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

VALUE ADDED TAX APPEAL NO. 76 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:

Kaniz Fatema

.... Appellant

-Vs-

Customs, Excise and VAT Appellate Tribunal, Dhaka and others

.... Respondents

Mr. Abu Md. Ziaul Haque, Advocate
........For the Appellant

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 Respondents-Government.

Heard on 13.05.2026, 20.05.2026 &
Judgment on 08.06.2026

Present:

Mr. Justice S.M. Maniruzzaman
&
Mr. Justice Dihider Masum Kabir

Dihider Masum Kabir, ***J:***

This Appeal, preferred under section 42(1)(Ga) of the Value Added Tax Act, 1991 (in short, the Act, 1991), is directed against the order dated 25.05.2015 passed by respondent No. 1, the Customs, Excise and VAT Appellate Tribunal, Dhaka (in short, the Tribunal), in Nathi No.

CEVT/Case(VAT)-126/2014/1332 dated 01.06.2015 dismissing the appeal and thereby affirming the order passed by respondent No. 2, the Commissioner, Customs, Excise & VAT (Appeal) Commissionerate, Dhaka-1, Dhaka [in short, the Commissioner (Appeal)], in First Appeal Order No. 16/MUSAK/Appeal/Dhaka-1/2014 dated 03.09.2014, which had been preferred against the adjudication order dated 19.09.2013 passed by respondent No. 4, the Assistant Commissioner, Customs, Excise & VAT, Demra Division, Dhaka (in short, the AC).

Facts, relevant for the disposal of the instant appeal, in brief, are that the appellant is the owner of a pick-up van bearing registration No. Dhaka Metro Da-14-0318 which was rented out to one Mr. Anwar Hossain, a member of the Dhaka District Truck Labour Union. The appellant has been engaged solely in the business of renting out the pick-up van, without involving herself in any other commercial activity.

In the course of business, on 11.09.2013, the appellant's pick-up van was transporting goods (S.M. flat bars) when it was intercepted by a preventive team of the Demra Division. The driver of the vehicle was asked to produce the MUSAK-11 challan (delivery invoice) for the loaded goods. Upon inspection, the preventive team found the produced MUSAK-11 to be deceptive and forged. Consequently, exercising powers under section 26 of the Act, 1991, the preventive team seized the loaded goods belonging to Bikrampur Satata Steel Corporation (in short, BSS Corporation) valued of Tk.5,336/- along with the appellant's pick-up van under a MUSAK-5 seizure list.

Thereafter, the AC passed an adjudication order on 19.09.2013 against BSS Corporation, alleging that the goods were being transported without the issuance of a MUSAK-11, in violation of sections 6, 31, and 32 of the Act, 1991, read with Rules 16, 22, and 23 of the Value Added Tax Rules, 1991 (in short, the Rules, 1991). The AC determined the evaded VAT to be Tk. 800/- on the goods valued at Tk. 5,336/-, imposed a penalty of Tk. 800/- under section 37(2)(খ)(অ) of the Act, 1991 and confiscated the goods in favor of the State. Furthermore, in a summary proceeding for the release of the vehicle, the AC imposed a redemption fine (বিমোচন জরিমানা) of Tk. 5,00,000/- in lieu of confiscation under section 41 of the Act, 1991 and directed BSS Corporation to pay the said amount. However, while BSS Corporation paid the evaded VAT of Tk. 800/- and the penalty of Tk. 800/, it refrained from paying the redemption fine of Tk.5,00,000/-.

The appellant Kaniz Fatema as the owner of the pick-up van, subsequently secured the release of her vehicle under protest by furnishing Bank Guarantee No. 01/2013 dated 05.12.2013, issued by Uttara Bank Limited, Johnson Road Branch, Dhaka, and preferred an appeal before the Commissioner (Appeal) who dismissed the same by an order dated 03.09.2014.

Challenging the said appellate order, the appellant preferred a second appeal before the Tribunal which was registered as CEVT/Case(VAT)-26/ 2014. The Tribunal dismissed the appeal and thereby affirmed the order dated 03.09.2014 passed by respondent No. 2, the Commissioner (Appeal).

