HCJD/C-121

JUDGMENT SHEET

IN THE SLAMABAD HIGH COURT, ISLAMABAD

C.M.A. No.125 of 2023

M/s Amal Steel
Versus
Anti-Dumping Appellate Tribunal and two others

Appellants by	**:**	**M/s Abdul Moiz Jafferi and Salman K. Haider, Advocates.** **M/s Asad Ladha and Basil Nabi Malik, Advocates in C.M.A. No.24/2021.** **M/s Mohammad Afzal Awan and Nazima Parveen, Advocates in F.A.O. No.50/2021.** **Mr. Naveed Zafar Khan, Advocate in F.A.O. No.63/2021**
Respondents by	**:**	**M/s Waqas Amir and Abu Mohammad Azfar, Advocates for National Tariff Commission (NTC).** **Mr. Saif Ullah Khan, Advocate for Respondent. No.3 in C.M.A. No.117/2023.** **M/s Ahmad Sheraz and Asad Ahmed Ghani & Mohammad Rizwan Rasheed, Advocates for Res.No.1 and 2, respectively, in C.M.A. No.24/2021.**
Date of Hearing	**:**	**18.12.2023**

Babar Sattar, J:- Through this judgment, this Court will decide the appeals listed in the Annex appended to this judgment which have been filed under section 17(13) of the Anti-Dumping Duties Act, 2015 **("ADD Act")**.

2. The appeals being decided through this judgment fall in two categories. Under Category-A in the Annex are listed appeals filed by parties who did not avail a right of appeal

before the Anti-Dumping Appellate Tribunal **("Tribunal")** under section 70(1) of the ADD Act. And have directly filed the second appeal before this Court on the basis that appeals against the judgment rendered by the Tribunal, that they are aggrieved by, are pending adjudication before this Court. The appeals listed in Category-B in the Annex have been filed against judgments rendered by the Tribunal whereby the appeals filed by such entities were dismissed on grounds of limitation for having been filed beyond the period of limitation.

3. As these appeals are being decided on grounds of maintainability, the arguments of the learned counsels for the appellants are being summarized together. The basic argument of the learned counsels for the appellants was that appeals have been filed against judgments of the Tribunal against which other appeals had been filed within time and the appellants, therefore, had a right to have their appeals decided on merits in view of the law laid down by the Supreme Court in ***Mohammad Ashraf and others Vs. UBL and other*** ***(2019 SCMR 1004)***. The additional arguments raised was that there was no concept of in personam duties under the ADD Act as Anti-Dumping Duties were imposed against all importers that were importing goods from the exporters who were deemed to be dumping goods and causing injuries to the local industry. Consequently, their appeals were already pending against a duty imposed by the National Tariff Commission **("NTC")**. Everyone affected by such duty are to be heard in appeal whether or not such appeal was filed within the period prescribed under section 70 of the

ADD Act. Further arguments were made on behalf of entities who availed their first right to appeal before this Court and had neither filed their appeals before the Tribunal nor had such appeals been dismissed, that limitation began from the date of knowledge and as the relevant appellants had not been incorporated as companies when the impugned judgment was passed by the Tribunal, they had no opportunity to file an appeal before the Tribunal. And the period of limitation from their perspective ought to be construed from the date of their knowledge, which would be the date when after their incorporation and entering into the relevant business they sought to import the products against which duty had been imposed by NTC.

4. Learned counsel for NTC submitted that the appeals were not maintainable and it had been decided by this Court in ***M/s Spirit Industries (Pvt.) Ltd. through authorized representative Vs. National Tariff Commission, Islamabad and 2 others*** ***(2021 PTD 647)*** that the Tribunal was created under a special law and had no power to condone delay under section 5 of the Limitation Act, 1908 **("Limitation Act")**. The said judgment was subsequently followed and reiterated by this Court in ***M/s Al-Ahad Steel Vs. National Tariff Commission and others*** ***(C.M.A. No.64/2023)*** wherein all arguments raised by the appellants in the instant appeals had been considered and rejected. And it had been found that where entities sought to enter the business of importing goods that were subject to anti-dumping duties, they entered into such

business with the knowledge of duties and there was no legal or equitable ground to condone their appeals filed beyond the period of limitation.

