

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

WRIT PETITION NO. 642 of 2025

IN THE MATTER OF:

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

And

IN THE MATTER OF:

***Brithish American Tobacco
Bangladesh Company Limited.***

....Petitioner.

-versus-

***The Commissioner, Large
Taxpayer's Unit and another.***

.... Respondents.

Mr. Ahsanul Karim, Senior
Advocate with
Mr. Mustafizur Rahman Khan,
Senior Advocate with
Mr. Junayed Ahmed Chowdhury,
Senior Advocate

.... For the Petitioner.

Mr. Md. Asaduzzaman, Attorney
General for Bangladesh, with
Mr. Dihider Masum Kabir,
D.A.G.with
Mr. A.M. Jamiul Hoque (Faisal),
A.A.G. with
Ms. Sabikun Nahar, A.A.G.with
Mr. Ali Asgar Fakir, A.A.G with
Mr. Mohammad Alam Khan, A.A.G.

.... For the respondents-
government.

Order passed on 26.02.2025

Present:

Mr. Justice Md. Jahangir Hossain

and

Mr. Justice Yousuf Abdullah Suman

Yousuf Abdullah Suman, J:

In this writ petition, the petitioner- British
American Tobacco Bangladesh Company Limited-

challenged the impugned order dated 12.12.2024 passed by the respondent no.1, the Commissioner of Large Taxpayer's Unit, Dhaka, demanding Value Added Taxes and duties for an amount of TK.168,77,46,697 (one hundred sixty eight crore seventy seven lac forty six thousand and six hundred ninety seven).

We have heard the learned counsels for the petitioner, Mr. Ahsanul Karim, Mr. Mustafizur Rahman Khan and Mr. Junayed Ahmed Chowdhury, and the learned Attorney General, Mr. Md. Asaduzzaman, as well as the Deputy Attorney General, Mr. Dihider Masum Kabir for the state. We have also perused the application and the documents appended therewith, a supplementary affidavit filed by the petitioner, and other materials submitted on and off the record including the written submissions filed by both the parties hereto.

The learned counsels for the petitioner submit that, the impugned order of demand is illegal in that the petitioner is to pay the applicable taxes and duties only at the point of supplying cigarettes from its place of manufactures/factories under Rule 11(2) of SRO No.181 dated 13.06.2019. And the petitioner paid so in full in the instant case admittedly. There is no provision of law to pay the said taxes and duties again at any stage thereafter. Hence, they submit, demanding taxes while cigarettes are supplied from the warehouse for which the taxes and duties have already been paid at the point of removal from the factory is illegal and has no legal sanctions.

They further submit that, though the price of the product has increased after removal from the factory and the petitioner sold them out with the

new price which is obligatory by law under Clause 2 (Ka) & (Kha) of the General Order No.1/VAT/2024 dated 27.05.2024, and thereby made some additional profits by selling them at an increased rate, those profits are “windfall profits” as was held in *Meghna Petroleum Limited vs. Commissioner of Taxex, Dhaka* 50 DLR (AD) 165, and thus the said profits are lawful.

As to the maintainability of this writ petition, the learned counsels for the petitioner submit that, despite having the statutory appellate forum this petition is still maintainable as the impugned order is passed “wholly without jurisdiction” as was held in *Harbanslal Sahnia vs. Indian Oil Corp. Ltd.* 2 SCC 107 referred in our jurisdiction in the case of *Commissioner of Customs, Excise and VAT vs. Syed Nurul Arefeen* 29 BLC (AD) 136. He also refers *British American Tobacco Bangladesh Company Limited vs. NBR* 25 BLC (AD) 49, *Whirlpool Corporation vs Registrar of Trade Marks, Mumbai and Others* 8 SCC 1, and *Commissioner of Customs, Jessore vs. Cab Express (BD) Ltd.* 14 MLR (AD) 294 wherein, the learned counsels submit, courts entertained writ petitions despite having appellate forum on a number of grounds including where the authority had acted wholly without jurisdiction.

