

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

WRIT PETITION NO. 11085 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:

Danish Foods Limited

... Petitioner

-vs-

***Government of the Peoples Republic of
Bangladesh, represented by it Secretary,
Ministry of Law, Justice and Parliamentary
Affairs, Bangladesh Secretariat, Dhaka and
others.***

... Respondents.

And

Mr. Kazi Ershadul Alam, Advocate with
Ms. Nazmun Binte Islam, 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 the instant Rule Nisi, the petitioner has challenged the impugned Demand Notice as contained in Nothi No.5th/Cus/12(4985)B/E/Group-1/Bena/2015/3550 (1) dated 22.06.2017 issued by the respondent No.2 under Section 83A of the Customs

Act, 1969 directing the petitioner to pay Tk.51,06,393.60 (Annexure-A), to be declared to have been passed without any lawful authority and hence, of no legal effect.

At the time of issuance of the Rule the operation of the impugned demand notice issued under Nothi No.5th/Cus/12(4985)B/E/Group-1/Bena/2015/3550 (1) dated 22.06.2017 by the respondent No.2 under Section 83A of the Customs Act, 1969 (Annexure-A) was stayed by this Court for a prescribed period.

In view of the statements so made in the writ petition, we have heard Mr. Kazi Ershadul Alam, the learned Advocate appearing with Ms. Nazmun Binte Islam, the learned Advocate for the petitioner and Mr. Md. Abul Kalam Khan (Daud),, the learned Assistant Attorney General appearing for the respondents-government.

The issue in question is centering around making direct demand under Section 83A of the Act, 1969 on the contention of short levied duties to the tune of Tk.51,06,393.60.

In this regard, Mr. Kazi Ershadul Alam, the learned Advocate appearing for the petitioner submits that in view of the decision of the case of *Musa Bhuiyan (Md) -Vs- Commissioner of Customs, Dhaka* reported in **23 BLC-662** the customs authority though is empowered to make demand under Section 83A of the Customs Act, 1969 but prior thereto there has to be a notice of show cause in compliance of the principles of natural justice, which has not been done in the present case.

In view of the submissions of the learned Advocate appearing for the petitioner, we have gone through the writ petition along with the impugned demand dated 22.06.2017 as contained in Annexure-A

wherefrom it appears that said demand has been made by the authority concerned under Section 83A of the Customs Act, 1969 for payment of Tk.51,06,393.60 as short levied duty.

Vide Section 83A of the Customs Act, 1969 the customs authority can make a demand for payment of short levied duties upon making amendment of the assessment done earlier. However, fact remains that said provision does not contain the requirement to issue a show cause notice prior to issuance of making said demand.

In the case of *Musa Bhuiyan (Md) -Vs- Commissioner of Customs, Dhaka* reported in *23 BLC-662*, one of the Benches of this Division has categorically observed that prior to making a demand which has the effect of enhancement of duties, principles of natural justice is required to be complied with, by issuing a show cause notice for amendment of assessment and to give personal hearing to the person concerned.

Said observations and findings are still in operation.

In the instant case, the impugned demand notice dated 22.06.2017 has been issued by the customs authority making amendment of assessment under Section 83A with direction upon the petitioner to deposit the required amount as short levied duties, but without complying with the principles of natural justice.

The observations and findings as quoted above being squarely applicable in the facts and circumstances of the instant case hence, it is liable to be made absolute.

In the result, this Rule is made absolute.

The impugned order dated 22.06.2017 under Nothi No.5th/Cus/12 (4985) B/E/Group-1/Bena/2015/3550 (1) issued by the respondent No.2 under Section 83A

of the Customs Act, 1969 directing the petitioner to pay Tk.51,06,393.60 (Annexure-A), is hereby declared to have been passed without lawful authority and hence, of no legal effect.

Since, the impugned Demand Notice dated 22.06.2017 (Annexure-A) has been struck down on point of technicality hence, the respondents concern are at liberty to issue a fresh notice upon the petitioner under Section 83A of the Customs Act, 1969 for the amount as has been claimed as short levied duties, in due compliance of law.

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.