IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Md. Nuruzzaman
Mr. Justice Borhanuddin
Mr. Justice Md. Abu Zafor Siddique

CIVIL APPEAL NO.142 OF 2008.

(From the judgment and order dated 19.07.2005 passed by the High Court Division in Writ Petition No.101 of 1998).

The Commissioner of Customs, VAT & Excise, Agrabad Commercial Area Chattogram and others.	:	**...Appellants.**

-Versus-

Abul Khair Steel Mills Limited (U-2), BSCIC Road, Charipur, Feni.	:	**...Respondent.**

For the Appellants.	:	Mr. Samarendra Nath Biswas, Deputy Attorney General instructed by Mr. Haridas Paul, Advocate-on-Record.
For the Respondent.	:	Mr. Ramjan Ali Sikder, Advocate instructed by Ms. Madhumalati Chowdhury Barua, Advocate-on-Record.
Date of Hearing.	:	**The 4th & 17th January, 2023.**
Date of Judgment.	:	**The 17th January, 2023.**

J U D G M E N T

Borhanuddin,J: This civil appeal by leave arise out of the judgment and order dated 19.07.2005 passed by the High Court Division in Writ Petition No.101 of 1998 making the Rule absolute with direction.

Facts relevant for disposal of the appeal are that the respondent herein as petitioner filed the writ petition contending, interalia, that the petitioner is a private limited company incorporated under the Companies Act, 1913 and engaged in the business of, amongst other, importing B.P./M.S. coil, cold rolled etc.; In course of its business, the petitioner opened Letter of Credit (hereinafter stated as 'L.C.') on 07.10.1996 for importation of one thousand metric tons of M.S./B.P. coil valued at US$ 486,000.00 under Section 25A of the Customs Act, 1969; Subsequently, the said L.C. was amended on 17.10.1996 increasing value of the goods to US$ 487,500.00; The L.C. was opened relying on the notification being SRO No.316-Ain/94/1568/Shulko dated 03.11.1994 issued under the authority of Section 25A of the Customs Act to get benefit of Clean Report of Findings Certificate (hereinafter stated as 'CRF Certificate') and the condition of the CRF Certificate has been incorporated in the L.C.; The aforesaid SRO No.316 dated 03.11.1994 provides that the imported goods to be physically verified by the Government enlisted Pre-Shipment Inspection (hereinafter stated as 'PSI') Agency and accordingly a CRF Certificate will be issued and such goods on arrival in the country shall be assessed on the basis of such CRF Certificate wherein the price, quality, quantity and H.S. Code number of the goods verified will be mentioned; The petitioner's imported goods were duly verified at the port of loading by one of the Government enlisted PSI Agency on 15.11.1996 and the CRF Certificate was issued on 12.12.1996; After arrival of the goods at Chattogram Port, the petitioner through its clearing (C&F) agent submitted In-Bond Bill of Entry on 01.02.1997 under the Registration No.C-58875 for the purpose of assessment of duties and taxes on the basis of CRF Certificate value and accordingly the customs authority assessed the goods on the basis of CRF value and allowed the goods to be warehoused against Bond No.A-5 dated 13.02.1997; On 02.11.1997 the petitioner company through its clearing agent submitted Ex-Bond Bill of Entry for release of a part of the warehoused goods on payment of duties and taxes on the basis of CRF value but the writ-respondent no.2 the Superintendent, Customs, Excise & VAT, Feni Circle, Feni refused to make assessment as per CRF certified value stating that there is no Rule to assess the goods on the basis of CRF Certificate value in respect of Ex-Bond Bill of Entry vide order dated 28.12.1997; In the meantime the notification being SRO No.113-Ain/97/1705/Shulko dated 11.05.1997 was published by which several items were taken out from the list of items allowed to enjoy benefit of CRF Certificate facility and by another notification being No.26/97/Shulko dated 11.09.1997 tariff value has been fixed in respect of the petitioner's imported items and some others under the authority of Section 25(7) of the Customs Act, 1969 repealing the Notification No.16/97/Shulko dated 19.05.1997 and the tariff value was fixed at US$ 750.00 per metric ton in respect of the goods imported by the petitioner.

