

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

**Writ Petition No. 8918 of 2019**

**In the matter of:**

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

-And-

**In the matter of:**

A-One Polymer Limited

...Petitioner

-Versus-

Government of Bangladesh and others

... Respondents

Ms. Nahid Mahtab, Senior Advocate with

Ms. Sonia Sarder, Advocate

... For the petitioner

Mr. Pratikar Chakma, DAG with

Mr. Humayun Kabir,

Ms. Farzana Rahman Shampa,

Mr. Masud Rana Mohammad Hafiz and,

Mr. Ali Akbor Khan, AAGs

... For respondent No.3

**Judgment on: 07.02.2024**

**Present**

**Mr. Justice Muhammad Khurshid Alam Sarkar**

**And**

**Mr. Justice Sardar Md. Rashed Jahangir**

**Sardar Md. Rashed Jahangir, J:**

The Rule was issued on an application under article 102 of  
the Constitution of the People's Republic of Bangladesh calling

upon the respondents to show cause as to why the notice and demand of VAT of Tk.20,02,57,954/-(Twenty crore two lac fifty seven thousand nine hundred fifty four) for the period from January, 2015 to March, 2018 under Nothi No. ঢাকা উত্তর/আঃওবিঃ/এওয়ান পলিমার/মূসক ফাঁকি/১০(১৯৫)/২০১৯/১২৮৬, তারিখঃ ২৯/৫/২০১৯ খ্রিঃ (Annexure-‘B-1’) issued by the respondent No. 5 on the basis of purported report (copy of which was not supplied to the petitioner) of VAT Evasion Case No. 17/2019, dated 07.01.2019 should not be declared to have been issued without lawful authority and are of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.

The petitioner is a private limited company incorporated under the Companies Act, 1994 engaged in manufacturing uPVC Pipes & Fittings, Teflon Tape, ABS Bathroom Fittings, Magic Pipe, Toilet Tissue Holder etc. and having been registered under section 15 of the Value Added Tax Act, 1991 ( in short ‘the VAT Act’) for

the purpose of paying VAT. It is stated that on 15.05.2018 the respondents entered into the Head Office of the petitioner-company for the purpose of conducting inspection and search under section 26 of the VAT Act, 1991 pursuant to a letter of authority dated 14.05.2018 issued by the office of the respondent No. 3, and after such search and inspection as aforementioned the inspecting team seized some documents and materials relating to VAT payment including commercial and personal documents also upon preparing Mushak-5 for the purpose of preparing and submitting a report before the concern authority for enabling them to collect or realise proper VAT. It is further stated that on 03.01.2019, the office of respondent No. 3 submitted a report to the Convener of the Task Force constituted for the purpose of auditing payment of VAT and intelligence services and on the basis of said report respondent No. 5 issued and served a notice upon the petitioner purportedly under section 55(1) of the VAT Act asking it to show cause as to why it

shall not be liable for less-paid/unpaid/evaded VAT of Tk.20,02,57,954/-. Challenging the mere show cause-cum-demand notice dated 29.05.2019 (Annexure-‘B-1’) petitioner filed the instant writ petition and obtained the Rule together with an interim direction for maintaining status-quo in respect of the impugned notice.

Ms. Nahid Mahtab, learned Senior Advocate appearing for the petitioner submits that the show cause-cum-demand notice dated 29.05.2019 issued solely on the basis of a report dated 17.01.2019 prepared in violation of the provisions of sections 26, 26(1)(ka), 26(Ka)(3) and (4), 48 and 51 of the VAT Act, 1991.

She next submits that the respondents violating the provisions of the VAT Act illegally entered into the office premises of the petitioner and seized as well as 10(ten) documents including CPU, Laptop, Computer Software and C.D., collected from the IT room of the petitioner without having any valid authority under the

VAT Act or Rules made thereunder and therefore, the issuance and service of the impugned notice pursuant to the so called report preparing by the respondents on the basis of aforesaid illegal search and seizure made in violation of the provisions of VAT Act, have been done and issued without lawful authority.

She further submits that the illegal search and seizure dated 15.05.2018 has been carried out in violation of the due process of law and natural justice; thus, the action of the respondents including the issuance of notice under section 55(1) of the VAT Act, 1991 dated 29.05.2019 should be declared to have been done and issued without lawful authority.

On the other hand, Mr. Pratikar Chakma, learned Deputy Attorney General appearing for the respondents by filing an affidavit-in-compliance and submits that the petitioner herein challenged a mere issuance of notice purportedly issued under section 55(1) of the VAT Act, 1991 asking the petitioner to show

cause as to why it shall not be liable for less-paid/unpaid/evaded VAT of Tk.20,02,57,954/-.

