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

Writ Petition No. 13337 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:

Rangs Electronics Limited
...Petitioner
-Versus-
Director General, Nirikkha, Goyenda-O-Tadonto Adhidoptor, Mullya Sangjojon Kor, Dhaka and others
... Respondents
Ms. Nahid Mahtab, Senior 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. 5

Judgment on: 22.02.2024

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 realization of Tk. 12,49,94,153/- as VAT by the respondent No.1-4 in violation of sections 26(1), and

26Ka(3) and (4), 51 and 55 of the Value Added Tax Act, 1991, General Order No. 14/Mushak/2015 dated 30.06.2015 read with Chapter 10.02(K), 11.01 1 11.02(22) of the "মূল্য সং-যাজন কর নিরীক্ষা (অডিট) ম্যানু-য়ল" should not be declared to have been done without lawful authority and is of no legal effect and also as to why the respondents should not be directed to refund/adjust the VAT amounting to Tk.12,49,94,153/- in accordance with law and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts relevant for disposal of the Rule are that the petitioner is a private limited company engaged in the business of manufacturing electronic products and trading of imported electronic items in Bangladesh, having been registered under section 15 of the Value Added Tax Act, 1991 (hereinafter referred to as 'the VAT Act') for the purpose of paying VAT . It is stated that that the petitioner is paying all Government taxes including value added tax regularly.

The respondent Nos. 3 and 4 have been authorized by respondent No.2 (on behalf of the respondent No.1) vide nothi Nos. ৫(১০)নিঃ-গাঃতঃঅঃ/২৬-ধারা প্র-য়াগ-২৪২/২০১৫/৪৩৭১ তারিখঃ-২৬/০৯/২০১৮খ্রিঃ and ৫(১০)নিঃ-গাঃতঃঅঃ/২৬-ধারা প্র-য়াগ-২৪২/২০১৫/৪৩৭২, তারিখঃ- ২৬/০৯/২০১৮খ্রিঃ for the purpose of conducting inspection including search and seizure, within the meaning of the provision of section 26 and 34 of the VAT Act. It is further stated that the aforesaid respondent Nos. 3 and 4 along with their teams after conducting inspection and search, seized some documents, CPU, software from the head office and sales centre of petitioner-company; thereafter the respondents on 27.09.2018 upon preparing Mushak-5 seized the aforesaid

documents, CPU and software for the purpose of ascertaining the VAT payable liabilities of petitioner-company. Thereafter, the petitioner through a representation dated 10.10.2018, before the respondent No.1, offered some explanation and its apology. It is further stated that the aforesaid inspection team along with the respondent Nos.1 and 2 asked the officer concerned of petitioner-company to appear and explain their conduct and after discussion (meeting) as per the verbal direction of respondents, the petitioner deposited Tk.12,50,00,000/-(twelve crore fifty lac), in the respective Code specified for Value Added Tax, through Treasury Challans as alleged VAT liabilities of the petitioner upon observing all the legal formalities .

It is further stated that the petitioner-company on being threatened and pressurized by respondents compelled to deposit the aforesaid amount, particularly, Tk.12,49,94,153/- (twelve crore forty nine lac ninety four thousand one hundred fifty three) through 19(nineteen) treasury challans and as such the said realisation is beyond the sanction of due process of law and the legal scope of the provisions of VAT Act.

Challenging the realization of Tk.12,49,94,153/-(twelve crore forty nine lac ninety four thousand one hundred fifty three), together with a prayer of issuance of writ of mandamus for a direction upon the respondents to refund/adjust the aforesaid amount of deposited VAT, the petitioner-company has filed this writ petition and hence this Rule.