Being aggrieved by such refusal to make assessment on the basis of CRF Certificate, the petitioner moved before the High Court Division under Article 102 of the Constitution submitting, interalia, that the impugned order for assessment of duties and taxes on the basis of tariff value as fixed by Notification No.26/97/Shulko dated 11.09.1997 based on SRO No.113-Ain/97/1705/Shulko dated 11.05.1997 is arbitrary and without lawful authority inasmuch as the petitioner is entitled to pay duties and taxes on the basis of CRF value as assured by the SRO No.316-Ain/94/1568/Shulko dated 03.11.1994 issued under the authority of Section 25A of the Customs Act, 1969 and that the L.C. having been opened by the petitioner on 07.10.1996 prior to the publication of the Notification No.26/97/Shulko dated 11.09.1997 and the SRO No.113-Ain/97/1705/Shulko dated 11.05.1997, the petitioner acquired vested right under a statutory notification which cannot be taken away by a subsequent statutory notification.

Upon hearing the petitioner, a Division Bench of the High Court Division issued a Rule Nisi upon the writ-respondents to show cause.

The writ-respondent no.1 Commissioner of Customs, Excise and VAT, Chattogram contested the Rule by filing an affidavit-in-opposition stating, interalia, that the submission of In-Bond Bill of Entry is admitted and the imported consignment warehoused under In-Bond Bill of Entry for which Customs duty, tax etc. are to be assessed and paid at the time of release of the goods on the basis of the price prevalent on the date of submission of Ex-Bond Bill of Entry and therefore the CRF Certificate as issued was not entertainable, more so when by the SRO No.113 dated 11.05.1997 the imported consignment of the petitioner was withdrawn from the list of items allowed to enjoy the CRF Certificate facility, the order of assessment of the petitioner's imported consignment on the basis of tariff value was proper. It is also stated that as per provision of Section 30 read with Sections 25(1)(2) and (3) of the Customs Act the petitioner is required to pay the Customs duty, VAT and other taxes regarding bonded warehoused goods on the basis of tariff value prevailing at the time of clearance of the goods from the bonded warehouse submitting Ex-Bond Bill of Entry. It is further stated that the petitioner's submitted Ex-Bond Bill of Entry dated 02.11.1997 was subsequent to the publication of the Notification No.26/97/Shulko dated 11.09.1997 and SRO No.113 dated 11.05.1997 and as such the Rule is liable to be discharged.

The writ-petitioner filed an affidavit-in-reply asserting the statements made in the writ-petition and further stating that the value of the imported goods has been certified by the Government approved PSI Agency and the same has not been disputed by the respondents as such assessment based on tariff value instead of CRF Certified value relying on SRO No.113 dated 11.05.1997 is illegal inasmuch as the CRF Certificate granted pursuant to SRO No.316 dated 03.11.1994 issued under the authority of Section 25A of the Customs Act prevails over all notifications issued subsequent to SRO No.316 dated 03.11.1994, more so no tariff value was fixed for the item in reference at the time of issuance of the CRF Certificate. It is also stated that as per the settled principle of law the writ-petitioner, in the facts and circumstances, acquired a vested right, which cannot be taken away by any subsequent notification. It is further stated that Section 25A of the Customs Act is an overriding provision of the Customs Act as been held by this Division in several cases, neither in the notification dated 11.09.1997 nor in the SRO dated

11.05.1997 there is any clause giving retrospective effect to said notifications and those are not applicable in the instant case.

After hearing the parties, a Division Bench of the High Court Division made the Rule absolute with a direction upon the respondents to make assessments of the petitioners imported consignment on the basis of CRF Certificate value and return the Bank guarantee furnished by the petitioner at the time of release of the goods on provisional assessment.

Having aggrieved, the writ-respondent no.1 as petitioner preferred Civil Petition for Leave to Appeal No.1457 of 2005. Upon hearing the learned Advocate for the petitioner, this Division granted leave on 21.04.2008.

