IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL APPELLATE JURISDICTION)

Present:
Mr. Justice Md. Bashir Ullah

Criminal Appeal No. 5989 of 2023

In the matter of:
An Appeal under Section 10(1)(a) of the Criminal Law Amendment Act, 1958.

And
In the matter of:

Md. Gias Uddin

... **Appellant**

-Versus-
The State and another

... **Respondents**

Mr. Mohammad Motaher Hossan, Advocate
... For the Appellant

Mr. Md. Kamruzzaman (Kachi), Advocate
… For the Respondent No. 2

Mr. Md. Shafiquil Islam, D.A.G with
Ms. Farhana Abedin, A.A.G with
Mr. Hemayth Uddin, A.A.G and
Mr. K. M. Saiful Islam, A.A.G
… For the State

Heard on 19.04.2026, 28.06.2026 30.06.2026, 01.07.2026, 02.07.2026, 05.07.2026, 09.07.2026 and 12.07.2026
Judgment on 16.07.2026

This appeal, preferred under Section 10(1)(a) of the Criminal Law Amendment Act, 1958 is directed against the judgment and order dated 29.05.2023 passed by the learned

Divisional Special Judge, Dhaka in Special Case No. 09 of 2015, arising out of Dakkhin Keraniganj Police Station Case No. 47, dated 22.04.2012 corresponding to G.R. No. 206 of 2012, convicting the appellant and Debabrata Mistiry under Sections 467/468/471/109 of the Penal Code read with Section 5(2) of the Prevention Corruption Act, 1947 and sentencing them to suffer simple imprisonment for 05 (five) years with a fine of Taka 20,000/- (twenty thousand) in default to pay the fine to suffer simple imprisonment for 06(six) months more. The trial Court further convicted Md. Didarul Alam Titu and Mrs. Reshma Akter under Sections 467/468/471 and 109 of the Penal Code and sentenced them for a period of 05(five) years rigorous imprisonment with a fine of Taka 20,000/- in default to pay the fine to suffer simple imprisonment for 06(six) months more.

The Prosecution's Case:

The facts relevant for disposal of the appeal, in short, are that one Sayed Ataul Kabir, Deputy-Assistant Director of the Anti-Corruption Commission, Dhaka lodged a First Information Report (FIR) alleging *inter alia* that a Letter of

Credit (L/C) bearing No. 08070801011 dated 15.09. 2008 was fabricated in the name of one 'Amin Trading Company' for the purported import of a Toyota Hard Jeep (Chassis No. ACU 10-0004412, Engine No. 2az-0276962). A corresponding Bill of Entry No. 118997 dated 29.10.2008 was also procured through fraudulent means. Inquiry revealed that the signatures of the Principal Appraiser and the approval on the Bill of Entry, Invoice, and Bill of Lading were forged. The seal indicating the payment of customs duty was also forged. It was revealed from the record of BRTA that one Reshma Akter, wife of Didarul Alam Titu submitted these false and fabricated documents for registration of a vehicle. Consequently, registration No. Dhaka-Metro-Gha-14-1655, was issued on 17.02.2009. Subsequently, the ownership was transferred to Sikdar Abdul Kashem, who is the brother-in-law of Didarul Alam Titu though the vehicle remained in the possession and use of Didarul Alam Titu.

It was further revealed that Assistant Director Giash Uddin (Appellant) along with Motor Vehicle Inspector S. M. Mahfuzur Rashid and Debabrata Mistiry issued registration

No. Dhaka-Metro-Gha-14-1655 without proper verification, thereby facilitating misappropriation of Taka 20,82,065/- (twenty lac eighty-two thousand and sixty-five). Consequently, the FIR was lodged under Sections 409/109/467/468/471 of the Penal Code read with section 5(2) of the Prevention of Corruption Act, 1947.

Upon closure of the investigation, the Investigating Officer, namely, Md. Khairul Huda submitted Charge Sheet No. 196, dated 21.05.2014 and a supplementary Charge Sheet No. 196(Ka), dated 21.03.2017.

