

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

**WRIT PETITION Nos.8259, 8260, 8261, 8263, 8264,
8265, 8267. 8270 and 8274 all of 2022**

IN THE MATTER OF:

Applications under Article 102 of the Constitution
of the People's Republic of Bangladesh

And

IN THE MATTER OF:

Perfetti Van Melle Bangladesh Pvt. Ltd.

- Petitioner in all writ petitions.

-VS-

***Customs, Excise and VAT Appellate Tribunal
and others***

.... Respondents in all writ petitions.

And

Mr. K.M. Tanjib-ul-Alam, Senior Advocate with

Mr. Kazi Ershadul Alam, Advocate and

Ms. Nazmun Binte Islam, Advocate

.... For the Petitioner in all writ petitions.

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. and

Mr. Md. Taufiq Sajawar (Partho), A.A.G.

....For the Respondents-government in all writ petitions.

***Heard on: 27.02.2023, 02.03.2023
and Judgment on: 07.03.2023***

Present:

Mrs. Justice Farah Mahbub.

And

Mr. Justice Ahmed Sohel

Farah Mahbub, J:

Since common question of law and facts are involved in all these
9(nine) writ petitions as such, those have been heard together and are being
disposed of by this single judgment.

In these writ petitions respective Rules Nisi had been issued by this Court under Article 102 of the Constitution of the People's Republic of Bangladesh, calling upon the respondent No.1, Customs, Excise and VAT Appellate Tribunal to show cause as to why the impugned respective orders dated 05.05.2022, 22.05.2022, 05.05.2022, 22.05.2022, 18.05.2022, 05.05.2022, 18.05.2022, 05.05.2022 and 05.05.2022 respectively passed in Customs Appeal Nos. 195, 204, 193, 206, 197, 191, 207, 192 and 196 all of 2022 dismissing the appeal, should not be declared to have been passed without any lawful authority and hence, of no legal effect.

At the time of issuance of the respective Rules Nisi the operation of the impugned orders dated 05.05.2022, 22.05.2022, 05.05.2022, 22.05.2022, 18.05.2022, 05.05.2022, 18.05.2022, 05.05.2022 and 05.05.2022 (Annexure-A) passed by the Tribunal concerned dismissing the respective appeals have been stayed by this Court for a prescribed period with further direction to maintain *status-quo* in respect of encashment of the respective bank guarantees.

In view of the statements so made in the writ petitions, we have heard Mr. K.M. Tanjib-ul-Alam, the learned Senior Advocate appearing with Mr. Kazi Ershadul Alam, the learned Advocate for the petitioner and Mr. Md. Abul Kalam Khan (Daud) and Mr. Md. Modersher Ali Khan (Dipu) the learned Assistant Attorney Generals appearing for the respondents-government. We have also gone through the impugned orders passed by the Tribunal concerned along with the Annexures so have been appended thereto.

In all these Rules Nisi, the issue in question being raised by the petitioner is that on the date so fixed by the Tribunal i.e. respondent No.1

for statutory deposit under Section 194(1) of the Customs Act, 1969 (in short, the Act, 1969), can the said authority dismiss the appeal for non-appearance of the petitioner–appellant and also by giving findings “..... আপীলকারীর আবেদন ও নথিতে রক্ষিত যাবতীয় কাগজপত্র পর্যালোচনায় দেখা যায়, শুল্ক ভবন কর্তৃক চূড়ান্ত শুল্কায়ন যথাযথ হয়েছে মর্মে আপীল মামলাটি খারিজযোগ্য।”.

Vide Section 196A(1) of the Act, 1969 any person aggrieved by an order in view of the context as described in clause-(a) and (b) of sub-section (1) may prefer appeal to the Appellate Tribunal within the time frame as stipulated under sub-section (3) in the manner as provided under sub-section (6) of Section 196A of the Act, 1969.

Relevant part of Section 196A is quoted below for cursory glance:-

“196A. (1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order:-

(a) ¹[any decision or order passed by the Commissioner of Customs or Commissioner of Customs (Bond) or Director General (Duty Exemption and Drawback) or any officer of Customs equivalent to Commissioner of Customs], not being decision or order passed under section 82 or section 98; or

(b) an order passed by the Commissioner (Appeal) under section 193 as it stood immediately before the appointed day or under section 193A.

(2)

²[(3) Every appeal under this section shall be filed within three months from the date on which the order sought to be appealed against is received by the Commissioner of Customs or, as the case may be, the other party preferring the appeal:

Provided that the President of the Appellate Tribunal may, if he is satisfied that the appellant has not been able to file an appeal within the aforesaid period of three months due to reasonable grounds, allow it to be presented within a further period of two months.]

(4)

(5)

(6) An appeal to the Appellate Tribunal shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf and shall, in the case of an appeal made on or after the appointed day, irrespective of the date of demand or ³[duties, taxes] and interest or of levy of penalty in relation to which the appeal is made, be accompanied by a fee of,-

(a) where the amount of ⁴[duties, taxes] and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is one lakh Taka or less, ⁵[three hundred Taka];

(b) where the amount of⁶[duties, taxes] and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than one lakh Taka,⁷[one thousand two hundred Taka]: Provided that no such fee shall be payable in the case of an appeal referred to in sub-section (2) or a memorandum of cross-objections referred to in sub-section (4).”

