for the examination of witnesses and documents.



Plain reading of the above referred section would indicate that for the purpose of deciding of appeal, this Tribunal shall be deemed to be civil court and shall have the same power as are envisaged in such court under the Code of Civil Procedure. Being a seeming provision, section 72 of the Act does not convert this Tribunal into a Civil Court in all matter; rather it is restricted as to powers of the Civil Court in deciding an appeal where its procedure is specifically not mentioned. This Tribunal has already dealt with similar issue and held that;

"Be that as it may, in another cited case of *Muhammad Hussain Vs EDO* reported in 2007 Supreme Court Monthly Review 855, stated with profound respects, it has been held as follow:

"The Service Tribunal is deemed to be civil court and shall have the same powers as are vested in such court under the code of Civil Procedure including the following powers in view of section 5 (2) of Punjab Service Tribunal Act, 1974:-

- (a) Enforcing the attendance of any person and examining him on oath.
- (b) Compelling the production of documents, and
- (c) Issuing Commission for the examination of witnesses and documents.

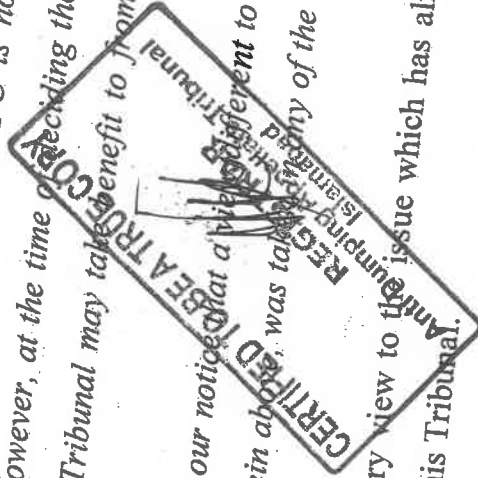
The aforesaid provision clearly shows that CPC is not applicable in stricto sense. However, at the time of appeals, the learned service Tribunal may take benefit to from principles of CPC.

Nothing was brought to our notice that a writ issued in what has been emphasized herein above, was taken in any of the other cited case".

In view of the above, we do not have contrary view to the issue which has already been settled by the superior courts as well as this Tribunal.

Issue Nos. 2&3,4 and 5.

5. The contentions of learned counsel for the appellant were that notices were not served properly under section 27 (a), 37(2) and 39(3) of the Act keeping in view the spirit of order 5 rules 20, Order 29 Rule 2 and order 48 Rule 2 of C.P.C whereas the commission complied with the substituted service which was not sufficient to discharge the Commission's obligation. It was argued that the orders passed by the Commission in derogation of above referred sections were void under Article 10-A of Constitution of Islamic Republic of Pakistan and question of limitation does not arise against the void orders. In any case the appellant got knowledge of the imposition of duty and the time limitation would run from the date of knowledge. This argument has no substance as law provides time limitation from the publication of notice in the



newspaper widely circulated throughout Pakistan. Learned Chief Legal Advisor controverted the submissions and argued that the Commission followed the principles laid down by the Act. It did not violate any provision of law in discharging its functions and made all the orders strictly in accordance with law. There is no provision of law in this Act for substituted service but the learned counsel for appellatant has relied by referring the provisions of C.P.C which related to substituted law, the orders passed by the Commission did not violate any provision of law, the orders passed by the Commission are valid and in accordance with law. It can hardly be termed as void orders.

6. We have given due consideration to the submissions made before us, provisions of law referred to by both the counsels and perused the record. The provisions of Act, which were referred to by the parties, are reproduced as under:

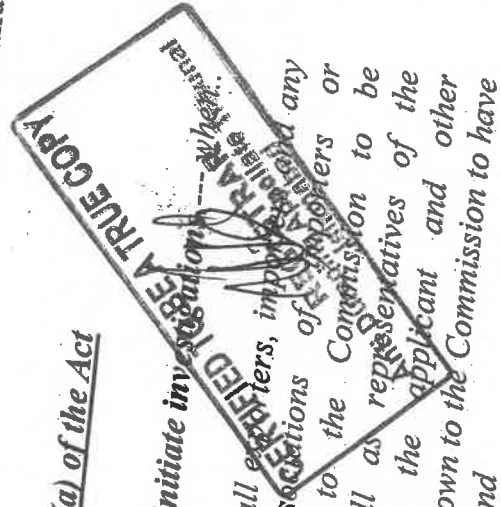
Section 27(a) of the Act

27. Notice of decision of initiate investigation

(a) Give notice to all exporters, importers, any representative associations of exporters or importers or concerned, as well as representatives of the exporting country, the applicant and other interested parties known to the Commission to have an interest therein; and

(b)

2.



