IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO.6163 OF 2008

IN THE MATTER OF:

An application under Article 102(2)(a)(i) and (ii) of the Constitution of the People's Republic of Bangladesh.

And

IN THE MATTER OF:

Solar Television Mfg. Ltd.

……Petitioner

-Vs-

Customs, Excise and VAT Appellate Tribunal, Dhaka and others

.... Respondents

Mr. Munshi Moniruzzaman, Advocate with
Mr. Samarendra Nath Biswas, Advocate

........For the Petitioner

Mr. Akhtar Farhad Zaman, D.A.G. with
Ms. Shadia Afrin Shapla, D.A.G with
Mr. Arif Khan, D.A.G. with
Mr. Sovan Mahmud, A.A.G. with
Mr. Md. Faridul Islam, A.A.G. with
Mr. Md. Nazmul Haque, A.A.G and
Mr. Md. Sarwar Alam Chowdhury, A.A.G
Mr. Shahinoor Alam(Shahin), A.A.G

.... For the Respondents-Government.

Heard on 07.06.2026 &
Judgment on 15.06.2026.

Present:

Mr. Justice S.M. Maniruzzaman

and

Mr. Justice Dihider Masum Kabir

Dihider Masum Kabir, J:

In this Rule Nisi, issued under Article 102 of the Constitution of the People's Republic of Bangladesh, the respondents have been called upon to show cause as to why the order dated 30.07.2008 passed by respondent No.1 under Nothi No. CEVT/CASE(VAT)-279/2007(Annexure-G) dismissing the appeal for default and affirming the order dated 19.07.2007 passed by respondent No.2 under Nothi No.4 (6) 115-Basto/Television /Mulla Anumodan/Appeal/2005/1097(Annexure-E) as to approving the price at a higher rate by respondent No.3 should not be declared to have been passed without lawful authority and is of no legal effect and/or pass such other or further order or orders as to this court may seem fit and proper.

At the time of issuance of the Rule, further operation of the order of respondent No.1 dated 30.07.2008 passed under Nothi No. CEVT/CASE (VAT) 279/2007 (Annexure-G) was stayed by this Court for a prescribed period.

Facts, relevant for disposal of the Rule, in brief, are that the petitioner is a private limited company incorporated under the Companies Act, 1994 and is engaged in the business of manufacturing of 14" and 21" colour television by using imported raw-materials including picture tube, cabinet sets, parts and other components and sales/supply its products in the open market. The petitioner's company is running its business while paying VAT regularly.

On 23.01.2007, for the purpose of assessing and paying VAT, the petitioner submitted a price declaration along with a cost analysis as required under Rule 3(1) of the Value Added Tax Rules, 1991 (in short, the Rules, 1991) for its product and also submitted a clear copy of Bill of Entry on 19.03.2007 as demanded by respondent No.3 on 28.01.2007. Thereafter, respondent No.3 enhanced/increased the value in its order dated

04.06.2007, ignoring the declared price with retrospective effect in violation of Rules 3(3) and 5(2) of the Rules, 1991.

Challenging the said order dated 04.06.2007, the petitioner as appellant preferred an appeal on 01.07.2007 before the Commissioner, Customs, Excise and VAT Commissionerate, Dhaka (in short, the Commissioner) which was affirmed by its order dated 19.07.2007 ignoring the petitioner's declared value.

Being aggrieved by and dissatisfied with the order dated 19.07.2007 passed by the Commissioner, the petitioner preferred a second appeal before Respondent No.1, the Customs, Excise and VAT Appellate Tribunal, Dhaka (in short, the Tribunal) on 11.11.2007. The Tribunal in its order dated 30.07.2008 dismissed the appeal for default.

Being aggrieved by the order passed by the Tribunal, the petitioner moved this Court by filing the instant writ petition and obtained the Rule.

Mr. Samarendra Nath Biswas, the learned Counsel appearing on behalf of the petitioner submits that respondent No.1 committed an error of law in disposing of the appeal without serving proper intimation or notice upon the petitioner for the scheduled date of hearing. The order, having been passed in violation of the principles of natural justice (*audi alteram partem*), is illegal and liable to be declared to have been passed without lawful authority.