The case was transmitted for trial to the learned Divisional Special Judge, Dhaka and registered as Special Case No. 09 of 2015. The charges were framed on 17.02.2016 under Sections 409/109/467/468/471 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947, while the accused pleaded not guilty and claimed to be tried when the same was readout and explained to the accused. The prosecution examined 10 witnesses, while the defence examined none. The accused-persons were examined under

Section 342 of the Code of Criminal Procedure and repeated their innocence.

The learned Special Judge after completion of the evidence and hearing the parties convicted the appellant and Debabrata Mistiry under Sections 467/468/471 and 109 of the Penal Code read with Section 5(2) of the Prevention Corruption Act, 1947 and sentencing to suffer simple imprisonment for 05 (five) years with a fine of Taka 20,000/- (twenty thousand) in default to pay the fine to suffer simple imprisonment for 06(six) months more and convicted Md. Didarul Alam Titu and Mrs. Reshma Akter under Sections 467/468/471 and 109 of the Penal Code and sentenced them for a period of 05(five) years rigorous imprisonment with a fine of Taka 20,000/- in default to pay the fine to suffer simple imprisonment for 06(six) months more.

Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence, the convict preferred this appeal before this Court.

Submissions on behalf of the Appellant:

Mr. Mohammad Motaher Hossan, the learned Advocate appearing on behalf of the appellant, contends that the Principal Appraiser, Md. Nizam Uddin and Appraiser, Moazzem Hossain were not examined, even their signatures were not verified by the handwriting expert, which is a fatal lacuna in the prosecution's case.

He next contends that the charges framed against the appellant are defective and fail to precisely articulate the specific act of omission or commission attributable to him, thus vitiating the trial.

He further argues that there is no substantive allegation against the appellant that he forged any of the documents in question. His role was limited to the administrative process of registration, and he cannot be held criminally liable for the acts of the primary fabricators.

Mr. Hossan contends that the prosecution has failed to establish the essential ingredients of the offences. The appellant had no knowledge that the documents submitted were forged, and there is no evidence of any dishonest intention or personal gain on his part.

In support of his contention, he refers to the decision passed in the case of ***Moslem Uddin Vs. The State***, reported in 10 MLR (HCD) 199; ***Syed Ali Mondal alias Syed Ali and Others***, reported in 46 DLR (1994) 149, ***Mahbub Hassan Vs. The State***, reported in 33 BLD (2013) 83 and ***Md. Fazlul Haque Vs. The State and another***, reported in 23BLT (HCD) 17.

The learned Advocate finally prays for allowing the appeal.

Submissions on behalf of the Respondent:

Per contra, Mr. Md. Kamruzzaman (Kachi), the learned Advocate appearing on behalf of the respondent No. 2, contends that there is no illegality, impropriety or infirmity in the impugned judgment and order of conviction and sentence. The trial Court rightly convicted the appellant under Sections 467/468/471/109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947.

He next submits that the appellant being the officer of BRTA was specifically assigned to verify and examine the documents before issuing the registration of the vehicle and his failure to perform this statutory duty, which allowed the fraudulent scheme to succeed, renders him liable and deserving of punishment under Sections 467/468/471 and 109 of the Penal Code read with Section 5(2) of the Prevention Corruption Act, 1947 for his grave criminal misconduct.

Learned Advocate contends that the impugned judgment and order of conviction do not suffer from any illegality or infirmity. In support of his contention, the learned Advocate refers to the case of ***Kazi Mozaharul Haq and others Vs. The State,*** reported in 33DLR (HCD) 262. He finally prays for dismissal of the appeal.

I have meticulously considered the submissions of the learned Advocates for both sides, perused the evidence on record, impugned judgment and order passed by the trial Court and the other materials on records.

