

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

WRIT PETITION NO. 2799 OF 2006

IN THE MATTER OF:

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

And

IN THE MATTER OF:

Shamsul Alam

..... Petitioner

-Vs-

***Commissioner, Customs, Excise & VAT,
Commissionerate, Agrabad, Chittagong and others***

..... Respondents.

Mr. M.A. Hannan with

Mr. Abdus Samad Azad, Advocates

..... for the Petitioner

Ms. Mahfuza Begum, Deputy Attorney General,
Ms. Sayeda Sabina Ahmed Molly, Mr. Ali Akbor
Khan, Assistant Attorney Generals.

..... For the Respondents-government.

Heard on: 19.03.2024

Judgment on: 21.03.2024

Present:

Madam Justice Kashefa Hussain

and

Mr. Justice S.M. Maniruzzaman

S.M. Maniruzzaman, J:

In this Rule Nisi issued under Article 102 of the Constitution of the People's Republic of Bangladesh, the respondents have been called upon to show cause as to why the impugned order dated 05.01.2006 passed by the respondent No.1 in Letter No. ৫৯/২০(১৮) এলসি (এডমিন)/২০০২ (পোর্ট-১)/১২৭-২৯ ordering the respondent No.2 for imposing minimum value at US\$ 580.00 per MT of imported frozen "Hilsha Fish" in place of US\$ 300.00 per MT (Annexure-G)

and imposition of the said value of US\$ 580.00 per MT on assessment in the Bill of Entry No. C-652-06 dated 28.03.2006 (Annexure-F) should not be declared to have been made without lawful authority and is of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the Rules, the respondents was directed to release the petitioner's imported consignment under Bill of Entry No. C-652-06 dated 28.03.2006 on payment of customs duties and other taxes on the basis of invoice value at the rate of US\$ 300.00 per MT in cash and on payment of 20% in cash and 80% on furnishing a Bank Guarantee for the amount of difference of duties and taxes in between the invoice value at the rate of US\$ 300.00 per MT and impugned value at the rate of US\$ 580.00 per MT within the specific period stipulated therein.

Facts, necessary for disposal of the Rule, in short, are that the petitioner is a businessman engaged in the business of importation of various home consumption items from abroad and after importation sells the same in the local market. The petitioner has been continuing his business by obtaining necessary permission from the authority of the government.

The petitioner in course of his business decided to import 33.333 Metric Ton of frozen "Hilsha Fish" under H.S. Code No. 0304.20.10 from Myanmar. As per the business practice prevalent for import item in Myanmar, the petitioner made Foreign Demand Draft being No. BTA/ FD0005516 dated 27.03.2006 for US\$ 10,000.00 from Sonali Bank Limited, Teknaf Branch, Cox's Bazar in favour of Myanmar Economic Bank, Maungdaw Branch, Maungdaw, Myanmar under Border Trade Agreement executed between Myanmar and Bangladesh on 18.05.1994.

On receipt of the aforesaid payment order, the supplier made shipment of the goods and issued necessary shipping documents namely Commercial Invoice and Packing List in support of shipment. After arrival of the goods at Land Customs Station, Teknaf, the petitioner through his C&F Agent submitted Bill of Entry No. C-652-06 dated 28.03.2006 along with necessary shipping documents for assessment and releasing the consignment on payment of duty and taxes on the basis of invoice value. The Customs authority, however rejected the invoice value at the rate of US\$ 300.00 Per Metric Ton and assessed the goods at the higher rate of US\$ 580.00 Per Metric Ton being minimum assessable value which was fixed as per recommendation of the Value Fixation Committee, Customs House, Chattogram. The respondent No.1, Commissioner, Customs, Excise and VAT Commissionerate, Chattogram also has fixed the minimum assessable value of the frozen “Hilsha Fish” at the rate of US\$ 580.00 Per Metric Ton vide letter No. ৫ম/২০(১৮)এলসি(এডমিন)/২০০২ (পাট-১)/১২৭-২৯ dated 05.01.2006. Said order came in force on 31.12.2005 and would remain in force till further order (Annexure-G).

It has been further stated that the respondent No.1 by official order dated 19.07.2006 further fixed minimum value of some imported goods including the frozen “Hilsha Fish” at the rate of US\$ 580.00 per Metric Ton giving effect from 28.03.2006. The aforesaid 3 (three) orders were issued by the respondent No.1, fixing the minimum assessable value of frozen “Hilsha Fish” at the rate of US\$ 580.00 per Metric Ton. On the basis of the said minimum value, the respondents Customs Authorities assessed the petitioner’s consignment fixing the value of Tk. 13,34,716.00 instead of invoice value of Tk. 6,70,139.00.

Feeling aggrieved by and dissatisfied with the aforesaid office circulars and subsequent assessment order the petitioner moved this application before this Court and obtained Rule and interim order of direction.

