

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

Present

Mr. Justice Md. Iqbal Kabir

And

Mr. Justice Md. Akhtaruzzaman

CUSTOMS APPEAL NO. 386 OF 2019

IN THE MATTER OF:

An Appeal under section 196D of the Customs Act, 1969.

AND

IN THE MATTER OF:

Commissioner of Customs, Customs Bond
Commissionerate, 342/1, Segunbagicha, Dhaka.

..... Appellant.

-VERSUS-

Customs, Excise and VAT Appellate Tribunal, Jiban
Bima Bhaban (3rd floor), 10 Dilkusha Commercial Area,
Dhaka and another.

..... Respondents.

Mr. Elin Imon Saha, Assistant Attorney General.

..... For the Appellant.

Mr. Md. Munshi Moniruzzaman with
Mr. Nahid Sultana Jenny, Advocates.

..... For the Respondent No. 2.

Heard on 25.04.2024.

Judgment on: 30.07.2024.

Md. Akhtaruzzaman, J.

This Appeal under section 196D of the Customs Act, 1969 is directed against the judgment and order dated 06.08.2019 under Nathi No. CEVT/CASE(CUS)-38/2019/1189 dated 25.08.2019 passed by the Customs, Excise and VAT Appellate Tribunal (Respondent No. 1) allowing the appeal partly and reversing the Order No. 8/Bond Circle-02/2019 dated 09.01.2019 passed by the Commissioner, Customs Bond Commissionerate, Dhaka.

Facts, relevant for disposal of this appeal, in a nutshell are that on the basis of secret information a preventive team of customs authority initiated an investigation in the bonded warehouse of respondent No. 2 M/S Hossain

Dying and Printing Mills Limited, Pagar, Tongi, Gazipur who illegally removed the raw materials imported violating the provisions of sections 13(1), 86, 97 and 114 of the Customs Act, 1969 read with the conditions of bond license as well as the provisions of Bonded Warehouse Licensing Rules, 2008. It is further contended that the assessable value of illegally removed raw materials is Tk. 23,81,00,302.90 and imposable duties and taxes on it is Tk. 4,19,55,757.78. Thereafter, the appellant on 25.09.2018 made a demand for the said amount along with a show cause notice upon the respondent No. 2. The respondent No. 2 on 11.10.2018 submitted a written reply contending submitted that they have lost as well as misplaced some of the documents of the imported raw materials for which the occurrence was happened. It is further stated in the written reply that by this time, they have already paid Tk. 4,19,55,757.21 into the government treasury and they have promised not to commit such types of wrong in future. Eventually, on 11.11.2018 a hearing was held wherein the Managing Director of the Respondent No.2 took part. The Commissioner of Customs observed that since respondent No.2 admitted its guilt for doing wrong and since the said occurrence took place by them for the first time, as such, the customs authority imposed Tk. 2,00,00,000.00 as penalty under section 156 and Clause 1 and 90 of the schedule annexed to the Custom Act, 1969 vide order dated 06.01.2019.

Being aggrieved by and dissatisfied with the said judgment and order dated 09.01.2019 passed by the Commissioner of Customs, the Respondent No.2 preferred an appeal before Respondent No.1 which was registered as CEVT/CASE(CUS)-38/2019/2 and after hearing the appeal, the Tribunal

allowed the same in part on 06.08.2019 by reversing the order of the Commissioner of Customs dated 09.01.2019.

Being aggrieved by the said judgment and order passed by the Tribunal the customs authority preferred this appeal contending *inter alia* that the Tribunal has failed to appreciate the evidences and materials on record and illegally passed the impugned judgment and order which is liable to be set aside.

Mr. Elin Imon Saha, the learned Assistant Attorney General appearing for the appellant submits that the Tribunal has failed to conceive and consider that respondent No. 2 most illegally and deliberately removed the imported goods outside the bonded warehouse in violation of Section 13, 86, 97 and 114 of the Customs Act read with the relevant provisions of the Bonded Warehouse Licensing Rules, 2008 which is punishable under section 156 of the Customs Act. Mr. Saha further submits that the Tribunal below has failed to consider that Respondent No. 2 had failed to produce any proper documents and legal permission against the short founded raw materials and subsequently they have confessed to their fault at the time of hearing of the appeal, but the Tribunal without taking into consideration of the materials illegally passed the impugned judgment and order which is liable to be set aside.

