

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

**WRIT PETITION NO. 10279 OF 2025**

**IN THE MATTER OF:**

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

And

**IN THE MATTER OF:**

***Commissioner of Customs, Customs House,  
Chattogram***

.... Petitioner

-Vs-

***Customs, Excise and VAT Appellate Tribunal  
and another.***

....Respondents.

Mr. Akhtar Farhad Zaman, Deputy Attorney General with Ms. Shadia Afrin Shapla, Deputy Attorney General with Mr. Arif Khan, Deputy Attorney General with Mr. Sovan Mahmud, Mr. Md. Faridul Islam and Mr. Md. Nazmul Haque, Assistant Attorney Generals

...For the petitioner

Mr. Mohammad Jamal Hossain, Advocate

... For the respondent No.2

**Heard on 17.05.2026,18.05.2026**

**Judgment on 20.05.2026.**

**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 impugned order dated 20.02.2024 passed by respondent No. 1, the Customs, Excise and VAT Appellate Tribunal, in CEVT Case (Cus) No. 535/2023 (Annexure-A), setting aside the order dated 11.07.2023 passed by the Commissioner of Customs, Customs House, Chattogram, should not be declared to have been passed without lawful authority and is of no legal effect, and/or why such other or further order or orders should not be passed as to this Court may seem fit and proper.

At the time of issuance of the Rule, further operation of the order dated 20.02.2024(Annexure-A) was stayed by this Court for a prescribed period.

Facts, relevant for disposal of the Rule, in brief, are that the petitioner is the Commissioner of Customs, Customs House, Chattogram a Government officer duly appointed by the National Board of Revenue. The petitioner exercises the statutory functions and powers conferred upon him under section 4 of the Customs Act, 1969 (the Act, 1969). Respondent No. 2, Maddhapara Granite Mining Company Limited is a state-owner enterprise operating under the authority and administrative control of Petrobangla (Bangladesh Oil, Gas and Mineral Corporation), Government of the People's Republic of Bangladesh. Respondent No. 2 is engaged in the extraction and production of hard rock from the Maddhapara Underground Hard Rock Mine situated in Dinajpur District.

For the purpose of its operational requirements, respondent No. 2, in the ordinary course of business, opened a Letter of Credit No. 000001223010077 dated 16.03.2023 for the importation of 40,000.00 K.G. of Low Density Products Prilled Ammonium Nitrate from Korea. After arrival of the goods at Customs House, Chattogram, respondent No. 2, upon collecting the necessary shipping documents from its bank, submitted Bill of Entry No. 1062311 dated 09.07.2023 through its C&F Agent for assessment and release of the goods under H.S. Code No. 3102.30.00.

Thereafter, pursuant to the Import Policy Order No. 2021–2024, the customs authority physically examined the imported goods and found that the H.S. Code declared by respondent No. 2 was incorrect and the imported goods ought to have been assessed under H.S. Code No. 2834.29.90. Accordingly, the customs authority held that such act of respondent No. 2 was in violation of section 32 of the Act, 1969, punishable under section 156(1) of the said Act.

It is further stated that due to the sensitive and hazardous nature of the goods, their prolonged detention at the port posed serious safety and operational risks. Under such compelling circumstances, and having no effective alternative, respondent No. 2, through its C&F Agent, submitted an application before the petitioner for summary adjudication for the purpose of securing the immediate release of the goods.

Upon receipt of the said application and after hearing respondent No. 2, the petitioner passed Adjudication Order No. 92 dated 11.07.2023

directing respondent No. 2 to pay additional customs duty and other charges amounting to Tk. 21,37,916.11 and thereby imposed a penalty of Tk. 43,00,000/- together with a redemption fine of Tk. 2,00,000/- under Table, Clause 14 of section 156(1) of the Act, 1969.

Being compelled by the situation and in order to avoid serious operational disruption and safety hazards, respondent No. 2 secured release of the goods upon payment of the assessed customs duties and taxes, together with the penalty and redemption fine imposed by the adjudication order dated 11.07.2023.

