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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. 325 of 2018

M/S Spirit Industries (Private Limited,
89, Circular Road,
Lahore.

Appellant

VERSUS

1. National Tariff Commission,
Islamabad.
2. M/S Aisha Steel Mills Limited,
45-Down Stream Industrial Area,
Karachi
3. M/S International Steels Limited
101, Beaumont Plaza, Beaumont Road,
Karachi

For appellant

Respondents

For respondent
No. 1

Mr. Hassan Khan Durrani,
Learned counsel for appellant.

For respondent
No. 2&3

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

Mr. Jabar Khan an associate of
Mr. S.U.Khan, learned counsel
for respondent Nos. 2 &3.

Date of hearings

Date of judgment

01-04-2019, 08-04-2019 & 15-04-2019
15-04-2019

JUDGMENT

Mr. Justice Mian Fasih-ul-Mulk:

19-01-2019 in the matter of Cold-Rolled Steel Coils (GSC) imported from Republic of China and Ukraine bearing ADC No. 35/2015/NTC/CRC as well as Galvanized Steel Coils ("GSC") imported from People's Republic of China dated 08-02-2017 passed by the Appellant has challenged the orders dated 01-04-2019, 08-04-2019 & 15-04-2019 reported from Republic of China and Ukraine bearing ADC No. 35/2015/NTC/CRC as well as Galvanized Steel Coils ("GSC") imported from People's Republic of China dated 08-02-2017 passed by

National Tariff Commission ("The Commission") on complaints made by M/s Aisha Steel Mills Limited and M/s International Steel Limited, the Respondents No. 2 & 3 respectively herein. The Commission imposed Anti-Dumping Duties on Cold Rolled Coils and Galvanized Steel Coils. The appellant has filed this appeal on 21-03-2019.

2. We have heard the arguments of Mr. Hasan Khan Durrani, learned counsel for appellant, Mr. Ahmed Sheraz, Chief Legal Advisor, NTC, respondent No. 1 and Mr. Jabar Khan, an associate of Mr. S.U. Khan learned counsel for respondent No. 2 & 3.

3. Mr. Hasan Khan Durrani, learned counsel for appellant submitted that respondent No. 2 and 3 are public limited companies, established under the companies Ordinance, 1984, and are indulged into the businesses of manufacturing "Cold-Rolled Steel Coils" and "Galvanized Steel Coils" in Pakistan and are recognized by the respondent No. 1 as being "Domestic Industry". He continued his arguments that respondent No. 2 approached respondent No. 1 and filed an application under section 20 of the Anti-Dumping Duties Ordinance on 11-06-2015. The notice of initiation of investigation was duly issued on 16-07-2015 under section 23 of the Ordinance 2015. The said Ordinance-2015 dated 26-02-2015 expired on 26-06-2015, and a new law was promulgated as "Anti-Dumping Duties Act, 2015" on 10-09-2015. It is worth consideration that no saving clause was provided under the Act of 2015 to the proceedings carried on/initiated under the Ordinance 2015. In addition, he stated that respondent No. 2 was under legal obligation to file a fresh/new application under the mandate of Section 20 of the Act 2015 as the earlier application under the Ordinance 2015 did ended with the ceased law on 26-06-2015. Instead of such application, respondent No. 1, performing under the Act, 2015, passed an illegal preliminary determination on 13-01-2016, after the expiry of 180 days from the date of initiation of the investigation. Respondent No. 1 acted in utter disregard to the law and arbitrarily issued the impugned Notice of Final Determination on 19-01-2017 after 341 days of the date of preliminary determination and 522 days after the date of initiation of investigation, hence attract the violations of Section 37 and 39 of Act-2015. Respondent No. 3 approached Respondent No. 1 and filed an application under section 20 of the Ordinance 2015 on 29-06-2015. Whereas, respondent No. 1 issued notice for initiation of investigation on 11-08-2015 under section 23 of the ordinance 2015, which had already ceased at that time and a new law was promulgated as the Act of 2015, providing no saving clause to the proceedings carried on/initiated under the Ordinance 2015. Respondent No. 3 was under legal obligation to file a fresh/new application under the

mandate of section 20 of the Act 2015 as the earlier application filed under the Ordinance 2015 had ended with the ceased law. Instead of any such application, Respondent No. 1, while performing under the Act 2015, passed an illegal preliminary determination on 03-11-2016, after the expiry of 449 days from the date of initiation of the investigation. Respondent No. 1 acted under utter disregard of law and arbitrarily issued the impugned Notice of Final Determination on 08-02-2017, after 449 days of the date of Preliminary Determination and 556 days after the date of initiation of investigation, hence in violation of sections 37 and 39 of the Act 2015. Further, he submitted that the proceeding as above are in absence of any application and carried out in violations to the mandatory periods of limitations under sections 20, 24, 37 and 39 of the Act 2015. The determinations are nothing but void, illegal, baseless, arbitrary, and unwarranted, based on malafide and without jurisdiction, hence not maintainable under the law. Concluding his arguments, he stressed that as the facts related to the impugned determination are unwarranted by facts and law and the evaluation of those facts is biased so limitation would not run being both the determinations *void ab initio*.

