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

Writ Petition No. 15620 of 2022
with
Writ Petition No. 3748 of 2021
with
Writ Petition No. 3749 of 2021
with
Writ Petition No. 3750 of 2021

IN THE MATTER OF:
An application under Article 102 of the Constitution of the People's Republic of Bangladesh.

AND
IN THE MATTER OF:

Z & Z Intimates Limited
….Petitioner (In W.P No. 15620 of 2022)
Versus
The Customs Excise and VAT Appellate Tribunal, Jibon Bima Bhaban, 4th Floor, 10 Dilkusha C/A, Dhaka, and others.
….Respondents (In W.P No. 15620 of 2022)

Mr. Raghib Rauf Chowdhury, Senior Advocate
..For the Petitioner (In W.P No. 15620 of 2022)

Mr. Mohammad Arshadur Rouf, Additional Attorney General with
Mr. Rasel Ahmmad, D.A.G,
Mr. Sharif Uddin Ahmed, A.A.G,
Mr. Md. Shaif Uddin Ratan, A.A.G,
Mr. Md. Rejaul Islam, A.A.G
Mr. Md. Joynul Hussain Rubel, A.A.G,
Mr. Md. Towhidul Islam, A.A.G and
Ms. Mahbuba Tasnim Akhi, A.A.G
`....For the Respondents (In W.P No. 15620 of 2022)

Piangka Fashin Ltd.
…. Petitioner (In W.P Nos. 3748 of 2021, 3749 of 2021, and 3750 of 2021)
Versus
Customs, Excise & VAT Appellate Tribunal, Jibon Bima Bhabon (3rd Floor), 10, Dilkusha Commercial Area, Dhaka-1000, and others
…. Respondents (In W.P Nos. 3748 of 2021, 3749 of 2021, and 3750 of 2021)

Mr. Munshi Moniruzzaman with
Mr. Samarendra Nath Biswas and

Mr. Sakib Rezwan Kabir, Advocate
…. For the Petitioner (In W.P Nos. 3748 of 2021, 3749 of 2021, and 3750 of 2021)

Mr. Mohammad Arshadur Rouf, Additional Attorney General with
Mr. Rasel Ahmmad, D.A.G,
Mr. Sharif Uddin Ahmed, A.A.G,
Mr. Md. Shaif Uddin Ratan, A.A.G,
Mr. Md. Rejaul Islam, A.A.G
Mr. Md. Joynul Hussain Rubel, A.A.G,
Mr. Md. Towhidul Islam, A.A.G and
Ms. Mahbuba Tasnim Akhi, A.A.G
…. For the Respondents (In W.P Nos. 3748 of 2021, 3749 of 2021, and 3750 of 2021)

Present:
Mr. Justice Md. Iqbal Kabir
And
Mr. Justice Md. Riaz Uddin Khan
And
Mr. Justice Sardar Md. Rashed Jahangir

Heard on 15.01.2025, 29.04.2025, 14.08.2025 and judgment on 11.03.2026.

Md. Iqbal Kabir, J:

The instant reference to a Larger Bench has been made seeking a interpretation of section 194 of the Customs Act, 1969. Since all the writ petitions involve similar questions of law and fact, they were heard together, and this single judgment will govern each of the four writ petitions.

In order to adjudicate the Rule of the above-noted cases, a brief statement concerning the factual aspect of each of the cases is called for.

In Writ Petition No. 3749 of 2021, the facts narrated are as follows. The petitioner is an export-oriented garments industry having a Bond license. The petitioner had the entitlement to import different kinds of products under different HS Codes. Therefore, the petitioner entered into a Sales Contract with the foreign buyers. Subsequently, the petitioner received commercial documents regarding the goods in question, and upon amending the Import Generated Manifest (IGM), deposited the required fees and got a Utilization Declaration (UD). Petitioner submitted

the Bill of Entry, being No. C-237513 dated 04.02.2020 to the Customs authority for assessment and release of the goods in question. However, the Customs authority on physical inspection made a Report thereby claims the goods are beyond declaration. Therefore, a proceeding was initiated wherein the petitioner made a reply to a show cause notice and, by submitting another application, prayed to cancel the relevant Bill of Entry.

