

Chapter XVIII A

Alternative Dispute Resolution

192 A. Alternative Dispute Resolution.- Notwithstanding anything contained in this Act regarding adjudication or disposal of any dispute as defined and mentioned in section 192C which may or may not be pending with concerned customs authority or customs and VAT appellate authorities, any importer or exporter or Pre-shipment Inspection Agency concerned in such disputes may apply to the concerned authorities for the resolution of the dispute through the Alternative Dispute Resolution (hereinafter ADR) process in the manner as laid down in the following sections and rules made hereunder and resort to ADR must precede the completion of the procedures under adjudication or appeal provisions of the Act.

192 B. Commencement.-The ADR process as mentioned in this chapter shall come into force on such date and in such custom house or Customs-station or Commissionerate as the Board may determined by notification in the official Gazette.

192C. Definition and Scope of Disputes for ADR.- (1) For the purposes of this chapter, "dispute" means any case or proceeding pending before any customs authority or any court including Supreme Court of Bangladesh in respect of the levy, assessment, classification collection or refund of duty and taxes and/or, for imposition of fine and/or, penalty, it also includes an assessment objected to in writing to the concerned commissioner by the concerned importer in relation to the determination of customs valuation of that assessment.

(2) The following disputes may be dealt with ADR,-

(a) Subject to the provision of section 25 sub-section (1),(2),(4),(5) and(6) customs valuation related disputes, falling under the pre- shipment inspection system or otherwise, arising out of customs assessment and disputes pending with any customs or appellate authority or before any court including the Supreme Court of Bangladesh shall fall under this category; and

(b) Any other disputes, arising out of submission of Bill of Entry or Bill of Export in case of import or export, as the case may be, or issuance of Demand Notice or show cause Notice in relation to any Bill of Entry or Bill of Export by the concerned customs authorities and pending with any customs or Appellate authority or court including the Supreme Court of Bangladesh falling under this Act, excluding the following-

(i) fraud or criminal cases and disputes;

(ii) disputes involving seizure and confiscation of prohibited, restricted, smuggled goods;

(iii) disputes involving allegations of money laundering;

[]

(v) disputes on alleged evasion of duties and taxes through the resort to misdeclaration of [] name and quantity of goods, fraud of documents, violation of import and export policy or violations of customs bonded warehouse related licensing and/or bond related conditions; and

(C) penalty related pending disputes of pre-shipment inspection agency.

192D. Type of ADR Mechanism and Duties of the Parties Concerned. –

(1) ADR mechanism provided in this chapter is based on facilitation and a facilitator, appointed as per provisions of this chapter will act as a neutral between the disputing parties.

(2) For ADR under this chapter the selection or appointment, fees, duties and responsibilities of the facilitator will be as provided in the rules made for this purpose.

(3) The duties and responsibilities of the applicant importer or exporter [or Pre-shipment Inspection Agency] for ADR will be as provided in the rules.

(4) Selection of officer for representing customs authorities in the ADR negotiation and his duties and responsibilities will be as provided in the rules.

192 E. Application for ADR.- For seeking Alternative Resolution of a dispute, referred to in section 192C, the concerned importer, or exporter [or Pre-shipment Inspection Agency], as the case may be, shall apply to the following authorities:

(a) for a dispute which was created and not already been adjudicated or settled before the commencement of the ADR System, the application is to be submitted in such form and manner as may be prescribed in the rules, to the concerned Customs Commissioner or Adjudicating officer or Appellate authorities, as the case may be;

(b) for a dispute which arises after the commencement of the ADR System, the application is to be made before seeking or trying for settlement of the said dispute under sections 179, 193 or 196 as the case may be, of this Act, to the concerned customs commissioner or Adjudicating officer, as the case may be, in the manner prescribed in the rules, within ten working days from the date of issue of the concerned show cause notice or assessment order, or demand notice, as the case may be.

(c) for an application on a matter suitable for ADR which is pending before the Supreme Court of Bangladesh, the concerned petitioner, if he so desires, may apply to the concerned Customs Commissioner for Alternative Resolution, after obtaining permission from the said court, and upon granting of such permission by the court the matter shall remain in abeyance for the duration of the ADR process:

Provided that, if the court disposes any such Writ Petition with directions to any of the above authorities to settle the matter through ADR, therefore the authority shall settle the case accordingly, if not otherwise barred by law.

