

Customs Act, 1969
Chapter XIXA
Resolution of Cases

Section 196O. Definitions: In this chapter, unless the context otherwise requires,

- (a) “Bench” means a Bench of the Resolution Commission;
- (b) “Case” means any proceeding under this Act or any other Act for levy, assessment and collection of customs duty, pending before an adjudicating authority or any appellate authority or the High Court Division on the date an application under subsection (1) of section 196U is made.

Provided that when any proceeding is referred back in any appeal or revision, as the case may be, by any court or the Appellate Tribunal or any other authority or the High Court Division to the adjudicating authority for a fresh adjudication or decision then such proceeding shall not be deemed to be a case pending within the meaning of this clause;

- (c) “Chairman” means the Chairman of the Resolution Commission;
- (d) “Commissioner (Investigation)” means an officer of the customs appointed as such Commissioner to conduct inquiry or investigation for the purposes of this Chapter;
- (e) “Member” means a Member of the Resolution commission and includes the Chairman and the Vice-Chairman;
- (f) “Resolution Commission” means the Customs and VAT Resolution Commission constituted under section 196P of this Act; and
- (g) “Vice-Chairman” means a Vice-Chairman of the Resolution Commission.

Section 196P. the Customs and VAT Disputes Resolution Commission:

(1) The Government shall, by notification in the Official Gazette, constitute a Commission to be called the Customs and VAT Disputes Resolution Commission for the resolution of cases under this chapter and chapter of the VAT Act, 1991 (Act XXII of 1991)

(2) The Resolution Commission shall consist of a Chairman and as many Vice-Chairmen and other Members as the Government thinks fit and function within the Department of the Government dealing with Customs and VAT matters.

(3) The Chairman and Vice Chairmen and other Members of the Resolution Commission shall be appointed by the Government from amongst persons of integrity and outstanding ability, having special knowledge of, and experience in, the administration of customs and VAT laws.

(4) A member of the judicial service who held the office of District Judge for not less than three years may be appointed a member of the Resolution Commission.

(5) A person who has practiced or has been practicing as an advocate in the High Court Division for a period not less than ten years may be appointed as a member of the Resolution Commission.

Provided that, where a member of the National Board of Revenue is appointed as the Chairman, Vice Chairman or as a Member of the Resolution Commission, he shall cease to be a member of the said Board.

Section 196Q. Jurisdiction and powers of Resolution Commission:

(1) Subject to the other provisions of this Chapter, the jurisdiction, powers and authority of the Resolution Commission may be exercised by Benches thereof.

(2) Subject to the other provisions of this section, a Bench shall be presided over by the Chairman or a Vice Chairman and shall consist of two other Members, one of them shall be from the judicial service or a professional chartered accountant.

(3) The Bench for which the Chairman is the presiding officer shall be the Principal Bench and the other Benches shall be known as additional Benches.

(4) Notwithstanding anything contained in sub-section (1) and sub-section (2), the Chairman may authorize the Vice-Chairman or any Member appointed to one Bench to discharge also the functions of the

Vice-Chairman or, as the case may be, other Member of another Bench.

- (5) The Principal Bench shall sit at Dhaka and the Government shall, by notification in the Official Gazette, establish additional Benches at such places as it considers necessary.
- (6) Notwithstanding anything contained in the foregoing provisions of this section, and subject to any rules that may be made in this behalf, when one of the persons constituting a Bench (whether such person be the presiding officer or other Member of the Bench) is unable to discharge his functions owing to absence, illness or any other cause or in the event of the occurrence of any vacancy either in the office of the presiding officer or in the office of one or the other Members of the Bench, the remaining Members may function as the Bench and if the presiding officer of the Bench is not one of the remaining Members, the senior among the remaining Members shall act as the presiding officer of the Bench as may be authorized by the Chairman :

Provided that if at any stage of the hearing of any such case or matter, it appears to the presiding officer that the case or matter is of such a nature that it ought to be heard by a Bench consisting of three Members, the case or matter may be referred by the presiding officer of such Bench to the Chairman for transfer to such Bench as the Chairman may deem fit.

- (7) Notwithstanding anything contained in the foregoing provisions of this section, the Chairman may, for disposal of any particular case, constitute a special Bench consisting of more than three Members.
- (8) Subject to the other provisions of this Chapter, the special Bench shall sit at a place to be fixed by the Chairman.

