JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

F.A.O.No.107 of 2019
M/s Popular Steel Corporation
Versus
National Tariff Commission, Islamabad and others

Date of Hearing:	05.11.2019
Appellant by:	Mr. Hassan Khan Durrani, Advocate
Respondents by:	Mr. Ahmed Sheraz, Advocate for respondent No.1 Mr. Saifullah Khan, Advocate for respondents No.2 and 3

MIANGUL HASSAN AURANGZEB, J:- Through the instant appeal under Section 70(13) of the Anti-Dumping Duties Act, 2015 (**"the 2015 Act"**), the appellant, M/s Popular Steel Corporation, impugns the judgment dated 29.05.2019 passed by the Anti-Dumping Appellate Tribunal, dismissing the appellant's appeal under Section 70(1)(ii) of the 2015 Act against following two final determinations:-

(i) Final determination dated 19.01.2017 and the levy by the National Tariff Commission of definitive Anti-Dumping Duty on Cold-Rolled Coils(hereinafter referred to as **"C.R.C."**) imported from the People's Republic of China (**"China"**) and Ukraine; and

(ii) Final determination dated 08.02.2017 and the levy by the National Tariff Commission of definitive Anti-Dumping Duty on Galvanized Steel Coils/Sheets(hereinafter referred to as **"G.S.C."**) imported from China.

2. The facts essential for the disposal of this appeal are that on 11.06.2015, M/s Aisha Steel Mills Limited (respondent No.2) filed an application before the National Tariff Commission (respondent No.1) under Section 20 of the 2015 Act alleging that C.R.C. were being exported to Pakistan at dumped prices from China and Ukraine, and that this was causing material injury to the domestic industry producing such products. Respondent No.2 was a domestic producer of C.R.C.

3. M/s International Steels Limited (respondent No.3) on 29.06.2015, filed an application before the National Tariff Commission (respondent No.1) under Section 20 of the 2015 Act alleging therein that G.S.C. were being exported to Pakistan at dumped prices from China, and that this was causing material injury to the domestic industry producing such products. Respondent No.3 was a domestic producer of G.S.C.

4. On 16.07.2015 and 11.08.2015, respondent No.1 published notices for initiation of investigation regarding alleged dumping of C.R.C. and G.C.S., respectively. The said notices were published under Section 27 of the 2015 Act in the official Gazette as well as in the newspapers. Respondent No.1 made the preliminary determinations of the dumping and injuring after the initiation of investigation. Notices of the said preliminary determinations were issued on 13.01.2016 and 03.11.2016. It is not disputed that notices of the preliminary determinations were also published in accordance with Section 37(3) of the 2015 Act. In the said notices, it was clearly provided that any party registered as an interested party in the case may request a hearing within thirty days of the publication of the notice of the preliminary determination.

5. On 19.01.2017, respondent No.1 made a final determination in the anti-dumping investigation against dumped imports of C.R.C. into Pakistan originating in and/or exported from China and Ukraine. It is also not disputed that said notice of the final determination was published in accordance with Section 39(5) of the 2015 Act. By virtue of the said final determination, definitive anti-dumping duties were imposed on the dumped imports of the investigated products importable from China and Ukraine for a period of five years effective from 13.01.2016. The said duties were imposed under Section 50(2) of the 2015 Act.

6. In the anti-dumping investigation against dumped imports of G.S.C. into Pakistan originating and/or exported from China, respondent No.1 made a final determination on 08.02.2017. It is also not disputed that notice of the final determination was published in accordance with Section 39(5) of the 2015 Act. By

virtue of the said final determination, definitive anti-dumping duties were imposed on the dumped imports of the investigated products importable from China for a period of five years effective from 08.02.2017. The said duties were imposed under Section 50 of the 2015 Act.

