

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

Customs Appeal No. 158 of 2015

In the matter of:

An appeal under section 196D of the Customs
Act, 1969

AND

In the matter of:

Commissioner of Customs, Customs House,
Chattogram.

... Appellant

-Versus-

Customs, Excise & VAT Appellate Tribunal
and another

... Respondents

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 appellant

Mr. A.H.M. Zia Uddin, Advocate

... For the respondent No.3

The 01st June, 2025

Present:

Mr. Justice Sardar Md. Rashed Jahangir

&

Mr. Justice Kazi Waliul Islam

Sardar Md. Rashed Jahangir, J:

This appeal under section 196D of the Customs Act, 1969 is

directed against the judgment and order dated 27.07.2014 passed by the

respondent No. 1, Customs, Excise and VAT Appellate Tribunal, Dhaka

under Nathi No. CEVT/Case(Cus)-1029/2011 dated 24.05.2015, dismissing the appeal affirming the order dated 18.10.2011 passed by the Commissioner, Customs, Excise and VAT (Appeal), Chattogram under Appeal Order No. 239 of 2011.

Facts relevant for disposal of the appeal are that the respondent No. 3 being importer imported 6,992.50 Metric tonnes (gross) and 6,000 Metric tonnes (net) of white sugar from Thailand through a Letter of Credit No. 2487-04-01-0089 dated 18.02.2004 and invoice No. INI-7473-7479 dated 23.07.2004 declaring value of the goods at US\$195.00 per Metric tonne, under H.S. Code 1701.11.00. After arrival of the goods the importer through it's C&F agent submitted Bills of Entry No. C-189430, C-189447, C-189457, C-189465, C-189452 and C-189474 all dated 07.08.2004; the customs authority found the declared value as incorrect and as such, assessed the goods, considering it's value at US\$224.00 purportedly invoking the authority of Rule 5 of the Valuation Rules, 2000. Pending completion of final assessment the importer filed Writ Petition No. 4336 of 2004 before the High Court Division of the Supreme Court of

Bangladesh, wherein a direction was given together with the issuance of the Rule Nisi upon the customs authority to release the goods upon accepting declared value in cash and accepting continuing bank guarantee for the difference of duties between the declaration and the assessment and accordingly, upon making payment and furnishing bank guarantee the consignments were released. Therefore, the final assessment order has been passed. Challenging the assessment order under Nathi Nos. 100/AP/Sec-1/2004-05 and 101/AP/Sec-1/2004-05, the importer preferred appeal under section 193 of the Customs Act, 1969 before the Commissioner, Customs, Excise and VAT (Appeal), Chattogram and the Commissioner under Appeal Order No. 239 of 2011 dated 18.10.2011 allowed the appeal declaring the invoice value to be the transaction value and ordered the customs authority to make the final assessment on the basis of the transaction value.

Having been aggrieved by the aforesaid order of Commissioner, Customs, Excise and VAT (Appeal), Chattogram, the Commissioner of Customs, Customs House, Chattogram filed an appeal before the

Customs, Excise and VAT Appellate Tribunal, Dhaka under section 196A of the Customs Act, 1969 and the Tribunal after hearing both the parties by its order dated 27.07.2014 dismissed the appeal affirming those of under Appeal Order No. 239 of 2011 dated 18.10.2011 by the Commissioner, Customs, Excise and VAT (Appeal), Chattogram.

Challenging which the instant appeal has been filed.

Learned Deputy Attorney General appearing for the appellant took us through the paper book and in course of hearing inviting our attention at page no. 112 of the paper book and submits that the Tribunal as well as the Commissioner, Customs, Excise and VAT (Appeal), Chattogram at the time of passing their order committed error of law upon misreading of the Valuation Report (reference) scope from 01.01.2003 to 31.12.2005 available before them.

He next submits that both the appellate authorities below failed to notice that the assessed value under the referred Bills of Entry were 0.23US\$ per Kg. Despite both the appellate authorities upon misreading the valuation report containing the reference values available before them

erroneously held that the assessed value was US\$0.18 per Kg., although according to the valuation report US\$0.18 per Kg. was the declared value. And as such, he prayed for setting aside the judgment and order of both the appellate authorities below and thereby prays to maintain the original assessment order made under Nathi No. 100/AP/Sec-1/2004-05 and 101/AP/Sec-1/2004-2005 by the Deputy Commissioner of Customs, Customs House, Chattogram.

On the other hand, Mr. A.H.M. Zia Uddin, learned Advocate appearing for importer-respondent No. 3 submits that the customs authority without considering the purports of the Valuation Rules, 2000 together with the contemplation of the Customs Act, 1969 made arbitrary assessments imposing load on the value without considering the reference value available under the bills of entry for the relevant time. Both the appellate authorities below, he continues to submit that considering the aforementioned aspect allowed the appeal directing to assess the goods on the declared invoice value and accordingly, he prays for dismissal of the appeal.

Heard learned Deputy Attorney General for the appellant and learned Advocate for the respondent No. 3, perused the record together with the paper book and lower Court's record.

Upon examination of the Tribunal's record (L.C.R), it appears that a Valuation Report scope from 01.01.2003 to 30.01.2005 of Customs Headquarter under the Ministry of Finance having been preserved in the record of the Tribunal. In course of argument, learned Deputy Attorney General has referred the said preserved valuation report which has been included in the paper book from page Nos. 105-115. From the page No. 112 of the paper book, it appears that some assessment references having been mentioned under Bill of Entry Nos. C-145922, C-145955, C-145961, C-145968, C-145981, C-145992, C-146000, C-146159, C-146162, C-146171, C-146180 and C-146188 all dated 28.06.2004 relates to white sugar of Thailand origin.

At the time of considering the aforementioned Bills of Entries, the Commissioner, Customs, Excise and VAT (Appeal), Chattogram as well as Customs, Excise and VAT Appellate Tribunal, Dhaka erroneously held

that the reference assessed value of the aforesaid Bills of Entry is 180US\$ per metric tonne. Upon examination of the valuation report in particular page 112, we find that the assessed reference values were 230US\$ per metric tonne. Although the declared value was US\$200 and US\$180 per metric tone, but both the appellate authorities below failed to notice correctly the assessed reference values and thus, arrived at an erroneous conclusion that the declared value is higher than that of the reference values.

In view of the aforesaid apparent error, we are of the view that the order of Customs, Excise and VAT Appellate Tribunal is not sustainable in law.

Accordingly, the appeal is allowed.

The judgment and order dated 27.07.2014 passed by the respondent No. 1, Customs, Excise and VAT Appellate Tribunal, Dhaka under Nathi No.CEVT/Case(Cus)-1029/2011 dated 24.05.2015 is hereby set aside.

The concerned customs authority is hereby directed to assess the imported white sugar afresh in accordance with the Customs Act, 1969

together with the Valuation Rules, 2000. Upon consideration of the papers or documents, if any, be produced by the respondent No. 3 in support of his declared value within a period of 45(forty five) days of receipt of the copy of this judgment and order and the concerned customs authorities is also hereby directed not to encash the submitted bank guarantee before making the said assessment.

Kazi Waliul Islam, J:

I agree.