JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P. No. 4643 of 2022

SOHAIL AND COMPANY
Vs.
ANTI DUMPING APPELLATE TRIBUNAL, ISLAMABAD
AND 2 OTHERS

CMA No. 96 of 2022

AL-QAMAR IMPORTS (PVT.) LIMITED
Vs.
ANTI DUMPING APPELLATE TRIBUNAL, ISLAMABAD
AND 2 OTHERS

CMA No. 162 of 2022

AL-QAMAR IMPORTS (PVT.) LIMITED
Vs.
NATIONAL TARIFF COMMISSION AND ANOTHER

CMA No. 165 of 2022

SOHAIL SAFDAR MIAN AND ANOTHER
Vs.
NATIONAL TARIFF COMMISSION AND ANOTHER

CMA No. 169 of 2022

M/S WORLD WIDE TRADERS AND 3 OTHERS
Vs.
NATIONAL TARIFF COMMISSION AND ANOTHER

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CMA No. 04 of 2023

DAWOOD UL HASSAN
Vs.
NATIONAL TARIFF COMMISSION AND ANOTHER

Petitioner/Appellants by	:	M/s Shafqat Mehmood Chohan, Muhammad Immad Qamar, Shabbir Ali Khokhar and Rana Shahid Abbas Advocates.
Respondents by	:	M/s Saifullah Khan, Waqas Amir and Muhammad Azfar Advocates.
Date of Hearing	:	**07.12.2023.**

SAMAN RAFAT IMTIAZ, J.-

1. Through this consolidated Judgment I am deciding the aforementioned Writ Petition as well as the Civil Miscellaneous Appeals **("C.M.As.")**.

2. Vide Writ Petition No. 4643/2022 the Petitioner [M/s Sohail and Company] has assailed the Order dated 10.11.2022 **("Impugned Order")** passed by the Respondent No. 1 **[**Anti-Dumping Appellate Tribunal, Islamabad **("Tribunal")]** whereby the Application under Section 12(2) CPC was rejected. The said application had been filed by the Petitioner against the Judgment dated 17.02.2022 **("Impugned Judgment I")** passed by the Tribunal in Appeal No. 215/2017 which was filed by the Respondent No. 3 [DIC Pakistan Limited]. The Petitioner has also sought setting aside of the Impugned Judgment I whereby the First Final Determination dated 14.07.2017 was set aside and the matter was remanded to the Respondent No. 2 **[**National Tariff Commission **("Commission")]** for *de novo* determination. In addition, the Petitioner has sought direction to the Tribunal to direct the Respondent No. 3 to implead the Petitioner as a party in the proceedings in Appeal No. 215/2017 and to conduct fresh proceedings.

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3. The above-captioned C.M.As have been filed by the Appellants [Al-Qamar Imports (Pvt.) Limited, the Petitioner, Asad Ahmed Shamsi, M/s World Wide Traders, M/s Bakhtawar Traders, M/s K.T. Enterprises, M/s Super Graphic, Dawood ul Hassan] to assail the Impugned Judgment I passed by the Tribunal whereby the First Final Determination was set aside and matter was remanded to the Respondent No. 2/Commission and also the Judgment dated 17.11.2022 **("Impugned Judgment II")** passed by the Tribunal whereby Appeals Nos. 293, 296, 297, 491, 493, 495, 499, 302 of 2022 filed against the Second Final Determination vide Order dated 05.04.2022 passed by the Respondent No. 2/Commission were rejected.

4. The brief facts giving rise to the instant Writ Petition and C.M.As. are that a Complaint under Section 20 of the Anti-Dumping Duties Act, 2015 **("Anti-Dumping Act")** was filed on 06.10.2015 by the Respondent No. 3 before the Respondent No. 2/Commission alleging dumping of Offset Printing Ink **("Investigated Product")** originating in and/or exported from the People's Republic of China and the Republic of Korea into the commerce of Pakistan and thereby allegedly causing material injury to the domestic industry producing the Investigated Product. The Respondent No. 2/Commission initiated an anti-dumping investigation vide Notice of Initiation dated 07.12.2015 under Section 23 of the Anti-Dumping Act in respect of the alleged dumped imports of the Investigated Product wherein a Preliminary Determination was notified vide notice of Preliminary Determination dated 21.12.2016 imposing provisional duty for which a report was published on the website of the Respondent No. 2/Commission.