7. Under Section 70(2) of the 2015 Act, an interested party can prefer an appeal to the Appellate Tribunal against the initiation of investigation or a preliminary determination (where it is alleged that it does not satisfy the requirements laid down in Sections 23 and 27 respectively) within thirty days of the publication of the notice of initiation or notice of the preliminary determination, as the case may be. Section 70(4) of the 2015 Act provides that an appeal against a final determination under Section 39 of the said Act can be filed within forty five days from the date of the publication in the newspapers of the public notice of the final determination or the decision of the Commission.

8. It is an admitted position that the appellant's appeal to the Appellate Tribunal against the final determinations dated 19.01.2017 and 08.02.2017 was filed beyond the limitation period provided in Section 70(4) of the 2015 Act. Vide impugned judgment dated 29.05.2019, the learned Appellate Tribunal dismissed the appellant's appeal as time barred without giving any findings on the merits of the case. The said judgment dated 29.05.2019 has been assailed by the appellant in the instant appeal.

9. Learned counsel for the appellant, after narrating the facts leading to the filing of the instant appeal, submitted that under Section 37(1) of the 2015 Act, respondent No.1 was under an obligation to make a preliminary determination of dumping and injuring not earlier than sixty days and not later than one hundred and eighty days after the initiation of an investigation; that respondent No.1 had published notices of the preliminary determinations:- (i) on 13.01.2016, i.e. after a lapse of one hundred and eighty one days of the notice dated 16.07.2015 for the initiation of an investigation regarding alleged dumping of C.R.C.; and (ii) on 03.11.2016, i.e. after a lapse of four hundred

and fifty days of the notice dated 11.08.2015 for the initiation of an investigation regarding alleged dumping of G.S.C.; that the preliminary determination had been made beyond the period permissible under the law for making such a determination; that the appellant was not aware of the proceedings pursuant to the notices for the initiation of the investigation; that final determination dated 08.02.2017 in the matter of G.S.C. dumping was made after more than 15 months of publication of notice for initiation of investigation; that the appellant had not been issued any notice as to the initiation of investigations in accordance with Section 27(1) of the 2015 Act; that since the appellant was unaware about the proceedings culminating in the notice for final determination, the limitation period of forty five days for filing an appeal under Section 70(4) of the 2015 Act would be computed from the date when the final determinations dated 19.01.2017 and 08.02.2017 came to the appellant's knowledge; that the appellant was not given an opportunity of a hearing before the final determinations were made; that the proceedings leading to the final determinations violated the appellant's fundamental rights under Article 10A of the Constitution; and that the final determinations were unlawful and operated to the detriment of the appellant's interest. Learned counsel for the appellant prayed for the appeal to be allowed and for the final determinations dated 19.01.2017 and 08.02.2017 to be set-aside. In making his submissions, learned counsel for the appellant placed reliance on the judgments reported as *PLD 1981 S.C. 21, 2018 PTD 668* and *2018 CLD 1016*.

10. On the other hand, learned counsel for respondent No.1 submitted that the appellant was not registered with respondent No.1; that anti-dumping duty was correctly imposed on the import of dumped products in Pakistan since such dumping was operated adversely to the interests of the local industry; that the 2015 Act was a special statute providing for a limitation period of forty five days for filing an appeal under Section 70(4) against a final determination by respondent No.1; that Sections 5 and 14 of the Limitation Act, 1908 were not applicable to the appeals filed

under the provisions of the 2015 Act; that since the notices of initiation of investigation as well as the preliminary determinations were published in the official Gazette as well as in the newspapers, the appellant cannot assert that it had no knowledge of such notices; and that since the impugned judgment dated 29.05.2019 does not suffer from any legal infirmity, the instant appeal is liable to be dismissed.

11. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

12. The facts leading to the filing of the instant appeal have been set out in sufficient detail in paragraphs 2 to 8 above, and need not be recapitulated.

13. Since the sole ground on which the Appellate Tribunal dismissed the appellant's appeal under Section 70(4) of the 2015 Act was that the same was barred by limitation, the only question that needs to be determined is whether the Appellate Tribunal should have heard the appellant's time barred appeal on merits.

