

Form No: HCJD/C-121

ORDER SHEET

IN THE LAHORE HIGH COURT, LAHORE
(JUDICIAL DEPARTMENT)

Writ Petition No.26907 of 2024.

M/s A & A Pipe Industries, **Versus** Federation of Pakistan, etc.
etc.

S. No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of Parties or counsel, where necessary
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02.05.2024 Muhammad Afzal Awan, Advocate for the petitioners.
Ch. Imtiaz Elahi, Deputy Attorney General for Pakistan.
(*ON COURT'S CALL*).

Through this Constitutional Petition, filed under Article 199 of the *Constitution of Islamic Republic of Pakistan, 1973*, petitioners have called into question the vires, validity and legality of conclusion of sunset review dated 30.08.2022 and notice dated 31.08.2022 whereby the National Tariff Commission (***The Commission***) while deciding the review decided to continue definitive Anti-Dumping Duties for another period of 05-years w.e.f. February 08, 2022.

2. Facts in brevity are that an application under Section 20 & 24 of the Anti-Dumping Duties Act, 2015 (***The Act***) was received by the Commission on 29.06.2015 from M/s International Steel Limited, Karachi, with the allegation that galvanized coils and sheets are being imported to Pakistan at dumped prices from the People Republic of China and said import has caused and is threatening to cause material injury to the domestic industry. After receipt of the said application, notice of initiating of Anti-Dumping Investigation of galvanized coils and sheets was issued on 11.08.2015; that the Commission after conducting the Anti-Dumping Investigation, issued a final determination

notice dated 08.02.2017 for imposition of definitive Anti-Dumping Duty on dumped imports of galvanized coils and sheets; that the Commission issued notice dated 25.10.2021 with regard to impending expiry of Anti-Dumping Duties by notifying that the Definitive Anti-Dumping Duties levied on dumped import of galvanized coils and sheets shall be terminated on 08.02.2022; that an application under Section 58(3) of the Act was moved to the Commission on 15.12.2021 from M/S International Steel Limited, Karachi and M/s Ayesha Steel Mills, Karachi for sunset review of Anti-Dumping Duties levied on dumped import of galvanized coils and sheets into Pakistan; that the Commission conducted the proceedings of the sunset review and vide order dated 30.08.2022 decided that there is a need to continue imposition of Definitive Anti-Dumping Duties on dumped imports of product under review from China as per specific rates mentioned in the decision for another period of 05 years w.e.f. 08.02.2022; that in this regard a notice dated 31.08.2022 was also issued. Being dissatisfied, petitioners have filed instant Constitutional Petition by challenging the decision of said sunset review and notice.

3. Preliminary arguments are heard. Record perused.

4. The main objection raised by the learned counsel for the petitioners is with regard to the constitution of the Commission who decided the said review. He maintains that as per Section 4 of the National Tariff Commission Act, 2015, it is provided that the Commission shall comprise of five members, appointed by the Federal Government in the prescribed manner but the impugned decision of sun set review is passed by a three Member Commission, hence, the same is not

sustainable in the eyes of law. For ease Section 4 of the Act *ibid* is reproduced as under:-

“4. Constitution of the Commission.—(1) The Commission shall comprise five members, appointed by the Federal Government in the prescribed manner. The Federal Government shall appoint one of the members to be Chairman of the Commission.

(2) The Commission shall be body corporate having perpetual succession and a common seal. It shall have the authority and duty to exercise the functions assigned to it by or pursuant to this Act or any other law for the time being in force, shall have the power and authority to acquire, hold and dispose of property, both movable and immovable, in its own name, shall have the power and authority to open a personal ledger account in its own name and may sue and be sued in its own name.

(3) The head office of the Commission shall be at Islamabad and the Commission may establish offices at such places as it may deem necessary.

(4) **No act, proceedings or decision of the Commission shall be invalid by reason only of the existence of a vacancy or defect in the Constitution of Commission.**

In this regard, it is observed that Sub-Section 04 of the Section 04 of the Act *ibid* reflects that no act, proceeding or decision of the Commission shall be invalidated by reason of only of the existence of a vacancy or defect in the Constitution of the Commission. In this view of the matter, this objection taken by the learned counsel for the petitioners is not tenable.

5. It is observed that the statute has provided a remedy of appeal under Section 70 of the Anti Dumping Duties Act, 2015. Before further discussion, it is better to see Section 70 of the Act *ibid* which reads as under:

70. Appellate procedures.—(1) Any interested party may prefer an appeal to the Appellate Tribunal against—

(i) the initiation of an investigation or a preliminary determination, where it is alleged that it does not satisfy the requirements laid down in sections 23 and 37 respectively;

(ii) an affirmative or negative final determination by the Commission under section 39;

(iii) any final determination pursuant to a review;

(iv) an order of the Commission for termination of investigation under Section 41; or

(v) a determination of the Commission under section 52.