Consideration of Evidence:

For the proper adjudication of the matter and analysis of the facts on record of the prosecution's evidence is being reviewed as follows:

PW1, Syed Ataul Kabir, Assistant Director, Anti-Corruption Commission, Head Office, Dhaka, the informant deposed that a fictitious Letter of Credit being No. 08070801011 dated 15.09.2008 was purportedly opened under the name of one ‘Amin Trading Company’ for the import of Toyota Hard Jeep (Chassis No. ACU 10-0004412, Engine No. 2az-0276962). Subsequently, Bill of Entry No. 118997 dated 29.10.2008 was prepared. Verification revealed that the signatures of the Principal Appraiser and the approving officer on the Bill of Entry, Invoice, and Bill of lading were forged. The customs duty payment seal was entirely forged. Records from BRTA reveal that one Reshma Akter, wife of Didarul Alam Titu applied for registration using false and fabricated documents. Consequently, registration No. Dhaka-Metro-Gha-14-1655 was issued on 17.02.2009. Subsequently, the ownership was transferred to Sikdar Abdul Kashem, brother-in-law of Didarul Alam Titu, though the vehicle remained under the active possession and use of Didarul Alam Titu.

He further deposed that Assistant Director Giash Uddin, alongside Motor Vehicle Inspector S. M. Mahfuzur Rashid and

Debabrata Mistiry issued registration No. Dhaka-Metro-Gha-14-1655 without verifying the documents, treating them as genuine. In doing so, they acted in collusion with each other co-accused, resulting in the evasion and misappropriation of Taka 20,82,065/-(twenty lac eighty-two thousand and sixty-five).

He proved the FIR as Exhibit 1, the Sanction Letter as Exhibit 2. In cross-examination, he stated that he was a member of the initial inquiry committee led by Abdul Aziz Bhuiya. He stated that he did not personally investigate the matter or visit Chattogram as the task was performed by Abdul Aziz Bhuiya and Khairul Huda. He affirmed that legally no vehicle can be released from a port without assessment and paying customs duties. He could not verify whether Amin Trading Company, Madday Badda, Dhaka was a fictitious entity or if the inquiry team contacted the importer.

He admitted that the BRTA authority registered the vehicle on the face value of the documents presented. He stated that he had no knowledge that the registration fees were paid to NBR as directed by the Honourable High Court Division. He denied the suggestion that the FIR was lodged maliciously against Md. Didarul Alam Titu and Mrs. Reshma Akter to shield the actual importer.

He disclaimed any personal knowledge regarding how the vehicle physically entered or was released from the port. He further stated that BRTA has no authority to receive any other fees except registration fees.

He affirmed that BRTA possesses a dedicated customs cell and accused Md. Giash Uddin approved the registration without demanding or verifying the mandatory L/C documents and assessment documents.

He stated that the BRTA's primary mandate is the collection of registration fees, not the verification of customs duty payment

He asserted that the file was forwarded to Md. Giash Uddin for final approval by his subordinates and the involved persons were made accused.

PW2, Shah Mohammad Moin Uddin, DMD, IFIC Bank Limited, Head Office, in response to an official query from the Anti-Corruption Commission, he verified that the Letter of

Credit No. 08070801011 was never issued by IFIC Bank Limited.

PW3, Md. Neyajur Rahman, Commissioner of Customs, Customs House, Mongla, Khulna, deposed that upon the ACC's query, a verification of the automated customs database was conducted, it is revealed that the submitted Bill of Entry did not match any genuine record and the custom duty of the subject vehicle stands at Taka 20,82,065.09 as per Yellow Book, valuation assessment.

PW4, Mohammad Mahmudul Hasan, Additional Commissioner, Customs, Excise and Vat Commissionerate, Chattogram deposed that in response to the query of the Anti-Corruption Commission, he had informed that Orchid Express, Ocean Vessel Voyage No. 19, never arrived at Chattogram Port in the year 2008 and Shipping Agent NYK line had submitted no Import General Manifest to the Custom House matching the vehicle.

PW5, Md. Hemayet Hossain, Upper Assistant, BRTA, Faridpur, deposed that Deputy Director of Anti-Corruption

Commission, namely Md. Khairul Huda seized the *alamat* of the case and prepared a formal seizure list.

