

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

**VALUE ADDED TAX APPEAL NO. 65 OF 2015**  
**VALUE ADDED TAX APPEAL NO. 66 OF 2015**  
**VALUE ADDED TAX APPEAL NO. 67 OF 2015**

IN THE MATTER OF:

An appeal under section 42(1)(Ga) of the Value  
Added Tax Act, 1991

And

IN THE MATTER OF:

***Shurwid Industries Ltd.***

..... Appellants in all the appeals

-Vs-

***Customs, Excise and VAT Appellate Tribunal  
and others***

..... Respondents in all the appeals

Mr. Md. Munshi Moniruzzaman, Advocate

.....For the Appellants in the appeals

Mr. Akhtar Farhad Zaman, D.A.G. with

Ms. Shadia Afrin Shapla, D.A.G with

Mr. Arif Khan, D.A.G. with

Mr. Sovan Mahmud, A.A.G. with

Mr. Md. Faridul Islam, A.A.G. with

Mr. Md. Nazmul Haque, A.A.G and

Mr. Md. Sarwar Alam Chowdhury, A.A.Gs

..... For the Respondent-government.

**Heard on 20.04.2026, 29.04.2026**

**Judgment on 04.05.2026**

**Present:**

Mr. Justice S.M. Maniruzzaman

and

Mr. Justice Dihider Masum Kabir

**S.M. Maniruzzaman, J:**

The identical questions of law and fact are involved in three VAT Appeals and the parties are the same. Accordingly, those have been heard together and are being disposed of by this single judgment.

These 3 (three) Appeals under Section 42(1)(Ga) of the Value Added Tax Act, 1991 (in short, the Act, 1991) are directed against the order dated 16.04.2015 passed by the respondent No.1, Customs, Excise and VAT Appellate Tribunal (in short, the Tribunal) under Nathi No. CEVT/Case (VAT)-159/2013/1337, CEVT/Case (VAT)-158/2013/1338 and CEVT/Case (VAT)-157/2013/1339 all dated 01.06.2015 disallowing the appeals and thereby affirming the order dated 05.09.2013 under Nothi No. ৪/মূসক (৭৭) ঢাকা (উত্তর)/সুহদ ইভাঃ লিঃ/মূল্য ঘোষণা/আপীল/২০১৩/৬৪৪(৩), Nothi No. ৪/মূসক (৭৫) ঢাকা (উত্তর)/সুহদ ইভাঃ লিঃ/মূল্য ঘোষণা/আপীল/২০১৩/৬৪৩(৩) and Nothi No. ৪/মূসক (৭৮) ঢাকা (উত্তর)/সুহদ ইভাঃ লিঃ/মূল্য ঘোষণা/আপীল/২০১৩/৬৪২(৩) passed by the respondent No.2, Commissioner, Customs, Excise and VAT Commissionerate, Dhaka directing the appellant to file price declaration in the form of MUSAK-1 instead of MUSAK-1Ga.

Facts, relevant for disposal of the appeals, in brief, are that the appellant in all three appeals is a private limited company incorporated under the Companies Act, 1994 and is engaged in the business of manufacturing various PVC products, namely PVC square plates, PVC plates, PVC crystal bowls, plastic water cups, and PVC square tiffin carriers of different sizes. Since the appellant sells its products in the local market, it obtained a VAT Registration Certificate under the Value Added Tax Act, 1991 (in short, the Act, 1991) for the purpose of paying VAT in accordance with the law.

The products manufactured by the appellant, namely plastic/PVC clear bowls, plates, tiffin carriers and plastic water cups were exempted from payment of VAT under SRO No. 227-Ain/2013/683-Mushak dated

02.07.2013, as listed in Table-3 under Heading 3924.10.00. For the purpose of VAT assessment, the appellant company submitted price declaration of its products in Form Mushak-1(Ga), claiming exemption from payment VAT along with a cost analysis on 15.07.2013, as required under rule 3(1Ka) of the Value Added Tax Rules, 1991 (in short, Rules 1991) before the concerned Divisional Officer.

In its application, the appellant provided a detailed description of the raw materials used as well as other inputs required for the production and marketing of the goods. The appellant also described in detail the marketing process of the company. The price declaration submitted by the appellant company were received by the Divisional Officer, respondent No. 4 dated 15.07.2013.

The respondent No. 3, after hearing the objection by order dated 31.07.2013 directed the appellant to submit Mushak Form-1 instead of Mushak Form-1(Ga) holding that the products in question fall under Heading of H.S. Code No. 39.23 and are not exempted from payment VAT under S.R.O. No. 227-AIN/2013/683-Mushak dated 02.07.2013.

Against the orders dated 31.07.2013, the appellant preferred appeals before respondent No. 2 under rule 7 of the Rules, 1991. After hearing the appeals, respondent No. 2 by order dated 05.09.2013 dismissed the appeals and thereby upheld the order passed by respondent No. 3. It is contended that respondent No. 2 by misinterpreting the S.R.O. dated 02.07.2013, illegally dismissed the appeals.

Being aggrieved by the aforesaid orders of the Commissioner (Respondent No. 2), the appellant preferred appeals before the Customs, Excise and VAT Appellate Tribunal (Respondent No. 1), which were registered as CEVT/Case (VAT)-159/2013, CEVT/Case (VAT)-158/2013 and CEVT/Case (VAT)-156/2013. In the Memorandum of Appeals before the Tribunal, the appellant made specific submissions regarding the S.R.O. dated 02.07.2013 and categorically stated that the products manufactured by the appellant were clearly exempted from payment of VAT. As such, the appellant was required to submit a price declaration under Mushak Form-1(Ga) not in Mushak Form-1. The Tribunal upon hearing the parties dismissed the appeals by its orders dated 01.06.2015.

Being aggrieved thereby, the appellant preferred the instant VAT appeals before this Court.

Mr. Md. Munshi Moniruzzaman, the learned Advocate appearing for the appellant in all the appeals submits that tableware and kitchenware under H.S. Code No. 39.24 fall within Section 7 of the Bangladesh Customs Tariff which deals with plastics and articles thereof.

Mr. Munshi next submits that the Tribunal committed an error of law in failing to consider that all tableware and kitchenware are classified under H.S. Code No. 39.24 and that a plastic water cup being tableware/kitchenware also falls within the purview of the said H.S. Code. As such, the impugned orders are liable to be set aside.

Mr. Munshi further submits that the appellant had submitted a plastic water cup before the appellate authority, i.e., the Tribunal for its

consideration. However, without considering the same, the Tribunal passed the impugned orders which are not sustainable in law. Consequently, the orders passed by the Tribunal are liable to be set aside.

Mr. Munshi goes to argue that the Tribunal being the last court of fact ought to have arrived at its findings after considering the relevant provisions of law and upon perusal of the evidence adduced at the time of hearing of the appeals. However, in the instant appeals although the Tribunal was provided with a sample of the plastic water cup as well as the definition of tableware/kitchenware as given in Wikipedia, it erred in law in failing to consider or make any finding regarding such evidence. Consequently, the orders passed by Tribunal are illegal and liable to be set aside.

Mr. Munshi finally argues that the respondent Nos. 1 and 2, upon misreading the evidence and misconstruing the provisions of the Value Added Tax Act, 1991 and the Rules made thereunder directed the appellant to submit a price declaration in Mushak Form-1 instead of Mushak Form-1(Ga). As such, respondent No. 1 erred in law in dismissing the appeal and the same are illegal and liable to be set aside.

On the other hand, Mr. Akhtar Farhad Zaman, the learned Deputy Attorney General appearing for the respondent-Government submits that the Divisional Officer as well as both the appellate authorities below after considering the provisions of rule 3(3) of the Rules, 1991, passed the impugned orders as such there is no illegality in the impugned orders.

The learned Deputy Attorney General further submits that the items manufactured by the appellant do not all fall under H.S. Code No. 39.24 and that upon considering the relevant provisions of law as well as the First Schedule of the Custom Tariff, the Divisional Officer rightly rejected the price declarations and directed the appellant to submit a price declaration in Mushak Form-1(Ka) under the Rules, 1991. As such, there is no illegality in the impugned orders.

We have heard the learned Advocate for the appellant and the learned Deputy Attorney General for the respondent-Government, perused the memo of appeals as well as the relevant materials on record so appended thereto and considered the relevant provisions of law.

The main issue to be addressed in the instant appeals is whether the Divisional Officer (Respondent No. 3) was justified in rejecting the price declaration dated 01.07.2013 submitted by the appellant in Mushak Form-1(Ga) and in directing the appellant to submit a fresh price declaration in Mushak Form-1(Ka) under the Rules, 1991.

In order to appreciate the said argument, let us first look into the heading of H.S Code 39.23 and 39.24 of the First Schedule of the Customs Act, 1969.

H.S Code No. 39.23

Articles for the conveyance or packing of goods, of plastics, stoppers, lids, caps and other closures of plastics.

- 3923.10.00 -- Boxes, cases, crates and similar articles
- Sacks and bags (including cones)
- 3923.21.00 -- Of polymers of ethylene
- Of other plastics

3923.29.00	-- Alright storage bags with zipper
3923.29.90	-- Other
	- Carboys, bottles, flasks and similar articles
3923.30.00	--- Sachet for medicine, inhaler container, actuators and dust caps for inhaler
	--- Other
3923.30.90	--- Spools, cops, bobbins and similar supports
3923.40.10	--- Bobbins, Silver/spinning can
3923.40.20	--- Autoconer spare parts
3923.40.90	--- Other
3923.50.00	--- Stoppers, lids, caps and other closures
	--- Other
3923.90.10	--- Trays for transportation and keeping of chicks and eggs
3923.90.20	--- Nursery trays for seedlings
	--- Aseptic pack
3923.90.31	--- Imported by VAT registered dairy industries
3923.90.39	--- Other
3923.90.90	--- Other

#### H.S Code No. 39.24

Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics.

