

**17 SCOB [2023] HCD 82**

**HIGH COURT DIVISION  
(STATUTORY ORIGINAL JURISDICTION)**

**Admiralty Suit No. 92 of 2016**

**Chattogram Dry Dock Ltd  
....Plaintiff  
Vs.  
M.T. Fadl-E-Rabbi (IMO No. 9078177)  
and others  
.... Defendants**

Mr. Kamal-UI Alam, Senior Advocate  
with  
Mr. Golam Arshed and  
Ms. Shahnaj Akhtar Advocates  
... For the Applicant  
(Auction purchaser)  
Ms. Kazi Zinat Haque, DAG  
...For the Customs-Authority

Mr. Saifur Rashid, Advocate  
..... For the Plaintiff  
Mr. Md. Belayet Hossain, Advocate  
....For the Defendants

**The 16<sup>th</sup> April, 2019**

**Present:**

**Mr. Justice Muhammad Khurshid Alam Sarkar**

**Editors' Note:**

**The plaintiff (the applicant-auction purchaser) was the highest bidder of the auction-sold vessel who prayed for an order from the High Court Division for a direction to the Marshall of the Court to deliver the auction-sold vessel to him without payment of any customs duties and VAT. He claimed that previously the Assistant Commissioner of Customs of Chattogram had informed that there was no scope for assessing custom duties against the said vessel and, as such he is now barred by estoppel to demand any custom duties. Moreover, for claiming custom duties on a foreign vessel ordered by the Court to be sold as scarp, Bill of Entry is required. The High Court Division, however, analyzing sections 18, 23, 43, 44, 45, 51, 52, 53 and 79 of Customs Act and relevant provisions of the Import and Export Act held that when a foreign vessel is brought into or comes in Bangladesh, with or without Bills of Entry, it is dutiable. Consequently, the rule is discharged with the direction to take delivery of the vessel upon payment of the customs duties and other Government dues.**

**Key Words:**

Estoppel; Customs Duty; Bill of Entry; Imported goods; Section 115 of the Evidence Act, 1872; Section 18, 23, 43, 44, 45, 51, 52, 53 and 79 of the Customs Act, 1969; Section 2(c), 3(1) and 3(2) of the Imports and Exports (Control) Act, 1950

**The meaning of estoppel:**

**The meaning of estoppel that this Court finds from the statute book and Black's Law Dictionary is that a party is prevented by his own acts from claiming a right to the detriment of the other party who was entitled to rely on such conduct and has acted accordingly.**

**(Para 17)**

The logical question that arises in this circumstance is that if the auction-purchaser wants to employ the doctrine of estoppels as a shield on the ground of non-mentioning of the payment of customs duties in the auction notice, then, resorting to the same doctrine, he should not have paid off all other dues, taxes and charges, such as sale tax, Port dues and wage men's charges which were also not mentioned in the auction notice published in the newspapers. The true scenario, as surfaces from the conducts of the auction-purchaser and from the explanations received from the team of Marshall, is that it was notified to all the bidders that they were at liberty either to submit their proposal agreeing with these "Further Conditions" or they might abstain from submitting their proposals. Therefore, it is amply clear to me that upon accepting the above conditions, all the bidders have participated in the bid and this applicant became the highest bidder upon agreeing with and accepting the condition that customs duties and other Government dues are to be paid off on top of his offer of Taka 8,50,00,000/-. More so, on 10.07.2018, since the offer of the highest bidder was accepted and confirmed by this Court subject to the payment of all the Government tax, duties and charges, and given the fact that the auction-purchaser (applicant) received this Court's aforesaid Order dated 10.07.2018 without raising any objection thereto, the auction-purchaser evidently had reconfirmed his position that he was purchasing the vessel upon agreeing with the conditions of payment of all the Government dues and, that is how, he had waived his right to question about payment of Government dues, which includes customs duties.

(Para-19)

**Section 23 Customs Act 1969:**

The marginal note of the above law includes not only 'goods' .... 'wreck', but also 'ETC', meaning that if any foreign thing/object, whether it is goods or something else, comes into Bangladesh, it shall be considered as "imported goods". In the light of admitted fact that the goods in question (the vessel) has come into Bangladesh from a foreign country, it shall be considered as "imported goods" at the time of its sale/transfer, as per the provisions of Section 23 of the Customs Act.