He next submits that the legal course, petitioner ought to have taken as contemplated under the VAT Act is that it is to submit a written reply and thereafter it may claim an opportunity of personal hearing under the provision of section 55 of VAT Act to defend its position and also in order to show that the demand or claim of VAT has been actually paid or deposited in Government Treasury in due course and the respondent-commissioner is under an obligation as provided under section 55 of the VAT Act, 1991 is to hear the petitioner and upon perusal of its written reply and personal hearing shall finalize the demand, if there is any or exonerate the petitioner from the demand. But the petitioner without availing the proper course of law, directly rushed to the High Court Division with a misconceived application. He continues, the scope and opportunity as has been provided under

section 55 of the VAT Act in quite efficacious and adequate for defending the petitioner and thus, the Rule as has been issued in this writ petition is liable to be discharged.

Heard learned Advocate for the petitioner and learned Deputy Attorney General for the respondents, perused the writ petition together with the annexures and the affidavit-in-compliance filed by respondent No. 5 and the provisions of law.

It appears that the respondent No.5 issued and served a show cause-cum-demand notice dated 29.05.2019 under section 55(1) of the VAT Act, 1991 upon the petitioner-company, asking it to show cause within the time specified therein as to why the petitioner company shall not be liable for less paid/unpaid or evaded VAT of Tk.20,02,57,974/- (Annexure-‘B-1’). Upon perusal of the said notice it transpires that on being authorized vide Memo No. নিরীক্ষা, গো-সন্দা ও তদন্ত অধিদপ্তর, মূল্য সং-যাজন কর, ঢাকার আ-দশ নং- ৫(১০)নিঃ-গাঃতঃঅঃ/২৬-ধারা প্র-সাগ-২৪২/২০১৫/৩৩৩৮, তারিখঃ ১৪/০৫/২০১৮ খ্রিঃ as

well as 4(four) inspection teams have been constituted under the supervision of Additional Director General of নিরীক্ষা, গো-য়ন্দা ও তদন্ত অধিদপ্তর, মূল্য সং-যাজন কর, ঢাকা and the said teams being authorized in the aforesaid manner entered into the office of Anowar Group and made inspection and search into several offices and concerns of the said group and upon completion of inspection and search the teams seized some documents through 'Mushak-5' from the Office and IT room of the petitioner which includes CPU, Laptop, Computer Software and C.D..

Under section 20 of the VAT Act, 1991 the Board for the purpose of implementation the provisions of the VAT Act and the Rules made thereunder by publishing in the Official Gazette appointed the persons as specified in section 20 as VAT Officials and under clause (Gha) of sub-section (1) the Director General, Nirikkha, Goyenda and Tadanto Adhidoptor has been assigned as VAT Official.



It is contended by the petitioner that the respondents in violation of the provisions of sections 26(1), 26(Ka), 48 and 51 of the VAT Act made an illegal inspection, search and seizure. For better understanding relevant portion of section 26 of the VAT Act is reproduced herein below :

২৬। ক্ষমতাপ্রাপ্ত কর্মকর্তা-গণর উৎপাদনস্থল, -স্বাধীনস্থল, ব্যবসায়স্থল ও ঘড়বাড়ী-ত প্র-বশ, মজুদ পণ্য, সেবা ও উপকরণ পরিদর্শন এবং হিসাব ও নথিপত্র পরীক্ষা করার অধিকার। -(১) উপ-ধারা (২) এর বিধান সা-প-ক্ষ, [সহকারী কমিশনার বা সহকারী পরিচালক] পদমর্যাদার নি-ম্ন ন-হন এইরূপ কোন মূল্য সংযোজন কর কর্মকর্তা বা তাঁহার নিকট হইতে এতদুদ্দেশ্যে ক্ষমতাপ্রাপ্ত-

(ক) যে কো-না মূল্য সং-যাজন কর কর্মকর্তার কোন নিবন্ধিত বা নিবন্ধনযোগ্য ব্যক্তির উৎপাদনস্থল বা সরবরাহস্থল বা সেবা প্রদা-নর স্থল বা ব্যবসায়স্থল বা সংশ্লিষ্ট অন্য কোন ঘরবাড়ী বা অঙ্গনে প্রবেশের অধিকার থাকি-ব;

(খ) যে কো-না মূল্য সং-যাজন কর কর্মকর্তা নিবন্ধিত বা নিবন্ধন-যোগ্য ব্যক্তির উৎপাদন প্রক্রিয়া, মজুদ পণ্য, সেবা ও উপকরণ পরিদর্শন ও তদসংক্রান্ত হিসাব পরীক্ষা করিতে করিতে পারি-বন; এবং

