

**JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT**

Writ Petition No.24269 of 2019

Ali Enterprises through its Proprietor Omair Ali Khan

Versus

**Federation of Pakistan through Secretary, Ministry of
Commerce, Cabinet Secretariat, Islamabad & another**

J U D G M E N T

Date of hearing: 27.02.2020.

Petitioner by: Amna Warsi and Ayesha Warsi, Advocates.
Shafqat Mehmood Chauhan, Abdul Quddus
Mughal, Mian Muhammad Athar, Nauman
Arshad, Adnan Ahmad Paracha, Rana
Muhammad Asif, Aamir Shehzad Jammal,
Hammad-ul-Hassan Hanjra, Afsar Raza, Ch.
Saeed Ashraf, Anas Gull, M. Akif Tahir, Hafiz
Muhammad Arshad, Haji Abdul Sattar and
Malik Umar Awan, Advocates (in connected
petitions).

Respondents by: Ch. Ishtiaq Ahmad Khan, Additional Attorney
General and Zahid Sikandar, Assistant
Attorney General. Ameer Abbas Ali Khan,
Assistant Advocate General on Court's call.
Saifullah Khan and Asad Ahmad Ghani,
Advocates.
Ahmad Sheraz and Waqas Amir, Advocates
for NTC.

MUHAMMAD SAJID MEHMOOD SETHI, J.- This consolidated judgment shall decide instant petition, along with connected cases i.e. **W.P. Nos.61351, 66020, 66548, 67909, 67910, 67913, 67916, 71016 of 2019 & W.P. Nos.8819, 8875, 9824, 10107, 11224, 11225 & 11987 of 2020**, as common questions of law and facts are involved in these cases.

2. Through instant petition, petitioner has challenged the vires of Section 14(2) & (4) of the Anti-Dumping Duties Act, 2015 (“the ADD Act”) being *ultra vires* the Article 10-A of the

Constitution of the Islamic Republic of Pakistan, 1973 (“**the Constitution**”). Petitioner has also assailed Final Determination dated 25.08.2017, made by the National Tariff Commission (“**the NTC**”), whereby anti-dumping duties on imports of Polyester Filament Yarn (“**PFY**”) into Pakistan, were imposed allegedly on account of non-fulfillment of legal requirements under Sections 3, 13, 14(1) & 15 of the ADD Act.

3. Learned counsel for petitioner submits that the impugned Final Determination dated 25.08.2017 has been issued in violation of the express provisions of the ADD Act and the National Tariff Commission Act, 2015 (“**the NTC Act**”). She further submits that the Commission has not considered that PFY identifiable by PCT Heading 5402.4700 is not produced / manufactured in Pakistan, thus, the product does not come within the definitions of “investigated product” and “domestic injury” and the NTC committed gross illegality while making Final Determination. She further submits that act of respondent No.2 regarding imposition of highest Anti-Dumping Duty i.e. 11.35% on “Other Exporting Companies from China” without determination of injury caused to the domestic industry, is arbitrary, without lawful authority and violative of Articles 4, 9, 18 & 25 of the Constitution. She adds that variable Anti-Dumping Duty on exporting companies instead of on the product under investigation with reference to PCT Heading is also against the provisions of the Competition Commission Act, 2010.

She adds that under Section 1(2) of the ADD Act, the NTC has been given jurisdiction within geographical limits of Pakistan and the procedures of investigation prescribed under Sections 32(4) & 35 of the ADD Act, particularly Rule 12 of the Anti-Dumping Rules, 2001 i.e. investigation in other countries to verify information or obtain other details is *ultra vires* the ADD Act as the law excludes the extra territorial application. She adds that the NTC is authorized to initiate investigation on the written

