

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.658 OF 2002

In the matter of:

An application under Section 115 of the Code of Civil Procedure.

And

Amanullah

... Petitioner

-Versus-

Commissioner of Customs, Cuustoms House, Bandar, Chattogram and others

... Opposite parties

None appears

.... For the petitioner.

Mr. Md. Mahfuzur Rahmain, Deputy Attorney General
with

Mr. Md. Moshihur Rahman, Assistant Attorney General

Mr. Md. Mizanur Rahman, Assistant Attorney General

.... For the opposite parties.

Heard on 05.11.2024

Judgment on 06.11.2024

This Rule was issued calling upon the opposite parties to show cause as to why the judgment and decree dated 31.10.2001 passed by the Additional District Judge, 2nd Court, Chattogram in Other Class Appeal No.03 of 2000 reversing the judgment and decree dated 31.10.1999 passed by the learned Senior Assistant Judge-in-Charge, 3rd Court, Sadar, Chattogram in Other Suit No.126 of 1997 should not be set aside and or pass such other or further order or orders as to this Court may seem fit and proper.

Facts in short are that the petitioner as plaintiff instituted above suit for declaration that the imposition of tax by the defendant No.4 on the imported acid oil of the plaintiff at the rate of 30% placing above commodity under H. S. Code No.3823.19.00 is illegal and not binding upon the plaintiff.

It was alleged that the acid oil imported by the plaintiff and used in refineries falls under H. S. Code No.1511 and subject to payment of duty at the rate of 22.50%. But in 1995-96 the defendants has illegally changed the H. S. Code of above commodity and classified the same under H.S. Code No.3823.19.00 and imposed duty at the rate of 30% which is unlawful and not tenable in law.

Defendant Nos.1-5 contested the suit by filing a joint written statement alleging that pursuant to the Memo of the National Board of Revenue dated 19.08.1997 above imported acid oil has been placed under H.S. Code No.3823.19.00 and subjected to payment of duty at the rate of 30%. Pursuant to above decision of the National Board of Revenue the imported acid oil of the plaintiff was lawfully classified under H.S. Code No.3823 and fixed duty at the rate of 30% which calls for no interference.

At trial plaintiff and defendant examined one witness each. Documents produced and proved by the plaintiff were marked as Exhibit Nos.1-21 and that of the defendant were marked as Exhibit No.Ka.

On consideration of facts and circumstances of the case and evidence on record the learned Senior Assistant Judge decreed the suit.

Being aggrieved by above judgment and decree of the trial Court the defendant preferred Other Class Appeal No.3 of 2000 to the District Judge, Chattogram which was heard by the learned Additional District Judge, 2nd Court, Chattogram who allowed the appeal, set aside the judgment and decree of the trial Court and dismissed the suit.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of Appeal below above respondent as petitioner moved to this Court and obtained this Rule.

No one appears on behalf of the petitioner when the Rule was taken up for hearing although this matter appeared in the list for hearing on several dates.

Mr. Md. Mizanur Rahman, learned Assistant Attorney General for the opposite parties submits that customs duty and supplementary duty are imposed on imported goods on the basis of classification and rate of duty determined by the National Board of Revenue. Pursuant to the Memo of the National Board of Revenue dated 19.08.1997 acid oil used in refineries was placed under H. S. Code No.3823 and duty at the rate of 30% was fixed. Due to above decision of the National Board of Revenue defendants lawfully classified the imported acid oil of the plaintiff under H. S. Code No.3823 and imposed duty at the rate of 30%. The learned Assistant Attorney General lastly submits that the

jurisdiction of the Civil Court in entertaining any suit against a decision of the Custom Officer as to the placement of any commodity under the H. S. Code and imposing duty on important goods has been barred by Section 196M of the Customs Act, 1969.

On consideration of the above materials on record the learned Judge of the Court of appeal below has rightly allowed the appeal, set aside the flawed judgment and decree of the trial Court and dismissed the suit which calls for no interference.

I have considered the submissions of the learned Advocate for the opposite parties and carefully examined all materials on record.

At the time of hearing of this Rule the learned Assistant Attorney General produced an attested copy of Memo No.২(৪৯)স্বক-৫/৯২/৯৯৪ তার ১৯.০৮.৯৭ ঞঃ issued by the National Board of Revenue which shows that above Board has placed the imported acid oil under H. S. Code No.3823 and a duty of 30% was payable for the same.

It appears that both the classification of the imported goods under various Codes and determination of the rate of duty recoverable from those goods change from time to time on the basis of the decision of the National Board of Revenue. Pursuant to the decision of the National Board of Revenue communicated by above Memo No.2(49)Sulka-5/92/996dated 19.08.1997 defendants rightly imposed 30% duty on the imported acid oil of the plaintiffs treating the same under H. S. Code 3823.

As far as jurisdiction of the Civil Court to entertain any appeal against an order passed by a Custom Officer is concerned, Section 196M of the Customs Act, 1969 is reproduced below:

196M. "Bar to the jurisdiction of the Courts- No appeal shall lie to any civil Court by any person aggrieved by any decision or order passed by an officer of customs before appealing to and getting decision or order thereon from the Commissioner (Appeal) or the Appellate Tribunal, as the case may be."

It is admitted that the petitioner did not prefer any appeal to the above appellate forums under the Customs Act, 1969 challenging the legality and propriety of the above order of the Custom Officer. As such above provision of the Customs Act, 1969 is attracted in this case and this suit was barred by Section 196M of the Customs Act, 1969.

The learned Judge of the Court of appeal below on correct appreciation of facts and laws has rightly allowed the appeal and set aside the judgment and decree of the trial Court.

In above view of the materials on record I am unable to find any illegality or infirmity in the impugned judgment and decree of the Court of appeal below nor I find any substance in this revisional application under Section 115 of the Code of Civil Procedure and the Rule issued in this connection is liable to be discharged.

In the result rule is hereby discharged.

The order of injunction granted at the time of issuance of the Rue
is vacated.

However, there is no order as to costs.

Send down the lower Courts records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER