

Present:

Mr. Justice Mohammad Bazlur Rahman  
and  
Mr. Justice Md. Ruhul Quddus

Customs Appeal No. 87 of 2008

BUREAU VERITAS (BIVAC) Bangladesh Ltd.  
... Appellant

-Versus-

Customs Excise and Vat Appellate Tribunal, Dhaka and  
others  
... Respondents

Mr. M. A. Azim Khair with Mr. Md. Iqbal Hossain  
Advocates  
... for the Appellant

Mr. Goutam Kumar Roy, Deputy Attorney General with Mr.  
Protikar Chakma, Assistant Attorney General  
í for the respondent

Judgment on 24.04.2013

*Md. Ruhul Quddus, J:*

This appeal under section 196D of the Customs Act, 1969 at the instance of Bureau Veritas Bangladesh Ltd., a Pre-shipment Inspection Agent, has been preferred against judgment and order dated 08.07.2008 passed by the Customs, Excise and VAT Appellate Tribunal, Dhaka in an appeal being No.CEVT/Case/(Cus)-416/2003 dismissing the same and thereby affirming order No.252 dated 01.04.2003 passed by the Commissioner of Customs, Chittagong.

Facts giving rise to the appeal, in brief, are that the proforma-respondent M/S Dysin Chemical Ltd. imported some finishing agent for textile industries

from Taiwan. The appellant, a pre-shipment inspection agent, after holding inspection issued clean report of findings (CRF) certificate being No. BDH 2002 12796 IC dated 14.10.2002 certifying the goods to have been fallen under H.S. Code No. 3809.91.00.

On submission of bill of entry (being No.C 1442 dated 29.10.2002) for releasing the goods, the Customs authority raised objection regarding its H. S. Code taking the plea that the commercial description of the goods was 'acrylic polymer in primary form' classified actually under H. S. Code No.3906.90.00. Subsequently the Customs authority issued notice dated 12.01.2003 asking the appellant to show cause as to why action should not be taken against it for certifying wrong H. S. Code against the imported goods causing loss of revenue to the Government. The appellant by letter dated 26.01.2003 replied the notice asserting that the CRF certificate and the H. S. Code mentioned therein were correct. The said reply was accompanied by a chemical analysis report showing that the ingredients of the imported goods were of finishing agent for textile industries.

On receipt of the reply and after hearing the parties, the Commissioner of Customs, Chittagong passed order No.252 dated 01.04.2003 imposing penalty of Taka 1,00,000/= (one lac) only to be paid by the pre-shipment inspection agent (herein appellant) purportedly under article 10 (2) (3) of the Pre-shipment Inspection Order, 1999. The Commissioner of Customs passed the order mainly on the reason of wrong quoting of H.S. Code against the imported goods.

The appellant preferred an appeal being No. CEVT/Case/(Cus)-416/2003 before the Customs, Excise and VAT Tribunal, Dhaka under section 196A of the Customs Act challenging the aforesaid order dated 01.04.2003. The Appellate Tribunal after hearing the parties dismissed the appeal and thereby affirmed the original order by its judgment and order dated 08.07.2008, which is impugned herein.

Mr. M. A. Azim Khair, learned Advocate appearing for the appellant submits that the Customs authority without holding any chemical examination or laboratory test held that the imported goods in question was acrylic polymer and fell under H. S. Code No.3906.90.00, which was absolutely wrong. Although the Customs authority served a show cause notice, passed the impugned order without considering the reply dated 26.01.2003 made by the appellant and the chemical analyses report attached therewith. Moreover, the allegation that the commercial description of the imported goods was of acrylic polymer does not lend support from the First Schedule of the Customs Act as well as the relevant column of the CRF certificate.

On the other hand Mr. Gautam Kumar Roy, learned Deputy Attorney General appearing for the respondent submits that the Appellate Tribunal as well as the Commissioner of Customs in passing their respective orders considered the documents available on records. There is no illegality in the impugned orders which can be interfered with by this Court sitting in virtually a second appeal.

We have considered the submissions of the learned Advocates and gone through the records. The goods in question have been described in clause 12,

items 3 and 4 of the CRF certificate. For better appreciation, the relevant portion of the certificate relating to descriptions of the goods are quoted below:

<i>12. Detailed Report of Goods Inspected:</i>						
<i>Item</i>	<i>Description of Goods As Per First Schedule &amp; Remarks</i>	<i>Commercial Description (brand no., model no., art no., chemical or physical property if necessary etc.)</i>	<i>Quantity</i>	<i>Quality</i>	<i>H.S. Code</i>	<i>CIF Value</i>
0001	-	-	-	-	-	-
0002	-	-	-	-	-	-
0003	<i>Finishing Agents, dye carriers to accelerate the dyeing or fixing of dye-stuffs and other products and preparations (for example, dressings and mordants,) of a kind used in the Textile, Paper, Leather or like Industries, not elsewhere specified or included. Other: of a kind used in the Textile or like Industries.</i>	<i>Fixing agent for textile industries, genefix nerf.</i>			38099100	
0004	<i>Finishing Agents, dye carriers to accelerate the dyeing or fixing of dye-stuffs and other products and preparations (for example, dressings and mordants), of a kind used in the Textile, Paper Leather or like Industries, not elsewhere specified or included. Other: of a kind used in the Textile or like Industries</i>	<i>Genefix nert-n</i>			38099100	

Nowhere in the CRF certificate particularly in commercial description of the goods, the word 'acrylic polymer' is mentioned or its description in any manner is given. The First Schedule of the Customs Act, wherein H. S. Code number, description and tariff of the goods are mentioned does also not support the allegation raised against the appellant. Neither the Appellate Tribunal nor the Commissioner of Customs in passing their respective orders did consider

the reply made by the appellant or assigned any reason as to how the description of the goods does not match with the H.S Code mentioned. We, therefore, do not find any legal and reasonable basis for imposition of penalty upon the pre-shipment inspection agent allegedly for giving wrong description or certifying wrong H. S Code of the imported goods.

In view of the above, we find substance in the appeal. Accordingly, the customs appeal is allowed. The impugned judgment and order dated 08.07.2008 passed by the Customs, Excise and VAT Appellate Tribunal, Dhaka in Appeal No.CEVT/Case/(Cus)-416/2003 dismissing the same and affirming order No.252 dated 01.04.2003 of the Commissioner of Customs, Chittagong is set aside.

Communicate the judgment and send down the records.

Mohammad Bazlur Rahman, J:

I agree.