3924.10.00	--- Tableware and kitchenware
	--- Other
3924.90.10	--- Feeding Bottles
3924.90.90	--- Other

Moreover, by S.R.O No.২২৭-আইন/২০১৩/৬৮৩-মুসক, the Government exempted from payment of VAT, the goods manufactured under H.S. Code No. 39.24. The relevant provision of the said S.R.O. is quoted below for ready reference:

(ক) কলাম (১) এ উল্লিখিত শিরনামা সংখ্যা (Heading No.) ৩৮.২৪ এবং উহার বিপরীতে কলাম (২) ও (৩) এ উল্লিখিত এক্সিসমূহের পর নিম্নরূপ নূতন শিরনামা সংখ্যা (Heading No.) ৩৯.২৪ এবং উহার বিপরীতে কলাম (২) ও (৩) এ নিম্নরূপ এক্সিসমূহ সন্নিবেশিত হইবে, যথা:-

"৩৯.২৪ সংশ্লিষ্ট এইচ,এস,কোড

প্লাস্টিকের তৈরী (মেলামাইন ব্যতীত) খালা, বাসন, পেয়ালা, বাটি, মগ, জগ, গ্লাস, সজ্জি ধোয়ার জন্য ব্যবহার্য জালি, গামলা, বালতি, খাবার ঢাকার ঢাকনি, স্কুলের বাচ্চাদের ব্যবহার্য পানির বোতল, ঝুড়ি ও টিফিন ক্যারিয়ার, বদনা, সাবানদানি, বেবী পটি, টিস্যু হোল্ডার, বেড প্যান, বেবী বাথটাব, মশলার ট্রে, চায়ের ট্রে, আইস ট্রে, আইস স্কুপ, সালাদ কাটিং বোর্ড, পিঁড়ি বা টুল, ডিশ র্য়াক, ময়লার ঝুড়ি, প্যাডেল বিন, ডাস্ট প্যান, গ্লাস স্ট্যান্ড, হ্যাংগার, হাতপাখা (প্লাস্টিকের তৈরী আসবাবপত্র ব্যতীত)

Considering the aforesaid provision of law, respondent No. 3, the Divisional Officer rejected the appellant's price declaration and directed the appellant to submit fresh price declaration under MUSAK Form-1(Ka) holding *inter alia*;

“.....প্রতিষ্ঠানের প্রতিনিধি বক্তব্য, পণ্যের নমুনা, দাখিলকৃত দলিলানি অত্র দপ্তর কর্তৃক পর্যালোচনায় দেখা যায় যে, পণ্যটি প্রকৃত পক্ষে Water Cup নয় এবং এটি টেবিলওয়্যার, কিচেনওয়্যার বা অন্যান্য হাউজহোল্ড পন্যও নয়। পণ্যটি মূলত আইসক্রিম, দধি, ফিরনি পায়েস ইত্যাদি বিক্রয়ের ক্ষেত্রে প্যাকেজিং ম্যাটেরিয়াল হিসেবে "One time useable small Plastic Cup এবং Harmonized Commodity Description and Coding System EXPLANATORY NOTES 2 (Chapter 30-63) এর ৩৯২৩ Heading এর ক্রমিক (a) (i) এর ব্যাখ্যা ("Cups without handles having the character of containers used for the packing or conveyance of certain foodstuffs, whether or not they have a secondary use as tableware or toilet articles;") এর আলোকে প্রতীয়মান হয় যে, আলোচ্য পণ্যটি ৩৯২৩ Heading এর অন্তর্ভুক্ত যা এস. আর.ও নং-২২৭-আইন/২০১৩/৬৮৩-মূসক, তারিখ-০২.০৭.২০১৩খঃ অনুযায়ী মূসক অব্যাহতি প্রাপ্ত পন্য নয় মর্মে বিবেচিত। এমতাবস্থায়, আলোচ্য পণ্যগুলি এস.আর.ও নং-২২৭-আইন/২০১৩/৬৮৩-মূসক, তারিখ-০২.০৭.২০১৩খঃ এর অন্তর্ভুক্ত নয় বিধায় প্রতিষ্ঠান কর্তৃপক্ষকে মূসক-১গ এর পরিবর্তে মূসক-১-এ মূল্য ঘোষণা দাখিল ধরতে অনুরোধ করা হলো।.....”

The appellant claimed that, the products manufactured by it are water cup falling under H.S Code 39.24 but respondent No. 3, as well as the two appellate authorities below, upon examination of the specimen of the products available on record passed the impugned order on concurrent

findings holding that the item manufactured by the appellant do not fall under H.S. Code No. 39.24. Rather, the said item is essentially packing materials used for covering of Biscuit, Chanachur, Ice cream and etc. and therefore fall under H.S. Code No. 39.23. As such, the appellant is not entitled to exemption from payment of VAT under S.R.O. No. 227 of 2013 and was rightly directed to submit price declaration under Mushak Form-1(Ka) of the VAT Rules, 1991.

In the above facts and circumstances, we find no legal infirmity in the impugned orders of the Tribunal as well as the VAT authorities below.

Accordingly, the 3(three) appeals are dismissed.

However, there will be no order as to cost.

Send down the lower Court's record at once.

**Dihider Masum Kabir, J:**

I agree.

Md. Gener Ali-B.O.