

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

Writ Petition No. 12424 of 2017

With

Writ Petition No. 13416 of 2017,

Writ Petition No. 13761 of 2017,

Writ Petition No. 13987 of 2017,

Writ Petition No. 13989 of 2017,

Writ Petition No. 13990 of 2017,

Writ Petition No. 13991 of 2017,

Writ Petition No. 13992 of 2017,

Writ Petition No. 13993 of 2017,

Writ Petition No. 13994 of 2017,

Writ Petition No. 13996 of 2017

And

Writ Petition No. 13997 of 2017

In the matter of :

An application under Article 102(2) of the
Constitution of the People's Republic of
Bangladesh.

-And-

In the matter of :

Nila Packing and Accessories Ltd.

..... Petitioner

(In Writ Petition No. 12424 of 2017)

Holy Garments Accessories Ltd.

(In Writ Petition No. 13416 of 2017)

Mohammed Elias

..... Petitioner

(In W.P. No. 13987 of 2017, W.P. No. 13989 of
2017, W.P. No. 13991 of 2017, W.P. No. 13992
of 2017, W.P. No. 13993 of 2017, 13994 of
2017, 13996 of 2017 and 13997 of 2017)

Parvin Ahmed

..... Petitioner

(In W.P. No. 13990 of 2017)

Hanzee Industrial Company Limited

(In W.P. No. 13761 of 2017)

-Versus-

The Customs, Excise and VAT Appellate Tribunal and another.

.....Respondents

(In W.P. No. 12424 of 2017 and
W.P. No. 13416 of 2017)

The Commissioner,
Customs Bond Commissionerate,
42, M.M. Ali Road, Lalkhan Bazar, Chittagong
and another.

.....Respondents

(In W.P. No. 13987 of 2017, W.P. No. 13989 of
2017, W.P. No. 13991 of 2017, W.P. No. 13992
of 2017, W.P. No. 13993 of 2017, 13994 of
2017, 13996 of 2017 and 13997 of 2017)

Bangladesh, represented by the Secretary,
Ministry of Finance, Bangladesh Secretariat,
Raman, Dhaka and others
(In W.P. No. 13761 of 2017)

Mr. M. A. Hannan, Advocate with
Mr. M. Ataul Gani, Advocate

.... For the petitioners

(In W.P. No. 12424 of 2017 and
W.P. No. 13416 of 2017)

Mr. Md. Bahadur Shah, Advocate

..... For the petitioner

(In W.P. No. 13987 of 2017,
W.P. No. 13989 of 2017, W.P. No.
13990 of 2017, W.P. No. 13991 of 2017,)

Mr. Tanjib-ul Alam, Advocate with
Mr. Saquibuzzaman, Advocate

..... For the petitioner

(In W.P. No. 13761 of 2017)

Ms. Israt Jahan, DAG with
Ms. Mosammat Khairun Nessa, AAG,
Mr. Swarup Kanti Deb, AAG and
Mr. Abul Kalam Azad, AAG

..... For Respondents

Present:
 Mr. Justice Zubayer Rahman Chowdhury
 And
 Mr. Justice Md. Mozibur Rahman Miah
 And
 Mr. Justice Md. Iqbal Kabir

Date of Hearing : 10.04.2018, 02.08.2018,
 29.10.2018 and 30.10.2018

Date of Judgment : 13.12.2018

Zubayer Rahman Chowdhury, J :

The instant reference to a larger Bench has been made seeking a correct interpretation of section 194 of the Customs Act, 1969. Since all the writ petitions involve similar questions of law and fact, they were heard together and this single judgment will govern each of the twelve writ petitions.

A brief statement with regard to the factual aspect of each of the case is called for.

In Writ Petition No. 12424 of 2017, the facts are as follows :

The petitioner company is engaged in manufacturing of garments accessories, which is supplied to 100% export oriented readymade garments industries. Whilst the petitioner was carrying on his business, the officials of respondent no. 2 carried out an inspection at the petitioner's bonded warehouse on 16.11.2015 and found shortage 4,07,688.02 Kg and an excess amount of 29,477.93 Kg of different raw materials as per the Bond Register, valued at Tk. 2,09,24,784.17, with a duty payable thereon amounting to Tk. 1,02,86,435.19.