14. Notices of the final determinations dated 19.01.2017 and 08.02.2017 in the matters of alleged import of dumped products C.R.C. and G.S.C., respectively, were admittedly published in the official Gazette as well as in the newspapers. The appellant had filed the appeal under Section 70(1)(ii) of the 2015 Act on 30.04.2019, i.e. more than 2 years beyond the limitation period of forty five days for filing appeals against the final determinations.

15. Section 5 of the Limitation Act, 1908 does not apply on its own force to special or local laws but has to be made applicable to such laws through legislation. This is implicit in the language of Section 5 of the Limitation Act by employment of the words, *"[a]ny appeal or application ... to which this section may be made applicable by or under any enactment"*. In the case of Mahmud Alam Vs. Mehdi Hussain (PLD 1970 Lahore 6), the Hon'ble Mr. Justice Muhammad Afzal Zullah (as he then was) had the occasion to hold that *"[t]he words "by or under any enactment" indicate that Section 5 of the Limitation Act is not of general*

application to all the enactment, but can be made applicable by the provisions of an enactment."

16. It is an admitted position that the legislature has not made Section 5 of the Limitation Act, 1908 specifically applicable to appeals filed under Section 70 of the 2015 Act. In fact, by the 2015 Act, no provision of the Limitation Act, 1908 has been made applicable to any proceedings under the said Act. The mere fact that the 2015 Act does not expressly exclude the application of Section 5 of the Limitation Act, 1908 to the proceedings under the 2015 Act would, by itself, not extend the application of Section 5 of the Limitation Act, 1908 to such proceedings.

17. By way of an explanation, it may be stated that the Service Tribunals Act, 1973 is a special statute, Section 4 whereof provides a limitation period of thirty days for filing an appeal by a civil servant before a Service Tribunal against a final order made by a departmental authority. Section 7 of the said Act only makes Sections 5 and 12 of the Limitation Act, 1908 applicable to appeals under the Service Tribunals Act, 1973. The other provisions of the Limitation Act, 1908 therefore do not apply to appeals filed under Section 4 of the Service Tribunals' Act, 1973. As regards the case at hand, as mentioned above, no provision of the Limitation Act, 1908 has been made applicable to appeals filed under Section 70 of the 2015 Act.

18. Since the limitation period of forty five days for filing an appeal before the Appellate Tribunal is prescribed under Section 70 of the 2015 Act, I am of the view that the applicability of the Section 5 of the Limitation Act, 1908 also stands excluded by Section 29(2) (b) of the said Act, which reads that:-

> ***"(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor by the first schedule, the provisions of section 3 shall apply, as if such period were prescribed therefor in that schedule, and for the 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, sections 9 to 18, and section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law; and***
>
> ***(b) The remaining provisions of this Act shall not apply."***

19. 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. In this regard, reference may be made to the following case law:-

(i) In the case of Government of Balochistan Vs. Abdul Rashid Langove (2007 SCMR 510), it was held that the delay in filing a revision petition under the provisions of the Land Reforms Regulations, 1972 could not be condoned as Section 5 of the Limitation Act, 1908 was not applicable.

(ii) In the case of Haji Hussain Haji Dawood Vs. M.Y. Kherati (2002 SCMR 343), it was held as follows:-

> ***"7. Under section 21 of the Sindh Rented Premises Ordinance, 1979, an appeal can be preferred against the order of the Rent Controller to the High Court "within 30 days of such order". In this case, the date of the ejectment order is 17-5-1986 whereas the First Rent Appeal was filed by the appellants in the High Court on 30-9-1987. If the date of the ejectment order in this case is taken as the date from which the period of limitation of 30 days for filing an appeal to the High Court commences, the appeal before the High Court was obviously barred by time. Section 5 of the Limitation Act is not applicable to appeals filed under the Sindh Rented Premises Ordinance, 1979. Reference can be made to Abdul Ghaffar v. Mumtaz (PLD 1982 SC 88) and Ali Muhammad v. Fazal Hussain (1983 SCMR 1239)."***

