

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION**

(Special Statutory Jurisdiction)

Customs Appeal No. 11 of 2003.

In the matter of:

An appeal under section 196D of the Customs Act, 1969.

And

In the matter of:

Jashimuddin, son of Mohammad Mohiuddin of village Ramerkanda, Post Office Ruhitpur, Police Station Keranigonj, District-Dhaka represented by its constituted attorney Mr. Ainul Hoque, son of Abdul Gani Dhali, of village Mridha Kandi, Police Station Naria, District-Sariatpur

.... Appellant.

Versus

The Appellate Tribunal, Customs, Excise and VAT, Jibon Bima Bhaban, 10, Dilkusha Commercial Area, Dhaka and another.

... Respondents

Ms. Fahima Barrin(Eva), Advocate

...For the Appellant.

Mr. Tapash Kumar Biswas, D.A.G.

... For respondents-customs authorities.

Heard on: The 11th & 18th Nov.2014

Judgment on: The 19th Nov. 2014.

Mohammad Ullah, J:

This appeal under Section 196D of the Customs Act, 1969, is directed against the order dated 11.3.2003 passed by the Customs, Excise and VAT Appellate Tribunal (respondent no.1), as communicated vide Nothi No. CEVT/Case(cus) 303/62 dated

<p>Present: Mr. Justice Sheikh Hassan Arif and Mr. Justice Mohammad Ullah</p>

20.3.2003, preferred by the appellant against the order dated 5.9.1996 passed by the Commissioner of Customs, Customs House, Dhaka confiscating the goods in view of the provision under Clauses 8 and 9(1) of the Table of Section 156(1) of the Customs Act, 1969.

Short facts, relevant for the purpose of disposal of this appeal, are that the appellant Md. Jashimuddin holding Passport No. L-0525321 went to Singapore on 25.10.1995 for doing work therein. But, unfortunately, the Emigration Office at Singapore Airport did not provide him necessary Port Entry Visa to enter Singapore and the appellant was deported to Bangladesh through air on the next day on 26.10.1995. It has been contended that appellant's brother Md. Badal was working at Singapore who purchased 2 kg. gold bar, 200 grams gold chain and a Movie Video camera by his own money worth about Tk. 9,46,895/- who gave the same to the appellant through another passenger of the same flight with a view to recovery of the Air fare incurred by him for his brother i.e. the appellant. The appellant arrived at the then Zia International Airport on 26.10.1995 and declared as per the relevant Baggage Rules about the goods carried by him with a view to pay applicable tax and duties payable on the said goods. But the

customs authority, instead of taking applicable tax and duties, seized those goods alleging, *inter-alia*, that since the appellant did not get any visa to enter into the Singapore, he will not be eligible to get benefit of Baggage Rules. Therefore, the appellant was asked to show cause as to why the seized goods would not be confiscated in favour of the State and why he would not be punished under Clauses 8 and 9(1) of the Table of Section 156(1) of the Customs Act, 1969. Accordingly, the appellant replied to the said show cause notice on 3.3.1996 contending, *inter-alia*, that the goods were not smuggled one and as per Baggage Rules he was entitled to bring those goods into Bangladesh on payment of applicable tax and duties thereof. Thereafter, the matter was adjudicated by the respondent no. 2 Commissioner of Customs who upon hearing the appellant and the representative of the customs authority confiscated the seized goods in favour of the State in view of the provision of clauses 8 and 9(1) of the Table of section 156(1) of the Customs Act, 1969 vide order dated 5.9.1996. Being aggrieved with the adjudication order of the commissioner of customs, the appellant preferred an appeal before the Customs, Excise and Vat Appellate Tribunal, Dhaka, whereupon the Tribunal after hearing the parties dismissed the appeal and, thereby, affirmed the order of the commissioner of customs. Being aggrieved with the aforesaid order of the Tribunal, the appellant approached this Court invoking

section 196D of the Customs Act, 1969 by filing the aforesaid customs appeal.

This appeal is contested by the customs authorities through Mr. Tapash Kumar Biswas, learned Deputy Attorney General.

Ms. Fahima Barrin (Eva), learned Advocate appearing on behalf of the appellant, submits that the appellant was entitled to carry the confiscated goods and release the same subject to payment of applicable tax and duties payable on the goods but when the appellant declared those goods as brought by him for giving tax and duties, the customs authorities most illegally ignoring the provision of applicable laws and Rules, particularly the Baggage Rules, 1994, seized the said goods and while the commissioner of customs and the Tribunal adjudicated the matter misdirected themselves holding that the goods as carried by the appellant was smuggled one and hence both the orders of the customs authorities should be set aside.

Mr. Tapash Kumar Biswas, learned Deputy Attorney General, appearing on behalf of the customs authority, on the other

hand, submits that since the appellant did not get any Visa to enter into Singapore, the Baggage Rules was not applicable to the appellant particularly for the purpose of carrying the confiscated goods and as such the commissioner of customs and the Tribunal did not commit any illegality in passing their respective orders. The learned Deputy Attorney General further submits that without prior permission for importing the said goods, the appellant brought those into Bangladesh and as such the customs authority rightly confiscated the goods as the same was smuggled one.