Section 37(2) of the Act

37. Preliminary determination (1) The Commission (2) The Commission shall issue a notice of preliminary determination, whether affirmative or negative, which shall, subject to the requirements of section 31, set forth in sufficient detail the findings and conclusions reached on all issues of fact and law considered material. Such notice or preliminary determination may also contain such other information as may be prescribed.

(3)

(4)

Section 39(3) of the Act.

39. Final determination. --- (1) The Commission..... (2) -----

[Handwritten signature]

(3) The Commission shall, subject to the requirements for the protection of confidential information under section 31, issue a notice of the final determination, whether affirmative or negative, containing relevant information on the matters of fact and law and reasons that have led to the determination.

(4) ---
 (5) ---
 (6) ---

Order 5 Rule 20 of C.P.C.

20. **Substituted service.** [(1) where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the service or summons by-
- (a) affixing a copy of the summons at some conspicuous part of the house, if any, in which the defendant is known to have last resided or carried on business or personally worked for gain; or
 - (b) Any electronic device of communication which may include telegram, phonogram, text, fax radio and television; or
 - (c) Urgent mail service or public communication services; or
 - (d) Beat of drum in the local area where the defendant resides; or
 - (e) Publication in press; or
 - (f) Any other manner or mode as it may appear to the Court to be as effective as it may be.

Provided that the Court may order the service of all or any of the aforesaid manners and modes of service simultaneously];

Order 29 Rule 2 of C.P.C.

2. **Service on corporation.** Subject to any statutory provision regulating service of process, where the suit is against corporation, the summons may be served-
- (a) on the secretary; or on any director, or other principal officer of the corporation, or
 - (b) by leaving it or sending it by post addressed to the corporation at the registered office, or if there is no registered office then at the place where the corporation carries on business.

Order 48 Rule 2 of C.P.C.

2. **Orders and notices how served.** All orders, notices and other documents required by this code to be given to or served on any person shall be served in the manner provided for the service of summons.

From the above provisions it is clear that section 27(a) of the Act provide that when the commission has decided to initiate an investigation it shall give notice to all exporters, importers and any representative associations of importers or exporters known to the Commission to be concerned, as well as representatives of the exporting country, the applicant and other interested parties known to the Commission to have an interest therein. It is evident from the record that the Commission sent questionnaire to the known importers or exporters whereas the appellants did not registered itself by an importer throughout the investigation. Section 37(2) of the Act provides that the Commission shall issue a notice of preliminary determination, whether affirmative or negative, which shall, subject to the requirements of section 31, set forth in sufficient detail the findings and conclusions reached on all issues of fact and law considered material. Such notice or preliminary determination may also contain such other information as may be prescribed and the Commission may also notice of preliminary determination as may be prescribed and the Commission issued 37(2) & (3). Section 39(3) of the Act provides that the Commission shall, subject to the requirements for the protection of confidential information under section 31, issue a notice of final determination, whether affirmative or negative, containing relevant information on the matters of fact and reasons that have led to the determination. The Commission issued notice on 13-01-2016 and 03-11-2016 under section 39 on 19-1-2017 and 2-2-2017 respectively whereas the appellant did not file appeal against the final determination passed by the Commission before this Tribunal within the prescribed period of time. The provisions of CPC clearly shows that these are related to the substituted service of notice whereas Anti-Dumping Duties Act does not provide any method of substituted service. Although the above said provision of the Act provide that the Commission shall publish notice in newspaper as well as in the official Gazette where the time prescribed for filing an appeal runs with the day when notice is published in the newspaper and the appellant did not file appeal before this Tribunal within the time i.e. 45 days after publication of notice in the newspaper. It is clear from the record that the Commission followed the above said provisions of law and issued notices of initiation, preliminary determination and final determination in accordance with the provisions envisaged by the Act and did not violate any provision of law in respect of issuing notices therefore the determinations made by the Commission cannot be termed void mere on the

ground that the notices were not served individually to the appellant. The issues are answered accordingly.

