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JUDGMENT SHEET
LAHORE HIGH COURT
RAWALPINDI BENCH RAWALPINDI
JUDICIAL DEPARTMENT

F.A.O.No. 74 of 2022.

M/s. Ashfaq Brothers & another
vs.

Anti-Dumping Appellate Tribunal of Pakistan & others

J U D G M E N T

Date of hearing.	08.02.2023.
Appellants by	M/s Naveed Zafar Khan, Muhammad Siddique Akbar and Ms. Nazma Parveen Malik, Advocates.
Respondent No.1 by	Malik Muhammad Saddique Awan, Additional Attorney-General for Pakistan, M/s Arshad Mehmood Malik, Ch. Sajid Mehmood, Ch. Muhammad Rizwan and Ch. Tayyab Bilal, Assistant Attorney-Generals for Pakistan.
Respondent No.2 by	M/s Waqas Amir and Ahmed Sheraz, Advocates.
Respondents No.3 and 4 by	Ch. Muhammad Nawaz, Advocate.
Respondent No.5 by	Mr. Saif Ullah Khan, Advocate for counsel for respondent No.5.

MIRZA VIQAS RAUF, J.:- This single judgment shall govern the subject appeal as well as connected appeals (ten in numbers) mentioned in the list appended hereinafter as Annexure “A”, all arising from orders of different dates passed by the Anti-Dumping Appellate Tribunal, Islamabad (hereinafter referred to as “Appellate Tribunal”) while exercising jurisdiction under Section 70 of the Anti-Dumping Duties Act, 2015 (hereinafter referred to as “Act”).

2. The appeals under consideration were initially placed before different Single Benches and were admitted for regular hearing accordingly. The respondents, however, resisted these appeals on the ground that since the impugned orders were passed by the “Appellate Tribunal”, so this Court lacks territorial jurisdiction. In this backdrop, vide order dated 02.11.2022, office was directed to place these appeals before the Hon’ble Chief Justice for constitution of Larger Bench as there was apparent disparity in various judgments to this effect. For ready reference and convenience, same is reproduced below:-

*“Ms. Nazma Parveen Malik, Advocate for the appellants.
Mr. Arshad Mahmood Malik, Assistant Attorney-General for Pakistan.*

Mr. Waqas Amir, Advocate for respondent No.2.

Ch. Muhammad Nawaz, Advocate for respondents No.3 & 4.

This appeal as well as connected appeals are before this Court against the impugned final determination order dated 13.06.2018 passed by the learned Anti-Dumping Appellate Tribunal, Pakistan, exercising jurisdiction under the Anti-Dumping Duties Act, 2015.

2. *On behalf of the respondents, a question qua territorial jurisdiction of this Court has been raised and in support thereof learned counsel for the respondents has relied upon case laws reported as Messrs KARACHI IRON AND STEEL MERCHANTS ASSOCIATION through Authorised Representative and 30 others vs. ANTI-DUMPING APPELLATE TRIBUNAL and 22 others (2021 PTD 1150), MUHAMMAD TAHIR MASOOD and 5 others vs. CHAIRMAN, STATE LIFE INSURANCE CORPORATION OF PAKISTAN and 2 others (2022 PLC (C.S) 439) and order passed in F.A.O.No.46 of 2020.*

3. *Contrary to this, learned counsel for the appellants while convincing the Court that territorial jurisdiction vested in the Court places reliance on case law reported as “MUHAMMMAD FAYYAZ vs. FEDERATION OF PAKISTAN and others” (2022 PTD 399) and judgment dated 14th October 2021, passed in W.P.No.62992 of 2021.*

4. *Apparently there is a clear disparity amongst the judgments referred hereinabove. In order to remove this disparity, it would be apt to refer this matter to the Hon’ble Chief Justice for constitution of Large Bench.*

5. *Office to proceed swiftly for the said purpose”.*

3. In furtherance of above, these appeals are now before us for resolution of the moot point relating to territorial jurisdiction of this Court against the decision of the “Appellate Tribunal”. We would, thus, refrain ourselves to delve into any other question canvassed in these appeals.

4. Learned counsel for the appellants submitted that the appellants are importers of various commodities and they have been subjected to duty under the “Act”. He added that the “Appellate Tribunal” is since performing functions in connection with affairs of the Federation, so appeal can be adjudicated by any of the High Courts against its decision. Learned counsel contended that even otherwise the appellants are residing within the territorial jurisdiction of this Court and it would be convenient for them as well to invoke the jurisdiction. It is further contended that it is negligence on the part of the Federation that it failed to establish Benches at Lahore, Karachi, Quetta and Peshawar and the appellants cannot be penalized on this score. Reliance is placed on TRADING CORPORATION OF PAKISTAN (PRIVATE) LIMITED vs. PAKISTAN AGRO FORESTRY CORPORATION (PRIVATE) LIMITED and another (2000 SCMR 1703) and MUHAMMAD FAYYAZ vs. FEDERATION OF PAKISTAN and others (2022 PTD 399).

