

Present:
Mr. Justice Shamim Hasnain
and
Mr. Justice Md. Ruhul Quddus

Writ Petitions No.4404-4405 of 2012

Alhaj Md. Mizanur Rahman Chowdhury and
another

...Petitioners in both the writ petitions

-Versus-

Commissioner, Customs Bond
Commissionerate, Dhaka and others

...Respondents in both the writ petitions

Mr. M. A. Hannan, Advocate

... for the petitioners in both the writ petitions

Mrs. Kashefa Hussain, Assistant Attorney
General

... for respondent No.1 in both writ petitions

Mr. A. K. M. Nurul Alam, Advocate,

... for respondent No.8 in both the writ petitions

Judgment on 10.02.2013

Md. Ruhul Quddus,J:

These two writ petitions have been heard analogously and are being disposed of by one judgment inasmuch as common questions of law and facts are involved in the cases and the parties therein are also same.

In the two writ petitions, the petitioners have challenged initiation of two certificate cases, namely, Certificate Cases No.5/Customs and 7/Customs of 2011 both pending before the General Certificate Officer,

Narayanganj by the Customs authority implicating them therein as directors of R M Super Steel Ltd. (herein respondent No.7), which defaulted in payment of taxes against a bonded warehouse license being No.37/Cus-PBW/90 dated 15.09.1990 and refusal of the Customs authority to delete their names by substituting that of respondents No.10-15. The petitioners have also sought for direction upon the respondents to delete their names by substituting that of respondents No.10-15 in the certificate cases.

The petitioners and respondents No.8-9 as share holder-directors formed several companies including R. M. Super Steel Ltd. at Bagbari Satgram, Araiহার, Narayanganj. The company applied for a private bonded warehouse license to the Commissioner, Customs Bond Commissionerate, Dhaka (respondent No.1) and after observing all necessary formalities respondent No.1 granted bonded warehouse license No.37/Cus-PBW/90 dated 15.09.1990 in its favour.

Thereafter, the petitioners transferred all their shares in the company to respondents No.10-15. The Registrar, Joint Stock Companies approved the transfer. The record of the company was also modified to that effect and accordingly its board of directors was reconstituted. But the reconstituted board for reason best known to it did not obtain any approval from the respondent No.1.

The petitioners were informed by their bank that a notice being No.21/2012 dated 07.02.2012 was issued for freezing their account. They inquired into the matter and came to know that respondents No.10-15 did not take any approval against transfer of their shares.

Then the petitioners made a representation dated 19.02.2012 to respondent No.1 for deleting their names from the said notice stating all the facts regarding transfer of their shares, approval of the Registrar, Joint Stock Companies thereto and modification of the company's record to that effect.

The petitioners also came to know that two certificate cases being Nos.5/Customs and 7/Customs of 2011 were initiated against the petitioners and respondents No.8-9 for realization of Taka 17,50,000/= and 1,05,089/= respectively. The cases are now pending before the General Certificate Officer, Narayanganj.

The petitioners also filed a joint application on 16.04.2012 for post-facto approval to the reconstituted board of directors of the company (annexure-E), but without any result. Having no way, the petitioners moved in this Court with the present writ petitions and obtained the Rules. Subsequently they obtained an order of stay on 07.01.2013 in writ petition No.4404 of 2012.

Mr. M. A. Hannan, learned Advocate for the petitioners submits that they had transferred their entire shares and liabilities to respondents No.10-15 long back in 1999, but the Customs authority without service of any notice as required under section 202 of the Customs Act forwarded their names to the Certificate Officer, Narayanganj (annexure-G) and initiated the certificate cases, which are illegal and without lawful authority. He further submits that as soon as the petitioners came to learn about the certificate cases, they filed application to the Customs authority for approval to transfer of their

shares in favour of respondents No.10-15, but the Customs authority did not respond.

Mr. Hannan further submits that the terms and conditions as embodied in the license do not provide any time frame for approval to any change of the board of directors of the company. The petitioners were under bonafide impression that the reconstituted board of directors would take necessary approval. However, when they came to know about initiation of the certificate cases, filed the application for such approval (annexure-E), which is still pending. The petitioners did not file any application before or immediately after transfer of their shares does not mean that they will bear the company's liability till eternity.

