

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

Writ Petition No. 2338 of 2014 with
Writ Petition No. 2339 of 2014,
Writ Petition No. 2340 of 2014,
Writ Petition No. 2341 of 2014,
Writ Petition No. 2342 of 2014,
Writ Petition No. 4816 of 2014,
Writ Petition No. 4817 of 2014,
Writ Petition No. 4818 of 2014,
Writ Petition No. 4819 of 2014,
Writ Petition No. 4820 of 2014,
Writ Petition No. 4821 of 2014,
Writ Petition No. 4822 of 2014,
Writ Petition No. 4823 of 2014,
Writ Petition No. 4824 of 2014,
Writ Petition No. 4825 of 2014 and
Writ Petition No. 4826 of 2014

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:

BUREAU VERITAS (BIVAC) Bangladesh Limited.

... Petitioner

-Versus-

Customs, Excise and VAT Appellate Tribunal, Dhaka and
others

.... Respondents

Mr. M. Anwarul Azim Khair, Advocate

... For the Petitioner

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 Respondent

Heard on : 27.05.2025 and 28.05.2025

Judgment on : 02.06.2025

Present:**Mr. Justice Sardar Md. Rashed Jahangir****and****Mr. Justice Kazi Waliul Islam****Sardar Md. Rashed Jahangir , J:**

Since all the writ petitions involve identical point of law based on similar facts between the same parties as such all the petitions have been taken together for hearing and disposed of by this common judgment.

The point of law is that whether a PSI Agent is required to deposit the penalty imposed by the Commissioner of Customs for preferring an appeal to the Customs, Excise and VAT Appellate Tribunal (shortly the Tribunal') against the adjudication order imposing the penalty. In each of the aforementioned cases, separate Rule Nisi was issued about the legality of the following 16(sixteen) individual orders passed by the Tribunal:

Writ Petition numbers	Tribunal's order and date
Writ Petition No. 2338 of 2014	Nathi No. CEVT/Case (Cus)298/2011/3016 dated 15.12.2013.
Writ Petition No. 2339 of 2014	Nathi No. CEVT/Case (Cus) 493/2011/36 dated 07.01.2014.
Writ Petition No. 2340 of 2014	Nathi No. CEVT/Case (Cus) 614/2011/38 dated 07.01.2014.
Writ Petition No. 2341 of 2014	Nathi No. CEVT/Case (Cus) 616/2011/30 dated 07.01.2014.
Writ Petition No. 2342 of 2014	Nathi No. CEVT/Case (Cus) 617/2011/29 dated 07.01.2014.
Writ Petition No. 4816 of 2014	Nathi No. CEVT/Case (Cus) 409/2011/39 dated 07.01.2014.
Writ Petition No. 4817 of 2014	Nathi No. CEVT/Case (Cus) 410/2011/37 dated 07.01.2014.

Writ Petition No. 4818 of 2014	Nathi No. CEVT/Case (Cus) 615/2011/40 dated 07.01.2014.
Writ Petition No. 4819 of 2014	Nathi No. CEVT/Case (Cus) 714/2011/99 dated 28.01.2014.
Writ Petition No. 4820 of 2014	Nathi No. CEVT/Case (Cus) 716/2011/98 dated 28.01.2014.
Writ Petition No. 4821 of 2014	Nathi No. CEVT/Case (Cus) 717/2011/100 dated 28.01.2014.
Writ Petition No. 4822 of 2014	Nathi No. CEVT/Case (Cus) 718/2011/101 dated 28.01.2014.
Writ Petition No. 4823 of 2014	Nathi No. CEVT/Case (Cus) 719/2011/102 dated 28.01.2014.
Writ Petition No. 4824 of 2014	Nathi No. CEVT/Case (Cus) 721/2011/103 dated 28.01.2014.
Writ Petition No. 4825 of 2014	Nathi No. CEVT/Case (Cus) 722/2011/105 dated 28.01.2014.
Writ Petition No. 4826 of 2014	Nathi No. CEVT/Case (Cus) 723/2011/104 dated 28.01.2014.