5. The Petitioner, being an importer of the Investigated Product was aggrieved of the Preliminary Determination dated 21.12.2016 and as such registered itself as an 'interested party' with the Respondent No. 2/Commission. The Respondent No. 2/Commission held multiple hearings

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and thereafter the First Final Determination dated 14.07.2017 whereby the provisional duty was dropped was notified vide notice dated 21.07.2017.

6. Consequently, the Respondent No. 3 filed an appeal but without impleading any of the 'interested parties' and obtained the Impugned Judgment I whereby the First Final Determination dated 14.07.2017 was set aside and the matter was remanded to the Respondent No. 2/Commission for *de novo* determination in light of the observations made in the Impugned Judgment I.

7. The Respondent No. 2/Commission after remand provided opportunity of hearing to all the interested parties and issued the Second Final Determination vide Order dated 05.04.2022 which was challenged before the Tribunal by the Petitioner along with the other Appellants in Appeals Nos. 293, 296, 297, 491, 493, 495, 499, 302 of 2022 filed on18.04.2022.

8. Thereafter, the Petitioner filed an application on 30-05-2022 under Section 12(2) C.P.C. against the Impugned Judgment I before the Tribunal challenging the remand. However, such application has been dismissed vide the Impugned Order whereas the Appeals Nos. 293, 296, 297, 491, 495, 499, 302 of 2022 were rejected vide the Impugned Judgment II. Hence, the Writ Petition and these C.M.As.

Arguments of the learned counsel for the Petitioner in respect of the Writ Petition No. 4643/2022:

9. The learned counsel for the Petitioner has argued that the Impugned Order is based on erroneous grounds as the Petitioner had no notice of the appeal filed by the Respondent No. 3 before the Tribunal and as such could not have become a party thereto itself. Secondly, the Impugned Order is based on the fact that on remand the Respondent No. 2/Commission issued notice to the Petitioner but the Petitioner did not participate in the

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proceedings before the Respondent No. 2/Commission, which is also on faulty ground.

10. The learned counsel for the Petitioner submits that the Impugned Order erroneously finds that the words, 'fraud' and 'misrepresentation' have not been mentioned in the Application filed under Section 12(2) C.P.C. He submits that firstly "fraud" and "misrepresentation" can be made out from the contents of such Application but even otherwise the requirements of Section 12(2) also include 'want of jurisdiction'. He argued that where necessary party has not been impleaded the forum is incompetent for 'want of jurisdiction' which aspect was not considered in the Impugned Order. Therefore he argued that both the Impugned Order as well as the Impugned Judgment I is liable to be set aside and for the Respondent No. 3's appeal to be heard afresh after impleading the Petitioner.

Arguments of the learned counsel for the Petitioner/Appellants in respect of the C.M.A Nos. 96/2022, 162/2022, 165/2022, 169/2022, 04/2023:

11. The learned counsel for the Petitioner while addressing arguments in respects of the connected C.M.As., submits that proceedings under the Anti-Dumping Act, 2015 have been held to be penal in nature vide judgments reported as *Rab Nawaz and others v. Additional District Judge and others,* 2023 MLD 511, *Moulana Atta ur Rehman v. Al Hajj Sardar Umar Farooq and others,* PLD 2008 SC 663, *Subeh Sadiq v. Mst. Rajan through Legal Heirs,* PLD 2006 Lahore 585, *Muhammad Suleman v. Abddul Rashid and 13 others,* PLD 1987 Lahore 387, *Mst. Maqbool Begum, etc. v. Gullan and others,* PLD 1982 S.C. 46.

12. He further submits that Sections 37 and 39 of the Anti-Dumping Duties Act are time bound and so is Section 58 which provides for a period of five years for review of duty imposed. In this respect he has highlighted that the Preliminary Determination was made on 21.12.2016, whereas, the

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duty has been imposed on 07.04.2022 and as such was beyond the limitation period stipulated in the law. Furthermore he relies upon the definition of 'Domestic Industry' provided in Section 2 (d) of the Anti-Dumping Act whereby Importers and Exporters have been excluded and submits that after the duty was imposed by the Second Final Determination dated 07.04.2022 the Respondent No. 3 itself started importing and as such ceased to fall within the definition of 'Domestic Industry' which fact was ignored by the Tribunal.