Being aggrieved by and dissatisfied with the order passed by the Tribunal, the appellant preferred the instant appeal before this Court under section 42(1)(Ga) of the Act, 1991.

Mr. Abu Md. Ziaul Haque, the learned Advocate appearing on behalf of the appellant submits that under section 40 of the Act, 1991, the AC is empowered to adjudicate matters where the value of the goods or services exceeds Tk.2,00,000/- but is less than Tk.5,00,000/-. However, in the instant case, the total value of the goods (S.M. flat bars) is only Tk.5,336/- which falls within the exclusive adjudicatory jurisdiction of a Revenue Officer whose statutory limit is less than Tk.2,00,000/-. He contends that the Tribunal erred in law by failing to consider that the matter was adjudicated by the AC, an authority lacking jurisdiction, rendering the original adjudication order is illegal and liable to be set aside.

Mr. Haque next submits that the provisions of section 37 of the Act, 1991 cannot be resorted to before a final demand is made under section 55(3) of the said Act. In the present case, the order was passed under section 37(2) of the Act, 1991 without exhausting the mandatory procedure laid down in section 55. The Tribunal, without considering this legal aspect, erroneously dismissed the appeal; hence, the impugned order is illegal and liable to be set aside.

The learned Advocate further submits that the Tribunal failed to appreciate that the appellant is merely engaged in the rental business of her pick-up van through a rental company. As such, the imposition of a penalty upon the appellant is not backed by law, and consequently, the same is illegal and liable to be set aside.

Mr. Haque finally argues that the action taken against the appellant does not fall within the purview of section 38 of the Act, 1991, which deals with circumstances attracting a redemption fine. In the instant case, a redemption fine was imposed in lieu of the confiscation of both the goods and the pick-up van, completely ignoring the provisions of section 41 of the Act, 1991, which establish that a pick-up van is not "goods" upon which VAT is applicable. Moreover, BSS Corporation is not the owner of the pick-up van; the vehicle was merely hired. He emphasizes that sections 6, 31, and 32 of the Act, 1991, read with Rules 16, 22, and 23 of the Rules, 1991, apply exclusively to BSS Corporation and not to a rented pick-up van transporting goods. Therefore, no question of violating the aforementioned provisions arises on the part of the appellant. Consequently, the confiscation of the vehicle and the subsequent imposition of a redemption fine of Tk.5,00,000/- are completely unauthorized by law. As such, respondent No. 1 erred in law in dismissing the appeal, and the impugned order is illegal and liable to be set aside.

On the other hand, Mr. Akhtar Farhad Zaman, the learned Deputy Attorney General appearing on behalf of the respondents (the Customs Authority) submits that the pick-up van was confiscated on 11.09.2013 under section 39(2) of the Act, 1991, as the vehicle directly facilitated the commission of the offense by transporting VAT evaded goods. He states that on 19.09.2013, one Mr. Harun, appearing on behalf of BSS Corporation, admitted to the offense and prayed for a summary proceeding to release both the goods and the pick-up van. Thereafter, on the same date, the AC adjudicated the matter, determining the evaded VAT to be Tk.800/-

and imposing a penalty of Tk. 800/- under section 37(2)(থ)(অ) of the Act, 1991. In the same order, the AC released the pick-up van by imposing a redemption fine (বিমোচন জরিমানা) of Tk.5,00,000/- in lieu of confiscation under section 41 of the Act, 1991, and directed BSS Corporation to pay the said amount.

The learned Deputy Attorney General further submits that the redemption fine of Tk.5,00,000/- was imposed upon BSS Corporation, and not upon the owner of the pick-up van. He contends that at the time of the adjudication, there was no hard and fast statutory rule governing the ratio or cap for imposing a redemption fine. Consequently, he submits that there is no illegality or procedural error in the impugned order and the appeal is liable to be dismissed.

