

**ORDER SHEET**  
**In the Anti- Dumping Appellate Tribunal, Pakistan**  
**(Appellate Jurisdiction)**  
**Appeal No. 265 of 2018**

**M/S A.R CHAUDHRY INDUSTRIES(PVT) LTD.**  
 Chief Executive Ch. Yaqoob Hussain, House No.22,  
 Block-B, Model Town, Lahore.

**Appellants**

**VERSUS**

**NATIONAL TARIFF COMMISSION,**  
 State Life Building # 05, Blue Area, Sector F-6/4 Islamabad.

**Respondents**

S. No. of Order/ Proceedings	Date of Order/Proceedings	Order with Signature of Chairman and Members	Respondents
Rem. 7	October 11, 2022		

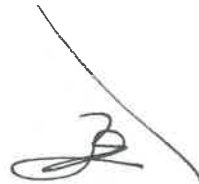
1. Mr. Azhar Mukhtar, Advocate for the appellants

2. Mr. Ahmed Sheraz, Chief Legal Advisor along with Mr. Azfar Naeem, Legal Advisor and Mr. Khizar Hayat, Director General (NTC) for respondent

This appeal is before us pursuant to the order's of the Hon'ble Islamabad High Court in FAO No. 237 of 2019 whereby the judgment dated, April 4, 2019 passed by this Tribunal in appeal No. 265 of 2018 was assailed. The Hon'ble Islamabad High Court disposed of the appeal with the following order:

*“The matter is remanded to the Anti-Dumping Tribunal, whereby the Tribunal may seek report or may refer the matter to the Commission for actual calculation of the refund claimed by the appellant on the basis of any documents for their satisfaction and if appellant fails to submit the requisite documents/information, they are well within powers to reject the claim of the appellant and may pass the order within next two (02) months under intimation to this Court.”*

2. The appeal was fixed on the August 10<sup>th</sup> & 15<sup>th</sup> but no one appeared on behalf of the appellants as Mr. Saood Nasrullah Cheema, learned counsel for the appellants was on general adjournment for the period from July 4<sup>th</sup> to September 15<sup>th</sup> of 2022. The learned counsel however cut short his visit to USA and appeared on August 26<sup>th</sup> and submitted that its third round of litigation before this Tribunal, pertaining to a case of refund filed with National Tariff Commission (“NTC”) in consequence of the



order of the Hon'ble Lahore High Court, Lahore in Writ Petition No. 12663/2014 whereby Preliminary Determination and levy of provisional anti-dumping duty on import of Tiles from People's Republic of China dated, April 3, 2014 was declared void for the reason recorded in W.P. No. 12255/2014. Consequently, they filed refund claim of the Anti-Dumping Duty paid, in terms of Circular No. 002/2012/NTC/Refunds dated, February 27, 2012 which was being denied by the NTC on one pretext or other. Referring to the Circular, he submitted that it prescribes procedure for filing of refund of Anti-Dumping Duty where such duty becomes refundable as consequence of judgment, decree, order of direction of the court. This Circular mentions the documents to be submitted with the refund application and procedure for verification of claim in para (c) and (d) respectively. A perusal thereof would show that there was no requirement for the evidence of passing of duty to the customers, yet the NTC called for this evidence and the appellants provided the same, though it was not required in case of such refunds which becomes payable as a consequence of the judgment of the court. He referred to the judgment of the Supreme Court 2017 PTD 622. The NTC did not consider the evidence provided by them and rejected the claim without giving any reason as had been observed by this Tribunal's judgment dated, November 23, 2016. He submitted that he would submit his written arguments on the next date of hearing.

3. In his written arguments, the appellants contended that there was no provision available in the Anti-Dumping Duties Act, 2015 or in the refund procedure/Circulars necessitating the refund claimant to prove through evidence that it had not passed on the incidence of Anti-Dumping Duty to his buyers. Even though, the Appellant was required to submit only those documents with the refund claim application as were prescribed vide Circular No. 002/2012/NTC/Refunds dated, February 27, 2012 but they provided additional documents required by NTC from time to time to prove that no Anti-Dumping Duty was passed on/charged from the buyers/consumers on the sales of Tiles imported during the period when the preliminary determination of Anti-Dumping Duty was in field. The appellants provided the sales register pertaining to the period during which the consignments in question were



imported alongwith the relevant import documents indicating the cost of the imported goods. The appellants also submitted sales register pertaining to the tax period prior to the import of Tiles in question alongwith detailed formula for determination of cost to establish the fact that there was no change in the sale price of same description of tiles sold prior to the imports in question and thereafter. It was emphasized that the Tribunal remanded the case to the NTC vide order dated November 23, 2016 with clear observations and instructions to be followed, the NTC adamantly ignored the same and started asking the appellants for more documents in the remanded proceeding. The directions of this Tribunal were as under:

‘the Commission while making the impugned order as regard those applicants who produced some documents has observed that, “*examination of these documents do not justify their claim that the incidence of duty has not been passed on to the buyers*”. Neither any reason, much-less plausible, has been assigned nor any method has been shown by which the Commission came to its afore-noted conclusion. Also, nothing has been stated as to which documents produced before the Commission were examined for the purpose of its calculation to form its conclusion and how the ones so examined could not be found meeting the requisite standard of satisfaction’.

