

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

WRIT PETITION NO.9305 of 2020

IN THE MATTER OF:

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

And

IN THE MATTER OF:

Arif Hossain

... Petitioner

-vs-

*Commissioner of Customs, Customs House,
P.S.-Bandar, Chattogram and others.*

... Respondents.

And

Mr. Md. Mizanul Hoque Chowdhury, Advocate with
Mr. Md. Masudul Hoque, Advocate and
Mr. Md. Ekram Uddin Khan Chowdhury, 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. and
Mr. Md. Taufiq Sajawar (Partho), A.A.G.
....For the Respondents-government.

Heard on: 09.03.2023, 03.05.2023
and Judgment on:24.05.2023

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 show
cause notice bearing Nothi No.185/PCA/2017-2018/22569/Cus dated 10.10.2020

under Section 83A of the Customs Act, 1969 asking to show cause against the demand of Tk.9,36,757.98 in connection with Bill of Entry No.C-949472 dated 24.07.2017 (Annexure-C), 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 notice bearing Nothi No.185/PCA/2017-2018/22569/Cus dated 10.10.2020 (Annexure-C), was stayed by this Court for a prescribed period.

Facts, in brief, are that the petitioner is a proprietor of M/S. Tashin Corporation, who is engaged in the import business of various chemical items. During the course of business the petitioner opened Letter of Credit No.0000296117010121 for import of 72 MT Dextyrose Anhydrous under H.S. Code No.1702.30.10. In due course the exporter shipped the consignment and sent all relevant shipping documents namely L/C, Invoice and Bill of Lading etc. [Annexure-A-A(III) respectively]. On receipt thereof the petitioner submitted Bill of Entry No.C-949472 dated 24.07.2017 for assessment and release of the goods in question. Accordingly, assessment was made by the Customs authority and the goods were released on receipt of applicable customs duties and taxes on 02.08.2017.

On 15.01.2018, the Deputy Commissioner of Customs on behalf of the Commissioner of Customs concerned issued a show cause notice under Section 83A of the Customs Act, 1969 (in short, Act of 1969) for amendment of assessment with direction upon the petitioner to give reply thereof within 30(thirty) working days. The petitioner did not respond to the same. Having receipt no response thereof said respondent issued the impugned demand cum-show cause notice on 10.10.2020 (Annexure-C)

under Section 83A of the said Act, 1969 asking the petitioner to show cause as to why an amount of Tk.9,36,757.98 should not be demanded from the petitioner upon making amendment of assessment in connection with Bill of Entry No.C-949472 dated 24.07.2017 under H.S. Code No.1702.30.90.

The impugned demand cum show cause notice dated 10.10.2020 (Annexure –C) is quoted as under:

“Customs Act, 1969 এর First Schedule এ H.S. Code 1702.30.10 এর বিপরীতে বর্ণনা Dextrose anhydrous / monohydrate BP/USP Pyrogen free imported under blacklist উল্লেখ আছে। H.S.Code 1702.30.10 এর বিপরীতে উল্লিখিত বর্ণনা অনুযায়ী আলোচ্য পণ্য ঔষধ প্রসাশন অধিদপ্তরের পূর্বানুমতির মাধ্যমে প্রেরিত Blocklist অনুযায়ী পণ্য আমদানি ও খালাসযোগ্য। কিন্তু আমদানিকারক প্রতিষ্ঠান কোন Blocklist ভুক্ত Pharmaceutical Industry নয় বিধায় এইচএসকোড ১৭০২.৩০.১০ তে শুক্কায়নের কোন সুযোগ নেই। অর্থাৎ আমদানিকারক বাণিজ্যিক ভিত্তিতে পণ্য চালানটি আমদানি করেছেন। ফলে প্রথম তফসিল অনুযায়ী পণ্যগুলি H.S.Code-1702.30.90 (CD-25%, RD-3%, SD-20%, VAT-15%, AIT-5%, ATV-4%) এর বিপরীতে শ্রেণীবিন্যাসযোগ্য। পণ্যটি প্রকৃত এইচ.এস.কোড-এর বিপরীতে শুক্কায়ন করা হলে শুক্ক-করাদির পরিমাণ দাঁড়ায় ২৭,৩০,১৪১.৪৩ (সাতশ লক্ষ ত্রিশ হাজার একশত একচল্লিশ দশমিক চার এক) টাকা মাত্র। পূর্বে পরিশোধিত শুক্ক-করাদির পরিমাণ ১৭,৯৩,৩৮৩.৪৫ (সতের লক্ষ তিরানব্বই হাজার তিনশত তিরিশি দশমিক চার পাঁচ) টাকা মাত্র। এক্ষেত্রে কম পরিশোধিত শুক্ক-করাদির পরিমাণ (২৭,৩০,১৪১.৪৩-১৭,৯৩,৩৮৩.৪৫) = ৯,৩৬,৭৫৭.৯৮ (নয় লক্ষ ছত্রিশ হাজার সাতশত সাতান্ন দশমিক নয় আট) টাকা মাত্র, যা আমদানিকারকের নিকট হতে আদায়যোগ্য। ইতঃপূর্বে সূত্রোক্ত পত্রের মাধ্যমে ৩০(ত্রিশ) কার্যদিবসের মধ্যে জবাব প্রদানের জন্য কারণ দর্শাও নোটিশ জারী করা হলেও আপনার প্রতিষ্ঠান হতে কোন জবাব পাওয়া যায়নি।

এমতাবস্থায়, Customs Act, 1969 এর Section-83A এর বিধান মোতাবেক শুক্কায়ন সংশোধনপূর্বক পরিহারকৃত শুক্ক-করাদি বাবদ ৯,৩৬,৭৫৭.৯৮ (নয় লক্ষ ছত্রিশ হাজার সাতশত সাতান্ন দশমিক নয় আট) টাকা মাত্র কেন তাঁর নিকট হতে আদায়যোগ্য হবে না তার লিখিত জবাব এ পত্র জারির ০৭ (সাত) কার্যদিবসের মধ্যে দাখিলের জন্য পুনরায় অনুরোধ করা হলো। এ বিষয়ে তিনি/তাঁর ক্ষমতা প্রাপ্ত প্রতিনিধি ব্যক্তিগত শুনানীতে উপস্থিত হতে চাইলে জবাবে তাও উল্লেখ করতে হবে।

নির্ধারিত তারিখ বা তপূর্বে এ নোটিশের জবাব পাওয়া না গেলে আর কোন প্রকার যোগাযোগ ছাড়াই Customs Act, 1969 এর প্রদত্ত ক্ষমতাবলে নথিতে রক্ষিত দলিলাদির ভিত্তিতে পরবর্তী আইনানুগ ব্যবস্থা গ্রহণ করা হবে। রাজস্ব সুরক্ষার স্বার্থে বিষয়টি অতীব জরুরী।”

Being aggrieved by and dissatisfied with the petitioner preferred the instant application and obtained the present Rule Nisi.

Mr. Md. Mizanul Hoque Chowdhury, the learned Advocate appearing with Mr. Md. Masudul Hoque, the learned Advocate for the petitioner mainly contends that admittedly assessment of consignment was made by the Customs authority on 02.08.2017 (Annexure-B-1); as such, in view of Section 83B(1) of the Act, 1969 since said authority has failed to complete the process of amendment of assessment within 3(three) years, hence the impugned demand cum show cause notice dated 10.10.2020 (Annexure-C) is liable to be declared to have issued without lawful authority and is of no legal effect.

