

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

WRIT PETITION NO.7193 of 2020

IN THE MATTER OF:

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

And

IN THE MATTER OF:

Md. Mosharaf Hossain

... Petitioner.

-vs-

***People's Republic of Bangladesh represented
by the Secretary, Ministry of Finance, Internal
Resources Division, Bangladesh Secretariat,
Sher-e-Bangla Nagar, Dhaka and others.***

... Respondents.

And

Ms. Faria Zaman, Advocate

.... For the Petitioner.

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

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

Mr. Md. Modersher Ali Khan (Dipu), A.A.G.

....For the Respondents-government.

**Heard on: 08.02.2024 and
Judgment on:13.02.2024**

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 dated 27.09.2020 passed under Nothi No.
CEVT/Case (Cus))-388/2020 by the Customs, Excise and VAT Appellate

Tribunal, Dhaka, respondent No.3 rejecting the appeal filed by the petitioner on the ground of limitation (as contained in Annexure-G), should not be declared to have been passed without lawful authority and hence, of no legal effect.

At the time of issuance of the Rule the operation of the impugned order dated 24.06.2020 issued by the respondent No.4 under Section 202 of the Customs Act, 1969 read with Section 95(5) (Gha) of the Value Added Taxes and Supplementary Duty Act, 2012 (Annexure-D), was stayed by this Court for a prescribed period.

Facts, in brief, are that the petitioner is a bonafide businessman who is engaged in the business of export and import in compliance of the provisions of law. During the course of business the petitioner opened a Letter of Credit on 22.05.2019 to import some accessories and other electronic items from China and to that effect he duly submitted Bill of Entry No. C-886050 dated 11.06.2018 before the Customs authority for assessment of the same. After submission of the Bill of Entry the imported goods were physically examined by the Customs authority. Accordingly, certificate was issued declaring that the goods in question had been imported as per the declaration made by the petitioner. Subsequently, the Customs Intelligence Cell (CIC) informed the Customs authority for further physical inspection of the goods in question but the same was not done. Ultimately, goods could not be released from the Customs House, Chattogram. Consequently, those were listed for auction sale. Challenging the said enlistment of the goods for auction sale the petitioner filed Writ Petition No. 14373 of 2018 before this Court. Upon hearing the petitioner and having found *prima facie* substance this Court

issued a Rule Nisi and also, stayed the auction proceeding with direction upon the Customs authority to release the goods subject to payment of applicable customs duties, taxes and other charges.

However, due to financial crisis the petitioner had failed to take delivery of the imported goods in compliance of the direction given by this Court. In the meanwhile, the Customs authority started proceedings under clause 9(1) and (14) of the Table of Section 156(1) of the Customs Act, 1991 with the issuance of a show cause notice for violation of Section 16 read with Section 32 of the said Act, 1969. The petitioner having filed an application for summary adjudication conceding to the allegations so brought against the respondent No.4 vide order dated 09.04.2019 passed an adjudicating order imposing Tk. 40,00,000/- as penalty with Tk. 5,00,000/- as redemption fine.

However, the petitioner having failed to have the goods released on payment of applicable duties and taxes the respondent No.4 vide notification No. 35 dated 24.06.2020 informed all the respective Customs Houses not to allow the petitioner to export and import any goods and release of the same, under Section 202(1)(B) of the Customs Act, 1969 read with Section 95(5)(Gha) of the Value Added Tax and Supplementary Duty Act, 2012.

Challenging the said adjudicating order dated 11.04.2019 passed by the respondent No.4 the petitioner preferred an appeal bearing No. CEVT/Case (Cus)-388/2020 before the respondent No.3 under Section 196A of the Act, 1969.

Said appeal was ultimately dismissed as being barred by limitation vide order dated 27.09.2020. Hence, the application.

Ms. Fariha Zaman, the learned Advocate appearing for the petitioner submits that the impugned order was passed on 11.04.2019 but neither the petitioner has received a copy of the said order nor it was communicated to the petitioner. Moreover, at the time of issuance of the said order the petitioner was suffering from serious illness and could not take necessary steps for preferring appeal within time. In addition the company was facing financial crisis; consequently, it was difficult at the relevant time to arrange required finance to prefer appeal before the Tribunal upon obtaining certified copy. Meanwhile, a delay of 9(nine) months and 20(twenty) days have occurred for preferring appeal. Accordingly, she prays for interference in the matter by giving necessary direction upon the Tribunal concerned to hear the appeal on merit upon condoning the delay for the cause of justice and equity.

Mr. Md. Abul Kalam Khan (Daud), the learned Assistant Attorney General appearing for the respondents-government submits that challenging the adjudicating order passed by the Commissioner concerned an appeal before the Tribunal is required to be preferred within the statutory prescribed period as provided under Section 196A of the said Act. In the instant case, the petitioner has admittedly caused delay in preferring the said appeal. Hence, the order of dismissal of the appeal preferred by the petitioner as being barred by limitation cannot be termed as an order passed without lawful authority. Accordingly, submits that this Rule is liable to be discharged.

It is an admitted position of fact that challenging the adjudicating order dated 11.04.2019 passed by the respondent No.4, the petitioner as appellant preferred an appeal before the Customs, Excise and VAT Appellate

Tribunal, Dhaka, respondent No.3 under Section 196A of the Customs Act, 1969. However, in preferring the appeal before the Tribunal a delay of 9(nine) months and 20(twenty) days have occurred due to the reason of not being informed within time. The Tribunal concerned ultimately dismissed the appeal having not been convinced about the cause of delay so has occasioned while preferring the appeal.

The power to condone the delay by the Tribunal is discretionary. However, taking into consideration of the facts that for dismissal of the appeal the petitioner has become non-suited, 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 dated 27.09.2020 passed under Nothi No. CEVT/Case (Cus))-388/2020 by the Customs, Excise and VAT Appellate Tribunal, Dhaka, respondent No.3, is hereby declared to have been passed without lawful authority and hence, of no legal effect.

Accordingly, the Tribunal concerned is directed to hear the appeal on merit within 3(three) months from the date of receipt of the copy of the order provided the said appeal has been preferred upon fulfillment of the requirement of law.

There will be no order as to costs.

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

Muhammad Mahbub Ul Islam, J:

I agree.