

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

WRIT PETITION NO. 11993 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:

M/S Medlife Packaging Industries Ltd.
..... Petitioner

-Vs-

***The National Board of Revenue (NBR) represented
by its Chairman and others***
....Respondents

Mr. A.M. Mahbub Uddin Khokon, Senior
Advocate with Mr. H. M. Shanjid Siddique,
Advocate
..... For the petitioner

Ms. Nasima K. Hakim, Deputy Attorney General
with Ms. Tahmina Polly, Mr. Ali Akbor Khan,
Mr. Md. Hafizur Rahman, Mr. Elin Imon Saha
and Mr. Ziaul Hakim, Assistant Attorney
Generals
..... For the respondents-government

Heard on: 10.01.2024 & 21.01.2024.

Judgment on: 22.01.2024.

Present:

Mr. Justice Md. Iqbal Kabir
and
Mr. Justice S.M. Maniruzzaman

S.M. Maniruzzaman, 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 inaction of the respondent Nos. 09 to 11 from releasing the petitioner's goods of 1000 KGs Frozen Boneless Buffalo Meats and 25 MTs Onion imported from India vide Commercial Invoice No. ZAPL/EXPBR-MT006 dated 14.04.2023 under Letter of Credit Nos. 088023010152 dated 12.04.2023 and 088023010160 dated 20.04.2023 failure to comply the direction stated in Memo No. 03. 08. 2680. 226. 14. 234. 22. 561 dated 29.08.2023 issued by the proforma respondent No. 12 [Bangladesh Investment Development Authority (BIDA) (Annexure-L)] should not be declared without lawful authority and is of no legal effect and why a direction should not be given upon the respondents Nos. 09 to 11 to release the petitioner's goods of 1000 KGs Frozen Boneless Buffalo Meats and 25 MTs Onion imported from India vide Commercial Invoice No. ZAPL/EXPBR-MT006 dated 14.04.2023 under Letter of Credit Nos. 088023010152 dated 12.04.2023 and 088023010160 dated 20.04.2023 and or such other or further order or orders passed as to this court may seem fit and proper.

At the time of issuance of the Rule, the respondent No. 7 was directed to take necessary steps pursuant to the letter dated 29.08.2023 issued by Director, Bangladesh Investment Development Authority (BIDA) within a stipulated time.

On receipt the *interim* direction, the respondent No. 7 by his letter dated 08.10.2023 refused to release the consignment of the petitioner in question holding that before importation of Buffalo Meats, the petitioner did not obtain no objection certificate from the concerned authority.

Feeling aggrieved by the letter dated 08.10.2023, the petitioner by filing application before this Division prayed for issuing supplementary Rule and accordingly supplementary Rule was issued in the following terms:

“Let a supplementary Rule Nisi be issued calling upon the respondents to show cause as to why Memo No. 33.01.0000.110.22.041.15-1573 dated 08.10.2023 issued by the respondent No. 7 rejected to release the petitioner’s Goods in violation of আমদানী নীতি আদশ ২০২১-২০২৪ and failure to comply with the Memo No. 03.08.2680.226.14.234.22.561 dated 29.08.2023 issued by the pro-forma respondent No. 12 i.e., Bangladesh Investment Development Authority (BIDA) (Annexure-Y) shall not be declared illegal, without lawful authority and is of no legal effect 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 supplementary Rule, the operation of the Memo No. 33.01.0000.110.22.041.15-1573 dated 08.10.2023 was stayed by this Court for a prescribed period.

Challenging the said *interim* order of stay, the respondent Customs Authority preferred Civil Petition for Leave to Appeal being No. 3493 of 2023 before the Appellate Division of the Supreme Court of Bangladesh, and after hearing the said Leave to Appeal the Appellate Division was pleased to stay the *interim* order of stay by its order dated 18.12.2023 with a direction to hear and dispose of the Rule by this Bench expeditiously.

Facts, relevant for disposal of the Rule, in short, are that the petitioner is a private limited company incorporated under the Companies Act, 1994 and is engaged in the business of importation of various

vegetables, frozen meats, food, beverage and etc. for supplying the same abroad after processing. The petitioner for the purpose of its business obtained necessary certificate from the concerned government authorities as well BIDA being Certificate No. BR-07Apr2022-00002 dated 20.04.2022.