PW6, Sheikh Md. Razibul Islam, Mechanical Assistant, BRTA, deposed that during his tenure at BRTA, Dhaka as Mechanical Assistant (from 2007 to 2010) the accused Giash Uddin approved registration No. Dhaka-Metro-Gha-1401655. Assistant Director Giash Uddin and Inspector Debabrata Mistiry were legally duty-bound to verify all documents concerning the vehicle registration. He and Mahfuzur Rashid were assigned the physical verification of the engine and Chasis Nos. matched the physical vehicle. In cross-examination, he noted that the vehicle was imported in 2009.

PW7, Md. Monirul Islam, Upper Divisional Assistant, BRTA, Dhaka South deposed that he issued the bank deposit slip for the payment of the registration fees for vehicle No. Dhaka-Metro-Gha-14-1655, upon the application submitted by accused Mrs. Reshma Akter. He corroborated that Md. Giash Uddin and Inspector Debabrata Mistiry were assigned for verifying and examining the validity and authenticity of the import documents.

PW8, ASM Tariqul Islam, Inspector of Police, BRTA, Dhaka deposed that Khairul Huda of Anti-Corruption Commission seized the original registration file of Dhaka-Metro-Gha-14-1655 from his office and placed it under the safe custody of Record Keeper Md. Hemayet Hossain.

PW9, Md. Lutfar Rahman, Director, Anti-Corruption Commission, Head Office, Dhaka, deposed that a three member committee was formed to prove the fraudulent registration of the Japanese Hard Jeep Toyota Motor. The committee submitted a formal inquiry report on 11.01.2022.

The inquiry, established that registration was issued for the vehicle No. Dhaka-Metro-Gha-14-1655 in favour of Mrs. Reshma Akter, later the ownership was transferred to Abul Kashem and actively operated by Didarul Alam Titu.

He corroborated that the accused Giash Uddin, S. M. Mahfuzur Rashid and Debabrata Mistiry negligently issued the registration without verifying and examining the documents properly. Thereby, they misappropriated Taka 20,82,065/- (twenty lac eighty-two thousand and sixty-five), which was payable as Customs Duties.

In cross-examination, he admitted that he did not visit Chattogram Port during the inquiry. He conceded that while a vehicle cannot legally enter the country without passing through a port of entry. He admitted that he did not physically inspect the port registries to verify the vehicle's movement.

PW10, Md. Khairul Huda, Ex-Deputy Director, Anti-Corruption Commission, Head Office, Dhaka, the Investigating Officer deposed that he was assigned to investigate the instant case. He seized the relevant documents and recorded statements of the witnesses under Section 161 of the Code of Criminal Procedure.

His investigation revealed that the accused Md. Didarul Alam Titu fabricated the Letter of Credit (LC), Bill of Entry, and related import documents. Subsequently, secured registration in the name of his wife, Reshma Akter and obtained registration No. Dhaka Metro-Gha-14-1655.

The investigating officer further deposed that Md. Giash Uddin instituted Criminal Revision No. 710 of 2016 before the High Court Division. The Court directed that the car be seized and following the direction, he physically seized the vehicle on

22.02.2017 and subsequently, he submitted Supplementary Charge Sheet No. 196(Ka) dated 21.03.2017.

In cross-examination, he admitted that he could not definitively establish whether the vehicle passed through Chattogram Port or any other port, through the vehicle was inside the country. He did not implicate any port official. He deposed that he did not know any specific directions passed in Writ Petition No. 4227 of 2013 nor of a revenue Taka 11,58,186.65 made via treasury chalan following an assessment by the National Board of Revenue (NBR).

PW10 affirmed that the legal liability to pay import taxes rests solely on the importer. He denied the suggestion that Didarul Alam Titu and Reshma Khatun were innocent victims defrauded by the importer.

He stated that the standard operating procedure required 02(two) inspectors to verify the file before forwarding it for approval, but registration was granted before the verification of the documents was complete.

He next deposed that it is the rules that customs duty would be paid in the port by which the car was imported.

He had no knowledge that the car was brought under which L/C, through which shipping and port, because the car related documents were forged.