Being aggrieved thereby, respondent No. 2 preferred a customs appeal before the Customs, Excise and VAT Appellate Tribunal (hereinafter referred to as “the Tribunal”), being Customs Appeal No. (Cus)535/2023. Upon hearing the parties, the Tribunal, by its order dated 28.02.2024, allowed the appeal in part and set aside the penalty and redemption fine imposed by the petitioner.

Challenging the said order passed by the Tribunal, the present petitioner filed the instant writ petition invoking the special original jurisdiction of this Court under Article 102 of the Constitution of the People’s Republic of Bangladesh and obtained the Rule along with an interim order of stay instead of preferring appeal as provided under the Act, 1969.

Mr. Akhtar Farhad Zaman, the learned Deputy Attorney General appearing for the petitioners, submits that respondent No. 2, Maddhapara Granite Mining Company Limited, never admitted that its declared H.S. Code was a bona fide mistake. Rather, throughout the proceedings, respondent No. 2 consistently maintained that its classification was correct and neither sought rectification nor acknowledged any error. Despite such unequivocal stance, the Tribunal inexplicably held the incorrect declaration of the H.S. Code to be a bona fide mistake, thereby contradicting the respondent's own position. Accordingly, Mr. Zaman submits that such determination is legally flawed, as it grants relief which was neither claimed nor admitted by respondent No. 2 and the order of the Tribunal is, therefore, internally inconsistent, rendered ex gratia, and devoid of any statutory justification.

Mr. Zaman next submits that the Appellate Tribunal failed to consider the assessment of the import documents, nor did the Tribunal evaluate the findings of the assessment committee. Moreover, the Tribunal failed to consider the contemporaneous records relating to the pricing of similar goods.

Mr. Zaman further submits that although the impugned order passed by the Tribunal is appealable under the Act, 1969, the petitioner could not prefer appeal within the stipulated time prescribed under section 196D of the Act, 1969, due to the necessity of obtaining permission from the concerned government authorities which occurred delay to prefer an

appeal. As such, the petitioner had no other efficacious alternative remedy except to invoke the special original jurisdiction of this Court under Article 102 of the Constitution of the People's Republic of Bangladesh for the protection of Government revenue.

On the other hand Mr. Mohammad Jamal Hossain, the learned Advocate appearing for respondent No. 2 submits that the instant writ petition is not maintainable, since the petitioner without preferring an appeal as required under section 196D of the Act, 1969 directly filed the writ petition and as such, the Rule is liable to be discharged as being not maintainable.

Mr. Hossain referring the letter issued by the National Board of Revenue vide Nathi No. 08.01.0000.53.02.023.23/153 dated 02.04.2023 submits that in the said letter, the National Board of Revenue categorically stated in Clause “গ” that if any item had previously been imported by declaring a particular H.S. Code or CPC and the authority subsequently changed the H.S. Code, such change should not be treated as misdeclaration. In view of the above, he submits that the Tribunal, upon considering the said clause of the NBR's letter, passed the impugned order, and therefore there is no illegality in the impugned order.

We have heard the learned Deputy Attorney General appearing for the petitioner and the learned Advocate appearing for respondent No. 2, have perused the writ petition, the relevant materials on record, and the annexures appended thereto and consulted the relevant provision of law.

It, however appears from the record that, respondent No. 2 had earlier released the identical goods through the same Customs House under several Bills of Entry, namely Bill of Entry Nos. C-1715479 dated 15.10.2022 and C-1069799 dated 15.06.2022, by declaring H.S. Code No. 3102.30.00 and the customs authority assessed and released the goods under the said H.S. Code.