13. He submits that Section 50(1) *ibid* has two components namely 'dumping' and 'injury' both of which must exist to impose duty and that "dumping" alone is not sufficient without establishing "injury". He further refers to sub-section (2) of Section 50 whereby only such duty may be imposed which is sufficient to remove the 'injury' caused to the 'Domestic Industry' even if dumping may be more. However such determination could not be made without quantifying the amount of injury suffered by the 'Domestic Industry'. No such excise was conducted by the Respondent No. 1/Tribunal whereas, the Impugned Judgment II only discusses the factors that allegedly caused 'injury'.

14. The learned counsel for all the remaining Appellants adopted the arguments advanced by the learned counsel for the Petitioner/Appellant and prayed for the setting aside of the Impugned Judgment II on behalf of the Appellants.

Counter Arguments of the Respondent No. 2/Commission in respect of Writ Petition No. 4643/2022:

15. The learned counsel for the Respondent No.2 at the very outset objects to the maintainability of the instant Writ Petition in view of the alternate remedy available under Section 70 of the Anti-Dumping Duties Act whereby appeals have been provided for and that in fact such appeals have been filed.

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16. The learned counsel for the Respondent No. 2/Commission also submits that *mala fide* of the Petitioner is evident from the fact that although an Appeal was filed by the same against the Impugned Judgment I on 18.04.2022 nevertheless an Application under Section 12(2) CPC was also moved on 30.05.2022 against the Impugned Judgment I.

17. On merits, the learned counsel for the Respondent No. 2/ Commission submits that a notice was duly issued to the Petitioner as well as to the Appellant [Al-Qamar Imports (Pvt.) Limited] in C.M.A No.162/2022 of the decision of remand by Impugned Judgment I and copy of such notice is available as part of the comments filed on behalf of the Respondent No.2 despite which they did not participate in the proceedings. He also submits that no cause of action/grievance accrued to the Petitioner due to failure to implead the same in the Appeal filed by the Respondent No.3 as the matter was simply remanded as opposed to imposition of any duty. He is of the opinion that a remand by itself does not constitute injury especially since post remand notice was admittedly given despite which no one for the Petitioner/Appellant participated in the proceedings. He relies upon the definition of aggrieved person given in *M/s Al-Ahmed (Pvt.) Ltd v. Anjuman Falah-O-Behbood, Hazara Mughal Goth And Others,* 2009 CLC 299. Without prejudice to the foregoing the learned counsel for the Respondent No. 2/Commission submitted that even otherwise no fraud or misrepresentation has been made out as per the definitions of the aforesaid words as per *Muhammad Yaqoob Vs. Mohsin Ali*, 1999 CLC 1173.

18. Next the learned counsel for the Respondent No. 2/Commission submits that principle of merger applies to the Impugned Judgment I passed by the Tribunal whereby the matter was remanded and the Second Final Determination made by the Respondent No. 2/Commission subsequent to remand, which then merged with the Impugned Judgment II which is under challenge in the connected C.M.As. In this regard he relies upon *Glaxo Laboratories Limited vs. Inspecting Assistant Commissioner of Income-Tax*

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and others 1992 PTD 932 and *Bashir Ahmed Badini, D&SJ, Dera Allah Yar and others vs. Chairman and Member of Administration Committee and Promotion Committee of High Court of Balochistan and others* 2022 PLC (C.S) 610.

Counter Arguments of the Respondent No. 2/Commission in respect of the C.M.A Nos. 96/2022, 162/2022, 165/2022, 169/2022, 04/2023:

19. The learned counsel for Respondent No. 2/Commission argues that the second appeal under Section 70 (13) under the Anti-Dumping Act can be equated with Section 100, CPC which has a restricted scope and pursuant to which the matter cannot be reopened afresh. In this regard he submits that the grounds raised by the Appellant in the second appeal before this Court including definition of 'domestic industry' and the arguments regarding failure to quantify the 'injury margin' were never raised prior to the instant appeal and as such no new ground can be raised or considered by this Court.

20. Without prejudice to the foregoing he also submits that under Section 36 of the Act assessment is made on the basis of data in respect of defined periods which are given in sub-sections (2) and (3) of Section 36. He referred to the notice of initiation which gives the relevant period in the instant case as the year 2015. Whereas admittedly Respondent No. 3 started importing in 2017 at which point the Respondent No. 2/Commission had become *functus officio* and as such the import by the Respondent No. 3, if any, could not be taken into consideration as it was outside the scope of investigation.

