

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

WRIT PETITION NO. 4481 OF 2019

IN THE MATTER OF:

An application under Article 102(2)(a)(1) and(ii) of the Constitution of the People's Republic of Bangladesh.

And

IN THE MATTER OF:

M/S Bengal Mines Development Corporation Limited

.... Petitioner

-Vs-

Commissioner of Customs, Excise and VAT Commissionerate and others

....Respondents

Mr. A. H.M Ziauddin, Advocate

... for the Petitioner

Ms. Nasima K. Hakim, Deputy Attorney General, with Ms. Tahmina Polly, Mr. Elin Imon Saha, Mr. Ziaul Hakim and Md Hafizur Rahman, Assistant Attorney Generals.

.....For the Respondents-government.

Heard on: 28.11.2023

Judgment on: 11.12.2023

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 the impugned order dated 03.01.2019 issued

vide Nathi No. ৩(৯)/১২৩/রেঃহিঃ/বেঙ্গলমাইনস/সঃঅঃ/২০১৫/৪৫১(১) (Annexure- G) and the final demand under Section 55(3) of the VAT Act, 1991 vide Nathi No. ৩(৯)/১২৩/রেঃ হিঃ/বেঙ্গলমাইনস/সঃঅঃ/১৫/২৩৩৪(১-২) (Annexure- E) and subsequent letter vide Nathi No. ৪/উৎপাদন)/(৬)০৮/চা/ভ্যাট/০৮/পাট-১/১৮/৩৬২ dated 13.03.2019 (Annexure-I) issued under Rule 43 of the VAT Rules, 1991 by the respondent Nos. 1 and 3 respectively should not be declared to have been passed without lawful authority and is of no legal effect for having been issued in violation of SRO No. 195-AIN/2012/653 Musak dated 07.06.2012 and hence, without jurisdiction and or such other or further order or orders should not be passed as to this Court may seem fit any proper.

At the time of issuance of the Rule further operation of the impugned order dated 13.03.2019 (Annexure-I) was stayed by this Court for a prescribed period.

Facts, for disposal of the Rule, in short, are that the petitioner is a limited company incorporated under the Companies Act, 1994 and is engaged in the business of manufacturing packaging tea products in Bangladesh by establishing factory in different places of the country. In course of business, the petitioner company obtained two separate VAT Registrations in separate places one at Faticchori, Chattogram wherein the petitioner has been engaging in the business of Tea Estate in the name of style “Baromasia Tea Estate” being VAT Registration Certificate No. 24221026496 dated 26.08.2014. Another unit for packaging of manufacture tea situated at Narayangonj under the

jurisdiction of Customs, Excise and VAT Commissionerate, Dhaka (East), Rupgonj Division being registration No. 21051006606.

Suddenly, the respondent No. 1, pursuant to the audit report of the CA firm issued a notice under Section 55(1) of the Act, 1991 upon the petitioner showing cause as to why amounting to Tk. 1,05,70,486.84 as evaded VAT should not be realized. By the said notice, the petitioner was also asked to give reply to the said notice within 50 (fifty) days from the date of receipt of the notice.

On receipt thereto the petitioner replied to the notice on 06.08.2017 contending *inter alia* that the concerned VAT Authority without considering the actual fact to the effect that the factories of the petitioner situated and registered in the different places i.e. one under the jurisdiction of Chattogram Commissionerate and another under the jurisdiction of Dhaka (North) Commissionerate. In view of the above context, the petitioner prayed for exonerate the petitioner from the allegation so made in the notice.

Pursuant to the said notice, the respondent No. 1 formed an audit team for conducting audit of the petitioner's account for authentication of the proceeding so have been initiated by issuing notice under Section 55(1) of the Act, 1991. After conducting audit, the team submitted report on 19.12.2017 recommending that the business enterprise of the petitioner i.e. one unit in the name "Baromasia Tea Estate" situated at Fatikchori, Chattogram evaded VAT to the tune of Tk. 10,56,776.25/- for the period of 2013-2014 another its packaging unit situated at

Rupgonj, Narayangon evaded VAT to the tune of Tk. 1,78,318.40/- for the said period.

Pursuant to the said audit report and after hearing the petitioner, the respondent No. 1 made the demand final under Section 55(3) of the Act, 1991, directing the petitioner to pay to the tune of Tk. 12,35,094.65/- as VAT within the period prescribed therein.

Being aggrieved by and dissatisfied with the said demand, the petitioner moved this application before this Court and obtained the present *Rule Nisi* along with an *interim* order of stay.