We have heard the learned Advocate for the appellant and the learned Deputy Attorney General for the respondent-Government. We have also perused the memo of appeal, the relevant materials on record appended thereto, and carefully considered the applicable provisions of law.

The cardinal issue requiring determination in the instant appeal is whether, upon confiscating VAT-evaded goods (S.M. flat bars) as well as the vehicle carrying them under section 26 of the Act, 1991 (under a MUSAK-5 seizure list), the VAT authority is legally empowered to confiscate the pick-up van and subsequently impose a redemption fine of Tk.5,00,000/- while completely ignoring the fact that the vehicle was a rented one owned by a third party, namely Kaniz Fatema, in view of the provisions contained in sections 38, 39, and 41 of the Act, 1991.

Before delving into the core issue, it is apposite to examine section 38 of the Act, 1991, which is reproduced below for ready reference:

৩৮। বাজেয়াপ্তকরণ- যদি-

(১) কোন নিবন্ধনযোগ্য ব্যক্তি নিবন্ধিত হওয়ার পূর্বে কোন করযোগ্য পণ্য প্রস্তুত বা উৎপাদন করেন বা করযোগ্য পণ্যের ব্যবসায়ে নিয়োজিত হন, তাহা হইলে উক্ত পণ্য বাজেয়াপ্তযোগ্য হইবে; অথবা

(২) কোন নিবন্ধিত ব্যক্তি-

(ক) কোন করযোগ্য পণ্য চালানপত্র ব্যতিরেকে ব্যবসায় অঙ্গন হইতে অপসারণ করেন, বা

(কক) চালানপত্রে প্রদর্শিত কর অথবা সংশিষ্ট পণ্য বা সেবার উপর প্রযোজ্য কর পরিশোধ ব্যতীত পণ্য সরবরাহ বা সেবা প্রদান করেন; বা

(খ) করযোগ্য এইরূপ কোন পণ্য চালানপত্র সহ ব্যবসায় অঙ্গন হইতে অপসারণ করেন যাহার গন্তব্য স্থান পর্যন্ত উক্ত চালানপত্র উহার সহিত না থাকে, বা

(গ) ধারা ৬ এর উপ-ধারা (৪ক) এ বর্ণিত বিধান প্রতিপালনে ব্যর্থ হন,

তাহা হইলে উক্ত পণ্য বাজেয়াপ্তযোগ্য হইবে এবং উক্ত নিবন্ধিত ব্যক্তি, তাহার প্রতিনিধি বা উক্তরূপ কর্মকান্ডে সহিত জড়িত যে কোন ব্যক্তিকে উক্ত পণ্যের উপর প্রদেয় মূল্য সংযোজন কর বা, ক্ষেত্রমত, মূল্য সংযোজন কর ও সম্পূরক শুল্কের অন্যূন অর্ধেক এবং অনূর্ধ্ব সমপরিমাণ অর্থ প্রদান করিতে হইবে।

On a plain reading of the configurations above, a vehicle transporting goods does not fall within the direct penal criteria of section 38 of the Act, 1991. At best, the vehicle might be implicated collaterally under the general mechanics of transportation tracking. However, in the instant case, the driver of the pick-up van performed his duties by carrying and producing the MUSAK-11 challan upon the demand of the VAT authority, which was only subsequently found to be deceptive and forged. A commercial driver is neither capable of verifying the genuineness of a MUSAK-11 challan, nor does such verification fall within the scope of his duties. His responsibility is limited to carrying the document during transit and producing it before the VAT authority when intercepted. Furthermore, section 38 provides that only the person actively involved in the evasion of VAT and supplementary duty shall be personally liable to a monetary penalty ranging from 50% to 100% of the evaded tax, as amended by the Finance Act, 2012. Consequently, since the driver was not penalized, the pick-up van itself cannot be independently confiscated by invoking section 38 of the Act, 1991.

