THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL STATUTORY JURISDICTION)

CUSTOMS APPEAL NO. 373 OF 2021

IN THE MATTER OF:

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

And

IN THE MATTER OF:

M/s. Green World Fashion Ltd.
.... Appellant.

-Vs-

Customs, Excise and VAT Appellate Tribunal, Dhaka and others.
....Respondents.

Mr. M. Abul Kashem Selim with
Md. Nazimuddin, Advocate
..... For the Appellant.

Mr. Akhtar Farhad Zaman with Mrs. Shadia Afrin Shapla with Mr. Arif Khan, Deputy Attorney Generals with Mr. Sovan Mahmud, Mr. Md. Faridul Islam, Mr. Md. Nazmul Haque and Mr. Md. Sarwar Alam Chowdhury, Assistant Attorney Generals
..... For the Respondent-government.

Heard On: 23.04.2026, 05.05.2026 & 06.05.2026
Judgment on: 13.05.2026

Present:

Mr. Justice S.M. Maniruzzaman
and
Mr. Justice Dihider Masum Kabir

S.M. Maniruzzaman, J:

This Customs Appeal, under section 196D of the Customs Act, 1969 (in short, the Act, 1969) is directed against the Order dated 12.06.2021 passed by Customs, Exercise and VAT Appellate Tribunal, Dhaka (in short, the Tribunal) respondent No. 1 communicated vide Nathi No.

CEVT/CASE (CUS)-29/2020/1307 dated 17.06.2021 disallowing the appeal and hereby affirmed the order No. 36 dated 01.01.2020 passed by respondent No. 2 (Commissioner of Customs, Customs House, Chattagram) communicated vide Nathi No. ৩৮০৭/এপি/সবিটিম-১৩/২০১৯-২০২০-৩১৫(কাস)(197) dated 02.01.2020.

Facts, relevant for disposal of the appeal, in brief, are that the appellant is a private limited company incorporated under the Companies Act, 1994, and is engaged in the business of manufacturing 100% export-oriented ready-made garments. In the course of its business, the appellant obtained a Bond License under section 13 of the Act, 1969 and also became a member of BGMEA bearing Membership No. 3146.

In course of its regular business, the appellant received an order from a foreign buyer for supplying “ladies’ skirts” and “men’s long pants”. Accordingly, a purchase order was executed between the appellant and the buyer vide Purchase Contract No. COMPLS/GWF/05/2019 dated 25.03.2019 (in short, the Contract).

For the purpose of manufacturing the said garments as per contract, the appellant opened a Back-to-Back Letter of Credit bearing No. 045119050010 dated 27.04.2019 for importing 27,500.00 K.G of 100% “Rayon Fabric” from China. It is stated that the appellant obtained a Utilization Declaration (U.D) from the Bangladesh Garments Manufacturers and Exporters Association (BGMEA) for using the imported fabric and also executed the requisite bond in respect of the bonded goods.

After arrival of the fabrics at Chattogram Port, the appellant, through its C&F Agent, submitted Bill of Entry No. 1333530 dated 20.08.2019 for

assessment and release of the imported goods under the bonded facility. Upon submission of the Bill of Entry, the goods were selected for physical examination. Accordingly, samples were collected for chemical examination. Upon completion of the chemical examination, the customs authority found that the imported goods were 100% “Rayon Dyed Fabrics” instead of 100% “Rayon Fabrics” and recommended to initiate proceedings under the Act, 1969.

Thereafter, on 24.10.2019, respondent No. 2 issued a show-cause notice upon the appellant under Section 180 of the Act, 1969, asking to show cause as to why action should not be taken against it under Table clauses 9(i) and 14 of Section 156 (1) for violation of sections 16 and 32 of the Act, 1969.

Upon receipt of the said notice, the appellant submitted a reply on 03.11.2019 stating, inter alia, that after completion of 100% chemical test, the customs authority had found the goods to be “Rayon Dyed Fabrics” instead of “Rayon Fabrics”, however, the ingredients corresponding to the declared H.S. Code had not changed. The appellant further stated that the goods in question had been imported for using in a 100% export-oriented industry and after manufacturing the finished products, would be supplied to the foreign buyer. Accordingly, the appellant requested the customs authority to release the goods.

After affording the appellant an opportunity of being heard, respondent No. 2 by an order dated 02.01.2020 confiscated the goods and imposed a penalty of Tk. 9,00,000/- along with a redemption fine of Tk. 1,00,000/- in lieu of confiscation. The respondent further directed the

appellant to release the goods upon payment of the applicable customs duties and taxes along with the penalties and that the goods be released under I.M.-4 instead of I.M.-7.