At the time of issuance of the Rules in each of the 16(sixteen) cases, operation of the above noted impugned order was stayed.

Brief facts of the case are that the petitioner is a limited company incorporated under the Companies Act and performing as an agent of (BIVAC) International S. A. Bureau Veritas Group of France which has been appointed by the Government of Bangladesh to render pre-shipment inspection (PSI) agency service under section 25A of the Customs Act. Different importers imported goods by opening six different letter of credit issued by the respective bank on various dates during the period from 27.01.2010 to 17.08.2010 under the Pre-shipment Inspection (PSI) Scheme. Accordingly, petitioner conducted inspection in accordance with the PSI Rules, 2002

and then issued 16(sixteen) Clean Reports of Finding (CRF) on various dates during the period from 23.03.2010 to 11.04.2011.

After arrival of the goods at Chattogram Port, the importers submitted bill of entry alongwith other commercial documents for releasing imported consignment as per CRF particulars issued by the petitioner. Upon examination of the goods, customs authority found anomaly in the CRF certificates relating to quantity of the goods and customs classification and thus raised objection in the relevant file. Finally the Commissioner of Customs, upon hearing representative of the petitioner, passed six adjudication orders imposing penalties of various amounts ranging from Tk. 1,25,273.22 to Tk. 76,18,483.22 on the petitioner (Annexure- 'A' to all the writ petitions). The sum total of the penalties is Tk.3,05,13,610.87/-.

The Commissioner passed adjudication orders with reference to rule 25(2) of the PSI Rules, 2002 and recorded following two grounds in the respective orders:

a) In some of the cases, the quantum of goods were found to be more than the quantum mentioned in the CRF certificates.

(b) In some of the cases, the H.S. Codes mentioned in the CRF certificates were found to be wrong.

(c) and in other cases, certified value of the goods were found incorrect.

Which involves the risk of realization of less customs duty and other taxes.

Being aggrieved by the adjudication orders, the petitioners submitted six separate appeals to the Tribunal under section 196A of the Customs Act. But the Tribunal summarily rejected all the appeals by 16(sixteen) separate orders on the same ground that the petitioner had not deposited the penalty as required by section 194(1) of the Customs Act, 1969. These orders have been challenged in these writ petitions.

Mr. M. A. Azim Khair, learned advocate appearing for the petitioner submits that section 194 of the Customs Act contemplates deposit of duty demanded or penalty levied "under this Act" which for all practical purposes means only the duty demanded or penalty levied under the Customs Act and which cannot be extended to include the penalty levied under the PSI rules and therefore the Tribunal acted without jurisdiction in rejecting the memorandum of appeal for alleged non compliance of the provision of section 194 of the Customs

Act as such impugned orders are liable to be declared to have been passed without lawful authority and are of no legal effect.

He also submits that with regard to the deposit of the penalty in order to file an appeal by a PSI Agent to the Tribunal has been settled in the case of Intertek Testing Service (BD) Ltd. and another -Vs- President Appellate Tribunal, Customs, Excise and VAT, Dhaka and others reported in 57 DLR(2005) 74 wherein it has been decided that a PSI agent is not legally required to deposit a penalty in any form for the purpose of filing an appeal under section 196A of the Customs Act, 1969 against an adjudication order passed by the Commissioner as such impugned orders are liable to be declared to have been passed without lawful authority and are of no legal effect. Learned advocate for the petitioner submits that as a pre- condition of it's appointment as PSI Agent, petitioner has furnished 12 performance Bonds equivalent to TK. 12 cores and mentioned this fact as a ground in the memo of appeal, but the Tribunal without considering this legal and factual aspect unlawfully rejected all the appeals as such impugned orders are liable to be declared to have been passed without lawful authority and are of no legal effect. In support of his submissions, learned advocate referred to unreported

cases of Bureau Veritas (BIVAC), Bangladesh Ltd. -vs- Customs, Excise and VAT Appellate Tribunal and others, passed in writ petition Nos. 15526-15529 of 2012 and writ petition nos.15531-15535 of 2012 and the case of Intertek Testing Services (BD) Ltd. and another -Vs- President, Appellate Tribunal, Customs, Excise and VAT, Dhaka and others, reported in 57 DLR(2005)74.