On the other hand, Mr. Md. Munshi Moniruzzaman with Ms. Nahid Sultana Jenny, the learned Advocates appearing for the respondent No. 2 submits that respondent No. 2 did not commit any wrong but due to misplacing of some documents the occurrence was held. The learned Advocate submits that the respondent No. 2 has already realized Tk.

4,19,55,757.21 to the government treasury through Chalan but Commissioner of Customs vide Order dated 09.01.2019 most illegally imposed Tk. 2,00,00,000/-(two crore) as penalty against which they filed an appeal before the Tribunal below and the Tribunal upon hearing the parties partly allowed the appeal reducing the fine and imposed Tk. 15,00,000/- (fifteen lac) instead of Tk. 2,00,00,000/- (two lac) to be paid by the respondent No. 2. Mr. Moniruzzaman finally submits that the Tribunal with a meticulous observations had allowed the appeal in part but the appellant without cogent grounds preferred the appeal which is liable to be dismissed. In support of his submission, the learned Advocate put reliance on the decision reported in 26 BLD (HC) 471.

Heard the submission put forward by the learned Advocates of both the sides and perused the impugned judgment and order along with relevant laws. Admittedly, Respondent No. 2 legally obtained the bonded warehouse license from the proper authority and has been duly exporting goods upon importing raw materials and paying government revenues regularly. On the disputed matter respondent No. 2 admitted that they have no intention to conceal the documents of the imported goods but those were mistakenly displaced. It is further admitted that they have paid the customs duties with an amount of Tk. 4,19,55,757,78/- timely. In spite of that the Commissioner of Customs vide its order dated 09.01.2019 imposed Tk. 2,00,00,000/- as fine upon them against which they had preferred an appeal before the Tribunal and the Tribunal upon taking hearing from the respective parties vide judgment and order dated 06.08.2019 revised the order passed by the Commissioner of Customs and allowed the appeal in part imposing Tk.

15,00,000/- (fifteen lac) as fine. Being aggrieved by the said judgment and order passed by the Tribunal the customs authority preferred the instant appeal.

On perusal of the impugned judgment and order passed by the Tribunal below it appears that the Tribunal has taken into consideration of the business performance of the respondent No.2, its conduct in realization of customs duties and other activities and thereafter passed the impugned judgment and order. The relevant portion of the said judgment is reproduced below:

“ট্রাইবুনাল পর্যালোচনায় আরো দেখতে পায় যে, আপীলকারী প্রতিষ্ঠান বন্ড সুবিধায় আমদানিকৃত কাঁচামাল/উপকরণ দিয়া তৈরী পণ্য যথারীতি রপ্তানি করা হয়েছে এবং আপীলকারী প্রতিষ্ঠানের নিকট দাবীকৃত পাওনা কারণ দর্শানো নোটিশ জারীর পূর্বে পরিশোধ করা হয়েছে। সুতরাং আপীলকারীর নিকট সরকারের সকল প্রাপ্যতা বাবদ ৪,১৯,৫৫,৭৫৭.৭৮ টাকা (চার কোটি উনিশ লক্ষ পঞ্চাশ হাজার সাতশত সাতান্ন দশমিক সাত আট) টাকা পরিশোধিত যা বিজ্ঞ কমিশনারের জারীকৃত আদেশে উল্লেখ করা হয়েছে। সুতরাং সরকারের কোন রাজস্ব ক্ষতি হয়নি, তবে রাজস্ব হানির যেহেতু সম্ভবনা ছিল যা আপীলকারী প্রতিষ্ঠানের সংশ্লিষ্ট বাণিজ্যিক কর্মকর্তার নিকট হইতে আমদানিকৃত পণ্য চালানোর ডকুমেন্টস Misplaced হওয়া এবং অজ্ঞতা বশতঃ আইএম-৪ এর মাধ্যমে আমদানিকৃত পণ্যের এটিভি পরিশোধ করা হয় নাই বলে উল্লেখ করেছেন।