5. Contrary to this, learned Law Officer as well as learned counsel representing the respondent-Department submitted that decision of the “Appellate Tribunal” can only be assailed before the learned Islamabad High Court. It is emphatically argued that not only order in original, but order in appeal were passed at Islamabad. Maintained that the appellants have now changed their addresses with mala-fide intent, so jurisdiction cannot be assumed on their convenience. Reliance is placed on SANDALBAR ENTERPRISES (PVT.) LTD. vs. CENTRAL BOARD OF REVENUE and others (PLD 1997 Supreme Court 334), Let.-Gen.(R) SALAHUDDIN TIRMIZI vs. ELECTION COMMISSION OF PAKISTAN (PLD 2008 Supreme Court 735) and RASHID LATIF vs. FEDERATION OF PAKISTAN through Secretary Ministry of Inter Provincial Coordination and 2 others (PLD 2014 Sindh 135).

6. Heard. Record perused.

7. Before advertng to the moot question, it would be advantageous to observe that in order to give effect in Pakistan to the provisions of Article VI of the General Agreement on Tariffs and Trade, 1994, and to the Agreement on implementation thereof and to amend and consolidate the law relating to imposition of anti-dumping duties to offset such dumping, to provide a framework for investigation and determination of dumping and injury in respect of goods imported into Pakistan and for matters ancillary thereto or connected therewith, the “Act,” was promulgated. Part VII of the “Act” deals with initiation and conduct of investigations, whereunder the National Tariff Commission (hereinafter referred to as “Commission”) is empowered to conduct an investigation upon a written application by or on behalf of the domestic industry. Part IX of the “Act” deals with investigation procedures, preliminary and final determinations. Any person aggrieved or interested from the initiation of investigation or preliminary determination or even final determination can prefer an appeal before the “Appellate Tribunal” constituted by the Federal Government in terms of Section 64 of the “Act”.

8. Section 70 deals with appellate procedures and it is the most pivotal provision for the resolution of the question raised before us. The decision of the “Appellate Tribunal” is appealable under sub-section (13) of Section 70 of the “Act”, which reads as under:-

- “70.-----
- (1) -----
- (2) -----
- (3) -----
- (4) -----
- (5) -----
- (6) -----
- (7) -----
- (8) -----
- (9) -----
- (10) -----

- (11) -----
- (12) -----
- (13) *The decision of the Appellate Tribunal shall be appealable in the **High Court**. The High Court shall render a decision within ninety days of receiving an appeal from the decision of the Appellate Tribunal:*

Provided that the High Court shall not make an interim order against the conduct of investigation by the Commission unless the Commission has been given notice of the application and has had an opportunity of being heard and the High Court for reasons to be recorded in writing, is satisfied that the interim order would not have the effect of prejudicing or interfering with the carrying out of a public work or of otherwise being harmful to the public interest [or State property] or of impeding the assessment or collection of public revenues:

Provided further that The Appellate Tribunal may, if it thinks fit accept an application from any party to an appeal in which the Appellate Tribunal has rendered its decision, for a clarification of any of the issues raised by the Appellate Tribunal in its decision:

Provided also that such application shall specify the precise issue in respect of which a clarification is sought and given reasons as to why a clarification is necessary”.

(underlining supplied for emphasis)

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It is, thus, evident from the above that an appeal against the decision of the “Appellate Tribunal“ lies before the High Court.

9. The term “High Court” is nowhere defined in the “Act”. This prompted the parties to raise the moot point. Part VII of the Constitution of the Islamic Republic of Pakistan, 1973 deals with the judicature and Chapter 1 defines the Courts. In terms of Article 175(1), there shall be a Supreme Court of Pakistan, a High Court for each Province and a High Court for Islamabad Capital Territory and such other courts as may be established by law. Chapter 3 deals with the High Courts and Article 192

provides the composition and jurisdiction of a High Court. For ready reference and convenience, same is reproduced below:-

- “(1) *A High Court shall consist of a Chief Justice and so many other Judges as may be determined by law or, until so determined, as may be fixed by the President.*
- [(2) *The Sind and Baluchistan High Court shall cease to function as a common High Court for the Provinces of Baluchistan and Sind.*
- (3) *The President shall, by Order, establish a High Court for each of the Provinces of Baluchistan and Sind and may make such provision in the Order for the principal seats of the two High Courts, transfer of the Judges of the common High Court, transfer of cases pending in the common High Court immediately before the establishment of two High Courts and, generally, for matters consequential or ancillary to the common High Court ceasing to function and the establishment of the two High Courts as he may deem fit.*
- (4) *The jurisdiction of a High Court may, by Act of 2[Majlis-e-Shoora (Parliament)], be extended to any area in Pakistan not forming part of a Province”.*

10. It would not be out of context to mention here that initially, Islamabad High Court was not in existence and it was ultimately established through Act No.XVII of 2010, dated 2nd August, 2010. By virtue of Section 4 of the said Act, jurisdiction of Islamabad High Court was extended in respect of the Islamabad Capital Territory, original, appellate, revisional and other jurisdiction, as under the constitution or the laws in force immediately before the commencement of the Act *ibid*, which was previously exercisable in respect of the said territory by the Lahore High Court.

