

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

WRIT PETITION NO. 15946 OF 2023

IN THE MATTER OF:

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

And

IN THE MATTER OF:

***Rainbow Ice Represented by it's proprietor, Zamir
Uddin Ahmed Chaudhury Rony***

..... Petitioner

-Vs-

***The Commissioner of Customs, Customs House,
Chattogram and others***

....Respondents

Mr. Md. Sadullah, Senior Advocate with
Mr. Kabir Miah Sarkar, Advocate

... for the Petitioner

Mr. Akhtar Farhad Zaman, D.A.G. with

Mrs. 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

..... For the Respondent-government.

Heard on: 27.04.2026

and

Judgment on: 10.05.2026.

Present:

Mr. Justice S.M. Maniruzzaman

and

Mr. Justice Dihider Masum Kabir

S.M. Maniruzzaman, 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 respondents shall not be directed to release the

imported goods, item No. 2 of the consignment of the petitioner in respect of Bill of Entry No. C-1465115 dated 17.09.2023 (Annexure-C) under section 81 of the Customs Act, 1969 upon receiving security or furnishing Bank guarantee for the differential amount within a period of 03 (three) working days 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, the respondents concerned were directed to release the imported goods, item No. 2 of the consignment of the petitioner covered under Bill of Entry No. C-1465115 dated 17.09.2023 (Annexure-C) under section 81 of the Customs Act, 1969 upon receiving security or furnishing bank guarantee for the differential amount within a period of 3(three) working days from date of receipt of this order.

The respondents was further directed to collect the sample of goods, item No. 2 and send the same to the Bangladesh Council of Scientific and Industrial Research (BCSIR), Chemical Research Division, BCSIR Laboratories, Dhaka, Dr. Quadrat-E-Khuda Road, Dhanmondi, Dhaka-1205 for chemical test within 7 (seven) days from the date of receipt of this order.

The interim order passed by the High Court Division was not challenged by the customs authority before the Appellate Division.

Pursuant to the said order and direction, the goods were released by the customs authority in favour of the petitioner on provisional assessment vide order dated 23.01.2024 upon furnishing a Bank Guarantee bearing No. SBACBL/Corporate/Credit/PG/2023/93 dated 28.12.2023 for the deferential amount of duty and taxes amounting to Tk. 14,74,478.41 only.

In compliance with the direction of this Court, the petitioner deposited Tk. 17,250/- towards the chemical examination fee through Pay Order dated

22.02.2024 and requested the concerned authority to take necessary steps for chemical examination of the petitioner's goods.

Mr. Md. Sadullah, learned Senior Advocate appearing for the petitioner submits that the concerned customs authority, after receiving the fees for the chemical test from the petitioner failed to comply with the order of this Court passed at the time of issuance of the Rule. In this regard, the learned Advocate further submits that the Rule may be made absolute for non compliance with court's order and the customs authority may be directed to finally assess the goods as per the H.S. Code declared by the petitioner and return the bank guarantee furnished by the petitioner.

On the other hand, Mr. Akhtar Farhad Zaman, the learned Deputy Attorney General appearing for the respondent-government, by placing the note sheet bearing Nathi No. ৫/কা:হা:চট্ট/সকশন-১(বি)/৫৭৯৬/শুক্রায়ন/২০২৩ dated 27.04.2026, submits that the petitioner failed to deposit addition amount of fees for the chemical test and, as such, the respondent customs authority was unable to send the sample for chemical examination. In this regard, the learned Deputy Attorney General submits that the goods in question have already been released by the Commissioner of Customs in favour of the petitioner on provisional assessment upon payment of duty and taxes in cases as per the declared H.S. Code and upon furnishing a bank guarantee for the remaining duty and taxes. In compliance with the interim order, the petitioner also deposited Tk. 17,250/- on 22.02.2024 through pay order for the purpose of conducting chemical test of the petitioner's goods by the Bangladesh Council of Scientific and Industrial Research (BCSIR) but additional fee has yet been paid by the petitioner and as such the customs authority unable to send the sample to the BCSIR.

In the instant case, it appears from the record that, at the time of issuance of the Rule on 11.12.2023, this Court directed the customs authority to take samples and send the same to the concerned laboratory for chemical examination. In response to the interim order, the petitioner deposited Tk. 17,250/- through Pay order No. ABA 3371684 dated 22.02.2024 to the customs authority for the purpose of chemical examination.

After submission the pay order dated 22.02.2024, the concerned customs authority failed to send the sample to the BCSIR for determining the actual classification of the goods imported by the petitioner. In the meantime, more than two years have already elapsed. Such negligence on the part of the government officials which is not acceptable by this Court.

Section 81 of the Customs Act, 1969 is quoted below for ready reference:

81. Provisional assessment of duty. (1) Where it is not possible immediately to assess the customs duty that may be payable on any imported goods entered for home-consumption or for warehousing or for clearance from a warehouse for home-consumption or on any goods entered for exportation, for the reason that the goods require chemical or other test [or a further enquiry] for purposes of assessment, or that all the documents or complete documents or full information pertaining to those goods have not been furnished, an officer not below the rank of [Assistant Commissioner of Customs) may order that the duty payable on such goods be assessed provisionally:

Provided that the importer (same in the case of goods entered for warehousing) or the exporter pays such additional amount as security or furnishes such guarantee of a scheduled bank for the payment thereof as the said

officer deems sufficient to meet the excess of the final assessment of duty over the provisional assessment.

[(2) Where any goods are allowed to be cleared or delivered on the basis of such provisional assessment, the amount of duty actually payable on those goods shall, within a period of one hundred and twenty working days from the date of the provisional assessment, where there is a case pending at any court, tribunal or appellate authority, from the date of receipt of the final disposal order of that case, be finally assessed and on completion of such assessment the appropriate officer shall order that the amount already guaranteed be adjusted against the amount payable on the basis of final assessment, and the difference between them shall be paid forthwith to or by the importer or exporter as the case may be:

Provided that the Board may, under exceptional circumstances recorded in writing, extend the period of final assessment specified under this sub-section.

There is also a case pending before the Tribunal/Appellate Authority against the finally assessed order.

The petitioner, being a bonafide businessman, has been continuing his business in compliance with the applicable laws of the country and his rights to profession is guaranteed by the Constitution of the People Republic of Bangladesh.

In view of the facts stated hereinabove and the prescribed provision of law, we are of the view that the statutory period of 120 days from the date of the order passed by this Court for collection of sample for chemical examination has already elapsed and the respondent customs authority failed to make final assessment of the goods within the prescribed period under section 81 of the Customs Act, 1969. Moreover the respondent customs authority did not take any step to extend the time so fixed by this Court for chemical examination of the goods at the time of issuing of the Rule.

In the facts and circumstances of the case it would be just and proper if we disposed of the Rule with necessary direction. Accordingly, the respondents are hereby directed to finally assess the goods within 30 (thirty) days from the date of receipt of this order.

With the above observations and directions the instant Rule is disposed of, however, without any order as to costs.

Communicate the copy of the judgment and order to the concerned respondents forthwith.

Dihider Masum Kabir, J:

I agree.