Issue No. 6 & 7

7. Learned counsel for the appellant neither referred to any specific provision of law showing that Limitation Act 1908 is applicable to a special law nor the power of this Tribunal which can enlarge the limitation period. We have also seen the provision of law relevant to the issue of time limitation and condonation. It is necessary to see the provisions of section 5 & 29 of the Limitation Act 1908, the same are reproduced as under:

Section 5 of the Limitation Act 1908

5. *Extension of period in certain cases. Any appeal or application for a revision or a review of judgment or for leave to appeal or any other application to which this section may be made applicable by or under any enactment for the time being in force may be admitted after the period prescribed therefore, when the appellant applicant satisfies the Court that they had sufficient cause for not preferring the appeal or making an application within each period.*

Explanation:

The fact that the appellant or applicant was misled by any order practice or judgment of the High Court in ascertaining or computing the prescribed period of limitation may be sufficient cause with the meaning of this section.

Section 29 of the Limitation Act 1908

29. *Savings. (1)...*

"(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefore by the First Schedule, the



provisions of Section 3 shall apply, as if such period were prescribed therefore in that schedule, and for purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law.

- (a) *The provisions contained in Section 4, 9, 18, 22 shall only apply to any special or local law.*
- (b) *The remaining provisions of this Act shall not apply."*

Plain reading of section 5 of the Limitation Act 1908 reveals that it is related to condonation of delay. The appellant did not file an application for condonation of delay. Section 5 clearly emphasizes for condonation of delay under the general law but does not mention anything under the special law. Section 29 of the Limitation Act 1908 states that only four sections of Limitation Act 1908 i.e. section 4,9,18 and 22 will apply to the proceeding under any special or local law and rest of the provision of the Limitation Act would not apply to such proceedings. The structure of limitation is found upon legal maxim, that delay defeats equity, time and tide wait for none and law helps the vigilant and not the indolent. The timelines for filing of appeal are mandatory in nature and are to be strictly complied with. The august Supreme Court of Pakistan in a case reported in 2003 YLR 1823 has held that the limitation is designed to quieter title and to bar stale and waterlog dispute and is to be strictly complied with. The special Tribunal do not possess the inherent powers as laid down by the superior Courts in following words that special Tribunal do not possess inherent powers available to civil courts, they are required to act within scope to statutes creating them, reliance is placed on PLD 1982 Quetta 87 and PLD 1973 S.C. 236. This Tribunal has already held in an earlier Judgment as under:

"Perusal of sub-section 70 of the Act reflects that an appeal under clause (i) of sub-section (1) shall be filed within thirty days of the publication of notice of initiation or notice (of) preliminary determination as the case may be".

and

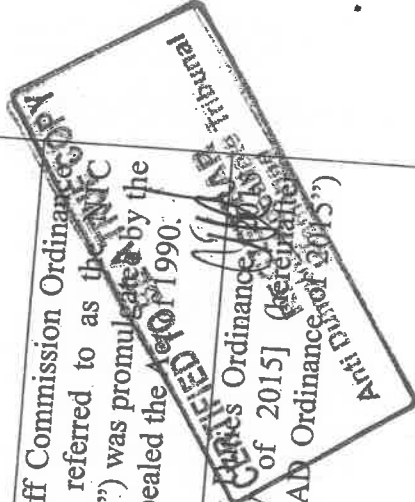
“This Tribunal cannot condone the delay in filing this appeal to allow the application moved by the appellant in this behalf.”

From the above said provision of Law and principle settled by the superior courts it is crystal clear that this Tribunal does not have the jurisdiction to enlarge the limitation period prescribed by law and section 5 of the Limitation Act 1908 is not applicable to the Tribunal working under the special law.