11. Article 198 deals with seat of the High Court and reads as under:-

[(1)] Each High Court in existence immediately before the commencing day shall continue to have its principal seat at the place where it had such seat before that day.

2[(1A)The High Court for Islamabad Capital Territory shall have its principal seat at Islamabad.]

- [(2) Each High Court and the Judges and divisional courts thereof shall sit at its principal seat and the seats of its Benches and may hold, at any place within its territorial jurisdiction, circuit courts consisting of such of the Judges as may be nominated by the Chief Justice.*
- (3) The Lahore High Court shall have a Bench each at Bahawalpur, Multan and Rawalpindi; the High Court of Sindh shall have a Bench at Sukkur; the Peshawar High Court shall have a Bench each at Abbottabad [, Mingora] and Dera Ismail Khan and the High Court of Baluchistan shall have a Bench at Sibi [and Turbat.]*
- (4) Each of the High Courts may have Benches at such other places as the Governor may determine on the advice of the Cabinet and in consultation with the Chief Justice of the High Court.*
- (5) A Bench referred in clause (3), or established under clause (4), shall consist of such of the Judges of the High Court as may be nominated by the Chief Justice from time to time for a period of not less than one year.*
- (6) The Governor in consultation with the Chief Justice of the High Court shall make rules to provide the following matters, that is to say,—*
- (a) assigning the area in relation to which each Bench shall exercise jurisdiction vested in the High Court; and*
- (b) for all incidental, supplemental or consequential matters.]*

12. There is no cavil to the proposition that the “Appellate Tribunal” is performing functions in connection with the affairs of the Federation and it is amenable to writ jurisdiction, but we have to examine as to whether in the circumstances, this Court can exercise the jurisdiction constitutional or appellate against the decision of the “Appellate Tribunal”. It is an admitted fact that initially investigation was started by the “Commission” at Islamabad, which resulted into passing of order in original. The said order was assailed through an appeal before the “Appellate Tribunal” under Section 70(1)(2) of the “Act”, who decided the same through impugned order.

13. We have noticed that the cause of action also arose either at Islamabad or Karachi and even the appellants before us while preferring their appeals before the “Appellate Tribunal” mentioned their addresses of places other than Rawalpindi. Apparently, the appellants have now changed addresses for their convenience or for any other reason best known to them.

14. It is trite law that the Court cannot assume jurisdiction on the whims of the parties or to facilitate any of them. We cannot ignore the doctrine of *forum non conveniens*. It is founded on the principle that if some other forum is more appropriate and the interest of justice would be served better, the Court may decline to exercise jurisdiction on the ground that a case could be suitably tried by another Court. The above doctrine has come under discussion before this Court in HASSAN SHAHJEHAN vs. FPSC through Chairman and others (PLD 2017 Lahore 665) and while outlining the scope and object of the same, it was held as under:-

“19. Another dimension of the case is the principle of forum non conveniens which is a discretionary power that allows courts to dismiss a case where another court, or forum, is much better suited to hear the case. This dismissal does not prevent a plaintiff from refileing his or her case in the more appropriate forum: The doctrine allows a court with jurisdiction over a case to dismiss it because the convenience of the parties and the interest of justice would be better served if the case were brought in a court having proper jurisdiction in another venue. "The doctrine of forum non conveniens, i.e., that some other forum is more "appropriate" in the sense of more suitable for the ends of justice, was developed by the Scottish courts in the nineteenth century, and was adopted (with some modifications) in the United States. The Scots rule is that the court may decline to exercise jurisdiction, after giving consideration to the interests of the parties and the requirements of justice, on the ground that the case cannot be suitably tried in the Scottish court nor full justice be done there, but only in another court. The basic principle is that.... the court is satisfied that there is some other available forum, having competent jurisdiction, which is the appropriate forum for the trial of the action, i.e. in which the case may be tried more suitably for the interests of all the parties and the ends of justice. Applying this principle to the facts of the present case, the matter in hand, can best be resolved at the Supreme Court of Pakistan.