On the basis of the report submitted by the Inspection team, respondent no. 2 issued a demand-cum-show cause notice dated 03.04.2016 asking the petitioner why it should not be held liable for punishment under section 156(1), Table Clauses 1, 51, 51A, 61 and 90 for violation of sections 86, 97, 144 and section 13(1) of the Customs Act, 1969. On receipt of the said notice, the petitioner submitted a objection on 12.05.2016 refuting the allegations made in the said show cause notice. Upon conclusion of hearing, respondent no. 2 passed the Adjudication Order No. 242/Bond Circle-06/2017 dated 11.06.2017, imposing a penalty of Tk. 1,00,000/- in addition to the customs duty and taxes amounting to Tk. 1,02,86,435.19, thereby totaling Tk. 1,03,86,435.19.

Being aggrieved by the aforesaid Adjudication Order dated 11.06.2016, the petitioner preferred an appeal on 18.06.2017 before the Customs, Excise and VAT Appellate Tribunal, Dhaka (briefly, the Tribunal) vide CEVT/Case(Cus)-413/2017. On the very same date, the petitioner also filed an application under the 2nd proviso of section 194(1) of the Customs Act, 1969 (hereinafter referred to as the Act) seeking exemption from depositing the demanded amount on the ground of hardship. After hearing the petitioner, respondent no. 1, by order dated 17.07.2017, directed the petitioner to deposit 10% cash and furnish a Bank Guarantee for 10% of the demanded amount within 01.08.2017. However, on that date, the petitioner filed an application praying for waiver of the deposit, as stated in the order dated 17.07.2017 and prayed

for accepting the appeal without the deposit. However, by order dated 13.08.2017, as evidenced by Annexure D, the Tribunal dismissed the appeal on the ground of non-compliance with the order dated 17.07.2017. It is this very order of rejection of the appeal that the petitioner has sought to challenge by filing the instant writ petition.

In Writ Petition No. 13416 of 2017, the petitioner, a limited company incorporated under the Companies Act, is engaged in the business of manufacturing garments accessories, zipper and plastic and is duly registered with the VAT Authorities.

On 11.02.2015, the petitioner filed an application before respondent no. 2 for adjustment of the export proceeds without issuing the Utilization Permission (UP) following which an inspection was carried out on 04.03.2015 at the petitioner's bonded warehouse. During the said inspection, the respondent found a shortage of 157.59 MT of raw materials as per the Bond Register, having a dutiable value of Tk. 1,23,66,341.19. On the basis of the said Inspection report, respondent no. 2 issued a demand-cum-show cause notice, to which the petitioner submitted a written objection on 27.10.2015 denying the allegations made in the said show cause notice and further stating that the petitioner exported/supplied garments accessories by using the imported raw materials, without, however, obtaining any Utilization Permission, due to lack of knowledge. After concluding the hearing, respondent no. 2 passed Adjudication Order No. 19 of 2017 dated 02.03.2017, imposing a penalty

of Tk. 2,00,00,000/- in addition to the customs duty and taxes amounting to Tk. 1,23,66,341.19, thereby totaling Tk. 3,23,66,341.19.

Being aggrieved by the aforesaid Adjudication order dated 02.03.2017, the petitioner preferred an appeal before the Customs, Excise and VAT Appellate Tribunal, Dhaka for accepting the appeal without any deposit. However, by order dated 19.06.2017, the Tribunal dismissed the appeal. Being aggrieved thereby, the petitioner moved this Court and obtained the instant Rule.

In Writ Petition No. 13761 of 2017, the petitioner, a 100% export oriented company, is duly registered with the VAT Authorities. The petitioner filed an application before respondent no. 4 under section 196A of the Customs Act, 1969 (briefly, the Act) for setting aside the Order No. 38/EPZ Sodar/2017 dated 01.08.2017 directing the petitioner company to pay additional customs duty amounting to Tk. 2,38,88,259.17 along with an amount of Tk. 5,00,000.00 on account of the petitioners alleged failure to produce documentary evidence in support of the export of 6,588.10 Kg of imported duplex board and 4,67,560.00 Kg of liner paper. At the same time, the petitioner also made a prayer for dispensing with the statutory deposit, required to be paid at the time of filing the appeal on the ground of hardship. By order dated 28.09.2017, respondent no. 4 rejected the application and directed the petitioner to deposit 10% of the demanded amount in cash and 10% in Bank Guarantee, amounting to Tk. 47,77,651.82 by 04.10.2017, failing which the appeal was to stand

dismissed. Being aggrieved thereby, the petitioner moved this Court and obtained the instant Rule along with the order of stay of the proceeding of CEVT Case No. 607 of 2017.