He acknowledged that the Customs Authority holds the statutory power to collect the unpaid customs duty or auction uncleared vehicles and noted that they had not initiated auction or collection proceedings regarding the subject vehicle.

Findings and Analysis:

The investigating officer could have contacted the exporter to obtain original shipping documents to ascertain the port of entry and the officials involved in releasing the vehicle without payment of the customs duty.

The record shows that the informant, PW1 in cross-examination deposed that: "অত্র মামলার ঘটনার বিষয়ে আমি কোন অনুসন্ধান বা তদন্ত করিনি। অনুসন্ধানকালে আমি চট্টগ্রামে যাইনি। আব্দুল আজিজ ভূঁইয়া ও খায়রুল হুদা চট্টগ্রামে গিয়েছে। চট্টগ্রামের পোর্ট থেকে নালিশী গাড়ীটি ছাড়াইয়া আনার কথা সিএন্ডএফ এজেন্টের মাধ্যমে আমদানীকারকের। শুল্কায়ন ছাড়া কোন গাড়ী খালাস হওয়ার সুযোগ নেই। এই দায়িত্ব পালন করে আমদানীকারক।"

PW1 also deposed that: "চট্টগ্রামের পোর্ট থেকে নালিশী গাড়ীর বিষয়ে শুল্কায়ন প্রদান করা হয়নি। উক্ত গাড়ীটি কোন পোর্ট দিয়ে বা কিভাবে বাংলাদেশে আসে

তা আমার জানা নেই। এই গাড়ীটি কিভাবে ছাড় করানো হলো তাও আমার জানা নেই। রেজিষ্ট্রেশনের ফি নেওয়া ব্যতীত অন্য কোন বিষয়ের ফি নেওয়ার এখতিয়ার বিআরটি'র নেই। বিআরটি-তে কাস্টমের সেল আছে। ...নালিশী গাড়ীটি কিভাবে বাংলাদেশে ঢুকেছে তা আমি অনুসন্ধান করিনি। এ মামলার বিষয়ে আমি কোন তদন্ত করিনি। এ গাড়ী কিভাবে কোন কাস্টম হয়ে ঢুকলো সেটাও আমি প্রাথমিকভাবে তদন্ত করিনি।...”

Investigating Officer, PW10 corroborated the evidence adduced by PW1. He also deposed that: “আমদানীকারকের দায়িত্ব ছিল গাড়ীর ট্যাক্স পরিশোধ করা, এটাই নিয়ম। সত্য নহে যে, এ আসামীদ্বয় আমদানীকারক দ্বারা প্রতায়িত হয়েছে।” He further deposed that: “আমদানী যে বন্দর দিয়ে হয় সেখানে শুল্ক দেয়ার নিয়ম। অন্য বন্দরে শুল্ক দেয়ার সুযোগ নেই।

...এই গাড়ীটি কোন বন্দরের মাধ্যমে, কোন শিপিং এর মাধ্যমে ও কোন এল.সির মাধ্যমে পাঠানো হয়েছে তা আমি জানিনা। কারণ গাড়ী সংক্রান্তে দাখিলকৃত কাগজাদি ভুয়া ছিল।

...শুল্ক দিতে না পারলে তা আদায় করার ক্ষমতা কাস্টমস কর্তৃপক্ষের ছিল। আলোচ্য গাড়ীর শুল্ক আদায়ের ব্যাপারে কাস্টমস কর্তৃপক্ষ কোন পদক্ষেপ নেয়নি বা গাড়ীটি নিলামে বিক্রয়ের জন্য কোন ধরনের উদ্যোগ গ্রহণ করেনি।”

PW1 affirmed that legally no vehicle can be released from a port without assessment and paying customs duties. He could not verify whether Amin Trading Company, Madday

Badda, Dhaka was a fictitious entity or if the inquiry team contacted the importer.

