

IN THE ANTI-DUMPING APPELLATE TRIBUNAL, PAKISTAN
(Appellate Jurisdiction)

Present

Mr. NASIR MASROOR AHMED
Mr. ATHER SALEEM

Chairman

Member

Appeal No. 344 of 2019

1. **M/S BLACK GOLD ENGINEERING,**
Block # 121 & 142. Deh Gharo
Kohistan Main National Highway
Dhabeji. Thatta Mirpur Sakro,
2. **M/S PEARLS STEEL,**
House # 106. Plot # 19, Sana Corner,
Ghulan Hussain Qasim Road. Gardn
West Karachi, Karachi Saddar Town
Karachi.
3. **M/S FAHEEM ENTERPRISES,**
Shop # 2. Iqbal Mansion Princess Street
Chand Bibi Road Karachi.



Appellants

VERSUS

1. **NATIONAL TARIFF COMMISSION,**
SLIC Building #5, Blue Area, Sector
F-6/4, Islamabad.
2. **M/S INTERNATIONAL STEELS LIMITED,**
101, Beaumont Plaza, 10 Beaumont
Road, Karachi.

Respondents

For appellants

Mr. Saad Shuaib Wyne, learned
counsel for appellants.

For respondent
No. 1

Mr. Ahmed Sheraz, Chief Legal
Advisor, Mr. Waqas Amir,
Legal Advisor.

For respondent
No. 2

Mr. Saifullah Khan, learned
counsel for respondent No. 2

Date of hearing : November 8, 2019 & November 15, 2019
Date of judgment : December 20, 2019

JUDGMENT

Nasir Masroor Ahmed: The instant appeal has been preferred before the Anti-Dumping Appellate Tribunal ("the Tribunal") on November 06, 2019 challenging the Notice of Final Determination dated June 13, 2018 against alleged dumped imports of Color Coated Coils/Sheets into Pakistan originating and/or Exported from the People's Republic of China and Republic of South Africa. The appeal was preferred after the lapse of time stipulated in the Anti-Dumping Duties Act, 2015 ("the Act"). This single judgment will also dispose of other appeals before this Tribunal bearing Nos. 204, 332, 333, 334, 336, 338, 339, 344 and 345 of 2019 as common question of law is involved in all these appeals.

2. The contention of Mr. Saad Shuaib Wyne, learned counsel for the appellant was that as this appeal was preferred against the Final Determination and same impugned order had also been challenged by another appellant through Appeal No. 299 of 2018 which was filed in time so the instant appeal should be heard along with the aforementioned appeal on merit which is pending adjudication before this Tribunal. He relied on a case law of Hon'ble Supreme Court of Pakistan 2019 SCMR 1004. He also submitted that the appellant did not make application for condonation of delay under section 5 of the Limitation Act as there was no question of condonation of delay. The appellant in Appeal No. 334 and 345 of 2019, filed application under section 151 of the Civil Procedure Code 1908 (CPC) read with section 5 of the Limitation Act praying that objection of time barred may be vacated and the case may be decided on merit instead of disposal of

REFERRED TO THE APPELLATE TRIBUNAL
REGISTERED FOR APPELLANT
IN DUMPING CASE
NO. 299 OF 2018

the matter on technical grounds. On the other hand, Mr. Ahmed Sheraz, Chief Legal Advisor, NTC submitted that the facts of the judgment, referred to by the learned counsel for appellants, were different as that judgment was based on the point of limitation relating to general law not for the special law. He contended that the said judgment was distinguishable on the two grounds; (i) Firstly, the Appellant in the present Appeal had not filed any application for condonation of delay even otherwise, if he could have filed the same would not be maintainable as this Tribunal had no power to condone the delay under the Act. The above mentioned judgment of the Supreme Court relates to section 5 of the Limitation Act wherein the Apex Courts may grant condonation to the aggrieved parties however, in the present Appeal the section 5 of the Limitation Act is not applicable to the special law in terms of section 29 of the Limitation Act. (ii) Secondly, the above mentioned judgment of the Honorable Supreme Court is not relevant on the ground that the Honorable Court in the said judgment had not settled down any principle whereby the condonation may be granted under the Special Laws.

