

20 SCOB [2025] HCD**HIGH COURT DIVISION
(Special Original Jurisdiction)****Present:****Mrs. Justice Farah Mahbub****And****Mr. Justice Ahmed Sohel****Writ Petition No. 3715 of 2022****Bangla Food and Beverage Limited
... Petitioner****-Versus-****The Customs, Excise and VAT Appellate
Tribunal and another****... Respondents**Mr. Samarendra Nath Biswas, D.A.G. with
Mr. Md. Abul Kalam Khan (Daud), A.A.G
withMr. Md. Modersher Ali Khan (Dipu),
A.A.G withMr. A.K.M. Nur Nabi (Sumon), A.A.G and
Mr. Md. Taufiq Sajawar (Partho), AAG

...For the Respondents-Government

Mr. Shams-ud-Doha Talukder, Advocate

... For the Petitioner

Date of Hearing: 04-08-2022

Date of Judgment: 11-08-2022

Editor's Note:

In this case, Bangla Food and Beverage Limited challenged the dismissal of its appeal by the Customs, Excise and VAT Appellate Tribunal for non-deposit of the statutory amount under Section 194 of the Customs Act, 1969, while the disputed goods remained in the custody of the customs authority. The Supreme Court held that the statutory deposit under Section 194 applies only when goods have ceased to be under customs control. Therefore, the court declared the order passed by the tribunal is of no lawful authority and legally ineffective. The Court directed the Tribunal to admit and dispose of the appeal within six months.

Key Words:

Statutory Deposit; Custody of Goods; Custody of Goods; Section 194 of the Customs Act, 1969

Deposit of duty or penalty not required for appeal when goods remain in customs custody:

From the plain reading of Section 194 (1) of the Customs Act, 1969, it is crystal clear that if the goods which have been ceased to be under the control of the customs authority, then there is a requirement of statutory deposit for filing an appeal under the said Act. In the instant case, admittedly, the goods are lying with the customs authority, i.e. the goods in question are in custody of the customs authority, which is evident from Annexure- E-1 to the writ petition. Since, the goods are lying with the customs authority, the deposit of demanded duty or penalty levied as prescribed under Section 194 of the Customs Act 1969, is not applicable for preferring appeal before the Commissioner (Appeal) or the Tribunal under Section 193 or 196A of the said Act.

... (Para 18)

JUDGMENT

Ahmed Sohel, J:

1. In this Rule Nisi, issued under Article 102 of the Constitution of the People's Republic of Bangladesh, the respondents have been called upon to show cause as to why the impugned order dated 23.02.2022 passed by the Customs, Excise and VAT Appellate Tribunal, respondent No. 1 in Nathi No. CEVT/Case(Cus)-646/2021/4992, rejecting the appeal for non-depositing the statutory deposit under Section 194 of the Customs Act, 1969, despite the fact that the goods in question are lying in the custody of the customs authority (Annexure- I) shall not be declared to have been passed without any lawful authority and is of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.

2. Facts, relevant for disposal of the Rule, in short, are that the petitioner is a 100% export-oriented industry, who exports various foodstuff such as Puffed Rice, Toast Biscuit, Chili Spice, Coriander Spice, Chicken Masala, Turmeric Spice, Curry Spice, Potato Crackers etc. to different countries. On 01/10/2020, the petitioner signed a purchase contract being No. BA/01/2020 with Modern Lotus General Trading LLC, Dubai, UAE for exporting 13 items of foodstuff. For this purpose, the petitioner appointed 'R Islam Agency' as clearing and forwarding agent for fulfilling the export procedure. The petitioner after completing the manufacturing of the foodstuff, completed packaging and transported the goods at Chattogram and registered the Bill of Export being No. C-1776888 dated 21.12.2020.

3. Subsequently, the concerned Officer of Customs House, Chattogram examined the goods and found those as per Commercial Invoice and Packing List and therefore, he opined that-“নির্দেশ মোতাবেক ELL ডিপোতে রক্ষিত আলোচ্য পণ্য চালানটি কায়িক পরীক্ষা করা হলো। পরীক্ষিত পণ্য হল Food Stuff যাহা স্বাক্ষরিত Invoice & Packing List এর ঘোষনা মোতাবেক সঠিক পাওয়া যায় বিধায় উক্ত পণ্য চালানটি রপ্তানীর অনুমতি দেয়া যেতে পারে।” and finally allowed the goods for stuffing into the container under the seal and signature of the Assistant Revenue Officer, Customs House, Chattogram. After getting approval for stuffing of the said consignment, the petitioner paid Global Taxes as per Assessment Notice. The petitioner through his C&F Agent handed over the consignment to Eastern Logistic Limited; they issued Terminal Receipt being No. ELL/54/2020 dated 21.12.2020 and as per the said receipt Eastern Logistic Limited received 545 cartons= 11,393.00 Kgs of food stuff.

