

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Obaidul Hassan
-Chief Justice

Mr. Justice Borhanuddin
Mr. Justice M. Enayetur Rahim
Mr. Justice Md. Ashfaqu Islam
Mr. Justice Md. Abu Zafor Siddique

CIVIL APPEAL NO.155 OF 2015.

(From the judgment and order dated 09.02.2014 and 10.02.2014 passed by the High Court Division in Writ Petition No.4715 of 2013).

Deputy General Manager, Janata Bank :Appellant.
Limited, Foreign Exchange Corporate
Branch, Regional Office, Zone-A, CDA
Annex Building, Chittagong.

-Versus-

Sampriti Chakma, Proprietor of M/S :Respondents.
Sampriti Enterprise, represented by its
Constituted Attorney Abdullah-Al Mamun
and others.

For the Appellant. : Mr. S.M. Atikur Rahman, Advocate
instructed by Mrs. Nahid Sultana,
Advocate-on-Record.

For Respondent No.1. : Mr. Shamim Khaled Ahmed, Senior
Advocate instructed by Mr. Zainul
Abedin, Advocate-on-Record.

For Respondent Nos.2-11. : Not represented.

Date of Hearing. : The 16th & 17th January, 2024.

Date of Judgment. : The 17th January, 2024.

J U D G M E N T

Borhanuddin,J: This civil appeal by leave is directed against the judgment and order dated 09.02.2014 and 10.02.2014 passed by the High Court Division in Writ Petition No. 4715 of 2013 making the Rule absolute.

Facts relevant are that respondent no.1 herein as petitioner preferred the writ petition invoking Article 102 of the Constitution before the High Court Division praying for a declaration that charging commission on bank guarantee against 100% cash margin in violation of Circular Nos.1750 and 3797 dated 23.05.1992 and 02.07.2005 respectively is illegal and without lawful authority and also seeking direction upon the writ-respondent no.11, Branch Manager, Janata Bank Limited, Foreign Exchange Division, Chittagong, to stop charging commission on bank guarantee with 100% cash margin, contending interalia, that the writ-petitioner Sampriti Chakma, an indigenous hillman from the Hill District-Khagrachari, participated in the tender floated by the Director of Food for supply boiled and non-boiled rice and being the lowest bidder obtained the work order; After supplying the rice in phases he submitted the bill against each consignment of supply; Being indigenous hillman, he was certified to get deduction of advance income tax but the Director of Food did not deduct; Then the writ-petitioner approached the National Board of Revenue (hereinafter referred to as 'the NBR') which

allowed deduction under Rule 16 of the Income Tax Rules, 1984 but subsequently, the NBR vide letter dated 29.12.1994 stated that although the indigenous hillman is exempted from payment of advance income tax but the business enterprise of the writ-petitioner was not an indigenous entity and as such the exemption under Rule 16 of the Income Tax Rules, 1984 is not applicable; Feeling aggrieved by the said letter, the writ-petitioner preferred two Writ Petition being Nos.207 of 1995 and 809 of 1995 and obtained Rule Nisi separately; In Writ Petition No.207 of 1995 the High Court Division passed an ad-interim order directing the writ-petitioner to furnish bank guarantee against the amount of advance income tax; Pursuant to said ad-interim order, the writ-petitioner deposited FDRs and made lien of those FDRs infavour of the writ-respondent no.11 and thereby furnished as many as 25(twenty five) bank guarantees issued by the writ-respondent no.10, Janata Bank Limited, Chittagong, infavour of the writ-respondent no.4, Commissioner of Taxes, Taxes Zone-3, Agrabad, Chittagong and all the bank guarantees are lying with the writ-respondent no.4.

Upon hearing the parties, the High Court Division discharged those Rules.

Having aggrieved, the writ-petitioner preferred two unsuccessful Civil Petition for Leave to Appeal being Nos.1445 of 1998 and 1446 of 1998 in this Division.