ট্রাইবুনাল পর্যালোচনায় আরো দেখতে পায় যে, প্রতিষ্ঠানটি নিয়মিত সরকারী ভ্যাট প্রদান করে আসছে। ইতোপূর্বে প্রতিষ্ঠানের বিরুদ্ধে এরূপ কোন মামলা হয়নি। তাছাড়া তর্কিত মামলার ক্ষেত্রে ২০১৭-১৮ অর্থ বছরে আপীলকারী ১৮,১৪৩,৮৮০.১৪ মার্কিন ডলার রপ্তানি করেছেন, এছাড়া আপীলকারীর পূর্বের রপ্তানির কাগজপত্র পর্যালোচনায় দেখা যায় যে, ২০১৩-১৪ অর্থ বছরে ১৭,৩৭৪,০১৮.১৩ মার্কিন ডলার, ২০১৪-১৫ অর্থ বছরে ১৬,১৯৬,১২৯.৩৩ মার্কিন ডলার, ২০১৫-১৬ অর্থ বছরে ১৫,২৭৭,০৬০.০২ মার্কিন ডলার, ২০১৬-১৭ অর্থ বছরে ১৪,৮৯১,০৬৮.৮০ মার্কিন ডলার এবং তর্কিত সময়ের পরে অর্থাৎ ২০১৮-১৯ অর্থ বছরে-১৫,৪৫০,৫৩৮.৭১ মার্কিন ডলার রপ্তানি করেছেন যা আপীলকারীর দাখিলকৃত রপ্তানি ডকুমেন্ট থেকে দেখা যাচ্ছে।

যেহেতু এটি তাদের প্রথম অপরাধ, সেহেতু কাস্টমস আইনের বিধান লংঘনের দায়ে আইন এর নিদিষ্ট ধারার (বিশেষত ধারা ১৫৬(১) এর দফা ৯০] আওতায় আপীলকারী প্রতিষ্ঠানের উপর আরোপিত দণ্ড কঠোর (Harsh) বলে ট্রাইবুনালের নিকট প্রতীয়মান হয়েছে। সেক্ষেত্রে আরোপিত দণ্ড এর অংক ২,০০,০০,০০০/- (দুই কোটি) টাকা হতে হ্রাস করে ১৫,০০,০০০/- (পনের লক্ষ) টাকা দণ্ড আরোপ করা হলে ন্যায় বিচার নিশ্চিত হবে এবং তা আইনানুগ ন্যায্যানুগ হবে বলে ট্রাইবুনাল মনে করে। উল্লিখিত আলোচনা ও পর্যবেক্ষণ এর ভিত্তিতে অত্র ট্রাইবুনাল এই সিদ্ধান্তে উপনীত হয় যে, বিজ্ঞ

কমিশনার, কাস্টমস বন্ড কমিশনারেট, সেগুনবাগিচা, ঢাকা-১০ কর্তৃক প্রদত্ত তর্কিত আদেশটি হাটু
ক্ষিপযোগ্য।”

In the case of *M/S Diplomat Garment (Pvt.) Ltd. v. The Commissioner of Customs, Customs House, Dhaka and others* reported in 26 BLD (HCD) 471 it has been observed by a Division Bench of this Court that

“In determining the issue whether the goods imported under back to back without payment of customs duty were exported & negotiation amount reimbursed to Bangladesh, there is prima facie proof of the use and export of the materials imported in due course, the allegation of avoidance in payment of duty, tax and other charges, do not stand and is without any basis. As it appears that the petitioner company has exported the goods in reference and the Sonali Bank has confirmed the realization of the bill amount relating to the export”

We have meticulously scrutinized the judgment and order passed by the Tribunal along with the relevant laws and case laws submitted by the respective parties. On going through the judgment and order it appears that the impugned judgment is self speaking which is based on legal foundation. It needs no interference by this Court. Accordingly, we are of the view that the appeal is liable to be dismissed.

In the result, the Appeal is dismissed without any order as to costs.

The judgment and order dated 06.08.2019 passed by the Customs, Excise and VAT Appellate Tribunal (Respondent No. 1) is affirmed.

The Respondent No. 2 is hereby directed to deposit Tk. 15,00,000/- (fifteen lac) as contained in the impugned judgment and order within 15(fifteen) days from the date of receipt of this judgment in accordance with law.

Communicate this judgment and order at once.

Md. Iqbal Kabir, J.

I agree.