

Present:
Mr. Justice Mohammad Bazlur Rahman
and
Justice Md. Ruhul Quddus

Customs Appeal No. 71 of 2008

Parsa Tex Ltd.

... Appellant

-Versus-

National Board of Revenue and others

í Respondents

with

Customs Appeal No. 42 of 2008

R. A. K. Ceramics (Bangladesh) Pvt. Ltd

... Appellant

-Versus-

Customs, Excise and VAT Appellant Tribunal,
Dhaka and others

í Respondents

with

Customs Appeal No. 7 of 2008

Magnate Industries Ltd.

... Appellant

-Versus-

National Board of Revenue and others

í Respondents

with

Customs Appeal No. 28 of 2007

Abdul Kader

... Appellant

-Versus-

Customs, Excise and VAT Appellant Tribunal,
Dhaka and others

í Respondents

with

Customs Appeal No. 25 of 2006

Shah Dairy Foods Ltd.

í Appellant

-Versus-

Customs, Excise and VAT Appellant Tribunal,
Dhaka and others

í Respondents

with

Customs Appeal No. 9 of 2003

Md. Shahjahan

... Appellant

-Versus-

Customs, Excise and VAT Appellant Tribunal,
Dhaka and others

í Respondents

with

Customs Appeal No. 55 of 2003

Abdul Kadir

... Appellant

-Versus-

Customs, Excise and VAT Appellant Tribunal,
Dhaka and others

í Respondents

Mr. A. M. Aminuddin, with Mr. Munshi
Muniruzaman, Advocates

í for the appellants in Appeal Nos. 71, 42 and 7 of 2008

Mr. Md. Bahadur Shah, Advocate

í for the appellants in Appeal No.28 of 2007 and
Customs Appeal Nos.9 and 55 of 2003

No one appears for appellant in Appeal No.25 of 2006

Mr. Pratikar Chakma, Assistant Attorney General

... for respondents in all the appeals

Judgment on 22.05.2013

Md. Ruhul Quddus, J:

These customs appeals under section 196D of the Customs Act, 1969 involving common questions of law and similar facts have been heard together and are being disposed of by one judgment.

Customs Appeal No.71 of 2008 was preferred against order dated 02.04.2008 passed by the Customs, Excise and VAT Appellate Tribunal, Dhaka in Appeal No.CEVT/Case(Cus)-499/2007/368 (1-2) dismissing the same for default in taking any step when it was taken up for hearing

and also in depositing the money as required under section 194 of the Customs Act. The appeal before the Tribunal was filed against order dated 19.07.2007 passed by the Commissioner of Customs Bond Commissionerate, Dhaka demanding duty and taxes of Taka 54,41,225 and Paisa 06 only from the appellant, which he had allegedly evaded.

Customs Appeal No.42 of 2008 was preferred against order dated 05.02.2008 of the Customs, Excise and VAT Appellate Tribunal, Dhaka passed in Appeal No.CEVT/Case(Cus)-137/2004/111(1-3) dismissing the same for default in taking any step when it was taken up for hearing. The appeal before the Tribunal was filed against order No.07 dated 09.03.2004 passed by the Review Committee, Chittagong rejecting a review application filed by the appellant.

Customs Appeal No.7 of 2008 was preferred against order dated 24.10.2007 of the Customs, Excise and VAT Appellate Tribunal, Dhaka passed in Appeal No.CEVT/Case(Cus)-110/2005/510(1-2) dismissing the same for default in taking any step when it was taken up for hearing and also in depositing the money as required under section 194 of the Customs Act. The appeal before the Tribunal was filed against order dated 02.01.2005 passed by the Commissioner, Customs Bond Commissionerate, Dhaka demanding Taka 12,03,417 and Paisa 05 only as customs duty and taxes from the appellant and imposing penalty of Taka 50,000/= only for commission of offence under section 156 (1), clause 14 and 90 of the Customs Act.

Customs Appeal No.28 of 2007 was preferred against order dated 20.05.2007 (communicated on 26.06.2007) of the Customs, Excise and VAT Appellate Tribunal, Dhaka passed in Appeal No.CEVT/Case(Cus)-201/1998/268(1-5) dismissing the same for default in taking any step when it was taken up for hearing. The appeal before the Tribunal was filed against order dated 23.12.1998 passed by the Commissioner of Customs, Chittagong refusing to assess customs duty of imported polymer of polythene in primary form on the basis of invoice value.

Customs Appeal No.25 of 2006 was preferred against order dated 15.11.2006 (communicated on 21.11.2006) of the Customs, Excise and VAT Appellate Tribunal, Dhaka passed in Appeal No.CEVT/Case(Cus)-552/2004/3808 (1-4) rejecting an application for review of its earlier order dated 28.08.2006 dismissing the appeal for default because of not taking any step when it was taken up for hearing. The appeal before the Tribunal was filed against order dated 25.09.2004 of the Review Committee, Chittagong refusing to assess customs duty of imported full cream milk powder on the basis of CRF value.

Customs Appeal No.9 of 2003 was preferred against order dated 17.10.2002 of the Customs, Excise and VAT Appellate Tribunal, Dhaka passed in Appeal No.CEVT/Case(Cus)-202/98 dismissing the same on merit, although the appellant was found absent when the appeal was taken up for hearing. The appeal before the Tribunal was filed against order dated 23.12.1998 passed by the Commissioner of Customs, Chittagong refusing to assess customs duty and taxes of imported polymer polythene in primary form on the basis of CRF value.

