

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

WRIT PETITION NO. 4041 of 2017
with
WRIT PETITION NO. 4040 of 2017
with
WRIT PETITION NO. 4042 of 2017
with
WRIT PETITION NO. 4043 of 2017

IN THE MATTER OF:

Applications under Article 102 of the Constitution
of the People's Republic of Bangladesh.

And

IN THE MATTER OF:

China Bangladesh Electronics Private Ltd. in
Writ Petition No.4041 of 2017

With

Al Helal Corporation (Pvt.) Ltd in Writ Petition
No.4040 of 2017

With

Energy + Electric & Electronics (Pvt.) Ltd. in
Writ Petition No.4042 of 2017

And

Heavens Light (Pvt.) Ltd. in Writ Petition
No.4043 of 2017.

- Petitioners

-vs-

National Board of Revenue and others in all
writ petitions.

..... Respondents.

And

Mr. Munshi Moniruzzaman, Advocate with
Mr. Sakib Rezwana Kabir, Advocate with
Ms. Shuchira Hossain, Advocate and
Ms. Izmet Nashra Khan, Advocate

..... For the Petitioners in all writ petitions.

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 in all writ petitions.

Heard on:28.02.2023, 13.12.2023
And Judgment on:17.12.2023

Present:

Mrs. Justice Farah Mahbub.

And

Mr. Justice Muhammad Mahbub Ul Islam

Farah Mahbub, J:

Since common question of law and facts are involved in all these 4(four) writ petitions as such, those have been heard together and are being disposed of by this single judgment.

In these 4(four) writ petitions respective Rules Nisi were issued by this Court 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 02.03.2017 issued under Nothi No.08.01.0000.078.14.004.16/173(1) by the respondent No.4 (Annexure-I in all writ petitions) directing the respondent No.5 to lock the BIN (Business Identification Number) and freeze the respective bank accounts of the petitioners, should not be declared to have been issued without lawful authority and hence, of no legal effect.

At the time of issuance of the Rules operation of the impugned order dated 02.03.2017 under Nothi No.08.01.0000.078.14.004.16/173(1) issued by the respondent No.4 (Annexure-I in all writ petitions) was stayed by this Court for a prescribed period.

Common facts, in brief, are that the petitioners are the respective companies limited by shares incorporated under the Companies Act, 1994; those are also registered with the VAT authority bearing VAT Registration Nos.19181048662, 2128105764, 19181048969 and 19081033533 respectively and are regularly paying VAT to the concerned authority. In order to carry on their respective businesses the petitioners also obtained

trade licenses from Dhaka (South) City Corporation and had renewed the same from time to time.

In this regard it has been stated that vide order dated 10.01.2017 the respondent No.6 formed a team comprising the officials of the respondent No.3 vide Section 26 read with Section 34 of the VAT Act, 1991 (in short, Act, 1991 and Rule 7 of the VAT Rules, 1991 (in short, Rules, 1991) to visit the office of the respondent No.9 company, the petitioner of writ petition No.4043 of 2017, in order to investigate the business activities of the said respondent company. Accordingly, said team visited the office of the said company on 11.10.2017 and seized a number of documents and items from their office under MUSAK-5. Subsequently, the respondent No.8 as an informant lodged a First Information Report with the local police station on 11.01.2017 implicating the respondent No.9 and others along with 200 unknown persons under Sections 143/332/353/189/379 and 109 of the Penal Code. Later, respondent No.5 issued a show cause notice upon the said company on 09.02.2017 under Section 37(2) of the Act, 1991 with reference to “অনিয়ম মামলা” No.05/17 dated 17.01.2017. In response thereof on 22.02.2017 the respondent No.9 company submitted all relevant documents of the last 5(five) years in connection with its business activities to the office of the respondent No.3.