4. On the other hand, Mr. Ahmed Sheraz, Chief Legal Advisor, NTC contradicted the submissions of learned counsel for appellant and replied that the Commission observed all legal requirements in reaching the impugned determinations. He submitted that the Commission initiated the investigation and published notice of initiation in the official gazette of Pakistan and in two widely circulated newspapers on July 16, 2015 in the matter of CRC and on 03-11-2016 in the matter of GSC. The Commission made preliminary determination of the investigation on 13-01-2016 and notice thereof published in the gazette in Pakistan through widely circulated newspaper on 13-01-2016 in the matter of CRC and 03-11-2016 in the matter of GSC. The Commission made final determination on 19-01-2017 and 8-02-2017 in the matter of CRC and GSC, respectively. Mr. Sheraz vehemently argued that the appeal was not filed within prescribed period of limitation as mentioned in section 70 of the Anti-Dumping Duties Act 2015 and hopelessly barred by time. He relied upon the Anti-Dumping Appellate Tribunal's Judgment in Appeal No. 69/CMA No. 30 of 2015 in the matter of M/s LG Qaiser Petrochemicals Pvt. Ltd versus National Tariff Commission.
5. Three issues important in this context are;

- i. Whether the proceedings before National Tariff Commission notices and determinations are void ab

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initio, therefore the question of limitation would not arise.

ii. *Whether the appeal has been filed within the time limit as prescribed under section 70 (2) of the Anti-Dumping Duties Act, 2015.*

iii. *Whether the Tribunal is empowered to condone the delay.*

Mr. Sheraz contended that the learned counsel for the appellant has taken the plea that when the investigation started there was no law prevailing so the impugned determination is *void ab-initio*. This argument is not only fallacious but also misconceived. In strengthening his arguments he relied upon the judgment in Writ Petition No. 169 of 2016 passed by the Hon'ble Islamabad High Court, Islamabad against the same product i.e Cold Rolled Coils/Sheets the writ petition was dismissed by the Hon'ble Court. Concluding his arguments, Mr. Sheraz submitted that there was no vacuum during the period of proceedings and promulgation of law, and as such the proceedings and determination made by the commission are legally valid and lawful.

6. We have given due consideration to the above submissions before us and have gone through the record referred to by the parties. The learned counsel for the appellant's main contention was that the impugned determination is *void ab initio* therefore the question of limitation does not arise. The plea taken by Mr. Hasan Khan Durrani was that there is a vacuum of law prevailing during the Commission's investigation in the impugned determination. The plea of appellant was contradicted by Mr. Sheraz relying on the judgment passed by the Hon'ble Islamabad High Court, Islamabad in Writ Petition No. 169 of 2016 which resolved the issue and the relevant facts are mentioned in chronological order are 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, 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, 2015 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 2015 retrospectively w.e.f. 25-6-2015.
11-8-2015	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 in the above cited Writ Petition 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 retroactive effect the Ordinances were, therefore, 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 29-06-2015, 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

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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 objection of appellant is over ruled and answered accordingly.

7. Adverting to the 2nd Issue, this Tribunal 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."

8. In relation to 3rd issue the Tribunal came to the conclusion that:
"This Tribunal cannot condone the delay in filing this appeal to allow the application moved by the appellant in this behalf".

9. We have also seen the provision of law relevant to the issue of time limitation and condonation. It is necessary to see the provision of section 29 of the Limitation Act 1908, which is as follows and the judgment already determined on the point of limitation.

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."

In view of the above, it is clear that this Tribunal cannot condone the delay under the Limitation Act, 1908.

RIGHTED TO BE A TRUE ORIGINAL
 This appeal is barred by limitation. *Anticipatory plea without touching the merits of appeal the same is dismissed on the ground of limitation.*

10. Thus, having discussed the matter in the preceding paragraphs, we are of the view that the appeal is barred by limitation. *Anticipatory plea without touching the merits of appeal the same is dismissed on the ground of limitation.*

Announced in open court this 15th day of the month April, 2019.

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 (Justice Mian Fasih-ul-Mulk)
 Chairman

sd
 (Ahmed Owais Pirzada)
 Member

Dated: 15-04-2019



GR No:	98-1908
Date of Presentation:	17-4-2019
No. of Writs:	2 Nos
No. of Folios:	20
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Copy Fee:	17-4-2019
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