The learned Attorney General, on the other hand, submits that, the impugned demand is entirely lawful made in pursuant to Rule 5(1) & (2) of SRO No.181 dated 13.06.2019 and Clause 2 (Ka) and (Kha) of the latest General Order No.1/VAT/2024 dated 27.05.2024 obliging the petitioner to pay the taxes

and duties in accordance with the amended/increased price of the cigarettes irrespective of whether they were produced and stored in the warehouse before the price hike; Clause 2 (Ka) of the said latest General Order distinctly mentioned the word release (খালাস) along with supply (সরবরাহ) for such levying of taxes and duties. He further submits that, in order to include 'warehouse' for the purpose of levying taxes and duties upon cigarettes released therefrom, the Rule 12 of the SRO No.181 dated 13.06.2019 has been amended by the SRO No.145 dated 11.06.2020 by adding 'warehouse' along with 'purchaser' while an invoice is issued in the Form 'VAT-6.3' in favour of the 'purchaser' or 'warehouse'. The removal of cigarettes from the warehouse, he submits, is also thus taxable under the law.

As to the issue of maintainability, the learned Attorney General submits that, there is statutory appellate forum under section 122 of the Value Added Tax and Supplementary Duty Act, 2012 which is competent to address both the questions of fact and law: in *NBR vs. Basic Dredging Company Ltd.* 29 BLC (AD) 141, our apex court held that "Where there is a statutory appellate forum ... the aggrieved person must exhaust that forum and without exhausting that statutory forum an application under Article 102 of the constitution is not maintainable"; he also refers the case of *Commissioner of Customs, Excise and VAT vs. Syed Nurul Arefeen* 29 BLC (AD) 136 wherein it was held that, "... since the statute provided efficacious alternative remedy to the aggrieved persons and statute itself contains a mechanism for redressal of grievance ... writ petitioners should avail the statutory remedy

provided in the statute”. The learned Attorney General therefore submits that this writ petition should outright be rejected.

We have heard both the sides at length. We are primarily concerned about the maintainability issue. Although our apex court paved several ways of exceptions to entertain a writ petition despite having appellate forum (*Commissioner of Customs, Excise and VAT vs. Syed Nurul Arefeen* 29 BLC (AD) 136; *British American Tobacco Bangladesh Company Limited vs. NBR* 25 BLC (AD) 49), we hold that those exceptions must be resorted not only cautiously and sensibly, but also responsibly: we nowadays hardly find any pleader in court who does not assert that his case is not fallen within the exceptions of ‘*mala fide*’, ‘arbitrariness’, ‘wholly without jurisdiction’, and so on, in order to repudiate the appellate forum. This trend is getting increasingly alarming rendering the appellate forum void. In the instant case, we had the opportunity to go through the 19 pages long impugned order addressing all the issues of facts and laws judiciously within the purview of all applicable relevant provisions, giving the petitioner a personal hearing, providing with the detail charts of taxable products, outlining the relevant laws under which they should be taxed etc., and also finally giving the petitioner, at the foot of the order, an opportunity to prefer an appeal in the event of being aggrieved by the same. The petitioner’s counsel’s submissions that the instant impugned order is “wholly without jurisdiction” did not, therefore, create sufficient appeal to us. We are of the view that, the provisions for appeal under section 122 of the Value

Added Tax and Supplementary Duty Act, 2012 provided an equally efficacious remedy in the instant case, and the matter can be resolved more effectively and efficiently in appeal. Unless the petitioner exhausts this statutory appellate forum, an application under Article 102 of the constitution is not maintainable, and hence we do not find any cogent reasons to entertain the instant writ petition bypassing the said forum of appeal.

In addition, we wish to make a note as to the issue of “windfall profits” argued for the learned counsels for the petitioner: it is revealed from the record (Annexure-F) that, the petitioner removed a huge amount of cigarettes from its factory to warehouse just on the day before the price hike for which just the taxes and duties paid by the petitioner were 3044,65,38,086/- (Three Thousand Forty Four Crore Sixty Five Lac Thirty Eight Thousand and Eighty Six), and the petitioner thereby claimed to have a windfall profit (!). This sheer size of transaction just before the day of price hike does not seem to be normal to us unless there is an ulterior motive to make unfair gains. We are therefore of the view that even if the petitioner had done so staying, arguably, within the purview of law, we can’t allow the law to be used as an instrument of fraud.

Hence, this writ petition does not merit any consideration.

Accordingly, the petition is rejected with the findings and observations made above.

These findings, however, shall not affect any issues while appeal is being heard, if one is preferred by the petitioner.

There is no order as to costs.

Communicate this order at once.

Md. Jahangir Hossain, J:

I agree.