21. Insofar as 'injury margin' is concerned the learned counsel for the Respondent No. 2/Commission contends that sub-section (2) of Section 50 is not mandatory and even otherwise the margin has been calculated. He highlighted from the relevant potion of the second Final Determination that while injury was calculated at 50.83%, Anti-Dumping Duty has been

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imposed equivalent to the dumping margin which is an amount less than the injury.

22. The learned counsel for the Respondent No. 2/Commission relies upon Section 39 of the Act and highlighted that the word used is "normally" and as such the timelines are not mandatory as has been held in *Messrs Aimnaz (Pvt.) Limited Vs. Federation of Pakistan,* 2018 PTD 1966.

Counter Arguments of the Respondent No. 3 in respect of Writ Petition No. 4643/2022:

23. The learned counsel for Respondent No. 3 has largely adopted the arguments submitted by the counsel for the Respondent No. 2/Commission subject to the following additional points: In respect of the writ petition he submits that the Petitioner was not impleaded as a party because the grievance of the Respondent No. 3 was on account of non-imposition of duty and as such the only relevant party was the Respondent No. 2/Commission. The learned counsel for the Respondent No. 3 has also pointed out the alleged misrepresentation of the Petitioner in that the Petitioner admitted receipt of notice in the investigation in its application under section 12(2) filed before the Tribunal whereas in the writ petition filed before this Court a contradictory statement has been made stating that the Petitioner was not informed of the said hearing and was surprised to find out later when a new notice of final determination dated 07.04.2022 was notified.

Counter Arguments of the Respondent No. 3 in respect of the C.M.A Nos. 96/2022, 162/2022, 165/2022, 169/2022, 04/2023:

24. In respect of C.M.As. the learned counsel for the Respondent No. 3 submits that the sunset review enshrined in Section 58 only applies in cases where Anti-Dumping Duty has been imposed. It has no relevance to the instant case where Anti-Dumping Duty was imposed provisionally. In order to bolster his argument he referred to Sections 43, 44, and 45 to emphasize that the provisional duty is only a temporary measure for four

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months at the end of which the duty is refunded to the importers. He explained that the objective of the sunset review in Section 58 is for a review to take place where Anti-Dumping Duty has been imposed and has been in place for a period of 5 years. He also submitted that the Petitioner can invoke this provision before the Respondent No. 2/Commission as the Anti-Dumping Duty has now been in place for 5 years instead of this appeal.

25. As far as Respondent No. 3 no longer falling under the definition of 'Domestic Industry' is concerned he contends that the Respondent No. 3 have not imported the Investigated Product at all. Even otherwise, alternate legal recourse is available to the Petitioner under the Anti-Dumping Act in case the Appellants have any grievance against the Respondent No. 3 on account of their subsequent act of alleged import of the Investigated Product.

26. Last but not the least the learned counsel for the Respondent No. 3 submits that it is not necessary to quantify injury and only a determination needs to be made under the Anti-Dumping Act the process of which has been provided for in Section 15, 16 and 17. In support of such submissions he has relied upon *Argentina-Cermic Tiles,* DSR 2001: XII, P. 6241, *China-GOES,* DSR 2012:XII, P.6251 and *EC-Salmon (Norway),* DSR 2008:I, P.3; *Commission Implementing Regulation* (EU) 2023/935 of 11 May 2023; *Commission Implementing Regulation* (EU) 2021/2239 of 15 December 2021; *Indian Case,-Final Findings in Antidumping investigations involving imports of Acetone originating in or exported from European Union, Ciness Taipei, Singapore, South Africa and USA; US Case-Final Injury Analysis Report of United States International Trade Commission in Antidumping investigation concerning certain freight rail couplers and Parts thereof from China; Report of the Panel-European Union Anti-Dumping measures on imports of certain fatty alcohols from Indonesia,* (WT/DS442/R*); Report of the Panel- China Anti-Dumping and*

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countervailing duty measures on broiler products from United States (WT/DS427/R).

27. I have heard the learned counsel for the parties and have also perused the record.

Writ Petition:

28. The perusal of the Impugned Order shows that it is based on four broad reasons. Firstly, that the Petitioner had ample opportunity to approach the Tribunal with a request to be made a party in Appeal No.215/2017 filed by the Respondent No. 3 against the First Final Determination but the Petitioner did not avail such remedy. However, neither the Impugned Order sheds any light nor the Respondents were able to satisfy this Court as to how such remedy was available to the Petitioner when it had no way of knowing about the filing of the Appeal before the Respondent No. 1/Tribunal. Indeed the Petitioner's entire case is that the Impugned Judgment I has been obtained through fraud and misrepresentation by the Respondent no. 3 by failing to implead the Petitioner despite the fact that it was registered as "interested party".