On the other hand, Mr. Md. Monjur Alam, learned Deputy Attorney General appearing for the respondent submits that the Commissioner lawfully imposed the penalties under rule 25(2) of the PSI Rules, 2002 upon recording proper findings on various defects in the CRF Certificates. However, learned Deputy Attorney General candidly admits that this legal issue has been settled in the case of Intertek Testing Service (BD) Ltd. and another -Vs- President, Appellate Tribunal, Customs, Excise and VAT, Dhaka and others, reported in 57 DLR(2005)74 and following the principle laid down in that case many other judgments have been passed by this Division.

Heard learned advocate for the petitioner and learned Deputy Attorney General for the respondent. Perused all the writ petitions and annexures appended thereof alongwith the citations referred by learned advocate for the petitioners.

Evidently the only issue raised in these 16(sixteen) cases is that whether the petitioner being a PSI Agent is required by section 194(1) to deposit the penalty imposed by the Commissioner for the purpose of preferring appeal to the Tribunal against the adjudication order imposing the penalty.

The respondent, being the customs authorities, have not filed any affidavit-in-opposition denying the fact of furnishing Performance Bond by the petitioner as a security for the performance of its statutory duty as a PSI Agent under the PSI Order, 1999 as claimed by the petitioner or under the PSI Rules, 2002. It is noted that the PSI Order, 1999 was repealed by the প্রি-শিপমেন্ট ইমপেকশন বিধিমালা, ২০০২. Rules 6 of the said Rules contain detailed provisions with regard to appointment of PSI Agent and sub rule (12) requires an Agent to furnish Performance Bond.

Rule 6(12) is quoted below:

(১২) উপবিধি (১০) অথবা উপবিধি (১১) অনুযায়ী সরকারের সিদ্ধান্ত অবহিত হবার অনধিক সাত কার্যদিবসের মধ্যে দরপত্রদাতাকে পরিশিষ্ট-৭ অনুযায়ী, দুই কোটি টাকার একটি Performance Bond দাখিল করতে হবে, যার কার্যকারিতা চুক্তির মেয়াদ শেষ হবার তারিখ হতে পরবর্তী ১২ (বার) মাস পর্যন্ত কার্যকর থাকবে।

In the 57DLR case, a Division Bench of this Court considered the same issue in the light of the scheme of the Customs Act, 1969 alongwith other relevant laws i.e. মূল্য সংযোজন কর আইন, ১৯৯১ with particular emphasis on section 194(1) of the Customs Act, 1969 and the Pre-shipment Inspection Order, 1999 made under section 25A of the Act, 1969.

The Bench observed as follows:

37) First, the Act was promulgated in 1969. Under section 156 of the Act various offences or punishments under 98 categories are described and/or provided. Under the Act other penalty may also be possible to be imposed. By the expression, "under the Act" the legislature clearly intended to include any such penalty imposed under section 156 or any other provision of the Act. Had the legislature ever intended to include a penalty levied under the Order, it could have come out with appropriate amendment.

38) Not Relevant.

39) Second, intention of the Government also becomes clearer if we examine the definition of the Act in the Order itself. In the Order, article 2(Ga) clearly says that the Act means the Customs Act. The Government was very conscious of its limitation that when the

legislature did not expand the Act to include the Order, it had no jurisdiction to mean the Order as the Act.