Mr. Biswas further submits that under the explicit statutory provisions of section 196B of the Customs Act, 1969 (in short, the Act, 1969), the Tribunal is strictly empowered to confirm, modify, or annul a decision or order appealed against. It possesses no legal authority to dismiss an appeal for default without entering into the merits. Therefore, the dismissal order *is coram non judice* and lacks legal effect. The Tribunal was bound by law to decide the appeal on its merits based on the record. Having failed to do so, it erred in law by dismissing the case for default.

Mr. Akhtar Farhad Zaman, the learned Deputy Attorney General appearing on behalf of the respondents-Government, vehemently contests the Rule. He submits that the instant writ petition is entirely misconceived, both on facts and in law, and as such, the Rule is liable to be discharged with costs.

The learned Deputy Attorney General further submits that the petitioner cannot claim a violation of the principles of natural justice (*audi alteram partem*). He argues that the scheduled date of hearing before the learned Tribunal was duly fixed and notified to the petitioner. The petitioner's failure to appear before the Tribunal on 21.07.2008 and 30.07.2008 demonstrates gross negligence and laches, and a party cannot take advantage of its own wrong or omission to stall fiscal recovery. Refuting the petitioner's argument regarding section 196B of the Act, 1969, the learned Deputy Attorney General submits that the power to "confirm, modify, or annul" inherently carries with it the ancillary and incidental power to dismiss an appeal for non-prosecution if the appellant abandons the proceedings. He contends that a statutory Tribunal cannot be expected to keep an appeal pending indefinitely or decide it on merits when the appellant completely absents themselves and fails to assist the Tribunal. Therefore, the order of dismissal for default was passed with lawful authority and cannot be termed *coram non judice*.

The learned Deputy Attorney General concludes his submissions by stating that the impugned orders passed by the Tribunal suffer from no illegality, material irregularity, or jurisdictional error. Since the petitioner bypassed the proper mechanism of seeking restoration before the Tribunal and rushed to this Court under its writ jurisdiction, the petition is highly premature and lacks merit. He thus prays for the Rule to be discharged.

We have heard the learned Counsel for the petitioner and the learned Deputy Attorney General for the respondent-Government, have perused the writ petition, relevant materials on record appended thereto and consulted the relevant provisions of law.

Admittedly on being aggrieved by the order dated 19.07.2007 of respondent No.2, the petitioner preferred an appeal before respondent No.1 under section 42 of the Value Added Tax Act, 1991 (in short, the Act, 1991) and relevant provisions of said section runs as follows:

"৪২। আপীল।-(১) যে কোন মূল্য সংযোজন কর কর্মকর্তা বা যে কোন ব্যক্তি কোন মূল্য সংযোজন কর কর্মকর্তার এই আইন বা কোন বিধির অধীন প্রদত্ত কোন সিদ্ধান্ত বা আদেশ দ্বারা সংক্ষুব্ধ হইলে তিনি উক্ত সিদ্ধান্ত বা আদেশের বিরুদ্ধে, পণ্যের সরবরাহ বা প্রদত্ত সেবার ক্ষেত্রে ধারা ৫৬ এর অধীন প্রদত্ত কোনো আটক বা বিক্রয় আদেশ অথবা পণ্য আমদানির ক্ষেত্রে Customs Act এর section 82 বা section 98 এর অধীন কোন আদেশ ব্যতীত, উক্ত সিদ্ধান্ত বা আদেশ প্রদানের তিন মাসের মধ্যে,

(ক) উক্ত সিদ্ধান্ত বা আদেশ অতিরিক্ত কমিশনার বা তন্নিম্নের কোন মূল্য সংযোজন কর কর্মকর্তা কর্তৃক প্রদত্ত হইয়া থাকিলে, কমিশনার (আপীল) এর নিকট; এবং

(খ) উক্ত সিদ্ধান্ত বা আদেশ কমিশনার, কমিশনার (আপীল) বা তাঁহার সমমর্যাদার কোনো মূল্য সংযোজন কর কর্মকর্তা কর্তৃক প্রদত্ত হইয়া থাকিলে, Customs Act, এর Section 196 এর অধীন গঠিত Appellate Tribunal,

অতঃপর Appellate Tribunal, বলিয়া উল্লিখিত, এর নিকট; আপীল করিতে পারিবেন।

(১ক) উপ-ধারা (১) এর অধীন আপীল গ্রহণের পর,

(ক) ....