Consequently, the instant civil appeal arose.

Mr. Samarendra Nath Biswas, learned Deputy Attorney General reiterated the submissions made by the learned Counsel for the petitioner at the time of hearing the leave petition stating that Ex-Bond Bill of Entry having been submitted on 02.11.1997 for removal of the goods from the warehouse after exclusion the goods from CRF facility and fixation of tariff value as such Customs duty and tax etc. are payable under Section 30 of the Customs Act on the basis of tariff value and thus the impugned judgment and order is liable to be set-aside. He also submits that the High Court Division erred in law in not considering that Section 25A of the Customs Act does not apply in this case and under Section 30 of the Act the writ-petitioner is require to pay Customs duties and taxes as well as on the tariff value prevailed on 02.11.1997 when the writ-petitioner presented Ex-Bond Bill of Entry for removal of the goods from the warehouse as such the impugned judgment and order is liable to be set-aside. In support of his submissions, learned Deputy Attorney General relied on the decision of this Division passed in the case of *Commissioner of Customs vs. Monohor Ali*, reported in IX ADC (2012) 451.

On the other hand Mr. Ramjan Ali Sikder, learned Advocate appearing for the respondent no.1 in support of the impugned judgment and order submits that the respondent no.1 opened L.C. on 07.10.1996 relying upon SRO No.316 dated 03.11.1994 issued under Section 25A of the Customs Act and obtained CRF Certificate upon inspection by the Government approved PSI Agency as per the said SRO at the cost of importer-respondent no.1 and the goods were warehoused by submitting In-Bond Bill of Entry dated 01.02.1997, Government subsequently issued Notification No.26/97/Shulko dated 11.09.1997 fixing the tariff value in respect of the imported goods which was after the conclusion of the import process of the goods into Bangladesh as such the goods were ought to have been assessed on the basis of the CRF Certificate value as held by the High Court Division. He also submits that the High Court Division has rightly held that the respondent no.1 having acted on the promise made by the Government under Section 25A of the Customs Act, 1969, that if the CRF Certificate is issued by the PSI Agency after inspection at the cost of importer-respondent the same would be the basis for assessment of Customs duties and taxes and the writ respondent-petitioners cannot go back from the promise as it was binding upon them. He lastly submits that the law as was prevalent at the time of opening of the L.C. on 07.10.1996, arrival of the imported goods and also during submission of In-Bond Bill of Entry, the assessment on the basis of the CRF Certificate as per the SRO No.316 dated 03.11.1994 issued in exercise of power conferred under Section 25A of the Customs Act would prevail and would be the basis for assessment of Customs duties and taxes and as such the appeal is liable to be dismissed. The learned Advocate also relied on the case of *Commissioner of Customs vs. Monohor Ali*, reported in IX ADC (2012) 451.

We have gone through the impugned judgment and order alongwith other papers/documents contained in the paper book and also the judgment cited by the parties.

Admittedly, the writ-petitioner opened L.C. on 07.10.1996 relying upon SRO No.316-Ain/94/1568/Shulko dated 03.11.1994 allowing benefit to the importers under Section 25A of the Customs Act and the L.C. was amended on 17.10.1994 to increase the value of the goods. As per terms of Section 25A of the Act and SRO No.316 dated 03.11.1994 the goods were inspected at the port of loading by one of the Government approved PSI Agency namely 'Bureau VERITAS' and after inspection the PSI Agency issued CRF Certificate on 12.12.1996. On arrival of the consignment at the port of Chattogram the importer-respondent through its clearing agent submitted In-Bond Bill of Entry No.C-58875 dated 01.02.1997 for assessment of the goods based on the CRF Certificate and accordingly the Customs authority after assessing the goods on the basis of CRF Certificate warehoused the goods In-Bond No.A-5 on 13.02.1997. The importer-petitioner submitted Ex-Bond Bill of Entry on 02.11.1997 for removal of a part of the imported goods on the basis of CRF Certified value but the writ-respondent no.2 refused to make assessment as per CRF Certified value stating that there is no Rule to assess the goods on the basis of CRF Certified value in respect of Ex-Bond Bill of Entry vide order dated 28.12.1997. In the meantime notification being SRO No.113 dated 11.05.1997 was published by which several items including petitioner's imported item were delisted from enjoying benefit of CRF Certificate facility and by another notification being

