

ORDER SHEET
THE HIGH COURT OF SINDH AT KARACHI

M.A. No.21/2020

M.A. No.22/2020

M.A. No.26/2020

Date: Order with signature(s) of the Judge(s)

1. For Orders as to maintainability as per order dated 18.01.2021
2. For Hg of C.M.A. No.2197/2020

17.02.2021

Mr. Abdul Moiz Jafri, advocate for appellants
Mr. Ahmed Sheeraz, advocate for respondent No.2
Mr. Saifullah Khan, advocate for respondent No.3
Mr. Waseem Akhtar, Assistant Attorney General

SALAHUDDIN PANHWAR, J: The captioned appeals are against the judgment dated 28.02.2020 passed by the Anti-Dumping Appellate Tribunal Pakistan in Appeal Nos.291, 296, 299, 300 of 2018.

2. Precisely, brief facts are that the respondent No.2 preferred appeals before the Anti-Dumping Appellate Tribunal and as referred the all appeals were allowed (*they were dismissed*). Being aggrieved the present appellants have filed captioned miscellaneous appeals before this Court. It has come on record that appellants in M.A. No.22 of 2020 have also filed appeal before Islamabad High Court against the same judgment and on same cause of action. Learned counsel for the appellants has referred judgments reported in **1985 SCMR 758 (Messrs Al-Iblagh Limited, Lahore vs. The Copyright Board, Karachi and others)**, **PLD 1997 SC 334 (Sandalbar Enterprises (Pvt) Ltd vs. Central Board of Revenue and others)**, **2009 CLD 1498 (LPG Association of Pakistan through Chairman vs. Federation of Pakistan through Secretary, Ministry of Petroleum and Natural Resources, Islamabad and 8**

others), 2017 P. Cr.L.J. 1920 (*Miss Ayyan Ali vs. Federation of Pakistan and others*) and 2017 SCMR 1179 (*The Federal Government through Secretary Interior, Government of Pakistan vs. Ms. Ayyan Ali and others*). While referring these judgments learned counsel for the appellants contends that Anti-Dumping Duties Act, 2015 provides ‘**High Court**’ the appellants have right to choose any forum as per their convenience. Further it is contended that the Federation notified the Tribunal though Federation was under obligation to establish Tribunal in every province but at present in Islamabad such Tribunal exists. The appellants participated and contested the case before the Tribunal and they have every right as per *Sandalbar’s case*, *LPG’s case* and *Ayyan Ali’s case* to choose any Court as per their convenience. It is also contended that the judgment passed by the Anti-Dumping Appellate Tribunal is *in rem* and it has affected the appellants and other importers/companies having the same business. It is also contended that any Act of Federation can be challenged before any High Court of any Province.

3. In contra, learned counsel for the respondents No.2 and 3 has relied upon case reported in 2012 CLC 507 (*Haji Riaz Ahmed through Attorney vs. Messrs Habib Bank Limited through President and 2 others*), 2018 PLC (C.S.) 555 (*Karamat Ullah Khan Chaudhry vs. Federation of Pakistan and 2 others*), PLD 1997 SC 334 (*Sandalbar Enterprises (Pvt) Ltd vs. Central Board of Revenue and others*) and contends that the appellants contested the appeals filed by the respondents under Section 70(1) of the Anti-Dumping Duties Act, 2015 and same were dismissed and now they are here in Miscellaneous Appeals; learned counsel has referred FAO No.46 of 2020 with Paragraph 4 and which contains that “**in view of statement by learned counsel for the parties, this and connected appeals i.e. FAO Nos.47, 50, 54 and 55 of 2020 are returned on the ground of jurisdiction**”. According to

learned counsel for respondent No.2 this Court has no jurisdiction as these appeals are against judgment of the Tribunal which is constituted at Islamabad and the jurisdiction lies at Islamabad.

4. Whereas learned counsel for respondent No.3 contends that the impugned order is not *in rem* and in fact it is binding upon the parties, hence qualifies the terms *in personam*. While learned Assistant Attorney General adopts the arguments of learned counsel for respondents No.2 and 3.

5. Heard learned counsel for the parties and perused the impugned order as well as case law referred by the respective parties.

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* (2014 PLD 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.

Office shall place copy of this order in connected M.As.

JUDGE