

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

Writ Petition No. 7168 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:

The Commissioner of Customs, Customs House, ICD,
Kamlapur, Dhaka

... Petitioner

-Versus-

Customs, Excise and VAT Appellate Tribunal and
others

... Respondents

Mr. Md. Monjur Alam, D.A.G. with

Dr. Mohammad Soeb Mahmud, A.A.G.

Mr. Md. Abul Hasan, A.A.G.

Mr. Monjur Elahi, A.A.G. and

Mr. Md. Tareq Rahman, A.A.G

... For the petitioner

Mr. Niaz Murshed, Advocate

... For the respondent No. 3

**Heard 06.05.2025, 20.05.2025 and
Judgment on: 25.05.2025**

Present:

Justice Sardar Md. Rashed Jahangir

and

Justice Kazi Waliul Islam

Sardar Md. Rashed Jahangir, J:

The Rule Nisi was issued on an application under article 102 of the Constitution of the People's Republic of Bangladesh calling upon the respondents to show cause as to why the judgment and order

bearing Nothi No. CEVT/Case(Cus)-165/2020 dated 29.05.2022 passed by the Customs, Excise and VAT Appellate Tribunal, respondent No. 1 allowing the appeal, setting aside the order No. 17/Sulka/Appeal/2019 dated 01.12.2019 passed by the respondent No. 2 directing to make assessment upon invoice value without following "শুল্ক মূল্যায়ন (আমদানি পণ্যের মূল্য নির্ধারণ) বিধিমালা, ২০০০" should not be declared to have been passed without lawful authority and to be of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.

Shorts facts for disposal of the Rule are that the respondent No. 3 being an importer opened a Letter of Credit being No. 161418010281 dated 01.10.2018 for importation of Power Bank Colloidal Battery, capacity 12V-40AH from China; after arrival of the goods at ICD, Kamlapur, Dhaka the respondent No. 3 through his C&F agent submitted Bill of Entry No. C-30469 dated 04.11.2018 declaring the value of the goods at US\$22.00 per unit. It is to be mentioned here that the declared invoice value of the goods was also at US\$22.00 per unit.

The customs authority upon examination found that the declared value is not tallied with the contemporary assessed or reference value as well as is too low in comparison of the international market and accordingly, they proposed to assess the goods at a value of US\$28.96 per unit. The respondent No. 3 on 04.11.2018 released the goods on protest upon paying all duties and taxes as per the claim of assessment having been made by the customs authority.

Being aggrieved by the order of assessment the importer preferred an unsuccessful appeal before the respondent No. 2 under section 193 of the Customs Act, 1969 and thereafter, on being further aggrieved by the order of Commissioner (Appeals), they took further appeal before the Customs, Excise and VAT Appellate Tribunal, Dhaka being No. CEVT/Case(Cus)-165/2020. The Tribunal after hearing both the parties by its judgment and order dated 29.05.2022 allowed the appeal setting aside the order No. 17/Sulka/Appeal/2019 dated 01.12.2019 passed by the respondent No. 2, affirming the assessment order dated 04.11.2018 under Nathi No.০৫/কাস(২১৫২)আম:/আইসিডি/গ্রুপ-৮/২০১৯.

Having been aggrieved by the order of Tribunal under Nathi No. CEVT/Case(Cus)-165/2020, the Commissioner of Customs, Customs House, ICD, Kamlapur, Dhaka moved before this Court and obtained the Rule.

By filing a supplementary affidavit learned Deputy Attorney General submits that the Tribunal without applying its judicial mind or without even examining properly the analyzed valuation report of the National Board of Revenue relates to Bill of Entry No. 28908 dated 21.10.2018 under the commercial description Electric Power Bank Battery for E-bike 12V-40AH erroneously held that the assessed reference value is US\$22.00 per unit. Although from the annexure-‘E’ to the supplementary affidavit dated 14.05.2025 it transpires that the

assessed reference value of the identical goods was US\$28.96. He further submits that the Customs, Excise and VAT Appellate Tribunal upon misreading the assessment reference under Bill of Entry No. 28908 dated 21.10.2018 wrongly and illegally held that the reference value is US\$22.00 per unit. Although reference under the aforesaid Bill of Entry is actually US\$28.96 and as such, he sought for setting aside the judgment and order dated 29.05.2022 under Nathi No. CEVT/Case(Cus)-165/2020 and further submits that the assessment order as well as the order of Commissioner (Appeal) under appeal order No.17/Sulka/Appeal/2019 dated 01.12.2019, affirming the assessment order dated 04.11.2018 is required to be restored.

Mr. Niaz Murshed, learned Advocate appearing for respondent No. 3 finds difficulty to refute the submission of learned Deputy Attorney General.

Heard learned Advocates of both the parties, perused the writ petition together with the annexures, affidavit-in-opposition, supplementary affidavit.

On perusal of the impugned order together with the supplementary affidavit dated 14.05.2025, we find substance in the submission of learned Deputy Attorney General.

Accordingly, the Rule is made absolute.

The judgment and order dated 29.05.2022 passed by the Customs, Excise and VAT Appellate Tribunal, Dhaka, respondent No. 1 under Nathi No. CEVT/Case(Cus)-165/2020 is hereby set aside and

the appeal order No.17/Sulka/Appeal/2019 dated 01.12.2019 passed by the Commissioner, Customs, Excise and VAT (Appeal Commissionerate), Dhaka- 1 affirming the assessment order dated 04.11.2018 with reference to the Bill of Entry No. C-30469 dated 04.11.2018 is hereby restored.

No order as to cost.

Communicate the judgment and order at once.

Kazi Waliul Islam, J:

I agree.