

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

Writ Petition No. 18812 of 2025

In the matter of:

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

AND

In the matter of:

Tahmid Enterpirse

... Petitioner

-Versus-

Bangladesh and others

... Respondents

Mr. A.Z.M. Fariduzzaman, Senior Advocate
with

Mr. Md. Abul Kalam Azad, Advocate

Ms. Fariha Zaman, Advocate

Ms. Fahiha Zaman, Advocate

... For the petitioner

Mr. Tanim Khan, D.A.G. and

Mr. A.M. Jamiul Hoque (Faisal), D.A.G. with

Ms. Fatema Yesmin, A.A.G.

Mr. Mehedi Hasan Ronve, A.A.G.

Ms. Elina Chowdhury, A.A.G. and

Mr. Sk. Naser Wahed (Shemon), A.A.G.

... For the respondents

Mr. K.S. Salah Uddin Ahmed, Advocate

... For the respondent No. 5

Judgment on: 22.07.2026

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 in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the impugned action of the respondents particularly the respondent Nos. 5 and 6 to demand store rent charges on containers for handing over the delivery of 6 (six) covered vans loaded with goods as specified in the application dated 23.10.2025 filed by the C and F Agent of the petitioner (Annexure-B) should not be declared to have been done without lawful authority and is of no legal effect and also as to why the respondents particularly the respondent Nos. 5 and 6, should not be directed to hand over the delivery of 6 (six) covered vans loaded with goods as specified in the application dated 23.10.2025 filed by the C&F Agent of the petitioner (Annexure-B) by accepting the detention charges and/or such other or further order or orders passed as to this Court may seem fit and proper.”

At the time of issuance of the Rule an interim direction was given in the following terms:

“However, the respondent Nos. 5 and 6 are hereby directed to hand over the delivery of 6 (six) covered vans

loaded with goods as specified in the application dated 23.10.2025 filed by the C&F Agent of the petitioner (Annexure-B) by accepting the detention charges within 3(three) days from the date of receipt of a copy of this order.”

Challenging the interim direction, the respondent No. 5 moved before the Hon’ble Appellate Division and after hearing Hon’ble Judge-in-Chamber was pleased to stay the interim direction with a further direction to hear and dispose of the Rule Nisi.

Facts necessary for disposal of the Rule are that the petitioner is a 100% import-oriented proprietorship concern, engaged exclusively in the importation of laminated wood panels and sale those in the domestic market. The firm enjoys an excellent reputation in conducting its business with integrity.

The petitioner imported some goods from China, after observing all the required formalities declaring the H.S. Code 4418.79.00. After arrival of the goods at Chittagong Port the petitioner submitted Bill of Entry through it’s C and F agent and after making payment of all the assessed duties and taxes the commissioner of customs concerned ordered to release the imported goods. Thereafter, all the imported goods has been

loaded in 6 (six) hired covered vans and when the goods were about to release from the port, gate the customs authority detained the vans from the gate on the allegation of untrue declaration and through a lengthy process of re-assessment the goods were provisionally assessed again as per order dated 07.10.2025 passed by the High Court Division in Writ Petition No. 15827 of 2025 and the respondents, customs authority agreed to release the goods upon accepting bank guarantee for the differential amount of duties, taxes and charges. Thereafter, on 22.10.2025 the respondent Nos. 3 and 4 permitted the petitioner to release the goods loaded in 6(six) covered vans. On 23.10.2025 petitioner through its C&F agent filed an application before respondent No. 6 to get delivery of the 6(six) loaded covered vans from the jetty premises. The concerned Assistant Traffic Officer submitted a report to the respondent No. 6 stating that without realization of store rent charges the goods cannot be delivered and thereafter, respondent No. 6 ordered to release the loaded trucks/ covered vans subject to payment of assessed store rent charge. The Chittagong Port Authority assessed the port charge in total at Tk. 65,27,308.23 as stands on 06.12.2025. Challenging the said demand of store rent charge the petitioner moved before this Court and obtained the Rule.

Mr. A.Z.M. Fariduzzaman, learned Senior Advocate appearing for the petitioner submits that the petitioner's imported goods were loaded in 6(six) trucks/ covered vans and when the covered vans were about to getting out from the port premises those were detained by the customs authority and thereby put those into the safe custody of Chittagong Port Authority. He continues to submit that as such, the petitioner is liable to pay the charges on detained trucks or loaded covered van under regulation 133 of the Regulations for Working of Chittagong Port (Cargo and Container), 2001.