PW9, Md. Lutfar Rahman, member of investigation committee deposed that: "আমি এ মামলার প্রাথমিক অনুসন্ধানকারী কর্মকর্তা। অনুসন্ধানকালীন সময়ে আমি চট্টগ্রাম বন্দরে যাইনি। ইহা সত্য যে, বন্দর ছাড়া কোন গাড়ী আমদানীর সুযোগ নেই। বন্দরের সংশ্লিষ্ট কাগজপত্র অনুসন্ধানকালে বন্দরে গিয়ে ভেরিফাই করি নাই।

...আমদানীকৃত কোন গাড়ী কাস্টমস কর্তৃপক্ষের অনুমোদন বা ক্লিয়ারেন্স ছাড়া দেশে ঢুকার সুযোগ নেই। কোথা থেকে গাড়ী বের হল তৎমর্মে আমদানীর সাথে সংশ্লিষ্ট স্থানে অনুসন্ধান করি নাই।..."

The informant (PW1) in his evidence deposed that: "গাড়ী রেজিষ্ট্রেশন করার সময় যখন যায় তখন গাড়ী নিয়ে রেজিষ্ট্রির জন্য আবেদন করা হয়। সংশ্লিষ্ট যাবতীয় কাগজপত্র সঠিক হলেই পোর্ট থেকে গাড়ী বের হয়। ট্যাক্স আনুষঙ্গিক চার্জ দেয়া স্বাভাবিক কাজ। ট্যাক্স দেওয়া বা না দেওয়া ইহা যাচাইয়ের দায়িত্ব এ আসামীর নহে।..."

In view of the above-mentioned testimonies of PW1, PW9 and PW10, who all conceded that they did not effectively investigate the entry of the vehicle into the country. The gravamen of the offence lies in the evasion of custom duty, yet the authorities primarily responsible for the collection of such duties (customs) and the release of goods from the port were not made parties, nor was there a concerted effort to fix liability on them. This indicates a flawed and incomplete investigation.

In the FIR, S. M. Mahfuzur Rashid was implicated as accused No. 6 but he was not sent up in the charge sheet.

There is no allegation against the appellant that he forged any of documents such as the Letter of Credit, Bill of Lading, Bill of Entry etc. Rather, in the FIR it is clearly stated that the registration was issued treating the submitted documents vehicle was as genuine. In FIR it is stated that: "রেজিষ্ট্রেশন সংক্রান্ত কাগজপত্র পর্যালোচনা করে দেখা যায় যে, তৎকালীন সহকারী পরিচালক জনাব গিয়াস উদ্দিন, মোটরযান পরিদর্শক, এস এম মাহফুজুর রশীদ এবং মোটরযান পরিদর্শক দেবব্রত মিস্ত্রি জাল কাগজপত্রকে সঠিক হিসেবে ধরে ভালভাবে পরীক্ষা-নিরীক্ষা ব্যতিরেকে গাড়ী রেজিষ্ট্রেশন নং ঢাকা-মেট্রো-ঘ-১৪-১৬৫৫ প্রদান করেন।"

Since the appellant did not forge any document by himself so he is not liable to be punished under Sections 467 and 468 of the Penal Code.

The appellant had no personal knowledge that the Letter of Credit (L/C) related documents, Bill of Entry and payment of customs duty related documents are forged, as evidenced by the fact that there is a dedicated custom cell in the premises of BRTA. They did not raise any objection or drew attention to the appellant regarding the payment of customs duty on the imported vehicle. So presumably the appellant issued registration treating the customs duty related documents genuine, thus the appellant cannot be presumed to have had the necessary *means rea* to commit the offence under Section 471 of the Penal Code, which requires the fraudulent or dishonest use of a forged document as genuine.

For an offence under Section 5(2) of the Prevention of Corruption Act, 1947, the prosecution must prove entrustment or dominion over the property and dishonest misappropriation, or obtaining of a pecuniary advantage for oneself or another. In the present case, none of these essential ingredients has been established against the convict-appellant.

There is no evidence that the appellant had dominion over the customs duty amount or that he dishonestly misappropriated it. There is also no evidence of any pecuniary benefit or advantage received by the appellant. The mere failure to perform a duty, without proof of corrupt intent or personal gain, is insufficient to attract liability under this provision.