(2) An appeal under clause (i) of subsection (1) shall be filed within thirty days of the publication of notice of initiation or notice preliminary determination, as the case may be.

(3) The Appellate Tribunal shall handle such an appeal as a priority and shall issue its decision on the appeal within thirty days of the filing of an appeal with the Appellate Tribunal:

Provided that the filing of an appeal under clause (i) of subsection (1) shall have no effect on the Commission's conduct of investigation.

(4) All appeals under clauses (ii), (iii), (iv) and (v) of subsection (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 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.

(5) Such an appeal shall be disposed of and the decision of the Appellate Tribunal pronounced, as expeditiously as possible as but not later than forty-five days from the date of receipt of an appeal compliant with the requirements contained in this Act.

(6) The Appellate Tribunal shall hear the appeal from day-to-day.

(7) In examining an appeal under subsection (1), the Appellate Tribunal may make such further inquiry as it may consider necessary, and after giving the Commission and an appellant an opportunity of being heard, pass such order as it thinks fit, confirming, altering or annulling a determination of the Commission appealed against:

Provided that in case the Appellate Tribunal decision requires action by the Commission, it shall remand the case to the Commission.

(8) After examining the appeal, the Appellate tribunal shall assess the facts related to the impugned determination of the Commission. The Appellate Tribunal shall determine whether the establishment of the facts of the Commission was proper and whether

the commission's evaluation of those facts was unbiased and objective. The Appellate tribunal shall base this determination on the official record maintained by the Commission or any other documents relied upon by the Commission in reaching the determination being appealed.

(9) Where the Appellate Tribunal determines that the Commission's establishment of the facts was proper and its evaluation was unbiased and objective, it shall confirm the appealed determination of the Commission provided that the Appellate Tribunal is satisfied that in reaching its determination, the Commission complied with the relevant provisions of this Act.

(10) The decision of the Appellate Tribunal shall be in writing, detailing the issues raised in the appeal and the arguments adopted by the appellant and the Commission. The Appellate tribunal shall also provide reasons for reaching its decision with reference to the provisions of this Act and the facts of the case.

(11) The Appellate Tribunal shall provide copies of its decision to all the appellants and the respondents including the Commission no later than five days from the date of rendering its decision.

(12) The Appellate Tribunal may, if it deems necessary, require an appellant to provide security in such form as may be prescribed, at the time of filing of an appeal.

(13) The decision of the Appellate Tribunal shall be appealable in the High Court. The High Court shall render a decision within ninety days of receiving an appeal from the decision of the Appellate Tribunal:

Provided that the High Court shall not make an interim order against the conduct of investigation by the Commission unless the Commission has been given notice of the application and has had an opportunity of being heard and the High Court, for reasons to be recorded in writing, is satisfied that the interim order would not have the effect of prejudicing or interfering with the carrying out of a public work or of otherwise being harmful to the public interest [or State property] or of impeding the assessment or collection of public revenues:

Provided further that The Appellate Tribunal may, if it thinks fit, accept an application from any party to an appeal in which the Appellate Tribunal has rendered its decision, for a clarification of any of the issues raised by the Appellate Tribunal in its decision:

Provided also that such application shall specify the precise issue in respect of which a clarification is sought and give reasons as to why a clarification is necessary:

(14) The Appellate Tribunal shall only accept such application if it is satisfied that a material issue discussed in its decision requires further clarification or elaboration. The party likely to be adversely affected by such clarification shall also be given a notice by the Appellate Tribunal:

Provided that no application under this subsection shall be accepted by the Appellate Tribunal later than thirty days of its decision.

(15) The Appellate Tribunal shall perform its functions under this Act in accordance with such procedures as may be prescribed.

(16) A determination of the Commission shall be given full force and effect during the pendency of any appeal of such determination.

(17) A person duly authorized by any interested party is entitled to appear, plead and act on behalf of such party before the Appellate Tribunal.”

6. Above quoted Section stipulates the jurisdiction of the Appellate Tribunal which mandates to exercise Appellate jurisdiction under the Act and hear appeals of the interested parties against any of the initial or definite findings/outcomes initiated/undertaken or concluded under the scheme of the Act. Under subsection (1), an interested party may prefer appeal against the initiation of an investigation or a preliminary determination on the grounds of non-fulfillment of requirements provided in Sections 23 and 37 of the Act while subsection (ii) of Section 70 provides that any interested party may prefer an appeal to the Appellate Tribunal against an affirmative or negative final determination made under Section 39 by the Commission. Subsection (iii) on the other hand, postulates the right of appeal to the Tribunal against final determination pursuant to a review and subsection (iv) recognize the right of appeal against Commission's order for termination of investigation under Section 41 of the Act while subsection (v) provides the right of appeal against a determination of the Commission under Section 52 of the Act.