No.16/97/Shulko dated 11.09.1997 tariff value was fixed at US$ 750.00 per metric ton in respect of petitioner's imported goods. The High Court Division after thorough discussions arrived at a finding:

> *"Thus on plain reading of the provisions of said SRO No.316 dated 03.11.1994 and Section 25A of the Customs Act, we find that the Certificate issued by an approved Pre-Shipment Agency on verification of the goods imported will be the basis for assessment and further in view of the non-obstantive clause like 'Notwithstanding anything contained in any other Section of this Act', contained in Section 25A, the CRF Certificate as granted as per provision of SRO No.316 dated 03.11.1994 issued under the authority of Section 25A of the Customs Act shall prevail over all other notifications issued either under Section 25(7) or under Section 25(1) of the Customs Act. It further appears that the petitioner appointed a Government approved Pre-Shipment Inspection Agency for the purpose of verification of the imported goods and on such verification the CRF Certificate having been granted and the goods having been shipped prior to the issuance of SRO No.113 dated 11.05.1997 and Notification No.26/97/Shulko dated 11.09.1997, the CRF Certificate will not be affected inasmuch as the writ-petitioner acquired the vested right to get his consignment assessed on the basis of the CRF*

> *Certificate. The Statutory Notification No.316 dated 03.11.1994 being issued pursuant to Section 25A of the Customs Act the subsequently issued statutory notification will not affect the CRF Certificate in any way and this contention gets support from the decision in the case of the Commissioner of Customs and others vs. Monohor Ali and others, reported in 23 BLD (AD) 59."*

The High Court Division regarding the point raised by the learned Deputy Attorney General in respect of applicability of CRF Certificate value regarding bonded warehoused goods arrived at a finding that:

> *"It appears that the provisions of said Section 30 did not put any bar against the application of Section 25A of the Customs Act, rather Section 25A has overriding clause over all other Section of the Act. Therefore the statement that the application of CRF Certificate is not applicable in case of bonded warehoused goods has no basis. The decision of the Appellate Division being binding on us and in view of the decision of the Appellate Division in the case of Monohor Ali mentioned above we find substance in the submission of the learned Advocate appearing for the petitioner to the effect that the CRF Certificate as issued pursuant to SRO No.316 dated 03.11.1994 is binding on the Customs authority and refusal*

> *thereto is illegal and without lawful authority."*

The learned Deputy Attorney General argued that the case of *Commissioner of Customs and others vs. Monohor Ali and others*, reported in 23 BLD (AD) 59 has been reviewed by this Division reported in IX ADC (2012) 451. The learned Counsel for the respondent no.1 also relied on the same case reported in IX ADC (2012) 451. The facts of the reported case and the point of law are almost similar to the case in hand.

After thorough and meticulous discussions this Division arrived at a conclusion based on the following findings:

> *"36. On careful perusal of Section 25(7) and 25A of the Customs Act reveals that Section 25(7) override of all other sub-sections of Section 25 of the Customs Act only, whereas Section 25A overrides all other Sections of the Customs Act and thereby the CRF value certified validly under Section 25A overrides any tariff value fixed under Section 25(7). Therefore it cannot be said that only the items of import which do not fall under tariff value notification of a relevant period can be treated under Section 25A and that if any imported goods fall under tariff SRO of a relevant period shall*

straightway attract the provision of Section 25(7). Provisions of Section-25A of the Customs Act supersedes the Provisions of Section-25, which includes Sections-25(1) & (2), 25(7), 30 and 30A of the Customs Act. CRF certificates issued validly shall get preference and the value certified therein shall supersede the value of the imported goods fixed under Sections 25(1) & (2) and or 25(7) of the Customs Act and shall be binding on the Customs authority. Thus the goods imported with CRF certificates issued prior to 13.05.1997 shall get the benefit of the CRF scheme and such goods shall be assessed for customs duty on the basis of the CRF certificated value.

