

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

WRIT PETITION NO.17710 of 2017

IN THE MATTER OF:

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

And

IN THE MATTER OF:

Mohammad Solaiman

... Petitioner.

-vs-

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

... Respondents.

And

Mr. A.H.M. Ziauddin, Advocate

.... For the Petitioner.

Mr. Samarendra Nath Biswas, D.A.G. with

Mr. Md. Abul Kalam Khan (Daud), A.A.G.

....For the Respondents-government.

**Heard on:29.01.2024 and
Judgment on:30.01.2024**

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 bearing Nothi No.CEVT/Case (Cus)-176/2017/746 dated 09.11.2017 passed by the respondent concerned dismissing the appeal filed by the petitioner on the ground of non deposition

of statutory deposit upon the demanded amount by the Customs authority in violation of the provision of Section 194(1) read with Section 196B of the Customs Act, 1969 passed by the respondent No.1, should not be declared to have been passed without lawful authority and hence, of no legal effect and further, as to why the respondent No.1 should not be directed to hear the appeal on merit without depositing the statutory deposit.

At the time of issuance of the Rule a direction upon the respondent No.2 was given not to encash the bank guarantee bearing No.OBL/KTG-026/04 dated 19.09.2004 (Annexure-A) for a prescribed period.

Facts, in brief, are that the petitioner in order to import 7000 metric tons of white sugar of Brazil origin opened Letter of Credit being No.1337/4/01/0032 dated 24.04.2004 at the invoice value of US\$ 195 per M.T. with submission of respective bill of entries all dated 05.09.2004. However, those goods was assessed by the customs authority fixing value at the rate of US\$ 224 per Metric ton instead of transaction value. Being aggrieved the petitioner filed writ petition No.5388 of 2004 before this Court. However, this Court at the time of issuance of the Rule gave direction upon the customs authority to release the goods on receipt of duties and taxes and other charges on the basis of the invoice value, in cash and on furnishing bank guarantee for the differential amount. In compliance thereof, the petitioner had been able to release the goods on payment duties and taxes and other charges on the basis of the invoice value, in cash and on furnishing bank guarantee bearing No. OBL/KTG/BG-026/04 dated 19.09.2004 covering the differential amount. Ultimately, the customs authority made final assessment on 16.11.2011 on the basis of earlier value @ US\$ 224.

Challenging the same the petitioner filed writ petition No.9664 of 2011 before this Hon'ble Court whereupon a Rule was issued which was ultimately disposed of upon hearing the respective contending parties vide judgment and order dated 29.04.2015 on the ground of maintainability having not invoked alternative forum as provided under the Customs Act, 1969.

Challenging the same, the petitioner moved the Hon'ble Appellate Division by filing Civil Petition for Leave to Appeal No.2206 of 2015, which was ultimately dismissed upon hearing the respective contending parties vide order dated 19.02.2017 affirming the order passed by the High Court Division.

In the given context, the petitioner preferred appeal before the respondent No.1 on 20.03.2017. Said appeal was ultimately dismissed vide the impugned order dated 26.10.2017 (Annexure-C) by the Tribunal concerned on the ground non-deposit of the required amount.

In this regard, drawing attention to Annexure-D to the supplementary affidavit, Mr. A.H.M. Ziauddin, the learned Advocate appearing for the petitioner submits that in compliance of the direction passed by this Hon'ble Court in connection with writ petition No.5388 of 2004, the petitioner duly paid applicable duties and taxes and other charges on the basis of the invoice value in cash and on furnishing bank guarantee covering the differential amount. Under the stated circumstances, he submits that dismissing the appeal by the respondent No.1 vide order dated 26.10.2017 in Appeal No.(Cus)-176/2017, on the ground of non-deposition of the required amount under Section 194(1) of the Customs Act, 1969 is not tenable in the eye of law.

In view of the stated position of facts, he submits that for the cause of justice necessary order be passed by this Hon'ble Court with direction upon the respondent No.1 to hear the appeal on merit upon declaring the impugned order so has been issued without lawful authority and hence, of no legal effect.

Mr. Md. Abul Kalam Khan (Daud), the learned Assistant Attorney General is present on behalf of the respondents-government.

It is not disputed by the respondent concerned that in connection with the consignment in question imported by the petitioner covered under the respective bill of entry it has already deposited applicable payment duties and taxes and other charges on the basis of the invoice value, in cash and on furnishing guarantee bearing No. OBL/KTG/BG-026/04 dated 19.09.2004 for the differential amount in connection with writ petition No.5388 of 2004.

Considering the stated position of facts, the impugned order dated 26.10.2017 passed by the respondent No.1 in Appeal No. (Cus)-176/2017 dismissing the appeal for non-deposit of 25% of the demanded amount under Section 194(1) of the Customs Act, 1969, falls through.

In view of the above position of facts 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 bearing Nothi No.CEVT/Case (Cus)-176/2017/746 dated 09.11.2017, dismissing the appeal filed by the petitioner on the ground of non deposition of the statutory deposit upon the demanded amount by the Customs authority in violation of Section 194(1) read with Section 196B of the Customs Act, passed by the respondent No.1, 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 appeal bearing No. (Cus)-176/2017 on merit in accordance with law, preferably within a period of 6(six) months from the date of receipt of the copy of the judgment.

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

Muhammad Mahbub Ul Islam, J:

I agree.