(Para 26)

**Sections 18, 23, 43, 44, 45, 51, 52, 53 and 79 of Customs Act 1969:**

From a careful examination of the relevant provisions of the Customs Act, namely, Sections 18, 23, 43, 44, 45, 51, 52, 53 and 79 and relevant provisions of the Import and Export Act, it leads me to hold that when any foreign thing, object, goods, which would include a foreign vessel, is brought into or comes in Bangladesh, be it without or with Bills of Entry, it is dutiable, as per the prevailing rate prescribed in the Bangladesh Customs Tariff, if the same is picked up/collected/arrested for the purpose of home consumption, warehousing, selling to local or foreign national/country or for any other lawful purpose.

(Para-28)

**Advocates should not expect detailed Judgment on the side-issue of a suit/matter, which is already well-settled by the Apex Court**

While an Advocate would be seen by this Court to be fully justified in receiving a detailed Judgment on finishing hearing of a suit or any other original substantive matter (such as Admiralty Suit, Writ Petition, Company Matter) even if the Court expresses its views dismissing the suit/discharging the Rule, however, as an officer of the Court, an Advocate is expected to assist this Court in saving its time by non-prosecuting an interlocutory application, when the same would be found by the Court without any substance after affording the opportunity of placing the arguments at length. It is to be borne in mind by the learned Advocates that since the number of Judges of this country are very negligible in comparison to the case-load, it has become very difficult for the

**learned Judges of this country to dispose of the substantive suit/matters and, therefore, the learned Advocates should not expect detailed Judgment on the side-issue of a suit/matter, which is already well-settled by the Apex Court of our jurisdiction.**

**(Para-30)**

## **JUDGMENT**

**Muhammad Khurshid Alam Sarkar, J:**

1. This application has been filed by the highest bidder of auction-sold vessel MT FADL-E-RABBI (hereinafter, the aforesaid highest bidder would be referred to as either ‘the applicant’ or ‘the auction purchaser’ or ‘the applicant-auction purchaser’) challenging the legality and propriety of the claim of customs duties and VAT of an amount of Taka 64,68,025/- by the Chattogram Customs Authority from the applicant. The applicant further prays for an Order from this Court directing the Marshall of this Court to deliver the auction-sold vessel M.T. FADL-E-RABBI (defendant no.1 of the suit) to the applicant without payment of any customs duties and VAT.

2. The background facts against which the instant application arises are as follows: the plaintiff filed this Admiralty Suit No. 92 of 2016 against the defendant no. 1-vessel (M. T. FADL-E-RABBI, IMO No. 9078177 flying Panama flag and currently lying at the Dry Dock, Chattogram Port) and its owners praying for a decree for recovery of its dry docking charges amounting to Taka 6,76,01,325/- with interest thereon @ 20% per annum. On the application of the plaintiff, the defendant no. 1-vessel (M.T. FADL-E RABBI) was arrested on 12.12.2016. Thereafter, as per this Court’s Order dated 30.05.2017, which was passed pursuant to the plaintiff’s application, the Marshall prepared and submitted on 02.07.2017 an inventory of the defendant no. 1-vessel (M.T. FADL-E-RABBI) for auction-sale of the same. Subsequently, in response to this Court’s Order dated 01.11.2017, the Chattogram Port Authority by their letter dated 05.02.2018 informed the Court that a sum of Taka 1,23,200/- was due up to 04.02.2018 as Watchman Charges and by letter dated 08.11.2017 a further information was passed onto this Court by the Chattogram Port Authority that a sum of Taka 53,17,627/59 was due up to 10.11.2017 as Port dues. Later on, the Assistant Commissioner of Customs of Chattogram vide its letter dated 09.11.2017 informed this Court that there was no scope to assess the customs duties of the said defendant no. 1-vessel (M.T. FADL-E-RABBI) at that stage.

3. It is stated in the application that with the above information and preparation, the auction notice for sale of the defendant no. 1-vessel (M.T. FADL-E-RABBI) was published in the Newspapers on 26.05.2018 in the Daily Financial Express and Daily Purbokon without containing any terms for payment of any outstanding customs duties. It is further stated that placing full reliance on the said auction notice, the applicant (auction-purchaser) submitted his auction bid on 29.05.2018 and became the highest bidder and, subsequently, in response to the proposal made by the auctioneer, agreed to enhance his auction bid to Taka 8,50,00,000/-. Then, the same was accepted and confirmed by this Court vide Order dated 10.07.2018 with direction upon the Marshall of this Court to deliver possession of the auction-sold vessel subject to payment of all encumbrances, charges etc, if any, in respect of the said vessel. Thereafter, in response to the Marshall's letter dated 12.07.2018 for realization of outstanding customs duties and charges, if any, and to issue a No Objection Certificate (NOC) against the defendant no. 1-vessel, the Assistant Commissioner of Customs, Chattogram informed the Marshall vide her letter dated 23.07.2018 that there was no scope

for the customs authority to claim duty as the vessel had not been presented before them for assessment of duties. After receiving the aforesaid letter, the Marshall issued the sale certificate of the auction-sold defendant no. 1-vessel (M.T. FADL-E-RABBI) on 26.07.2018. Subsequent thereto, the Marshall of the Court by letter dated 29.07.2018 asked the auction purchaser to take delivery of the auction-sold defendant no. 1-vessel at 11am on 01.08.2018 at Bandar Bhaban.