Section 196R. Vice-Chairman to act as Chairman or to discharge his functions in certain circumstances:

- (1) In the event of the occurrence of any vacancy in the office of the Chairman by reason of his death, resignation or otherwise, the Vice-Chairman or, as the case may be, such one of the Vice-Chairmen as the

Government may, by notification in the Official Gazette, authorize in this behalf, shall act as the Chairman until the date on which a new Chairman, appointed in accordance with the provisions of this Chapter to fill such vacancy, enters upon his office.

- (2) When the Chairman is unable to discharge his functions owing to absence, illness or any other cause, the Vice-Chairman or, as the case may be, such one of the Vice-Chairmen as the Government may, by notification in the Official Gazette, authorise in this behalf, shall discharge the functions of the Chairman until the date on which the Chairman resumes his duties.

Section 196S. Power of the Chairman to transfer cases from one Bench to another:

On the application of an importer or exporter or the Commissioner of Customs and after giving notice to them, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairman may transfer any case pending before one Bench to another Bench for disposal.

Section 196T. Decision to be by majority:

If the Members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and make a reference to the Chairman who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Resolution Commission and such point or points shall be decided according to the opinion of the majority of the Members of the Resolution Commission who have heard the case, including those who first heard it.

Section 196U. Application for resolution of cases:

- (1) Any importer, exporter or any other person (hereinafter referred to as the applicant in this Chapter) may, in respect of a case relating to him, make an application before adjudication to the Resolution commission, to have the case settled, in such form and in such

manner as may be prescribed by rules, and containing a full and true disclosure of his duty liability, which has not been disclosed before the proper officer, the manner in which such liability has been incurred, the additional amount of customs duty accepted to be payable by him and such other particulars as may be specified by rules including the particulars or such dutiable goods in respect of which he admits short levy on account of misclassification, under-valuation or inapplicability of exemption notification and such application shall be disposed of in the manner hereinafter provided :

Provided that no such application shall be made unless, -

- (a) the applicant has filed a bill of entry, or a shipping bill, in respect of import or export such goods, as the case may be, and in relation to such bill of entry or shipping bill, a show cause notice has been issued to him by the proper officer,
- (b) the additional amount of customs duty accepted by the applicant in his application exceeds Taka Two lakh; and
- (c) the applicant has paid the additional amount of customs duty accepted by him along with interest due under section

Provided further that no application under this sub-section shall be made for the interpretation of the classification of the goods under the Customs Act.

- (2) Where any goods have been seized under section ----, the applicant shall not be entitled to make an application under sub-section (1) before the expiry of ----days from the date of the seizure.
- (3) Persons who have filed appeals to the Commissioner (Appeal) or to the Appellate Tribunal or filed writ petition in the High Court Division under article 102 of the Constitution of Bangladesh, before the commencement of this chapter and, which are pending, may, on withdrawal of such appeals or writ petitions from the appellate authority or Court, as the case may be, be entitled to make an

application to the Resolution Commission to have their case(s) resolved under this chapter:

Provided that the additional amount of customs duty accepted by the applicant exceeds Taka two lakh and he has paid the additional amount of customs duty with interest.

- (4) Upon withdrawal of the appeal or the writ petition, the proceedings in appeal or writ petition, as the case may be, shall, for the purpose of this Chapter, be deemed to be proceedings pending before a Customs Officer.
- (5) Every application shall be accompanied by such fees as may be specified by rules.
- (6) An application made under subsection (1) shall not be allowed to be withdrawn by the applicant.

Section 196V. Procedure on receipt of an application under section 196:

(1) On receipt of an application under subsection (1) of section 196U, the Resolution Commission shall, within seven days from the date of receipt of the application, issue a notice to the applicant to explain in writing as to why the application should be allowed to be proceeded with and after taking into consideration of such explanation, the Resolution Commission shall, within a period of fifteen days from the date of the notice issued, by an order, allow the application to be proceeded with or reject the application, as the case may be and the proceedings before the Resolution Commission shall abate on the date of rejection:

Provided that an application shall not be rejected under this subsection, unless an opportunity has been given to the applicant of being heard.

Provided further that where no notice has been issued or no order has been passed within the aforesaid time by the Resolution Commission, the application shall be deemed to have been allowed to be proceeded with.

- (2) A copy of every order under subsection (1), shall be sent to the applicant and to the Commissioner of Customs having jurisdiction.

- (3) Where an application is allowed or deemed to have been allowed to be proceeded with under subsection (1), the Resolution Commission shall, within seven days from the date of the order passed under subsection (1), call for a report along with the relevant records from the Commissioner of Customs having jurisdiction and the Commissioner shall furnish the report within a period of thirty days of the receipt of the communication from the Resolution Commission:

Provided that where the Commissioner does not furnish the report within the aforesaid thirty days, the Resolution Commission shall proceed with the matter without the report of the Commissioner.