(গ) যে কো-না মূল্য সং-যাজন কর কর্মকর্তা যে কোন সময় নিবন্ধিত বা নিবন্ধনযোগ্য ব্যক্তির মূল্য সংযোজন কর সংক্রান্ত পুস্তক, নথিপত্র ও বাণিজ্যিক দলিলাদিসহ ব্যবসা সংক্রান্ত সকল দলিলাদি পরীক্ষা করিতে, উহা দাখিল করিবার নির্দেশ প্রদান করিতে বা [উক্ত দলিলাদি ও ক্ষেত্রমত, পণ্য আটক করি-ত বা আটককৃত পণ্য হেফাজত বা সংরক্ষণের উদ্দেশ্যে উৎপাদনস্থল, সরবরাহস্থল বা ব্যবসায়স্থলে, [সহকারী কমিশনার বা সহকারী পরিচালক] পদমর্যাদার নি-ম্ন ন-হন এমন কোন মূল্য সংযোজন কর্মকর্তা, তালাবদ্ধ করিতে বা এতদুদ্দেশ্যে প্র-যাজনীয় অন্যান্য কার্য করি-ত পারি-বন।

- (২).....  
 (৩).....  
 (৪).....  
 (৫).....  
 (৬).....

It appears that the respondents being Value Added Tax Officials within the meaning of section 20 of the VAT Act and on being authorized under section 26 of the said Act made inspection,

search and seizure in the business place of petitioner-company within the clear contemplation of section 26 of the VAT Act and thereafter seized some documents, CPU and software therefrom as per stipulation of clause-(Ga) of sub-section (1) of section 26, upon preparing Mushak-5 and observing the formalities of the said section, read with Rule 7 of the VAT Rules, 1991. Thus, the contention of petitioner that respondents made search and seizure in violation of the provisions of section 26 has no footing to stand. And the rest of the petitioner's contention as to the violation of the provisions of sections 26(Ka), 48 and 51 of the VAT Act, is absolutely misconceived; because, section 26(Ka) is related with regular audit to see the regular payment of VAT in order to combat against documentary evasion of VAT and the provision of section 48 relates to the authority of delegation of making search and provision of section 51 of the VAT Act itself contemplated that the search and seizure under section 51 shall be guided under the

provision of the Code of Criminal Procedure and has no relevance with the search and seizure as contemplated under section 26 of the VAT Act, 1991 read with Rule 7; because, provisions of section 26 of the Act and Rule 7 are self-explanatory having no nexus with section 51.

In the case in hand, the respondent Nos.5-11 having been authorized by the Director General of নিরীক্ষা, গো-য়ন্দা ও তদন্ত অধিদপ্তর, মূল্য সং-যাজন কর, ঢাকা entered into the business premises of the petitioner and after having search and inspection seized some documents and materials in due course under 'Mushak-5' and on the basis of the said inspection, search and seizure a detail report has been submitted to the concern authority. Pursuant to the said report, the notice dated 29.05.2019 under section 55(1) of the VAT Act has been issued by the respondent No.5 asking the petitioner to show cause as to why it shall not be liable for less paid/un-paid/evaded VAT of TK.20,02,57,954/- and in the said notice, it

has been specifically stated that the petitioner has evaded payment of VAT by misrepresenting the facts and concealing the actual sales. And under various tables of the said notice (several ছক, i.e. ছক- ৩ হই-ত ১০ as specified in the said notice) it has been categorically specified amounts of evaded VAT by way of concealment, the liabilities of payable VAT and the aggregate of total payable VAT, i.e. the demanded VAT of Tk.20,02,57,954/-

From the premise above, it appears that the demand as has been made under the notice dated 29.05.2019 (Annexure-‘B-1’) having been specified the detailing of evasion, the manner of evasion and the payable VAT. Thus, the contention of the petitioner that the search and seizure has been made violating the provisions of VAT Act, 1991 and the notice has been issued with some vague allegations and statements, is not tenable in law.

We do not find any illegality in the search and seizure process as well as in issuance of the notice dated 29.05.2019 under section 55(1) of the VAT Act, 1991.

In course of hearing on 10.08.2023, this Court observed that since no order of status-quo exists, the Commissioner of Customs, respondent No. 5 shall be competent to proceed with further proceeding of the notice dated 29.05.2023 and by filing an affidavit-in-compliance the respondent No. 5 apprised this Court that the respondent No. 5 served a notice upon the petitioner fixing the date for its personal hearing on 21.08.2023 and thereafter, the date was re-fixed on 18.10.2023 and since after repeated notices the petitioner-company failed to appear or not willing to appear before the respondent No. 5, the said respondent on 30.11.2023 made the demand final under section 55(3) of the VAT Act, 1991, which is an appealable order.

In the premise above, we find no merit in the writ petition as well as in the submissions of learned Advocate for the petitioner.

Accordingly, the Rule is discharged without any order as to cost.

However, since the demand has been made final by the order dated 20.11.2023 of respondent No. 5, the petitioner may take recourse of appeal under the VAT Act, 1991, if it is so advised, within 60(sixty) days from the date of receipt of this judgment.

Communicate the judgment and order at once.

**Muhammad Khurshid Alam Sarkar, J:**

I agree.