The Custom Authority, after hearing and without considering the reply made by the petitioner, passed an Adjudication Order which was ultimately challenged by the petitioner before the Customs, Excise and VAT Appellate Tribunal in an appeal being No. CEVT/Case (Cus)-101/2021 and after filing the appeal, the petitioner field an application before the Appellate Authority i.e., the Tribunal for accepting the appeal by waiving the requirement of statutory deposit by exercising the power under Section 194(1) of the Customs Act, 1969, since the goods in question have been confiscated in favour of the State, but the Tribunal by the impugned Order asked the petitioner to pay 10% cash and 10% Bank Guarantee as a statutory deposit and challenging the said Order, the petitioner has filed the instant writ petition.

The facts and issues of the Writ Petition Nos. 3748 of 2021, 3750 of 2021, and 15620 of 2022 are similar to the facts of the writ petition No. 3849 of 2021, except the Bill of Entry. However, out of those, only the petitioner of the writ petition No. 15620 of 2022 brought out the goods in question from the customs authority, though subsequently those goods were brought back under the control of the Customs Authority.

In the context stated above, the facts of writ petition No. 15620 of 2022 are narrated as follows. The petitioner, Z & Z Intimates Ltd**.**, applied to the Bangladesh Export Processing Zones Authority (BEPZA) seeking permission to import a duty-free vehicle in terms of S.R.O. No.

101/Ain/2010/2280/Customs dated 04.04.2010. Pursuant thereto, BEPZA issued an Import Permit in favour of the petitioner on 15.03.2022. Upon arrival, the petitioner submitted a Bill of Entry for the release of the said vehicle and, upon obtaining due permission from the competent authority, the vehicle was escorted to the petitioner's premises. Subsequently, the Customs Authority, upon unlocking the container, conducted a physical examination on 12.05.2022 and recorded that the imported vehicle was a *Rolls-Royce Jeep*, recommending assessment thereof under S.R.O. No. 101 dated 04.04.2010**.** After completion of the physical examination, the petitioner, in good faith, took the vehicle to the authorized Rolls-Royce Service Centre in Dhaka for repair of a dent detected during the inspection. However, while the vehicle was under repair, the Customs Intelligence and Investigation Directorate (CIID)**,** on 03.06.2022, seized the vehicle and took it into custody on the allegation that it had been removed before completion of assessment. Thereafter, by Adjudication Order No. 1147 dated 12.10.2022, the Customs Authority assessed customs duty amounting to Tk. 28,29,18,797.90, imposed a penalty of Tk. 56,60,00,000/-**,** and fixed the redemption fine at Tk. 40,00,000/-**.**

Being aggrieved by and dissatisfied with the said order, the petitioner preferred Appeal No. CEVT/CASE(CUS) 907 of 2022 before respondent No. 1, the Customs, Excise, VAT and Appellate Tribunal, Dhaka, along with an application praying for admission of the appeal without depositing the statutory pre-deposit of duty, penalty, and redemption fine, as the vehicle had been seized and remained under the custody of the Customs Authority.

The learned Tribunal heard the alleged application on 28.11.2022 and, by the impugned order dated 28.11.2022**,** was pleased to direct the petitioner to deposit 5% of the penalty amount in cash and furnish a bank

guarantee for a further 5% thereof within 29.12.2022 as a precondition for admission of the appeal.

However, in order to disposal of the above mention writ petitions, it has reminded us that this bench has been constituted to examine of section 194 of the Customs Act, 1969, as it was argued by the learned Advocate for the petitioner that if the goods in question are confiscated and kept under the control of the Customs Authority, no deposit shall be required in preferring an appeal against imposition of a penalty, and on the other hand, the learned DAG placed the provisions of section 194 of the Customs Act, 1969 before the Court and submits that wording employed by the Legislature are disjunctive and therefore, though the deposit is not required in preferring an appeal against any Customs duty but against imposition of penalty if any person wants to prefer an appeal under the said provisions, the required amount of deposit must be deposited for preferring an appeal as pre-condition.