It further appears from the impugned order that considering the Clause “গ” of the NBR’s letter dated 02.04.2023, the Tribunal partly allowed the appeal. The Clause “গ” is quoted below for ready reference;

“(গ)-আমদানিকৃত পণ্য কোনো একটি কাস্টম হাউস স্টেশন কর্তৃক কোনো H.S. Code কিংবা CPC আওতায় শুল্কায়নপূর্বক খালাস পরবর্তীতে উক্ত একই পণ্য একই বা ভিন্ন কাস্টম হাউস/স্টেশনের মাধ্যমে আমদানির ক্ষেত্রে যদি ইতোপূর্বে অনুমোদিত H.S. Code কিংবা CPC সঠিক নয় মর্মে কাস্টম হাউসের এসেসমেন্ট কমিটি কিংবা জাতীয় রাজস্ব বোর্ডের শ্রেণীবিন্যাস কমিটি কর্তৃক সিদ্ধান্ত গৃহীত হয় এবং/বা পূর্বের অনুমোদিত H.S. Code কিংবা CPC পরিবর্তন করা হয় তাহলে তা মিথ্যা ঘোষণা হিসেবে বিবেচিত হবেনা। Partial Shipment সুবিধায়ুক্ত ঋণপত্রের ক্ষেত্রেও এ বিধান প্রযোজ্য হবে।

দফা (ঘ)(ক), (খ) ও (গ) মোতাবেক কাস্টমস কর্তৃক নিরূপিত বা অনুমোদিত H.S. Code কিংবা CPC ব্যবহার না করে একই আমদানিকারক কর্তৃক একই জাতীয় পণ্য ভুল H.S.Code কিংবা CPC ঘোষণাপূর্বক আমদানি করলে তা কাস্টমস আইনের ৩২ ধারা মোতাবেক মিথ্যা ঘোষণা হিসেবে গণ্য হবে এবং ন্যায় নির্ণয়ন প্রযোজ্য হবে।”

The Tribunal allowed the appeal in part holding that;

“অত্র পণ্য চালানের ক্ষেত্রে পণ্যের সংখ্যা/ওজন/পরিমাণ তথা অন্যান্য স্পেসিফিকেশন ইত্যাদি সঠিক রয়েছে শুধুমাত্র বাণিজ্যিক বর্ণনার প্রেক্ষিতে এইচ.এস কোড পরিবর্তিত হয়েছে যা

আপিলকারী প্রতিষ্ঠানের অসাবধানতাবশত ভুল বিধায় জাতীয় রাজস্ব বোর্ডের উপরোক্ত আদেশের অনুচ্ছেদ-গ এর বিধান মোতাবেক স্বীয় বিচারিক প্রজ্ঞা (Judicious Mind) প্রয়োগ করে ন্যায়ানুগ সিদ্ধান্ত গ্রহণের সুযোগ রয়েছে। সেই আলোকে অত্র পণ্য চালানোর ক্ষেত্রে শুল্ক কর্তৃপক্ষ কর্তৃক নির্ধারিত এইচ.এস কোড যথাযথ হলেও তর্কিত বিচারাদেশের মাধ্যমে অসত্য ঘোষণার দায়ে The Customs Act, 1969 এর Section-156 (1) এর Table এর Clause-14 মোতাবেক দন্ড আরোপের সিদ্ধান্ত যথাযথ হয়নি বলে অত্র ট্রাইব্যুনাল মনে করে।”

In view of the above findings of the Tribunal, we do not find any illegality in the impugned order. However, it is settled principle of law that when any question of maintainability is raised by any party in a writ petition, the first duty of the Court is to examine whether the said writ petition is maintainable or not.

In this regard, it appears from section 196D of the Act, 1969 that a specific provision has been inserted for filing an appeal before the High Court Division. The relevant provision is quoted below for ready reference;

“196D Appeal to the High Court Division- The Commissioner of Customs or the other party may, within ninety days of the date upon which he is served with notice of an order under section 196B, by an application, prefer an appeal to the High Court Division against such order”

On consideration of the above provision, it is evident that any order passed by the Tribunal under section 196B of the Act, 1969 is an appealable order under the section 196D of the Act, 1969.

In the instant case, the petitioner has not advanced any argument to show that the impugned order passed by the Tribunal violated any

fundamental rights guaranteed under the Constitution or it was passed in malafide, or in colorable exercise of power or without jurisdiction.

Having considered the above facts and circumstances of the case together with the finding and observations made hereinabove, we are of the view that the instant writ petition is not maintainable.

Accordingly, the Rule is discharged as being not maintainable.

There will be no order as to costs.

Communicate the order at once.

**Dihider Masum Kabir, J:**

I agree.