

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

WRIT PETITION NO. 4246 OF 2008

IN THE MATTER OF:

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

-AND -

IN THE MATTER OF:

Md. Abdul Ahad
... Petitioner

-VS-

Customs, Excise and VAT Appellate
Tribunal and others
.....Respondents

Ms. Shuchira Hossain, with
Ms. Izmet Nashra Khan, and
Mr. Munshi Moniruzzaman,
Advocates
.....For the Petitioner

Ms. Tahmina Polly, AAG
... For the respondents

Present:

Mr. Justice Zafar Ahmed

And

Mr. Justice Sardar Md. Rashed Jahangir

Heard and Judgment on : 03.07.2024

Zafar Ahmed, J.

In the instant writ petition, this Court issued a Rule Nisi
on 08.06.2008 calling upon the respondents to show cause as to

why the order dated 27.02.2008 under Nothi No. CEVT/Case (VAT)-13/2008/159(1-3) dated 02.03.2008 (Annexure-H) passed by the respondent No. 1 dismissing the appeal for default and thereby affirming the order dated 25.10.2007 under Nothi No. 4/A(9) 47-Mushak/Appeal/Chatta/07/2601 passed by the respondent No. 2 (Annexure-F) by which the adjudication order No. 90/06 dated 24.10.2005 passed by the respondent No. 3 was affirmed (Annexure-A) should not be declared to have been passed without lawful authority and is of no legal effect.

At the time of issuance of the Rule Nisi, this Court passed an interim order staying operation of the adjudication order No. 90/06 dated 24.10.2005 passed by the respondent No. 3 (Annexure-A), so far as it relates to imposing penalty of Tk. 2,50,000/-.

The only issue in the instant Rule is whether the Customs, Excise and VAT Appellate Tribunal has any power under Section 196B of the Customs Act, 1969 to reject an appeal for default for non-appearance of the appellant. The issue has already been settled by this Division in series of cases.

Earlier, in Writ Petition No. 8240 of 2007 (*Al Noor Steel Complex Ltd. Vs Customs, Excise and VAT Appellate Tribunal, Dhaka and others*), this Division after elaborate

discussions and upon examination of the provisions of Section 196B of the Customs Act, 1969 held:

“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 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 above decisions unequivocally establish the principle that the Customs, Excise and VAT Appellate Tribunal does not have any power under the law to dismiss an appeal for default. It must pass a reasoned order touching upon the merit of the case even the appellant does not appear before it.

In the instant case, the Appellate Tribunal, vide the Order No. 3 dated 27.02.2008 (Annexure-H) dismissed the appeal filed by the petitioner for default. Thereafter, the petitioner filed an application before the Tribunal to restore the appeal. The Tribunal, vide Order dated 14.05.2008 (Annexure-I1) rejected the said application for restoration on the ground that after passing an order under Section 196B, the Tribunal can pass further order if there is clerical error in the earlier order but the Tribunal has no power under the law to restore the appeal by setting aside the default order.

We have already noted that it is settled proposition of law that Customs, Excise and VAT Appellate Tribunal does not have any power to dismiss an appeal for default. In the instant case, the Tribunal dismissed the appeal for default without having any sanction of law. Therefore, the said dismissal order cannot sustain in law. Hence, we find merit in the Rule.

In the result, the Rule is made absolute. The Order dated 27.02.2008 (Annexure-H) passed by the Customs, Excise and VAT Appellate Tribunal under Nothi No. CEVT/Case (VAT)-13/2008 dismissing the appeal for default is declared to have been passed without lawful authority and is of no legal effect. It follows that the subsequent Order dated 14.05.2008 (Annexure-I1) rejecting the application for restoration of the appeal cannot sustain in law and hence, the same is set aside.

The Tribunal concerned is hereby directed to hear the appeal under Nothi No. CEVT/CASE (VAT)-13/2008 on merit upon affording an opportunity of hearing to the petitioner in due compliance of law, preferably within a period of 6(six) months from the date of receipt of the copy of this order. If the petitioner fails to appear before the respondent concerned it is at liberty to dispose of the appeal on merit in the absence of the petitioner.

Sardar Md. Rashed Jahangir, J.

I agree.