

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

WRIT PETITION NO. 13511 of 2018

IN THE MATTER OF:

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

And

IN THE MATTER OF:

ICB Islamic Bank Limited

..... Petitioner

-vs-

***Commissioner (current charge), Customs,
Excise and VAT Commissionerate, Dhaka
(South), Dhaka and others.***

.....Respondents.

And

Mr. A.R.M. Qayyum Khan, Advocate

..... For the Petitioner.

Mr. Samarendra Nath Biswas, D.A.G. with

Mr. Md. Abul Kalam Khan (Daud), A.A.G. and

Mr. Md. Modersher Ali Khan (Dipu), A.A.G.

.... For the Respondents-government.

***Heard on:04.06.2024 and
judgment on:05.06.2024***

Present:

Mrs. Justice Farah Mahbub.

And

Mr. Justice Muhammad Mahbub Ul Islam

Farah Mahbub, 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 demand as contained in Nothi No.8/মূসক/৮(২৯৪) কর ফাঁকি/বিচার/১৭ dated 16.08.

2018 issued under the signature of the respondent No.1 so far as it relates to the period from January, 2011 to December, 2012 as time barred under Section 55(3) of the Value Added Tax Act, 1991, hence without jurisdiction (Annexure-B), should not be declared to have been passed without lawful authority and hence, of no legal effect.

At the time of issuance of the Rule the operation of the impugned demand dated 16.08.2018 (Annexure-B) so far as it relates to the period from January, 2011 to December, 2012, was stayed by this Court for a prescribed period.

In view of the statements so made in the writ petition Mr. A.R.M. Qayyum Khan, the learned Advocate appearing for the petitioner submits that the respondent No.1 issued the impugned final demand dated 16.08.2018 under Section 55(3) of the VAT Act, 1991 (Annexure-B). In this regard, he goes to contend that part of the said demand from January, 2011 to December, 2012 is time barred under Section 55(1) of the VAT Act, 1991. Hence, making final demand covering the said respective period is wholly without jurisdiction.

In this regard, upon producing a photocopy of the order dated 17.07.2023 passed by the Tribunal concerned in Appeal Case No.(VAT) 05 of 2019 he submits that said appeal so has been preferred by the petitioner for the remaining part of the demanded unpaid VAT, which has been disposed of through ADR between the respective parties vide order dated 23.11.2022 and that the respective demanded amount of VAT has already been paid off by the petitioner vide the respective treasury challan.

Mr. Md. Abul Kalam Khan (Daud), the learned Assistant Attorney General appearing is present on behalf of the respondents-government.

The petitioner has challenged the impugned final demand dated 16.08.2018 (Annexure-B) issued by the respondent concerned under Section 55(3) of VAT Act, 1991 mainly on the ground that part of the said demand is time barred from January, 2011 to December, 2012.

Vide Section 55(1) of VAT Act 1991 the authority concerned is empowered to make demand for the evaded or less paid VAT within 5(five) years. Since the impugned demand so made for the respective period from January, 2011 to December, 2012 is barred by limitation; hence, making final demand covering the said period is without jurisdiction.

In view of the above, the Rule is made absolute.

The impugned demand as contained in Nothi No.8/মূসক/৮(২৯৪) কর ফাঁকি/বিচার/১৭ dated 16.08.2018 issued under the signature of the respondent No.1 so far as it relates to the period from January, 2011 to December, 2012, is hereby declared to have been passed without lawful authority and hence, of no legal effect.

There will be no order as to costs.

Communicate the judgment and order to the respondents concerned at once.

Muhammad Mahub Ul Islam, J:

I agree.