The Division Bench of this Court considered the submissions and, upon perusing the provisions of section 194 of the Customs Act, 1969, was of the view that the entire provisions of section 194 of the Customs Act, 1969 should be minutely examined by a full bench, so that the issue as to the requirement of deposit in preferring an appeal against imposing a penalty can finally be determined.

Mr. Samarendra Nath Biswas, learned Advocate for the petitioners, indeed admitted the contention made by the respondents. However, he argued that the goods being confiscated were in the custody of the Customs Authority; therefore, petitioners are not under an obligation to pay a penalty for filing an Appeal under section 194 of the Customs Act, 1969.

In order to substantiate his submission, he took us to the relevant provision on which the above question has to be decided, which is section

194 (1) of the Customs Act, 1969. However, section 194 of the Customs Act, 1969 states as follows:

> (1) Any person desirous of appealing under section 193 [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 officer [fifty percent of the duty demanded or fifty percent of the penalty imposed, or both, as the case may be]:
>
> Provided that such person may, instead of depositing 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:
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> Provided further that where, in any particular case, the appellate authority is of the opinion that the deposit of duty demanded or _[4][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.
>
> (2) If, upon an appeal, it is decided that the whole or any portion of the aforesaid duty or penalty was not leviable, the appropriate officer shall return to the appellant such amount or portion as the case may be.

In the first part of section 194 of the Customs Act, 1969, the words “in respect of goods which have ceased to be under the control of customs authorities " have been used, and after this part, the word “or” has been used, before the words “to any penalty levied under this Act.

He also brought to our notice that the Customs Act, 1969, has been repealed by a new law, namely কাস্টমস আইন, ২০২৩, wherein section 223 contains the provision of appeal as was in section 194 of the repealed Act. Section 223 of the Ain, 2023, is as follows:

> “২২৩। **নিষ্পন্নাধীন আপিলের ক্ষেত্রে দাবিকৃত শুল্ক ও কর বা আরোপিত জরিমানা জমা**।-(১) কোনো ব্যক্তি, কাস্টমসের নিয়ন্ত্রণাধীনে নাই এইরূপ পণ্যের ক্ষেত্রে দাবি সম্পর্কিত কোনো সিদ্ধান্ত অথবা আদেশের বিরুদ্ধে অথবা এই আইনের অধীন আরোপিত কোনো জরিমানার বিরুদ্ধে ধারা ২২০ বা ধারা ২২৬ এর অধীনে আপিল করিবার অভিপ্রায় পোষণ করিলে তিনি