Drawing attention of the Court to the facts that the 6(six) loaded covered vans/ trucks having been detained and kept into the safe custody of Chittagong Port Authority, he lastly submits that since the goods has been loaded in the covered vans/ trucks and those covered vans/ trucks have been detained into the port premises, the respondent-port authority is entitled to get only detention charge under regulation 133 of the Regulations, 2001 not the store rent under regulation 161.

Referring to clause B5.5, under Tariff Section 'B' of the Tariff Schedule published by the Chittagong Port Authority under SRO No. 364-Ain/225, he submits that the Lorries and Carts

were/are being detained within the jetty premises are to be charged per night and per lorry/cart at \$3.00USD.

On the other hand, Mr. K.S. Salah Uddin Ahmed, learned Senior Advocate appeared for the respondent No. 5 by filing affidavit-in-opposition and submitted that the petitioner imported goods through container and the goods were released and were placed in 6 (six) covered vans thereafter; a separate unit of Custom Authority detained the said goods along with 6 (six) covered vans over the dispute of HS Code. Subsequently, the dispute between the writ petitioner and Custom Authority continued for several months and during this period the goods and the covered vans were kept in designated area of the port for which port authority could not keep any goods in the said place as such when the writ petitioner after solving the dispute with the Custom Authority wanted to take its imported goods out of the area of Chittagong Port, then the Chittagong Port claimed the store rent as per Regulation No. 161 of the Regulations for working of Chittagong Port (Cargo and Container, 2001), amounting to Tk. 65,27,308.23 (sixty five lac twenty seven thousand three hundred eight and twenty three paisa) as on 07.12.2025, but the writ petitioner without paying the said money has filed the instant writ.

He next submits that Chittagong Port Authority has imposed store rent as per Regulation No. 161 of the Regulation for working of Chittagong Port (Cargo and Container), 2001 as such there is no question to treat the said claim as illegal and arbitrary.

He further submits that the writ petitioner has used the jetty premises of the Chittagong Port Authority for more than four months for which Chittagong Port Authority has no fault and because of the use of the jetty premises through 06 (six) covered vans the port authority could not use the same place for storing any other imported goods, as such the writ petitioner must pay store rent to the port authority in accordance with all fairness.

He again submits that if the writ petitioner is allowed to take its goods without payment of lawful store rent of the Chittagong Port Authority then Port Authority shall lose more than Tk. 65,27,308.23 (Sixty five lac twenty seven thousand three hundred eight and twenty three paisa) of public money as on 07.12.2025 which has already increased as of today.

Referring to Regulation 161 of the Regulations for Working for Chittagong Port (Cargo and Container), 2001, he submits that the petitioner is liable to pay store rent or rent charges as usual, because the delivery of the goods have been taken but the goods were not removed from the jetty premises.

Heard learned Advocates of both the parties, perused the writ petition together with the annexures and affidavit-in-opposition and series of supplementary affidavits-in-opposition and replies filed on behalf of the parties.

We have also examined the Regulations for Working of Chittagong Port (Cargo and Container), 2001, made and published by the Chittagong Port Authority in exercising the powers and authority of sub-section (1) of the section 52 of the Chittagong Port Authority Ordinance, 1976.

We have also examined the Tariff Schedule made and promulgated by the Chittagong Port Authority in exercising the authority of section 22 of the Chittagong Port Authority Act, 2022.

It is an admitted fact that the goods have been imported by the petitioner by observing all the formalities and after arrival of the goods those were kept into the custody of Chittagong Port Authority. Prior to that upon completion of the customs assessment the imported goods has been loaded in 6(six) covered van/trucks. Thereafter, when the goods were about to getting out from the port premises, those were detained by the customs authority, and were kept under the safe custody of port authority.

Thereafter, a long process of bargaining was taken place and the goods were reassessed provisionally under a direction of the High Court Division in Writ Petition No. 15827 of 2025.

In the second round, when the goods were about to release the dispute arose regarding payable port charges; according to the port authority, the store rent charge would be imposed as per Regulation No. 161 of the Regulations for Working of Chittagong Port (Cargo and Container), 2001 read with concern tariff clause.

On the other hand, it is contended by the petitioner that the goods were loaded into 6(six) covered van/ trucks and thereafter the loaded covered van/trucks have been detained into the jetty premises, thus, the port charge should be 'the detention charge' in accordance with Regulation 133 of the Regulations, 2001 read with section B5.5 of the Tariff Schedule of the Chittagong Port.