At this juncture, the respondent No.4 vide the impugned order dated 02.03.2017 directed the respondent No.5 to lock the BIN and to freeze the respective bank accounts of the petitioners namely; (i) M/s. Al Helal Corporation Ltd., (ii) China Bangladesh Electronics Private Ltd., (iii) M/s. Energy + Electric & Electronics (Pvt.) Ltd. and (iv) Heaven’s Light (Pvt.) Ltd. respectively.

The impugned order dated 02.03.2017 (Annexure-I of all the writ petitions) issued by the respondent No.5 is quoted below for ready reference:

“গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
জাতীয় রাজস্ব বোর্ড,
সেগুনবাগিচা, ঢাকা।

নথি নং-০৮.০১.০০০০.০৭৮.১৪.০০৪.১৬/১৭৩(১)

তারিখঃ ০২/০৩/২০১৭ খ্রিঃ।

বিষয়ঃ সরকারী কাজে বাধা প্রদান করায় অভিযুক্ত প্রতিষ্ঠান সমূহের BIN সাময়িকভাবে লক করা ও ব্যাংক হিসাব জন্ম করণ প্রসঙ্গ।

সূত্রঃ নিরীক্ষা, গোয়েন্দা তদন্ত অধিদপ্তরের পত্র নং- ৫ (১০) নি.গো.তঃঅঃহ্যাভেন 'সলাইট' পরিদর্শন- ১৩/২০১৭/৬০ তারিখঃ ১২/০১/২০১৭। (কপি সংযুক্ত)

সূত্রোক্ত পত্রের মাধ্যমে এ দপ্তর অবগত হয়েছে যে, গত ১২/০১/২০১৭ তারিখে নিরীক্ষা, গোয়েন্দা তদন্ত অধিদপ্তরের একটি নিবারক দল কর্তৃক মূল্য সংযোজন কর আইন ১৯৯১ এর ধারা ২৬ প্রয়োগ করে অভিযান পরিচালনা কালে মেসার্স হেভেন'স লাইট প্রাইভেট লিঃ (মুসক নিবন্ধন নং - ১৯০৮১০৩৩৫৩৩) কর্তৃপক্ষ ও তাদের প্রত্যক্ষ ইন্ধনে ও সহযোগিতায় প্রায় ২০০ জন লোক নিবারক কাজে নিয়োজিত দলকে ভয়ভীতি প্রদর্শন, হামলা, মারধর করে এবং আটককৃত দলিলাদি ছিনিয়ে নেয়। এ কারণে পল্টন থানায় একটি FIR দায়ের সহ হ্যাভেন'স লাইট প্রাঃ লিঃ সহ নিম্নলিখিত ৩ টি প্রতিষ্ঠানের বিরুদ্ধে কাস্টমস, এক্সাইজ ও ভ্যাট কমিশনারেট, ঢাকা (দক্ষিণ) এ অনিয়ম মামলা দায়ের করা হয়েছেঃ

- i) মেসার্স চায়না বাংলাদেশ ইলেকট্রনিক্স প্রা লিঃ (BIN- ১৯১৮১০৪৮৬৬২)
- ii) মেসার্স এনার্জি প্লাস ইলেকট্রিক এন্ড ইলেকট্রনিক্স প্রাঃ লিঃ (BIN- ১৯১৮১০৪৮৯৬৯)
- iii) মেসার্স আল হেলাল কর্পোরেশন লি. (BIN- ২১২৮১০৫৭০৬)

০২। উপর্যুক্ত ৪টি প্রতিষ্ঠান মূলতঃ একই মালিকানাধীন মর্মে জানা গেছে। আলোচ্য প্রতিষ্ঠানসমূহের মালিকপক্ষ মূল্য সংযোজন কর আইন, ১৯৯১ এর আওতায় সম্পূর্ণ আইনত একটি অভিযানকে বাধা প্রদান সহ সরকারী কর্মকর্তা কর্মচারীদের মারধর করেছেন, যা সুস্থঞ্চল একটি রাষ্ট্রে কোন ভাবেই কাম্য নয়।