> আপিল দায়ের করিবার সময়ে অথবা আপিল কর্তৃপক্ষ তাহাকে অনুমতি প্রদান করিলে আপিলটি বিবেচনার পূর্বে যে কোনো পর্যায়ে দাবিকৃত শুল্ক ও করের ১০ (দশ) শতাংশ অথবা আরোপিত জরিমানার ১০ (দশ) শতাংশ যথাযথ কর্মকর্তার নিকট জমা প্রদান করিবেনঃ
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> তবে শর্ত থাকে যে, উক্ত ব্যক্তি জরিমানার উপরি-উল্লিখিত সম্পূর্ণ অর্থ জমা প্রদানের পরিবর্তে উহার ৫০ (পঞ্চাশ) শতাংশ জমা প্রদান করিতে এবং অবশিষ্ট অর্থ যথাযথ পরিশোধের জন্য কোনো তফসিলি ব্যাংক হইতে গ্যারান্টি দাখিল করিতে পারিবেনঃ
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> আরও শর্ত থাকে যে, যদি কোনো বিশেষ ক্ষেত্রে আপিল কর্তৃপক্ষ এহরূপ অভিমত পোষণ করে যে, দাবিকৃত শুল্ক ও কর অথবা আরোপিত জরিমানা জমা প্রদান আপিলকারীর জন্য অযথা কষ্টের কারণ হইবে, তাহা হইলে উহা বিনাশর্তে অথবা তাহার বিবেচনায় উপযুক্ত শর্ত আরোপ সাপেক্ষে উক্ত জমা প্রদানের প্রয়োজনীয়তা হইতে আপিলকারীকে অব্যাহতি প্রদান করিতে পারিবেনঃ
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> আরও শর্ত থাকে যে, ধারা ৩২ অনুযায়ী উক্ত ব্যক্তি, উক্ত ধারার অধীন অবহিত করা হইয়াছে, কিন্তু পরিশোধিত হয় নাই এইরূপ কোনো শুল্ক বা করের উপর ধার্যকৃত সুদ, এই আইনের অধীন কোনো আপিল দাখিল বা নিষ্পন্নাধীন বিবেচনা ব্যতিরেকে, পরিশোধের জন্য দায়ী থাকিবেন, যদি না আপিলে ইহা চূড়ান্তভাবে নির্ধারিত হয় যে, উক্ত অপরিশোধিত পরিমাণ যথাযথভাবে আরোপিত হয়নি।
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> (২) যদি কোন আপিল কর্তৃপক্ষ সিদ্ধান্ত প্রদান করে যে, উপরি-উক্ত শুল্ক ও কর বা জরিমানার সম্পূর্ণ অথবা উহার যে কোনো অংশ আরোপযোগ্য ছিল না, তাহা হইলে যথাযথ কর্মকর্তা আপিলকারীকে উক্ত অর্থ অথবা, ক্ষেত্রমত, অংশবিশেষ ফেরত প্রদান করিবেন। ”

and vide Finance Ordinance, 2025, subsection 1 of Section 223 of the Customs Act, 2023, amended as under:

> “১৫৬। ২০২৩ সনের ৫৭ নং অইনের ধারা ২২৩ এর সংশোধন।-উক্ত আইনের ধারা ২২৩ এর উপ-ধারা (১) এ উল্লিখিত “শুল্ক ও করের ১০ (দশ) শতাংশ অথবা আরোপিত জরিমানার ১০ (দশ) শতাংশ” শব্দগুলি, সংখ্যাগুলি ও বন্ধনীগুলির পরিবর্তে “শুল্ক ও করের ১০ (দশ) শতাংশ বা যেক্ষেত্রে শুল্ক ও কর প্রযোজ্য নয় সেক্ষেত্রে জরিমানার ১০ (দশ) শতাংশ” শব্দগুলি, সংখ্যাগুলি ও বন্ধনীগুলি প্রতিস্থাপিত হইবে।”

In the instant case, the Commissioner vide its Adjudication Order (Annexure-M) confiscated the goods in question in favour of the State and imposed a fine along with redemption fine, and in respect of the release of the goods in question, the following Order was passed:

> “১০। দাবীকৃত শুল্ক-করাদি বাবদ ৪১,৮৪,১৬০.৮৬ + ব্যক্তিগত অর্থদন্ড ১১,০০,০০০.০০ + বিমোচন জরিমানা ২,০০,০০০.০০ = সর্বমোট ৫৪,৮৪,১৬০.৮৬ (চুয়ান্ন লক্ষ চুরাশি হাজার একশত ষাট দশমিক আট ছয়) টাকা পরিশোধের শর্তে পণ্যচালানটি IM-4 (স্বাভাবিকহারে)-এ শুল্কায়নের আদেশ দেয়া হলো।...”

The petitioners did not get the release of the goods in question as per the Order of the adjudication authority, and as such, the same is under the control of the Customs Authority, so the Order of the Tribunal

(Impugned Order of the Writ Petition) is not consistent with the legal requirement/legal provision.

Further, he brought to our notice a decision passed in a case of M/s. S. L. Steel vs. Commissioner of Customs, Chittagong, and others (Writ Petition No. 774 of 2012), the goods of the petitioner were confiscated, and a fine was imposed. Later, when the petitioner preferred the appeal, it was summarily rejected by the Customs Appellate Tribunal on the ground that no deposit was made by the petitioner for preferring the appeal. The High Court Division settled the issue by stating that:

> "Since the goods are in the custody of the customs authority, no statutory deposit is required to be paid for filing an appeal against the impugned order regarding any fine or penalty before the Customs Appellate Tribunal."