In Writ Petition No. 13987 of 2017, the petitioner is a 100% export oriented manufacturer of garments accessories. On 08.12.2016, on the basis of secret information, a team from the Customs Bond Commissionrate, Chittagong inspected the petitioner's factory and found a shortage of 1) 8613 Kg of PP to 1550 of duplex board, with a total dutiable value of Tk. 15,01,178.00. Respondent no. 1 issued a showcase notice on 02.02.2017 upon the petitioner 02.02.2017, directing the petitioner to file a reply with 15 days thereof. By Order No. 35 of 2017 dated 28.05.2017, respondent no. 1 adjudicated the matter ex-parte, imposing a penalty of Tk. 15,00,000/- and also imposed of a duty of Tk. 6,55,117.20 and directed the petitioner to deposit the same through Treasury chalan within 15 days. Challenging the order dated 28.05.2018, the petitioner filed an appeal 04.06.2017, being no. CEVT/Case/Cus 383/2017 on before the Customs, Excise and VAT Appellate Tribunal, Dhaka. At the same time, the petitioner also filed an application for accepting the appeal without any deposit on the ground of hardship. By order dated 18.07.2017, respondent no. 1 dismissed the appeal on account of the petitioner's failure to make the statutory deposit. Being aggrieved thereby, the petitioner moved this Court and obtained the instant Rule.

In Writ Petition No. 13989 of 2017, the petitioner is engaged in the business of manufacturing and export of garments accessories. It is a 100% export oriented industries. On 16.02.2016, a Preventive Team of the Customs Bond Commissionerate, Chittagong inspected the petitioner's industry and allegedly found shortage of 14,248 MT of Art Card, having total payable duty of Tk. 8,26,668.96. On 23.10.2016, respondent no. 1 issued show cause notice upon the petitioner directing him to file a reply within 15 days as to why penal action should not be taken against him under the relevant provisions of the Customs Act.

Vide Order No. 34/2017 dated 04.05.2017, respondent no. 1 adjudicated the matter ex-parte, imposing a penalty of Tk. 10,00,000/- for the alleged shortage of the goods and also imposed a duty of Tk. 4,85,134.85, directing the petitioner to deposit the same within 15 days. Challenging the aforesaid order dated 04.05.2017, the petitioner filed an appeal on 04.06.2010 being No. CEVT/Case (Cus) 375/2017 under section 196 A of the Customs Act before the Customs, Excise and VAT Appellate Tribunal, Dhaka. At the same time, the petitioner also filed an application seeking waiver on the deposit on account of hardship. However, by order dated 18.07.2017, respondent no. 1 dismissed the appeal on account of the petitioner's failure to make the statutory deposit.

In Writ Petition No. 13990 of 2017, the petitioner is engaged in the business of manufacturing and exporting garments accessories. It is a 100% export oriented industries. On 02.04.2016, a Preventive Team of the Customs Bond Commissionerate, Chittagong inspected the petitioner's industry and allegedly found 1) 12,899.00 Kg. of paper, 2) 471.716 Kg of

paper and 3) 95.750 Kg of polythine, having payable duty amounting to Tk. 2,16,51,176.00. On 26.04.2016, respondent no. 1 issued show cause notice upon the petitioner directing him to file a reply within 15 days as to why penal action should not be taken against him under the relevant provision of the Customs Act.

Vide Order No. 30/2017 dated 24.04.2017, respondent no. 1 adjudicated the matter ex-parte, imposing a penalty of Tk. 5,00,00,000/- for the alleged shortage of the goods and also imposed a duty of Tk. 7,16,51,176.167, directing the petitioner to deposit the same within 15 days. Challenging the aforesaid order dated 24.04.2017, the petitioner filed CEVT/Case/(Cus)-380/2017 under section 196 A of the Customs Act before the Customs, Excise and VAT Appellate Tribunal, Dhaka. At the same time, the petitioner also filed an application seeking waiver on the deposit on account of hardship. However, by order dated 18.07.2017, respondent no. 1 dismissed the appeal on account of the petitioner's failure to make the statutory deposit.

