

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO.8441 of 2021

IN THE MATTER OF:

An application under Article 102 of the
Constitution of the People's Republic of
Bangladesh

And

IN THE MATTER OF:

***Regent Energy and Power Limited and another
... Petitioner.***

-vs-

***Customs, Excise and VAT Appellate Tribunal,
Dhaka and others.***

... Respondents.

And

Ms. Farzana Khan, Advocate for
Mr. Ahsanul Karim, Senior Advocate
... For the Petitioner.

Mr. Samarendra Nath Biswas, D.A.G. with
Mr. Md. Abul Kalam Khan (Daud), A.A.G. with
Mr. Md. Modersher Ali Khan (Dipu), A.A.G.
....For the Respondents-government.

***Heard on 09.01.2024 and
judgment on:17.01.2024***

Present:

Mrs. Justice Farah Mahbub.

And

Mr. Justice Muhammad Mahbub Ul Islam

Farah Mahbub, J:

This Rule Nisi was issued under Article 102 of the Constitution of the
People's Republic of Bangladesh, calling upon the respondents to show cause
as to why the impugned order dated 16.06.2021 passed by the respondent
No.1 in Customs Appeal No.170 of 2021 under Nothi No. CEVT/ Case

(Cus)-170/2021/1048 dated 16.06.2021 (Annexure-A) summarily dismissing the appeal filed by the respondent concerned on the ground of limitation, should not be declared to have been passed without lawful authority and hence, of no legal effect.

At the time of issuance of the Rule, the respondents concerned were directed to maintain *status-quo* in respect of encashment of bank guarantee bearing No.MBL/AGRA/BG/08/2020 dated 23.02.2021 maintained with the respondent No.3 Bank, for a prescribed period.

In view of the statements so made in the writ petition, Ms. Farzana Khan, the learned Advocate appearing for the petitioner submits that the petitioner filed Customs Appeal No.170 of 2021 under Section 196A of the Customs Act, 1969 challenging the final assessment dated 01.02.2021, which was communicated to the petitioner No.1 on 23.03.2021 i.e., 31 days after passing the impugned order. Consequently, while preferring the appeal a delay of 1(one) month and 19(nineteen) days have occurred. Accordingly, she prays for interference in the matter by giving necessary direction upon the Tribunal concerned to hear the appeal on merit upon condoning the delay, for the cause of justice and equity since because of dismissal of the appeal the petitioner has now become non-suited.

Mr. Md. Abul Kalam Khan (Daud), the learned Assistant Attorney General appearing for the respondents-government submits that challenging the adjudicating order passed by the Commissioner concerned an appeal before the Tribunal is required to be preferred within the statutory prescribed period as provided under Section 196A of the said Act. In the instant case, the petitioner has admittedly caused delay in preferring the said appeal. Hence, the order of dismissal of the appeal

preferred by the petitioner as being barred by limitation cannot be termed as an order passed without lawful authority. Accordingly, he submits that this Rule is liable to be discharged.

It is an admitted position of facts that challenging the impugned order dated 22.02.2021 passed by the respondent No.2 under Nothi No.৫-কাস-১২(৪৩৭১)প্রপ-৪/২০১৯/২২৮৩(৭), the petitioner preferred Customs Appeal No. 170 of 2021 under Section 196A of the Customs Act, 1969. However, in preferring the appeal before the Tribunal a delay of 1(one) month and 19(nineteen) days has occurred due to the reason as stated therein. The Tribunal concerned ultimately dismissed the appeal having not been convinced about the cause of delay so has occasioned while preferring the appeal.

The power to condone the delay by the Tribunal is discretionary. However, taking into consideration of the facts that for dismissal of the appeal the petitioner has become non-suited, and also, considering justice, equity and fair play we are inclined to interfere in the instant matter.

In the result, the Rule is made absolute without any order as to costs.

The impugned order dated 16.06.2021 passed by the respondent No.1 in Customs Appeal No.170 of 2021, under Nothi No. CEVT/ Case (Cus)-170/2021/1048 dated 16.06.2021 (Annexure-A) is hereby declared to have been passed without lawful authority and hence, of no legal effect.

Accordingly, the Customs, Excise and VAT Appellate Tribunal, Dhaka, respondent No.1 is hereby directed to hear the Customs Appeal No.170 of 2021, under Nothi No.CEVT/ Case (Cus)-170/2021/1048 dated 16.06.2021 (Annexure-A) on merit in accordance with law, preferably within 3(three) months from the date of receipt of the copy of the judgment

and order provided the Bank guarantee in question so has been furnished by the petitioner covers the requirement as provided under Section 194 (1) of the Act, 1969.

However, the respondent concerned is hereby directed to maintain *status-quo* with regard to the bank guarantee in question till disposal of the said appeal.

Communicate the judgment and order to the respondents concerned at once.

Muhammad Mahbub Ul Islam, J:

I agree.