7. Section 70 of the Act is an exhaustive provision, which does not only provide the substantive right of appeal and time limitation for preferring and decision of the same but it also lays down the procedural requirements for carrying out the whole appellate procedure. It stipulates a comprehensive scheme of exercising Appellate Jurisdiction by the Appellate Tribunal constituted under Section 64 of the Act against appeal preferred by an interested party either against initiation of investigation, preliminary determination or final determination and also provides limitation to as well as it also provides the procedure for hearing the same including chalking out the requirements for a decision of the Tribunal. Moreover, subsection (13) lays down the substantive right of appeal against the decision of the Appellate Tribunal to the High Court. This whole scheme of remedial procedure is clearly suggestive of the fact that a Determination even though a Final Determination under Section 39 is not absolute and is open for scrutiny before the Appellate Tribunal if any interested party, dissatisfied with the same, prefers an appeal before it. It is further evident that the decision of the Appellate Tribunal pronounced under subsection (9) of Section 70 is further open to judicial examination by the High Court under subsection (13) if an interested party still feels dissatisfied prefers so. These two-fold remedies are itself provided by the Act to an interested party whose rights have been determined and adjudged by the Commission and the Appellate Tribunal contrary to his interests and contradictory to the law in his understanding. The right of appeal is always provided by the law to ensure safe administration of justice and to enable an independent higher forum to dissect the

decisions of the lower forum on the scale of true spirit and interpretation of law involved in the matter and to ascertain that no miscarriage of justice was caused by the lower forum. The purpose of providing an Appellate authority is always to further the cause of justice and to rule out the probability of wrong decision rendered by the first judicial forum or the First Appellate Authority either due to mistake of fact or wrong application of law. Whenever an appeal is preferred by a discontented party before the Appellate Forum/Appellate Tribunal in a case, the said Appellate body is competent to set aside, affirm or modify the decision under appeal and if right of further appeal is available to a party against such decision, the second Appellate body, in this case the High Court, can similarly affirm, vary or alter the decision of the lower Appellate forum/the Appellate Tribunal. For reference reliance is placed on the case titled Shaheen Merchant Versus Federation of Pakistan/National Tariff Commission and others (2021 PTD 2126).

8. The accumulative effect of this discussion is that when the statute has provided specific remedies of appeal to the Petitioner against Final Determination, and when right of another appeal is still available after the decision of the Appellate Tribunal, then in such a situation, the petitioners have no authority to invoke the extraordinary jurisdiction of this Court.

9. Now this comprehensive remedial algorithm of right of appeal against action and determination of the Commission under the Act which affects the rights and interests of any of the parties relating to the subject-matter leaves no doubt that the law does not only recognize the rights of interested parties but also provides a specially constituted Tribunal to exercise

appellate jurisdiction under the Act and to give its reasoned decisions in accordance with subsection (10) of Section 70.

10. Indubitably, when an efficacious, alternate and time bound definite remedy is available before a Tribunal specially constituted under the law then resort to extra-ordinary Constitutional jurisdiction before this Court does not find favor under the law since the absence of these conditions are sine qua non for exercising Writ jurisdiction. The Honorable Supreme Court in “Rana Aftab Ahmad Khan v. Muhammad Ajmal” (PLD 2010 SC 1066) laid down the very principle while observing as follows:-

"When the petitioner has no explanation to offer, as to why the "other remedy", which is a definite one in nature; is time bound and is, specifically designed and prescribed by the legislature keeping into consideration time constraints in the election process, but has not been availed for any good reason, by the petitioner. Whether still the High Court should have imperatively interfered in the matter and the refusal thereof, should be construed as an erroneous or patently illegal order or an order suffering from any jurisdictional defect calling for the intervention by this Court in its instant jurisdiction? The answer is in negative".

The Honorable Court further concluded:-

"12. Resultantly, in the circumstances of the case, the High Court had rightly refused to interfere in its constitutional jurisdiction, when an appropriate, efficacious and adequate alternate remedy available to the petitioner has not been availed by him without any justification..."

11. This proposition was further discussed and elaborated by the Hon'ble Supreme Court of Pakistan in a recent judgment titled “MIAN AZAM WAHEED AND 2 OTHERS V. THE COLLECTOR OF CUSTOMS THROUGH ADDITIONAL COLLECTOR OF

CUSTOMS, KARACHI” (2023 PTD 1571) in the following manner:

“The writ jurisdiction of the High Court cannot be exploited as the sole solution or remedy for ventilating all miseries, distresses and plights regardless of having equally efficacious, alternate and adequate remedy provided under the law which cannot be bypassed to attract the writ jurisdiction. The doctrine of exhaustion of remedies stops a litigant from pursuing a remedy in a new court or jurisdiction until the remedy already provided under the law is exhausted. The profound rationale accentuated in this doctrine is that the litigant should not be encouraged to circumvent or bypass the provisions assimilated in the relevant statute paving the way for availing remedies with precise procedure to challenge the impugned action, so as in this case, the Customs Act, which is in its own wisdom a complete set of law with regard to the genus of remedies, but the petitioners, rather than filing a Revision petition against the impugned Valuation Ruling under section 25-D of the Customs Act, directly approached the learned Islamabad High Court where the writ petitions were ultimately dismissed due to lack of jurisdiction and the net result emerging from the entire litigation is that the impugned valuation ruling is intact. The extraordinary jurisdiction of the High Court under Article 199 of the Constitution cannot be reduced to an ordinary jurisdiction of the High Court. In the case of *Dr. Sher Afgan Khan Niazi v. Ali S. Habib and others* (2011 SCMR 1813), this Court held that the question of adequate or alternate remedy has been discussed time and again by this Court and it is well settled by now that the words "adequate remedy" connote an efficacious, convenient, beneficial, effective and speedy remedy. It was further held that the superior Courts should not involve themselves into investigations of disputed question of fact which necessitate taking of evidence. While referring to the various dictums laid down in the case of *State Life Insurance Corporation of Pakistan v. Pakistan Tobacco Co. Ltd.*, (PLD 1983 SC 280), *Gul Ahmed Textile Mills Ltd v. Collector of Customs* (Appraisement, (1990 MLD 126), *Pak. Metal Industries v. Assistant Collector* (1990 CLC 1022), *Allah Wasaya v. Tehsildar/AC 1st Grade*, (1981 CLC 1202), *Syed Riaz Hussain Zaidi v. Muhammad Iqbal*, (PLD 1981 Lah. 215), *Abdul Hafeez v. Chairman, Municipal Corporation* (PLD 1967 Lah. 1251), this Court also provided enlightened and levelheaded guiding principles to be considered by the High Courts to determine the adequacy of the alternate remedy in the following terms:-

- (i) *If the relief available through the alternative remedy in its nature or extent is not what is necessary to give the requisite relief, the alternative remedy is not an "other adequate remedy" within the meaning of Article 199.*
- (ii) *If the relief available through the alternative remedy, in its nature and extent, is what is necessary to give the requisite relief, the 'adequacy' of the alternative*

remedy must further be judged, with reference to a comparison of the speed, expense or convenience of obtaining that relief through the alternative remedy, with the speed, expense or convenience of obtaining it under Article 199. But in making this comparison those factors must not be taken into account which would themselves alter if the remedy under Article 199 were used as a substitute for the other remedy.

(iii) In practice the following steps may be taken:-

(a) Formulate the grievance in the given case, as a generalized category;

(b) Formulate the relief that is necessary to redress that category of grievance;

(c) See if the law has prescribed any remedy that can redress that category of grievance in that way and to the required extent;

(d) If such a remedy is prescribed the law contemplates that resort must be had to that remedy;

(e) If it appears that the machinery established for the purposes of that remedy is not functioning properly, the correct step to take will be a step that is calculated to ensure, as far as lies in the power of the Court, that that machinery begins to function as it should. It would not be correct to take over the function of that machinery. If the function of another organ is taken over, that other organ will atrophy, and the organ that takes over, will break down under the strain;

(f) If there is no other remedy that can redress that category of grievance in that way and to the required extent, or if there is such a remedy but conditions are attached to it which for a particular category of cases would neutralise or defeat it so as to deprive it of its substance, the Court should give the requisite relief under Article 199;

(g) If there is such other remedy, but there is something so special in the circumstances of a given case that the other remedy which generally adequate, to the relief required for that category of grievance, is not adequate to the relief that is essential in the very special category to which that case belongs, the Court should give the required relief under Article 199.

If the procedure for obtaining the relief by some other proceedings is too cumbersome or the relief cannot be obtained without delay and expense, or the delay would make the grant of the relief meaningless this court would not hesitate to issue a writ if the party applying for it is found entitled to it, simply because the party could have chosen another course to obtain the relief which is due." (Ibrahim T.M. Ltd. v. Federation of Pakistan PLD 1989 Lah. 47, Allah Ditta v. Muhammad Saeed Vattoo PLD 1961 Lah. 479, Shamas Din and Bros. v. Income-tax and Sales Tax Officer PLD 1959 Lah. 955, Khaliq Najam Co. v. Sales-Tax Officer PLD 1959 Lahore 915)."

12. In view of the above, it can be easily gathered that the instant petition, in presence of an adequate alternate remedy of appeal, is not maintainable.

13. As a corollary of above discussion, this petition is *dismissed-in-limine*.

(AHMAD NADEEM ARSHAD)
JUDGE

APPROVED FOR REPORTING.

JUDGE

*M. Arsalan**