3. We heard Mr. Saad Shuaib Wyne, learned counsel appearing for appellant, Mr. Ahmed Sheraz, Chief Legal Advisor, Mr. Wajid Amir, Legal Advisor, National Tariff Commission ("the Commission") and Mr. Saifullah Khan, learned counsel for respondent No. 2 and have gone through the record made available before us. Following issues arise in the light of their submissions made before the Tribunal during the course of their arguments:-

ISSUES

1. *Whether the appeal has been filed within the time limit as prescribed under section 70 (4) of the Act?*
2. *Whether this Tribunal has any inherent power of condonation of time delay of Civil Court by virtue of section 72 of the Act?*
3. *Whether the Limitation Act, 1908 is applicable to a Special law? If so to what extent?*

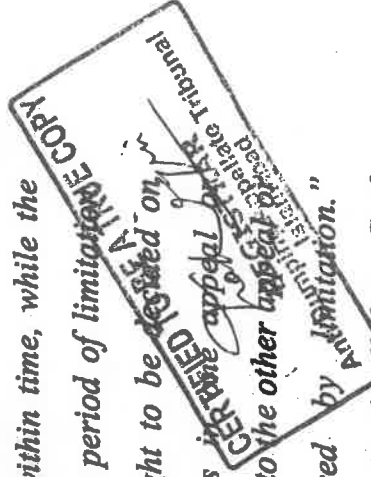
4. *Whether the Appellate Tribunal has the jurisdiction to enlarge the limitation period?*

Before adverting to the issues listed above we intend to examine the plea taken by Mr. Saad Shuaib Wyne that since his appeal is against the same final determination as is pending before Tribunal, his appeal may also be heard on merit on the basis of principle reiterated by the Hon'ble Supreme Court of Pakistan. The relevant passage of the said judgment is reproduced as under:

2019 SCMR 1004

"It is settled law that where an order or judgment is challenged through separate proceedings be it appeals or petitions, some of which are within time, while the others have been filed beyond the period of limitation, all such appeals or petitions ought to be decided on merit especially when an order is appealed to the petition (within time) would apply to the other appeal petition, which may be barred by limitation." Consequently, it is appropriate to decide all three Civil Petitions on merits."

After perusal of the said case law, it is clear that the matter before Supreme Court of Pakistan was of a Civil Petition for leave to appeal filed against the judgment of Hon'ble Lahore High Court, Lahore whereby Execution First Appeals were dismissed and one of the three Civil Petitions was time barred and the Petitioners had filed application for condonation of delay. The said judgment is distinguishable on the two grounds that firstly the Apex Court's judgment is relating to Section 5 of the Limitation Act, 1908 and secondly the judgment had not settled down any principle whereby the condonation may be granted under the Special Laws. In such view of the matter we now proceed to examine issues framed above.



Shuaib Wyne contended that the limitation in Section 70 (4) of the Act does not come into play in view of the judgment of the Hon'ble Supreme Court 2019 SCMR 1004.

5. On the other hand, Mr. Ahmed Sheraz, Chief Legal Advisor, NTC submitted that the facts of the judgment, referred to by the learned counsel for appellants, were different as that judgment was based on the point of limitation relating to general law not for the special law. Further, the language of section 70 of the Act is mandatory in nature, therefore, any appeal filed after the period of limitation is liable to be dismissed. His contention was that the Tribunal did not have the power to condone delay under the Act as had been held by this Tribunal in Appeal No. 69 / C. M.A. No 30 of 2015, Appeal No. 314/2018, 315/2018, 320/2019, 322/2019, 323/2019, 324/2019, 325/2019, 326/2019 & 330/2019. Mr. Saifullah Khan, learned counsel for the private respondent was also of the same view as was offered by Mr. Sheraz and adopted by the Chief Legal Advisor to the Commission.

6. After hearing both the sides, we consider it pertinent to reproduce the provision of law relating to filing of an appeal before this Tribunal. Section 70 (4) of the Act is reproduced as under:

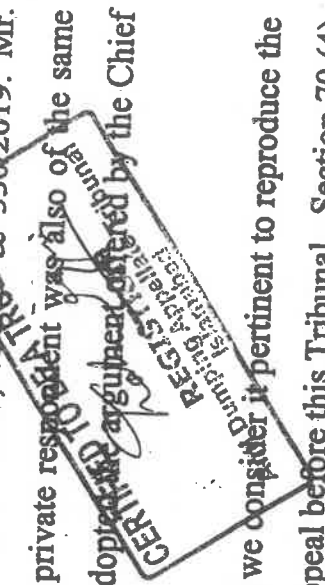
Section 70 (4) of the Act

70. *Appellate procedures.* - (1)

(2)

(3)

(4) *All appeals under clauses (ii), (iii), (iv) and (v) of sub-section (1) shall be filed within forty-five days from the date of publication in newspapers of a public notice or as the case may be, date of the decision of the*



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Commission of any affirmative or negative final decision or determination or termination of investigation by the Commission, and shall be in such form and contain such information as may be prescribed.

