

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

WRIT PETITION NO. 2946 OF 2003

IN THE MATTER OF:

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

And

IN THE MATTER OF:

Keya Cosmetics Limited

.... Petitioner

-Vs-

***Customs, Excise and VAT Appellate Tribunal,
Dhaka and others***

....Respondents.

Mr. Nitai Roy Chowdhury with
Mr. Debasish Roy Chowdhury, Advocates
..... For the Appellant.

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

Heard on 05.03.2024.

Judgment on 06.03.2024.

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 order dated 19.03.2003 passed by the
respondent No. 1, Customs, Excise and VAT Appellate Tribunal in
Case No. CEVT/Case (VAT) Dhaka 37/2002 should not be declared to

have been passed without lawful authority and is of no legal effect or other such or further order or orders passed as to this court may seem fit and proper.

At the time of hearing of the Rule, the operation of the impugned demand by the respondent No. 2 (Annexure-B) was stayed by this Court for a prescribed period.

The issue involved in the instant writ petition is that whether the provision of Section 194 of the Customs Act, 1969 for waiver deposit of demanded amount is applicable in the Value Added Tax Act, 1991. The said issue has already been settled by our Appellate Division in the Case of *Sunshine Cables and Rubber Works Ltd. and another-Vs-National Board of Revenue and others* reported in **18 BLC(AD)168** wherein, it has been held *inter alia*;

Provision contained in Section 42(2)(Kha) of the Act to deposit 25% of the demanded VAT or the penalty imposed is a mandatory requirement for filling an appeal and according to the provisions of Section 42(1)(Ka)(Kha) of the Act, after failing of the appeal the Appellate Tribunal shall dispose of the appeal in accordance with the provisions of the Customs Act.

It has been further observed that-

Appeal before the Tribunal was incompetent or not in form and that the Tribunal has no jurisdiction to relax or dispense with the deposit of the mandatory requirement of 25% of the demanded VAT or penalty for accepting an appeal as required under the provisions of Section 42(2)(Kha) of the Act by applying the provisions of second proviso to Section 194(1) of the Customs Act.

However, the learned Advocate for the petitioner prays for giving an accommodation as given to the petitioner by the aforesaid judgment. By the said judgment the Appellate Division directed the Tribunal to hear and dispose of the appeal after depositing the statutory amount by the appellant. In view of the above submission we are inclined to allow the petitioner to deposit 25% of the demand VAT (as applicable that time) within 60(Sixty) days from the date of receipt of this judgment and order. After deposit of such amount, the Tribunal will be at liberty to dispose of the appeal in accordance with law. Failing to deposit such amount, the VAT Authority will be at liberty to realize the demanded amount in accordance with law.

In view of the above direction this Rule is disposed of, however, without any order as to costs.

The order of stay granted earlier by this Court is hereby recalled and vacated.

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

Md. Iqbal Kabir, J:

I agree.