We have heard the learned Advocates from both the sides, perused the materials on record including the concerned provision of law. It appears that the appellant went to Singapore on 25.10.1995 through an International flight for doing job and when he failed to cross the Singapore Airport as the authority concerned did not provide him required Port Entry Visa, he was compelled to return Bangladesh from Changee Airport, Singapore. According to the appellant when he was returning from Singapore Airport, his brother Md. Bellal, who was working at Singapore, gave 2 kg gold bar, 200 grams gold chain and a movie video camera to the appellant through another passenger who was also coming to

Bangladesh by the same flight. Accordingly, the appellant arrived at the then Zia International Airport on 26.10.1995 and gave declaration as per the relevant Baggage Rules that he carried 2 kg gold bar, 200 grams gold chain and a Movie Video Camera for paying applicable tax and duties on the said goods. In spite of taking applicable tax and duties on the declared goods, the customs authority seized the same on the ground that the Baggage Rules should not be applicable for the appellant as he did not get any Visa for entering into the Singapore and he will not be treated as বিদেশ প্রত্যাগত যাত্রী.

On the face of the aforesaid contention of the customs authority and the submissions of the learned Advocates from both the sides, we have examined the provisions of the Baggage Rules, 1994 namely Sub-rule (8) of Rule 3 as was applicable at the relevant time. It will be convenient to quote the Rule 3 (8) for ready reference:

“বিদেশে অবস্থানের মেয়াদ নির্বিশেষে একজন বাংলাদেশী যাত্রী বিদেশ হইতে আগমনের সময় অথবা বিদেশে বসবাসরত বাংলাদেশী কোন যাত্রী বাংলাদেশে আগমনের সময় প্রতি ১১.৬৬৪ গ্রাম (এক তোলা) স্বর্ণ ৩০০/- (তিনশত) টাকা ও প্রতি ১১.৬৬৪ গ্রাম (এক তোলা) রৌপ্য ৬/- টাকা হারে শুল্ক প্রদান করিয়া অনধিক ৫ (পাঁচ) কেজি স্বর্ণ এবং ১৫ (পনের) কেজি রৌপ্য আমদানী করিয়া খালাস লইতে পারিবেন এবং একজন পুরুষ যাত্রী ৫০ (পঞ্চাশ) গ্রাম ও মহিলা যাত্রী ২০০ (দুইশত) গ্রাম ওজনের স্বর্ণালঙ্কার বা রৌপ্য অলংকার শুল্ক, মূল্য সংযোজন কর ও সম্পূরক শুল্ক পরিশোধ ব্যতিরেকে আমদানী করিতে পারিবেন: তবে শর্ত থাকে যে, এক প্রকারের অলংকার ছয়টি বা তিন সেটের অধিক হইবে না।”

In view of the aforesaid provision of the Baggage Rules, 1994, it appears that a passenger can carry up-to 5 kg gold bar, 15 kg. silver on payment of applicable tax i.e. Tk.300/-for 11.664 grams (one Tola) gold and Tk. 6/- for 11.664 grams (one Tola) silver, besides a male passenger can take 50 grams and a female passenger can take 200 grams ornaments made by gold or silver without payment of tax and duties on those materials. It also appears that in nowhere in the Baggage Rules, 1994 as was applicable at the relevant time made any embargo that a passenger returning from any Airport outside of Bangladesh cannot get benefit of the Baggage Rules, 1994 for want of staying a particular time in abroad. It further appears that the commissioner of customs and the Tribunal failed to appreciate the bonafide of the appellant who gave declaration of the carried goods in question as per the relevant Baggage Rules for the purpose of paying applicable tax and duties on those goods. From the facts and circumstances in the instant case, we hold that the appellant was a valid passenger and mere failure to obtain Visa for the purpose of entering into the Singapore, he should not be held disqualified for getting benefit of the concerned Baggage Rules. It appears that the customs authority and the Tribunal concurrently held that the appellant failed to stay minimum 12 hours at Singapore for getting benefit of the Baggage Rules, but we do not find any provisions of such time limit in the

Baggage Rules for the purpose of getting benefit of the same. Again, it appears that the appellant did not breach any provision of law and try to evade payment of customs duties or taxes leviable on the confiscated goods. This being so, we are of the view that the goods in question were not prohibited or restricted to bring into Bangladesh and the appellant lawfully carried the said goods and accordingly he gave declaration to pay the applicable tax and duties on those goods to the customs authority but the custom authority ignoring the provision of law particularly the Baggage Rules, 1994 as was applicable at the relevant time seized the goods without any fault of the appellant. Considering the provisions of law and in view of the above facts and circumstances of the case, we find merit in this appeal.

In the result, the appeal is allowed.

The order dated 11.3.2003 passed by the Customs, Excise and VAT Appellate Tribunal (respondent no.1) as communicated vide Nothi No. CEVT/Case (cus) 303/62 dated 20.3.2003 preferred by the appellant against the order dated 5.9.1996 passed by the Commissioner of Customs, Customs House, Dhaka is set aside.

The respondents customs authorities are directed to return or release the said confiscated goods in favour of the appellant within

30 (thirty) days from the date of receipt of this judgment on payment of tax and duties as applicable at the relevant time.

Let a copy of this Judgment be sent to the Tribunal under the seal and signature of an officer of this Court in view of the provision of section 196G of the Customs Act, 1969.

Send down the records of the lower authorities.

Sheikh Hassan Arif, J:

I agree.

Siddique/B.O.