০৩। উপর্যুক্ত প্রেক্ষাপটে উল্লিখিত ০৪ (চার) টি প্রতিষ্ঠানের বিরুদ্ধে নিম্নরূপ পদক্ষেপ সহ প্রয়োজনীয় আইনগত কার্যক্রম গ্রহণ করার জন্য নির্দেশক্রমে অনুরোধ করা হলোঃ-

ক) উল্লিখিত প্রতিষ্ঠানসমূহের BIN সাময়িকভাবে লক করা।

(খ) প্রতিষ্ঠানসমূহের ব্যাংক হিসাবসমূহ সনাক্ত করে Freeze করার জন্য সংশ্লিষ্ট বাণিজ্যিক ব্যাংককে নির্দেশ প্রদান করা এবং

(গ) প্রতিষ্ঠানসমূহের যাবতীয় আমদানিতথ্য সংগ্রহ করে তাদের প্রকৃত করদায়িতা নির্ধারণ করে কোন রাজস্ব ফাঁকি সংঘটিত হয়েছে কিনা তা যাচাই করা।

(মাহাম্মদ মাহবুব হাসান)

দ্বিতীয় সচিব (মুসক গোয়ন্দা, তদন্ত ও পরিঃ)''

Being aggrieved by and dissatisfied with the petitioners have preferred the instant of the application under Article 102 of the Constitution and obtained the present Rule Nisi.

In addition to the statements so made in the respective writ petitions, the petitioners by filing affidavit-in-reply to the affidavit-in-opposition filed by the respondent No.5 stated, *inter-alia*, that subsequent to issuance of the impugned order dated 02.03.2017 the VAT authority concerned issued a demand cum-show notice on 06.08.2017 vide Nothi No.8/মুসক/৮ (১৩৮) কর ফাঁকি/নিঃ/বিচার/১৭/১১০২ (Annexure-I) under Section 55(1) of the Act, 1991. Subsequently, a final demand had been made by the said authority vide order dated 07.11.2017 under Nothi No.8/মুসক/৮ (১৩৮) কর ফাঁকি/নিঃ/বিচার/১৭ (Annexure-III) under Section 55(3) of the Act, 1991. Being aggrieved, the petitioners have preferred appeal before the Tribunal concerned bearing Nothi No.সিইভিটি/কেইস (ভ্যাট)-২৮/২০১৮ (Annexure-IV). The Tribunal concerned upon hearing both the parties ultimately, dismissed the appeal vide judgment and order dated 03.02.2020.

In view of the said context, Mr. Munshi Moniruzzaman, the learned Advocate appearing for the petitioners of all the four writ petitions submits that in the impugned order it has been clearly mentioned that the respondents went to the office of the respondent No.9, the petitioner of writ petition

No.4043 of 2017 and allegedly were confronted by the officials of the said respondent company; to that effect a criminal case had also been lodged against the respondent No.9. But, fact remains that the petitioners in connection with Writ Petition Nos.4040, 4041 and 4042 all of 2017 were in no way involved with the alleged occurrence. Consequently, the order of locking the BIN and freezing the bank accounts of the respective petitioners is not tenable in the eye of law.

He further submits that an order of locking the BIN and freezing the bank account can be passed under Section 56 of the Act, 1991 only by the VAT officer; however, the term *VAT officer* “মূল্য সংযোজন কর কর্মকর্তা” as defined in Section 20 of the Act, 1991 does not include the respondent No.4. Consequently, the order passed by the said respondent is without jurisdiction.

He also submits that the impugned order does not come within the purview of Section 56 of the Act, 1991 since no demand is pending against the petitioners at any point of time. On that score as well, the impugned order is liable to be knocked down.