4. It is stated in the application that the Assistant Commissioner of Customs, Chattogram suddenly took a U-turn and vide her letter dated 30.07.2018 informed the Marshall of the Court that since the defendant no. 1-vessel (M.T. FADL-E-RABBI) flying a foreign flag had been auction-sold by this Court, the same, as scrap-vessel having LDT 2771 MT, is liable to be assessed for custom duties under HS Code no. 8908.00.00 of the First Schedule to the Customs Act, 1969 (hereinafter, referred to as the Customs Act) and the same has been assessed accordingly at a total amount of Taka 64,48,025/-. The Assistant Commissioner of Chattogram Customs House in the aforesaid letter requested the Marshall for taking steps directing the auction-purchaser to obtain NOC upon due payment of the said amount of customs duties with a note that the earlier related memo dated 23.07.2018 issued by the customs authority had been withdrawn.

5. Against the auction purchaser's instant application, the defendant no. 9 (Commissioner of Customs, Chattogram) filed an affidavit-in-opposition contending, *inter alia*, that in response to the letter dated 12.07.2018 of the Registrar General of the Supreme Court (the Marshall of the Admiralty Court), initially, the Assistant Commissioner of Customs, Chattogram on behalf of the Commissioner of Customs, Chattogram vide letter dated had 23.07.2018 mistakenly informed the Marshall that though an order had been passed by the Court for assessing the customs duties, but it was not being possible to assess the customs duties because of non-presentation of the vessel before the customs authority. It is stated that by a subsequent letter dated 30.07.2018, the earlier memo dated 23.07.2018 had been withdrawn having informed the Marshall that since the defendant no. 1-vessel (M.T. FADL-E-RABBI) is a foreign vessel and has been auction-sold by this Court, the same is leviable as scrap-vessel having LDT 2771 MT and is to be assessed for customs duties against HS Code no. 8908.00.00 as specified in the First Schedule to the Customs Act. By the aforesaid letter, the customs authority claimed a total amount of Taka 64,48,025/- and requested the Marshall for taking steps directing the auction purchaser to obtain NOC upon payment of the said amount of customs duties.

6. Having found the above inconsistent position of the Chattogram Customs Authority, this Court issued a show cause notice upon the Assistant Commissioner of Customs, Chattogram, seeking an explanation as to why she had previously informed this Court's Marshall that there was no scope for assessing customs duties against the vessel at the relevant time. In response to this Court's aforesaid show cause notice dated 08.08.2018, the Assistant Commissioner of Customs, Chattogram vide letter dated 12.08.2018 expressed unconditional apology to this Court claiming that it was a bonafide mistake on part of a junior officer.

7. Mr. Kamal-Ul Alam, the learned Senior Advocate, makes his first submission on the doctrine of estoppels. He takes me through (i) the letter written by the Assistant Commissioner of Customs, Chattogram dated 09.11.2017, (ii) the auction notice for sale of the defendant no. 1-vessel published in the newspapers on 26.05.2018 and, side by side, (iii) the letter dated 30.07.2018 issued by the Chattogram Customs Authority, and submits that

since by the earlier letter 09.11.2017 the customs authority had informed the Court's Marshall that no customs duty was due against the defendant no.1-vessel and since in the auction notice no term for payment of any outstanding customs duties on the defendant no. 1-vessel was disclosed, the applicant placing full reliance thereon submitted his auction bid, which having been accepted and confirmed by this Court the sale certificate was issued by the Marshall, the Assistant Commissioner of Customs, Chattogram was not justified in law and equity in subsequently issuing the impugned memo dated 30.07.2018 for the first time disclosing that the defendant no. 1-vessel flying a foreign flag having been sold in auction by this Court the same as scrap vessel was liable to be assessed for customs duties, inasmuch as any such claim by the Chattogram Customs Authority would be hit by doctrine of estoppels. In elaborating his submissions on the doctrine of estoppels, he argues that once the customs authority has issued the letter dated 09.11.2017 and, also, the letter dated 23.07.18 stating that there is no dues in respect of the ship M.T. Fadl-E-Rabbi, the customs authority is estopped under Section 115 of the Evidence Act, 1872 (shortly, the Evidence Act) from claiming any customs duties from the importer or the auction purchaser as the importer (vessel owner) or the auction purchaser acted upon the assurance given by the customs authority cannot retrace its steps and ask for duty, as claimed by them by the subsequent letter dated 30.7.2018. In support of his submissions, he refers to the case of Collector of Customs, Chattogram Vs A. Hannan reported in 42 DLR (AD) 167 and the case of Guzrat Estate Financial Corporation Vs Messrs Lotus Hotel Private Limited reported in AIR 1983(SC) 848.