(iii) In the case of Rahim Jan Vs. Securities and Exchange Commission of Pakistan (2002 SCMR 1303), the petitioner instead of filing an appeal within the limitation period provided in Section 34 Securities and Exchange Commission of Pakistan Act, 1997, preferred a Constitutional petition against the order of the Commission. Subsequently, the Constitutional petition was withdrawn and an appeal was filed by the petitioner. The Hon'ble Supreme Court upheld the judgment of the Hon'ble High Court dismissing the

petitioner's appeal as time barred and it was held that by virtue of Section 29(2)(b) of the Limitation Act, 1908, Section 5 of the said Act was not attracted to the said appeal for the purpose of condonation of delay.

(iv) In the case of Muhammad Nazir Vs. Saeed Subhani (2002 SCMR 1540), it was held that since the special law, i.e. West Pakistan Urban Rent Restriction Ordinance, 1959 had provided a limitation period for filing an appeal, an application under Section 5 of the Limitation Act, 1908 for condonation of delay in filing of an appeal had been correctly dismissed.

(v) In the case of Allah Dino Vs. Muhammad Shah (2001 SCMR 286), it was held as follows:-

> ***"There is no cavil with the argument that if the Statute governing the proceedings does not prescribe period of limitation, the proceedings instituted thereunder shall be controlled by the Limitation Act as a Whole. But where the law under which proceedings have been launched prescribes itself a period of limitation like under section 115, C.P.C. then benefit of section 5 of the Limitation Act cannot be availed unless it has been made applicable as per section 29(2) of the Limitation Act, as held in the cases (i) The Canara Bank Ltd. v. The Warden Insurance Co. Ltd. (AIR 1935 Bombay 35), (ii) Abdul Ghaffar and others v. Mst. Mumtaz (PLD 1982 SC 572), (iii) Ali Muhammad and another v. Fuai Hussain and others (1983 SCMR 1239), (iv) Collector of Customs (Appraisement) v. Messrs Saleem Adaya, Karachi (PLD 1999 Karachi 76) and (v) Haji Muhammad Ashraf v. The State and 3 others (1999 MLD 330)."***

(vi) In the case of Riaz Hussain Vs. Board of Revenue (1991 SCMR 2307), the Hon'ble Supreme Court, after making reference to Section 8 of the West Pakistan Board of Revenue Act, 1957, which is a special law providing a limitation period of ninety days for filing a review petition against a decree passed by the Board of Revenue, held as follows:-

> ***"The scope and grounds to review an order have been specified by subsection (1) of section 8 while subsection (2) prescribes period of limitation of 90 days for filing review application computed from the date of decree or order. Section 5 of the Limitation Act has not been made applicable to the review application. Therefore, the application for review must be filed within 90 days from the date of the order of and delay in filing such application***

beyond the period of limitation cannot be condoned by applying section 5 of the Limitation Act.
The power to exercise review jurisdiction emanates from the statute and, therefore, it has to be exercised within the four corners of the prescribed conditions and limitation. Such power can be exercised if application is filed by a party within a particular period fixed by the Act and unless the power to extend the time has been conferred, on expiry of such period, such jurisdiction cannot be exercised by any authority. As section 5 of the Limitation Act has not been made applicable and power to condone the delay or extend the period of limitation has not been conferred by law, the authority exercising review power cannot, in breach of the statutory provisions, assume power and extend the time."