In course of business, the petitioner obtained permission from BIDA dated 08.02.2023 (Annexure-A-5) and opened a Letter of Credit No. 088023010152 dated 12.04.2023 for importation “Buffalo Meats” 1.00 MT and “Onion” 25.020 MTs from India. After arrival of the goods at Hilli Land Customs Station, Hakimpur, Rangpur, the petitioner through its C&F Agent submitted Bill of Entry No. C-5546 dated 10.05.2023 for assessing and releasing the goods on payment of applicable customs duty and taxes in accordance with law. But the Customs Authority refused to release the goods on the ground that the petitioner before importation of the “Buffalo Meats” did not obtain any permission from the respondent No. 7, Department of Livestock Services. Hence, the instant writ petition.

Mr. A.M. Mahbub Uddin Khokon, learned Senior Advocate appearing with Mr. H. M. Shanjid Siddique, learned Advocate for the petitioner submits that the petitioner established Medlife Packging Industries by obtaining permission from BIDA and imported raw materials in question by obtaining necessary permission from its controlling authority i.e. BIDA on 08.02.2023. In this regard, he submits that there is no necessary to obtain permission from the respondent No. 7 to release the goods in question. The respondent concerned most illegally and arbitrarily restrained to release the petitioner’s imported Onion and Buffalo Meat. In

view of the above, learned Senior Advocate prays for giving necessary direction to the concerned Customs Authority to release the goods on payment of applicable customs duty and taxes in accordance with law.

Conversely, Mr. Elin Imon Saha, learned Assistant Attorney General appearing for the respondent-government drawing attention specially Annexure-I9 dated 02.08.2023 and Annexure-E dated 23.05.2023 submits that the issue involves in the instant writ petition which have already been settled by the Customs, Excise and VAT Appellate Tribunal in Customs Appeal No. 220 of 2023, wherein the Tribunal directed the concerned Commissioner, Customs, Excise and VAT Commissionerate (Dhaka West), Dhaka to take necessary steps for investigation of the petitioner's factory confirming whether the machineries and others equipments for processing of the items in question have been installed by the petitioner. Being aggrieved by the said order, the petitioner has preferred Customs Appeal bearing No. 812 of 2023 before this Court which is still pending for final disposal. Subsequently, the Deputy Commissioner of Customs has confiscated the goods in question in favour of the state and thereby imposed penalty upon the petitioner to the tune of Tk. 25,000/- by the adjudication order dated 02.08.2023. In view of the above, he submits that before disposal of the aforesaid appeals, this Court cannot give any direction to release the goods at this stage.

Mr. Shah next submits that being aggrieved by the adjudication order dated 02.08.2020 the present petitioner preferred customs appeal before the Tribunal being Customs Appeal No. 50 of 2023 so far it relates to Onion and Customs Appeal No. 51 of 2023 in relating to Buffolo Meat which are

still pending for final disposal. During pendency of the appeals in respect of selfsame matter, the instant Rule is not maintainable.

We have heard the learned Advocate and the learned Assistant Attorney General, gone through to the writ petition, affidavit-in-opposition and relevant materials on record so appended thereto.

It appears from record that the goods in question has already been confiscated by the respondent No. 11, Deputy Commissioner of Customs, Hilli Land Customs Station, Rangpur by his adjudication order dated 02.08.2023. Being aggrieved by the said adjudication order, the Customs Appeal Nos. 50 and 51 both of 2023 have been preferred by the petitioner which are pending before the Tribunal for final disposal. Moreover, another Customs Appeal bearing No. 812 of 2023 filed by the petitioner before this Court against the order of the Tribunal dated 23.05.2023 which is also pending for final disposal.

Since the self same matters are pending before the two authorities one before this Court under the Customs Appellate Jurisdiction another before the Tribunal for finally settling disposal of the issue involved in the Rule. During pendency of the said appeals, the petitioner has filed the instant writ petition invoking special original jurisdiction under Article 102 of the Constitution for releasing the imported goods.

Furthermore, the moot issue requires to be addressed in the instant Rule is that whether the goods in question imported by the petitioner in due compliance with the law. The said issue is the subject matter of the appeals pending before the appellate authorities and as such we are refraining to touch this issue by this judgment.

In view of the stated circumstances, since the self same matters are pending before the two appellate forums for final disposal and the petitioner have enough scope to agitate its grievances before the said forum and as such the present Rule is not maintainable at this stage.

Having considered to the facts and circumstances of the case and the reasons stated hereinabove we do not find any substance in the Rule.

In the result, the Rule is accordingly, discharged.

There will be no order as to costs.

Communicate the copy of the judgment and order to the concerned respondents forthwith.

Md. Iqbal Kabir, J:

I agree.