

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

WRIT PETITION NO. 2004 OF 2022

IN THE MATTER OF:

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

And

IN THE MATTER OF:

Akij Food And Beverage Limited
.... Petitioner

-Vs-

National Board of Revenue and others.
....Respondents.

Mr. Fida M. Kamal, Senior, Advocate with
Mr. Md. Ziauddin, Advocate with
Mr. Shameem Aziz, Advocate with
Mr. Khondker Nazmul Ahsan, Advocate with
Mr. Majedul Hasan Miajee, Advocate
..... For the Petitioner.

Mr. Samarendra Nath Biswas, D.A.G. with
Mr. Md. Abul Kalam Khan Daud, A.A.G. with
Mr. Md. Ali akbor Khan, A.A.G. and
Mr. Md. Asaduzzaman, A.A.G
..... For the Respondents-government.

Heard On: 13.04.2022,20.04.2022
&
Judgment on: 21.04.2022.

Present:

Mrs. Justice Farah Mahbub.
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 failure of the respondents to assess the

imported Totapuri Mango Pulp as per the “শুষ্ক মূল্যায়ন (আমদানি পণ্যের মূল্য নির্ধারণ) বিধিমালা, ২০০০”, which is further ascertained through an office order being Nothi No.08.01.0000.057.01.006.17/189(32) dated 29.10.2017, issued by the respondent No. 1(Annexure-F), should not be declared to have been done without lawful authority and is of no legal effect and as to why the different assessment of the same Totapuri Mango Pulp under Bill of Entry No. C-32176 dated 06.12.2021(Annexure-D) under Bill of Entry No.C-32177 dated 06.12.2021(Annexure-J) from Dhaka Inland Contained Depot (ICD), Kamalapur, Dhaka should not be declared to have been done without lawful authority and are of no legal effect and or such other or further order or orders passed as to this Court may seem fit and proper.

Facts, relevant for disposal of the Rule, in short, are that the petitioner is a one of the leading food beverage companies in the country, which manufacture a wide range of food and beverage products like carbonated beverages, fruit drinks and other allied products for both local and international markets. In course of business, the petitioner imported raw material Aseptic Totpuri Mango Pulp from India and thereof accordingly, opened Letter of Credit bearing No.249021011530 dated 21.09.2021 to Standard Chartered Bank Ltd. Dhaka, for importing said Aseptic Totapuri Mango Pulp under H.S. Code No. 2009.10.00 from India having value USD 73,714.90.

After arrival of the goods in consignment ICD Kamalapur, Dhaka the petitioner goods clearing and forwarding agent submitted Bill of Entry being No. C-32176 dated 06.12.2021the concern Customs Authority for assessment of customs duties, taxes and other charges and towards releasing the consignments and accordingly, the Customs authority

completed assessment on 09.12.2020 under the গুৰু মূল্যায়ন (আমদানি পণ্যের মূল্য নির্ধারণ) বিধিমালা ২০০০ (in short Rules-2000) and accordingly, issued assessment notice in favour of the petitioner on 12.12.2021 and under basis of the said assessment the petitioner paid on the Customs duties and taxes as per assessment made by the customs authority on the same date(Annexure-D, D1,E).

Upon completed assessment of the goods in question the customs authority paid customs, duty and taxes on 12.12.2021 however, that the present petitioner tried to release the goods but the Customs Authority concern stopped to release the goods.

It has been further stated that the respondent No. 1 National Board of Revenue issued a Office Order bearing Memo No.08.01.0000. 057.01.006.17/189(32) dated 29.10.2017, thereby given an explanation under Section 219B of the Customs Act, 1969 stating *inter alia* that the Mango Pulp product is beyond the S.R.O No.165-Ain/2016/27 Customs dated 02.06.2016 which fixed the minimum value of imported products, therefore, assessment of Mango Pulp should be done as per the গুৰু মূল্যায়ন (আমদানি পণ্যের মূল্য নির্ধারণ) বিধিমালা ২০০০ (in short Rules-2000)(Annexure-F).

It is further stated that the petitioner earlier imported another 820 and 410 barrels of Mango Pulp and after assessment of duty for the said 820 and 410 barrels through the Bill of Entry No. C-26378 dated 14.10.2021 and Bill of Entry No.C-26220 dated 12.10.2021 respectively, the instant petitioner paid all the Customs duty and taxes duly released the said barrels whither concern Customs House assess the said 0.69 USD per KG to 0.86 USD per KG.

