

IN THE ANTI-DUMPING APPELLATE TRIBUNAL, PAKISTAN
(APPELLATE JURISDICTION)

PRESENT

MR. NASIR MASROOR AHMED
MR. ATHER SALEEM
MS. SAMAIRA NAZIR SIDDIQUI

CHAIRMAN
MEMBER
MEMBER

APPEAL No. 397 of 2021

Along with

C.M.A. No. 138 of 2021

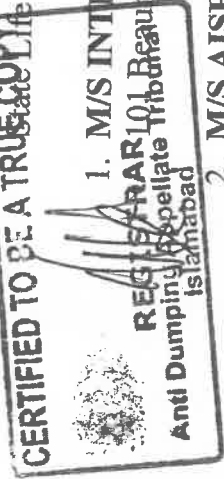
M/S INAYAT PIPE INDUSTRIES PRIVATE LIMITED,
 Main Bund Road, Near Ishtiaq Kanta Opp. China Scheme,
 Kroll Ghati Stop, Lahore.

Appellants

VERSUS

NATIONAL TARIFF COMMISSION,

State Life Building # 05, Blue Area, Sector F-6/4 Islamabad.



1. **M/S INTERNATIONAL STEELS LIMITED,**
 Beaumont Plaza, 10 Beaumont Road, Karachi.

2. **M/S AISHA STEEL MILLS LIMITED,**
 1/F Arif Habib Centre, 23 M.T. Khan Road, Karachi.

Respondents

APPEAL No. 417 of 2021

Along with

C.M.A. No. 145 of 2021

M/S RAWAT STEEL INDUSTRY,
 Plot No. 42 & 43, NS-I Road, Industrial Estate Rawat,
 Rawalpindi.

Appellants

VERSUS

1. **NATIONAL TARIFF COMMISSION,**
 State Life Building # 05, Blue Area, Sector F-6/4 Islamabad.

2. **M/S AISHA STEEL MILLS LIMITED,**
 1/F Arif Habib Centre, 23 M.T. Khan Road, Karachi.

3. **M/S INTERNATIONAL STEELS LIMITED,**
101 Beaumont Plaza, 10 Beaumont Road, Karachi.

Respondents

APPEAL No. 418 of 2021

Along with

C.M.A. No. 148 of 2021

M/S AJMAIR STEEL INDUSTRIES (PVT.) LTD,
23-KM Seikhupura Road, Lahore.

Appellants

VERSUS

1. **NATIONAL TARIFF COMMISSION,**
State Life Building # 05, Blue Area, Sector F-6/4 Islamabad.
- M/S INTERNATIONAL STEELS LIMITED,**
101 Beaumont Plaza, 10 Beaumont Road, Karachi.

Respondents

APPEAL No. 425 of 2021

Along with

C.M.A. No. 151 of 2021

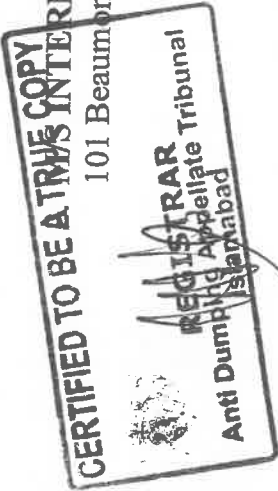
M/S TORKHAM INDUSTRIES,
44-KM, Palai Interchange, Shah Kot, Malakand.

Appellants

VERSUS

1. **NATIONAL TARIFF COMMISSION,**
State Life Building # 05, Blue Area, Sector F-6/4 Islamabad.
2. **M/S INTERNATIONAL STEELS LIMITED,**
101 Beaumont Plaza, 10 Beaumont Road, Karachi.

Respondents






APPEAL No. 431 of 2021

Along with

C.M.A. No. 156 of 2021

M/S TORKHAM INDUSTRIES,

44-KM, Palai Interchange, Shah Kot, Malakand.

Appellants

VERSUS

1. **NATIONAL TARIFF COMMISSION,**
State Life Building # 05, Blue Area, Sector F-6/4 Islamabad.
2. **M/S INTERNATIONAL STEELS LIMITED,**
101 Beaumont Plaza, 10 Beaumont Road, Karachi.