After final assessment done by the concerned Deputy Commissioner of Taxes (hereinafter referred to as 'the DCT') the writ-petitioner paid all the taxes and obtained 'Tax Liability Certificate' up to the assessment year 2000-2001 from the DCT concerned; Despite payment of the income tax as per assessment order made by the DCT concerned, the Director of Food in an attempt to collect advance income tax asked the Janata Bank Limited to allow encashment of the bank guarantees infavour of the Food Department; Challenging the said attempt, the writ-petitioner filed Writ Petition No.3429 of 2013 for releasing the bank guarantees; The writ-petitioner filed instant Writ Petition No.4715 of 2013 for a declaration that the charging commission on bank guarantee for which FDRs are deposited and made lien infavour of the writ-respondent no.11, are tentamounts to 100% cash margin

against the bank guarantees and vide Circular No.1750 dated 23.05.1992, the service charge is Tk.200/- only as the bank guarantees are secured by 100% cash margin and there is no other condition to charge commission on such bank guarantees; But the writ-respondent no.11 claimed commission at the rate of 0.50% on the entire amount of the bank guarantee in violation of said circular which compelled the writ-petitioner to serve demand justice notice upon the writ-respondents but without any response; Finding no other efficacious remedy, the writ-petitioner preferred instant writ petition for a declaration that charging commission at the rate of 0.50% on the entire amount of bank guarantees is illegal and without lawful authority.

Upon hearing the writ-petitioner, a Division Bench of the High Court Division issued a Rule Nisi upon the writ-respondents to show cause.

Writ-respondent nos.1 and 2 contested the Rule by filing an affidavit-in-opposition, contending inter alia, that the Taxes Department claimed that the writ-petitioner's business enterprise not being indigenous

hillman entity, the exemption under Rule 16 of the Income Tax Rules, 1984 is not applicable to the enterprise owned by the writ-petitioner; The writ-petitioner being lowest bidder obtained work order for supplying boiled and non-boiled rice to the Director of Food and accordingly, supplied the rice in phases and submitted bill against each consignment of supply; The writ-petitioner tried to avoid deduction of advance income tax under Section 52 of the Income Tax Ordinance, 1984 read with Rule 16 of the Income Tax Rules, 1984 and approached the NBR for exemption of advance income tax which although erroneously exempted earlier but later on the NBR cancelled the said order; The writ-petitioner submitted income tax return under normal procedure for the assessment year 1995-1996 and 1996-1997 disclosing his business income and the Assessing Officer assessed total income of the writ-petitioner on the basis of the return submitted and the writ-petitioner paid the tax liability accordingly upon which the taxes department issued clearance certificate for the assessment years 1995-1996 up to 2000-2001; The Director of Food passed the order for forfeiting the deposited bank guarantees and

directing the bank concerned to encash the same for collecting advance income tax justly and legally.

The writ-respondent no.10, Janata Bank Limited, submitted affidavit-in-opposition stating that the writ petitioner and the guarantors are the clients of the Janata Bank; The writ-petitioner imported rice taking help from Janata Bank under the quota of Chittagong Hill Trucks; The customs authority and the food department claimed 3% Advance Income Tax (AIT) at the time of releasing the imported goods; The writ-petitioner earlier filed Writ Petition Nos.207 of 1995 and 809 of 1995 praying for exemption from the imposition of advance income tax; The High Court Division directed the writ-petitioner to furnish bank guarantees instead of cash to cover the amount of advance income tax; The writ-petitioner was unable to provide any cash margin or collateral security and only deposited FDR's infavour of the writ-respondent no.10 and made lien of those FDR's to the bank; Those FDR's since issued from the respondent no.10 bank, the writ-petitioner has been receiving interest from those FDRs; The bank has adjusted their commission from the interest of the FDR's to be paid to the writ-

petitioner; The rate of commission of the bank guarantee is quarterly 0.50% and respondent no.10, bank deducted the same pursuant to the Circular No.3797 and the terms and conditions as stipulated in the sanction letter, where the rate of commission is fixed; The writ-petitioner is lawfully bound to pay such commission as the writ-petitioner accepted the rate of commission at the time of furnishing bank guarantees; Therefore, the bank is entitle to get commission on the bank guarantees pursuant to the circular and sanction letter and the Rule is liable to be discharged.

After contested hearing, a Division Bench of the High Court Division made the Rule absolute by the impugned judgment and order.