application of the domestic industry along with the evidence, to determine that investigated (imported) product has been dumped and caused injury to domestic market after its introduction into Commerce of Pakistan, which means that power of the NTC with reference to any exporter or producer under investigation is limited and exercise of such power is beyond the scope of law and investigation and determination by the NTC to offset the effect of dumping by imposition of Anti-Dumping Duty without due process of law is *ultra vires* the Articles 4, 10-A & 18 of the Constitution. She further submits that the ADD Act does not provide for regulatory mechanism or process, however, it is a law to offset the effect of dumping, hence, cannot be treated as an enactment for the regulation of trade, commerce or industry in the interest of free competition therein. She adds that sub-section (2) of Section 14 is overriding sub-section (1) as the latter requires the Commission to determine dumping margin of each known exporter or producer of an investigated product, whereas the former provides option to limit the number of exporters, producers, importers and types of products, and under provisos to sub-sections (3) & (4), this option becomes authority / prerogative of the NTC, which is illogical and unjustified. She adds that Anti-Dumping Duty is not mentioned in the Federal Legislative List like other duties and taxes specifically mentioned in items 43, 44 & 52. She further submits that the penalty cannot be imposed on importer without determination in terms of Article 10-A of the Constitution. She further submits that the Anti-Dumping Duty is not a custom tariff as if it is presumed to fall in the definition of "taxation" provided in Article 260 of the Constitution, then, by virtue of Article 77 of the Constitution, every time Anti-Dumping Duty shall be levied by Parliament and furthermore, it was not introduced as money bill under Article 73 of the Constitution. Tracing history of Anti-Dumping Duty, she submits that Anti-Dumping Duty was imposed through the Import of Goods (Anti-

Dumping and Countervailing Duties) Ordinance III of 1983, and at the time, the Constitution was held in abeyance and with the revival of the Constitution by the Eighth Amendment, 1985, it was protected by virtue of Article 270A and again by virtue of Article 270AA, so the question of the legislative competence of the Parliament was never raised / discussed. She adds that the publication of notification in the official gazette is mandatory in terms of Sections 3, 27(1)(b), 37(3), 39(5), 42(2), 47(6), 50, 58(2), 59(2) & 64 of the ADD Act. In support of her submissions, she has relied upon The Imperial Tobacco Co. of India Ltd. v. The Commissioner of Income-Tax, South Zone, Karachi and another (PLD 1958 Supreme Court (Pak.) 125), National Bank of Pakistan and 117 others v. SAF Textile Mills Ltd. and another (PLD 2014 Supreme Court 283), Shahid Pervaiz v. Ejaz Ahmad and others (2017 SCMR 206), Messrs Friends Technical Engineering Association, Muzaffarabad / Rawalpindi through Advisor to the Prime Minister of AJ&K and 4 others v. Barrister Syed Iftikhar Ali Gillani and 24 others (2018 CLC 54) and Muhammad Saleem Bikiya through Attorney and 14 others v. Pakistan through Secretary Ministry of Commerce and another (2018 PTD 2026).

Mr. Shafqat Mehmood Chauhan, Advocate, learned counsel for petitioner in connected petition, submits that the Commission in Anti-Dumping Duties Act, 2015, means the National Tariff Commission established under the provisions of the NTC Act, 2015, which was not validly constituted, thus, final determination issued by such Commission is not sustainable. He further argues that the issue regarding existence of the Commission under the provisions of the NTC Act, 2015 has neither been decided nor declared valid by any forum including Hon'ble Supreme Court of Pakistan. He adds that the Hon'ble Apex Court had only endorsed the actions of the Commission under the *defacto* doctrine. He argues that according to scheme of the ADD Act, preliminary

investigation, final determination, imposition and collection of the Anti-Dumping Duty vest with one authority i.e. the Commission, which is violative of the provisions of the Constitution of the Islamic Republic of Pakistan, 1973, because investigating authority cannot implement outcome of its own investigation, being contrary to Articles 4, 9, 25 & 27 and hit by Article 8 of the Constitution.