4. Thereafter, while the petitioner was waiting for the shipment of his consignment, all on a sudden, received a show cause notice on 12.01.2021, issued by respondent No. 2 (Commissioner of Customs, Customs House, Chattogram) under Nathi No. ১৩/রপ্তানী-১/বিবিধ/২০২০-২১/৯১৮ (কাস) dated 05.01.2021, for the allegation of attempting to export foodstuff giving untrue statement, in particular, it has been alleged that in physical examination they found 183 Cartons = 10,257.00 kgs of goods less than the declaration, which is punishable under Section 32 of the Customs Act, 1969 and as well as Section 22 of the Foreign Exchange Regulation Act, 1947 (Annexure- D to the writ petition).

5. Subsequently, the petitioner gave a reply to the show cause notice and attended the hearing before the concerned authority. Thereafter, the respondent No. 2 on 04.10.2021, passed an adjudication order imposing a penalty of Tk. 35,00,000/- (Thirty five lacs) upon the

petitioner and redemption fine of Tk. 2,00,000/- (Two lacs) (Annexure- E and E-1 respectively to the writ petition).

6. Being aggrieved by and dissatisfied with the aforesaid adjudication order dated 04.10.2021, the petitioner filed an appeal on 09.12.2021 under Section 196A of the Customs Act, 1969 which was registered as Customs Appeal being No. 646 of 2021.

7. The petitioner categorically stated in the memorandum of appeal that since the disputed goods were under the control of the customs authority, he filed the appeal without depositing the statutory deposit as per Section 194 of the Customs Act, 1969. The Tribunal fixed a date for admission hearing on 13.12.2021 and on that date, the learned advocate for the appellant appeared before the Tribunal and after hearing the appellant, the Tribunal passed an order, which is as under-“নথিতে রক্ষিত কাগজপত্র পর্যালোচনায়, ট্রাইব্যুনালে মামলা দায়েরের শর্ত মোতাবেক দি কাস্টমস এ্যাক্ট, ১৯৬৯ এর ১৯৪ ধারা প্রতিপালন আবশ্যিক বিধায় আপীলকারীর হার্ডশিপ বিবেচনায় আপীলকারীকে দি কাস্টমস এ্যাক্ট, ১৯৬৯ এর ধারা ১৯৪ এর উপধারা (১) মোতাবেক **Statutory Deposit** বাবদ দাবীকৃত অর্থদণ্ড ও বিমোচন জরিমানার ১৫% নগদ চালানের মাধ্যমে এবং ১০% নিঃশর্ত ব্যাংক গ্যারান্টির মাধ্যমে সরকারী কোষাগারে যথাযথ খাতে আগামী ০৬/০১/২০২২ ইং তারিখের মধ্যে জমা প্রদান পূর্বক তার কপি ট্রাইব্যুনালে দাখিলের জন্য নির্দেশ প্রদান করা হলো। ব্যর্থতায় খারিজ।”

8. In the above context, the appellant-petitioner on 17.01.2022 filed an application praying for admitting the appeal without statutory deposit, annexing the order passed by the Hon'ble High Court Division in Writ Petition No. 5928 of 2021 dated 15.07.2021 and the order passed in Civil Petition for Leave to Appeal No. 1786 of 2021 dated 24.10.2021 by the Appellate Division of the Hon'ble Supreme Court of Bangladesh. However, the Tribunal, respondent No. 1, on 23.02.2022 passed the impugned order dismissing the appeal on the ground for non-depositing of the statutory deposit, required under the Customs Act. 1969.

9. Feeling aggrieved and dissatisfied with the aforesaid impugned order dated 23.02.2022, the petitioner moved before this Court and obtained the present Rule Nisi.

10. Mr. Shams-ud-Doha Talukder, the learned Advocate appearing on behalf of the petitioner, at the very outset, submits that it is clear from Section 194 of the Customs Act, 1969 that the party who desires to appeal under Section 193 or 196A of the Customs Act, shall comply with the conditions laid down in Section 194 of the said Act, i.e. if the goods have ceased to be under the control of customs authorities. In this particular case, the disputed goods are under the control of the respondent, customs authority. Therefore, provision of Section 194 is not at all applicable in the present case and as such, the dismissal order of the Tribunal is not in accordance with law.

11. He next submits that the petitioner on 17.01.2022 filed an application praying for admitting the appeal without statutory deposit, mentioning the order dated 15.07.2021 passed by the Hon'ble High Court Division in Writ Petition No. 5928 of 2021 and the order passed in Civil Petition for Leave to Appeal No. 1786 of 2021 by the Appellate Division of the Hon'ble Supreme Court of Bangladesh, wherein the Hon'ble Appellate Division has settled the issue of statutory deposit. However, the Tribunal without considering the said application, passed the said impugned order dated 23.02.2022, which is unjust, illegal and also contemptuous. Therefore, he submits that the impugned order dated 23.02.2022 is liable to be declared to have been passed without lawful authority and is of no legal effect. Accordingly, he prays for making the Rule absolute.