29. The second reason given in the Impugned Order is that the Respondent No. 2/Commission issued notice to the Petitioner to participate in the proceedings undertaken by them pursuant to the Impugned Judgment I but it did not respond to the said notice. I agree with the Petitioner that notice by the Respondent No. 2/Commission of proceedings undertaken on remand has no bearing on whether the judgment whereby the matter was remanded was or was not obtained by way of fraud or misrepresentation.

30. This brings to me to the argument raised by the Respondent No. 2/Commission that no prejudice was caused to the Petitioner by way of the Impugned Judgment I as the Impugned Judgment I simply remanded the matter to the Respondent No. 2/Commission and did not impose any Anti-Dumping duty. I am not convinced by this argument at all. It is undisputed

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that the Petitioner was an 'interested party' as per definition under Section 2(j) of the Anti-Dumping Act by virtue of being an importer. Thus the Petitioner had a valuable right in terms of the First Final Determination made by the Respondent No. 2/Commission whereby the provisional duty was dropped as a result of the proceedings that it was a part of.

31. There is no force in the argument that by setting aside such determination and remanding the matter to the Respondent No. 2/Commission to determine afresh whether any duty was required to be imposed or not could not be termed to be prejudicial to the Petitioner. The Impugned Judgment I essentially decided that the determination made by the Respondent No. 2/Commission whereby the provisional duty was dropped was erroneous. That decision by itself was adverse to valuable rights of the Petitioner who had every right to be present before the Respondent No. 1/Tribunal to defend the First Final determination as being correct and arguing for dismissal of the Respondent No. 3's Appeal.

32. Thirdly, it has been observed in the Impugned Order that the Petitioner's application under Section 12(2) does not refer to fraud and misrepresentation committed by the Respondent No. 3 except non-impleadment in Appeal. In my opinion non-impleadment of a necessary party is itself fraud/misrepresentation[1]. It is settled law that a decision cannot be allowed to remain in the field if it has been procured without impleading a party whose rights were involved and such party has been injured and that such party is entitled to file an application under Section 12(2), C.P.C[2]. The learned counsel for the Respondent No. 3 argued that the Petitioner was not a necessary party as the Respondent No. 3 was only aggrieved by the First Final Determination made by the Respondent No. 2/Commission. Such argument is counter intuitive especially in light of the definition of 'interested party' as given in the Act under Section 2(j) which includes "importers". Although the Respondent No. 3 might have been

[1] *Shafi Muhammad and another vs. Waseem Ahmed Khan and 11 Others*, 2011 YLR 2576;
[2] *Ahmed and others vs. Nazir Ahmed and others*, 2019 CLC 1841.

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aggrieved by the First Final Determination of the Respondent No. 2/Commission however, since the Petitioner/Appellants benefitted under such First Final Determination the Appeal filed by the Respondent No. 3, affected the rights of the Petitioner.

33. Fourthly, that the Petitioner had an alternate remedy available in terms of the Appeal provided for under the Anti-Dumping Act. This is not a requirement of Section 12(2) CPC and the Respondents were unable to show this Court any authority on the basis of which I would be persuaded to agree with such reasoning that a party who has a right of appeal would be deprived of the right to file an application under Section 12(2) CPC if otherwise available. In fact, the Lahore High Court in the case of *Jubilee General Insurance Company Limited vs. Ravi Steel Company through Propretor*, 2020 CLC 1440 held that the a party has three concurrent remedies i.e., (a) appeal; (b) review; as well as (c) application under Section 12(2), C.P.C., and one does not exclude the other.

34. Having said that it was also held that although the party has the right to elect any of the three remedies but the moment one out of those had been availed the doors of the court to receive/entertain the application under Section 12(2), C.P.C., were closed to decide both the remedies simultaneously or one after the other. The reasoning given was that if duplication is allowed then there would be no end to litigation which may also cause conflicting judgments and would be sheer abuse of process of law. In this case, the Petitioner filed Appeal No. 491/2017 against the Impugned Judgment I and thereafter filed the Application under Section 12(2) CPC on 30.05.2022 which was even after the Second Final Determination was already made by the Respondent No. 2/Commission on 07.04.2022 in spite of the fact that the Petitioner had come to know of the Impugned Judgment I and the proceedings underway before the Respondent No. 2/Commission as a result of such Judgment as notice was issued to the Petitioner by the Respondent No. 2/Commission on

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14.03.2022 which is also evident from the fact that the Petitioner had already filed an appeal.