Respondents

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REGISTRAR
Anti Dumping
Tribunal
Islamabad

For Respondent No. 1

For Respondent
No. 2 & 3

----- : **Mr. Naveed Zafar Khan, Advocate**

----- : **Mr. Ahmed Sheraz, Chief Legal
Advisor, Mr. Waqas Aamir & Mr.
Azfar Naeem, Legal Advisors, NTC**

----- : **Mr. Saifullah Khan, Advocate**

Dates of Hearings

----- : (1) March 31, 2021 (2) April 15, 2021
(3) May 27, 2021 (4) June 3, 2021
(5) June 17, 2021 (6) June 24, 2021
(7) October 6, 2021 (8) October 8, 2021
(9) October 11, 2021 (10) October 14, 2021
(11) October 18, 2021

Date of Order

----- : **January 17, 2022**

JUDGMENT

Nasir Masroor Ahmed: These appeals are directed against different Final Determination reports issued by National Tariff Commission ("the NTC") in the matters of alleged dumped imports of Galvanized Steel Coils/Sheets, Color Coated Coils/Sheets and Cold Rolled Coils causing injury to the domestic industry. All

these appeals Nos. 397, 417, 418, 425 & 431 of 2021 involve similar question of limitation as indicated from the table below:

Table

Appeal No.	Name of Product	Impugned FD Notice Date	Date of Filing Appeal	Time Barred by days?
397 of 2021	Cold Rolled Coils/Sheets/ Strips	30.3.2020	19.2.2021	10 months and 20 days
417 of 2021	Cold Rolled Coils/Sheets/ Strips And Color Coated Steel Coils/ Sheets	19.01.2017 And 13.06.2018	29.04.2021	04 years 03 months and 10 days And 02 years 10 months and 16 days
418 of 2021	Galvanized Steel Coils/Sheets	08.02.2017	04.06.2021	04 years 03 months and 27 days
425 of 2021	Galvanized Steel Coils/Sheets	08.02.2017	16.09.2021	04 years 07 months and 08 days
431 of 2021	Cold Rolled Coils/Sheets/ Strips And Color Coated Steel Coils/ Sheets	19.01.2017 And 13.06.2018	06.10.2021	04 years 08 months and 17 days And 03 years 03 months and 23 days

Since all the above mentioned appeals involve a similar question of law, therefore we intend to dispose these cases through this single judgment.

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Mr. Naveed Zafar Khan, learned counsel for the Appellants and Mr. Ahmed Sheraz, Chief Legal Advisor NTC, Mr. Waqas Aamir & Mr. Azfar Naeem, **REGISTERED ATTORNEYS TO THE TRIBUNAL** Anti Dumping and Safeguarding Tribunal Islamabad learned counsel for private respondents appeared before this Tribunal.

- At the very outset, Mr. Azfar Naeem, Legal Advisor to the NTC pointed out that these appeals were preferred beyond the time as stipulated in the ADD Act which needs to be decided first. Further, he submitted that learned counsel for the appellants also made Civil Miscellaneous Application (CMAs) for granting interim relief, the same cannot be taken up before deciding the issue of maintainability and if the appellants cross the threshold of limitation then the CMAs be taken up for arguments. Mr. S.U. Khan, learned counsel for private respondents also had the same stance.

- Mr. Naveed Zafar Khan, learned counsel for the appellants argued on the point of limitation. He submitted that this Tribunal was vested with the powers

of a Civil Court as per section 72 of the ADD Act and in a number of cases the superior courts had held that whenever a Tribunal or a Court was vested with power of a civil court it had inherent jurisdiction to combine or club the cases arising out from the same cause of action in order to avoid duplication and contradictory orders. He further argued that since the Anti-Dumping Duties Act 2015 vide section 72 clearly vested the powers of a Civil Court to this Tribunal, therefore, the Tribunal could consolidate / club any number of appeals filed after statutory period of time with any appeal pending with the Tribunal on the same determination. He placed reliance on PLD 1993 Supreme Court 418 (Para E at page 423), 2006 SCMR 126 (Para A, C & E pages 1264 and 1265 and Para B page 1264), PLD 2021 Baluchistan 59 (Para A and C pages 61-62), 2015 SCMR 821, PLD 2011 Lahore 20P (Para A page 213) and 2021 CLC 229 (Para A page 232).

5. Learned Counsel for appellants also argued that the Tribunal in its judgments relied on PLD 1992 Quetta 87 which was not relevant as the Tribunal constituted under Pakistan Industrial Relation Ordinance, 1969 did not have jurisdiction to entertain civil court under the said Ordinance whereas this Tribunal had jurisdiction to entertain civil court under section 72 of the ADD Act and prayed that delay in their appeals be condoned in exercise of the inherent power under section 151 of the Code of Civil Procedure.