In Writ Petition No. 13991 of 2017, the petitioner is engaged in the business of manufacturing and exporting garments accessories. It is a 100% export oriented industries. On 22.12.2016 a Preventive Team of the Customs Bond Commissionerate, Chittagong inspected the petitioner's industry and allegedly found 1) 12,899.00 Kg. of Paper Line, 2) 83,708.00 Kg of LLDPE and 3) 2,27,811.00 Kg of P.P. Film having total payable duty amounting to Tk. 2,73,64,994.53. On 29.12.2016, respondent no. 1 issued show cause notice upon the petitioner directing him to file a reply

within 15 days as to why penal action should not be taken against him under the relevant provision of the Customs Act.

Vide Order No. 33/2017 dated 24.04.2017, respondent no. 1 adjudicated the matter ex-parte, imposing a penalty of Tk. 2,01,79,185.59 for the alleged shortage of the goods and also imposed a duty of Tk. 2,85,31,357.79, directing the petitioner to deposit the same within 15 days. Challenging the aforesaid order dated 24.04.2017, the petitioner filed CEVT/Case/(Cus)-376/2017 under section 196 A of the Customs Act before the Customs, Excise and VAT Appellate Tribunal, Dhaka. At the same time the petitioner also filed an application seeking waiver of the deposit required for the purpose of filing the appeal on account of hardship. However, by order dated 18.07.2017, respondent no. 1 dismissed the appeal on account of the petitioner's failure to make the statutory deposit.

In Writ Petition No. 13992 of 2017, the petitioner is engaged in the business of manufacturing and export of garments accessories. It is a 100% export oriented industries. On 19.02.2017, a Preventive Team of the Customs Bond Commissionerate, Chittagong inspected the petitioner's industry and allegedly found excess of 1) 9678 Kg. of Craft Liner Paper, 2) 3750 Kg of LLDPE and 3) 9678 Kg of P.P. Film, having payable duty amounting to Tk. 9,50,291.17. On 22.02.2017, respondent no. 1 issued show cause notice upon the petitioner directing him to file a reply within 15 days as to why penal action should not be taken against him under the relevant provision of the Customs Act.

Vide Order No. 111/2017 dated 27.04.2017, respondent no. 1 adjudicated the matter ex-parte imposing a penalty of Tk. 15,00,000/- for the alleged shortage of the goods and also imposed a duty of Tk. 9,50,291.17, directing the petitioner to deposit the same within 15 days. Challenging the aforesaid order dated 27.04.2017, the petitioner filed an appeal on 04.06.2017, being No. CEVT/Case/(Cus)-377/2017 under section 196 A of the Customs Act before the Customs, Excise and VAT Appellate Tribunal, Dhaka. At the same time, the petitioner also filed an application seeking waiver on the deposit for the purpose of filing the appeal on account of hardship. However, by order dated 18.07.2017, respondent no. 1 dismissed the appeal on account of the petitioner's failure to make the statutory deposit.

In Writ Petition No. 13993 of 2017, the petitioner is engaged in the business of manufacturing and export of garments accessories. It is a 100% export oriented industries. On 08.01.2017, a Preventive Team of the Customs Bond Commissionerate, Chittagong inspected the petitioner's industry and allegedly found 1) 11386 Kg. of Pupley Board and 2) 300, 350, 400, 450 GSM, having total payable duty of Tk. 3,12,31,348.00. On 16.01.2017, respondent no. 1 issued show cause notice upon the petitioner directing him to file a reply within 15 days as to why penal action should not be taken against him under the relevant provision of the Customs Act.

Vide Order No. 36/2017 dated 28.05.2017, respondent no. 1 adjudicated the matter ex-parte, imposing a penalty of Tk. 10,00,000/- for the alleged shortage of the goods and also imposed a duty of Tk. 13,12,313.48, directing the petitioner to deposit the same within 15 days.