However, in view of Section 194(1) the person so is desirous to prefer appeal is to deposit the required amount of duties so demanded if the goods have ceased to be under the control of the customs authority or the penalty imposed or both, as the case may be, either at the time of filing appeal or with permission of the appellate authority i.e. the Tribunal at a later stage, but before consideration of the appeal i.e. before the appeal is taken up for substantive hearing. Section 194(1) of the Act, 1969 is quoted below for ready reference.

“194. (1) Any person desirous of appealing under section 193¹[or section 196A] against any decision or order relating to any duty demanded in respect of goods which have ceased to be under the control of customs authorities or to any penalty levied under this Act shall, at the time of filing his appeal or if he is so permitted by the appellate authority at any later stage before the consideration of the appeal, deposit with the appropriate officer²[fifty per cent of the duty demanded or fifty per cent of the penalty imposed, or both, as the case may be]:

Provided that such person may, instead of depositing³[the amount of the penalty as aforesaid], deposit only fifty percent thereof and furnish a guarantee from a scheduled bank for the due payment of the balance:

Provided further that where, in any particular case, the appellate authority is of the opinion that the deposit of duty demanded or⁴[penalty imposed] will cause undue hardship to the appellant, it may dispense with such deposit, either unconditionally or subject to such conditions as it may deem fit to impose..”

Vide Section 196B the Tribunal after giving the parties to the appeal an opportunity of being heard may pass such order thereon as it deem fit either confirming, modifying or annulling the decision or order appealed

against or may refer the case back on remand with necessary direction for adjudication afresh.

Section 196B(1) of the Act, 1969 is quoted below:-

“196B. (1) The Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against [or may refer the case back to the authority which passed such decision or order with such directions as the Appellate Tribunal may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary].”

A combined reading of the aforementioned provisions of law goes to transcribe that when an appeal is preferred before the Tribunal under Section 196A and on receipt thereof a date is fixed for statutory deposit as per requirement of Section 194(1) subject to giving notice to the appellant it shall pass necessary order either dismissing the appeal without affording further time, or may extend time for the said deposit before substantive hearing of the appeal or even dispense with such deposit under the second proviso to Section 194(1) either conditionally or subject to such conditions as it may deem fit to impose. Prior to passing such order the Tribunal cannot hear and dispose of the appeal on merit.

In the instant case, admittedly 18.04.2022 was fixed by the Tribunal for statutory deposit under Section 194(1) of the Act. However, the Tribunal, the respondent No.1 had dismissed the appeal on two counts; firstly, for non appearance of the party, secondly, it found that the final assessment so made by the customs authority was lawful.

Said impugned order is *ex-facie* not sustainable in the eye of law, for, notice of the date so fixed for statutory deposit appears to have been served at Perfetti Van Melle Bangladesh Private Limited, Mouza-7, No. Kewa, (Baraider Chala), P.O. Gilaberaid, P.S. Sreepur, Dist: Gazipur; not at the

address as mentioned by the petitioner appellant in the respective form of the appeal, as is apparent from Annexure-E to the writ petition. Consequently, they failed to remain present before the Tribunal on the respective date, as contended by the petitioner. Further, the Tribunal has dismissed the appeal though in a slipshod manner but touching the merit of the appeal by observing, *inter-alia* “..... আপীলকারীর আবেদন ও নথিতে রক্ষিত যাবতীয় কাগজপত্র পর্যালোচনায় দেখা যায়, গুরু ভবন কর্তৃক চূড়ান্ত শঙ্কায়ন যথাযথ হয়েছে মর্মে আপীল মামলাটি খারিজযোগ্য।”. Said findings are also not maintainable for having been passed touching the merit of the appeal.

Considering the facts and circumstances prevalent in the instant cases as well as the observations and findings, we found substance in all the Rules.

In the result, all the Rules in connection writ petition Nos. 8259, 8260, 8261, 8263, 8264, 8265, 8267, 8270 and 8274 all of 2022 are hereby made absolute without any order as to costs.

The respective impugned orders dated 05.05.2022, 22.05.2022, 05.05.2022, 22.05.2022, 18.05.2022, 05.05.2022, 18.05.2022, 05.05.2022 and 05.05.2022 respectively passed by the Tribunal concerned in Customs Appeal Nos. 195, 204, 193, 206, 197, 191, 207, 192 and 196 all of 2022 are hereby declared to have been passed without any lawful authority and hence, of no legal effect.

The respondent No.1 is accordingly directed to fix a date afresh in connection with the respective customs appeals for statutory deposit under Section 194(1) of the Customs Act, 1969 with service of notice upon the petitioner at the proper address as mentioned in the respective form of the

appeals, within 2(two) weeks from the date of receipt of the copy of the judgment and order.

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

Ahmed Sohel, J:

I agree.