(vii) In the case of Ali Muhammad Vs. Fazal Hussain (1983 SCMR 1239), the great jurist, Mr. Justice Nasim Hassan Shah (as he then was), after making reference to Section 15(4) of the West Pakistan Urban Rent Restriction Ordinance, 1959, held as follows:-

"The time allowed for an appeal under subsection (4) of section 15 to the High Court, under the Ordinance, is 30 days, whereas under Article 156 of the Limitation Act it is 90 days. The time allowed for filing the appeal by the special law i.e., West Pakistan Urban Rent Restriction Ordinance, 1959 being different from that given in the Limitation Act, Section 5 stands excluded by virtue of section 29(2) of the Limitation Act, which permits the application of only, sections 4, 9 to 18 and 22 in such situations. The same view has also been taken by us in Abdul Ghaffar and others v. Mst. Mumtaz (PLD1982 SC 88). The High Court, therefore, rightly dismissed the applications for condonation of delay invoking the provisions of section 5 of the Limitation Act."

20. Learned counsel for the appellant had also submitted that respondent No.1 should have sent notices of initiation of investigation to the appellant specifically under Section 27(1)(a) of the 2015 Act. Section 27(1)(a) of the 2015 Act is reproduced herein below:-

*"27. **Notice of decision to initiate investigation.**–(1) When the Commission has decided to initiate an investigation it shall–*
(a) give notice to all exporters, importers and any representative associations of importers or exporters known to the Commission to be concerned, as well as representatives of the exporting country, the applicant and other interested parties known to the Commission to have an interest therein;"

21. Notices of initiation of investigation under Section 27(1)(a) of the 2015 Act could have been sent to the appellant only if the

appellant was *"known to the Commission"*. It is an admitted position that the appellant was not registered with respondent No.1. Additionally, the requirement to publish a notice for initiation of investigation in the official Gazette and in the newspapers under Section 27(1)(b) of the said Act cannot be termed as substituted service which is resorted to in substitution of the ordinary mode for the service of such notice where notice cannot be served on a party through the ordinary mode or where a party is evading the service of notice.

22. Since it is also an admitted position that notices of the initiation of investigation in the case at hand were published in the official Gazette as well as in the newspapers in accordance with Section 27(1)(b) of the 2015 Act, the preliminary determinations or the final determinations cannot be declared as invalid if notice under Section 27(1)(a) was not sent to the appellant. Furthermore, since notices of the initiation of investigation, notices of the preliminary determinations and final determinations were published in the official gazette as well as in the news papers under Section 27(1)(b), Section 37(3) and Section 39(5) of the 2015 Act, respectively, the appellant cannot claim that it was unaware of the proceedings before respondent No.1 culminating in the issuance of the final determinations. In the case of Bahria Town (Pvt.) Limited Vs. Government of Punjab (2017 CLC 1793), it has been held *inter alia* that notification issued in the official Gazette had a presumption of notice to all. In the case of Bashir Ahmad Vs. Faisalabad Development Authority (2015 YLR 1484), it was held *inter alia* that publication of any legislation in the official Gazette would be considered to be sufficient for the notice of public at large. In the cases of Muhammad Shafi Vs. Multan Development Authority (2010 YLR 1161) and Makhdoom Ahmad Ghauns Vs. Chairman, Town/Municipal Committee (1994 CLC 430), it was held *inter alia* that publication of notification under Section 4 of the Land Acquisition Act, 1894, in the official Gazette and newspaper would be considered as sufficient notice to the landowners of the proposed acquisition. In the

case of Dr. Liaqat Ali Khan Vs. Employees Old Age Benefits Institution (2007 PLC 497), it was held *inter alia* that publication of notice in the official Gazette would be sufficient notice to all and judicial notice thereof could be taken.

23. Since the notices of initiation of investigation, notices of preliminary determinations and notices of final determinations were admittedly published in the official Gazette as well as in the newspapers, the appellant cannot assert that it was unaware of the proceedings before respondent No.1. Therefore, the Anti-Dumping Appellate Tribunal committed no illegality in dismissing the appellant's time-barred appeal.

24. In view of the above, the instant appeal is dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2019

(JUDGE)

Qamar Khan*

Uploaded By : Engr. Umer Rasheed Dar