8. Mr. Kamal-Ul Alam, the learned Senior Advocate, then, takes me through the provision of Section 18 of the Customs Act and submits that the provision is only applicable for import and export of commodity by the importers or exporters, but in the instant case the auction purchaser is neither an importer nor an exporter. He argues that this applicant has purchased the vessel in auction from the custody of the Court as per auction notice published by the Court "as is where is basis", in other words, as per the present condition of the vessel whatever and wherever it is (যেখানে যে অবস্থায় সে অবস্থার ভিত্তিতে), and as such Section 18 of the Customs Act is not applicable in the instant case for the applicant. He submits that customs duty is primarily leviable on goods 'imported' into or exported from Bangladesh. In an effort to show the literal meaning of the word 'importation', Mr. Alam places its meaning from Black's Law Dictionary, and submits that 'importation' is defined therein as 'the act of bringing goods and merchandise into a country from a foreign country' and 'imported' in general, has the same meaning in the tariff laws that its etymology shows, in porto, to carry in. That is to say, to 'import' is to bear or carry into, for, an imported article is one brought or carried into a country from abroad, Mr. Alam continues to submit. In support of his above arguments, he also refers to Wharton's Law Lexicon to show the meaning of the terminology 'import' and submits that the meaning of the word is 'goods or produce brought into a country from abroad'. Thereafter, Mr. Kamal-Ul Alam places before this Court the provisions of Section 2(c) of the Imports and Exports (Control) Act, 1950 (shortly, Imports and Exports Act) and submits that the aforesaid law defines the terminology 'import' as 'bringing into Bangladesh'. Mr. Alam professes that under Section 3(1) of the aforesaid Act, the Government by order declares Import Policy each year and under Section 3(2) thereof no goods can be 'imported' without a license to be issued by the Chief Controller or any other officer of the Government. Mr. Kamal-Ul Alam argues that when in compliance with the aforesaid provisions of law any goods is imported in Bangladesh, then, as per the requirements of the provisions of Section 43, 44 and 45 of the Customs Act, the conveyance bringing such goods in Bangladesh has to declare and file import manifest specifying all goods 'imported' in such conveyances to the Port Authorities. He contends that since it is an admitted position that the defendant no. 1-vessel has entered into Bangladesh as an ocean-

going-liner-vessel carrying cargos from abroad, therefore, after discharging the cargo in the ordinary course, it would have left the Port area upon obtaining Port clearance under Sections 51, 52 and 53 of the Customs Act. He strenuously argues that the defendant no. 1-vessel has never been brought into Bangladesh as 'imported goods', as defined in the provisions of Sections 2(c), 3(1) and 3(2) of the Imports and Exports Act and as such Section 18 of the Customs Act, under which customs duties is leviable on 'imported goods', has no manner of application whatsoever for imposition and assessment of customs duties on the defendant no. 1-vessel for not being an 'imported goods' and as such the auction purchaser is not liable under any provision of law to pay any customs duty whatsoever on his auction-purchased defendant no. 1-vessel.

9. Mr. Alam, then, takes me through Section 79 of the Customs Act and submits that as per the aforesaid provision, a Bill of Entry must be submitted by the owner of any imported goods for home consumption or warehousing or for any other approved purpose by delivery to the appropriate officer, but since the vessel has not been imported by the auction purchaser, question of submitting of any Bill of Entry to the customs house does not arise and calculating any customs duty does not arise either. Therefore, as Mr. Kamal-Ul Alam continues to argue, the Assistant Commissioner of Customs, Chattogram was wholly wrong in law in asserting that non-filing of Bill of Entry under Section 79 of the Customs Act by the defendant no. 1-vessel prevented the customs authority on earlier occasions in determining and assessing the customs duties on the defendant no. 1-vessel inasmuch as under Section 79 of the Customs Act, a Bill of Entry is required to be delivered to the appropriate officer of customs by the owner of any 'imported goods', and in view of the admitted fact that the defendant no. 1-vessel has not been brought into Bangladesh as goods or scrap-vessel, the requirement of Section 79 of the Customs Act for filing Bill of Entry for the 'imported goods' has no manner of application in the case of defendant no. 1-vessel.