6. Further, relying upon the judgments 2020 SCMR 959, 1989 SCMR 1621 and PCD 2002 SCMR 514, he prayed that since the appeal against FD dated 08.02.2017 in the matter of Galvanized Steel was being heard by the Tribunal thus his appeals be decided with the pending appeals.

7. Mr. Azfar Naeem, Legal Advisor to the NTC contradicted the pleas taken by learned counsel for the appellants and submitted that the case laws relied upon by the appellants are distinguishable from the case in hand. He submitted that the Section 70(4) of ADD Act provide time limitation to file an appeal before this Tribunal, it did not provide any powers to this Tribunal to condone the delay and Section 5 of the Limitation Act, 1908 was not applicable on ADD Act being the special law. He contended that in 1993 PLD 418 Honorable Supreme Court elaborated about the inherent powers conferred upon the Additional District Court

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 Anti Dumping Investigation Officer
 Islamabad

and did not lay down any principle in respect of Tribunals. Similarly, in PLD 2021 BAL 59, the court observed that in the Civil Procedure Code, 1908, no provision for consolidation of a civil suit is provided but the court may consolidate different suits to avoid conflict of judgment, provided the parties in the suits are the same and the cause of action is the same. Obviously the Hon'ble court was discussing the inherent power of the court, especially the power of subordinate judiciary and not the power of the Tribunal vested with the powers of a court by virtue of a deeming provision of a statute. He further submitted that in 2015 SCMR 821 the Honorable court held that where a statute confers the jurisdiction on a court or a Tribunal by application the powers which are reasonably, incidental and ancillary to the exercise of jurisdiction. The ADD Act vests the powers of a Civil Court to the Tribunal under Section 72 of the ADD Act, which was a deeming provision in the statute and cannot be exercised where, express provision is made in the statute i.e. Section 70(4) of the ADD Act is available. Likewise in 2012 CLC 229, it was clear that inherent power can be used under impossible situations where the law was found to be lacking in meeting some eventualities so such powers could not be used to ignore the already existing provision given by the special law and this case law was itself against the appellants on which learned counsel relied upon. He further submitted that the case laws referred to by learned counsel for appellants i.e 2020 SCMR 959, 1989 SCMR 1621 and PCD 2002 SCMR 514 were not relevant herein as these judgments are distinguishable on the ground that Supreme Court of Pakistan has inherent power under section 151 of CPC as well as under Supreme Court Rules, 1980 whereas this Tribunal had no such powers. Further, he relied upon the earlier judgments of this Tribunal as well as FAOs No. 86, 107/2019 passed by Honorable Islamabad High Court Islamabad to substantiate his stance.

8. Mr. Saifullah Khan, learned counsel for private respondents submitted that this Tribunal did not possess any inherent powers for condonation of delay as held by the Tribunal in Appeal No. 69 of 2015 and Appeal No. 344 of 2019. He prayed that appeals in hand were also liable to be dismissed on the point of limitation.

9. Admittedly, these appeals are preferred beyond the prescribed period of time. Learned counsel for the appellants submitted many case laws while praying for the condonation of delay, which have been considered by the Tribunal and after having gone through all the record, provision of law and case laws relevant to the issue in question, it is clear that neither this Tribunal have power to condone delay under the ADD Act nor can it exercise inherent power vested in the court to condone the delay under section 151 of CPC. This issue of using inherent power vested under section 151 of CPC read with section 72 of the ADD Act has earlier been decided by this Tribunal in Appeal No. 330 of 2019 in the following terms;

“...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 deeming 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 n deciding an appeal where its procedure is specifically not mentioned”.

Similarly, this Tribunal in Appeal No. 344 of 2019 relying on PLD 1982 Quetta 87
FILED TO ADDITIONAL JUDGE 1973 S.C. 236 held that, *“In view of the above, we do not have contrary view on the issue which has already been settled by the Superior Courts as well as RECORDED AT BAR. It is clear that this Tribunal do not possess inherent power in respect of Dumping of petrol in the area of condonation of delay”.* It would be instructive to reproduce from the above referred judgments, relevant extract reads as under:

PLD 1982 Quetta 87

“Special Tribunals do not possess inherent powers available to civil court, they are required to act within scope of statutes creating them.”

PLD 1973 S.C. 236

“it is also now well-established that where an inferior tribunal or Court has acted wholly without jurisdiction or as Rubinstein puts in his book on “jurisdiction and illegality” taken any action “beyond the sphere allotted to the tribunal by law and therefore, outside the area within the law recognizes a privilege to err”, then such action amounts to “usurpation of power unwarranted by

law" and such an act is nullity: that is to say, "the result of a purported exercise of authority which has no legal effect whatsoever."