Challenging the aforesaid order dated 28.05.2017, the petitioner filed an appeal on 04.06.2017 being No. CEVT/Case/(Cus)-378/2017 under section 196 A of the Customs Act before the Customs, Excise and VAT Appellate Tribunal, Dhaka. At the same time the petitioner also filed an application seeking waiver on the deposit required for the purpose of filing the appeal on account of hardship. However, by order dated 18.07.2017, respondent no. 1 dismissed the appeal on account of the petitioner's failure to make the statutory deposit.

In Writ Petition No. 13994 of 2017, the petitioner is engaged in the business of manufacturing and of export garments accessories. It is a 100% export oriented industries. On 19.02.2017, a Preventive Team of the Customs Bond Commissionerate, Chittagong inspected the petitioner's industry and allegedly found shortage of 1) 21,25,600 of Film Board, 2) 18,51,237.00 of LLDPE and 3) 36,100.00 of Ant Card, having total payable duty of Tk. 82,85,687.00. On 22.02.2017, respondent no. 1 issued show cause notice upon the petitioner directing him to file a reply within 15 days as to why penal action should not be taken against him under the relevant provision of the Customs Act.

Vide Order No. 37/2017 dated 28.05.2017, respondent no. 1 adjudicated the matter ex-parte, imposing a penalty of Tk. 2,00,00,000/- for the alleged shortage of the goods and also imposed a duty of Tk. 82,85,687.60, directing the petitioner to deposit the same within 15 days. Challenging the aforesaid order dated 28.05.2017, the petitioner filed an appeal on 04.6.2017 being No. CEVT/Case/(Cus)-379/2017 under section 196 A of the Customs Act before the Customs, Excise and VAT Appellate

Tribunal, Dhaka. At the same time, the petitioner also filed an application seeking waiver on the deposit for the purpose of filing the appeal on account of hardship. However, by order dated 18.07.2017, respondent no. 1 dismissed the appeal on account of the petitioner's failure to make the statutory deposit.

In Writ Petition No. 13996 of 2017, the petitioner is engaged in the business of manufacturing and export of garments accessories. It is a 100% export oriented industries. On 20.02.2017, a Preventive Team of the Customs Bond Commissionerate, Chittagong inspected the petitioner's industry and allegedly found shortage of 1) 80449.00 Kg of P.P. Filmy, 2) 27119.00 of H.I.P.S. and 3) 12202 of Duplex Board, having a total payable duty of Tk. 30,31,963.98. On 22.02.2017, respondent no. 1 issued show cause notice upon the petitioner directing him to file a reply within 15 days as to why penal action should not be taken against him under the relevant provision of the Customs Act.

Vide Order No. 38/2017 dated 31.05.2017, respondent no. 1 adjudicated the matter ex-parte, imposing a penalty of Tk. 1,00,00,000/- for the alleged shortage of the goods and also imposed a duty of Tk. 30,31,963.98, directing the petitioner to deposit the same within 15 days. Challenging the aforesaid order dated 31.05.2017, the petitioner filed an appeal on 11.06.2017 being No. CEVT/Case/(Cus)-391/2017 under section 196 A of the Customs Act before the Customs, Excise and VAT Appellate Tribunal, Dhaka. At the same time, the petitioner also filed an application seeking waiver of the deposit for the purpose of filing the appeal on account of hardship. However, by order dated 18.07.2017,

respondent no. 1 dismissed the appeal on account of the petitioner's failure to make the statutory deposit.

In Writ Petition No. 13997 of 2017, the petitioner is engaged in the business of manufacturing and export of garments accessories. It is a 100% export oriented industries. On 19.02.2017, an Intelligence Team of the Customs Bond Commissionerate, Chittagong inspected the petitioner's industry and allegedly found shortage of 1) 3,00,785.00 Kg of PP Film, 2) 33,020.00 Kg of H.I.P.S. 3) 1,60,216 Kg of LLDPE, 4) 32,114 Kg of Duplex Board 300 GSM and 5) 7,511.00 Kg of Duplex Board 350 GSM, having total payable duty of Tk. 1,44,22,470.20. On 22.02.2017, respondent no. 1 issued show cause notice upon the petitioner directing him to file a reply within 15 days as to why penal action should not be taken against him under the relevant provision of the Customs Act.