12. On the other hand, Mr. Abul Kalam Khan Daud, the learned Assistant Attorney General by filing power submits that since the Tribunal imposed penalty, as such, the petitioner is liable to deposit the statutory amount as prescribed under Section 194 of the Customs Act, 1969. Having considered the said provision of law, the Tribunal has rightly dismissed the appeal. Accordingly, he prays for discharging the Rule.

13. We have considered the submissions of the learned Advocate for the petitioner and the learned Assistant Attorney General, relevant provisions of law, perused the writ petition, and the annexures appended thereto with profound attention.

14. In the instant case, it appears that the respondent No. 2, the Commissioner of Customs, Customs House, Chattogram passed an adjudication order dated 04.10.2021, imposing a penalty of Tk. 35,00,000/- upon the petitioner and redemption fine of Tk. 2,00,000/-. Challenging the said adjudication order dated 04.10.2021, the petitioner preferred an appeal on 09.12.2021 under Section 196A of the Customs Act, 1969 being Customs Appeal No. 646 of 2021.

15. It further appears that on 13.12.2021 the respondent No. 1, directed the petitioner to deposit 15% of the imposed penalty and redemption fine in cash and 10% by bank guarantee within 06.01.2022, in default the appeal shall be dismissed (Annexure- G).

16. Now, in the instant case, the only issue requires determination before this Court is, whether the statutory deposit as required under Section 194 of the Customs Act 1969, for preferring an appeal under Section 196A of the Customs Act, 1969 is applicable.

17. In order to adjudicate this issue, let us examine Section 194 of the Customs Act, 1969, which is quoted below-

“194. (1) Any person desirous of appealing under section 193 or section 196A against any decision or order relating to any duty demanded in respect of goods which have ceased to be under the control of customs authorities or to any penalty levied under this Act shall, at the time of filing his appeal or if he is so permitted by the appellate authority at any later stage before the consideration of the appeal, deposit with the appropriate officer fifty percent of the duty demanded or fifty percent of the penalty imposed, or both, as the case may be:

Provided that such person may, instead of depositing the amount of the penalty as aforesaid, deposit only fifty percent thereof and furnish a guarantee from a scheduled bank for the due payment of the balance:

Provided further that where, in any particular case, the appellate authority is of the opinion that the deposit of duty demanded or penalty imposed will cause undue hardship to the appellant, it may dispense with such deposit, either unconditionally or subject to such conditions as it may deem fit to impose.

(2) If, upon an appeal it is decided that the whole or any portion of the aforesaid duty or penalty was not liable, the appropriate officer shall return to the appellant such amount or portion as the case may be.”

18. From the plain reading of Section 194 (1) of the Customs Act, 1969, it is crystal clear that if the goods which have been ceased to be under the control of the customs authority, then there is a requirement of statutory deposit for filing an appeal under the said Act. In the instant case, admittedly, the goods are lying with the customs authority, i.e. the goods in question are in custody of the customs authority, which is evident from

Annexure- E-1 to the writ petition. Since, the goods are lying with the customs authority, the deposit of demanded duty or penalty levied as prescribed under Section 194 of the Customs Act 1969, is not applicable for preferring appeal before the Commissioner (Appeal) or the Tribunal under Section 193 or 196A of the said Act.

19. It further appears that this Court in Writ Petition No. 5928 of 2021, on a similar point issued rule and direction upon the respondent No. 1, the Customs, Excise and VAT Appellate Tribunal to admit and hear the appeal on merit in accordance with law.

20. Challenging the said order passed in Writ Petition No. 5928 of 2021, the respondent preferred Civil Petition for Leave to Appeal No. 1786 of 2021 before the Appellate Division of the Supreme Court of Bangladesh, wherein it has been held that-

“Considering the facts and circumstances of the case, we find no legal infirmity in the impugned order factually and legally calling for interference by this Court.

Accordingly, we find no merit in this petition and the same is dismissed.”

21. Therefore, it is apparent that this issue of statutory deposit as required under Section 194 of the Customs Act, 1969, for filing an appeal before the Tribunal has already been settled by our Apex Court.

22. In the present case, admittedly, the goods are in custody of the customs authority, at this circumstances, we are of the view that the Tribunal without applying its judicial mind and misinterpreting Section 194 of the Customs Act 1969, passed the impugned order dated 23.02.2022.

23. In light of the above context of the case, we find substance in the submissions as advanced by the learned Advocate for the petitioner and merit in the Rule.

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

25. The impugned order dated 23.02.2022 passed by the Customs Excise and VAT Appellate Tribunal, respondent No. 1, dismissing the appeal for non-depositing of the statutory deposit under Section 194 of the Customs Act, 1969. (Annexure-I) is hereby declared to have been passed without lawful authority and hence, of no legal effect.

26. The respondent No. 1, Tribunal is hereby directed to hear and dispose of the appeal within 06 (six) months from the date of receipt of the copy of the judgment and order.

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