

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

**WRIT PETITION NO.5871 of 2024**

**IN THE MATTER OF:**

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

And

**IN THE MATTER OF:**

***Thai Foils and Polymer Industries Limited***  
***... Petitioner.***

-VS-

***Customs, Excise and VAT Appellate Tribunal,***  
***Dhaka and others.***

***... Respondents.***

And

Mr. Debashis Bhattacharyy, Advocate with  
Mr. Bhuiya Alamgir Hossain, Advocate  
.... For the Petitioner.

Mr. Samarendra Nath Biswas, D.A.G. with  
Mr. Md. Abul Kalam Khan (Daud), A.A.G. with  
Mr. Md. Modersher Ali Khan (Dipu), A.A.G.  
....For the Respondents-government.

***Heard on 05.06.2024 and***  
***judgment on:06.06.2024***

Present:

*Mrs. Justice Farah Mahbub.*

*And*

*Mr. Justice Muhammad Mahbub Ul Islam*

**Farah Mahbub, J:**

This Rule Nisi was issued under Article 102 of the Constitution of the  
People's Republic of Bangladesh, calling upon the respondents to show cause  
as to why the impugned order dated 18.03.2024 passed by the Customs,  
Excise and VAT Appellate Tribunal, Dhaka, respondent No.1 in Appeal Case

No.(VAT) 51 of 2024 communicated under Nothi No. CEVT/Case (VAT) 51/2024/2322 dated 25.03.2024 dismissing the appeal as being barred by limitation (Annexure-A) arising out of the adjudicating order dated 05.09.2022 passed under Nothi No.4 /Musak (686)Kar Fakhi/Thai Foils/Bichar/Purbo-Comi:/2022/3322 (Annexure-B), should not be declared to have been passed without lawful authority and hence, of no legal effect and also, as to why a direction should not be given upon the respondents to hear and dispose of Appeal Case No.(VAT) 51 of 2024 on merit upon condoning the delay in preferring the appeal.

Subsequently, vide order dated 29.05.2024 the operation of the order dated 23.05.2024 passed under Nathi No. 08.01.2600.023.04.353.24/2756 by the respondent No.2 (Annexure-H) and thereby locking the Business Identification Number (BIN) of the petitioner company under Section 95(5)(gha) of the VAT and Supplementary Duty Act, 2012 along with order dated 23.05.2024 issued under Nothi No.08.01.2600.023.04.353.24/2755 dated 23.05.2024 by the office of the respondent No. 02 asking the petitioner's Bank namely Bank Asia PLC, Principal Office Branch, 111- 113, Motijheel Commercial Area, Dhaka to deduct an amount of Tk.1,31,62,908.00 (Taka one crore thirty one lac sixty two thousand nine hundred and eight) only as unpaid VAT and Tk. 2,63,25,816.00 (Taka two crore sixty three lac twenty five thousand eight hundred and sixty) only as penalty in total, Tk.3,94,88, 724.00 (Taka three crore ninety four lac eighty eight thousand seven hundred twenty four) only from the petitioner's bank account under Rule 69(1) of the VAT and Supplementary Duty Rules, 2016 (Annexure-I) and to deposit to the same in the account of the respondent No.2, for a prescribed period.

In view of the statements so made in the writ petition, Mr. Debashis Bhattacharyy, the learned Advocate appearing on behalf of the petitioner submits that the petitioner company was not served with the adjudicating order. It came to learn on 13.12.2023 when the petitioner company went to the office of the relevant VAT circle for submitting regular VAT returns. Accordingly, the petitioner company applied for the certified copy of the said order on 28.12.2023 before the office of the respondent No.2 and obtained the same on 28.12.2003.

He also submits that after obtaining the certified copy of the adjudicating order from the office of the respondent No.2 on 28.12.2023 the petitioner company filed the present appeal before the Customs, Excise and VAT Appellate Tribunal i.e. respondent No.1 within the statutory period of 90(ninety) days challenging the aforesaid adjudicating order on 05.02.2024 under Section 122(1) of the VAT and Supplementary Duty Act, 2012.

Accordingly, he submits that because of the impugned order of dismissal of appeal the petitioner has become non-suited as such, for the cause of justice and equity, a direction be given upon the Tribunal to hear the appeal on merit and till disposal of appeal to keep the order dated 23.05.2024 issued under Nothi No.08.01.2600.023.04.353.24/2756 (Annexure-H) and order dated 23.05.2024 issued under No.08.01.2600.023.04.353.24/2755 (1) (Annexure-I) in abeyance.

Mr. Md. Modersher Ali Khan (Dipu), the learned Assistant Attorney General appearing for the respondents-government submits that challenging the adjudicating order passed by the Commissioner concerned an appeal before the Tribunal is required to be preferred within the statutory prescribed period as provided under Section 122(2) of the said

Act of 2012. In the instant case, he submits, the petitioner has admittedly caused delay in preferring the said appeal. Hence, the order of dismissal of the appeal preferred by the petitioner as being barred by limitation cannot be termed as an order passed without lawful authority. Hence, he submits, this Rule is liable to be discharged.

It is an admitted position of fact that challenging the adjudicating order dated 05.09. 2022 passed under Nothi No.4 /Musak (686)Kar Fakhi/Thai Foils/Bichar/ Purbo-Comi:/2022/3322 by the Commissioner, Customs, Excise and VAT Commissionerate, Dhaka (East), Dhaka, the respondent No.2 the petitioner as appellant preferred an appeal before the Customs, Excise and VAT Appellate Tribunal, Dhaka, under Section 122 of the VAT and Supplementary Duty Act, 2012. However, in preferring the appeal before the Tribunal a delay of 428(Four hundred twenty eight ) days has occurred. The Tribunal concerned ultimately dismissed the appeal having not been convinced about the cause of delay so has occasioned while preferring the appeal.

The power to condone the delay by the Tribunal is discretionary. However, the assertion of the petitioner is that the appeal in question has been preferred in due compliance of law i.e., upon fulfillment of the requirement of payment over the demand in question and that for dismissal of the said appeal the petitioner has become non-suited.

In view of the above position of facts and also considering justice, equity and fairplay we are inclined to interfere in the instant matter.

In the result, the Rule is made absolute without any order as to costs.

The impugned order dated 18.03.2024 passed by the Customs, Excise and VAT Appellate Tribunal, Dhaka, Respondent No.1 in Appeal Case

No.(VAT) 51 of 2024 communicated under Nothi No. CEVT/Case (VAT) 51/2024/2322 dated 25.03.2024 (Annexure-A) is hereby declared to have been passed without lawful authority and hence, of no legal effect.

Accordingly, the Customs, Excise and VAT Appellate Tribunal, Dhaka, is hereby directed to hear the appeal bearing Appeal Case No.(VAT) 51 of 2024 on merit in accordance with law preferably within 6(six) months from the date of receipt of the copy of the judgment and order provided the requirement of Section 122 of the Act, 2012 has been duly complied with.

However, the order dated 23.05.2024 issued under Nothi No.08.01.2600.023.04.353.24/2756 (Annexure-H) and order dated 23.05.2024 issued under No.08.01.2600.023.04.353.24/2755 (1) (Annexure-I) are kept abeyance till disposal of the appeal.

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

**Muhammad Mahbub Ul Islam, J:**

I agree.