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Guidance to the above effect can also be sought from SANDALBAR ENTERPRISES (PVT.) LTD. vs. CENTRAL BOARD OF REVENUE and others (PLD 1997 Supreme Court 334) and Let.-Gen.(R) SALAHUDDIN TIRMIZI vs. ELECTION COMMISSION OF PAKISTAN (PLD 2008 Supreme Court 735).

15. In somewhat similar circumstances, in the case of Messrs KARACHI IRON AND STEEL MERCANTS ASSOCIATION through Authorised Representative and 30 others vs. ANTI-DUMPING APPELLATE TRIBUNAL and 22 others (2021 PTD 1150), the learned Sindh High Court observed as under:-

“6. It is an undeniable position that the appellant(s) did contest the matter before the Tribunal, constituted at Islamabad over which this Court has got no administrative control therefore, mere plea of 'convenience' is never sufficient for choosing the Court(s) rather it is always the commandment of the law and law alone which describes the 'jurisdiction'. Failure of the Federation in establishing Tribunal(s) at other provinces is also no ground to press right of convenience. Further, the matter appears to be between the parties alone hence the same, legally, can't be taken as having **applicability thereof on people at large**. It is conducive to refer the case of Rashid Latif v. Federation of Pakistan through Secretary Ministry of Inter Provincial Coordination (PLD 2014 Karachi 135 (authored by me in a DB matter) wherein the issue of jurisdiction is discussed in detail while discussing all the citations. The conclusion was that in case an action of Federation, if affecting community or public at large then same may be challenged before High Court of other province, too but if the same is personam relating to any party then the jurisdiction would lie with the High Court of the area where order is passed.

7. Here the situation is different as the Tribunal is constituted at Islamabad. Admittedly the appeals preferred by the appellants at Islamabad Tribunal and all parties contested their case at Rawalpindi Bench in FAO, against the said order four appeals are filed at Islamabad High Court, hence I agree with the same referred observation and hold the present appeal(s) to be incompetent. Accordingly, captioned appeals are dismissed on the point of jurisdiction”.

16. So far judgment in the case of TRADING CORPORATION OF PAKISTAN (*supra*) heavily relied upon by the learned counsel for the appellants is concerned, it is observed that in the said case, facts were

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entirely different. Moreover, said judgment was rendered by the Hon'ble Apex Court with reference to Article 199 of the "Constitution".

17. Though learned counsel has also relied upon MUHAMMMAD FAYYAZ vs. FEDERATION OF PAKISTAN and others (2022 PTD 399), but we have no hesitation to observe that a question of territorial jurisdiction was though raised before the learned Single Judge, but it was not at all consciously attended or responded by the Court.

18. The crux of above discussion is that word "High Court" used in sub-section (13) of Section 70 of the "Act" corresponds to Islamabad High Court and, as such, this Court lacks territorial jurisdiction to ponder upon the decision of the "Appellate Tribunal".

19. Resultantly, all these appeals are hereby returned to the appellants to present the same to the Court of competent jurisdiction.

20. Disposed of on above terms.

(Sadaqat Ali Khan)
Judge

(Mirza Viqas Rauf)
Judge

(Ch. Abdul Aziz)
Judge

Approved for reporting.

Judge

Judge

Judge

“Annexure-A”

Sr. No.	Case number	Parties name
1.	F.A.O.No.62 of 2022.	M/s. Rukhsar Steel vs. Anti-Dumping Appellate Tribunal of Pakistan & others.
2.	F.A.O.No.91 of 2022.	M/s. K.B. Steel Industries vs. Anti-Dumping Appellate Tribunal of Pakistan & others.
3.	F.A.O.No.103 of 2022.	M/s. Asia Metal Industry & others vs. The Federal Board of Revenue & others.
4.	F.A.O.No.134 of 2022.	M/s. Victory Pipe Industries (Pvt) Ltd. & another vs. The Federal Board of Revenue & others.
5.	F.A.O.No.135 of 2022.	M/s. Master Pipe Industries and others vs. The Federal Board of Revenue & others.
6.	F.A.O.No.136 of 2022.	M/s. Max Comfort (SMC-PVT) Ltd., and another vs. The Federal Board of Revenue & others.
7.	F.A.O.No.10 of 2023.	M/s International Pipe Tube & Steel Re-Rolling Industry vs. National Tariff Commission & others.
8	F.A.O.No.11 of 2023.	M/s Reliance Industries & another vs. National Tariff Commission & others.
9	F.A.O.No.18 of 2023.	M/s Kareem Pipe Industries (Pvt) Ltd. & others vs. National Tariff Commission & another.
10.	F.A.O.No.19 of 2023.	M/s I.I. K. Industries (Pvt.) Ltd & another vs. National Tariff Commission & another.

(Sadaqat Ali Khan)
Judge

(Mirza Viqas Rauf)
Judge

(Ch. Abdul Aziz)
Judge