Vide Order No. 31/2017 dated 24.07.2017, respondent no. 1 adjudicated the matter ex-parte, imposing a penalty of Tk. 50,00,000/- for the alleged shortage of the goods and also imposed a duty of Tk. 1,44,22,470.20, directing the petitioner to deposit the same within 15 days. Challenging the aforesaid order dated 24.04.2017, the petitioner filed an appeal on 04.06.2017, being No. CEVT/Case/(Cus)-382/2017 under section 196 A of the Customs Act before the Customs, Excise and VAT Appellate Tribunal, Dhaka. At the same time, the petitioner also filed an application seeking waiver on the deposit for the purpose of filing the appeal on account of hardship. However, by order dated 18.07.2017, respondent no. 1 dismissed the appeal on account of the petitioner's failure to make the statutory deposit.

Mr. Tanjib-ul Alam, the learned Advocate appears along Mr. M.A. Hannan, Mr. M. Ataul Gani, Mr. Bahadur Shah, the learned Advocate on behalf of the petitioners in all the writ petitions, while the Rule is being opposed by Ms. Israt Jahan, the learned Deputy Attorney General appears along with Ms. Most. Khairun Nessa, Mr. Swarup Kanti Deb and Mr. Abul Kalam Khan, the learned Assistant Attorney Generals on behalf of respondent no. 1.

The common submission advanced by the learned Advocates appearing on behalf of the petitioners is that the Tribunal passed the impugned orders without application of mind. It has further been contended that the respective petitioners filed applications seeking waiver from making the statutory deposit on the ground of hardship. However, without taking into account this particular aspect of the case, i.e. the hardship of the petitioners, the Tribunal passed the orders in a mechanical and arbitrary manner. Referring to various orders passed by the Tribunal in respect of other appeals, the learned Advocates have argued strenuously that while granting exemption, the Tribunal acted in an arbitrary manner and applied a "pick and choose" policy in as much as, in some cases, the appeals were allowed to be filed with a deposit of only 5%, while in other cases, the appeals were directed to be filed upon payment of 25% on the demanded amount. The learned Advocates have submitted in a uniform voice that the gross variation in respect of the percentage of the deposit ranging from 5% to 25% indicates clearly that the Tribunal was not consistent and even handed in considering the applications of hardship filed by the respective petitioners.

Referring to various judgments passed by this Division, the learned Advocates have also tried to impress upon us that while dealing with similar matters, the petitioners were directed to pay varying amounts of deposit, starting from 0% and going upto 25%.

Referring to section 194 of the Customs Act, 1969 (briefly the Act), it has been argued at the Bar that the second proviso to section 194 of the Act provides for granting waiver/exemption from making the deposit of duty demanded by the Customs Authority. However, while passing the impugned orders, the Tribunal failed to make a proper assessment of each individual case and applied a pick and choose policy in granting exemptions, which is manifested in the respective orders.

Appearing in opposition to all the Rules, the learned Deputy Attorney General submits that the Tribunal has been vested with the power to decide the issue of hardship, which is essentially a question of fact that has to be determined upon consideration of the facts and circumstances of each individual case. The learned DAG submits forcefully that this Court, in exercise of the writ jurisdiction, is precluded from undertaking an exercise which involves ascertainment of the factual aspect of a case. She submits that since the issue of hardship is essentially a question of fact, which varies from case to case, the Tribunal has been vested with the sole authority to decide the issue of granting exemptions in appropriate cases.

At the very outset of the discussion, it would be pertinent to refer to section 194 of the Act, which reads as under :

“194. Deposit, pending appeal, of duty demanded or penalty levied-(1) Any person desirous of appealing under section 193 or section 196A against decision or order relating to any duty demanded in respect of goods which have ceased to be under the control of customs authorities or to any penalty levied under this Act shall, at the time of filing his appeal or if he is so permitted by the appellate authority at any later stage before the consideration of the appeal, deposit with the appropriate officer the duty demanded or the penalty levied;

Provided that such person may, instead of depositing as aforesaid the entire amount of the penalty, deposit only fifty per cent thereof and furnish a guarantee from a scheduled bank for the due payment of the balance;

Provided further that where, in any particular case, the appellate authority is of the opinion that the deposit of duty demanded or penalty levied will cause undue hardship to the appellant, it may dispense with such deposit, either unconditionally or subject to such conditions as it may deem fit to impose.