He lastly submits that prior to taking such action, minimum 2(two) notices are required to be served upon the person concerned under Rule 43 of the Rules, 1991. But in the instant case, the respondents have not served any notice whatsoever upon the petitioners under the said provision of law. As such, he submits that the action of the respondents in locking the Business Identification Number (BIN) and freezing the bank accounts of the petitioners is absolutely illegal and hence, is liable to be declared to have been passed without lawful authority and is of no legal effect.

Countering the said assertions, Mr. Md. Abul Kalam Khan (Daud), the learned Assistant Attorney General by filing affidavit-in-opposition on behalf of the respondent No.5 submits that the office of the respondent No.3, Director General, Audit and Intelligence and Investigation office inspected the petitioner's office on 11.01.2017 under Section 26Ka of the Act, 1991. During the course of inspection said team repeatedly requested the officials of the said company to show the selling and other relevant documents, but the representatives of the petitioner's company were not co-operating and or complying with the said request. Rather, respective officials of the said company in collusion with others had obstructed the inspection team during the course of inspection and later on, attacked the members of the said team, which ultimately led to filing the criminal case against them. However, at one stage, the petitioner's company showed one document and upon examining the same it was detected that they had shown less quantity of selling products. The inspection team also found that said company had sold their products by personal challan. Thus, it became evident that the petitioner company had violated the respected provisions of the VAT Act, 1991. Consequently, the respondent No.5 issued a show cause notice on 09.02.2017 respectively in all the writ petitions for violation of Sections 3, 26, 31, 32 and 35 of the Act, 1991 read with Rules 22, 23 and 24 of the Rules, 1991 and hence, punishable under Section 37(2) of the said Act, 1991, with direction to give reply within a prescribed period.

Lastly, he submits drawing attention to the impugned order dated 02.03.2017 issued by the authority concerned of the National Board of Revenue (Annexure-I to all the writ petition) that no order has been passed for locking the BIN (Business Identification Number) of the petitioners or to freeze the respective bank accounts of the petitioners. Rather, the same has been issued addressing the Commissioner, Customs, Excise and VAT Commissionerate, Dhaka (South), Dhaka with direction to take necessary steps pursuant thereto. Under the circumstances, he submits that challenging the said order dated 02.03.2017 (Annexure-I to the writ petition) filing the instant writ petitions is not maintainable; hence, it liable to be discharged as being pre-mature.

Countering the said assertions, the learned Advocate appearing for the petitioners submits that no where within the 4(four) corners of the VAT Act, 1991 the authority concerned of the National Board of Revenue has been empowered by the Legislature to give necessary direction upon the Commissioner concerned to freeze the respective bank accounts or to lock the BIN (Business Identification Number) of the petitioners. In this regard, he submits that the only arena within which the Board is empowered to look into is the context as provided under Sections 43 and 44 of the said Act. Since the context of the instant case does not attract any of those contexts as prescribed under those provisions of law hence, issuance of the said order by the authority concerned of the National Board of Revenue is liable to be knocked down for having been issued without jurisdiction.

Vide the impugned order dated 02.03.2017 the National Board of Revenue under Nothi No.08.01.0000.078.14.004.16/173(1) (Annexure-I)

directed the Commissioner, Customs, Excise and VAT Commissionerate, Dhaka (South), Dhaka to take necessary steps on the following issues:

“০৩। উপযুক্ত প্রেক্ষাপটে উল্লিখিত ০৪ (চার) টি প্রতিষ্ঠানের বিরুদ্ধে নিম্নরূপ পদক্ষেপ সহ প্রয়োজনীয় আইনগত কার্যক্রম গ্রহণ করার জন্য নির্দেশক্রমে অনুরোধ করা হলোঃ-

- ক) উল্লিখিত প্রতিষ্ঠানসমূহের BIN সাময়িকভাবে লক করা।
- খ) প্রতিষ্ঠানসমূহের ব্যাংক হিসাবসমূহ সনাক্ত করে Freeze করার জন্য সংশ্লিষ্ট বাণিজ্যিক ব্যাংককে নির্দেশ প্রদান করা এবং
- গ) প্রতিষ্ঠানসমূহের যাবতীয় আমদানিতথ্য সংগ্রহ করে তাদের প্রকৃত করদায়িতা নির্ধারণ করে কোন রাজস্ব ফাঁকি সংঘটিত হয়েছে কিনা তা যাচাই করা।”

