

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

**Writ Petition No. 5740 of 2021**

**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. Ismail

...Petitioner

-Versus-

Chairman, Chattogram Port Authority and others  
...Respondents

Mr. Mohammad Mehdi Hasan, Advocate

...For the petitioner

Mr. Imranul Kabir, Advocate

...For the respondent No. 1

Mr. Pratikar Chakma, DAG with

Mr. Humayun Kabir,

Ms. Farzana Rahman Shampa,

Mr. Masud Rana Mohammad Hafiz and,

Mr. Ali Akbor Khan, AAGs

... For the respondent Nos.4 and 5

**Judgment on: 19.02.2024**

**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 action of the respondent Nos. 1 to 3 in deducting 15% VAT instead of 7.5% VAT from the bills of the petitioner (Annexure-‘E’, ‘E-1’ and ‘E-2’) for the works under contract agreement (Form PW3A-9) Tender No.18.04.0000.132.14.068.21 dated 01.05.2021 (Annexure-‘A’) should not be declared to have been taken without lawful authority and is of no legal effect, and why the respondents should not be directed not to deduct 15% VAT instead of 7.5% VAT from the petitioner’s bill for the works under contract No. 18.04.0000.132.14.068.21 dated 01.05.2021 (Annexure-‘A’) and/or pass such other or further order or orders as to this Court may seem fit and proper.

At the time of issuance of the Rule, the respondents concerned were directed to deduct 7.5% VAT from the petitioner’s bill for the works under contract No. 18.04.0000.132.14.068.21 dated 01.05.2021(Annexure-‘A’).

The petitioner is a Bangladeshi National, having proprietary concern in the name and style ‘Ifaz Traders’ and engaged in various kinds of works under different contracts. Respondent No.1 floated a tender being No.18.04.0000.132.14.068.21 dated 26.01.2021 inviting eligible contractors/persons to participate in the tender for the works ‘appointment of a contractor for Jetty Handling (cleaning and garbage removing) for Chittagong Port Authority’ for a period

of 2(two) years. The petitioner on being successful in getting the offered work a contract agreement was signed between the respondent No.1 and petitioner on 01.05.2021 for execution of the work as per specification of the Notification of Award and Tender documents. It is to be mentioned here that the Notification of Award was issued in favour of the petitioner on 29.04.2021.

As per the contract agreement dated 01.05.2021, the documents forming the contract shall be interpreted in the following order of priority:

- a. the signed Contract Agreement;
- b. the letter of Notification of Award;
- c. the completed Tender and the Appendix to the Tender;
- d. the Particular Conditions of Contract;
- e. the General Conditions of Contract;
- f. the Technical specifications;
- g. the General Specification;
- h. the Drawing;
- i. the priced BOQ and the Schedules; and
- j. any other Documents listed in the PCC forming Part of the Contract;

It is stated that the respondent Nos. 1-3 collect VAT on behalf of respondent Nos. 4 and 5 from the monthly bills payable/paid to the petitioner. It is further stated that under ‘সাধারণ আ-দশ নং-১৪/মূসক/২০১৭, তারিখঃ০১/০৭/২০১৭ইং’ the petitioner’s work having been defined under Service Code 037.00 as ‘Procurement

Provider (যোগানদার)' and deductible VAT from the bills of said service as per stipulation of the aforementioned General Order is 5%; thereafter, SRO No.149-Law/2020/110-Mushak has been promulgated by the respondent No.5, on being authorized by the Value Added Tax and Supplementary Duties Act, 2012 (shortly 'the VAT Act'), under which 7.5% VAT is to be deducted from the bills of 'Procurement Provider'. It is further stated that the petitioner submitted his first bill to the Chattogram Port Authority for the works completed in the month of May, 2021 and surprisingly found that the authority made payment after deducting VAT at the rate of 15% from the aforesaid monthly bills violating the provisions of the VAT Act and the Order and Rules made thereunder. Challenging the deduction of 15% VAT from the monthly bills, the petitioner filed this writ petition and obtained the Rule.