Plain reading of the above referred section would indicate that for the purpose of filing of an appeal against the Final Determination before this Tribunal, 45 days are specified in the Act. It is clear from the above provision that the appellant had to file appeal within 45 days from the date of publication of a public notice in newspaper. This appeal was filed on November 06, 2019 while the Final Determination was made on June 13, 2018 which reveals that the instant appeal is barred by time. The other appeals, mentioned in first paragraph of this judgment, have also been preferred beyond the prescribed period of time as specified in Section 70 of the Act. Having thus examined the provision of law relevant to the issue and the case law relied upon by the appellants, we have come to the conclusion that the appeals in hand have not been filed within prescribed period under the Act.

ISSUE NO. 2

7. Mr. Saad Shuaib Wyne admitted that they had not filed any application for the condonation of the delay, however, the appellants in appeals No. 334 of 2019 and 345 of 2019 made applications under section 151 of CPC read with section 5 of the Limitation Act and prayed that objection of time barred may be vacated and the case may be decided on merit instead of disposal of matter on technical grounds. On the other hand, Mr. Ahmed Sheraz, Chief Legal Advisor, NTC, contended that this Tribunal did not have any inherent power of the court. He submitted that section 72 of the Act did not convert this Tribunal in to a civil court in all matters, the powers of the Tribunal are restricted to the power of deciding an appeal where its procedure is not specifically provided. He also referred to section 151 of CPC which deals with inherent power of the court and submitted that this Tribunal does not possess inherent power in respect of condonation of delay and relied upon PLD 1982 Quetta 87, PLD 1973 SC 236 and 1985 CLC 1072 (Lah). In order to examine that whether the Code of Civil Procedure is

applicable to this Tribunal by virtue of section 72 of the Act, it is pertinent to see the relevant provision of the Act which reads as under:

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 person 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 ~~and~~ indicates that for the purpose of deciding of an appeal, this Tribunal shall be deemed to be Civil Court and shall have the same power as are envisaged in such court under the CPC. Being a deeming provision, section 72 of the Act does not convert this Tribunal into a Civil Court in all matters; rather it is restricted to powers of the Civil Court in deciding an appeal where its procedure is specifically not mentioned. This issue was dealt in case of Muhammad Hussain Vs EDO reported in 2007 Supreme Court Monthly Review 85 and it has been held as follows;

“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 sensu. However, at the time of deciding the appeals, the learned service Tribunal may take benefit to from principles of CPC.

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

The question whether special tribunals have any inherent power available to civil court or they have to decide matters in terms of power available to them under the governing statute has been answered by the Superior Courts in their judgment as under:-

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

(Relied upon PLD 1982 Quetta 87 and PLD 1973 S.C. 236)

Even for exercise of inherent power of the Court under section 151 of CPC a formal application under section 5 of the Limitation Act is essential for condonation of delay as held in the case law 1985 CLC 1072 (Lah), relevant portion of the citation, is as under:-

1985 CLC 1072 (Lah)

“Submission of a formal application under Section 5 of the Limitation Act is essential for enabling Court to, if at all, condone the delay, no power as to condone the delay can be executed by resort to the inherent power under this Section” (S.151).

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 this Tribunal. It is clear that this Tribunal do not possess inherent power in respect of condonation of delay.

ISSUE NO. 3

8. The appellant in Appeal No. 334 and 345 of 2019 referred to section 151 of the C.P.C read with section 5 of the Limitation Act and prayed that objection of time barred may be vacated and the case may be decided on merit instead of disposal of the matter on technical grounds. Mr. Saad Shuaib Wyne submitted that the appellant did not make an application for condonation of delay under Section 5 of the Limitation Act as there was no question of condonation of delay in the light of the judgment as quoted earlier and relied upon the principle laid down in 2019 SCMR 1004 and further referred judgment PLD 1994 SC 879. On the other hand Mr. Ahmed Sheraz, Chief Legal Advisor to the Commission offered his argument on the point of limitation and submitted that Section 5 of the Limitation Act was not applicable to any Special or Local Law such as proceedings under Anti-Dumping Duties Act, 2015. He submitted that as per Section 29 of the Limitation Act, 1908, only four sections 4, 9, 18 and 22 of the Limitation Act would apply to the proceedings before this Tribunal. Mr. Saifullah Khan, learned counsel for the respondent No 2 was also of the same view as was offered by Mr. Sheraz and adopted the argument offered by him. We have seen the provisions of law relevant to the issue of time limitation and condonation. It is necessary to see the relevant provisions of the Limitation Act, section 5 is 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 of limitation prescribed therefore, when the appellant or applicant satisfies the Court that they had sufficient cause for not preferring the appeal or making the application within such 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.*