Ms. Nahid Mahtab, learned Senior Advocate appearing for the petitioner submits that the respondents on 27.09.2018 in violation of the provisions of sections 26(1), 26(Ka) of the VAT Act read with ‘মূল্য সং-যাজন

কর নিরিক্ষা (অডিট) ম্যানুয়াল', made search and seizure and thereby stepped outside the given jurisdiction under the VAT Act and as such, the said actions of respondents are liable to be declared to have been done without lawful authority. She next submits that under the provisions of section 51 of the VAT Act, the respondents are under obligation to observe certain rules and procedure as contemplated under section 103 of the Code of Criminal Procedure, but the said respondents without observing those formalities made the search and seizure, which is beyond the legal authority. She further submits that the respondent Nos.3 and 4 without being authorized entered into and inspected the petitioner's head office as well as sales centre and thereafter made a seizure list allegedly through Mushak-5 and in pursuant to the aforesaid seizure list (inventory of Mushak-5), the respondents proceeded against petitioner and the petitioner under duress, compelled to deposit Tk.12,49,94,153/-(twelve crore forty nine lac ninety four thousand one hundred fifty three) through 19(nineteen) treasury challans and thus, the aforesaid activities of the respondents as well as aforesaid realization are liable to be declared to have been done without lawful authority and is of no legal effect. She lastly submits that the respondents cannot realize any tax or levy without sanction of law violating the provision of Article 83 of the Constitution providing protection against illegal levy or collection of revenue. Thus, the activities of the respondents are violative to the provisions of the Constitution and are liable to be declared to have been done without lawful authority.

On the other hand, Mr. Pratikar Chakma, the learned Deputy Attorney General appearing for the respondent No.5, submits that the writ

petition as well as the submissions made therein are misconceived and as such the Rule Nisi has been issued beyond the scope of constitutional law. He next submits that the respondent Nos. 3 and 4 on being duly authorized by respondent Nos. 1 and 2 made inspection, search and seizure upon observing all the legal formalities of sections 26, 34 of the VAT Act, 1991 read with Rule 7 of the VAT Rules, 1991 and thereafter an Evasion Case (VAT) being No.54 of 2019 dated 03.11.2019 having been initiated and thereafter under Memo No.৩(৯)নিঃগোঃতঃঅঃ/র‍্যাংগ্‌সইলেকট্রনিক্স/তদন্ত-১৫১/২০১৮/৮৭০৬,তারিখঃ ২৪/১১/২০১৯ইং dated 24.11.2019, the Chairman of the petitioner's company was asked to explain their position (Annexure-I) and having no satisfactory explanation from the petitioner-company a notice under section 55(1) of the VAT Act, 1991 has been issued on 07.12.2023 upon the petitioner-company. He next submits that after inspection and search it has been discovered that huge amount of VAT has been evaded by the petitioner-company and accordingly, a proceeding has been initiated under Evasion Case (VAT) No. 54 of 2019; on coming to know about the aforesaid proceeding of the evasion case petitioner-company sent his senior manager to make discussion with the respondents and thereafter decided to deposit the evaded VAT of Tk.12,49,94,153/-(twelve crore forty nine lac ninety four thousand one hundred fifty three) through Treasury Challans willingly, following the due process of law and the said taka was deposited through 19 Treasury Challans; thus, there was no illegally on the part of the respondents. In spite of that the petitioner-company filed the writ petition only to drag the realization process of evaded VAT and therefore, he prays for discharging the Rule.

Heard learned Advocate for the petitioner and learned Deputy Attorney General for respondent No.5, perused the writ petition together with the annexures appended thereto, the application for stay, affidavit-in-opposition and affidavit-in-compliance filed on behalf of respondent No.5. Having gone through the rival contention of both the contending parties and examined the provisions of law.

It appears that the respondent Nos. 3 and 4 on being authorized under 2(two) different memos dated 26.09.2018 (Annexures-‘B’ and ‘B1’) by respondent Nos. 1 and 2 made inspection, search along with their respective teams on 27.09.2018 into the head office and sales centre of petitioner-company situated at 2(two) different places and after inspection and search they made seizure lists (inventory) in Mushak-5, seizing some documents, CPU, softwares upon taking signature of authorized officers {Manager (Admin) of petitioner’s company} and thereafter on the basis of said inspection, search and seizure they initiated a proceeding of VAT Evasion Case being No.54 of 2019 dated 03.11.2019. It further transpires from Annexure-‘I’ to the application for stay, together with Annexure-‘C’ and Annexure-‘D’ ‘D-1’ and ‘D-2’ to the writ petition that the petitioner-company on coming to know about the aforesaid VAT evasion case willingly deposited Tk.12,49,94,153/-(twelve crore forty nine lac ninety four thousand one hundred fifty three) in the concern Code (VAT Account, maintaining for payment of VAT) through treasury challans.