Mr. Mohammad Mehdi Hasan, learned Advocate appearing for the petitioner submits that the petitioner after participating in open tender obtained the work order from respondent, Chattogram Port Authority for rendering some services as specified in the Notification of Award dated 29.04.2021 as well as in Tender documents; under 'সাধারণ আ-দশ নং-১৪/মূসক/২০১৭, তারিখঃ ০১/০৭/২০১৭ইং' read with 'এস,আর,ও নং ১৪৯-আইন/২০২০/১১০-মূসক' dated 11.06.2020, the petitioner should be treated as 'Procurement Provider

(-যাগানদার)' Service Code of which is S037.00 and under 'এস.আর.ও নং ১৪৯-আইন/২০২০/১১০-মুসক' the deductible VAT from the bills of petitioner's service is 7.5%, but the respondent Nos.1-3 most arbitrarily and illegally deducted VAT at the rate 15% from the monthly bills of petitioner and thereby acted beyond their jurisdiction and as such, the action of the respondent Nos.1-3 is required to be declared to have been taken without lawful authority and is of no legal effect.

On the other hand, Mr. Imranul Kabir, learned Advocate appearing for respondent No. 1 submits that under the VAT Act the respondent No. 1 is the withholding tax authority and is under an obligation to deduct VAT from any payment made to any person under any contract or agreement for rendering services and as such, the respondent Nos.1-3 are deducting VAT at source from the monthly bills of the petitioner's proprietary concern as per the provision of the VAT Act as well as the contract agreement and tender documents. He next submits that the Commissioner of Customs, Excise and VAT of concern zone asked the respondent No. 1 to deduct 15% VAT from the monthly bills of petitioner and accordingly, the respondent Nos. 1-3 are deducting VAT as per direction of the Commissioner concerned and in view of above, he prays for discharging the Rule.

Mr. Pratikar Chakma, learned Deputy Attorney General made his submission adopting the submissions of learned Advocate for the respondent No. 1 claiming that 15% VAT has been deducted justly and legally from the monthly bills of the petitioner's proprietary concern and therefore he also prays for discharging the Rule.

Heard the learned Advocates for the petitioner, respondent No.1 and the learned Deputy Attorney General, and perused the writ petition and affidavit-in-opposition filed on behalf of respondent No.1 together with their annexures.

We have also examined the provisions of the VAT Act alongwith the 'এস,আর,ও নং ১৮৬-আইন/২০১৯/৪৩-মূসক' dated 13.06.2019 and 'এস,আর,ও নং ১৪৯-আইন/২০২০/১১০-মূসক' dated 11.06.2020.

It appears that the petitioner through its proprietary concern entered into an agreement with respondent No.1 on 01.05.2021 after successfully participated in an open tender for appointment of a contractor for Jetty Handling (Cleaning & Garbage Removing) for Chattogram Port Authority for a period of 2(two) years. Clause-5 of the Contract Agreement dated 01.05.2021 states as under:

*"The Procuring Entity hereby covenants to pay the Contractor in consideration of the execution and completion of the works and the remedying of defects therein, the contract price or such and other*

*sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.”*

Under section 3 of the Tender Documents captioned ‘General Condition of Contract’ (in short ‘GCC’) in clause-4, it is stipulated that the contract shall be governed by and interpreted in accordance with the laws of the People’s Republic of Bangladesh and under clause-18 of GCC, it is also stipulated that the contractor shall be entirely responsible for all applicable taxes, custom duties, VAT, and other levies imposed or incurred inside and outside Bangladesh. It is to be noted here that the contractor (petitioner) is to submit his bill on monthly basis. Under section 4, captioned ‘Particular Condition of Contract’ (PCC) in clause GCC 65.1, the method and conditions of payment has been specified and it is also stated that (from page 102 of the writ petition) the payment shall be made in Bangladeshi taka on monthly basis. Under sub-clause (6) of clause-GCC 65.1, it is further stipulated that Income-tax, VAT and any other taxes imposed by the Government shall be borne by the contractor and which shall be deducted from the monthly bills of the contractor.

It further appears that the work has been specified in Contract Agreement, Notification of Award, Tender documents, etc. as “Appointment of a Contractor for Jetty Handling (Cleaning and Garbage removing) for Chattogram Port Authority.....’ and under

‘এস,আর,ও নং ১৮৬-আইন/২০১৯/৪৩-মুসক’ dated 13.06.2019 read with ‘এস,আর,ও নং ১৪৯-আইন/২০২০/১১০-মুসক’ dated 11.06.2020 such services of the petitioner has been defined/explained under Service Code S065.00 captioned “ভবন, মে-ঝা ও অংগন পরিস্কার বা রক্ষণা-বক্ষণকারী সংস্থা” are as below:

ব্যখ্যা।-“ভবন, মে-ঝা ও অংগন পরিস্কার বা রক্ষণা-বক্ষণকারী সংস্থা” অর্থ প-ণর বিনিম-য় সরকারি, আধা-সরকারি, স্বায়ত্তশাসিত প্রতিষ্ঠান, বেসরকারি সংসস্থা (এনজিও), ব্যাংক, বীমা বা অন্য কো-না আর্থিক প্রতিষ্ঠান, লিমি-টড কোম্পানী, শিক্ষা প্রতিষ্ঠান বা আন্তর্জাতিক সংস্থার ভবন, মেঝে ও অংগন পরিস্কারের কার্যে নিয়োজিত কোনো ব্যক্তি, প্রতিষ্ঠান বা সংস্থা।”

Learned Advocate for respondent No. 1 is claiming that the service of the petitioner shall fall under the Service Code S005.10 under caption ‘পণ্যাগার’; on meticulous examination of the explanation, definition given under Service Code S005.10 (under SRO No. 186 of 2019), it appears that in no manner the said Code shall be applicable for the services rendered by the petitioner. Now, regarding the submissions made by learned Advocate for the petitioner, it is contended that their service should be fallen under Service Code S037.00 under caption ‘-যাগানদার’ (Procurement Provider) claiming himself as ‘-যাগানদার’, because he is rendering the services to the ‘চট্টগ্রাম বন্দর কর্তৃপক্ষ’ after participating in a tender and that is why his rendered service should be treated/fallen under Service Code S037.00.



We have also examined the provisions of এস,আর,ও নং ১৪৯-আইন/২০২০/১১০-মূসক, ‘উৎস মূল্য সং-যাজন কর কর্তন ও আদায় বিধিমালা, ২০২০; in Rule 4 under the caption ‘-যোগানদারের ক্ষেত্রে উৎসে মূসক কর্তন’, it is provided that ‘যে সকল সেবার সুনির্দিষ্ট সংজ্ঞা রহিয়া-ছ, সে সকল সেবা যোগানদার হিসা-ব গণ্য হই-ব না’। Under Service Code S065.00, the services of the petitioner have been defined and explained as ‘ভবন, মে-ঝা ও অংগন পরিষ্কার বা রক্ষণা-বক্ষণকারী সংস্থা’; thus, by operation of Rule 4 of the ‘উৎস মূল্য সং-যাজন করকর্তন ও আদায় বিধিমালা, ২০২০ the services of the petitioner cannot be treated as ‘Procurement Provider’. Under sub-rule (2) of Rule 3 of the said Rules, 2020 it is also stated that “টেন্ডার, চুক্তি, কার্যাদেশ বা অন্যবিধভাবে সরবরাহের ক্ষেত্রে নিম্নের ছকে বর্ণিত কলাম (২) এ বর্ণিত সেবার কো-ডর বিপরী-ত কলাম (৩) এ বর্ণিত সেবার বিপরী-ত কলাম (৪) এ বর্ণিত হা-র আবশ্যিকভাবে উৎসে কর্তনকারী সত্তা কর্তৃক উৎসে কর্তন করিতে হইবে; যথাঃ .....” and at serial No. 35 under Service Code S065.00 the deductible VAT has been specified at the rate of 10%.

In the premise above, we are of the view that neither the petitioner’s service can be treated as ‘পণ্যাগার’ nor as ‘ইজারা’, rather its services are to be treated under Service Code S065.00 as ‘ভবন, মে-ঝা ও অংগন পরিষ্কার বা রক্ষণা-বক্ষণকারী সংস্থা’ and the deductible VAT from the payment of its monthly bills is 10% under the provisions of SRO No. 149-Law/2020/110-Mushak dated 11.06.2020 read with SRO. No. 186-Law/2019/43/Mushak dated 13.06.2019.

Accordingly, we find merit in the Rule.

Therefore, the Rule is made absolute-in-part. No order as to cost.

The respondents are directed to treat the services of the petitioner under Service Code S065.00 and the respondent No. 1-3 are also directed to ensure collection of rest 2.5% of VAT, which has been collected in a manner of lesser degree by the interim order of this Court from the deductible VAT in the earlier monthly bills of the petitioner, to meet the ultimate 10% of VAT.

Communicate the judgment and order at once.

**Muhammad Khurshid Alam Sarkar, J:**

I agree.