In the absence of dishonest intention, dominion, or personal gain, the conviction is unsustainable in law. This view is fortified by the decision. In ***Mahbub Hassan Vs. The State***, reported in 33BLD (2013) 83, wherein it was held:

> "*mens rea* or dishonest intention is a necessary ingredient of the offence of criminal misconduct as defined in section 5(1) (d) of the Prevention of Corruption Act, 1947. The mere fact due to the decision taken or acts done by the public servant or servants concerned someone got pecuniary 'benefit or advantage would not ipso facto bring the said public servant or servants within the mischief of section 5(1) (d) of the said Act."

Upon a close scrutiny of the entire evidence adduced by the prosecution and other materials on record it appears that it is seriously doubtful whether the convict-appellant was involved with *means rea* in misappropriating the funds as alleged in the FIR and as such the benefit of doubt should be given to the accused-appellant. In this connection, reliance may be placed on the case of ***Shahidul Islam (Md) alias H. M. Shahid vs. State*** (supra), wherein it has been held that on consideration of the entire evidence and materials on record it appears to the court that the prosecution case is doubtful; the benefit of doubt must be given to the accused and he should be acquitted of the offence.

It appears from the cross-examination of the informant, (PW1) he stated that: "...মামলাটি রাজস্ব কর ফাঁকি দেওয়ার মামলা। রাজস্ব কর ফাঁকি দেওয়া হয়েছে কিনা তা নির্ণয়ের ক্ষমতা বিআরটি এর নেই। ...তার অধঃস্তন কর্মকর্তা কাগজপত্রের বিষয়ে 'OK' করার পর ভেরিফাই করলে অনুমোদনের জন্য তার নিকট আসে।..."

There is no substantive allegation against the appellant that he forged any of the documents in question. PW10 affirmed that the legal liability to pay import taxes rests solely on the importer. PW1 stated that BRTA has no authority to receive any other fees except registration fees. The appellant was entrusted to collect the registration fees of the subject vehicle. His role was confined simply to the administrative process of vehicle registration and thus he cannot be held criminally liable for the acts of the primary fabricators.

It is a matter of fact that Reshma Akter filed Writ Petition No. 4227 of 2013 before the High Court Division and obtained a Rule *Nisi* on 22.04.2013. Subsequently, Reshma Akter filed an application for non-prosecution of the writ petition stating *inter alia* that the customs authority completed assessment of the imported car and as per said assessment the petitioner paid all customs duties and taxes to the Government Exchequer through treasury chalan on 15.09.2013 amounting to Taka 11,58,186.65. Upon hearing, the High Court Division discharged the Rule for non prosecution as being infructuous on 13.02.2014.

The evidence of the Writ Petition and the subsequent assessment and payment of Taka 11,58,186.65 to the National Board of Revenue, indicates that the matter of customs duty was later regularized. This is a significant circumstance that was not effectively considered by the trial Court, further casting a shadow on the prosecution's narrative of a completed misappropriation.

Considering the gravity of the offence and the facts and circumstances unveiled in the case and the evidence on record, this Court finds that the prosecution has manifestly failed to prove the guilt of the convict-appellant beyond reasonable doubt. More so, this Court finds illegality, impropriety and infirmity in the impugned judgment and order of conviction passed against the convict-appellant. Consequently, the appellant is entitled to the benefit of doubt and acquittal.

Order:

In the result, the appeal is allowed.

The judgment and order dated 29.05.2023, passed by the learned Divisional Special Judge, Dhaka in Special Case No. 09 of 2015 is hereby set aside in so far as it relates to the convict-appellant, Md. Gias Uddin.

The convict-appellant, Md. Gias Uddin is acquitted of all charges levelled against him.

The convict-appellant is released from his bail bond.

Let a copy of this judgment along with the Lower Court's Records (LCR) be communicated to the Court concerned forthwith.

(*Md. Bashir Ullah, J*)

Md. Sabuj Akan
Assistant Bench Officer.