4. Conversely, learned Law Officers, duly assisted by learned counsel for respondents, defends the Final Determination dated 25.08.2017 by submitting that the petitioners had already exercised their constitutional right by filing **W.P. No.3318 of 2019** before this Court, which was dismissed vide order dated 20.09.2019, therefore, principle of *res-judicata* is applicable, thus, instant petition is liable to be dismissed. He further contends that previously, some importers had challenged the provisions of the ADD Act and imposition of Anti-Dumping Duty before the Hon'ble Sindh High Court and Islamabad High Court, whereby the issues have already been decided, hence, instant petition merits dismissal. He adds that in terms of Section 3 of the Act *ibid*, the Commission is authorized to regulate proceedings within the meaning of this Act. He adds that Section 50 of the Act empowers the Commission to impose an Anti-Dumping Duty. He further contends that Section 14 deals with the determination of individual dumping margin of exporter / producer of an investigated product after consultation with the foreign exporters, hence, the provisions of Section 14 are not *ultra vires* the Article 10-A of the Constitution. He further contends that the entities, on whom the definitive Anti-Dumping Duty has been imposed by the NTC, should approach the Appellate forum with their respective grievances, however, it is evident that not a single entity, whether official or private, from the exporting countries, which are dumping PFY and causing material injury and serious harm to the domestic industry, has approached the Appellate Tribunal. He further contends that until and unless, a statute or a part of it, has

been held or declared to be *ultra vires*, the same remains operative for all intent and purposes. He further contends that petitioners have failed to make out a case to press injunctive order as none of these ingredients for such relief exists. In support of his contentions, he has referred to Messrs Aimnaz (Pvt.) Limited v. Federation of Pakistan, through the Secretary, Ministry of law, Federal Secretariat, Islamabad and 2 others (2018 PTD 1966), Muhammad Saleem Bikiya's Case (Supra), order dated 07.10.2019, passed by learned Division Bench of this Court in **ICA No.58423 of 2019** titled M/s Samuda Chemicals Complex Ltd. v. Federation of Pakistan & others, order dated 13.09.2019, passed by this Court in **W.P. No.29473 of 2019** titled Supreme Steel Forming (Pvt.) Ltd. etc. v. Federation of Pakistan, etc., order dated 20.09.2019, passed by this Court in **W.P. No.49427 of 2019** titled M/s Yahya International etc. v. Federation of Pakistan etc., order dated 04.10.2019, passed by this Court in **W.P. No.2821 of 2019** titled M/s S.S. International etc. v. Federation of Pakistan, etc. and order dated 24.10.2019, passed by this Court in **W.P. No.60431 of 2019** titled M/s Universal Trading etc. v. The FOP etc.

5. Arguments heard. Available record perused.

6. The Anti-Dumping Duties Act, 2015 was enacted to amend, repeal and reform the Anti-Dumping Duties Ordinance, 2000, to give effect to Article VI of the General Agreement on Tariffs and Trade, 1994, Agreement on Implementation of said Article VI, [commonly known as Anti-Dumping Agreement, agreed by member States of World Trade Organization (“WTO”)] and imposition of anti-dumping duties to offset injurious dumping. WTO is an international organization dealing with the rules of trade between nations and as per WTO, if a company exports a product at a price lower than the price it normally charges on its own home market, it is said to be dumping the product. Anti-Dumping Agreement allows governments to take anti-dumping action by imposing extra import duty on the particular product

from the particular exporting country in order to bring its price closer to the normal value or to remove the injury to domestic industry in the importing country. Article 6 of the Anti-Dumping Agreement governs the application of anti-dumping measures, which are unilateral remedies after an investigation and determination, in accordance with the provisions of said Agreement, however, principles of confidentiality of sensitive information, verification of information, transparency of proceedings, disclosure of information to interested parties, affording reasonable and proper opportunity of hearing and participation in investigation are required to be observed strictly. Furthermore, it is not obligatory for a member State to take anti-dumping measures under Article 6 of the Anti-Dumping Agreement, but *Majlis-e-Shoora* (Parliament) of Pakistan has chosen to adopt the Agreement through promulgation of the ADD Act. Under Section 4 of the ADD Act, an investigated product is considered to be dumped if it is introduced into the commerce of Pakistan at price which is less than its normal value. If an exporter or producer is in violation of provisions of the ADD Act and there is injury to domestic industry within the meaning of the ADD Act, then a dumping margin is determined, and based on that Anti-Dumping Duty is imposed.