In view of the foregoing, the instant case, we again reiterate the same view that this Tribunal does not have inherent powers available to civil court for condonation of delay.

10. As regards the ADD Act it does not provide any power to the Tribunal to enlarge the time limitation provided by the ADD Act. The timelines provided for filing of appeals are thus mandatory in nature and are to be strictly complied with. This Tribunal in Appeal No. 69 of 2015 held that, "This Tribunal cannot condone the delay in filing this appeal to allow the application moved by the appellant in ~~the~~ **COPE** half". In another Appeal No. 325 of 2018, this Tribunal has decided that, "it is clear that this Tribunal cannot condone the delay under *Limitation Act, 1908*" and this decision was challenged before Honorable **REGISTRAR Tribunal** **Islamabad High Court**, Islamabad through FAO No. 86 of 2019 dated 03.12.2019 where it was held:

"19. Now as already said the limitation period of forty five days for filing an appeal under section 70(4) of the 2015 Act before the Appellate Tribunal has not been prescribed in the Limitation Act, 1908, but in the 2015 Act, which is a special law, Section 5 of the said Act cannot be made applicable to such appeals filed under Section 70 (1)(ii) of the 2015 Act. There is a catena of case law in support of filing an appeal or a revision is provided in a special law, Section 5 of the Limitation Act, 1908 would have no application due to section 29(2)(b) of the said Act"

It is clear from the above that for filing an appeal, against the Final Determination before this Tribunal, 45 days are specified in the ADD Act and the appellants had to file appeal within 45 days from date of publication of a public notice in newspaper. Most of the appeals were filed after the prescribed time ranging from 3 years to 4 years which establishes beyond any shadow of doubt that these appeals are grossly barred by time.

11. On the issue of when one appeal is pending adjudication, the later may be heard along with that appeal, learned counsel for the appellants relied upon 2020 SCMR 959 & 1989 SCMR 1621. These judgments were not relevant herein as these judgments are distinguishable on the ground that Supreme Court of Pakistan has inherent power under section 151 of CPC as well as under Supreme Court Rules, 1980 whereas this Tribunal had no such powers nor the ADD Act empowers the Tribunal to condone the delay.

Civil Miscellaneous Applications

12. Civil Miscellaneous applications bearing Nos. 138 in Appeal No. 397 of 2021, 145 in Appeal No. 417 of 2021, 148 in Appeal No. 418 of 2021, 151 in Appeal No. 425 of 2021 and 156 in Appeal No. 431 of 2021 were made before this Tribunal for seeking interim relief and in this regard learned counsel for the appellants took plea that the forum which could grant final decision could also grant *interim* injunction. They further submitted that the appellants had good prima facie case and there were bright chances of their success. The balance of convenience, also leaned in their favor yet the respondents were insistent to recover the respondent for collecting anti-dumping duty against final determinations that were *void ab initio*. They prayed for suspension of operation of notices of final determination and restraining the respondent for collecting anti-dumping duty.

13. On the other hand, the respondents vehemently opposed the plea taken by learned counsel for the appellants and submitted that prima facie the appeals were hopelessly barred by time so balance of convenience and irreparable loss could not arise out until and unless the threshold of time limitation was crossed. They prayed that the appellants did not have any prima facie case, or balance of convenience nor irreparable loss as they had the option to import the investigated products from non-dumped sources. They further argued that sub-section (16) of section 70 of the ADD Act, required that the final determination shall be given full force and effect during the pendency of any such appeal.

14. Thus, having discussed the matter in preceding paragraphs and without touching other merits of the case, we are of the view that these appeals

being barred by me, thus liable to be dismissed. Order accordingly. All the CMAs made before this Tribunal also stand dismissed. Parties are left to bear their own costs

ANTI DUMPING TRIBUNAL ISLAMABAD
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AR
Anti Dumping Tribunal



(Nasir Masroor Ahmed) Chairman

(Ather Saleem) Member

(Samaira Nazir Siddiqui) Member

Dated: January 17, 2022

GR No:	3009/2022	Judicial/ADAT
Date of Presentation:	20.01.2022	
No. of Petitions:	3009	
No. of Petitioners:	10	
Appellate Fee Paid:	20000	
Copy Fee:		
Date of Receipt of Copy:	20.01.2022	
Date of Delivery of Copy:	20.01.2022	
Compared by:	Prepared by:	
Received by:	Astey Hameem	