Mr. A.H.M. Ziauddin, learned Advocate appearing for the petitioner mainly submits that the petitioner company establish to business unit namely “Baromasia Tea Estate” situated at Fatikchori, Chattogram under VAT registration No. 24221026496 and another its packaging unit situated at Rupgonj, Narayangon under VAT registration No. 21051006606 under the jurisdiction of Commissioner, Customs, Excise and VAT Commissionerate, Dhaka (East), Dhaka however, the proceeding under Section 55 of the Act, 1991 so have been initiated by the respondent No. 1 for realization outstanding VAT including the amount under the jurisdiction of Customs, Excise and VAT Commissionerate, Chattogram and as such the impugned proceeding and subsequently final demand is absolutely without jurisdiction. Mr. Ziauddin further submits that the Commissioner, Customs, Excise and VAT Commissionerate Dhaka (East), Dhaka has jurisdiction to dealt with the matter of the petitioner Tea Packaging Division and as such the impugned order dated 03.10.2019 and demand notice dated 03.01.2018

issued by the respondent concerned in respect of Tea Estate, Chattogram is illegal and to have been issued without lawful authority. Mr. Ziauddin next submits that Section 55(1) and (3) of the Act, 1991 demonstrated that the matters under the said Section should be dealt with by the “সংশ্লিষ্ট মূল্য সংযোজন কর কর্মকর্তা” of the concerned Commissionerate, but the impugned order has been passed by the respondent No. 1 in place of the respondent No. 2 and as such the impugned orders are liable to be declared without lawful authority. Mr. Ziauddin also submits that under SRO No. 195 dated 07.06.2012 the jurisdiction of all Commissionerates have been formulated by the said SRO, the respondent No. 1 is empowered to exercise jurisdiction within the periphery of Customs, Excise and VAT Commissionerate (Dhaka East), Dhaka but he has travelled beyond jurisdiction in the impugned orders and as such the impugned order is without jurisdiction. In view of the above, the learned Advocate prays for making the Rule absolute.

On the other hand, Ms. Tahmina Polly, learned Assistant Attorney General for the respondent-government by filing affidavit-in-opposition submits that the impugned order is appealable order under the Act, 1991, the petitioner without exhausting the said forum of appeal has filed the instant writ petition which is not maintainable.

We have considered the submissions of the learned Advocate for the petitioner and learned Assistant Attorney General for the respondent-government, gone through the writ petition, relevant materials on record appended thereto.

It appears from record that the petitioner established its two units in the name “Baromasia Tea Estate” situated at Fatikchori, Chattogram and obtained VAT registration No. 24221026496 under the jurisdiction of Customs, Excise and VAT Commissionerate, Chattogram and another “Packaging Unit” situated at Rupgonj, Narayangonj and obtained VAT registration No. 21051006606 under the jurisdiction of Customs, Excise and VAT Commissionerate (Dhaka East), Dhaka. However the respondent No. 1, Commissioner, Customs, Excise and VAT Commissionerate (Dhaka East), Dhaka on the basis of CA audit report had initiated a proceeding under Section 55(1) of the Act, 1991 claiming VAT amounting to Tk. 12,35,094.65/- out of which Tk. 10,56,776.25/- which was alleged to evade by the one unit of the petitioner “Baromasia Tea Estate” situated at Fatikchori, Chattogram under the jurisdiction of VAT Commissionerate, Chattogram and rest amount of Tk. 1,78,318.40/- is under his jurisdiction.

In this regard the contention of the learned Advocate for the petitioner is that the amount of alleged evaded VAT to the tune of Tk. 10,56,776.25/- which is absolute without jurisdiction of the respondent No. 1.

In this regard we have examined the SRO No. ১৯৪-আইন/২০১২/৬৫২-মূসক dated 07.06.2012 wherein the National Board of Revenue by exercise power contemplated under Section 20 of the Act, 1991 appointed “সংশ্লিষ্ট মূল্য সংযোজন কর কর্মকর্তা”. By the said SRO, the concerned VAT Officer(s) has been appointed for the jurisdiction of Customs, Excise and VAT Commissionerate, Chattogram. In the instant case, however, it appears that the respondent No. 1, Commissioner had

initiated proceeding for realization VAT of Tk. 10,56,776.25/- allegation to evade VAT by one unit of the petitioner namely “Baromasia Tea Estate” situated at Chattogram which is without jurisdiction of the said respondent.

As regard to the submission of the learned Assistant Attorney General that the petitioner without exhausting forum of appeal against the impugned demand, the Rule is not maintainable. There are many decisions of this Court that when an illegality is apparent on face of record and the respondent performing the function of the Republic have acted totally without jurisdiction, invoking forum as provided under Article 102 of the Constitution is not a bar.

In view of the above, we think that the proceeding so have been initiated for the amount of Tk. 10,56,776.25/- alleging for evasion VAT by the “Baromasia Tea Estate” situated at Faticchori, Chattogram is without his jurisdiction, but the proceeding so far in relating the amount of Tk. 1,78,318.40/- is within his jurisdiction. Since part of the impugned demand is without jurisdiction and hence the petitioner has come before this Court under the writ jurisdiction.

In view of the facts and circumstances of the case, we find substance in the submissions made by the learned Advocate for the petitioner and thus merit in the Rule. Accordingly, the Rule is made absolute in part, however, without any order as to costs.

The impugned order dated 13.03.2019 so far it relates to the amount of Tk. 10,56,776.25/- is hereby declared to have been passed without jurisdiction and however, the amount of Tk. 1,78,318.40/- has

been passed within lawful authority. Accordingly, the petitioner is directed to pay Tk. 1,78,318.40/- within 30(thirty) days from the date, failing which the VAT authority will be at liberty to realize such amount in accordance with law.

The respondent VAT Authority will be at liberty to take appropriate proceeding for the amount of Tk. 10,56,776.25/- in accordance with law.

Communicate a copy of the judgment and order to the concerned respondent.

Md. Iqbal Kabir, *J*:

I agree.

Md. Mashud sikder-A.B.O.