7. Perusal of record reveals that on 01.01.2016, the respondent-NTC received a written application under Section 20 of the ADD Act from M/s Gatron Industries Limited, Karachi and M/s Rupali Polyester Limited, Lahore, claiming to be producers of the domestic product, wherein the applicants alleged that PFY is being exported to Pakistan at dumped price from the exporting countries, thereby causing material injury to Pakistan's domestic industry producing PFY. The NTC informed the Embassies of exporting countries in Islamabad through note verbale dated 07.01.2016 in accordance with the requirements of Section 21 of the Act. The NTC, after examining the accuracy and adequacy of the evidence

provided in the application, established that there was sufficient evidence of alleged dumping of PFY into Pakistan from the exporting countries resulting into material injury to the domestic industry. Consequently, the NTC issued a notice of initiation of anti-dumping investigation against the alleged dumping of PFY, which was published in the Official Gazette of Pakistan and in two widely circulated national newspapers on 27.02.2016.

8. In terms of Section 37 of the Act, the NTC is obliged to make a preliminary determination of dumping and injury, if any, not earlier than sixty days and not later than one hundred and eighty days, after initiation of an investigation. The Commission made preliminary determination in this investigation on 14.02.2017 and notice in this regard was duly published on 15.02.2017 in the official gazette as well as two national newspapers. Lastly, the Commission, in terms of Section 39 of the Act, made final determination in this investigation and is satisfied that the investigated product has been imported into Pakistan at dumped prices from the Exporting Countries, which has caused material injury to domestic industry during the period of investigation. Therefore, the Commission, pursuant to the powers conferred upon it under Section 50 of the Act, decided to impose definitive anti-dumping duties on PFY imported from the exporting countries for a period of five years effective from the date of final determination i.e. 26.08.2017.

9. The individual dumping margins have been determined for the exporters / foreign producers on the basis of information provided by them and verified by the NTC. The duty rate for exporters / foreign producers, who have cooperated and provided information, has been determined in accordance with the provisions of sub-sections (3) & (4) of Section 51 of the Act. Duty rate / dumping margin of all other non-cooperating exporters / foreign producers of the exporting countries has been determined on the basis of the best information available in accordance with

Section 32 of the Act. The NTC has not violated petitioner's right to fair trial as Article 10-A of the Constitution not only ensures fair trial but also due process but in accordance with law, which in this case is the Anti-Dumping Act and Rules. The scheme of the Act is that on initiation of an Application under Section 20 of the Act, the Commission initiates the investigation by publication of notice in national newspapers under Section 27 of the Act. In terms of Section 34 of the Act, the Commission shall in a notice of initiation include a proposed schedule for conducting investigation, including the proposed time limits for submission of written arguments, the proposed date for hearing if requested, the proposed date for preliminary determination and the proposed date for final determination. Section 37 provides for the preliminary determination and Rule 10 provides the disclosure of information in the notice of preliminary determination. The NTC after the preliminary determination in accordance with Rule 11 of the Rules, holds separate disclosure meeting with exporters and foreign producers to explain the dumping calculation methodology preliminarily applied for that exporter or foreign producer. On 27.02.2017, the NTC provided the exporters / foreign producers with the disclosure documents explaining dumping calculation methodology applied for those exporters / foreign producers and dumping calculations. The exporters / foreign producers submitted their views / comments on dumping calculations, which were duly considered by the Commission for dumping calculations in the final determination of this investigation. Furthermore, upon request of the Pakistan Yarn Merchants Association and exporters / foreign producers, a hearing in this investigation was held on 20.06.2017 under Rule 14 of the Rules. The information submitted by the participants during the hearing, whether orally or in writing and record note of the hearing prepared by the Commission are available in the public file. Hence, in the present case, not only due

process but also fair trial has been provided to the interested parties under the relevant law.