(2) If, upon an appeal, it is decided that the whole or any portion of the aforesaid duty or penalty was not leviable, the appropriate officer shall return to the appellant such amount or portion as the case may be.”

In this reference before us, we are primarily concerned with the 2nd proviso of section 194 of the Act.

A careful and close reading of the 2nd proviso of section 194 leaves no room for doubt that the power to dispense with the deposit, either unconditionally or upon imposition of conditions, has been left to the “sole discretion of the Tribunal.”

It is the cardinal rule of interpretation that the words used in a Statute are to be interpreted as it is, and not what they ought to be. The Legislature, in their wisdom, and in our view quiet correctly, stipulated that the discretion to allow dispensation with the deposit is vested only

with the Tribunal. This is apparent from the very last sentence, which reads, "it may dispensed with such deposit, either unconditionally or submit to such conditions as it may deem fit and proper." (emphasis added on the word "it") By using the word "it", the Legislatures have very clearly expressed their intention that it is the Tribunal and the Tribunal alone which is vested with the sole authority to dispense with the deposit or otherwise accept an appeal upon such conditions as it deems fit to impose with regard to such deposit. The use of the word "it", in our view, implies that the jurisdiction or authority of this Court to interfere in matters of granting exemption on the ground of hardship has been excluded. I am fortified in any view by a decision which dates back to more than half a century in the case of Pandyan Insurance Company Limited vs. K. J. Khambatta and others, reported in AIR 1955 (Bombay) 241. While delivering the judgment, Chagla, C.J. observed as under :

"If the law confers discretion upon an office or upon a tribunal it is for that officer or that tribunal to exercise its discretion. It is not for the High Court to exercise this discretion for him. In the case of discretion it is very rarely and under great limitations that the High Court interferes."

While dealing with the issue of the Tribunals jurisdiction/ authority to deal with the factual aspect of a case, the Supreme Court of India, in the case of State of Andhra Pradesh and others vs. Chitra Venkata Rao, reported in AIR 1975 (SC) 2151, held:

"The findings of fact reached by an inferior court or Tribunal as a result of the appreciation of evidence are not re-opened or questioned in writ proceedings."

In that case, the Court further held:

“A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal.”

In the case of Dhaka Warehouse Ltd. and another, Tutelor Oil Service Pvt. Co. Ltd. and another, National Warehouse and another vs. Assistant Controller of Customs, reported in (1991) 11 BLD (AD) 327, relied on by the petitioners, the Apex Court, while allowing the appeal, held as under :

“Payment of the demanded sum, as a condition precedent as required under Section 194 of the Act for filing an appeal, would have surely caused a great hardship to the appellants. The appellants’ prayer for exemption from depositing the demanded sum was rather arbitrarily rejected by the appellate authority.”

In our view, the aforesaid decision of the Apex Court is distinguishable from the present case before us for the simple reason that in the decision referred to above, no exemption was granted and the appellant’s application of hardship was rejected summarily. In the present writ petitions, the petitioners were granted exemptions, albeit of varying degrees. It is the non-deposit of the exempted amount which led to the rejection of the appeals by the Tribunal.

When a Tribunal is set up under an Act for adjudicating the disputes between the contending sides relating to the rights and privileges conferred under the Act, unless otherwise provided by law, the jurisdiction of the Tribunal is exclusive. However, this should not be inferred as a total ouster of the Court’s jurisdiction. Where the Tribunal

exceeds its authority or where it fails to exercise its power in accordance with law or where it has acted malafide, in such cases, this Court can and should interfere.

In our view, this Court does not have the jurisdiction to substitute its own decision for that of the Tribunal in granting exemption in respect of the applications for hardship filed by the respective petitioners. In other words, the 2nd proviso of section 194 of the Act vests absolute and total authority upon the Tribunal to decide the question of hardship, giving due consideration to each and every case on merit. Therefore, the logical inference from our discussion leads us to the conclusion that the instant reference be answered in the negative and accordingly, it is so answered. Consequently, the Rules issued in all the writ petitions are liable to be discharged.

Accordingly, the Rules issued in all the writ petitions stand discharged.

The interim orders, granted at the time of issuance of the Rules, are hereby recalled and vacated.