The Court thus directed to hear the appeal and dispose of it on merit. Therefore, it is well settled by the aforesaid precedent that there is no requirement of statutory deposit with respect to duty as well as penalty at the time of filing an appeal if the goods are in the custody of the customs authority.

Further, the decision laid down in M/s. Madina Agency vs. National Board of Revenue (27 BLC 520) has the same view with regard to statutory deposit before filing an appeal. In the alleged case, on receiving the memo of appeal, the concerned respondent issued a letter to the petitioner asking to deposit 50% of the penalty amount. Complying with said order, the appeal shall be rejected without hearing the appeal. However, thereafter, upon hearing the petitioner, the respondent rejected the appeal vide impugned order, holding that the petitioner failed to comply with the deposit of the statutory amount as per the order so passed earlier under section 194(1) of the Customs Act, 1969. Being aggrieved by the said order, the petitioner moved to the Court and

obtained the following decision. The Court observed and stated in para 27 of the judgment that:

> "On a plain reading of section 194 it appears that any aggrieved person desires to prefer appeal under section 193 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, he/it shall deposit 50% of duty demanded or 50% of penalty levied or both as the case may be at the time of filing appeal."

Therefore, deposit of duty or penalty or both is required only when the goods cease to be under the control of customs authorities.

He also brings the present position of India by citing the law and decisions of its jurisdiction.

Section 129E of the Customs Act, 1962, before the amendment by the Indian Finance Act, 2014, read as follows:

> "-129E: Where in any appeal under this Chapter, the decision or order appealed against relates to any duty and interest demanded in respect of goods which are not under the control of the customs authorities or any penalty levied demanded in respect of goods which are not under the control of the customs authorities or any penalty levied under this Act, the person desirous of appealing against such decision or order shall, pending the appeal, deposit with the proper officer the duty and interest demanded or the penalty levied: Provided that where in any particular case, the Commissioner (Appeals) or the Appellate Tribunal is of opinion that the deposit of duty and interest demanded or penalty levied would cause undue hardship to such person, the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal may dispense with such deposit subject to such conditions as he or it may deem fit to impose so as to safeguard the interests of revenue.
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> Provided further that where an application is filed before the Commissioner (Appeals) for dispensing with the deposit of duty and interest demanded or penalty levied under the first proviso, the Commissioner (Appeals) shall, where it is possible to do so, decide such application within thirty days from the date of its filing."

As the above-mentioned provisions before the amendment of 2014, the requirement to make a statutory deposit was a precondition to prefer an appeal if the goods were not in the custody of the customs Authority.

The provision under the Indian Customs Act, 1962, which provided the situation where statutory deposits were to be made, was considered in the case of Bhavya Apparels (P) Ltd. and another vs. Union of India and another [(2007) 10 Supreme Court Cases 129]. The Court stated in para 12 of the above-noted judgment:

> "Section 129E of the Act would be attracted where the goods in question are not in the custody of the Revenue. The said provision, therefore, would be attracted only when the ingredients thereof exist."

The Indian Supreme Court did not distinguish between fine and duty. They opined that the requirement of Section 129E shall only be attracted when the goods are not in the custody of the customs authority. Section 129E has been replaced by the Finance Act, 2014, as follows:

> "-129E. The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal,-
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> (i) under sub-section (1) of section 128, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of customs lower in rank than the Commissioner of Customs;
>
> (ii) against the decision or order referred to in clause (a) of sub-section (1) of section 129A, unless the appellant has deposited seven and a half per cent. Of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against;
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> (iii) against the decision or order referred to in clause (b) of sub-section (1) of section 129A, unless the appellant has deposited ten per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order

> appealed against: Provided that the amount required to be deposited under this section shall not exceed rupees ten crores: Provided further that the provisions of this section shall not apply to the stay applications and appeals pending before any appellate authority prior to the commencement of the Finance (No. 2) Act, 2014."

The concept of control of goods has been removed from the statute by the aforesaid amendment. The amount of deposit is reduced, and the maximum amount of deposit is fixed at ten crores.

