

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

Customs Appeal No. 16 of 2006
with
Customs Appeal No. 28 of 2008
with
Customs Appeal No. 52 of 2008

Wright Garments (Pvt) Ltd.
 õ Appellant in Customs Appeal No.16 of 2008

M.A. Zipper & Elastic Industries Ltd.
 õ Appellant in Customs Appeal No.28 of 2008

Md. Habibur Rahman
 õ Appellant in Customs Appeal No.52 of 2008

-Versus-

Customs, Excise and VAT Appellate Tribunal,
Dhaka and others
 õ Respondents in all the appeals

Mr. Md. Sadullah, Advocate
 õ for the appellant in Customs Appeal 6 of 2008

Mr. Md. Modersher Ali Khan, Advocate
 õ for the appellant in Customs Appeal 28 of 2008

No one appears for the appellant in Customs Appeal
No.52 of 2008

Judgment on 04.06.2013

Md. Ruhul Quddus, J:

These three customs appeals under section 196D of the Customs Act, 1969 arising out of same nature of orders dismissing three 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.16 of 2006 has been preferred against order dated 02.07.2006 passed by the Customs, Excise and VAT Appellate Tribunal, Dhaka in Appeal No.CEVT/Case(Cus)-97/2002/2394 dismissing the same for non-deposition of money as required under section 194 of the Customs Act. The appeal before the Tribunal was filed challenging order dated 16.06.2002 passed by the Commissioner, Customs Bond Commissionerate, Dhaka imposing personal penalty of Taka 5,00,00,000/= (five crore) only for committing offence under sections 13 (2) (b), 86, 97, 104 and 105 of the Customs Act by illegal shifting and selling of goods worth Taka 2,72,75,860.44 (two crore seventy-two lac seventy-five thousand eight hundred sixty and Paisa forty-four) only from the bonded warehouse of the appellant-company causing loss of revenue amounting to Taka 1,80,36,161.47 (one crore eighty lac thirty-six thousand one hundred sixty-one and Paisa forty-seven) only; and directing to deposit the money totaling Taka 6,80,36,161.47 (5,00,00,000/- + 1,80,36,161.47) (six crore eighty lac thirty-six thousand one hundred sixty-one and Paisa forty-seven) only to the public exchequer within fifteen days.

Customs Appeal No.28 of 2008 has been preferred against order dated 24.03.2008 of the Customs, Excise and VAT Appellate Tribunal, Dhaka passed in Appeal No.CEVT/Case(Cus)-262/2007/262(1-2) dismissing the same for non-deposition of penalty-money. The appeal before the Tribunal was filed against order dated 10.06.2007 passed by the Commissioner, Customs Bond Commissionerate, Dhaka imposing

penalty of Taka 20,51,095/= (twenty lac fifty-one thousand ninety-five) to be paid by the appellant-company for committing offence under table 60 of section 156 (1) of the Customs Act by keeping unregistered goods in its bonded warehouse; and directing to deposit the penalty-money to the public exchequer within fifteen days.

Customs Appeal No.52 of 2008 has been preferred against order dated 27.02.2008 of the Customs, Excise and VAT Appellate Tribunal, Dhaka passed in Appeal No.CEVT/Case(Cus)-249/2006 dismissing the same for non-deposition of penalty-money. The appeal before the Tribunal was filed against order dated 28.02.2006 passed by the Commissioner, Customs House, Dhaka confiscating foreign currency equivalent to Taka 15,88,200/= (fifteen lac eighty-eight thousand two hundred) from the appellant and imposing penalty of Taka 2,00,000/- (two lac) only to be paid by him for attempting to take away from Bangladesh the foreign currency, which was more than the legal limit; and directing him to deposit the penalty-money to the public exchequer within fifteen days.

Mr. Md. Sadullah, learned Advocate for the appellant in Customs Appeal No.16 of 2006 agitates all the grounds taken in the application of appeal and submits that the Appellate Tribunal ought to have heard the appeal on merit and given a decision therein. Now justice demands that the High Court Division would give a decision on merit in the instant appeal.

Mr. Md. Modersher Ali Khan, learned Advocate for the appellant in Customs Appeal No.28 of 2008 adopts the submission of Mr. Md. Sadullah and submits that the Appellate Tribunal without disposing of the appeals on merit has violated the provision of section 196 B and thereby committed illegality and as such the impugned orders are liable to be set aside.

We have gone through the record and examined the impugned orders in all the three appeals. It appears that the Customs, Excise and Vat Appellate Tribunal, Dhaka dismissed the appeals for non-deposition of money as required by section 194 of the Customs Act.

Before going into merit of the appeals, let us consider the point of maintainability of the customs appeals first. 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+

From a plain reading of the aforequoted sections of the Customs Act, it appears that a customs appeal under section 196D lies before the High Court Division against a final order passed on merit under section 196B after hearing of the parties by the Customs, Excise and VAT Appellate Tribunal in an appeal under section 196A of the Act.

This view also lends support from an unreported decision in Customs Appeal No. 17 of 2008 passed analogously with two other appeals by a Division Bench, wherein one of us was a party.

Since the order in question before us is not a final order passed on merit after hearing of the parties, the instant appeals under section 196D are not maintainable. Accordingly all the customs appeals are dismissed as being not maintainable.

Learned Advocates for the appellants in Customs Appeal No.16 of 2006 and Customs Appeal No. 28 of 2008 are allowed to take back the certified copy of the impugned order by substituting photocopy thereof.

Send down the records.

Mohammad Bazlur Rahman, J:

I agree.