40) Third, the fact that the PSI agents each had already furnished a performance bond in the form of a bank guarantee of TK.2 crore in favour of the customs authority, it cannot be said that article 12 of the Order does not empower the customs authority to encash such bank guarantee against any penalty levied under the Order that the agent becomes ultimately liable to pay, by decision in appeal. If the control of imported goods does not require any deposit of duty demanded, then why the custody to such bank guarantee would not be intended to exempt the deposit of the penalty levied under the Order for consideration of an appeal."

The said Division Bench concluded as follows:

45) In the circumstances, we find that the Appellate Tribunal acted beyond its jurisdiction under section 194 of the Customs Act, 1969 in demanding deposit of a portion of the penalty levied under article 10(5) of the Pre-shipment Order, 1999 and in rejecting the appeals presented against the orders of penalty for want of such deposit."

The 57DLR case was followed by another Division Bench in disposing of writ petition nos. 15526-15529 of 2012 and writ petition nos. 15531-15535 of 2012.

On the issue raised in these 16(sixteen) cases, we hold the same view taken by two other Division Benches.

In disposing of the writ petition nos.15526-15529 of 2012 and writ petition nos. 15531-15535 of 2012 another Division Bench of this court arrived at a finding that:

"One of the intentions of section 194(1) of the Customs Act, 1969 requiring the deposit of penalty imposed by a Commissioner is to ensure the deposit of the penalty as a security. Section 194(1) does not directly exempt a PSI Agent from making such deposit. But when section 194(1) is considered with section 202, of the Customs Act, 1969 and rules 6(12) and 27 of the PSI Rules, 2002 it is evident that the PSI Agent is required to comply with the requirement of section 194(1) in advance and in a different form."

It appears that the petitioner has stated in the memo of appeal before the Tribunal that it has furnished 5(five) Performance Bond amounting to TK.12 Crore under PSI Order and under the said Performance Bond any dues of the petitioner to the Government is protected and secured.

Considering the discussions made hereinabove, we hold that the petitioner as a Pre-shipment Agent is not required to make any form of deposit under section 194(1) of the Customs

Act, 1969 for preferring an appeal under section 196A against the penalty imposed by the Commissioner of Customs.

In such view of the matter, we are of the opinion that the Tribunal acted illegally in rejecting the appeals on the ground of non-deposit of the penalty.

Accordingly, the Rule issued in all writ petitions are made absolute without any order as to cost.

Following orders of the Tribunal are declared to have been passed without lawful authority and are of no legal effect.

Writ Petition numbers	Tribunal's order and date
Writ Petition No. 2338 of 2014	Nathi No. CEVT/Case (Cus)298/2011/3016 dated 15.12.2013.
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Writ Petition No. 2340 of 2014	Nathi No. CEVT/Case (Cus) 614/2011/38 dated 07.01.2014.
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Writ Petition No. 4820 of 2014	Nathi No. CEVT/Case (Cus) 716/2011/98 dated 28.01.2014.
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Writ Petition No. 4823 of 2014	Nathi No. CEVT/Case (Cus) 719/2011/102 dated 28.01.2014.

Writ Petition No. 4824 of 2014	Nathi No. CEVT/Case (Cus) 721/2011/103 dated 28.01.2014.
Writ Petition No. 4825 of 2014	Nathi No. CEVT/Case (Cus) 722/2011/105 dated 28.01.2014.
Writ Petition No. 4826 of 2014	Nathi No. CEVT/Case (Cus) 723/2011/104 dated 28.01.2014.

The Appellate Tribunal is directed to proceed with the appeals preferred by the petitioner against the aforementioned orders and to take decision upon admission of the appeals keeping in view of our findings on the requirement of deposit of the penalty and to dispose of the same in accordance with law. In admitting the appeals if the Tribunal is satisfied that the Performance Bond has been furnished by the petitioner and if it is still valid, the said bond shall be treated as a security for the purpose of section 194(1) of the Customs Act, 1969.

No order as to cost.

Communicate a copy of this judgment to the Appellate Tribunal at once.

Kazi Waliul Islam, J:

I agree.