Mrs. Kashefa Hussain, learned Assistant Attorney General appearing for the Government-respondents without filing any affidavit-in-opposition submits that admittedly the petitioners did not obtain any prior/post-facto approval for transfer of their shares in the company, even they did not inform it to the Customs authority. Section 202 of the Customs Act gives power to the Customs authority to prepare a certificate specifying amount of duties and taxes or any penalty payable by any person and send it to the Collector or Certificate Officer of a District to recover the amount as a public demand. So, there is nothing wrong in initiation of the certificate cases against the petitioners.

Mr. A. K. M. Nurul Alam, learned Advocate appearing for respondent No.8 contests the Rule by filling an affidavit-in-opposition wherein it has been impliedly admitted that the writ petitioners had left the company. However, learned Advocate contends that since the

petitioners had executed the bond, they cannot be exempted from any liabilities accrued thereon. Whether they had any liability against the bond license being a question of fact cannot be decided in a writ petition and as such the Rule is liable to be discharged.

We have considered the submissions of the learned Advocates and perused the records. The bonded warehouse license was issued on certain terms and conditions, of which clause 5 runs as follows:

5. The license will cease to be valid, whenever there is a change in the constitution of the firm (unless renewed).

It comes out from a plain reading of the above quoted clause that after transfer of the petitioners' shares and reconstitution of the board of directors of the company, the bond license, against which the demand was made, had ceased.

It is not very clear from either of the pleadings whether there was any renewal of the license after reconstitution of the board or transfer of the petitioners' shares, although primarily it was the duty of the reconstituted board to obtain necessary renewal/approval from respondent No.1 and to inform the authority about the transfer. It has also not been stated anywhere in the writ petition that the claims of duties and taxes against the bond license as made by the Commissioner, Bond Commissionerate is not correct or that it became payable after the petitioners had left the company. In such a position and at this stage we do not find any illegality in initiation of the certificate cases against the petitioners, especially when they did not obtain any approval against transfer of their shares in the company even did not inform it to the authority.

The petitioners executed the bond in the capacity of share holder-directors of R. M. Super Steel Ltd. When they had transferred their entire shares and the board of directors was reconstituted, they should not be held responsible for any liability, which accrued after such reconstitution.

Whether the petitioners had any liability against the bond license is a question of fact, but nevertheless it is also admitted that they had left the company long back in 1999 and since they left the company, the Customs authority is under obligation to approve the transfer of their shares or to make the license inoperative. The authority cannot hold them responsible for any liability that was accrued after reconstitution of the board. In that view of the matter, we are of the view that necessary directions should be passed to end the dispute.

Accordingly, the Commissioner of Customs Bond Commissionerate, Dhaka (respondent No.1) is directed either to give approval to the reconstituted board of directors of R. M. Super Steel Ltd. having its factory at Bagbari Satgram, Araiহার, Narayanganj or to the transfer of the petitioners' shares to respondents No.10-15 by disposing of their (petitioners') application dated 16.04.2012 (annexure-E). The respondent No.1 is further directed to assess whether the petitioners had any liability against the bonded warehouse license No.37/Cus-PBW/90 dated 15.09.1990 prior to transfer of their shares in the said company on 01.07.1999 and to furnish a report to the General Certificate Officer, Narayanganj within three months from receipt of this judgment. In the event their liability is found to be in the negative, the certificate cases shall proceed against the company and its directors,



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who were at the helm of affairs of the company at the relevant time. If their liability is found in the affirmative, the certificate case will continue against the petitioners as well. The respondent No.1 may give the petitioners as well as respondents No.7-15 an opportunity of being heard, if he thinks it necessary to determine the issues referred.

With the above directions and observations, both the Rules are disposed of.

The stay granted earlier in writ petition No.4404 of 2012 shall continue for a period of three months from the date of receipt of this judgment by respondent No.1.

Communicate the judgment to respondents No.1-7.

Shamim Hasnain, J:

I agree.