

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

WRIT PETITION NO. 8897 of 2018

IN THE MATTER OF:

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

And

IN THE MATTER OF:

Md. Lokman Hossain

..... *Petitioner*

-vs-

***The Commissioner of Customs, Excise and VAT
Commissionerate, Dhaka (South), 160/A, IDEB
Bhaban, Kakrail, Dhaka and others.***

.....*Respondents.*

And

Mr. A.R.M. Qayyum Khan, 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: 07.11.2023 and

Judgment on:21.11.2023

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 Memo dated 28.06.2018 as contained in Nothi No.8/মূসক/৮(৩৭) কর ফাঁকি/বিচার/২০১৫/৮৪৬ issued under

the signature of the respondent No.1 directing the respondent No.4 bank to freeze the petitioner's bank account bearing No.33019316 maintained with respondent No.3 without serving any final demand under Section 55(3) of the VAT Act, 1991 as well as notice under Rule 43 of the VAT Rules, 1991 (Annexure-D), should not 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 Memo dated 28.06.2018 as contained in Nothi No.8/মূসক/চ(৩৭) কর ফাঁকি/বিচার/২০১৫/৮৪৬ issued by the respondent No.1, (Annexure-D), was stayed by this Court for a prescribed period.

Facts, in brief, are that the petitioner being a bonafide businessman is doing business of import who is also the owner of a proprietorship business concern in the name and style M/S. Hera International.

It is stated that vide Nothi No. 8/মূসক/চ(৩৭)কর ফাঁকি/বিচার/২০১৫/২৬৫ dated 08.07.2015 issued under the signature of the respondent No.1 a demand-cum show cause notice was issued under Section 55(1) of the VAT Act, 1991 for Tk. 1,30,14,521.24/- (Taka one crore thirty lac fourteen thousand five hundred twenty one and twenty four paisa) as evaded amount of VAT (Annexure-A). On receipt thereof the petitioner gave reply on 10.09.2015 (Annexure-B) denying the assertions so made therein with request to appear for personal hearing. Allowing the said prayer the authority concerned fixed 23.11.2015 with notice to the petitioner. The petitioner duly appeared before the respondent No.1 and gave personal hearing with all relevant documents.

While the petitioner was waiting for the final order to be passed by the respondent No.1 under Section 55(3) of the Act, 1991 the respondent No.4

the bank informed the petitioner with regard to the order dated 27.06.2018 issued by the respondent No.1 freezing the respective bank account of the petitioner for non-payment of the evaded amount of VAT of Tk. 1,30,14,521/- (Taka one crore thirty lac fourteen thousand five hundred and twenty one) (Annexure-D).

In the given context, finding no other alternative the petitioner filed the instant writ petition and obtained the present Rule.

Mr. A.R.M. Qayyum Khan, the learned Advocate appearing for the petitioner submits that the impugned order of warrant dated 28.06.2018 to freeze the respective bank account of the petitioner was issued without serving any final demand under Section 55(3) of the Vat Act, 1991; resultantly, the petitioner has been deprived in filing appeal under the VAT Act, 1991.

He further submits that it is the mandatory requirement of law that prior to issuance of warrant to freeze any bank account under Section 56 of the VAT Act, 1991 the authority concern has to issue notice minimum twice under Rule 43(1) of the VAT Rules, 1991 and that notice must be served upon the debtor. In the instant case, no notice was served upon the petitioner in compliance of the said provision of law. In view of the above, he submits that the impugned order of warrant dated 28.06.2018 is liable to be declared to have been issued without lawful authority and hence, of no legal effect.

Mr. Samarendra Nath Biswas the learned Deputy Attorney General appearing on behalf of the respondents-government submits that in view of the present context and also, for the cause justice and equity the demanded amount which remained unpaid be retained in the respective

bank account of the petitioner till an appeal is preferred by the petitioner in due compliance of law.

No affidavit in opposition has been filed by the respondent concern controverting the said assertions so made in the instant writ petition. In the absence of any supporting documents with affidavit from the respondents-concern the averments so made by the petitioner remain uncontroverted. Consequently, this Court finds that without serving final demand under Section 55(3) of the VAT Act, 1991 and without complying the requirements as provided under Section 56 of the VAT Act, 1991 read with Rule 43 of the VAT Rules, 1991 issuing the impugned order dated 28.06.2018 under Nothi No.8/মূসক/চ(৩৭) কর ফাঁকি/বিচার/ ২০১৫/চ৪৬ by the respondent No.1 directing the respondent No.3 to freeze the respective bank account of the petitioner is liable to be declared to have been passed without lawful authority; hence, has no legal effect.

In the result, the Rule is made absolute.

The impugned Memo dated 28.06.2018 as contained in Nothi No.8/মূসক/চ(৩৭) কর ফাঁকি/বিচার/২০১৫/চ৪৬ issued under the signature of the respondent No.1 directing the respondent No.4 bank to freeze the petitioner's bank account bearing No.33019316 maintained with the respondent-bank without serving any final demand under Section 55(3) of the VAT Act, 1991 as well as notice under Rule 43 of the VAT Rules, 1991 (Annexure-D), is hereby declared to have been issued without lawful authority and hence, of no legal effect.

The respondent's concern is hereby directed to serve the copy of the final demand under Section 55(3) of the VAT Act, 1991 upon the petitioner afresh within 30(thirty) days from the date of receipt of the copy of this judgment and order.

On receipt thereof, the petitioner is at liberty to prefer an appeal within the period as prescribed under Section 42 of the VAT Act, 1991. However, till preferring the appeal before the forum created under the statute the order of stay granted earlier by this Court at the time of issuance of the Rule shall remain in operation.

If the petitioner fails to prefer the appeal within the said prescribed period the respondent-concerned is at liberty to proceed for realization of the unpaid demanded amount of VAT 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.