

FORM NO.HCJD/C
JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CASE NO. : W.P. NO.1803-2010

Naseemul Ali

Vt.

**The Executive Director, Securities & Exchange Commission of Pakistan
& Another**

Date of hearing : 16.10.2012
Petitioner by : Raja Imran Aziz, Advocate
Respondents by : Mr. Sultan Mazhar, Advocate

NOOR-UL-HAQ N. QURESHI J. The claim urged in the

petition by impugning the judgment dated 18.03.2010 passed by the respondents thereby request for waiving off the penalty amount upon the petitioner.

2. After elaborate arguments by both the sides, learned counsel for the respondents has agitated the maintainability of the instant writ petition in view of Section 33 & 34 of the Securities & Exchange Commission of Pakistan Act, 1997. He emphasized that actually, the appeal is to be preferred to the Appellate Bench of the Commission, which the petitioner did, where-after, another appeal lies to the High Court as required by Section 34 of the said Act.

3. I have gone through the relevant provisions of law referred above. However, for convenience, same are being reproduced herein below: -

“33. Appeal to the Appellate Bench of the Commission

(1) An appeal shall lie to an Appellate Bench of the Commission in respect of an order of the Commission made by one Commissioner. The person aggrieved by such order may within thirty days of the passing of the order prefer an appeal to the Appellate Bench of the Commission.

(2) The Commission shall constitute an Appellate Bench of the Commission comprising not less than two Commissioners to hear appeals under subsection (1)

(3) If any Commissioner who is included in the Appellate Bench has participated or been concerned in the decision being appealed against the Chairman shall nominate another Commissioner to sit in the Bench to hear that appeal.

(4) The form in which an appeal is to be filed and the fees to be paid therefore and other related matters shall be prescribed by rules.

34. Appeal to the Court (1) *An appeal shall lie to the Court referred to in Part II of the Ordinance in respect of an order of the Commission comprising two or more Commissioners or the Appellate Bench.*

(2) *The appeal under subsection (1) may be filed within sixty days of the date of the decision and shall be accompanied by a fee of one hundred rupees.*

4. Learned counsel for the respondent has argued that when adequate remedy is available to the petitioner, the statutory bar of jurisdiction has been discussed in various authorities delivered by the August Supreme Court of Pakistan. He referred 1999 SCMR 1881 (Khalid Mahmood Vs. Collector of Customs, Lahore) & 2005 SCMR 37 (Collector of Customs & others Vs. Universal Gateway Trading Corporation and Another), whereby their lordships have observed that constitutional jurisdiction not to exercised when alternate efficacious remedy is available under the relevant provisions of law.

5. In the instant case, adequate remedy available to the petitioner has been availed and further appeal as provided by Section 34 of the Securities & Exchange Commission of Pakistan Act, 1997 by preferring appeal against the said order is also available to him, which he did not avail. Therefore, in my humble view, instant petition suffers from such technicalities, hence same being non-maintainable, is hereby dismissed.

(NOOR-UL-HAQ N. QURESHI)
JUDGE

Announced in Open Court on 18-10-2019.


Zawar

JUDGE