We now turn our attention to section 39 of the Act, 1991, which reads as follows:

<u>৩৯। বাজেয়াপ্তির সীমা।-</u>

(১) এই আইনের অধীন কোন পণ্য বাজেয়াপ্তকরণ বলিতে উক্ত পণ্য যে মোড়কে পাওয়া যায় সেই মোড়ক এবং উহাতে প্রাপ্ত সকল বস্তুও অন্তর্ভুক্ত হইবে।

(২) এই আইনের অধীনে বাজেয়াপ্তযোগ্য পণ্য পরিবহনে ব্যবহৃত যে কোন প্রকার যানবাহনও বাজেয়াপ্তযোগ্য হইবে:

তবে শর্ত থাকে যে, এই উপ-ধারার অধীন বাজেয়াপ্তযোগ্য যানবাহন আটক করা হইলে বিধিতে উল্লিখিত কর্মকর্তা উহার এবং উহাতে পরিবহনকৃত পণ্যের ন্যায় নির্ণয়ন অনিষ্পন্ন থাকা অবস্থায় (Pending adjudication), বিধিদ্বারা নির্ধারিত পদ্ধতিতে অন্তবর্তীকালীন ছাড় প্রদান করিতে পারিবেন।

(৩) যে কোন জলযানের বাজেয়াপ্তকরণ বলিতে উহার ট্যাকল, সাজসজ্জা ও আসবাবপত্রও অন্তর্ভুক্ত হইবে।

A close examination of section 39 reveals two primary legislative schemes: firstly, under sub-section (1), goods and their packaging are legally treated as a single unit since packaging is essential for the transport and preservation of commodities; secondly, under sub-section (2), any transport used for carrying goods liable to confiscation shall also be liable to confiscation. Under general legal jurisprudence, an active instrument that facilitates an offense is held vulnerable to state action alongside the principal offender. However, to prevent economic stagnation or severe financial loss to innocent transport owners while the formal adjudication is pending, the proviso to sub-section (2) explicitly allows for the interim release of the vehicle. In the instant case, the confiscated pick-up van was released to the appellant under protest duly fulfilling the requirements including documents regarding ownership of the pick-up van and upon furnishing Bank Guarantee No. 01/2013 dated 05.12.2013. From these provisions, we find that the VAT authority does possess the initial statutory power to seize the transporting vehicle alongside the tax-evaded goods.

However, the core controversy arises from section 41 of the Act, 1991 under which the AC imposed the excessive redemption fine of Tk.5,00,000/-. The section is reproduced below for ready reference;

> **৪১। বাজেয়াপ্তির পরিবর্তে জরিমানা আরোপ।**
>
> যখন এই আইন বা বিধি অনুযায়ী কোন পণ্য বাজেয়াপ্তির সিদ্ধান্ত গ্রহণ করা হয়, তখন ন্যায়-নির্ণয়নকারী কর্মকর্তা পণ্যের মালিককে বাজেয়াপ্তির বিকল্প হিসাবে উক্ত পণ্যের উপর প্রদেয় কর, অন্যান্য সরকারী পাওনা, অর্থদন্ড এবং উক্ত কর্মকর্তার বিবেচনায় **উপযুক্ত জরিমানা প্রদানপূর্বক** উক্ত পণ্য বিমোচনের সুযোগ দিতে পারিবেন:
>
> তবে শর্ত থাকে যে, কোন আইন দ্বারা বা উহার অধীনে যে পণ্যের আমদানি নিষিদ্ধ করা হইয়াছে সেই পণ্যের ক্ষেত্রে এই ধারার কোন কিছু প্রযোজ্য হইবে না।

It is clear from this provision that once an offense is proved upon adjudication, the law mandates the confiscation of the offending goods, making them government property. Normally, the state auctions such goods to recover revenue. However, section 41 provides an equitable alternative: it allows the owner to reclaim the property by paying a redemption fine in lieu of absolute forfeiture. Originally, the text granted the adjudicating officer wide, unguided discretionary powers to impose whatever amount they deemed "appropriate" ("**উপযুক্ত জরিমানা**"). Adjudicating officers typically calculated this by looking at the market value of the vehicle or goods rather than the quantum of tax evaded, leading to grossly disproportionate and inconsistent results.