10. He next submits that the H.S. Code No. 8908.00.00 is applicable to a vessel and other floating structures imported for breaking up in the country, but as a matter of fact, the instant vessel having not been imported by the auction purchaser for breaking up, question of levying any customs duty does not arise at all in respect of vessel M.T. Fadl-E-Rabbi. He argues that since the auction purchaser is not importer of any vessel, rather purchaser of a vessel from the home market, as such he is not liable to pay any import duty. Had it been so, it was to be paid by the owner of the vessel who has brought the vessel to Bangladesh, Mr. Kamal-Ul Alam continues to argue.

11. By making the above submissions, the learned Senior Advocate for the applicant (auction-purchaser) prays that the claim of the defendant no. 9 (customs authority) made by their letter dated 30.7.2018 be declared illegal and the physical possession of the vessel M.T. Fadl-E-Rabbi be delivered to the auction-purchaser along with a compensation of the sum of Taka 100,000/- per diem on and from 01.8.2018 to the actual date of delivery of possession of the vessel M.T. Fadl-E-Rabbi for the ends of justice.

12. Per contra, Ms. Kazi Zinat Haque, the learned DAG, appearing for the customs authority, places the latest edition of the Bangladesh Customs Tariff for the year 2017 containing HS Codes, names/descriptions of the goods for imposition of customs duties and the rates of customs duties and submits that when the law imposes customs duties on importation of foreign scrap-vessel, there should not be any debate on the issue. She refers to the case of Bashiruddin Ahmed Vs Secretary, Bangladesh, 3 BLC(AD) 179 and submits that since the issue has been settled by the Honorable Appellate Division long ago, the learned

Advocate for the auction-purchaser should non-prosecute this application, otherwise this Court should slap an exemplary costs upon the applicant.

13. After hearing the learned Senior Advocate for the auction-purchaser and the learned DAG and on perusing the application, the impugned letter together with other letters issued by the Chattogram Customs Authority and upon examination of the relevant laws, it appears to me that mainly two issues are to be adjudicated upon by this Court, namely (i) whether the Chattogram Customs Authority is estopped by Section 115 of the Evidence Act to claim the customs duty and VAT from the auction-purchaser and (ii) in order for claiming customs duties on a foreign vessel ordered by the Court to be sold as scrap, whether Bill of Entry is required.

14. Let me take up the first issue, namely, (i) whether the Chattogram Customs Authority is estopped by Section 115 of the Evidence Act to claim the customs duty and VAT from the auction-purchaser. Section 115 of the Evidence Act merits quotation here, which is as under;

**Estoppel**-When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

15. From a minute perusal of the law, the plain understanding thereof by anyone would have is that when a person acts on the basis of another person's words/action/omission believing it to be true, the later is estopped from saying/doing otherwise.

16. The provision of estoppel is placed under Part III of the Evidence Act and this part's provisions deal with production and effect of witnesses. By the rule of evidence under Section 115, the Legislature intended that a person shall not be allowed to allege and prove a thing under the following circumstances; (i) when a person makes a representation (declaration/action/omission) to another and (iii) the other has acted upon the said representation to his detriment. In other words, on the basis of a person's representation when another person does something, subsequently the person who had made such representation shall not be allowed to deny the truth of his representation. Before incorporation of this provision in the Act of Parliament, namely, the Evidence Act, 1872, the doctrine of estoppels was evolved by the Courts on the principles of equity in order to avoid injustice so that where one party by his words/conducts enticed another party to do something, that conducts/words would be binding upon the former who would not be entitled to go back from it. Black's Law Dictionary provides the following meaning of the word 'estoppel'.

“A bar that prevents one from asserting a claim or right that contradicts what one has said or done before or that has been legally established as true.”

17. Thus, the meaning of estoppel that this Court finds from the statute book and Black's Law Dictionary is that a party is prevented by his own acts from claiming a right to the detriment of the other party who was entitled to rely on such conduct and has acted accordingly.