Conversely, Mr. Mr. Md. Modersher Ali Khan (Dipu), the learned Assistant Attorney General appearing for the respondents-government by filing affidavit-in-opposition submits that subsequent to release of the consignment on making assessment and on receipt of customs duty and taxes on 02.08.2017 it was detected by the Customs authority that the petitioner importer is not a block listed pharmaceutical industry; hence, the goods were liable to be assessed under different H.S.Code. Accordingly, question of amendment of assessment arose. To that effect, he submits, the Customs authority issued a show cause notice upon the petitioner under Section 83A of the Act, 1969 on 15.01.2013 i.e. within 6(six) months from the date of previous assessment with direction upon the petitioner to give reply thereof within 30 (thirty) working days, but he did not respond. Under the circumstances, the respondent concerned again issued a reminder show cause notice on 10.10.2020 (Annexure-C) in continuation of the earlier show cause notice with direction upon the

petitioner to give reply thereof within 7(seven) working days of issuance of the said notice. The petitioner again did not respond thereto; rather, without giving reply thereof he filed the instant writ petition seeking declaration from this Hon'ble Court that the impugned show cause notice is barred by limitation under Section 83B(1) of the said Act.

In this regard, he goes to argue that in order seek equitable relief under Article 102 of the Constitution the aggrieved person is to come with clean hands. Accordingly, he submits that since the petitioner did not respond to the earlier show cause notice dated 15.01.2018 issued under Section 83A within 6(six) months of the assessment; as such, challenging the present show cause notice dated 10.10.2020, which is the reminder of the earlier notice, seeking equitable relief on the count that said notice issued under Section 83A is barred by limitation under Section 83B(1), is not maintainable. Hence, he submits that the Rule is liable to be discharged.

Admittedly, the petitioner imported the goods in question under Letter of Credit No.0000296117010121 corresponding to Bill of Entry No. C-949472 dated 24.07.2017, which were assessed by the Customs authority under H.S. Code No.1702.30.10, as declared by the petitioner. However, those goods were released on receipt of applicable duties and taxes on 02.08.2017 (Annexure-B-1). The contention of the Customs authority is that only the block listed pharmaceutical industry was entitled to make a prayer for assessment of the goods under the declared H.S. Code, but the petitioner company was not. Accordingly, a demand cum show cause notice was issued upon the petitioner on 15.01.2018 under Nothi No.১৮৫/পিসিএ/২০১৭-১৮/১৩৫৬(কাস) under Section 83A of the Act,

1969 for amendment of assessment, within 6(six) months of the earlier assessment, with direction to give reply thereof within 30(thirty) working days. The petitioner did not respond to the said show cause notice.

Under the stated circumstances, vide the impugned order dated 10.10.2020 (Annexure-C) a reminder show cause notice was issued by the respondent concerned to the petitioner under Section 83A of the said Act with direction to give reply thereof within 7(seven) days. However, without responding to the said notice the petitioner seeking equitable relief has obtained present Rule Nisi on the contention that in view of Section 83B(1) the proceeding under Section 83A having not been concluded within 3(three) years from the date of assessment i.e. on 02.08.2017, the reminder show cause notice is liable to be knocked down, as being barred by limitation under Section 83B(1) of the Act, 1909.

It is the settled principle of law that the remedy given under writ jurisdiction is equitable; hence, the applicant must come with clean hands. In view of the decision of our apex Court in *Oriental Bank vs. A B Siddiq (2008) 13 BLC (AD) -144* the improper conduct with regard to the matter in controversy may disentitle him to get equitable relief.

In the present case, proceeding under Section 83A of the Act, 1969 was initiated with the issuance of show cause notice on 15.01.2018 within 6(six) months of assessment; the petitioner with intention did not respond to the same. Said improper conduct of the petitioner disentitles him from taking the plea of limitation in order to strike down the reminder notice issued upon him subsequently on 10.10.2020 (Annexure-C).

In view of the above observations, findings and considering the facts and circumstances of the present case, we find no substance to the contention so has been advanced on behalf of the petitioner.

In the result, this Rule is discharged without any order as to costs.

The order of stay granted earlier by this Court is hereby vacated.

Communicate the judgment and order to the respondents concerned at once.

Muhammad Mahbub Ul Islam, J:

I agree.

