

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

WRIT PETITION NO.9979 of 2023

IN THE MATTER OF:

An application under Article 102 of the
Constitution of the People's Republic of
Bangladesh

And

IN THE MATTER OF:

Kutir Nirman Kousholi Ltd.

... Petitioner.

-vs-

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

... Respondents.

And

Ms. Fahriya Ferdous, Advocate

.... For the Petitioner.

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.

....For the Respondents-government.

***Heard on 09.11.2023 and
judgment on:07.02.2024***

Present:

Mrs. Justice Farah Mahbub.

And

Mr. Justice Muhammad Mahbub Ul Islam

Farah Mahbub, J:

Unsigned judgment and order dated 09.11.2023 is hereby recalled.

This Rule Nisi was issued under Article 102 of the Constitution of the
People's Republic of Bangladesh, calling upon the respondents to show cause
as to why the impugned order dated 12.06.2023 passed by the respondent
No.1 under Nothi No. CEVT/ Case (VAT)-191/2023/1864 dated 20.06.

2023 (Annexure-H) dismissing the appeal filed by the petitioner on the ground of delay without considering the provision of Section 196A(5) of the Customs Act, 1969, should not be declared to have been passed without lawful authority and also, as to why the respondent No.1 should not be directed to hear and dispose of the appeal bearing No. CEVT/CASE (VAT)-191/2023 on merit upon condoning the delay in preferring the appeal.

At the time of issuance of the Rule the operation of the impugned notice dated 27.07.2023 passed under Nothi No.08.01.2648.10.05. 52.21/1844 by the respondent No.4 (Annexure-I), was stayed by this Court for a prescribed period.

In view of the statements so made in the writ petition, Ms. Fahriya Ferdous, the learned Advocate appearing for the petitioner submits that challenging the adjudication order dated 05.12.2022 (Annexure-E) passed under Nothi No.8/মূসক/পশ্চিঃ কমিঃ/০৮ (২০৮) কুটির নিমার্গ/মূসক ফাঁকি/ বিচার/২০২২/ ৫১৫২(২), by the Commissioner, Customs, Excise and VAT Commissionerate, Dhaka, the respondent No.2, the petitioner as appellant preferred an appeal before the Customs, Excise and VAT Appellate Tribunal, Dhaka, respondent No.1 in due compliance of VAT and Supplementary Duty Act, 2012 . However, during the course of preferring appeal, a delay of 2(two) months 23 (twenty three) days has occurred. In this regard, she submits that the said delay being unintentional and not due to the laches of the petitioner and also, considering the fact that because of dismissal of the appeal by the Tribunal concerned vide order dated 12.06.2023 (Annexure-H), the petitioner has now become non-suited. Accordingly, she prays for interference in the matter by

giving necessary direction upon the Tribunal concerned to hear the appeal on merit upon condoning the delay for the cause of justice and equity.

Mr. Md. Modersher Ali Khan (Dipu), the learned Assistant Attorney General appearing for the respondents-government submits that challenging the adjudication order passed by the Commissioner concerned an appeal before the Tribunal is required to be preferred within the statutory prescribed period as provided under Section 122(2) of the said Act of 2012. In the instant case, the petitioner has admittedly caused delay in preferring the said appeal. Hence, the order of dismissal of the appeal preferred by the petitioner as being barred by limitation cannot be termed as an order passed without lawful authority. Hence, he submits, this Rule be liable to be discharged.

It is an admitted position of fact that challenging the adjudication order dated 05.12.2022 (Annexure-E) passed under Nothi No.8/মূসক/পশ্চিমঃ কমিঃ/০৮ (২০৮) কুটির নির্মাণ/মূসক ফাঁকি/ বিচার/২০২২/ ৫১৫২(২), by the Commissioner, Customs, Excise and VAT Commissionerate, Dhaka, the respondent No.2, (Annexure-E), the petitioner as appellant preferred an appeal before the Customs, Excise and VAT Appellate Tribunal, Dhaka, under the VAT and Supplementary Duty Act, 2012. However, in preferring the appeal before the Tribunal a delay of 2(two) months 23 (twenty three) days has occurred due to the reason of not being informed within time. The Tribunal concerned ultimately dismissed the appeal having not been convinced about the cause of delay so has occasioned while preferring the appeal.

The power to condone the delay by the Tribunal is discretionary. However, taking into consideration of the fact that for dismissal of the said

appeal the petitioner has become non-suited we are inclined to interfere in the matter for the cause of justice, equity and fair play.

In the result, the Rule is made absolute.

The impugned order dated 12.06.2023 passed by the Tribunal concerned, respondent No.1 under Nothi No.CEVT/Case (VAT)-191/2023/1864 dated 20.06.2023 (Annexure-H) is hereby declared to have been passed without lawful authority and hence, of no legal effect.

Accordingly, the Tribunal concerned is hereby directed to hear the appeal on merit within 3(three) months from the date of receipt of the copy of the order provided the appeal has been preferred upon fulfillment of the requirement of law.

There will be no order as to costs.

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

Muhammad Mahbub Ul Islam, J:

I agree.