It is further contention of the respondent No. 5 that earlier in similar situation the petitioner was charged under Regulation No. 161 and upon accepting those assessed charge the petitioner took release of it's earlier goods which is evident from the Annexure- '4' to the supplementary affidavit dated 25.02.2026 and as such it is contended by the respondent No. 5 that the petitioner is now barred by Estoppel in claiming differently.

To consider the contention of the respondent No. 5, we have carefully examined the provision of Regulation 161 of the Regulations for Working of Chittagong Port (Cargo and Container), 2001. For better understanding Regulation 161 is reproduced herein below:

“161. Rent on cargo or container etc. of which delivery has been taken- Cargo or container etc. of which delivery has been taken but which has not been removed from the jetty premises shall be liable to rent charges as usual.”

On a bare reading of the aforementioned regulation, it appears that it has been provided that the rent of cargo and container etc. of which delivery has been taken but were not removed from the jetty premises, in that case, the port charges shall be imposed as usual.

On the other hand, the contention of the petitioner is that after completion of all the formalities of customs assessment, the goods were made ready to deliver and thereafter, those were loaded into 6(six) covered van/trucks. When the goods were about to getting out/release from the port premises those were detained by the customs authority and were kept within the premises and thereafter the detention period was running and ended by a direction of the High Court Division upon reassessment of the goods provisionally.

According to the petitioner, since the goods have been loaded into 6(six) covered van/ trucks and those covered van /trucks having been detained, thus the Chittagong Port Authority is entitled to get the detention charge/rent only. Referring to Regulation 133 of the Regulations for Working of Chittagong Port (Cargo and Container), 2001, he submits that since the provision of Regulation No. 133, is applicable upon the petitioner in calculating the applicable port charge thus, there is no scope to take resort of the provision of Regulation 161.

To consider the contention of the petitioner, we feel it necessary to examine the relevant provision and for sake of clarity the provision of Regulation 133 is reproduced herein below:

“133. Charges on Carts or Trucks etc. detaining in Jetty premises.- Carts or trucks etc. if detaining in jetty premises with Import or export materials intended for delivery or shipment or otherwise or as empty due to neglect of the owner or hirer or driver shall be subjected to detention charge per transport per day or night at the rate as mentioned in the Tariff.”

On a bare reading of Regulation 133, it appears that if a cart or truck etc. is detaining in jetty premises with import materials intending for delivery, then those shall be subjected to the

detention charge per transport per day or night i.e. the detention charge shall be imposed on the detaining trucks.

Opposing the contention of the petitioner, Mr. K.S. Salah Uddin Ahmed, learned Senior Advocate appearing for the respondent No. 5 submits that provision of regulation 133, contains 2(two) parts, the first part is to qualify by the words, containing in the second part “due to neglect of the owner or hirer or driver” and if, the incident or happening having not been qualified by the said words of the second part, the provision of the Regulation 133 is not applicable.

On meticulous examination of Regulation 133, we could not be agreement with learned Advocate for the respondent No. 5, because Regulation 133 containing into parts, but those parts are quite disjunctive and not dependable with each other. In the first part, it is provided that if any truck (covered van) is detaining into the jetty premises with import/export materials intended from delivery/shipment, then it shall be subjected to detention charge.

On the other hand, in the second part it is provided that if any vehicle (cart or truck) is left empty in jetty premises due to negligence of owner or hirer or driver.

The first part of the provision is related with detained loaded trucks/vans/carts and the second part relates with empty

truck leaving carelessly or due to negligence, thus we do not see any nexus between the detained truck with the second part, of leaving empty truck and as such, there is no question of qualifying as has been suggested by learned Advocate for the respondent No. 5.

In the premise above, we find that both of the provisions of the Regulation of 133 as well as 161 are applicable more or less in the case of the petitioner, because goods were taken delivered but having not been removed from the jetty premises (the provision of Regulation 161).

On the other hand, goods were loaded intending to deliver through covered van/trucks and thereafter those have been detained, thus, the provision of Regulation 133 containing in the first part is more preferably suitable for the case of the petitioner.

When 2(two) provisions of any law is equally/more or less applicable for any aggrieved person, the person is permitted or having the right to choose the beneficial one.

To be assessed either of 2(two) different provisions of a piece of law, the person has the right to choose the more favourable one.

In the premise above, the petitioner is entitled to be assessed/ charged under the provision of Regulation 133 read with the relevant provision of the Tariff Schedule.

We find merit in the Rule.

Accordingly, the Rule is made absolute.

Communicate the judgment and order at once.

Kazi Waliul Islam, J:

I agree.