Perusal of Section 5 of the Limitation Act, reveals that it seeks to provide for condonation of delay in filing of appeals or applications of revision to which this section has been made applicable by or under any enactment. It is obvious that the Limitation Act has not been made applicable to the Anti Dumping Act 2015 which itself prescribes time limit for filing of appeals under section 70 *ibid*. The timelines for filing of appeal are mandatory in nature and are to be strictly complied with. It has been held by the Hon'ble Supreme Court of Pakistan in 2001 SCMR 286 that where the law, under which proceedings have been launched, prescribes itself a period of limitation like under section 115, CPC then the benefit of section 5 of the Limitation Act cannot be availed, the relevant passage of Hon'ble Supreme Court of Pakistan reads as under:

2001 SCMR 286

“There is no cavil with the argument that if the Statute governing the proceedings does not prescribe period of limitation, the proceedings instituted thereunder shall be controlled by the Limitation Act as a whole. But where the law under which proceedings have been launched prescribes itself a period of limitation like under section 115, C.P.C. then benefit of section 5 of the Limitation Act cannot be availed unless it has been made applicable as per section 29(2) of the Limitation Act....”

(emphasis by us)

From the above provision of law and principle settled by the Superior Court, it is crystal clear that Section 5 of the Limitation Act is not applicable to the Tribunal working under the Special Law. However, Section 29 of the Limitation Act, makes some provisions applicable which are being discussed hereinafter:

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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 A, 9, 18, 22 shall only apply to any special or local law.

(b) The remaining provisions of this Act shall not apply.”

Perusal of section 29 of Limitation Act 1908 makes it clear that only four Sections of the said Act apply to the proceedings under any special or local law for the purpose of condonation of delay in filing an appeal under these local or special laws and rest of the provisions of the Limitation Act would not apply to such proceedings.

ISSUE No.4

9. M/s. Ahmed Sheraz & Saifullah Khan, learned counsels for the respondents submitted that this Tribunal has no power to enlarge the time period which is specified in the law and referred to the earlier judgment of this Tribunal authored by Mr. Justice Ghulam Rabbani in appeal No. 69 of 2015. They also placed reliance on the judgments of this Tribunal in Appeals No. 314/2018, 315/2018, 320/2018, 322/2019, 323/2019, 324/2019, 325/2019, 326/2019 and 330/2019, wherein similar question of law of limitation is involved and therefore prayed that the appeal may please be dismissed being barred by time. Mr. Wyne did not refer any provision of law which helps the Tribunal to ponder over that

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After having gone through the record, it is evident that there is no provision in the Act, 2015, which empowers the Tribunal to enlarge the limitation period and nothing was produced by the learned counsel for the appellant which reflects that whether this Tribunal has the jurisdiction to enlarge the time period specified by the law and we do not have contrary view to the earlier judgment of this Tribunal in appeal No. 69 of 2015; relevant part of the said judgment, is reproduced for ready reference, as follows:

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

11. The learned counsel for the appellants in Appeal Nos. 204, 332, 333, 334, 336, 338, 339,344 and 345 of 2019 adopted the arguments of learned counsel, Mr. Saad Shuaib Wyne appearing on behalf of the appellants in appeal No. 344 of 2019.

12. Thus, having discussed the matter in the preceding paragraphs, we are of the view that the appeal is barred by time. Without touching the merits of the appeal, the same is dismissed on the grounds of limitation along with other appeals bearing Nos. 204, 332, 333, 334, 336, 338, 339,344 and 345 of 2019 involving similar question of limitation, the parties are left to bear their own costs.

Announced in open Court this 20th day of the month of December, 2019.

—Sd—
(Ather Saleem)
Member

—Sd—
(Nasir Masroor Ahmed)
Chairman



Dated: December 20, 2019