It is contended by the petitioner that the respondents in violation of the provisions of sections 26(1), 26(Ka) and 51 of the VAT Act made an

illegal audit, search and seizure. For better understanding relevant portion of section 26 of the VAT Act is reproduced herein below ঃ

> ২৬। ক্ষমতাপ্রাপ্ত কর্মকর্তাগ-ণর উৎপাদনস্থল, -সবাপ্রদানস্থল, ব্যবসায়স্থল ও ঘড়বাড়ীতে প্রবেশ, 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 এইরুপ কোন মূল্য সং-যাজন কর কর্মকর্তা বা তাঁহার নিকট হইতে এতদুদ্দেশ্যে ক্ষমতাপ্রাপ্ত-
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> (ক) যে কো-না মূল্য সং-যাজন কর কর্মকর্তার কোন নিবন্ধিত বা নিবন্ধন-যাগ্য ব্যক্তির উৎপাদনস্থল বা সরবরাহস্থল বা সেবা প্রদানের স্থল বা ব্যবসায়স্থল বা সংশ্লিষ্ট অন্য কোন ঘরবাড়ী বা অঙ্গনে প্রবেশের অধিকার থাকিবে;
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> (খ) যে কোনো মূল্য সংযোজন কর কর্মকর্তা নিবন্ধিত বা নিবন্ধনযোগ্য ব্যক্তির উৎপাদন প্রক্রিয়া, মজুদ পণ্য, সেবা ও উপকরণ পরিদর্শন ও তদসংক্রান্ত হিসাব পরীক্ষা করি-ত করি-ত পারি-বন; এবং
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> (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 করি-ত, উহা দাখিল করিবার নির্দেশ প্রদান করিতে বা [উক্ত দলিলাদি ও ক্ষেত্রমত, পণ্য আটক করিতে বা আটককৃত পণ্য হেফাজত বা সংরক্ষণের উদ্দেশ্যে উৎপাদনস্থল, সরবরাহস্থল বা ব্যবসায়স্থ-ল, [সহকারী কমিশনার বা সহকারী পরিচালক] পদমর্যাদার নি-ম্ন ন-হন এমন কোন মূল্য সং-যাজন কর্মকর্তা, তালাবদ্ধ করি-ত] বা এতদুদ্দেশ্যে প্রয়োজনীয় অন্যান্য কার্য করি-ত পারি-বন।
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> (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 from the supply place (sale's centre), business place (head office) 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) 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 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. The further contention of the petitioner is that under duress the petitioner company compelled to deposit Tk.12,49,94,153/-(twelve crore forty nine lac ninety four thousand one hundred fifty three) illegally. Having gone through the explanations offered by the respondent No. 1 dated 24.11.2019 (Annexure-'I' to the application for stay together with the Annexures-'C', 'D', 'D-1' and 'D-2' to the writ petition), it appears that the petitioner-company willingly deposited Tk.12,49,94,153/-(twelve crore forty nine lac ninety four thousand one hundred fifty three) through 19(nineteen) treasury challans mentioning the specific Code for depositing VAT and in specific account allocated for the petitioner-company. It is not the fact or case of the petitioner that the respondents taken or realized taka by illegal means. Moreover, the petitioner-company is barred by acquiescence in raising objection against depositing/realizing the aforesaid amount of VAT, since the petitioner willingly deposited Tk.12,49,94,153/-

through 19(nineteen) valid Treasury Challans into the proper and specific Code of Exchequer without any sort of protest or objection and now it cannot challenge the aforesaid deposition or realization, in this regard the case of Prasan Roy Vs. CMDA(AIR 1988 SC205) can be relied upon .