Being aggrieved by the adjudication order dated 02.01.2020, the appellant preferred a Customs Appeal before respondent No. 1, Customs, Excise and VAT Appellate Tribunal bearing Customs Appeal No. Cus 29 of 2020.

It is further stated that during pendency of the appeal before the Tribunal, the appellant filed Writ Petition No. 1998 of 2020 before the High Court Division, Supreme Court of Bangladesh and obtained a Rule along with an interim order, directing the customs authority to release the goods in favour of the appellant upon furnishing a continuing bank guarantee covering the applicable customs duties and taxes. The realization of the fine and penalty was also stayed.

Accordingly, the appellant secured released the goods for manufacturing ready-made garments. Subsequently, the writ petition was disposed of by the High Court Division on 22.11.2020 with a direction upon the Tribunal to hear and dispose of the appeal in accordance with law.

After hearing the contending parties, the Tribunal dismissed the appeal and thereby upheld the order of the Commissioner by its order dated 12.06.2021.

Being aggrieved by and dissatisfied with the order of the Tribunal, the appellant preferred the instance Customs Appeal before this Court.

Mr. M. Abul Kashem Selim, the learned Advocate appearing on behalf of the appellant submits that the Tribunal failed to appreciate that

appellant's declared H.S Code No. 5516.24.00 falls within the ambit of H.S Code No. 5516.12.00 and was subsequently included in the Bond License vide Nathi No. 5(13)369/Cus-Bond/2000/Part-01/2015 dated 01.10.2019. The adjudication authority as well as the Tribunal without considering the said fact and legal position passed the impugned order. Therefore, the Tribunal committed error of law in dismissing the appeal and affirming the order of respondent No. 2 and thus, the same is liable to be set aside.

Mr. Selim next submits that the appellant declared the goods as 100% “Rayon fabrics” falls under H.S. Code No. 5516.24.00, whereas the customs authority classified the fabrics under H.S. Code No. 5516.12.00. Both H.S. Codes fall within the same category and enjoy duty free treatment under the bond facility. There was no material mis declaration regarding the H.S. Code. However, the respondent customs authority without considering this material facts passed the impugned adjudication order and the Tribunal most illegally dismissed the appeal and thereby affirmed the order of respondent No. 2 thus, the same is liable to be set aside.

Mr. Selim also submits that the imported goods were not prohibited or restricted under the Import Policy Order or any other law and as such the confiscation of the goods and such imposition of fine and penalty upon the appellant under section 16 of the Act, 1969 is ex-facie illegal and without jurisdiction and thus, the Tribunal committed error of law in dismissing the appeal.

Mr. Salim further submits that, before finally disposing of the appeal, the appellant filed a supplementary memo of appeal annexing all

relevant documents relating to the export of the finished products manufactured from the imported fabrics. However, the Tribunal, without considering those documents dismissed the appeal and thereby upheld the order of the Commissioner.

In view of the stated facts, Mr. Selim argues that the fabrics were released pursuant to the interim order passed by the High Court Division in Writ Petition No. 12254 of 2019. Thereafter, the appellant manufactured ready-made garments and exported the same. Subsequently, the export proceeds were duly realized which was reflected in the audit report conducted by the Customs Bond, Commissionerate, Dhaka dated 26.08.2020. Accordingly, the learned Advocate prays that the appeal be allowed and the bank guarantee be returned to the appellant.

Per contra, Mr. Akhtar Farhad Zaman, the learned Deputy Attorney General appearing on behalf of the respondent Government, submits that the appellant imported the fabrics by making a false declaration. Accordingly, the Commissioner of Customs rightly confiscated the fabrics and directed to release those upon payment of the applicable customs duties and taxes, fines and penalties. Considering the said facts, the Tribunal dismissed the appeal and thereby affirmed the order of the Commissioner.

The learned Deputy Attorney General further submits that the goods had already been released by the customs authority in favour of the appellant and although the appellant claims that the goods were utilized for export purpose under the bond facilities, such a claim was not the subject

matter of the present appeal. As such, the appellant is not entitled to return of the bank guarantee furnished before the customs authority.

In view of the above, the learned Deputy Attorney General prays that the appeal should be dismissed with a direction upon the customs authority to encash the bank guarantee in accordance with law.

We have heard the learned Advocate appearing for the appellant and the learned Deputy Attorney General appearing for the respondent-government, perused the impugned orders, relevant materials on record and consulted the relevant provision of law.