5. The questions that arise in relation to the instant appeal are three-fold. One, whether the Tribunal is vested with authority under the ADD Act read together with the Limitation Act to condone delay and admit and adjudicate appeals against the final determination that have been filed beyond the prescribed period of limitation. Two, whether this Court can, as the second Court of appeal, condone delay in the filing of an appeal against a final determination issued by NTC and direct the Tribunal to hear such appeals on merit. And three, can this Court entertain an appeal directly against a final determination issued by NTC where the appellant has not availed the right of first appeal before the Tribunal, or can this Court decide an appeal on its merits where the same has been dismissed by the Tribunal on grounds of limitation.

6. The question of whether the Tribunal is vested with authority to condone a period of limitation prescribed in section 70(4) of the ADD Act was decided by this Court in ***M/s Spirit Industries*** and it was held as follows:

> *"Now as already said the limitation period of forty five days for filing an appeal under Section 70(4) of the 2015 Act before the Appellate Tribunal has not been prescribed in the Limitation Act, 1908, but in the 2015 Act, which is a special law, Section 5 of the said Act cannot be made applicable to such appeals filed under Section 70(1)(ii) of the 2015 Act. There is a catena of case law in support of the proposition that where the limitation period for filing an appeal or a revision is provided in a special law, Section 5 of the Limitation Act, 1908 would have no application due to Section 29(2)(b) of the said Act."*

The law as laid down by this Court in ***M/s Spirit Industries*** was reiterated in ***M/s Al-Ahad Steel*** and it was emphasized that, "*if it were the intent of the Legislature to apply section 5 [of the Limitation Act] to the appeals before the Appellate Tribunal, then it would have been a straightforward matter to do so, as is the case with many other special enactments where section 5 has been extended to such special tribunals; section 5 cannot be applied sub-silentio."* The law as laid down in ***M/s Spirit Industries*** (seeking guidance from the law laid down by the Supreme Court in relation to applicability of the Limitation Act to special laws) settles the question raised above. The Tribunal is vested with no authority to condone delay and admit an appeal for regular hearing that has been filed after period of limitation prescribed in sections 70(2) and 70(4) of the ADD Act. The second question as framed above is whether this Court as a Court that is vested with the authority to condone delay under section 5 of the Limitation Act condone delay on behalf of appellants and then direct the Tribunal to hear such appeals on their merits. The answer to this question is also in the negative.

7. The law of limitation is now settled and the principles for purposes of interpretation of law of limitation were summarized more recently by the Supreme Court in ***Khushi Mohamamd through LRs. and others Vs. Mst. Fazal Bibi and others (PLD 2016 SC 872)*** as follows:

> *(i) The law of limitation is a statute of repose, designed to quieten title and to bar stale and water-logged disputes and is to be strictly complied with. Statutes of limitation by their very nature are strict*

and inflexible. The Act does not confer a right; it only regulates the rights of the parties. Such a regulatory enactment cannot be allowed to extinguish vested rights or curtail remedies, unless all the conditions for extinguishment of rights and curtailment of remedies are fully complied with in letter and spirit. There is no scope in limitation law for any equitable or ethical construction to get over them. Justice, equity and good conscience do not override the law of limitation. Their object is to prevent stale demands and so they ought to be construed strictly;

(ii) The hurdles of limitation cannot be crossed under the guise of any hardships or imagined inherent discretionary jurisdiction of the court. Ignorance, negligence, mistake or hardship does not save limitation, nor does poverty of the parties;

(iii) It is salutary to construe exceptions or exemptions to a provision in a statute of limitation rather liberally while a strict construction is enjoined as regards the main provision. For when such a provision is set up as a defence to an action, it has to be clearly seen if the case comes strictly within the ambit of the provision;