- (4) Where a report of the Commissioner of Customs called for under subsection (3) has been furnished within the time specified in that subsection, the Resolution Commission may, after examination of such report, if it is of the opinion that any further enquiry or investigation in the matter is necessary, direct, for reasons to be recorded in writing, the Commissioner (Investigation) within fifteen days of the receipt of the report to make or cause to be made such further enquiry or investigation and furnish a report within a period of sixty days of the receipt of the communication on the matters covered by the application and any other matters relating to the case:

Provided that where the Commissioner (Investigation) does not furnish the report within the aforesaid time, the Resolution Commission shall proceed to pass an order under subsection (5).

- (5) After examination of the records and the report of the Commissioner of Customs received under subsection (3), and the report, if any, of the Commissioner (Investigation) under subsection (4), and after giving an opportunity to the applicant and to the Commissioner of Customs having jurisdiction to be heard, either in person or through a representative duly authorized in this behalf, and after examining such further evidence as may be placed before it or obtained by it, the Resolution Commission may, in accordance with the provisions of this

Act, pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the Commissioner of Customs and the Commissioner (Investigation) under subsection (3) or subsection (4).

- (6) The order passed under subsection (5) shall provide for the terms of resolution including any demand by way of duty, penalty or interest, the manner in which any sums due under the resolution shall be paid and all other matters to make the resolution effective and in case of rejection the reasons therefor and it shall also provide that the resolution shall be void if it is subsequently found by the Resolution Commission that it was obtained by fraud, or misrepresentation of facts:

Provided that the amount of resolution ordered by the Resolution Commission, shall not be less than the duty liability accepted by the applicant under section 196U.

- (7) Where any duty, interest, fine and penalty payable in pursuance of an order passed under subsection (5) is not paid by the applicant within thirty days of receipt of a copy of the order by him, then, whether or not the Resolution Commission has extended the time for payment of such duty or has allowed payment thereof by installments, the applicant shall be liable to pay simple interest at the rate of ten percent per annum or at such other rate as notified by the Board on the amount remaining unpaid from the date of expiry of aforesaid thirty days and the amount which remains unpaid, shall be recovered along with interest due thereon, as the sums due to the Government by the proper officer having jurisdiction over the applicant in accordance with the provisions of section
- (8) Where a resolution becomes void as provided under subsection (6), the proceedings with respect to the matters covered by the resolution shall be deemed to have been revived from the stage at which the

application was allowed to be proceeded with under subsection (1) and the Customs Officer having jurisdiction may, notwithstanding anything contained in any other provision of this Act, complete such proceedings at any time before the expiry of two years from the date of the receipt of communication that the resolution became void.

Section 196W. Power of Resolution Commission to order provisional attachment to protect revenue:

(1) Where, during the pendency of any proceeding before it, the Resolution Commission is of the opinion that for the purpose of protecting the interests of revenue it is necessary so to do, it may, by order, attach provisionally any property belonging to the applicant in the manner as may be prescribed.

(2) Every provisional attachment made by the Resolution Commission under subsection (1) shall cease to have effect from the date the sums due to the Government for which such attachment is made are paid by the applicant and evidence to that effect is submitted to the Resolution Commission.

Section 196X. Power of the Resolution Commission to reopen completed proceedings:

If the Resolution Commission is of the opinion for reasons to be recorded in writing that, for the proper disposal of the case pending before it, it is necessary or expedient to reopen any proceeding connected with the case but which has been completed under this Act before the application for resolution under section 196U was made, it may, with the concurrence of the applicant, reopen such proceeding and pass such order thereon as it thinks fit, as if the case in relation to which the application for resolution had been made by the applicant under that section covered such proceeding also:

Provided that no proceeding shall be reopened by the Resolution Commission under this section after the expiry of five years from the date of application.

SECTION 196Y. Powers and procedure of the Resolution Commissions:

- (1) In addition to the powers conferred on the Resolution Commission under this Chapter, it shall have all the powers which are vested in a Customs Officer under this Act or the rules made thereunder.
- (2) Where an application made under section 196U has been allowed to be proceeded with under section 196V, the Resolution Commission shall, until an order is passed under subsection (5) of section 196V, have, subject to the provisions of subsection (4) of that section, exclusive jurisdiction to exercise the powers and perform the functions of any Customs Officer under this Act in relation to the case.
- (3) In the absence of any express direction by the Resolution Commission to the contrary, nothing in this Chapter shall affect the operation of the provisions of this Act in so far as they relate to any matters other than those before the Resolution Commission.
- (4) The Resolution Commission shall, subject to the provisions of this Chapter, have power to regulate its own procedure and the procedure of Benches thereof in all matters arising out of the exercise of its powers, or of the discharge of its functions, including the places at which the Benches shall hold their sittings.