Before parting with the case, we wish to make certain observations with regard to the issue that we are being called upon to decide.

It is apparent that while disposing of the hardship applications filed on behalf of the respective petitioners, the Tribunal did not act in a uniform manner and did not apply a uniform percentage while granting exemptions. Regrettably, this Court did likewise. This certainly cannot be the purport and intent of the law.

We, therefore, direct the Ministry of Law, Justice and Parliamentary Affairs to take proper and effective steps to incorporate necessary amendments in the Customs Act, 1969 so as to bring a uniformity in the application of the law with regard to granting of waiver by the Tribunal while deciding applications seeking exemption from making the statutory deposit on the ground of hardship.

There will be no order as to cost.

The office is directed to communicate the order.

Md. Mozibur Rahman Miah, J :

I agree.

Md. Iqbal Kabir, J :

I agree.

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

Present:

Mr. Justice Syed Mahmud Hossain, Chief Justice.

Mr. Justice Muhammad Imman Ali

Mr. Justice Hasan Foez Siddique

Mr. Justice Md. Nuruzzaman

Mr. Justice Obaidul Hassan.

CIVIL PETITION FOR LEAVE TO APPEAL NOS. 296, 53 & 248-255 of 2020.

(From the judgment and order dated 13.12.2018 passed by the High Court Division in Writ Petition Nos. 13761/2017, 12424/2017, 13987/2017, 13990/2017, 13991/2017, 13992/2017, 13993/2017, 13994/2017, 13996/2017 & 13997/2017).

Hanzee Industrial Company Limited,Petitioner.
represented by its Managing Director, Dhaka. (In C. P. No. 296 of 2020)

Nila Packing and Accessories Limited @ NilaPetitioner.
Packaging and Accessories Limited, Dhaka, (In C. P. No. 53 of 2020)
represented by its Managing Director, Masudur
Rahman.

Mohammad Elias.Petitioner.
(In C. P. Nos. 248 & 250-255 of
2020)

Parvin Ahmed.Petitioner.
(In C. P. No. 249 of 2020)

-Versus-

Bangladesh, represented by the Secretary,Respondents.
Ministry of Finance, Bangladesh Secretariat, (In C.P. No. 296 of 2020)
Ramna, Dhaka and others.

The Customs Excise and VAT AppellateRespondents.
Tribunal, represented by its President, Dhaka (In C.P. No. 53 of 2020)
and another.

The Commissioner, Customs BondRespondents.
Commissionerate, Chattogram and another. (In C.P. Nos. 248- 255 of 2020)

For the Petitioner : Mr. Tanjib-ul-Alam, Advocate instructed by Mr. Md.
(In C.P. No. 296 of 2020) Helal Amin, Advocate-on-Record.

For the Petitioner : Mr. M. A. Hannan, Advocate instructed by Mr. Satya
(In C.P. Nos. 53 & 248- Ronjon Mondall, Advocate-on-Record.
255 of 2020)

For the Respondents : Mr. A. M. Amin Uddin, Attorney General with Mr.
(In C.P. Nos. 296 & 53 of Samarendra Nath Biswas, Deputy Attorney General
2020) instructed by Mr. Haridas Paul, Advocate-on-Record.

Respondents : Not represented.
(In C.P. Nos. 248-255 of 2020)

Date of hearing : The 27th September, 2021. Z

ATTESTED

Superintendent
Appellate Division

ORDER

Heard the learned Advocates appearing for the petitioner in all the cases and the learned Attorney General for the respondents in C. P. Nos. 296 and 53 of 2020 and perused the impugned judgment and order of the High Court Division and other materials on record.

Considering the facts and circumstances of the cases, we find no legal infirmity in the impugned judgment and order factually and legally calling for interference by this Court.

Accordingly, we find no merit in these petitions and the same are dismissed.

J. S. M. Hossain, C.J.
S. M. Imman Ali, J.
S. Hossain For Siddique, J.
S. M. Nuruzzaman, J.
S. Obaidey Hossain, J.

CERTIFIED TO BE TRUE COPY OF
Superintendent
Appellate Division
Supreme Court of Bangladesh

[Signature]

The 27th September /2021
Md. Shahid Ullah

[Signature]
07/12/2021

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