

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

WRIT PETITION NO.10437 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:

Family Corner

... Petitioner

-vs-

National Board of Revenue and others.

... Respondents.

And

Mr. Shams-ud-Doha Talukder, Advocate with
Mr. Kamrul 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 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 adjudication order No.158 dated 26.08.2019 passed by the respondent No.2 demanding Tk.20,74,696.92/- as short levied duties and charges with penalty of

Tk.8,00,000.00 for violation of Sections 32 and 83A of the Customs Act, 1969 (Annexure-G) 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 adjudicating order No.158 dated 26.08.2019 passed by the respondent No.2 (Annexure-G) was stayed by this Court for a prescribed period.

In view of the statements so made in the instant writ petition, we have heard Mr. Shams-ud-Doha Talukder, 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 “পর্যালোচনায় দেখা যায় যে, আলোচ্য চালানের বিপরীতে ব্যাংক কর্তৃক সত্যায়িত দলিলাদির পরিবর্তে আমদানিকারক/তাঁর মনোনীত সিএন্ডএফ এজেন্ট প্রতারণা ও মিথ্যার আশ্রয় নিয়ে ভঁয়া/জাল দলিলাদির মাধ্যমে পণ্যচালানটি খালাস গ্রহণ করেছেন। আলোচ্য চালানে প্রদেয় শুল্ক-করাদির পরিমাণ ৩২,৬৮,৭৬৪.৪৫ টাকা। অথচ এক্ষেত্রে শুল্ক করাদি পরিশোধ করা হয়েছে ১১,৯৪,০৬৭.৫৩ টাকা। ফলে কম পরিশোধিত শুল্ক করাদি বাবদ ২০,৭৪,৬৯৬.৯২ টাকা রাজস্ব ফাঁকির বিষয়টি প্রমাণিত হয়েছে। আমদানিকারকের এরূপ কার্যক্রম The Customs Act, 1969 এর Section 32 অনুযায়ী অপরাধ সংঘটিত হয়েছে, যা একই Customs Act এর Section 156 (1) এর Table এর Clause 14 অনুযায়ী শাস্তিযোগ্য।” impugned adjudicating order dated 26.08.2019 has been passed by the respondent concerned.

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 of the Act, 1969 on the count, *inter-alia*, “পর্যালোচনায় দেখা যায় যে, আলোচ্য চালানের বিপরীতে ব্যাংক কর্তৃক সত্যায়িত দলিলাদির পরিবর্তে আমদানিকারক/তাঁর মনোনীত সিএন্ডএফ এজেন্ট প্রতারণা ও মিথ্যার আশ্রয় নিয়ে ভুঁয়া/জাল দলিলাদির মাধ্যমে পণ্যচালানটি খালাস গ্রহণ করেছেন। আলোচ্য চালানে প্রদেয় শুল্ক-করাদির পরিমাণ ৩২,৬৮,৭৬৪.৪৫ টাকা। অথচ এক্ষেত্রে শুল্ক করাদি পরিশোধ করা হয়েছে ১১,৯৪,০৬৭.৫৩ টাকা। ফলে কম পরিশোধিত শুল্ক করাদি বাবদ

২০,৭৪,৬৯৬.৯২ টাকা রাজস্ব ফাঁকির বিষয়টি প্রমাণিত হয়েছে।” hence, issuing a notice alleging *inter alia*, “আমদানিকারকের এরূপ কার্যক্রম The Customs Act, 1969 এর Section 32 অনুযায়ী অপরাধ সংঘটিত হয়েছে, যা একই Customs Act এর Section 156 (1) এর Table এর Clause 14 অনুযায়ী শাস্তিযোগ্য।..... দাবীকৃত শুল্ক-করাদি বাবদ ২০,৭৪,৬৯৬.৯২ + ব্যক্তিগত অর্থদন্ড ৮,০০,০০০.০০ = ২৮,৭৪,৬৯৬.৯২ (আটাশ চুয়াত্তর হাজার ছয়শত ছিয়ানব্বই দশমিক নয় দুই) টাকা The Customs Act, 1969 এর Section-83(A) অনুযায়ী এই পত্র জারীর ৩০ (ত্রিশ) দিনের মধ্যে পরিশোধ করার জন্য নির্দেশ দেয়া হলো।.....” is 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. Also, making the impugned demand for non-compliance of PSI is without jurisdiction, for, vide Section 25B of the Finance Act, 2013 it was optional for the importers to have their imported goods inspected by a pre-shipment inspection agency before or at the time of shipment of those goods on board or vessel, aircraft or other conveyance.

Section 25B is quoted below:

25B. Optional pre-shipment Inspection.-

“Notwithstanding anything contained in this Act, it is optional for the importers to have their importable goods inspected by a pre-shipment inspection agency before or at the time of shipment of those goods on board a vessel, aircraft or other conveyance.”

In view of the above facts and circumstances of the case and observations and findings, we find substance in this Rule.

Accordingly, this Rule is made absolute.

The impugned order dated 26.08.2019 passed by the respondent No.2 demanding Tk.20,74,696.92/- as short levied duties and charges with penalty of Tk.8,00,000.00 for violation of Sections 32 and 83A of the Customs Act, 1969 (Annexure-G) is hereby declared to have been passed without lawful authority and is of no legal effect.

Since, the impugned demand dated 26.08.2019 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.

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.