

Present:

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

Customs Appeal No. 9 of 2008  
with  
Customs Appeal Nos. 2-3 of 2008  
with  
Customs Appeal No. 53 of 2008

M. Shahidul Karim  
... Appellant in Customs Appeal 9 of 2008

Packers Bangladesh Ltd.  
... Appellant in Customs Appeals 2-3 of 2008

O. S. Kaha Tex (Bd) Ltd.  
... Appellant in Customs Appeal 53 of 2008  
-Versus-  
National Board of Revenue and others  
õ Respondents in all the customs appeals

Mr. A. M. Aminuddin with Mr. Munshi  
Moniruzzaman, Advocates  
õ for the appellants in all the customs appeals

Mr. Pratikar Chakma, Assistant Attorney General  
... for the respondents in all the appeals

Judgment on 28.05.2013

*Md. Ruhul Quddus, J:*

These four customs appeal under section 196D of the Customs Act, 1969 arising out of same nature of orders dismissing four separate appeals purportedly under section 196A of the Customs Act have been heard together and are being disposed of by one judgment.

Customs Appeal No.9 of 2008 was preferred against order dated 25.11.2007 passed by the Customs, Excise and VAT Appellate Tribunal, Dhaka in Appeal No.CEVT/Case(Cus)-108/2006/3603 (1-2)

dismissing the same for not depositing money as required under section 194 of the Customs Act. The appeal before the Tribunal was filed against order No.34/Musak/05 dated 12.12.2005 passed by the Commissioner of Customs, Excise and VAT Commissionerate, Dhaka confiscating the appellants goods and imposing redemption-fine of Taka 8,00,000/= (eight lac) with personal penalty of Taka 1,00,000/- (one lac) only to be paid by the appellant for illegal possession of some diamond-made ornaments in his jewelry-shop named Mona Jewelers at Baitul Mokarram, Dhaka.

Customs Appeal No.2 of 2008 was preferred against order dated 01.11.2007 of the Customs, Excise and VAT Appellate Tribunal, Dhaka passed in Appeal No.CEVT/Case(Cus)-748/2005/514(1-2) dismissing the same for not depositing duty and fine as required under section 194 of the Customs Act. The appeal before the Tribunal was filed against order No.108/05 dated 03.08.2005 passed by the Commissioner, Customs Bond Commissionerate, Dhaka demanding Taka 6,57,921.96 as customs duty from the appellant and imposing penalty of Taka 10,000= for violation of certain provisions of the Customs Act, and terms and conditions of bond license by selling medium papers and liner papers worth Taka 13,53,361.81 (thirteen lac fifty-three thousand three hundred sixty-one and Paisa eighty-one) only in open market, which were imported under bond facility.

Customs Appeal No.3 of 2008 was preferred against order dated 04.10.2007 of the Customs, Excise and VAT Appellate Tribunal,

Dhaka passed in Appeal No.CEVT/Case(Cus)-160/2006/499(1-2) dismissing the same for not depositing duty and fine as required under section 194 of the Customs Act. The appeal before the Tribunal was filed against order No.138/05 dated 24.11.2005 passed by the Commissioner, Customs Bond Commissionerate, Dhaka demanding Taka 3,90,360.30 (three lac ninety thousand three hundred sixty and Paisa thirty) only as customs duty from the appellant and imposing penalty of Taka 50,000= (fifty thousand) only for violation of certain provisions of the Customs Act, and terms and conditions of bond license by selling 21,294.55 K.Gs of medium papers and 23,750 K.Gs of liner papers in open market, which were imported under bond facility.

Customs Appeal No.53 of 2008 was preferred against order dated 26.02.2008 of the Customs, Excise and VAT Appellate Tribunal, Dhaka passed in Appeal No.CEVT/Case(Cus)-1037/2007/192(1-2) dismissing the same for not depositing duty and fine as required under section 194 of the Customs Act. The appeal before the Tribunal was filed against order No.289/07 dated 04.11.2007 passed by the Commissioner, Customs Bond Commissionerate, Dhaka demanding Taka 2,3108,831.43 (two crore thirty-one lac eight thousand eight hundred thirty-one and Paisa forty-three) only as customs duties and taxes from the appellant-company and imposing penalty of Taka 1,50,00,000/= (one crore and fifty lac) not in-bonding raw materials imported under bond facility and failing to produce any documents to

show that the goods manufactured by the raw materials were subsequently exported.

Mr. A. M. Aminuddin, learned Advocate for the appellants in all the appeals 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 since it has already been decided that a customs appeal under section 196D of the Customs Act against an order of dismissal of appeal for not depositing duties, taxes and fine as required by section 194 of the said Act is not maintainable, he should not argue the case on merit so that the appellants can approach with their respective cases in appropriate forum.

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

We have gone through the record and examined the impugned orders in all the four appeals. It appears that the Customs, Excise and Vat Appellate Tribunal, Dhaka dismissed the appeals for not depositing money as required by section 194 of the Customs Act. 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 aforequoted 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 under section 196B after hearing of the parties on merit by the Customs, Excise and VAT Appellate Tribunal in an appeal preferred before it within the scope of law. Any order of dismissal of appeal filed under section 196 A 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. 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.

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 before us are not the orders passed under section 196B of the Customs Act, the instant appeals under section 196D are not maintainable. Accordingly all the customs appeals are dismissed as being not maintainable.

Communicate the orders and send down the records.

Mohammad Bazlur Rahman, J:

I agree.



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