However, the petitioner imported 400 barrels of Mango Pulp to the consignment in question under Bill of Entry C-32177 dated 10.12.2021 the Customs Authority assess the goods fixing the value as per 0.86 USD per KG and accordingly, the petitioner made payment as per assessment made by the concern authority. However the Customs Authority without releasing of the goods the petitioner of the said inaction of the petitioner filed and instant writ petition obtained the present Rule.

Mr. Fida M. Kamal, the learned Senior Counsel along with Mr. Md. Ziauddin, the learned Advocate appearing for the petitioner mainly submits that it is evident from the Annexure -L that the instant petitioner imported the same product, aseptic totapuri mango pulp, three times within the previous 90 days of the concerned consignment, through Bill of Entry No. C-26220 dated 12.10.2021; Bill of Entry No. C-26378 dated 14.10.2021, both of which were assess at USD 0.69/per Kg, and through Bill of Entry No. C-32177 dated 06.12.2021, which was assessed at USD 0.86/per Kg. He further submits that according to rule -5(4) of the “শুষ্ক মূল্যায়ন (আমদানী পণ্যের মূল্য নির্ধারণ) বিধিমালা, ২০০০, if several transaction values of identical goods are found at the same time, then the value of the imported goods must be ascertained at the lowest transaction value. Further, as per rule -2(GaGA) of the said Rules, “same time” means within 90 days from the time of importation of goods, which is under process to ascertain the value. He next submits that it is evident from the Annexure-2 of the affidavit in opposition of the respondent No. 2 that the previously, the same goods was imported through four consignments being B/E No. C-801327 dated 17.05.2021; B/E No. C-454967 dated 14.03.2021; B/E No. C-513917 dated 24.03.2021 and B/E No. C-455005 dated 14.03.2021 which were wrongly

assessed at a higher rate i. e. USD 3.27/per Kg to USD 3.31/ per Kg and the instant petitioner filed appeals before the concerned authority against such assessment. The said appeals are still pending for final adjudication.

On the other hand Mr. Samarendra Nath Biswas, the learned Deputy Attorney General appearing on behalf of the respondent No. 2, Commissioner of Customs, Customs House, Chattogram without controverting the facts by filing any affidavit-in-opposition, however submits that the imported goods in question does not cover with the description of the goods as mentioned in the said S.R.O No.165 dated 02.06.2016 issued by the National Board of Revenue gave an explanation regarding assessment of the goods in question following the provision of Valuation Rules, 2000 and accordingly the Customs Authority considered the database value of the last one year of the imported goods by the same petitioner from the same country and it is found that in 4(four) separate consignments release earlier were assessed Customs Port Chattogram at rate of USD 3.31/Kg; USD3.31/Kg; USD 3.31/Kg; USD 3.27/Kg and accordingly the Customs Authority in respect of the instant consignment asked the petitioner to submit an unconditional Bank guarantee of the differential amount of the value as deceased by the petitioner and the database value.

He next submits that the Customs Authority following the provision of the valuation Rules, 2000 collected the database value of the same market and in the database value the minimum value USD 3.27/KG as per the safe of the government revenue the Customs Authority as per the provisional of the consignment and directed to submit the bank guarantee of the differential amount.

In view of the said proceedings he submits that there is no illegality and the subsequently, the order for provisional assessment of the consignment the petitioner in question and such he submits the instant Rule is liable to be discharged.

We have heard the learned Advocate appearing for the petitioner, the learned Deputy Attorney General appearing for the respondent Government, have perused the writ petition along with annexures so have been appended thereto.

It appears from the record that the petitioner the goods in question imported by the petitioner submitted Bill of Entry No.C-32177 dated 06.12.2021 and accordingly the Customs authority open a note sheet bearing Nathi No.৫-কাস (১৯৩০৩) আমঃ/আইসিডি/গ্রুপ-০১/২০২১ ইং which is quoted below for ready reference:

১৫। আলোচ্য পণ্যচালানটি শুক্লায়ন পরবর্তীতে Lock হওয়ায় খালাস বন্ধ রাখা হয়েছে। পুনরায় দলিলাদী, Data base value, Minimum Value, SRO জাতীয় রাজস্ব বোর্ডের আদেশ নং ০৮.০১.০০০০.০৫৭.০১.০০৬.১৭/১৮৯ (৩২) ঠাচাই করা হল:

ক) পণ্যটি Tatapuri Mango Pulp জাতীয় রাজস্ব বোর্ডের উল্লেখিত পত্রে বলা হয়েছে পণ্যটি Mango Juice তৈরীর প্রধান কাচামাল। এক্ষেত্রে Minimum Value SRO অনুপ্রায়ী মূল্য নির্ধারণ সমীচীন হবেনা বিধায় শুক্ল মূল্যায়ন বিধিমালা ২০০০ এর আলোকে মূল্য নির্ধারণের নির্দেশনা দেয়া হয়েছে।

খ) বিগত ১বছরের database পর্যালোচনায় দেখা যায় আমদানীকারকের একই পণ্য চট্টগ্রাম কাস্টমস হাউজ দিয়ে চারটি Consignment ঠাক্রমে \$3.31/kg, \$3.31/kg, \$3.31/kg ও \$3.27/kg তে শুক্লায়ন হয়েছে।

গ) আমদানীকারকের প্রতিনিধি জানান, ঘোষিত মূল্য উপেক্ষা করে উচ্চতর চড়াও মূল্যে শুক্লায়ন আদেশের বিরুদ্ধে সংস্কৃদ্ধ হয়ে অমদানীকারক কাস্টমস এক্সাইজ ও ভ্যাট আপীল কমিশনারেট চট্টগ্রাম এ আপীল করেছেন (

ছায়াকপি সমূহ পত্রাংশে রক্ষিত ঐ সদয় দেখা যেতে পারে।

ঘ) B/E No.C-801327 Dt.17.05.2021, C-454967 .14.03.2021, C-513917 Dt.24.03.2021, C-455005 Dt.14.03.2021, এর শুক্কায়নের বিরুদ্ধে আপীল কমিশনারেটে আপীল দায়ের করা হয়েছে। দায়েরকৃত আপীল নম্বর ঐথাক্রমে ১১৯/২০২১, ১২০/২০২১, ১২১/২০২১, ১২২/২০২১।

ঙ) ইতিমধ্যে বর্তমান পণ্যচালানটি ঘোষিত মূল্য ও Ref Value (Database অনুযায়ী Minimum Value \$3.27/kg এর মূল্যের পার্থক্য জনিত অর্থ ১,০৬,৫৩,০৩৭.০৪/- টাকা নিঃশর্ত ও অব্যাহত ব্যাংক গ্যারান্টি গ্রহণ পূর্বক সাময়িক শুক্কায়ন মাধ্যমে পণ্য ছাড় দেয়া যেতে পারে।

১৬) প্রস্তাবনাঃ

ক) আমদানীকৃত পণ্যটি Perishable Goods ঐ lock কৃত অবস্থায় রয়েছে, সে বিবেচনায় Customs Act 1969 এর ধারা ৮১ অনুসারে ১,০৬,৫৩,০৩৭.০৪/- টাকার নিঃশর্ত ও অব্যাহত ব্যাংক গ্যারান্টি গ্রহণ পূর্বক সাময়িক শুক্কায়ন করা যেতে পারে।

খ) পরবর্তীতে ঐথার্থ দলিলাদী সমূহ ঐচাই করে পণ্যের সঠিক শুক্কায়নযোগ্য মূল্য নির্ধারণ পূর্বক পণ্যচালানটি চূড়ান্ত শুক্কায়নের নির্দেশনা দেয়া যায়।

গ) একই সাথে ICD হতে সমজাতীয় শুক্কায়িত পণ্য তিনটির চালান এর PCA করার নির্দেশনা দেয়া যেতে পারে।

It appears from note 9 of the said note sheet that after submitted of the Bill of Entry the Customs Authority complete assessment to effect that the value declared by the petitioner is 0.58 USD/ per KG but it appears that the reference value of the said consignment available in the Customs authority of USD 0.69/Kg and accordingly the petitioner declared the said value of USD 0.86/per Kg and considered the said declared value the

Customs Authority assess the petitioner goods as per value of USD 0.86/per Kg and it is assessment notice in favour of the petitioner on 09.12.2021 and accordingly, the petitioner made full payment Customs duty and taxes on the same date which was evident by the Annexure –E to the writ petition but however the concern Customs Authority after making payment all Customs duty and taxes ratio to release the goods holding that and note sheet 15 of the said note sheet that:

(খ) বিগত ১বছরের database পর্যালোচনায় দেখা যায় আমদানীকারকের একই পণ্য চট্টগ্রাম কাস্টমস হাউজ দিয়ে চারটি Consignment পথক্রমে \$3.31/kg, \$3.31/kg, \$3.31/kg ও \$3.27/kg তে শুল্কায়ন হয়েছে।

গ) আমদানীকারকের প্রতিনিধি জানান, ঘোষিত মূল্য উপেক্ষা করে উচ্চতর চড়াও মূল্যে শুল্কায়ন আদেশের বিরুদ্ধে সংশ্লিষ্ট হয়ে আমদানীকারক কাস্টমস এক্সাইজ ও ভ্যাট আপীল কমিশনারেট চট্টগ্রাম এ আপীল করেছেন (ছয়কপি সমূহ পত্রাংশে রক্ষিত যা সদয় দেখা যেতে পারে)।

However it appears from the Annexure-J to the supplementary affidavit to the affidavit in opposition that the same petitioner earlier release the identical item for the concern customs station under Bill of Entry No.C-26220 dated 12.10.2021; Bill of Entry No. 26378 dated 14.10.2021 USD 0.69/per KG to 0.86/ per KG and it also appears that from the valuation report of the concern Custom station that it appears that from 1.01.2017 to 28.12.2021 the same said has been release from the customs House by the petitioner as well as other importer by the minimum value of USD 0.762 to 0.86/ per KG.

However, the issues in question for deamination in the instant writ petition which already been determine by this Court said vide the judgment dated 09.02.2021 passed in writ petition No.8459 of 2016 where this Court (both we are party of the judgment) categorically observed inter alia

.....

In this regard, in the case of *Amirul Islam (Md) -vs- Commissioner of Customs and others*, reported in *18 BLC(HC) 77* categorically observed, *inter-alia*:

“We have observed that the respondents as envisage in Annexure-“A” to the petition have themselves observed that without complying with the Rules 1 to 5 chronologically the respondents adopted straight away deductive method for doing the assessment and thus flouted even their own decision. On that score our decision is that the respondent had certainly indulge in accesses in making the assessment by applying Rule 7 of the Valuation Rules, 2000 that is the deductive method in assessing the goods in question. We simply cannot understand why such deviation took place or what tempted the respondent is not observing the approved method of assessing the goods in question. ”

However, in the instant case, it is admitted position of the fact that the petitioner submits Bill of Entry the concern Customs Authority assess the goods in question finally on 09.12.2021 on the basis of said assessment the petitioner make payment all customs duty and taxes on 12.12.2021 as evident Annexure –A to the writ petition. After payment of the said action the concern customs authority directed the petitioner to submit the bank guarantee from reversing the amount of customs duty and taxes Tk.1,06, 53,037.04/- however, it is settled by the earlier judgment that when the minimum value was available before the customs authority for previous 90(ninety) days submitting Bill of Entry the customs authority is legally

bound accept the said value under the Rules 5(4) of the Rules 2000. But however, in the instant case the concern customs authority without following the said provision of law directed the petitioner to furnish the bank guarantee for the differential amount of duty and taxes on the basis of the Bill of Entry submitted earlier on 14.03.2021. However, it appears from the record that the minimum value the said consignment available before the customs authority of USD 0.86/per KG and the customs authority legally bound accept the said value under the provision of law.

In view of the above facts and circumstance of the case and judgment so passed earlier by this Court and other reported judgment referred herein above we found the substance the submission so made by learned Advocate for the petitioner and accordingly, this Rule is made absolute without any order as to costs.

Since the goods duty and taxes in question has been paid by the customs authority as such assessment made by the concern customs authority by following valuation Rules 2000 as evident note 9 of the Annexure J to the supplementary affidavit and affidavit in opposition and as such the respondent No. 2, Commissioner of Customs, Customs House, Dhaka is hereby directed to release the consignment Letter of Credit bearing No.249021011530 dated 21.09.2021 and Bill of Entry No. No.C-26220 dated 12.10.2021; Bill of Entry No. 26378 dated 14.10.2021 within a period of 7 (seven) working days from the date of receipt of the copy of this judgment and order positively.

Communicate the copy of this judgment and order forthwith.

Farah Mahbub, J:

I agree.

M.A.Hossain-B.O.