No doubt, Section 56 of the VAT Act, 1991 empowers the VAT authority to give direction upon the concerned authority to freeze the respective bank account of the person concerned or lock the BIN till realisation of the unpaid or less paid VAT. However, exercise of such power is subject to pending demand “..... ধার্যকৃত কোন মূল্য সংযোজন কর বা, ক্ষেত্রমত, মূল্য সংযোজন কর ও সম্পূরক শুল্ক কিংবা আরোপিত কোন অর্থদণ্ড কিংবা এই আইনে কোন বিধির অধীন সম্পাদিত কোন মুচলেখা বা অন্য কোন দলিলের অধীনে দাবীকৃত কোন অর্থ প্রাপ্য থাকে সেক্ষেত্রে।” (emphasis given).

In the instant case, the respondent concerned has failed to show from any document whatsoever that prior to issuance of the order dated 02.03.2017 (Annexure-I) by the National Board of Revenue, there was any demand pending against the petitioners which was required to be realised under the VAT Act, 1991, which is further fortified from the impugned order where it has been stated, *inter-alia*, “(গ) প্রতিষ্ঠানসমূহের যাবতীয় আমদানিতথ্য সংগ্রহ করে তাদের প্রকৃত করদায়িতা নির্ধারণ করে কোন রাজস্ব ফাঁকি সংঘটিত হয়েছে কিনা তা যাচাই করা।”

Considering the above, it can clearly be discerned that in the absence of any pending demand at the relevant time, directing the

Commissioner by the authority concerned of National Board of Revenue to take necessary steps towards freezing the respective bank accounts of the petitioners along with locking their BIN, is without jurisdiction.

The impugned order further fails for having been issued by the authority concerned of the National Board of Revenue, who is not a “মূল্য সংযাজন কর কর্মকর্তা” as defined in Section 20 of the Act, 1991. In this regard, the categorical contention of the learned Assistant Attorney General appearing of the respondent concerned is that no final order of freezing the respective bank account or locking the respective BIN of the petitioners have been passed. Rather, by the impugned order a direction was given upon the Commissioner concerned to take necessary steps pursuant to the context as provided therein; hence, this Rule is liable to be knocked down as being pre-mature.

Said contention of the learned Assistant Attorney General is a misconceived one, for, within the four corners of the VAT Act, 1991, the Legislature has not empowered the National Board of Revenue to intervene in the matter of locking BIN or freezing the respective bank account by giving direction to that effect except the contexts as prescribed under Sections 43 and 44 of the said Act, 1991.

The impugned order further fails for having not complied with the requirements as prescribed under Rule 43 of the VAT Rules, 1991

In view of the above, we have no manner of doubt to find that the impugned order issued by the authority concerned of the National

Board of Revenue giving direction upon the Commissioner concerned to take necessary steps with regard to locking BIN or freezing the respective bank accounts of the petitioners is liable to be struck down for having been issued without lawful authority and hence, of no legal effect.

In the result, all the Rules of writ petition Nos.4040, 4041, 4042 and 4043 all of 2017 are made absolute.

The impugned order dated 02.03.2017 issued by the respondent No.4 under Nothi No.08.01.0000.078.14.004.16/ 173(1) (Annexure-I of all the writ petitions) directing the respondent No.5 to lock the BIN (Business Identification Number) and to freeze the respective bank accounts of the petitioners, are hereby declared to have been issued without lawful authority and hence, of no legal effect.

The order of stay in all the writ petitions granted earlier by this Court is hereby vacated.

There will be no order as to costs.

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

Muhammad Mahbub Ul Islam, J:

I agree.