The constitutionality of the amended section has been scrutinized in the case of Haresh Nagindas Vora vs. Union of India (Writ Petition No. 4315 of 2016, dated 19-6-2017).

> As regards the contention of the petitioners relying on the decision of the Supreme Court in Mardia Chemicals Ltd. v. Union of India (supra) that the condition of deposit of 75% was held to be invalid and therefore, Section 129E of the Act also is required to be held to be invalid, it cannot be accepted. The submission in the present context is too far-fetched. Under Section 129E of the Act, the requirement of deposit is 7.5% and 10% respectively, as provided in sub clauses (i), (ii), and (iii) of the said provision. As noted by us earlier, such a reasonable percentage of deposit cannot be labeled as an unreasonable deposit. It is surely not a deposit of 75% as considered by the Supreme Court in Mardia Chemicals Ltd. vs. Union of India (supra) so as to render the right of appeal illusory. In our opinion, the petitioners' reliance on the decision in Mardia Chemicals Ltd. is completely misplaced.

In the above case, the petitioner challenged the Constitutionality of amended section 129E. The Court upheld the constitutionality of the section on the ground that the deposit of 7.5 percent is not unreasonable. But in our case, it was argued that a deposit of fifty percent of the penalty amount is an unreasonable amount, amounting to a denial of the right of appeal.

From the understanding of the aforesaid provisions and judicial decisions both in Bangladesh and India, it is apparent that, whether concerning any fine or duty, it is not required by law to make any statutory

deposit when the goods in question are in the custody or control of the Authority of Customs.

It is at this juncture, against the above position, that learned DAG brought notice that in the name of 'repairs', the car, without paying any duties of the luxury car, had been removed from the CEPZ area. The customs authorities conducting relevant inspection found out and recovered the car from the petitioner's house on 04.07.2022.

It alleged that the petitioner imported the said car without obtaining the necessary approval from the Customs Authorities. Further, the petitioner, with malafide intention and ulterior motive, unlawfully removed the luxury vehicle (Rolls Royce Cullinan SUV, Engine No. 90164098, 6750 CC) without paying the required duties and took it to his residence for personal use. This was done in violation of the BEPZA Import Permission dated 26.10.2021, under which such a vehicle could only be imported and used within the EPZ area for production-related purposes. He further contends that this case is distinguishable from others, as the vehicle was removed from customs control without following the applicable legal procedures.

Mr. Raghib Rauf Chowdhury, learned Advocate for the petitioner, claims that the deposition of statutory deposit in respect of penalty levied is so harsh to the person who desires to appeal when the goods itself is under the control of the customs authority and are not being used or consumed, insisting that such a deposit is unreasonable. Moreover, the question of the validity of the imposition of a penalty is to be decided by the tribunal in appeal; therefore, until and unless the issue is finally decided, the question of deposition of statutory deposit in respect of the disputed levy of penalty creates undue hardship and restricts the person's desire to appeal. According to him, the car in question is taken back to the customs authority, and which has no consumption or use at all, thus, it

has fallen under the control of the customs authority, which requires no deposit during appeal, as the goods under the custody of the authority, it itself serves as adequate security for any payment that may arise upon final disposal of the appeal. Hence, no separate statutory deposit should be required at this stage.

He submits that sections 194 and 202 of the Customs Act have to read together, an appeal against an order of penalty levied on goods under the control of the customs authority should not require a deposit of money as security because, in case of non-payment of the penalty levied, the customs authority may proceed under section 202 against the controlled goods to satisfy the penalty amount.

However, on a query by this Court, it has admitted that some irregularities may have occurred on the part of the petitioner relates with car, for which it may be brought under some other provision to punish, but not in the present position.

He submits that in *Ayman Textile and Hosiery Ltd. vs. Government of Bangladesh* (28 BLC 247), the Court held that pre-deposit reflects a legislative intent to discourage frivolous appeals and ensure financial discipline. However, it should not be applied so rigidly as to deny the statutory right of appeal, especially when the liability is still under serious dispute.