(খ) আপীলটি Appellate Tribunal এর নিকট হইলে Appellate Tribunal এই আইনে যাহা কিছুই থাকুক না কেন, যতদূর সম্ভব, Customs Act এর উক্ত Tribunal সংক্রান্ত বিধানাবলী অনুযায়ী আপীলটির নিষ্পত্তি করিবে।"

(*Underlined has been given emphasis*)

And the provisions of section 196B of the Act, 1969 provides the detail manner in which the appeal is to be disposed of by the Tribunal.

At this juncture, main question in the case in hand is, whether the Tribunal has authority under section 196B of the Act, 1969 to dismiss an appeal for default on the ground of non-appearance.

Before delving into the core issue, it is apposite to examine section 196B of the Act, 1969, which is reproduced below for ready reference:

196B. Orders of Appellate Tribunal.-

(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.

(2) The Appellate Tribunal may, at any time within four years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1) and shall make such amendments if the mistake is brought to its notice by the Commissioner of Customs or the other party to the appeal:

Provided that an amendment which has the effect of enhancing the assessment or reducing a refund or otherwise increasing the liability of the other party shall not be made under this sub-section, unless the Appellate Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard.

(3) The Appellate Tribunal shall send a copy of every order passed under this section to the Commissioner of Customs and the other party to the appeal.

(4) Save as otherwise provided in section 196D, orders passed by the Appellate Tribunal on appeal shall be final.

A plain reading of the provisions of section 196B of the Act, 1969 mandates that the Tribunal is required to dispose of an appeal by passing such order or orders as it deems fit upon a consideration of the merits of the case, thereby confirming, modifying, or annulling the decision or order appealed against.

Earlier identical question of law was raised before this Division in Writ Petition No. 8240 of 2007 and this Division (one of us was party to the judgment) after elaborate discussions and upon examination of the provisions of section 196B of the Act, 1969 held that :

> *"It appears from the above provision that the jurisdiction and the manner of exercise of such jurisdiction of the Tribunal have been enumerated in specific terms. On reading the aforesaid provision of law it is clear that the statute has given power to the Appellate Tribunal to confirm, modify, annul the decision or orders appealed against and or to refer the case back to the authority on remand which has passed such decision or orders with such directions as the Tribunal may think fit for a fresh adjudication or decision as the case may be after taking additional evidence if necessary.*
>
> *Since the Tribunal may only pass orders under section 196B and cannot pass any other order once the appeal is a competent one in view of section 194 of the said Act, the order dismissing the said appeal for default on account of the absence of the appellant or his representative will be an order without jurisdiction as has already been held by this court in* Writ Petition No. 3859 of 2008 (*Selim Mohammad -vs- The Appellate Tribunal and others*). *Thus, such order dismissing the said appeal for default cannot be an order under section 196B and there is no scope under the aforesaid provision of law to dismiss the appeal for default"*

The unreported case of National Polymer Industries Limited -vs- Customs, Excise and VAT Appellate Tribunal, Dhaka and others in Writ Petition No. 3217 of 2020, as well as many other cases, supports the above view.

In the facts and circumstances of the present case, we find no cogent reason to depart from the settled principles enunciated in the aforementioned cases. Consequently, we find merit in the Rule.

Accordingly, the Rule is made absolute.

However, there shall be no order as to costs.

The order dated 30.07.2008 passed by respondent No.1 under Nothi No. CEVT/CASE (VAT)-279/2007(Annexure-'G') dismissing the appeal for default, is hereby declared to have been passed without lawful authority and hence, is of no legal effect.

Respondent No.1, Customs, Excise and VAT Appellate Tribunal, Dhaka is hereby directed to hear and dispose of the appeal dated 30.07.2008 under Nothi No. CEVT/CASE (VAT)-279/2007 on its merits in accordance with law, within 2(two) months from the date of receipt of this judgment and order.

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

S.M. Maniruzzaman, J

I agree.