35. Insofar as prayer for setting aside the Impugned Judgment I is concerned, the Petitioner has an alternate remedy in terms of Section 70 of the Anti-Dumping Act whereby an appeal to the Tribunal has been provided for. The Petitioner in fact availed such remedy and filed Appeal No. 165/2022 resulting in the Impugned Judgment II which is under challenge in the Connected C.M.As.

36. For all the foregoing reasons, the writ petition is devoid of merit.

Scope of Connected C.M.As:

37. The instant CMAs have been filed under sub-section (13) of Section 70 of the Anti-Dumping Act whereby decision of an appellate Tribunal is appealable in the High Court. It may be noted that the appeal to the High Court under Section 70(13) of the Anti-Dumping Act is the second appeal provided for under the Anti-Dumping Act as the first appeal lies before the Tribunal under Section 70(1) *ibid*. The scope of such second appeal has not been expressly delineated within the Anti-Dumping Act.

38. In the case of *Shivprasad Shankarlal Pardeshi vs. Leelabai Badrinarayan Kalwar,* AIR 1998 BOM 131, the Bombay High Court considered whether a second appeal filed under the Bombay Public Trust Act, 1950 is restricted in its scope as provided for a second appeal under Section 100, C.P..C., and in this regard held as follows in light of past precedent including pronouncements of the Supreme Court of India:

> *"21. There is yet another aspect of the matter which has not been considered in any of the judgments of this Court and we think it necessary to make a reference to the same. Sub section (1) of section 4 of the C.P.C. provides that, in the absence of any specific provisions to the contrary, nothing in the C.P.C. shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed by or under any other law for the time being in force.* ***Sub section (1) of section 100 of C.P.C. provides that save as otherwise expressly provided in the body of the C.P.C. or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case***

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involves a substantial question of law. In our view, therefore, if a special law does not otherwise widen the scope of a 'second appeal', such a second appeal must conform to the limits imposed by section 100 of the C.P.C. There may be cases where a special statute provides for the remedy of a second appeal and specifically confers powers wider than those contemplated by section 100 C.P.C. In such a case, it may be possible to contend that having regard to the opening words o(sub-section (1) of section 100 C.P.C., a second appeal on ground wider than those provided in section 100 C.P.C., could be entertained if the special law so provides.

22. In Chunilal Vithaldas v. Mohanlal Motilal Patel, A.I.R. 1967 S.C. 226 the question arose in the context of the provision for a second appeal under section 28 of the Saurashtra Rent Control Act, 1951. The question was whether the Appellate Court dealing with the Second Appeal was bound by the same restrictions as are imposed by section 100 C.P.C. It was argued before the Apex Court that a Second Appeal under section 28(1) of the Saurashtra Rent Control Act, 1951 meant an appeal from an appellate decree but the restrictions imposed by section 100 C.P.C., upon the power of the High Court were not attracted to a "Second Appeal" under section 28 of the Saurashtra Act. ***The Apex Court considered the Scheme of the provisions of the Saurashtra Act, 1951 and of the C.P.C., and concluded in para 9 of the judgment that the Saurashtra Act had merely declared that the second appeal will lie to the High Court against the decrees or orders passed by the courts exercising jurisdiction under section 27, but thereby the essential character of a Second Appeal under the C.P.C. was not altered. There was nothing in the Special Act to conclude that the legislature had intended to confer upon litigants a right of second appeal unhampered by the restrictions imposed by section 100 C.P.C. The Apex Court concluded that in a Second Appeal under section 28 of the Saurashtra Act, questions which cannot be raised in an appeal under section 100 C.P.C., could not be raised.*** *It was, therefore, held that a Second Appeal under section 28 of the said Act may be entertained by the High Court within the limits prescribed by section 100 C.P.C. and it is not open to the parties to demand reappraisal of the evidence by the High Court. Observations to this effect are also to be found in paras 10 and 12 of the said decision at page 228.*

23. We find the same principle enunciated by the Apex Court in State of Himachal Pradesh v. Maharani Kam Sundri . This was a case where the Special law gave wider powers to the High Court and by virtue of section 104 of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953, the High Court was entitled to reappraise the evidence and come to its own findings even in a Second Appeal. Since the special law viz. the said Himachal Pradesh Act conferred wider powers by virtue of section 104 on the High Court, it was held that the limitations imposed by section 100 C.P.C. on the powers of the High Court to interfere with the findings of fact were not applicable and, hence, the High Court was entitled to reappraise the evidence and come to its own findings in view of the wider scope of section 104 of the Special Act. These observations are to be found in para 3 of the judgment.