Mr. M.A. Hannan, learned Advocate appearing for the petitioner submits that under the provision of Section 25(3) of the Customs Act, 1969 the Government has authority to fix minimum value by publishing notification in the official gazette but, no gazette notification was made fixing the minimum value of the frozen "Hilsha Fish" in question under Section 25(3) of the said Act. Hence, the fixation of minimum value by the impugned orders are liable to be declared to have been passed without lawful authority. Mr. Hannan further submits that there is no existence of the Value Determination Committee either under the Customs Act, 1969 or the Customs Valuation Rules, 2000 and as such, fixation of the value by the Value Determination Committee for imported frozen "Hilsha Fish" at the rate of US\$ 580.00 Per Metric Ton and on the basis of the said value making assessment of the petitioner's goods in question is fully without jurisdiction. Lastly, Mr. Hannan goes to submit that the transaction value of the consignment at the rate of US\$ 300.00 Per Metric Ton was rejected by the Customs authority and imposed value of US\$ 580.00 Per Metric Ton in violation of the provision of rule 3 read with rules 4,5,6,7,8 and 9 of the Valuation Rules, 2000.

Per contra, Ms. Mahfuza Begum, the learned Deputy Attorney General appearing on behalf of the respondent-government without filing any affidavit-in-opposition submits that the present Rule must fail as being not maintainable, the petitioner had a alternative forum of appeal under the Customs Act, 1969 as well as Customs Valuation Rules, 2000 against the impugned assessment order but without doing so has challenged under the

writ jurisdiction and hence the present Rule is liable to be discharged as being not maintainable.

We have heard learned Advocate appearing for the petitioner, learned Deputy Attorney General appearing for the respondent government and have perused the writ petition along with annexures so appended thereto and consultant of the relevant provision of the law.

Admittedly, the petitioner imported 33.333 Metric Ton frozen “Hilsha Fish” from Myanmar at the rate of US\$ 300.00 Per Metric Ton and total value of the consignment was US\$ 10,000.00. After arrival of the goods at Land Customs Station, Teknaf, Cox’s Bazar, the petitioners of respective writ petitions through their C&F agent submitted Bill of Entry No. C-652-06 dated 28.03.2006 for assessment and releasing of the goods.

It however also appears that the invoice value of the consignment is US\$ 300.00 Per Metric Ton total invoice value is US\$ 10,000.00 equivalent to Tk. 6,98,000/- but, the Customs Authority without accepting the transaction value has fixed the assessable value of Tk. 13,74,716.00 upon giving adjustment of US\$ 1.9333% upon the invoice value. In this regard, the categorical assertion of the learned Advocate for the petitioner is that the Customs Authority has fixed the assessable value as per direction so given by the respondent No. 1 by his office order dated 05.01.2006 which is not permissible under the Customs Act, 1969.

Now the issue requires to be addressed in the instant Rule is that whether the Customs Authority is empowered to fix minimum value of any imported goods without publishing notification in the official gazette.

The said issue has already been resolved one of benches of this Division in the judgment dated 12.12.2018 passed in Writ Petition Nos. 6755 and 6753 both of 2006 (one of us was party of the said judgment) wherein this

Court on threadbare discussions of the issue made the Rule absolute and directed the Customs Authority to finally assess the goods under the Valuation Rules, 2000 which read as follows:

“In the result, both the Rules are made absolute without any order as to cost. The fixation of the minimum value of Frozen “Hilsha Fish” under H.S. Code No. 0303.39.10 at rate of US\$ 580 Per Metric Ton by the official circulars dated 05.01.2006, 17.04.2006 and 19.07.2006 (Annexure-G, G1, I respectively), pursuant thereto the assessment order as appeared in Bill of Entry Nos. C-1500-06 and 1499-06 both dated 13.07.2006 (Annexure-F to the writ petitions) are hereby declared to have been passed without jurisdiction and hence, of no legal effect.

Since, the goods in question have already been released by the Customs authority on the basis of interim order of direction so passed by this Court at the time of issuance of the Rules, in this situation, the concerned respondent is hereby directed to assess finally of the imported goods of the petitioners, covered under Bills of Entry Nos. C-1500-06 and 1499-06 both dated 13.07.2006 fixing the normal value under the provision of the Customs Valuation Rules, 2000 and shall return back the bank guarantee if the amount (if any) that becomes due after such final assessment is paid in cash within 120 (one hundred twenty) day from the date of receipt of the copy of this judgment and order, positively.”

Since the question of law and facts involves in the instant writ petition are similar in nature in the law and fact judgment quoted hereinabove and as such we are inclined to make the Rule absolute relying the judgment dated 12.12.2018.

Accordingly, the Rule is made absolute, however, without any order as to cost.

The impugned fixation of the minimum value of Frozen “Hilsha Fish” under H.S. Code No. 0303.20.10 at rate of US\$ 580 Per Metric Ton by the official circulars dated 05.01.2006 (Annexure-G), pursuant thereto the assessment order as appeared in Bill of Entry No. C-652-06 dated 28.03.2006 (Annexure-F to the writ petition) are hereby declared to have been passed without jurisdiction and hence of no legal effect.

Since, the goods in question have already been released by the Customs authority on the basis of *interim* order of direction so passed by this Court at the time of issuance of the Rule, in this situation, the concerned respondents are hereby directed to assess finally the imported goods of the petitioner, covered under Bill of Entry No. C-652-06 dated 28.03.2006 fixing the normal value under the provision of the Customs Valuation Rules, 2000 and shall return back the bank guarantee if the amount (if any) that becomes due after such final assessment is paid in cash within 30 (thirty) day from the date of receipt of copy of this judgment and order.

Communicate the copy of the judgment and order to the concerned respondents forthwith.

Kashefa Hussain, J:

I agree.