10. So far as contention of learned counsel for petitioner challenging extra territorial jurisdiction of the Commission and extent / scope of ADD Act with reference to Section 1(2) of the ADD Act is concerned, suffice it to say that preamble of the ADD Act clearly reflects the intention of the Legislature to give effect to Article VI of the General Agreement on Tariffs and Trade, 1994 and Agreement on Implementation thereof, which primarily regulate trade between different countries. Furthermore, Section 21 of the ADD Act authorizes the NTC to issue notice to the government of each exporting country, after receipt of application under Section 20 of the Act *ibid*. Section 37 (4) of the ADD Act provides that the Commission shall forward a copy of notice of preliminary determination to exporting country and to other known interested parties. In these circumstances, the argument is not sustainable, thus, is repelled.

11. The other main attack of learned counsel for petitioner is that sub-section (2) overlaps sub-section (1) of Section 14 of the ADD Act, as latter makes it mandatory to determine individual dumping margin for each known exporter or producer of an investigated product, also supported by Section 51 (2), whereas the former gave permission and authorized the Commission to limit the examination to a certain extent by exercising the discretion. Before addressing this argument, it is expedient to reproduce Sections 14(1)(2) & 51 (2) of the ADD Act, for ease of reference:-

“14. Individual dumping margin. (1) The Commission shall determine an individual dumping margin for each known exporter or producer of an investigated product.

(2) Notwithstanding anything contained in sub-section (1), where the Commission is satisfied that the number of exporters, producers or importers, or types of products involved is so large as to make it impracticable to determine an individual dumping

margin for each known exporter or producer concerned of an investigated product, the Commission may limit its examination to a reasonable number of interested parties or investigated products by using samples which are statistically valid on the basis of information available to the Commission at the time of selection, or to the largest percentage of volume of exports from the country in question which can reasonably be investigated.

....

51. Imposition and collection of anti-dumping duties.- (1) ...

(2) Save as provided for in sub-section (3), the Commission shall establish an individual anti-dumping duty for each known exporter or producer of dumped imports.”

Section 14 of the ADD Act corresponds to Article 6.10 of the Anti-Dumping Agreement, which is also reproduced hereunder:-

“6.10 The authorities shall, as a rule, determine an individual margin of dumping for each known exporter or producer concerned of the product under investigation. In cases where the number of exporters, producers, importers or types of products involved is so large as to make such a determination impracticable, the authorities may limit their examination either to a reasonable number of interested parties or products by using samples which are statistically valid on the basis of information available to the authorities at the time of the selection, or to the largest percentage of the volume of the exports from the country in question which can reasonably be investigated.”

This issue also came up for hearing before Hon’ble Sindh High Court in Muhammad Saleem Bikiya’s case supra, whereby after going through the provisions and referring to a decision of appellate body in a dispute between European Union and China, it was observed that it is mandatory to determine anti-dumping margin on individual basis in the light of provisions of Sections 14(1) & 51(2) of the ADD Act, however, exception specifically

provided in Section 14(2) is permissible. The relevant observations of Hon'ble Sindh High Court are reproduced as under:-

“17. In a dispute between the European Communities (i.e. the European Union) and China (referred to as EC-Fasteners (China)) that went to an Appellate Body, one question was whether Article 6.10 was mandatory or otherwise. The dispute was raised by China, alleging that certain provisions of the relevant EC Regulation were inconsistent with the AD Agreement. The Appellate Body, which gave its report on 15.11.2011, made the following observations (internal citations omitted):-

“....

329. In the light of the above, we interpret Article 6.10 of the Anti-Dumping Agreement as expressing an obligation, rather than a preference, for authorities to determine individual margins of dumping. This obligation is qualified and is subject not only to the exception specified for sampling in the second sentence of Article 6.10, but also to other exceptions to the rule to determine individual dumping margins that are provided for in the covered agreements.”

18. We have quoted somewhat extensively from the Appellate Body report because in our view it holds the key to understanding why, with respect, the submission made by learned counsel that the anti-dumping duty is a tax cannot be accepted. Since the ADD Act should, to the maximum extent possible, be interpreted and applied consistently with the AD Agreement, it follows that in our view, the provisions from the statute reproduced above must be regarded as mandatory. “Shall” as used therein means precisely that the nothing else. In other words, it is obligatory to compute the dumping margin section 14(1)) and the anti-dumping duty section 51(2)) on an individual basis, particularized to each offending exporter or producer. Only such derogation from this mandatory requirement is permissible as is expressly provided for in the statute.”