Having aggrieved, the writ-respondent no.10 as petitioner preferred civil petition for leave to appeal before this Division invoking Article 103 of the Constitution and obtained leave granting order.

Consequently, instant civil appeal arose.

Mr. S. M. Atikur Rahman, learned Advocate appearing for the appellant submits that the High Court Division

erred in law in not holding that the bank has realized the commission of the bank guarantee at the rate of 0.50% pursuant to the Circular No.3797 as well as the terms and conditions as stipulated in the sanction letter and as such the findings of the High Court Division regarding deduction of commission on the FDR's is liable to be set-aside. He further submits that the Circular No.1750 dated 23.05.1992 re-affirming the Circular No.1667 dated 04.12.1990 categorically provided fixed commission of Tk.200/- when the bank guarantee is secured by 100% cash margin and in all other cases deduction of commission at the rate of 0.50% and as such the impugned judgment and order regarding imposition of commission is liable to be set-aside.

On the other hand, Mr. Shamim Khaled Ahmed, learned advocate appearing for the respondent no.1 in support of the impugned judgment and order submits that pursuant to the ad-interim order passed in Writ Petition No.207 of 1995 the writ-petitioner deposited FDR's and made lien of those FDR's as security for the purpose of obtaining bank guarantee and those FDR's are equivalent to cash margin inasmuch as in default of payment for the secured amount,

the bank can encash the said FDR's at any time. He prays to dismiss the appeal.

Heard learned Advocate for the respective parties. Perused the impugned judgment and order alongwith papers/documents contained in the paper book.

From the record it transpires that as per the ad-interim order passed by the High Court Division in the writ Petition No.207 of 1995, the writ petitioner deposited FDR's and made lien of those FDR's infavour of the Janata bank as security of bank guarantees and the Janata bank after complying necessary formalities issued sanction letter infavour of writ petitioner for providing bank guarantees vide letter dated 15.07.1995, which is as under:

জনতা ব্যাংক
আঞ্চলিক কার্যালয়, জোন-এ
চট্টগ্রাম

সূত্রঃ নং-----৩৩৭/১৬/৯৫

তারিখঃ ১৫/০৭/৯৫ইং

ব্যবস্থাপক,
জনতা ব্যাংক,
বৈদেশিক বিনিময় শাখা,
চট্টগ্রাম।

বিষয়ঃ- মেসার্স সম্প্রীতি এন্টারপ্রাইজ এর পক্ষে পরিচালক (সংগ্রহ) খাদ্য অধিদপ্তর, ঢাকা এর অনুকূলে ১,৫৬,১২,৫০০/- (এক কোটি ছাপ্পান্ন লক্ষ বার হাজার পাঁচশত) টাকার ব্যাংক গ্যারান্টি ইস্যুর ঘটনোত্তর অনুমোদন প্রদান প্রসঙ্গে।

উপরোক্ত বিষয়ে আপনাদের ২৬-৬-৯৫ইং তারিখের আজচৌ/বৈবি/বিজি-২৩/৯৫ নং পত্রের আবেদন এবং সুপারিশের প্রেক্ষিতে মেসার্স সম্প্রীতি এন্টার প্রাইজ এর পক্ষে পরিচালক (সংগ্রহ) খাদ্য অধিদপ্তর, ঢাকা এর অনুকূলে নিম্নলিখিত শর্ত মোতাবেক উল্লেখিত ১,৫৬,১২,৫০০/- (এক কোটি ছাপ্পান্ন লক্ষ বার হাজার পাঁচশত) টাকার গ্যারান্টি ----- ইস্যুর ঘটনোত্তর অনুমোদন প্রদান করা হইলঃ-

| | |
|------------------------|--|
| ১। মক্কেলের নাম | ঃ- মেসার্স সম্প্রীতি এন্টার প্রাইজ |
| ২। বিনিফিসিয়ারীর নাম | ঃ- পরিচালক (সংগ্রহ) খাদ্য অধিদপ্তর, ঢাকা |
| ৩। গ্যারান্টির প্রকৃতি | ঃ- ব্যাংক গ্যারান্টি |
| ৪। গ্যারান্টির মূল্য | ঃ- ১, ৫৬, ১২, ৫০০/- (এক কোটি ছাপান্ন লক্ষ বার হাজার পাঁচশত) টাকা |
| ৫। গ্যারান্টির মেয়াদ | ঃ- উপযুক্ত |
| ৬। কমিশন | ঃ- ত্রৈমাসিক ০.৫০% হারে |
| ৭। মার্জিন | ঃ- ১০০% (স্থায়ী আমানত আকারে) |
| ৮। বিশেষ শর্ত | ঃ- সমুদয় সুদসহ স্থায়ী আমানতটি ব্যাংকের নিকট লিয়েন থাকিবে। |