The provisions and benefits of this section shall not apply to any goods the import of which is prohibited or restricted by or under any other law of the country.

To curb this absolute and arbitrary discretion, the Legislature subsequently stepped in through section 63 of the Finance Act, 2014 (effective from July 2014), substituting the vague words **"উপযুক্ত জরিমানা প্রদানপূর্বক"** with the restrictive clause **''ফাঁকিকৃত করের সর্বনিম্ন এক চতুর্থাংশ হইতে সর্বোচ্চ অর্ধাংশ পর্যন্ত জরিমানা আরোপণপূর্বক'** *(By imposing a fine ranging from a minimum of one-fourth to a maximum of one-half of the evaded tax).* The redemption fine was thus statutorily pegged directly to the volume of the evaded tax, eliminating asset-value-based profiteering by the department.

A combined reading of sections 38, 39, and 41 of the Act, 1991, alongside the facts and circumstances of this case, reveals that the driver committed no independent infraction, and the vehicle owner was an innocent third-party lessor. The actual VAT evasion of Tk. 800/- was committed exclusively by BSS corporation for the goods i.e. M.S. flat bars which are not contraband items. The adjudicating officer widely abused his discretionary powers under section 41 by imposing an illogical redemption fine of Tk.5,00,000/-. He fundamentally ignored the facts that the pick-up van was merely hired, that a transport vehicle is not an item on which VAT is independently assessable, and that the total value of the underlying VAT evaded goods was of Tk. 5,336/-, with an evaded VAT amount of only Tk. 800/-. The goods in question, namely S.M. flat bars, are generally merchantable and industrial raw materials, which do not fall under any list of prohibited, restricted, or contraband goods under any law for the time being in force in the country. Since respondent No. 4 did not and could not assess VAT upon the vehicle itself, the value of the pick-up van could not legally be used as a measure or yardstick for calculating a redemption fine.

The Tribunal passed its order on 25.05.2015, mechanically dismissing the appeal and affirming the orders of the lower authorities. Both lower appellate forums completely failed to apply their judicial minds. While the Tribunal is the final arbiter of facts and is fully competent to decide questions of both fact and law, it entirely ignored the patent disproportion and the shifting legal landscape. Furthermore, the first appellate order passed by the Commissioner (Appeal) is highly unsatisfactory as it completely bypassed the clear legislative intent to curb arbitrary penalties.

In view of the facts and circumstances of the case, we are of the opinion that the redemption fine should be aligned with the rationalized standard deemed reasonable by the Legislature and subsequently codified in the Finance Act, 2014. Accordingly, the redemption fine is reassessed and fixed at 50% of the actual evaded VAT amount, which computes to Tk.400/- (four hundred) only, in place of the astronomical Tk. 5,00,000/-.

For the reasons and discussions set forth above, we hold that the VAT authority acted in excess of its lawful scope and authority. Consequently, we find merit in this appeal.

Accordingly, the appeal is allowed.

There shall be no order as to costs.

The impugned order dated 25.05.2015 passed by respondent No. 1, the Customs, Excise and VAT Appellate Tribunal, Dhaka, in Nathi No. CEVT/Case(VAT)-126/2014/1332, affirming the order dated 03.09.2014 passed by respondent No. 2, the Commissioner, Customs, Excise & VAT (Appeal Commissionerate), Dhaka-1, is hereby set aside. The original adjudication order dated 19.09.2013 passed by respondent No. 4, the Assistant Commissioner, Customs, Excise & VAT, Demra Division, Dhaka, stands modified to the extent indicated above.

The concerned respondent is wrapped with a mandatory direction to return the Bank Guarantee No. 01/2013 dated 05.12.2013 issued by Uttara Bank Limited, Johnson Road Branch, Dhaka to the appellant within a period of 30 (thirty) days from the date of receipt of a copy of this judgment and order, after deducting the modified fine of Tk. 400/-, if not already realized.

Send down the Lower Court's Records (LCR) at once.

Let this judgment and order be communicated to the concerned respondents immediately.

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

I agree.