Section 196Z. Inspection, etc., of reports:

No person shall be entitled to inspect or obtain copy of any reports made by any Customs Officer to the Resolution Commission; but the Resolution Commission may, in its discretion, furnish copy thereof to any such person on an application made to it in this behalf and on payment of such fee as may be prescribed by rules:

Provided that for the purpose of enabling any person whose case is under consideration to rebut any evidence brought on record against him in any such report, the Resolution Commission shall, on an application made in this behalf, and on payment by such person of such fee as may be prescribed by rules, furnish him with a certified copy of any such report or part thereof relevant for the purpose.

Section 196ZA. Power of Resolution Commission to grant immunity from prosecution and penalty:

(1) The Resolution Commission may, if it is satisfied that any person who made the application for Resolution under section 196U has cooperated with the Resolution Commission in the proceedings before it and has made a full and true disclosure of his duty liability, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act or under the Penal Code or under any other Act for the time being in force and also either wholly or in part the imposition of any penalty, fine and interest under this Act, with respect to the case covered by the resolution:

Provided that no such immunity shall be granted by the Resolution Commission in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of the application under section 196U.

(2) An immunity granted to a person under subsection (1) shall stand withdrawn if such person fails to pay any sum specified in the order of resolution passed under subsection (5) of section 196V within the time specified in such order or within such further time as may be allowed by the Resolution Commission, or fails to comply with any other condition subject to which the immunity was granted and thereupon the provisions of this Act shall apply as if such immunity had not been granted.

(3) An immunity granted to a person under subsection (1) may, at any time, be withdrawn by the Resolution Commission, if it is satisfied that such person had, in the course of the resolution proceedings, concealed any particular material or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the resolution and shall also become liable to the imposition of any penalty under this

Act to which such person would have been liable, had no such immunity been granted.

Section 196ZB. Power of Resolution Commission to send a case back to the Customs Officer:

- (1) The Resolution Commission may, if it is of opinion that any person who made an application for resolution under section 196U has not cooperated with the Resolution Commission in the proceedings before it, send the case back to the appropriate Customs Officer or the Appellate Authority, as the case may be, having jurisdiction who shall thereupon dispose of the case in accordance with the provisions of this Act as if no application under section 196U had been made.
- (2) For the purpose of subsection (1), the Customs Officer shall be entitled to use all the materials and other information produced by the applicant before the Resolution Commission or the results of the inquiry held or evidence recorded by the Resolution Commission in the course of the proceedings before it as if such materials, information, inquiry and evidence had been produced before such Customs Officer or held or recorded by him in the course of the proceedings before him.
- (3) For the purposes of counting of the time so spent and/or the interest accrued in any case under any section of this Chapter, the period commencing from the date of the application made before the Resolution Commission under section 196U and ending with the date of receipt by the Customs Officer or the Appellate Authority of the order of the Resolution Commission sending the case back to the Customs Officer or the Appellate Authority, as the case may be, shall be excluded.

Section 196ZC. Order of Resolution to be conclusive: Every order of resolution passed under subsection (5) of section 196V shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided in this Chapter, be reopened in any proceeding under this Act or under any other law for the time being in force.

Section 196ZD. Recovery of sums due under order of resolution: Any sum specified in an order of resolution passed under subsection (5) of section 196V may, subject to such conditions, if any, as may be specified therein be recovered, and any penalty for default in making payment of such sum may be imposed and recovered as sums due to the Government in accordance with the provisions under section 202 by the Customs Officer having jurisdiction over the person who made the application for resolution under section 196U.

Section 196ZE. Bar on subsequent application for resolution in certain cases:
Where,

(i) an order of resolution passed under subsection (5) of section 196V provides for imposition of a penalty on the person who made the application under section 196U for resolution, on the ground of concealment of particulars of his duty liability; or

(ii) after the passing of an order of resolution under the said subsection (5) of section 196V in relation to a case, such person is convicted of any offence under this Act in relation to that case; or

(iii) the case of such person is sent back by the Resolution Commission to the Customs Officer having jurisdiction under section 196ZB;

then, he shall not be entitled to apply for resolution under section 196U in relation to any other matter.

Section 196ZF. Proceedings before Resolution Commission to be judicial proceedings: Any proceedings under this Chapter before the Resolution Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Penal Code (Act 45 of 1860).