আপনার বিশ্বস্ত

স্বাক্ষর অস্পষ্ট
(মাহবুবুল আলম)

On perusal of the referred sanction letter it appears that the Janata bank issued said letter infavour of the business enterprise of the writ petitioner wherein it was mentioned that the commission of the bank guarantee is quarterly 0.50% when secured by 100% margin.

The sanction letter dated 15.07.1995 was issued pursuant to the Circular No.1750 dated 23.05.1992. For proper appraisal, said circular is reproduced below:

জনতা ব্যাংক
প্রধান কার্যালয়
১১০, মতিঝিল বানিজ্যিক এলাকা
ঢাকা।

ফোন -----
২৪০০২৭-৩০
২৪০০৪২-৪৫

গ্রাম 'জনতা ব্যাংক'
পি ও বক্স নং-৪৬৮

তথ্য বিজ্ঞপ্তি নং-১৭৫০

জেনারেল ব্যাংকিং ডিভিশন

সকল উপ-মহাব্যবস্থাপক/সহকারী মহাব্যবস্থাপক
বিভাগীয় কার্যালয়/এরিয়া অফিস/আঞ্চলিক কার্যালয়/
কর্পোরেট শাখাসমূহ/স্থানীয় কার্যালয়,
সকল শাখা ব্যবস্থাপক,
জনতা ব্যাংক,
বাংলাদেশ।

তারিখ: ০৯-০২-৯৯ বাং
২৩-০৫-৯২ ইং

বিষয়: অভ্যন্তরীণ লেনদেনের ক্ষেত্রে ব্যাংক চার্জ ও কমিশনের হার পুনঃ নির্ধারণ।

মহোদয়,

উপরোক্ত বিষয়ে ০৪/১২/৯০ ইং তারিখে ১৬৬৭ নম্বর তথ্য বিজ্ঞপ্তির প্রতি সকলের দৃষ্টি আকর্ষণ করা যাইতেছে।

বাংলাদেশ ব্যাংকের ১২-০৩-৯০ইং তারিখের ৩ নম্বর বিসিডি সার্কুলারের নির্দেশ মোতাবেক কর্তৃপক্ষের অনুমোদনক্রমে ব্যাংকসমূহের নতুন পরিবর্তিত হারের তালিকা এতৎসঙ্গে সংযুক্ত করা হইল। ইহা অনতিবিলম্বে কার্যকরী হইবে। প্রসঙ্গত উল্লেখ্য যে, একই ধরনের সেবার জন্য গ্রাহকদের নিকট হইতে একই হারে চার্জ আদায় করিতে হইবে এবং কোন প্রকার বৈষম্য করা চলিবে না। নতুন প্রবর্তিত চার্জসমূহের তালিকা নোটিশ বোর্ড কিংবা শাখার গুরুত্বপূর্ণ স্থানে স্থাপনপূর্বক যথাযথ প্রচারের ব্যবস্থা করিতে হইবে। অনুগ্রহপূর্বক প্রাপ্তি স্বীকার করিবেন।

আপনার বিশ্বস্ত

(মোঃ বদরুদ্দোজা)
উপ-মহাব্যবস্থাপক।

(রফিকুল করিম চৌধুরী)
মহাব্যবস্থাপক।

অনুলিপি:

সকল উপ-মহাব্যবস্থাপক,
সকল সহকারী মহাব্যবস্থাপক,
সকল বিভাগীয়/শাখা প্রধান, প্রধান কার্যালয়,
সকল মহাব্যবস্থাপকের ব্যক্তিগত সহকারীবৃন্দ,
উপ-ব্যবস্থাপনা পরিচালক সাহেবের একান্ত সচিব,
ব্যবস্থাপনা পরিচালক সাহেবের একান্ত সচিব।

