

ORDER SHEET
In the Anti- Dumping Appellate Tribunal, Pakistan
(Appellate Jurisdiction)

Appeal No. 423 of 2021

Alongwith

C.M.A. No. 157 of 2021 & C.M.A. No. 158 of 2021

M/S JW VENDOR CITY (PRIVATE) LTD.,
House No. 92, Muhalla Sumi Park, PCSIR Phase-2, Lahore.

VERSUS

1. NATIONAL TARIFF COMMISSION,
State Life Building # 05, Blue Area, Sector F-6/4 Islamabad.
2. M/S ENGRO POLYMERS AND CHEMICALS LIMITED,
Karachi.

S. No. of Order/Proceedings	Date of Order/Proceedings	Order with Signature of Chairman and Members
7	November 4, 2021	1. Nemo for appellants

2. Mr. Azfar Naeem, Legal Advisor for respondent No. 1

3. Mr. Saifullah Khan, Advocate for respondent No. 2

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Ghouri learned counsel appeared on behalf of the appellants and commenced his arguments on the point of Anti Dumping duty limitation. He submitted that they had filed appeal

against Final Determination (Investigated Product: Polyvinyl Chloride Resin) issued on April 24, 2018, the appellants had not imported the investigated product (IP) before this date therefore they were neither interested party under Anti-Dumping Duties Act nor qualified as aggrieved party under the law. The appellants imported IP from the People's Republic of China, Chinese Taipei, South Korea & Thailand in June, 2021 and while making assessment, the Custom Authorities levied the anti-dumping duty on such imports, thus making the appellants an aggrieved party in June, 2021, immediately thereafter the appellants used their legal right and filed appeal on August 21, 2021. He submitted that this Tribunal had already disposed off the connected appeals against the impugned Final Determination in 2018 i.e. Appeal No. 288 of 2018 and prayed the Tribunal to decide the instant appeal in the

same terms. Learned counsel of the appellants relied upon Supreme Court judgment 2002 SCMR 343.

2. Mr. Azafar Naeem, learned counsel for respondent No. 1 submitted that the appeal was filed beyond the time period prescribed by law. He refuted the plea of the appellants and submitted that the notice of the determination by the NTC was published in the Gazette under the law. The issue of knowledge had already been discussed and decided by this Tribunal and the decision of the Tribunal was challenged before Islamabad High Court through FAOs' No. 86 & 107 of 2019 in which the Hon'ble Islamabad High Court held:

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22. "Furthermore, since notices of initiation, notices of preliminary determination and final determinations were published in the official gazette as well as the newspaper under section 27(1)(b), section 37(3) and section 39(3) of the 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".

He further submitted that the appellants should have been vigilant and not have slept over their rights. He relied upon Lahore High Court judgment 2021 CLC 1696 which is reproduced below:

"7. In instant case, question of condoning delay is of prime importance. The Hon'ble Supreme Court of Pakistan has extensively dealt with the issue of limitation in case titled, Lahore Development Authority v. Mst. Sharifa Bibi and another, PLD 2010 Supreme Court 705 and observed that the law of limitation is a rule of procedure, a branch of adjective law. It controls and regulates the process of litigation and time lines to prosecute a cause, failing which the matter must be closed. The litigant must take legal recourse with due diligence, as the laws assist those who are vigilant and not those who sleep over their rights. Consequently, conclusion was drawn that law of limitation cannot be considered a mere formality, rather, required to be dealt with being mandatory in nature with the specific purpose to help the vigilant and not

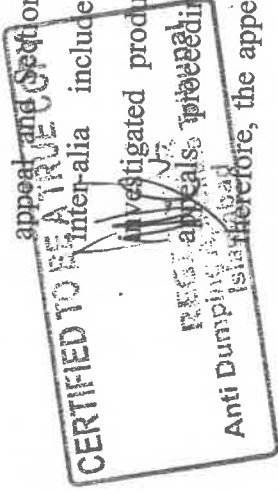
the indolent. It was further held that if the statute governing the proceedings does not prescribe the period of limitation, the proceedings are governed by the Limitation Act as a whole but where proceedings have been prescribed in the statute itself, such as in Section 115 of the C.P.C., the benefit of Section 5 of the Limitation Act is not available unless it has been made applicable as per Section 29(2) of the Limitation Act.

3. Mr. Saifullah Khan, Advocate appeared on behalf of respondent No. 2 and submitted his 'Wakalat Nama' to represent the private respondent in this appeal. He stated that in terms of Section 70 of the Anti-Dumping Duties Act only an interested party could file

appeal and Section 2 (j) ibid. defines 'interested party' as inter-alia includes any exporter or importer of investigated product. Since the investigation and the proceedings had already been concluded, therefore, the appellants at this stage could not claim to be interested party and their appeal was not maintainable.

Further, the judgment of the Supreme Court 2002 SCMR relied upon by the appellants was not relevant to this appeal, as it pertained to Section 5 of the Limitation Act, 1908, that did not apply to cases under Anti-Dumping Duties Act, which being special law provides its own mechanism regarding time limitation. He also referred to the Islamabad High Court FAOs' No. 86 & 107 of 2019 relied upon by the NTC and discussed at para 2 above. He further argued that the appellants were not an aggrieved party because they never imported the said product during the Period of Investigation or earlier and were not interested party at that point of time.

4. Mr. Azfar Naeem, learned counsel for respondent No. 1 supported the stance of the respondent No. 2 and added that the appellants tried to mislead the Tribunal by placing on record a Goods Declaration showing date of June 7, 2021. He stated that the appellants had imported the impugned product in 2019 & 2020 and also paid the anti-dumping duty and placed on record the numbers of GD's pertaining to the imports of the IP by the appellants during 2019 & 2020 as well. He further stated that even



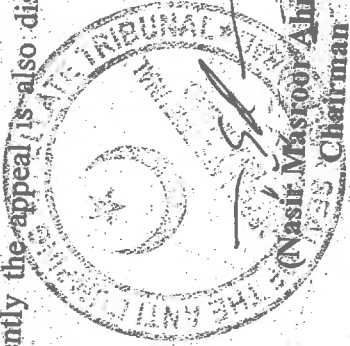
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if the GDs' filed on June 7, 2021 was considered to be their first import yet the appeal filed on August 4, 2021 was after the 58 days of the date of their goods declaration and was hit by the time limit of 45 days prescribed under the Anti-Dumping Duty Law.

5. From the foregoing, it is obvious that the instant appeal is barred by time for more than 3 years and this Tribunal has no power to condone the delay as was held by this Tribunal in Appeal No. 69 of 2015 and 325 of 2017 and the same has been upheld by the Hon'ble Anti Dumping Islamabad High Court in FAOs' No. 86 & 107 of 2017. We also held similar view in appeals No. 344 of 2019 and 362 of 2020. Further in view of the evidence that the appellants had imported the investigated product during 2019 & 2020 and also paid the duty, their plea that the duty was not in their knowledge until 7th June, 2021 is liable to be rejected being contrary to the facts.

6. Thus, having discussed the matter in preceding paragraphs and ~~peruse the record~~, we are of the view that the appeal in hand being barred by time is liable to be dismissed. Accordingly, C.M.A. No. 157 of 2021 for condonation of delay and C.M.A. No. 158 of 2021 for grant of stay merit no consideration and dismissed accordingly. Consequently the appeal is also dismissed being time barred.

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Anti Dumping Islamabad High Court
REF: 2021/1234



(Signature)
(Ather Saeem)
Member

(Signature)
(Samaira Nazir Siddiqui)
Member

Dated: November 4, 2021

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