18. Now, it is to be seen by me whether the Chattogram Customs Authority had previously made any representation to the auction-purchaser and whether the auction-purchaser has acted on the basis of the said representation. Upon making a thorough scrutiny of the Order-sheets together with the administrative file of this suit, it transpires that the

formats of the notice of auction in Bengali and English were prepared by the Marshall on 08.05.2018. The said format contains two parts; one part is auction notice for publication in the daily newspapers and the other part is under the heading of “Further Conditions” which is for information of the participants who are present in the auction-room. As many as five “Further Conditions” have been stipulated and condition no. 3 reads as follows: *“Bidding money offered for the purchase of the ship will be exclusive of outstanding Port dues, Customs duties, Sale tax and other charges payable to the Government. Those dues, duty, tax and other charges shall be paid by the purchaser”*. On a query by me to the team of Marshall, it was confirmed by them that before receiving the auction-bids (proposals) from the bidders, a copy of the “Further Conditions” was disseminated among them. Moreover, the conditions were read out loudly in the auction-room. The concerned officials informed me that the practice of non-mentioning the above-mentioned conditions in the auction-notice published in the newspapers is being followed since time immemorial i.e. from the date of establishment of the Admiralty Court. The above contention of the office of the Marshall appears to me to be true for the reason that although there is no mentioning about the payment of Port-dues, sale tax and other charges in the auction-notice published in the Daily Financial Express and the Daily Purbakon on 26.05.2018, the auction-purchaser after becoming the highest bidder in the auction held on 29.05.2018 paid Port dues, sale tax, watchmen’s charge etc. But the auction-purchaser is not willing to pay the customs duties on the plea that there was no mentioning about the payment of customs duties in the auction notice published in the newspapers.

19. The logical question that arises in this circumstance is that if the auction-purchaser wants to employ the doctrine of estoppels as a shield on the ground of non-mentioning of the payment of customs duties in the auction notice, then, resorting to the same doctrine, he should not have paid off all other dues, taxes and charges, such as sale tax, Port dues and wage men’s charges which were also not mentioned in the auction notice published in the newspapers. The true scenario, as surfaces from the conducts of the auction-purchaser and from the explanations received from the team of Marshall, is that it was notified to all the bidders that they were at liberty either to submit their proposal agreeing with these “Further Conditions” or they might abstain from submitting their proposals. Therefore, it is amply clear to me that upon accepting the above conditions, all the bidders have participated in the bid and this applicant became the highest bidder upon agreeing with and accepting the condition that customs duties and other Government dues are to be paid off on top of his offer of Taka 8,50,00,000/-. More so, on 10.07.2018, since the offer of the highest bidder was accepted and confirmed by this Court subject to the payment of all the Government tax, duties and charges, and given the fact that the auction-purchaser (applicant) received this Court’s aforesaid Order dated 10.07.2018 without raising any objection thereto, the auction-purchaser evidently had reconfirmed his position that he was purchasing the vessel upon agreeing with the conditions of payment of all the Government dues and, that is how, he had waived his right to question about payment of Government dues, which includes customs duties.

20. So, clearly it is not the scenario that the auction-purchaser has acted (i.e. participated in the auction and, later on, accepted this Court’s Order dated 30.07.2018) on a representation which was not disclosed/notified to him. The true fact is that the auction-purchaser is taking a chance of the wordings employed by a novice Customs Officer of the rank of Assistant Commissioner (Assistant Commissioner is the entry post of the BCS-Customs) who wrote to the Marshall twice (firstly on 09.11.2019 following the first auction and, second time, on 23.07.2018 following the second auction) in the following words “..... যেহেতু এই জাহাজটি

শুক্রগয়নের জন্য এই দপ্তরে দাখিল করা হয়নি বিধায় এ পর্যায়ে শুক্র করাদি আদায়ের কোন সুযোগ/পাওনা নাই .....”, plain meaning of which is that since the vessel has not been presented before the customs office (i.e. since no Bill of Entry has been submitted), at this stage there is no scope for the customs authority to make assessment of the customs duties. The tenderfoot having been under an impression that without receiving a Bill of Entry, she is not in a position to assess the customs duties. In any event, no one with ordinary prudence would interpret the afore-quoted Bengali sentences that there is no requirement of payment of customs duties or there is no claim of customs duties against the vessel. If the auction-purchaser wants to capitalize the expression “পাওনা নাই” (there is no dues) embodied in the aforesaid letter, it is my view that since the phraseology was employed after the mark of slash (/), it does not make any sense. The wordings might have been inserted by the novice officer herself at the request of the auction-purchaser or by the concerned clerk at the behest of the auction-purchaser with an ill motive of taking undue advantage thereof. Whatever the case may be, subsequently when the aforesaid junior customs officer herself comes up with proper explanations about her own letter, there cannot be any debate on the meaning of the wordings employed by her. It is my considered view that since the aforesaid letters were not written before the holding of the auction, and since the letters were not addressed/written to the auction-purchaser by the customs authority but was rather written specifically addressing the Marshall, therefore, no sensible person would argue that the auction-purchaser had made the offer on the basis of the aforesaid letters.