It, however appears from the record that the appellant is engaged in the business of manufacturing readymade garments for export. Accordingly, a purchase contract was signed between the appellant and the foreign buyer vide Purchase Contract No. COMPLS/GWF/05/2019 dated 25.03.2019 for the supply of “ladies’ skirts” and “men’s long pants”.

In order to supply the same, the appellant opened a Letter of Credit No. 045119050010 dated 27.03.2019 for importing 27,500.00 kg of 100% “Rayon Fabrics” from China. After arrival of the goods at Customs House, Chattagram, the appellant through its C&F Agent submitted Bill of Entry No. 1333530 dated 20.08.2019 seeking assessment and release the fabrics under the bond warehouse facilities. However, upon chemical examination of the fabrics, the customs authority came to the conclusion that the appellant imported 100% “Rayon Dyed Fabrics” instead of 100% “Rayon Fabrics”. Accordingly, a proceeding was initiated against the appellant under section 32 of the Act, 1969. Thereafter, upon hearing the appellant a penalty of Tk. 9,00,000/- along with a redemption fine of Tk. 1,00,000/-

was imposed by respondent No. 2 upon the appellant by order dated 02.01.2020 and thereby further directed to release the fabrics on payment of applicable customs duties and taxes along with the fine and penalty and be released the same under I.M-4 instead of I.M-7.

Challenging the said order, the appellant preferred Customs Appeal No. Cus 29 of 2020 before the Tribunal and during the pendency of the appeal, the appellant filed Writ Petition No. 1998 of 2020 before the High Court Division and obtained a Rule along with the following interim order:

> "Pending disposal of the Rule, let the operation of the adjudication order dated 01.01.2020 passed by the respondent No. 2 so far imposing of penalty the tune Tk. 09,00,000/- (Taka nine lac) as well as redemption fine of Te 1,00,000/- (Taka one lac) (Annexure- 1), be stayed till disposal of Appeal No. CEVT/Case (Cus)-29/2020/1067.
>
> Meanwhile, the respondent No. 2 is hereby directed to release the Consignment in question imported under Letter of Credit No. 045119050010 dated 27.05.2019 covered under Bill of Entry No. 1333530 dated 20.08.2019 on receipt of bank guarantee to be furnished by the petitioner covering the applicable duties and taxes, within a period of 07(seven) days from the date receipt of the copy of this order,"

Pursuant thereto, the customs authority released the goods in favour of the appellant upon furnishing Continuing Bank Guarantee No. 1420200003 dated 01.03.2020 for an amount of Tk. 65,07,312.38. After releasing of the goods by furnishing the bank guarantee, the appellant manufactured ready-made garments as per the buyer's requirements and

exported the same through Export Bill of Entry Nos. C-640693 dated 11.05.2020, C-654121 dated 13.05.2020, C-692859 dated 20.05.2020, C-692857 dated 20.05.2020, C-724186 dated 03.06.2020, C-747934 dated 09.06.2020, and C-768305 dated 14.06.2020.

It further appears that after export of the ready-made garments, the export proceeds were duly realized through Bangladesh Bank. The appellant disclosed the said facts before the High Court Division in Writ Petition No. 12254 of 2019 and prayed for passing necessary order and the High Court Division was pleased to dispose of the Rule on 23.01.2020 with a direction upon the Tribunal to hear and dispose of the appeal in accordance with law.

Thereafter, the present appellant filed a supplementary memorandum of appeal before the Tribunal annexing the order passed by the High Court Division dated 23.01.2020 and the documents relating to the export of the readymade garments manufactured by the imported fabrics under Bill of Entry No. 1333530 dated 20.08.2019.

It is to be noted here that the appellant imported fabrics exclusively for manufacturing export oriented garments under the contract. Although after chemical examination, the customs authority detected the fabrics as 100% “Rayon Dyed Fabrics” and classified under H.S. Code No. 5516.12.00 instead of H.S. Code No. 5516.24.00. Subsequently, by order dated 10.02.2019 respondent No. 3 (Commissioner of Customs, Customs Bond Commissionerate) included “Dyed Fabrics” under H.S. Code No. 5516.24.00 in the Bond license for import and also obtained permission

from the BGMEA for using the same fabrics for export. The aforesaid documents were available before the Commissioner of Customs as well as the Tribunal. However, neither of the authorities below considered those documents before passing the impugned order.