Since the VAT has been deposited/realized by/from the petitioner-company through treasury challans, mentioning the proper and specific Code for realization of VAT, there has been no violation of the provision of Article 83 of the Constitution.

In the premise above, it appears that the Rule and submissions of the petitioner-company merit no consideration and as such, we are of the view that the Rule is liable to be discharged.

However, since in pursuant to the VAT Evasion Case of 54 of 2019, a notice under section 55(1) of the VAT Act has been served upon the petitioner-company on 07.12.2023 by the respondent No.5, we are of a further view that the proceeding of section 55 of the VAT Act is to be finalized effectively within 60(sixty) days observing the provisions of section 55(3), after notifying the petitioner. Further, since the earlier notice has been issued during pendency of this Rule and if after finalization of the proceeding of section 55, it is seen that the liabilities of the petitioner-company is lesser than the deposited amount, then the respondents are directed to refund/adjust the excess amount of VAT for the aforesaid period; on the other hand, if it is seen that the finalized demand is greater than the deposited amount, then the said rest amount is to be realized by observing the relevant provisions of law.

It is to be mentioned here that on 12 December, 2023 while this Court after exhaustively hearing the learned Advocate for the petitioner and respondents expressed its mind by order in writing that the Rule bears no merit and asked the petitioner, whether it will take an opportunity to not press the Rule and participate in the proceeding initiated under section 55 of the VAT Act or not but in reply thereto when the petitioner decided to make further submissions, the order was recorded:

> "Earlier, this matter was heard on numerous occasions at length and after hearing the learned Advocate for the petitioner, the learned Assistant Attorney General and on perusal of the petitioner's application as well as the affidavit-in-opposition filed by the respondents together with their annexures and having read the relevant statutory laws, this Court opined that this Writ Petition is apparently not maintainable and the petitioner was given an opportunity to non-prosecute the instant Rule with an observation that if it does not non-prosecute this Rule and wishes to receive a full-fledged judgment, in that event, this Court shall slap an exemplary costs of Tk.10,00,000/- (ten lac) upon the petitioner.
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> Nevertheless, today, when the matter is taken up for hearing, the learned Advocate for the petitioner wished to conduct further hearing of this case at length, so that he can refer as many case laws as he thinks to be relevant to this case and submits that the petitioner is adamant to receive a full-fledged Judgment, event at the costs of Tk.10,00,000/- (ten lac).
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> Taking into consideration the submissions of the learned Advocate for the petitioner, we are of the view that petitioner's prayer is nothing but a delay-dally technique to delay the disposal of this case as this writ petition is apparently not maintainable. However, upon relying on the humble prayer of the learned Advocate for the petitioner that she shall be able to satisfy this Court on the issue of maintainability of this writ petition as well as on the substantive issues of the case, this Court is inclined to fix a date of hearing subject to the condition that at the time of hearing of the substantive petition, if the petitioner fails to satisfy this Court on the said issues, it

> shall be under an obligation to non-prosecute the instant Rule. If it does not non-prosecute this Rule and wishes to receive a full-fledged Judgment, in that event, this Court shall slap an exemplary costs of Tk.10,00,000/- (ten lac) upon the petitioner.

Accordingly, let the matter appear in the daily cause list on 07.02.2024 upon allocating time-slot at 12pm to 01pm."

But the petitioner opted to get a full-fledged judgment by wasting the valuable time of this Court in a merit less case. Thus, this Court finds it appropriate to impose a fine of Tk.10,00,000/- upon the petitioner-company as per the order dated 12.12.2023 and the petitioner is hereby directed to deposit the aforesaid fine within 60(sixty) days through proper treasury challan in favour of the National Exchequer. The Rule is discharged with the aforesaid direction.

Let this matter shall come up in the daily cause list after 60(sixty) days i.e. 24.04.2024 for compliance.

Communicate the judgment and order at once.

Muhammad Khurshid Alam Sarkar, J:

I agree.

Obaidul Hasan/B.O.