24. We may also refer to a Full Bench decision of the Punjab and Haryana High Court in Ganpat v. Smt. Ram Devi and others, A.I.R. 1978 P. & H. 137 S.S. Sandhawalia, J., (as he then was) dealt with the provisions of section 41 of the Punjab Courts Act, 1918 which were no way affected or curtailed by the amended provisions of section 100 C.P.C. The provisions of section 41 of the Punjab Courts Act were virtually in pari materia with the unamended provisions of section 100 C.P.C. But, though provisions of section 100 C.P.C. were amended by the Amending Act of 1976, there was no corresponding amendment to section 41 of the Punjab Courts Act, under which the Second Appeal was entertained. Relying upon the provisions of subsection (1) of section 4 as also sub section (1) of section 100 C.P.C. the Full Bench came to the conclusion that if the Special law had conferred wider jurisdiction on the High Court while

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dealing with the Second Appeal under section 41 of the Special Law, the limits imposed by section 100 C.P.C. could not curtail such powers. These conclusions are to be found in paras 11 to 14 of the judgment at page 140 of the report.

25. In view of the law laid down by the Apex Court in the two cases discussed in paras 22 and 23 above Chunilal Vithaldas's case and Maharani Kam Sundari's case (supra) as also the view expressed by the Full Bench of the Punjab & Haryana High Court in Ganpat's case para 24 above coupled with the fact that the ratio of the Apex Court decision in Ramchandra Pandit's case (supra) has been reiterated in Nanabhai Dayabhai Patel's case (supra) and having regard to the fact that section 72(4) of the Bombay Public Trusts Act, does not confer any powers wider than those conferred by section 100 C.P.C. while dealing with a Second Appeal, we are clearly of the view that the answer to the first part of first question referred by the learned Single Judge must be in the affirmative. We, therefore, hold that an appeal filed under section 72(4) of the Bombay Public Trusts Act, is subject to the restrictions and limitations imposed under section 100 C.P.C. while entertaining Second Appeal. ***Consequently it would follow that an appeal under section 72(4) would lie to this Court only if the High Court is satisfied that the case involves a substantial question of law. In substance, such an appeal will be subject to the same limitations as are prescribed under section 100 C.P.C. since there is nothing in section 72(4) of the Bombay Public Trusts Act which confers a wider jurisdiction upon this Court while hearing such an appeal,*** *though styled as a First Appeal."* [Emphasis added].

39. Examination of Section 70(13) of the Anti-Dumping Act reveals that it simply provides that the decision of the Appellate Tribunal shall be appealable in the High Court. Thus the essential character of a second appeal under Section 100, C.P.C., is not altered. There is nothing to indicate that a wider jurisdiction has been conferred upon the High Court while hearing such an appeal. Consequently, I find great merit in the argument raised on behalf of the Respondent 2/Commission that the instant C.M.As. are subject to the same restrictions as prescribed under Section 100, C.P.C. In similar circumstances, the Supreme Court of AJ&K in the case of *Raja Abdul Qayyum Khan vs. Choudhary Latif Akbar and 2 others,* 1994 MLD 2108 while relying upon *Sher Bahadur Khan alias Malik Bahadur Khan vs. Abdul Samad Khan and others,* PLD 1975 Peshawar 124 held that the scope of interference in appeals before the High Court arising from Election Tribunals is co-extensive with and subject to the limitations under Section 100, C.P.C. Therefore I will decide the matter on the merits of the case keeping in view the restrictions enshrined in Section 100, which are reproduced hereunder for convenience:

a) the decision being contrary to law or to some usage having the force of law;

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b) the decision having failed to determine some material issue of law or usage having the force of law;

c) a substantial error or defect in the procedure provided by this Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits.