The Commission was required to examine the documents produced by the appellants for the purpose of its calculation to form its conclusion it, however, again started demanding more documents which did not even make sense as to how they were relevant for the purpose of confirming that the incidence of Anti-Dumping Duty was not passed on to the customers. The appellants kept on providing the documents required by the NTC time and again but it remained incomplete and insufficient for NTC to process the refund claim of the appellants. The appellants finally was condemned unheard by the NTC as the refund claim of Anti-Dumping Duty was again rejected without any plausible justification and reason. It is worth mentioning that after sending letter dated March 21, 2017 whereby as usual the appellants was required to provide more information, the NTC did not provide the appellants an opportunity of being heard despite keeping the refund application pending for one year which was rejected on



March 3, 2018. The said order of the Commission was challenged before the Tribunal which could not succeed hence the appellants filed FAO No. 237 of 2019 in the Hon'ble Islamabad High Court which has remanded the appeal to the Tribunal, he prayed that the instant appeal may kindly be accepted.

4. During the course of hearing on September 2, 2022, the learned counsel for the Commission informed that the question whether Commission was entitled to seek documentary evidence from an importer who had deposited anti-dumping duty as result of provisional measures, to establish that such incidence of duty had been passed on to the buyer or not to determine the entitlement of refund was also raised before the Hon'ble Islamabad High Court in Writ Petition No. 4232 of 2016. The Hon'ble Court has allowed the petition, it would, therefore, be expedient to wait for the detailed judgment. With the consent of both parties the case was adjourned to a date in office.

5. Mr. Ahmed Sheraz, learned counsel for the Commission informed that an Intra Court Appeal No. 360 of 2020 was filed before the Division Bench of Islamabad High Court wherein the Division Bench has passed an interim order on September 27, 2022 to maintain the status quo.

6. The appeal was therefore re-fixed today. Mr. Azhar Mukhtar, learned counsel for the appellants submitted that they had submitted along with their refund application copies of goods declarations, commercial invoice issued by the exporter, packing list, copies of bill of lading, cash payment receipt showing payment of duty and taxes, copies of LC, sales register showing invoice number and date, description of goods, size & colour, unit price excluding sales tax amount and including sales tax, he contended that despite submissions of complete information of the two consignments imported by them and details of sale by way of providing copies of the sale register pertaining to the relevant period their claim has been rejected despite the orders of the Tribunal dated, November 23, 2016 requiring the Commission to examine the documents produced by the appellants for the purpose of its calculation to form its conclusion. He prayed that the Commission be directed to allow their refund on the basis of



documents already submitted by them.

7. Mr. Ahmed Sheraz, learned counsel for the Commission submitted that though the application was submitted by the appellants in terms of Circular NO. 002/2012/NTC/Refunds dated, February 27, 2012 issued under the Anti-Dumping Duties Ordinance, 2000. A new form of application was introduced after the enactment of Anti-Dumping Duties Act, 2015. Para 4 (iii) of the said application lists the documents required to be filed for each transaction for which refund was claimed. Serial f & g of Para 4 (iii) require the applicant to provide original sale invoices issued by the applicant/importer along with relevant evidence that the incidence of duty had not been passed on to any customer or buyer. He said that the applicants had failed to provide information sought by the Commission through different letters including on the format prescribed therewith the letter dated, December 16, 2016.

8. The Commission was asked to present case record and explain which documents/information they required to process the claim which they considered the appellants have not yet provided. From the record it appears that the applicant has provided information pertaining to the import and sales of tiles. The record shows that applicant while filing the refund application attached the import documents i.e. the goods declaration, commercial invoice issued by the exporters, packing list, letter of credit, bank challan showing the receipt of duty and taxes paid. Though the applicant did not submit the sales invoices, however, provided the copies of the sales register pertaining to the relevant period reflecting that the tiles were sold at around the same price during pre and post imposition of provisional anti-dumping duty. These documents contained information about the product description, size, quantity in meters, goods rate, import date, letter of credit number and date, goods declaration number and date, name of the exporting country, address of the exporter, import value both in US dollars and Pak Rupees, rates of duty and taxes and the amount paid and the prices at which tiles were sold to the local customers. The Commission yet sought this type of information from the applicant vide letter dated, December 16, 2016. When asked why Commission required this information

when it was already available with them, the learned counsel for the Commission and the Director General explained that in order to establish a link between imported goods and those sold in the local market and to establish that the incidence of anti-dumping duty has not been passed on they needed to examine the details of import and sales in juxtaposition to each other for which they sought information on the format specified by the Commission vide its letter dated December 16, 2016 and the same was not provided. Similarly, the sale invoices issued by the applicant/importer have not been provided despite many reminders.

9. The learned counsel for the appellants reiterated that they had provided all the import documents i.e. goods declaration, commercial invoices, payment receipt, audited accounts and the sales registers. However, they admitted not to have furnished the information in format forwarded to them with the said letter. They also admitted not to have provided the sales invoices. The Commission responded that the refund claim of the appellant was rejected earlier for want of requisite information.

10. Foregoing in view, in order to proceed further in pursuance of the orders of the Hon'ble Islamabad High Court dated, July 1, 2022 in FAO No. 237 of 2019, the matter is remanded to the Commission with the directions to:-

- i. the appellants to provide requisite information along with sales invoices within seven days to the Commission
- ii. the Commission to decide their refund application within three weeks after the receipt of requisite documents subject to verification and under intimation to the Hon'ble Court.

11. This appeal is disposed of in above terms.

**(Nasir Masroor Ahmed)**  
Chairman

**(Ather Saleem)**  
Member

**(Samaira Nazir Siddiqui)**  
Member



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