37. *Thus the Customs duty of the imported goods, the value of which have been duly verified and certified by the Government approved by Pre-shipment Inspecting Agencies at the port of loading prior to 13.05.1997, the publication date of the SRO No.113-Ain/97/1705/Shulka dated 11.05.1997 in the official gazette, should be assessed on the basis of such CRF certificated value and that Section 30 of the Customs Act will not affect the value of such imported goods certified in the CRF certificates issued prior to 13.05.1997, inspite of withdrawal of such goods from the benefit of CRF scheme effective from 13.05.1997 i.e. prior to the date of presentation of the Bill(s) of Entry to the Customs authority, for assessment of Customs duty.*

38. *It thus appears that the out of 27 appeals under review 18 appeals being (1) Civil Appeals (on review) Nos--------------------- -- will get benefit of CRF certificated value as the CRF Certificates were issued prior to 13.05.1997 and the remaining nine(9) appeals being Civil Appeal (on review) Nos---------- -- are not covered by the decision hereof, and will not get benefit of the CRF scheme as the CRF Certificates were issued on or after 13.05.1997.*

39. *Accordingly, the review-appeals are allowed Review appeals being C.A. No----------------- ------------------------------ are allowed.*

40. *It is declared that the consignments imported and Bill(s) of Entry of which has been presented for assessment along with the CRF certificates issued prior to 13.05.1997 in accordance with the provisions of S.R.O. 316 dated 03.11.1994 and S.R.O. No.244 dated 31.12.1996 are entitled to the benefit of CRF scheme inspite of issuance of S.R.O. No.113 dated 11.05.1997 and the CRF Certificated value of such consignments should be accepted by the Customs authority for the purpose of assessment of Customs duty on presentation of the Bills of Entry along with other required documents, without recourse to the date mentioned in Section-30 of the Customs Act and that the Bill(s) of Entry presented with CRF certificates dated 13.5.1997 or thereafter in respect of the*

imported goods for the purpose of assessment of customs duty shall not get the benefit of CRF scheme and shall be guided by Section-30 of the Customs Act. The consignments covered by C.A. Nos.332, 333, 335 to 345, 347, 351, 352, 355 and 357 of 2009 will get benefit of the CRF subject to other related provision of the law.

41. The C.A. Nos.119, 120, 121, 174, 555, 556, 559 and 560 all of 2001 and the Civil Petitions for Leave to Appeal Nos.1873-80 of 2002, as appeared in the cause list dated 19.08.2009 with Item No.2, shall be governed by the judgment and order passed and accordingly those disposed of."

In view of the findings arrived at in the case of *Commissioner of Customs vs. Monohor Ali*, reported in IX ADC (2012) 451, we do not find any reason to deviate from the above findings.

The core question involved in this civil appeal is what should be the value of goods on which the Customs duty shall be payable i.e. what is the relevant time for determination of the value of the goods. That the legal provision regulating this query is stated in Section 30 of the Customs Act, 1969 talks about the relevant time for determination of value of goods including the rate of duty and exchange rate.

Section 30 of the Customs Act, 1969 (as it was in the relevant time) runs as follows:

> *"30.* ***Date for determination of the value and rate of import duty-***
>
> *(1) The value of and the rate of duty applicable to any imported goods shall be the value and the rate of duty in force-*
>
> > *(a) in the case of goods cleared for home-consumption under Section 79, on the date on which a bill of entry is presented under that section;*
> >
> > *(b) in the case of goods cleared from a warehouse for home-consumption under Section 104, on the date on which the goods are actually removed from the warehouse; and*
> >
> > *(c) in the case of any other goods, on the date of payment of duty.*
> >
> > *--------------------------------------"*

Both Section 30(a) and (b) clearly indicates that, the value of goods and the rate of duty shall be the one prevailing on the date when the Bill of Entry is presented under Section 79. Although admittedly Bill of Entry can be presented either for In-Bond or for Ex bond, and two separate Bill of Entry number can be allocated in this two piece of document, Section 79 of the Customs Act, 1969 only refers to In-Bond Bill of Entry and the same is evident from a complete reading of the said provision as it then was:

> "*79.* ***Entry for home-consumption or warehousing.-***
>
> *(1) The owner of any imported goods shall make entry of such goods for home-consumption or warehousing or for any other approved purpose by delivering to the appropriate officer a Bill of Entry thereof in such form and manner and containing such particulars as the Board may direct:*
>
> > *Provided that if the owner makes and subscribes a declaration before the appropriate officer to the effect that he is unable, for want of such information as is essential for submitting a Bill of Entry then the said officer shall permit him previous to the entry thereof, to examine the goods in the presence of an officer of Customs or to deposit such goods in a public warehouse appointed under Section 12 without warehousing the same, pending the production of such information.*
>
> *(2) A Bill of Entry under sub-section (1) may be presented and the goods be cleared at any time within forty five days of the date*

of unloading thereof at a Customs-port or a land Customs-station or Customs-inland container depot or within thirty days of the date of unloading thereof at a Customs-airport or within such extended period as the Commissioner of Customs may deem fit:

Provided that the Commissioner of Customs may, in any special circumstances, permit a Bill of Entry to be presented before the delivery of the manifest.

(3) If the Commissioner of Customs is satisfied that the rate of Customs duty is not adversely affected and that there was no intention to defraud, he may in exceptional circumstances and for reasons to be recorded in writing permit substitution of a Bill of Entry for home-consumption for a Bill of Entry for warehousing or vice versa."

From complete reading of Section 79 it is apparent that chapter under which Section 79 is included deals with "Discharge of Cargo and Entry Inwards of Goods" and the Section itself is headed "Entry for home consumption or warehousing" as such Section 79 is dealing with the entry document which is the In-Bond Bill of Entry and not the exit documents which is the Ex-bond Bill of Entry. Most importantly, the time restriction at Section 79(2) for presenting the Bill of Entry within 45 (forty five) days since the goods were unloaded also indicates that this Section is only referring to In-Bond Bill of Entry because an Ex-Bond Bill of Entry (as per Section 98) can be presented within 24 (twenty four) months since the goods were warehoused. As such interpreting Section 79 in a manner to construe that the said Section refers to Ex-Bond Bill of Entry would give rise to an absurdity and direct conflict with Section 98 of the Customs Act, 1969 and hence the only logical interpretation of Section 79 would lead to the conclusion that it referred to In-Bond Bill of Entry and not Ex-Bond Bill of Entry.

Another fact that is to be noted is that at the time of presenting In-Bond Bill of Entry the rate of applicable duty is always mentioned at the In-Bond Bill of Entry (that at 'Box No.47'), which is assessed on the basis of value of the goods prevailing on the date on which In-Bond Bill of Entry is presented and the said document also shows the exchange rate of the very day. Unless the value of goods, rate of duty and exchange is to be paid as was prevailing on the day when In-Bond Bill of Entry was presented this whole assessment in the In-

Bond document would appear to be a futile exercise worth of nothing.

Thus the spirit of law is that the date for the purpose of calculating the value of the goods and the date for determining the rate of duty should be the same. Therefore, we have no hesitation to hold that there is no justification for taking one date for one purpose and another date for another purpose.

From the discussions made above and the principle enunciated in the cited case there seems no plausible way to conclude that Section 79 is referring to Ex-Bond document and consequently it is clear that the value of goods and the rate of duty shall be the one prevailing at the time of presenting the In-Bond Bill of Entry and not the Ex-Bond Bill of Entry document and once the In-Bond Bill of Entry is submitted any subsequent development in case of determination of value or any redetermination of rate of duty or taxes, shall not affect the value of the concern goods or the rate of duty for the purpose of payment of duties and charges.

Accordingly, the civil appeal is dismissed.

The judgment and order dated 19.07.2005 passed by the High Court Division in Writ Petition No.101 of 1998 is maintained.

No order as to costs.

J.

J.

J.

The 17th January, 2023
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