(iv) There is absolutely no room for the exercise of any imagined judicial discretion vis- -vis interpretation of a provision, whatever hardship may result from following strictly the statutory provision. There is no scope for any equity. The court cannot claim any special inherent equity jurisdiction;

(v) A statute of limitation instead of being viewed in an unfavourable light, as an unjust and discreditable defence, should have received such support from courts of justice as would have made it what it was intended emphatically to be, a statute of repose. It can be rightly stated that the plea of limitation cannot be deemed as an unjust or discreditable defence. There is nothing morally wrong and there is no disparagement to the party pleading it. It is not a mere technical plea as it is based on sound public policy and no one should be deprived of the right he has gained by the law. It is indeed often a righteous defence. The court has to only see if the defence is good in law and not if it is moral or conscientious;

(vi) The intention of the Law of Limitation is not to give a right where there is not one, but to interpose a bar after a certain period to a suit to enforce an existing right.

> *(vii) The Law of Limitation is an artificial mode conceived to terminate justiciable disputes. It has therefore to be construed strictly with a leaning to benefit the suitor;*
>
> *(viii) Construing the Preamble and Section 5 of the Act it will be seen that the fundamental principle is to induce the claimants to be prompt in claiming rights. Unexplained delay or laches on the part of those who are expected to be aware and conscious of the legal position and who have facilities for proper legal assistance can hardly be encouraged or countenanced."*

The principles as summarized above are unequivocal. This Court cannot not casually condone the period of limitation where the question has come before the Tribunal and it has held that it has no authority to condone delay in filing of an appeal under section 70(13) of ADD Act. This Court acts as the second Court of appeal. While exercising such jurisdiction this Court must apply its mind to the infirmity in the judgment rendered by the Tribunal as the first appellate forum. This Court as a second appellate forum as already held in ***M/s Spirit Industries*** that the Tribunal as the first appellate forum is devoid of authority to condone any period of delay in filing of an appeal before the Tribunal. This Court is thus vested with no arbitrary authority to find that despite the fact that the judgment of the Tribunal suffers from no infirmity, it is to be interfered with and set aside and the Tribunal is to be directed to hear the appeal-in-question on merits on the basis of some inchoate principle of equity. The scope of exercise of authority by Judges of Constitutional Courts was highlighted by the Supreme Court in ***Taufiq Asif Vs. General (Retd.) Pervez Musharaf and others (Civil Petition No.3797 of 2020)*** and it was held that, "*Judges are*

not sovereigns with unfettered discretion but are guardians of the law, tasked with ensuring that justice is done according to established legal norms and principles. Their decisions must be guided by the law, precedents and the facts before them…. A Judge, in the pursuit of justice, cannot embark on a self-imposed crusade of right and wrong…. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by the system, and subordinated to the primordial necessity of order in the social life. This ensures that justice is administered fairly, consistently and predictably, thereby upholding the rule of law." The answer to the second question also, therefore, is that this Court cannot read the provisions of the Limitation Act into the ADD Act on the premise that it is a Court of law and has the authority to condone delay in filing of an appeal under the Limitation Act and can consequently exercise such authority in relation to the judgment rendered by the Tribunal.

8. The third question that arises, as framed above, is whether the Court can itself hear a second appeal where the appellant has not availed the right to file a first appeal before the Tribunal or where such appeal was dismissed on ground of limitation. The answer to this question is also in the negative.