12. The question raised by the learned counsel for the petitioner as to nature of Anti-Dumping Duty has been aptly answered by the Hon'ble Islamabad High Court, in the judgment rendered in the case of Messrs Aimnaz (Pvt.) Limited supra. It has been observed by the learned Court that it is not a tax or a fee, but a regulatory measure or a remedial measure to protect the local industry from unfair competition, where goods were being dumped into Pakistan. The relevant portion of the aforesaid case is reproduced as under:-

“19. I intend to agree with the decision of the Hon’ble Sindh High Court that Anti-Dumping Duty is not a tax, however, it may not be regarded as a penalty but it is a regulatory measure or a remedial measure to protect the local industry from unfair competition because the goods are being dumped into Pakistan. This observation finds support from the preamble to the Act as well as the scheme of law by way of examination of the above mentioned Sections of the Act and NTC Act.

20. It was also argued on behalf of the Petitioners that by imposition of the Anti-Dumping Duty same is not only in violation of Article 77 of the Constitution and / or it is a delegated power and tantamount to excessive delegation. The referred arguments are immaterial inasmuch as it is noted in the judgment of Hon’ble Sindh High Court that Anti-Dumping Duty is not a compulsory exaction; it is not generally imposed; it is only levied and where there is dumping and that too by way of Anti-Dumping margin and has the slap of ceiling and floor. The referred features are not found in the tax which is general in nature. Hence, in so far as the judgments relied by both sides are concerned, there is no cavil with the principles laid down in the same but they are not attracted in the facts and circumstances. It is not necessary that any levy has to be either a fee or a tax. It can have a different genre and as noted above Anti-Dumping Duty is a regulatory measure or otherwise a penalty but by no means tax or a fee.”

13. Argument of the learned counsel for the petitioner regarding violation of the provisions of Competition Commission Act, 2010 is misconceived as the said Act has no link with the instant anti-dumping investigation conducted under the ADD Act. NTC has conducted this investigation on merits and rightly imposed duties in accordance with law. In terms of sub-section (2) of Section 51, the NTC has calculated individual dumping margin for 11 co-operating exporters / foreign producers. In terms of sub-section (6) of Section 51, the NTC applied a residual Anti-Dumping Duty rate for imports from exporters not known to the Commission at the time of final determination at a rate not exceeding a weighed average of individual dumping margins established for exporters and producers examined during investigation, excluding margins

established in accordance with Section 32 of the Act. Petitioner is trying to mix order of initiation with notice of initiation. Once the Commission receives an application from the applicant, the Commission after assessing accuracy and adequacy of the application passes order of initiation and then issues notice of initiation. The NTC only issued one notice of initiation in this investigation on 27.02.2016, which was duly published in the official gazette and newspapers. The NTC made preliminary determination in this investigation on 14.02.2017. Notice of preliminary determination was published in the official gazette of Pakistan and in two widely circulated national newspapers on 15.02.2017. Furthermore, the notice of final determination was published in the official gazette of Pakistan and in two widely circulated national newspapers on 26.08.2017.

14. The next submission of learned counsel for petitioners that Commission was not constituted in accordance with law is also misconceived, so much so the qualification and appointment of the Chairman and Members of the Commission was challenged before this Court and same were found valid within the contemplation of Section 5 of the NTC Act vide judgment dated 31.05.2017, passed in **W.P.No.39536 of 2016** titled Saleem Enterprises v. Federation of Pakistan etc. The said decision was also upheld by Hon'ble Apex Court vide order dated 29.03.2019 passed in **Civil Appeals No.1523 to 1547 of 2017** titled M/s Haseeb and Co. etc. v. Federation of Pakistan, etc.