Issue No. 8

8. On this issue, we rely on the judgment passed by the Hon’ble Islamabad High Court, Islamabad in Writ Petition No. 169 of 2016 which has resolved the issue and the relevant facts are mentioned in chronological order as follows:

24-6-1990	The National Tariff Commission Act, 1990 (hereinafter referred to as the “Act of 1990”) established the National Tariff Commission.
22-2-2000	The Anti-Dumping Duties Ordinance, 2000 [Ordinance No. LXV of 2000] (hereinafter referred to as the “AD Ordinance of 2000”) was promulgated.
26-2-2015	The National Tariff Commission Ordinance of 2015 (hereinafter referred to as the “NTC Ordinance of 2015”) was promulgated by the President and it repealed the Act of 1990.
26-2-2015	The Anti-Dumping Duties Ordinance No. IV of 2015] (hereinafter referred to as the “AD Ordinance of 2015”) was promulgated.
29-6-2015	In the context of Article 89 of the Constitution 120 days commenced on 26-2-2015 and ended on 25-6-2015. Application under the AD Ordinance of 2015 was received by the Commission regarding the alleged Anti-Dumping into Pakistan of cold rolled coils/sheets.
30-7-2015	The National Assembly passed the Resolution under Article 89 of the Constitution extending the AD Ordinance of



11-8-2015	2015 retrospectively w.e.f. 25-6-2015. The Commission initiated the investigations under section 23 (4) of the AD Ordinance of 2015.
5-9-2015	The President gave his assent to the Anti-Dumping Duties Act, 2015 [Act XIV of 2015] (hereinafter referred to as the "AD Act of 2015") and the National Tariff Commission Act, 2015 (hereinafter referred to as the "NTC Act of 2015")

The Hon'ble Islamabad High Court Islamabad held as under that:

13. In the instant case, the Resolution, dated 30-07-2015, extending the AD Ordinance of 2015 w.e.f. 25-06-2015 was passed pursuant to the powers vested under Article 89 of the Constitution. By giving retrospective effect the Ordinances were extended for another period of 120- days and, therefore, no vacuum existed between 25-06-2015 and 30-07-2015. The Commission and all its acts or proceedings were, therefore, valid and lawfully covered under the Ordinances. Moreover, after the enactment of the AD Act of 2015 and the NTC Act of 2015 the Ordinances were clearly provided with continuity by the Majlis-e-Shoora. The investigations initiated by the Commission pursuant to receiving applications under section 20 of the AD Ordinance of 2015 on 29-07-2015 and the proceedings conducted by the Commission thereafter, are consequently declared to be valid and within the authority and jurisdiction of the latter. Moreover, the consequences of repeal provided under Article 264 of the Constitution after the expiry of the period of validity of an Ordinance prescribed under Article 89 shall be attracted as held by the august Supreme Court in the judgment titled Federation of Pakistan Versus M. Nawaz Khokhar Supra. I am afraid that the case law cited at the Bar by the learned Counsel for the petitioners is distinguishable in the facts and circumstances of the instant petition.

14. For what has been discussed above, the instant petitions are without merit and are, therefore, accordingly dismissed.

In view of the above judgment passed by the Hon'ble Islamabad High Court Islamabad in the same matter impugned herein, we do not feel ourselves inclined to disagree with Mr. Sheraz, Chief Legal Advisor NTC on the point of vacuum of law when the investigation was initiated by the Commission. The legislature has the

power to legislate retrospectively and the order of the Hon'ble Islamabad High Court, Islamabad has attained finality as the same was not challenged before august Supreme Court of Pakistan. The objection of appellant is over ruled and answered accordingly.

9. Learned counsel for the appellants in appeal No. 327 of 2019, 328 of 2019 and 329 of 2019 adopted the arguments of learned counsel, Mr. Hassan Durrani appearing on behalf of appellant in appeal No. 330 of 2019.

10. Thus, having discussed the merits in the preceding paragraphs, we are of the view that the appeal is barred by limitation. Without reaching the merits of appeal No. 327 of 2019, 328 of 2019 and 329 of 2019 involving similar questions of limitation.

Parties are left to bear their own costs.

Announced in open court this 29th day of the month May, 2019.

RECEIVED BY THE CLERK
 GENERAL SECRETARY
 SUPREME COURT OF PAKISTAN
 ISLAMABAD
 29 MAY 2019



(Ahmed Owais Pirzada)
Member

(Justice Mian Fasih-ul-Mulk)
Chairman

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