9. It is by now a settled preposition that a stranger to a suit can file an appeal if he is aggrieved by the decision in the suit notwithstanding the fact that he was not a party to the suit. This was first held by the Lahore High Court in ***Mohammad***

Hussain Vs. Walayat Shah ***(PLD 1959 LHR 526)*** while relying on similar practice followed by English Courts. The said judgment was not adhered to by the Lahore High Court in ***Al-Kisan Transport Vs. Regional Transport Authority Lahore (PLD 1961 LHR 723)***. The view rendered in ***Al-Kisan Transport*** was declared to not be good law by the Supreme Court in ***H.M. SAYA & Co. Karachi Vs. Wazir Ali Industries Ltd. Karachi and another*** ***(PLD 1969 SC 65)***. The finding of the Supreme Court in ***H.M. SAYA & Co.*** was that H.M. Saya and Co. had deliberately omitted to make Wazir Ali Industries party in the suit with the intention to avoid contest, in full view of the fact that the relief sought was essentially against Wazir Ali Industries. The Supreme Court held that, "*it is true that there is no express provision permitting such party to prefer an appeal against such an order. This omission, however cannot be understood to amount to prohibition. The Court ought not act on the principle that every procedure is to be taken as prohibited unless it is expressly provided for. To give such a meaning to the omission would result in grave injustice…. If the decree or order appealed from adversely affects a person, he should be permitted to challenge the same in appeal even if he was not made a party to the original suit or proceeding."* The Supreme Court in ***H.M. SAYA & Co.*** also laid down the test as to who is entitled to file an appeal against a decree in a suit in which such person was not a party by holding that, "*the English Courts have consistently followed the practice that a person who is not a party to a suit or a proceeding may prefer an appeal if he is*

affected by the judgment, decree or order of the trial Court, provided he obtains leave from the Court of appeal. The test applied in granting leave to appeal, in such cases is that if the person who wants to prefer the appeal might properly have been a party in the suit or proceeding then he may obtain leave to appeal." The law laid down in ***H.M. SAYA & Co.*** remains good law and continues to be applied till date. The point to note, however, is that the test for entitlement to seek leave to file an appeal where the person is not party to the original proceedings is that such person "*might properly have been a party in the suit or proceedings"* that resulted in the order or judgment that is sought to be appealed.

10. The entities that were not in existence at the time when the final determination was issued by NTC and could not file an appeal before the Tribunal within the period of limitation by virtue of their non-existence can therefore not be allowed leave to file an appeal before this Court as they could never have been impleaded as parties in the original proceedings carried out by NTC. Consequently, importers incorporated after the expiry of the period of limitation prescribed for filing an appeal against final determination imposing duties cannot seek leave to file second appeal before this Court under the test laid down by ***H.M. SAYA & Co.***. This issue was also addressed by this Court in ***Al-Ahad Steel*** where this Court held that, "*the imports by the petitioner importers are to be assumed to carry the same injury that caused the commission to impose the duties. Resultantly, the importers have only themselves to blame for*

entering into a business without doing their proper homework. This Court cannot come to their rescue by deploying an unwarranted and exceedingly stretched interpretation of the statutory provision that was urged at the bar."

11. The final argument that remains to be addressed is whether a second appeal can be heard and decided on its merits by virtue of law laid down by the Supreme Court as enumerated in ***Mohammad Ashraf*** where it was held that where an appeal or petition had been filed within time, the other appeals or petitions emanating from the same order which is under adjudication ought to be decided on merit as well.

12. The proposition was articulated by the Supreme Court in ***Sh. Mohammad Rashid Vs. Majid Nizami, Editor-in-Chief, The Nation and Nawa-e-Waqt, Lahore and another (PLD 2002 SC 514)*** where appeals against a common judgment had been filed, some within time and others beyond the period of limitation. The delay was condoned by the Supreme Court and all appeals were decided on their merits. The principle was reiterated in ***Mohammad Ashraf*** where it was held that, "*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 had been filed beyond the period of limitation, all such appeals or petitions ought to be decided on merit especially when an order in one appeal or petition, within time, would apply to the other appeal or petition, which may be barred by limitation."* The rational for such principle was explained in ***Government of Balochistan***

through Chief Secretary Quetta Vs. Dr. Mohammad Tariq Jafar (2020 SCMR 1689) where the Supreme Court held that, *"important questions of law have been raised in these appeals and in order to avoid legal complications and abnormal situations arising out of the judgment of the Tribunal being left intact in appeals which are barred by time and possibly setting aside the same in the appeal which is within time a case has been made out for condonation of delay."*