It, however further appears that, an audit was conducted by the office of the Commissioner of Customs, Customs Bond Commissionerate, respondent No. 3 concerning the appellant's export-related documents for the period from 17.08.2018 to 16.08.2019 and submitted report on 26.08.2020, where it was found that the appellant, after releasing of the fabrics under Bill of Entry No. 1333530 dated 20.08.2019 as per direction of the High Court Division, manufactured ready-made garments and exported the same through Export Bill of Entry Nos. C-640693 dated 11.05.2020, C-654121 dated 13.05.2020, C-692859 dated 20.05.2020, C-692857 dated 20.05.2020, C-724186 dated 03.06.2020, C-747934 dated 09.06.2020, and C-768305 dated 14.06.2020. Thereafter, the export proceeds against the said export bills were duly realized through Bangladesh Bank. The main content of the said report reads as follows;

"(জ) ইউডি তে উল্লেখিত কাঁচামাল ও ব্যবহার এর পরিমান যা রপ্তানি এলসি/সেলস কন্ট্রাকস এ বর্নিত পরিমাপের সাথে সামঞ্জস্যপূর্ন রয়েছে।

(ঝ).....

(ঞ) পি আর সি সম্পূর্ন প্রত্যাসিত হয়েছে যা বাংলাদেশ ব্যাংকের Dash Board এর সাথে মিলিয়ে সঠিক পাওয়া যায়।"

However, a similar fact was involved in a Customs Appeal No. 177 of 2013, wherein the imported fabrics used for 100% export oriented garment production were alleged to have been imported misdeclaration.

Subsequently, the customs authority imposed duty, taxes, fine and penalty. Challenging the said order, the importer preferred appeal before the Tribunal. The Tribunal considering the export had been completed reduced penalty to Tk. 50,000.00 and exempted for payment of duty and taxes. The customs authority challenged that order before the High Court Division by filing Customs Appeal and this Court upon hearing the parties dismissed the appeal by Judgment and order dated 06.04.2015 observing;

> "…….We have further scrutinized the relevant provisions and found that the decision of the Appellate Tribunal is absolutely sound and keeping with those provisions of Customs Act and Rules. No substantial departure whatsoever have been made by the Tribunal in so doing. Admittedly, the export was completed which was also investigated by the own officials of the appellant which adversely goes against the appellant and supports the case of the respondents.
>
> That being the position, we are of the view that no illegality as such has been committed by the Appellate Tribunal in the judgment and order appealed against."

The facts of the present appeal are substantially similar of the facts of the said appeal and therefore the principle laid down therein is squarely applicable in the present case.

Considering the facts and circumstances of the case in hand, we are of the view that where the Bonded Ware House goods have been released for using export oriented manufacturing. After manufacturing finished products by the released goods and those have been subsequently exported by obtaining necessary permission from the concerned customs authority as well as BGMEA and the export proceeds have been realized duly through

Bangladesh Bank, in that case, any demand for customs duty and taxes in respect of such imported goods is wholly illegal and without lawful authority. However, fine may be imposed under Table Clause-1 instead of Table Clause-14 of section 156(1) of the Customs Act, 1969.

In view of the foregoing discussions made hereinabove, considering the nature of the discrepancy we find substance in the submissions so advanced by the learned Advocate for the appellant and thus merit in the appeal.

Accordingly, the appeal is allowed-in-part.

The impugned order dated 12.06.2021 passed by the Customs, Excise and VAT Appellate Tribunal, respondent No. 1, communicated vide Nathi No. CEVT/CASE (CUS)-29/2020/1307 dated 17.06.2021, dismissed the appeal and thereby affirmed the Order No. 36 dated 01.01.2020 passed by respondent No. 2, communicated vide Nothi No. ৩৮০৭/এপি/সবিটিম-১৩/২০১৯-২০২০-OSC(197) dated 02.01.2020, directing the appellant to release the goods upon payment of customs duty and taxes is hereby set aside.

The order of penalty is modified in the following terms:

> The appellant is directed to pay a penalty of Tk. 50,000/- under Table, Clause-1 of section 156(1) of the Customs Act, 1969, instead of the penalty of Tk. 9,00,000/- and redemption fine of Tk. 1,00,000/-.

Respondent No. 2, Commissioner of Customs, Customs House, Chattagram is further directed to return Bank Guarantee No. 1420200003 dated 01.03.2020 within 30 (thirty) days from the date of receipt of this judgment and order.

There will be no order as to cost.

Send down the lower Court's record at once.

Communicate the judgment and order to the concerned respondent forthwith.

Dihider Masum Kabir, J:

I agree.

M.A. Hossain-B.O.