Again, the relevant portion of the chart attached with the Circular No.1750 dated 23.05.1992 which dealt with the rate of commission of the bank guarantee runs as follows:

গ্রাহককে দেওয়া বিভিন্ন সেবার জন্য ব্যাংক কর্তৃক আদায়যোগ্য চার্জ সমূহ

| ক্রমিক নং | কাজের ধরণ | আদায়যোগ্য চার্জ এর প্রকৃতি | নতুন পরিবর্তিত হার/ আদায়যোগ্য হার |
|--------------|----------------------------|--------------------------------|---|
| ৮ | গ্যারান্টি (অভ্যন্তরীণ) | কমিশন | প্রতি তিন মাস অথবা উহার ভগ্নাংশের জন্য ৮ ০.৭৫% হারে। সর্বনিম্ন ৮ ২০০/-, ১০০% গ্যারান্টি মার্জিন প্রদান করিলে শুধুমাত্র সার্ভিস চার্জ ৮ ২০০/- আদায়যোগ্য। |

From the plain reading of Circular No.1750 dated 23.05.1992 alongwith the chart attached with said circular it appears that when bank guarantee issued by the concerned bank, the commission of said bank guarantee shall be 0.75% of the guaranteed amount if the security of said guarantee is other than cash margin and in case

of 100% cash margin the commission of said guarantee is Tk.200/- as service charge.

Now the question which requires to be addressed is that whether those FDRs deposited by the writ petitioner infavour of the Janata Bank as a security of bank guarantee be treated as 100% cash margin or not.

Bank guarantee means a comfort, which is being given by issuing bank, to a party (beneficiary in whose favour the guarantee is issued) of losses or damages if the client (on whose behalf the guarantee is being used) fails to complete or comfort to the terms of agreement. By issuing a bank guarantee, the issuing bank is assuring payment of the certain amount of money (as specified in the bank guarantee) to the beneficiary in case of non-performance of a certain contract according to the terms and conditions contained in the same. Issuance of bank guarantee is a secured transaction as the client needs to mortgage the properties or cash in the form of FDR for issuing of same. The bank will not give guarantee without securing itself. Again, when the borrower provides equal amount of bank guarantee in the form of fixed

deposit/call deposit, it is known as 100% cash margin since the fixed deposit can be closed immediately and the default if any can be set right without any delay and the bank need not provide any fund based loan for this purpose and for this characteristics the FDR must be treated as equivalent to 100% cash margin.

(Emphasis supplied by us.)

It appears from the record that the entire twenty five bank guarantees have been secured by the lien of those FDRs. Though Circular No.1750 dated 23.05.1992, which re-affirmed the Circular No.1667 dated 04.12.1990, stated that Janata Bank can issue a bank guarantee on the basis of commission @ প্রতি তিনমাস অথবা উহার ভগ্নাংশের জন্য ৮ ০.৭৫% হারে। সর্বনিম্ন ৮ ২০০/-, ১০০% গ্যারান্টি মার্জিন প্রদান করিলে শুধুমাত্র সার্ভিস চার্জ ৮ ২০০/- আদায়যোগ্য but the rate of commission was reduced at 0.50% as incorporated in the sanction letter. In the instant case, since entire twenty five bank guarantees have been secured by the FDRs as such the bank guarantees are secured by 100% cash margin. Again, since the bank guarantees are secured by the lien of those FDRs which can be encashed at any time as such the FDRs are equivalent to cash margin. So, the Janata bank is entitled to get Tk.200/- as service charge as per

the chart attached with the Circular No.1750 dated 23.05.1992.

From the facts and circumstances of the case and the discussions made above, we are of the view that the letter issued by the writ respondent no.10 claiming deduction of commission @ 0.50% on the entire secured amount cannot be treated as lawful deduction as such the judgment and orders dated 09.02.2014 and 10.02.2014 passed by the High Court Division in Writ Petition No.4715 of 2013 do not call for any interference by this Division.

In the result, the civil appeal is dismissed.

The judgment and order passed by the High Court Division is maintained.

However, no order as to costs.

C.J.

J.

J.

J.

J.