The law, as an inherently moral construct, also strives to grant reprieves or reliefs within reason. The law's aspirational value to strike an essential balance between legal strictures and sanctions on the one hand and the availing of legal rights on the other is witnessed best in section 194 of the Act, which, unlike section 129E of the Indian Customs Act, 1962, is still possessed of its permissive character intact. That balance is best exemplified in the law's consideration of "undue hardship" and that too "unconditionally" to entertain applications for deposit waiver. On the

other hand, section 129E of the Indian Customs Act, 1962 has, through a series of amendments, shed much of its permissive character in favour of the revenue's interests, taking centre stage and ultimately the statutory right of appeal being whittled down to a mere conditional one. But that has not been our legislative experience in this jurisdiction, at least not yet.

In the above case, the Court emphasized the legislative intent favoring the substantive right of preferring appeal. The provision of Section 194(1), if construed in accordance with the legislative intent, should allow the desirous person to prefer an appeal against a penalty imposed without paying the statutory deposit if the goods are under the control of the customs authority.

At this juncture, the words of a statute are to be understood in their natural and ordinary meaning and sentences are to be construed according to their natural and ordinary grammatical meaning. The language of section 194 of the Customs Act, 1969, makes it evident that the word “or” has been consciously used before the provision relating to “penalty.” This clearly indicates that the Legislature did not intend to extend the phrase “in respect of goods which have ceased to be under the control of customs authorities” to the provision concerning penalty. Accordingly, the said qualifying words cannot be read into or implied in the context of penalty, and no exemption can be claimed thereunder from making the statutory deposit required for filing an appeal against an order imposing a penalty.

The Court, in the above case, underscored that the legislative intent behind Section 194(1) is to uphold the substantive right of appeal. Interpreting the provision in that light, it held that a person aggrieved by a penalty should not be deprived of the opportunity to prefer an appeal merely due to the inability to make the statutory deposit, particularly where the goods remain under the control of the customs authority.

However, it appears that the principle of customs policy is to collect duty and taxes in case of export and import and to maintain a harmonious and convenient environment, not to create burden upon the importer/exporter by imposing undue hardship, therefore, it is transpires that as on when the goods released for consumption the requirement of deposition of statutory deposit both in case of duty and penalty is a condition precedent in preferring appeal but when the goods are under the control of customs authority statutory deposit both in case of duty and penalty is not required. Accordingly, based on previous decisions as mentioned above, a harmonious interpretation suggests that the requirement of statutory deposit, both for duty and penalty, operates as a condition precedent to filing an appeal only when the goods have been released for consumption. Conversely, where the goods are still under the custody or control of the customs authority, such deposit should not be insisted upon, as the revenue interest remains sufficiently secured.

It has been established that the petitioner took out its imported Car from the control of the Authority of Customs without following due process of law. Authority recovered the alleged Car and took it back under their control; therefore, to some extent, the facts of the alleged writ petition are different from all three cases. Now, all the imported goods related to the above cases, including the car, are under the control of the Authority of Customs. However, the activity of the petitioner, the importer of car, is not reasonable and fair; he is liable for the consequences of his alleged wrong, if there be any, and for such alleged wrong doing the customs authority is authorized to do the needful in accordance with law. Therefore, we are of the view that justice would be met if this Court disposed of the Rule with observation made herein above.

Resultantly, the Rule Nisi issued in Writ Petition Nos. 3748, 3749, and 3750 of 2021 are made absolute, while the Rule Nisi issued in Writ Petition No. 15620 of 2022 is disposed of.

The impugned orders of the alleged writ petitions are hereby declared to have been passed without lawful authority, and hence of no legal effect.

The concerned respondent is hereby directed to accept all the appeals filed by the petitioner for hearing and dispose of those appeals within 45 (forty-five) days from the date of receipt of this judgment and order on merit in accordance with law.

However, no order as to cost.

Communicate the copy of the judgment and order to the concerned respondent/s forthwith.

Md. Riaz Uddin Khan, J:
I agree

Sardar Md. Rashed Jahangir, J:
I agree