Limitation Period:

40. The learned counsel for the Petitioner argued that the Second Final Determination was made beyond the time period provided under Section 39 of the Anti-Dumping Act. The same ground was raised before the Appellate Tribunal who while relying upon a prior case before the World Trade Organization Panel held that the time taken in judicial review is not to be included in the time period provided under Section 39 of the Anti-Dumping Act. The excerpt of such decision as appearing in the Impugned Judgment II is reproduced herein below:

""7.515. However, as seen earlier, the Anti-Dumping Agreement distinguishes between final determinations and the judicial review of those determinations, the latter being a separate step, the duration of which is not included in the time period disciplined by Article 5.10.695 Therefore, the fact that the final determination of 4 February 2013 was subject to judicial review and then formally replaced (though "ratified") by a determination adopted on remand does not mean that the clock under Article 5.10 continued ticking throughout judicial review.

7.516. In support of its contrary argument, the United Arab Emirates emphasizes that the determination of 9 April 2015 was a "fresh start"; that the February 2013 determination is "officially valid" only because it was "ratified" by the 9 April 2015 determination; and that the latter imposed duties only prospectively and was entitled "final determination". 696 However, none of these points would mean that the time-limit in Article 5.10 should apply to the sum total of the time taken to reach the first final determination and the time taken for its subsequent judicial review and the time taken to reach a new determination on remand, as a result of judicial review"

41. The learned counsel for the Petitioner failed to establish that such decision is contrary to the law or that the Tribunal failed to determine this issue or any substantial error or defect has occurred in the procedure provided by the Anti-Dumping Act, which may possibly have produced error or defect in the decision of the case upon the merits in this regard.

42. Even otherwise, the plain language of Section 39 of the Anti-Dumping Act shows that the Respondent No. 2/Commission is required to make the final determination 'normally' within the timeline stipulated thereunder. No consequence for failure to adhere to such timeline has been provided. This Court has already held in *Messrs Aimnaz (Pvt.) Limited vs. the Federation of Pakistan through the Secretary, Ministry of Law, Federal Secretariat, Islamabad and 2 others,* 2018 PTD 1966, that since no consequence has been provided in Sections 36 and 39 of the Anti-Dumping Act in case of failure of the Respondent No. 2/Commission to do the needful within the prescribed time, the timeframe given is discretionary and not mandatory.

43. Insofar as reliance upon Section 58 of the Anti-Dumping Act is concerned the same is misconceived as the time period of five years stipulated thereunder applies to any definitive anti-dumping duty imposed, which is not the case here.

44. Thus the Petitioner has failed to make out a case for disturbing the findings of the Respondent No. 1/Tribunal vide the Impugned Judgment II on account of failure to make the Second Final Determination within the timeline stipulated in Section 39 or 58 of the Anti-Dumping Act.

Interpretation Of 'Domestic Industry':

45. As concluded hereinabove the instant C.M.As. being appeals under Section 70 (13) of the Anti-Dumping Duty Act are subject to the same restrictions as a second appeal under Section 100, of the CPC. Therefore, as correctly pointed out no new ground can be raised in the appeal under Section 70 (13) of the Anti-Dumping Duty Act that was not raised before the Appellate Tribunal [3]. This objection was never taken by the Petitioner/Appellants before the lower fora.

[3] *Messrs Rupafil through Personnel Manager vs. Deputy Director, Punjab Employees' Social Security Institution and 2 others*, 2003 PLC (Labour) 399.

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46. Even otherwise, admittedly the Respondent No.3 started importing the Investigated Product after the Second Final Determination. In other words there is no allegation that Respondent No.3 was importing the Investigated Product at any time during the defined period for which assessment was conducted. As such there is no merit in the Petitioner's argument that Respondent No.3 stood excluded from the definition of 'domestic industry' as given in Section 2(d) of the Anti-Dumping Act.

Non-quantification of injury margin:

47. Despite the contention of the counsel for the Respondent No. 2/Commission that the ground of non-quantification of injury was not taken before the Appellate Tribunal, nothing has been shown by the learned counsel for the Petitioner /Appellants in rebuttal thereof. Even otherwise perusal of the Second Final Determination shows that the injury margin has indeed been calculated and worked out at 50.83 %. Thus this too cannot serve as reason for setting aside the Impugned Judgment.

48. For all the foregoing reasons, W.P. No. 4643/2022 as well as C.M.A. Nos. 96/2022, 162/2022, 165/2022, 169/2022, 04/2023 are **dismissed**.

(SAMAN RAFAT IMTIAZ)
JUDGE

Announced in open Court on this 8th day of March, 2024.

JUDGE

Approved for Reporting
Blue Slip added.

Tanveer Ahmed/*

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