21. Two cases, namely, Collector of Customs, Chattogram Vs A. Hannan reported in 42 DLR (AD) 167 and Guzrat Estate Financial Corporation Vs Messrs Lotus Hotel Private Limited reported in AIR 1983(SC) 848 have been referred to by the learned Advocate for the auction-purchaser. In the cited Indian case, when Guzrat Estate Financial Corporation, being a statutory body, declined to disburse loan-money to Messrs Lotus Hotel Private Ltd despite execution of mortgage documents by the latter in favour of the former resulting in stoppage of construction of a 4-star hotel in the mid-path causing huge financial loss, the Indian Supreme Court held that principle of promissory estoppel shall stop the Corporation from backing out of its obligation. In the cited landmark case of our jurisdiction (A. Hannan’s case), the Government by publishing Gazette Notification declared that if the importers open their L/Cs for importation of sugar within 31.10.1984 and the ship arrived within 30.11.1984, they shall enjoy certain amount of exemption in paying customs duty and sales tax. Subsequently, the Government withdrew the facility on 06.11.1984. Although the importer (A. Hannan) opened his L/C within time and the vessel carrying sugar arrived on 24.11.1984, the customs authority declined to grant the exemption to the importer. The Appellate Division in the circumstances held that since the importer acted upon the Government’s assurance, the Government cannot retrace its steps.

22. While *ratio* laid down in the case of Indian Supreme Court has only persuasive value in adjudicating upon any case by the Courts of Bangladesh, the *ratio* laid down in the celebrated case of A. Hannan by the Apex Court of Bangladesh on the issue of doctrine of estoppels is to be applied mandatorily in a proper and fit case, for, this Court is constitutionally duty bound to apply any *ratio* propounded by the Appellate Division. But the facts of the present case having no nexus with the doctrine of estoppels, question of application of the *ratio* laid down in the A. Hannan’s case does not arise. The inevitable conclusion on the first issue of the instant petition is that there is no scope of application of the provisions of Section 115 of the Evidence Act in the case of the auction-purchaser.

23. Now, let me see whether Bill of Entry is required for levying customs duties. For this purpose, I need to look at the provisions of Section 18 of the Customs Act, which is reproduced below:

- Goods dutiable-** (1) Except as hereinafter provided, customs-duties shall be levied at such rates as are prescribed in the First Schedule or under any other law for the time being in force on-
- (a) goods imported into, or exported from, Bangladesh;
  - (b) goods brought from any foreign country to any customs-station, and without payment of duty there, transshipped or transported for, or thence carried to, and imported at, any other customs-station; and
  - (c) goods brought in bond from one customs-station to another
- Provided that no customs-duty under this Act or other tax leviable by a Customs officer under any other law for the time being in force shall be levied or collected in respect thereof, if-
- (a) in value of the goods in any one consignment do not exceed one thousand Taka; and
  - (b) the total amount of such duty and tax does not exceed Taka one thousand.

24. While Section 18(1) of the Customs Act states about the rate of duty, the features/identity of the goods for imposing duties are enunciated in its Clause (a) to (c). So, all that I find from Section 18(1) of the Customs Act is that if any good is imported into Bangladesh, duties shall be levied at a rate prescribed in the First Schedule to the Customs Act (Bangladesh Customs Tariff). This piece of Legislation does not require presentation of Bills of Entry as a precondition for levying of customs duties. All that it require is that the goods must be imported, and the meaning of the words ‘import’ or ‘importation’ given in the Black’s Law Dictionary, Wharton’s Law Lexicon and in Section 2(c) of the Imports and Exports Act is that when any goods/produce is brought into the country from a foreign country, it would be called ‘import’/‘importation’. None of the above authority states about the purpose of bringing the goods into the country.

25. In the case in hand, the ship is indisputably a foreign one which initially came for the purpose of carrying cargo and, later on, in a compelling circumstances it is being sold as wreck or scrap-vessel. Therefore, I find that the provision of Section 23 of the Customs Act squarely fits into the facts and circumstances of the present case and, hence, for adjudication upon the issue, Section 23 of the Customs Act is quoted below:

**GOODS, DERELICT, WRECK, ETC.-**All goods, derelict, jetsam, flotsam and wreck, brought or coming into Bangladesh shall be dealt with as if they were imported into Bangladesh.