13. The law of limitation as laid down in ***Khushi Mohammad*** has not been altered by the principle iterated by the Supreme Court in the aforementioned cases. The only possible reading of the law laid down in the aforementioned cases is that Supreme Court is vested with extraordinary authority under Article 187 of the Constitution to do complete justice in the cases before it. The authority vested in the Supreme Court under Article 187 of the Constitution is not vested in the High Court either in its constitutional jurisdiction or as a second appellate forum under section 70(13) of the ADD Act. This Court would therefore be bound by the law of limitation as has already discussed above. Without a party establishing sufficient cause for delay in filing an appeal, this Court is devoid of legal authority to manufacture sufficient cause under some conception of doing justice.

14. It was laid down in ***Hameed Akhtar Niazi Vs. Secretary, Establishment Division Government of Pakistan (1996 SCMR 1185)*** in a service matter that where a certain point of law has been decided in favour of one civil servant, dictates of justice and rule of good governance demand

that the benefit of such judgment be extended to other civil servants as well. This was done in the context of Article 25 of the Constitution. The said principle, however, cannot be applied in the present appeals at this stage. The question before this Court is the legality of duties imposed by NTC which have been upheld by the Tribunal. The judgments of the Tribunal are being adjudicated by this Court as the second appellate forum. To the extent that the judgment of the Tribunal is set aside and consequently the duties imposed by NTC are set aside, the principle laid down in ***Hameed Akhtar Niazi*** will come into play. As the anti-dumping duties would have been set aside, the benefit of such judgment would automatically flow to all importers including the present appellants.

15. The only question before this Court is whether the present appellants have standing before this Court, when they have not availed the right to file a first appeal before the Tribunal or where such appeal was dismissed on grounds of limitation. And the answer is that they do not have a right to hearing. In the event that such right was afforded to them it would render redundant the period of limitation prescribed by the ADD Act for purposes of filing an appeal before the Tribunal. Any party could then simply choose not to file an appeal before the Tribunal in the event that the period of limitation had passed and come before this Court, which is the second appellate forum, to avail their first right of appeal. The scheme of ADD Act does not permit the same. It is also not in accordance with the principles of justice and fairness that a party who has not timely availed a

right of appeal before the Tribunal should then be entertained by this Court by stepping into the shoes of the first appellate Court. The scope of appeal before as the second appellate forum is much more limited. As aforementioned, this Court cannot become an instrument in altering the adjudicatory scheme prescribed by the ADD Act, creating the Tribunal as the primary appellate forum, under some misplaced sense of dispensing equity.

16. In view of the above, this Court finds that the appeals are not maintainable and are ***dismissed.***

(BABAR SATTAR)
JUDGE

Announced in the open Court on 19.03.2024.

JUDGE

Approved for reporting.

M.A. Raza

Annexure

Category-A		
1.	C.M.A. No.125/ 2023	M/s Amal Steel Vs. Anti-Dumping Appellate Tribunal and two others
2.	C.M.A. No.117/2023	Mohammad Mansoor and others Vs. Anti-Dumping Appellate Tribunal etc.
Category-B		
3.	C.M.A. No.24/2021	Amina Ashraf Vs. National Tariff Commission and others
4.	F.A.O. No.50/2021	M/s Safa Steel Vs. National Tariff Commission and others
5.	F.A.O. No.52/2021	M/s Metallurgy International Vs. National Tariff Commission etc.
6.	F.A.O. No.63/2021	M/s Sama Trade Vs. Anti-Dumping Appellate Tribunal etc.
7.	C.M.A. No.121/2023	Fornax Icon (Pvt.) Ltd. through its CEO Vs. Anti-Dumping Appellate Tribunal etc.