15. It is re-emphasized that the individual dumping margins have been determined for exporters / foreign producers of the investigated product who cooperated and supplied necessary information and requested for individual dumping margin. Rate of definitive Anti-Dumping Duty for these exporters is determined on the basis of their individual dumping margins. Furthermore, a residual dumping margin and Anti-Dumping Duty rate for all other exporters from the exporting countries, who did not cooperate, is

determined on the basis of best available information in terms of Section 32 of the Act. Even otherwise, inspite of the fact that the impugned law or its provisions have been found intra-vires, petitioner has an alternate remedy available to it under Section 70 of the Act. As per said provision of law, “an interested party” may prefer an appeal to the Anti-Dumping Appellate Tribunal against the initiation, preliminary determination or final determination. It is well-settled that a person must not be permitted to bypass the remedy provided in the relevant statute to invoke the constitutional jurisdiction of this Court under Article 199 of the Constitution. In similar circumstances, this Court vide order dated 24.12.2018, passed in **W.P. No.258627 of 2018** titled M/s Akbar Tube Industries v. Federation of Pakistan, etc., dismissed the petition. For facility of reference, aforesaid order is reproduced hereunder:-

“Through this petition, the Petitioner has challenged the Notice of Final Determination dated 19.01.2017 issued by Respondent No.3, National Tariff Commission on the ground that it is against the statute.

2. At the outset, learned counsel for the Petitioner was confronted on the maintainability of the instant petition on account of the fact that remedy of appeal is available against the impugned Notice of Final Determination. Learned counsel for the Petitioner was unable to show any justification on the basis of which the instant petition is maintainable.

3. Given that the remedy of appeal under Section 70 of the Anti-Dumping Duties Act, 2015 against an affirmative or negative final determination made by the Commission is available to the Petitioner. Hence this Petition is **dismissed in limine.**”

16. Needless to observe here that while examining a law, enacted through legislative process provided under the Constitution, power of the Court was limited to examine whether

the provision of law was repugnant, inconsistent or in conflict with the provisions of the Constitution, whether legislature had legislative competence as envisaged in the Constitution, and whether the legislation violated or abridged fundamental rights guaranteed by the Constitution. This Court is to advance the object and purpose of a statute and try to uphold sanctity of legislative intent by adopting a purposive approach, not to defeat the same. A statute, being edict of the legislature, must be interpreted to seek intention of maker. Courts cannot sit in judgment over the wisdom of the legislature, except on two grounds on which the law laid down by the legislature can be struck down by the Courts, namely, lack of legislative competence and violation of any of the fundamental rights guaranteed in the Constitution or of any other Constitutional provision. It is well settled that where validity of a statute or provision thereof, is questioned and there are two interpretations, one which makes the law valid, is to be preferred over the other, which will render it void. The criteria before the Court, for determining the vires of a provision of law, is that the Court must be able to hold beyond any iota of doubt that violation of the Constitutional provisions was so glaring that the legislative provision under challenge could not stand. Without such violation of Constitutional provisions, the law made by the Legislature, cannot be declared bad. Reference, in this regard, is made to State of M.P. v. Rakesh Kohli and another (2013 SCMR 34), Messrs A.F. Ferguson & Co. through Partner and 49 others v. Pakistan through Secretary, Revenue Divisional Chairman, Islamabad and 3 others, (2020 PTD 27), Rafaqat Hussain v. Asifa Altaf and others (2019 MLD 194), Messrs Attock Gen Ltd. v. Additional Commissioner (Audit), Large Taxpayer Unit, Islamabad and 3 others (2019 PTD 692) and Badshah Gul Wazir v. Government of Khyber Pakhtunkhwa and others (PLD 2014 Peshawar 210). Motive of the Legislature, in passing a statute or its provision thereof, is beyond any scrutiny of Courts nor can the Courts

examine whether the Legislature had applied its mind to the provisions of a statute before passing it. Propriety, expediency and necessity of a law are to be determined by the legislative authority and not by the Courts.

17. In view of the above discussion, instant as well as the connected petitions are **dismissed** with no order as to costs.

(Muhammad Sajid Mehmood Sethi)
Judge

Announced in open Court on 24.04.2020.

Judge

APPROVED FOR REPORTING

Judge

* A.H.S / Sultan *