Customs Appeal No.55 of 2003 was preferred against order dated 17.10.2001 of the Customs, Excise and VAT Appellate Tribunal, Dhaka passed in Appeal No.CEVT/Case(Cus)-34/99 dismissing the same for default in taking any step when it was taken up for hearing. The appeal before the Tribunal was filed against order dated 18.01.1999 of the Commissioner of Customs, Chittagong refusing to assess customs duty and taxes of imported polymer polythene in primary form on the basis of invoice value.

Mr. A. M. Aminuddin, learned Advocate for the appellants in Customs Appeal Nos.71, 42 and 7 of 2008 with reference to an unreported judgment analogously passed in Customs Appeal No.17 of 2008 with two other customs appeals, wherein he himself appeared as an intervener, submits that it has already been decided that a customs appeal under section 196D of the Customs Act against an order of dismissal of appeal for default or for not depositing the duty and fine as required under section 194 of the Act is not maintainable. Under the circumstances, he would not argue the case on merit so that the appellants can approach with their respective cases in appropriate forum.

Mr. Md. Bahadur Shah, learned Advocate appearing for the appellant in Customs Appeal No. 28 of 2007 and Customs Appeal Nos.9 and 55 of 2003 agreeing with Mr. Aminuddin does not make any submission on merit.

Mr. Pratikar Chakma, learned Assistant Attorney General appearing for the respondents does not find any reason to oppose the submissions of the learned Advocates for the appellants.

We have gone through the records and impugned orders in all the seven appeals. It appears that in Customs Appeal Nos.71 of 2008 and 7 of 2008 the Customs, Excise and Vat Appellate Tribunal dismissed the same for default in taking steps when those were taken up for hearing and also in depositing the money as required under section 194 of the Customs Act. In Customs Appeal Nos.42 of 2008, 28 of 2007 and 55 of 2003, the Tribunal passed the orders of dismissal for not taking steps when those were taken up for hearing. Customs Appeal No.25 of 2006 was initially dismissed for default and subsequently an application for review of the dismissal order was rejected. The records show that no payment under section 194 was made in any of the said appeals.

Customs Appeal No.9 of 2003 was heard on 26.09.2002 and fixed for delivery of judgment on 17.10.2002. On both the dates the appellant was found absent, but the respondent was present and made its submissions. The Tribunal, however, on considering the records as well as the submissions of the respondent dismissed the appeal on merit by the impugned judgment and order. It appears from the judgment that earlier this appeal was dismissed for default by order dated 26.12.2000, which was subsequently restored on 11.05.2001 on prayer made by the appellant. It further appears that the Customs authority had assessed the duty and taxes of the imported polymer polythene on the basis of

reference value of US Dollar 720/= per metric ton. In so doing they have verified the International Market and eight other consignments from different Countries. We do not find any illegality in such assessment.

A customs appeal before the High Court Division is governed, amongst others, by section 196D read with section 196B of Customs Act. For better appreciation of law, these are quoted below:

“196B: Orders of Appellate Tribunal.- (1) The Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such order thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against[or may refer the case back to the authority which passed such decision or order with such directions as the Appellate Tribunal may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary. (Emphasis supplied)

2) The Appellate Tribunal may, at any time within four years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1) and shall make such amendments if the mistake is brought to its notice by the Commissioner of Customs or the other party to the appeal:

Provided that an amendment which has the effect of enhancing the assessment or reducing a refund or otherwise increasing the liability of the other party shall not be made under this sub-section, unless the Appellate Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard.

The Appellate Tribunal shall send a copy of every order passed under this section to the Commissioner of Customs and the other party to the appeal.

4) Save as otherwise provided in section 196D, orders passed by the Appellate Tribunal on appeal shall be final

“196D: Appeal to the High Court Division.- The Commissioner of Customs or the other party may, within ninety days of the date upon which he is served with notice of an order under section 196B, by an application, prefer an appeal to the High Court Division against such order.+(Emphasis supplied)

From a careful reading of the afore quoted sections of the Customs Act, it comes out that a customs appeal under section 196D lies before the High Court Division against an order passed by the Customs, Excise and VAT Appellate Tribunal on merit under section 196B after giving the parties an opportunity of being heard. Any order of dismissal of appeal for not depositing duty and/or fine as required under section 194, which is a precondition of considering any such appeal by the Customs Excise and VAT Appellate Tribunal, cannot be said to have been passed under section 196B. Similarly any order of the Tribunal dismissing an appeal for default is not an order under section 196B of the Act as it is not an order passed on merit. The law does not confer any jurisdiction on this Court to entertain any appeal against an order, which is not passed under section 196B of the Act.

We took the same view in the judgment and order dated 28.05.2003 passed analogously in Customs Appeal Nos.9, 2-3 and 53

of 2008. This view also lends support from the aforesaid decision of Customs Appeal No.17 of 2008 analogously passed with two others customs appeals, wherein one of us was a party.

Since the orders in question passed in Customs Appeal Nos. 71 of 2008, 42 of 2008, 7 of 2008, 28 of 2007, 25 of 2006 and 55 of 2003 are not the orders passed under section 196B of the Customs Act, these appeals are not maintainable. Accordingly, Customs Appeal Nos. 71 of 2008, 42 of 2008, 7 of 2008, 28 of 2007, 25 of 2006 and 55 of 2003 are dismissed as being not maintainable. As already discussed, Customs Appeal No.9 of 2003 having no merit is also dismissed.

Communicate the orders and send down the records.

Mohammad Bazlur Rahman, J:

I agree.