192 F. Processing and Disposal of Applications for ADR.- Applications received from the aggrieved or disputant importer or exporter [or Pre-shipment Inspection Agency] for ADR within this chapter, is to be processed and disposed of, according to the rules.

192 G. Duration of Negotiation and Resolution.- (1) Whether pending or new dispute if the application submitted for ADR relates to the same Customs House or Station, all formalities mentioned in this chapter including the negotiation and agreement or disagreement or resolution, as the case may be, of the dispute, are to be completed in a period of maximum thirty working days from the date of submission of the application.

(2) For a pending dispute for which application is submitted to the Commissioner Appeal or Customs and VAT Appellate Tribunal or any Court, the duration for the above purposes will be sixty working days from the date of submission of the application.

192H. Decision of the ADR.-

(1) A dispute may be resolved by an [agreement, including commitment to pay the duty and taxes or refund the same, as the case may be, in the agreed time limit], and may be concluded either wholly or in part where both the parties to the dispute accept the points for determination of the facts or laws applicable to the facts in the dispute, and agree on a settlement.

(2) Where an agreement is concluded, either wholly or in part, between the applicant importer or exporter [or Pre-shipment Inspection Agency] and the customs commissioner's representative, the facilitator shall record, in writing, the details of the agreement in the manner as prescribed by rules and shall communicate the same to the applicant, the concerned commissioner and the Board, within seven working days of the conclusion of the thirty or sixty days period, as the case may be.

(3) The recording of every such agreement shall provide for the terms of the agreement including any duty and tax payable or subject to refund, and such other matters as the facilitator may think fit to make the agreement effective.

(4) The agreement shall be signed by the applicant importer or exporter, commissioner's representative and the facilitator.

(5) The agreement shall be void if it is subsequently found that it has been concluded by fraud or misrepresentation of facts.

(6) Where no agreement, whether wholly or in part, is reached, the facilitator shall communicate about such unsuccessful dispute resolution in writing to the applicant, the concerned commissioner and the Board within such period and in such manner as may be prescribed by rules.

(7) Upon an agreement being reached and communicated as provided herein, the usual process of recovery of dues, if any, payable to the Government or refund of money to the importer or exporter [or Pre-shipment Inspection Agency] or any other necessary action shall proceed in accordance with the normally applicable provisions of the applicable laws.

192 I. Effects of Agreement or Resolution .- (1) Notwithstanding anything contained in any other provisions of this Act where an agreement is concluded for ADR under this chapter, it shall be binding for both the parties and cannot be challenged in any appellate forum or court either by the applicant or by the customs authorities.

(2) Every order of agreement, passed under this chapter 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.

(3) If the dues, payable to either party as per agreement, are not paid and if the same including any penalty or interest for default in making payment of such sum, if not paid within one year, such sum may either be recovered or refunded with annually 10 percent interest, or as sums due to the Government under section 202 or the applicant under section 33 of this Act.

192 J. Limitation for Appeal where Agreement is not concluded.-

(1) Notwithstanding any thing contained in any other provisions of this Act, where an agreement is not concluded fully or in part, the concerned importer or exporter [or Pre-shipment Inspection Agency] may, after completion of adjudication process, if pending, prefer an appeal to the respective appellate authorities on the unresolved issue.

(2) Where a dispute under appeal, an application for ADR is made but agreement could not have been concluded within the period mentioned in section 192G or negotiation ended in disagreement, the ADR process shall automatically stand terminated and the original appeal shall be deemed to have been revived before the concerned appellate authority including any court from the day immediately after the date the ADR process stands terminated and provisions contained in respective sections of the respective law shall, so far as may be, apply accordingly.

(3) In computing the period of limitations for filing appeal, the time elapsed between the filing of the application and the communication of the decision or order of the ADR by the facilitators to all the parties shall be excluded.

192 K. Reservation of Rights.- No person shall be issued a written order or notice, to attend the court as a witness to give evidence and no person shall be involved in the ADR proceedings in whatever capacity to compel disclosure of any representation made or document tendered in the course of the proceedings or the facilitator of the ADR proceedings to compel disclosure of any representation made or document tendered in the course of proceedings.