

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

**WRIT PETITION NO.4484 of 2017**

IN THE MATTER OF:

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

And

IN THE MATTER OF:

***Shah Amanath Traders***

***... Petitioner***

-vs-

***National Board of Revenue and others.***

***... Respondents.***

And

Mr. Hasnat Quaiyum, 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:07.11.2023 and  
judgment on:20.11.2023***

**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 notice dated 02.03.2017 as contained in Nothi No.এস২-৩৫/বিবিধ/সেকশন-৮(এ)/১৬-১৭/৪৫১০ কাস, issued by the respondent No.3, directing the petitioner to deposit an amount of

Tk.8,49,221.16 and also, as to why proceeding should not be drawn against it under Section 32 and Clause 14 of the Table of Section 156(1) of the Customs Act, 1969 (Annexure-A), should not to be declared to have been issued without lawful authority and hence, of no legal effect.

At the time of issuance of the Rule the operation of the impugned notice dated 02.03.2017 as contained in Nothi No.এস২-৩৫/বিবিধ/সেকশন-৮(এ)/১৬-১৭/৪৫১০ কাস, issued by the respondent No.3, (Annexure-A), was stayed by this Court for a prescribed period.

In view of the statements so made in the instant writ petition, we have heard Hasnat Quaiyum, the learned Advocate appearing for the petitioner and Mr. Md. Modersher Ali Khan (Dipu), the learned Assistant Attorney General appearing for the respondents-government.

From records it appears that on the allegations of “..... জাতীয় রাজস্ব বোর্ড এর এস, আর, ও নং ১৬৫ আইন/২০১৬/২৭/কাস্টমস, তারিখ: ০২/০৬/২০১৬ এবং সংশোধনী এস,আর,ও নং ২১৮-আইন/২০১৬/৪৫/কাস্টমস, তারিখ: ১ জুলাই, ২০১৬ অনুযায়ী এইচএস কোড ৩৯২৬.৯০.৯৯ এর বিপরীতে আমদানিকৃত Other articles of plastics পণ্যের Minimum Assessable Value \$2.00/KG. সে হিসাবে আলোচ্য চালানে আমদানিকৃত Cable Clip এর উপর প্রযোজ্য শুল্ক করাতির পরিমাণ ১২,৫৪,১৪৫.৮০ টাকা। অসত্য এইচএস কোড ঘোষণার মাধ্যমে পণ্য চালানটি খালাস গ্রহণ করে সরকারের ৮,৪৯,২২১.১৬ (আট লক্ষ ঊনপঞ্চাশ হাজার দুইশত একশ টাকা ষোল পয়সা) টাকা রাজস্ব ফাঁকি প্রদান করে The Customs Act, 1969 এর Section-32 এর আওতায় অপরাধ সংঘটন করেছেন যা একই আইনের Section- 156 এর Sub-Section (1) এর Table এর Clause 14 অনুযায়ী শাস্তিযোগ্য এবং The Customs Act, 1969 এর Section-83A অনুযায়ী অপরিশোধিত শুল্ক-করাতি আদায়যোগ্য।”, the petitioner was served with the demand-cum-show cause notice on 27.02.2017 (Annexure-A) as to why proceeding should not be drawn up

against for imposition of punishment as well as for realisation of less paid duties.

In the case of *Agripol Limited –Vs- National Board of Revenue and others (Supra)* (in which one of us was a party) it has been observed as under:

*“.....From a combined reading of Sections 83A and 32 of the Act it transpires that Section 83A empowers the officer concerned to amend assessment in order to “ensure correctness” with the issuance of a demand notice with direction to pay the said amount within 30(thirty) working days from the date of issuance. ....*

*Simultaneously, vide Section 32(3) of the Act of 1969 the Legislature has empowered the officer of Customs to ask the person concerned to pay duty or charges on the ground that due to “**inadvertence, error or misconstruction**” the same was not levied or short levied or erroneously refunded. However, prior to determining the said amount compliance of the principles of natural justice has been ensured with the issuance of show cause notice within 3 (three) years of the relevant date as described under Section 32(5) of the Act.*

*In other words, without charging any allegation for recovery of duties or charges, the officer of Customs may invoke provisions either under Section 83A or Section 32(3) of the Act. However, if there be any “**allegation of misdeclaration**” i.e. due to making or supplying untrue-statement or document or collusion, as the case may be and for such an act duty or charge has not been levied or short levied or erroneously refunded, it becomes a punishable offence under Section 32(1) read with clause 14 of the Table under Section 156(1) of the Act and proceedings to that effect may be initiated by the authority concerned . At the same time vide Section 32(2) by issuing a show cause notice the officer concerned is empowered to ask the person concerned as to why he should not make such payment.....”*

Said observations and findings are still in operation.

In view of the above, when amendment of assessment has been made by the Customs authority invoking power under Section 83A on the count, *inter-alia*, “ জাতীয় রাজস্ব বোর্ড এর এস, আর, ও নং ১৬৫ইন/২০১৬/২৭/ কাস্টমস, তারিখ: ০২/০৬/২০১৬ এবং সংশোধনী এস,আর,ও নং ২১৮-আইন/২০১৬/৪৫/কাস্টমস, তারিখ: ১ জুলাই, ২০১৬ অনুযায়ী এইচএস কোড ৩৯২৬.৯০.৯৯ এর বিপরীতে আমদানিকৃত Other articles of plastics পণ্যের Minimum Assessable Value \$2.00/KG. সে হিসাবে আলোচ্য চালানে আমদানিকৃত Cable Clip এর উপর প্রযোজ্য শুল্ক করাতির পরিমাণ ১২,৫৪,১৪৫.৮০ টাকা। .....।” hence, issuing a show cause notice alleging *inter alia*, “..... বিল অব এন্ড্রিতে অসত্য এইচএস কোড ঘোষণার মাধ্যমে পণ্য চালান খালাস গ্রহণ করে সরকারের ৮,৪৯,২২১.১৬ (আট লক্ষ ঊনপঞ্চাশ হাজার দুইশত একুশ টাকা ষোল পয়সা) টাকা রাজস্ব ফাঁকি.....” is a notice issued without lawful authority and hence, it has no legal effect, for, Section 83A is meant for amendment of assessment whereas, proceeding under Section 32(2) is initiated on the allegation of misdeclaration or evasion of duties and taxes.

In view of the above observations and findings this Rule is accordingly made absolute.

The impugned show cause notice dated 02.03.2017 issued by the respondents concerned passed under Nothi No.এস২-৩৫/বিবিধ/সেকশন-৮(এ)/১৬-১৭/৪৫১০ কাস, demanding payment of duties and taxes for an amount of Tk.8,49,221.16 (Annexure-A) is hereby declared to have been passed without lawful authority and is of no legal effect.

Since, the impugned notice dated 02.03.2017 has been struck down on point of technicality as such, the respondents concerned are at liberty to issue a fresh notice upon the petitioner under the respective

provisions of the Customs Act, 1969 in due compliance of law over the demand so has been claimed as short levied duties.

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.