26. The marginal note of the above law includes not only ‘goods’ .... ‘wreck’, but also ‘ETC’, meaning that if any foreign thing/object, whether it is goods or something else, comes into Bangladesh, it shall be considered as “imported goods”. In the light of admitted fact that the goods in question (the vessel) has come into Bangladesh from a foreign country, it shall be considered as “imported goods” at the time of its sale/transfer, as per the provisions of Section 23 of the Customs Act.

27. With the above conclusion that the vessel in question is an “imported goods”, I now should find out the rate of duty of this “imported goods”. And, I find in the Bangladesh Customs Tariff for the relevant period of 29.05.2018 (when the vessel in question was

auction-sold) that it prescribes at its Chapter 89 under the HS Code No. 8908.00.00 that vessels and other floating structures for breaking up are liable to a customs duties of BDT 1500/- per LDT.

28. I have minutely perused the provisions of Sections 43, 44, 45, 51, 52, 53, & 79 of the Customs Act as well as the relevant provisions of the Imports and Exports Act which were placed before this Court by the learned Senior Advocate for the auction-purchaser, Mr. Kamal-Ul Alam, in an effort to convince this Court that there is a legal requirement of presentation of Bill of Entry, and I am of the view that in the backdrop of operation of the provisions of Section 23 of the Customs Act, the arguments placed by the learned Senior Counsel Mr. Kamal-Ul Alam on the terminology “import” as well as on the requirement of presentation of Bills of Entry, do not deserve any consideration. From a careful examination of the relevant provisions of the Customs Act, namely, Sections 18, 23, 43, 44, 45, 51, 52, 53 and 79 and relevant provisions of the Import and Export Act, it leads me to hold that when any foreign thing, object, goods, which would include a foreign vessel, is brought into or comes in Bangladesh, be it without or with Bills of Entry, it is dutiable, as per the prevailing rate prescribed in the Bangladesh Customs Tariff, if the same is picked up/collected/arrested for the purpose of home consumption, warehousing, selling to local or foreign national/country or for any other lawful purpose.

29. I find it pertinent to record here that, initially, the learned Advocate Mr. Golam Arshed was trying his best to make out a case in his favour showing an obsolete Bangladesh Customs Tariff containing 0% duties on this item. But when this Court, upon obtaining an updated/appropriate copy of the Bangladesh Customs Tariff, suggested him to pay the customs duties claimed by the customs authority and, thereby, take the delivery of the vessel without wasting this Court’s valuable time on this issue, few days later, he engaged Mr. Kamal-Ul Alam as the Senior Counsel in this matter. Mr. Alam, then, put his best effort to demonstrate the advocacy of the stature of a true Senior Counsel by presenting some legal issues. However, after concluding the hearing of the instant application at length, this Court expressed its views in open Court to the filing-lawyer Mr. Golam Arshed (Mr. Kamal-Ul Alam was not present at that point of time) that this Court does not find any substance in this application and the learned Advocate may non-prosecute the application to assist this Court in saving its valuable hours which would require delivering a full-fledged Judgment. I reminded him that since the issue raised by him has been finally settled by the Apex Court of our jurisdiction in the case of Bashiruddin Ahmed Vs Secretary, Bangladesh Government, 3 BLC(AD) 179, there is no point of insisting upon this Court to deliver a detailed Judgment on the same issue. But the learned Advocate Mr. Golam Arshed wished to receive a full-fledged Judgment.

30. While an Advocate would be seen by this Court to be fully justified in receiving a detailed Judgment on finishing hearing of a suit or any other original substantive matter (such as Admiralty Suit, Writ Petition, Company Matter) even if the Court expresses its views dismissing the suit/discharging the Rule, however, as an officer of the Court, an Advocate is expected to assist this Court in saving its time by non-prosecuting an interlocutory application, when the same would be found by the Court without any substance after affording the opportunity of placing the arguments at length. It is to be borne in mind by the learned Advocates that since the number of Judges of this country are very negligible in comparison to the case-load, it has become very difficult for the learned Judges of this country to dispose of the substantive suit/matters and, therefore, the learned Advocates should not expect detailed Judgment on the side-issue of a suit/matter, which is already well-settled by the Apex Court of our jurisdiction.

31. In the result, the Rule issued by this Court in this application is discharged, however, without any order as to costs.

32. The auction-purchaser is hereby directed to take delivery of the vessel upon payment of the customs duties and other dues to the Government, if incurred any in the meanwhile.