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

Writ Petition No. 5749 of 2006

In the matter of:
An application under article 102(2)(a)(i)(ii) of the Constitution of the People's Republic of Bangladesh.

AND
In the matter of:

Karnafully Steel Mills Limited
... Petitioner

-Versus-
Customs, Excise and VAT Appellate Tribunal, Dhaka and others
... Respondents

A.H.M. Ziauddin, Advocate
... For the petitioner

Mr. Nawroz Md. Rasel Chowdhury, DAG with
Ms. Tahmina Polly and
Mr. Prince-Al-Masud, AAGs
... For the respondents

Heard on: 13.03.2024, 19.03.2024
and
Judgment on: 21.03.2024

Present:

Justice Md. Shahinur Islam
and
Justice Sardar Md. Rashed Jahangir

Sardar Md. Rashed Jahangir, J:

The Rule Nisi was issued on an application under article 102(2)(a)(i)(ii) of the Constitution of the People's Republic of Bangladesh calling upon the respondents to show cause as to why the order dated 24.04.2006 passed by the respondent No.1 under Nothi No. CEVT/Case(VAT)-82/2005 131(1-3) (Annexure-'F') should not be

declared to have been passed 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.

Facts leading to issuance of the Rule Nisi are that the petitioner is an industrial undertaking engaged in manufacturing Cold Rolled sheet in coil (C.R. Coil) by using H.R. Coil and other component as raw materials. On 01.01.2005 the petitioner submitted a price declaration in Musak-1 for the purpose of approving VAT payable base value (VAT payable price) mentioning the component raw materials, co-efficient of manufacturing the product and price of the goods together with proposed payable VAT. In the said declaration, petitioner-company declared 150Kgs of H.R. Coil to be wastage in producing 1000Kgs of C.R. Coil. The respondent No. 4 on 12.01.2005 by his order approved the price (base value) in a modified manner, i.e. VAT payable base value of per Metric Ton would be Tk.44,363.00 and the net payable VAT per Metric Ton would be Tk.707.58. In the said approval order it was also held by the respondent No. 4 that the wastage of H.R. Coil in producing 1(one) Metric Ton (1000 Kgs) C.R. Coil would be not more than 90(ninety) Kgs; the said price approval order dated 12.01.2005 has been annexed as Annexure-‘B’ to the writ petition. Petitioner being aggrieved by the price approval order dated 12.01.2005 filed an appeal (application) before the respondent No. 2 invoking provision of Rule 3(7) of the Value Added Tax Rules, 1991 and the said respondent in his order dated 24.02.2005 holding that for determining actual use of raw materials, component and wastage thereof in the process of producing C.R. Coil, an expert opinion has been sought

for from the Chattogram University of Engineering and Technology, Chattogram and the same is yet to be received; before getting such opinion the claim of petitioner-company cannot be considered at this moment and accordingly he upheld the price approval order of respondent No. 4 dated 12.01.2005 (Annexure-D).

Having aggrieved by the order dated 24.02.2005 passed by the respondent No. 2, the petitioner took an appeal before the Customs, Excise and VAT Appellate Tribunal, Dhaka being No. CEVT/Case(VAT)-82/2005. During pendency of the appeal on 14.11.2005 the petitioner filed a supplementary memorandum of appeal stating, *inter-alia*, that in earlier occasion an expert opinion has been sought for from the Chattogram University of Engineering and Technology, Chattogram for determining the actual use of raw materials, component and wastage thereof in the process of producing C.R. Coil and the respondent No. 4 after receiving the said opinion by his order dated 23.07.2005 revised the earlier price approval order dated 12.01.2005, holding that the VAT payable value of C.R. Coil would be Tk.45,446.00 and the wastage of H.R. Coil in producing 1000Kgs of C.R. Coil (1 Metric Ton) would be 111.11Kgs. and it was also mentioned in the said order that the revised price approval order shall be taken effect from 01.01.2005, i.e. from the date of submission of price declaration in Musak-1. The respondent No. 1 on a later date, i.e. on 24.04.2006 by its judgment and order dismissed the appeal upholding the order of respondent No. 2 dated 24.02.2005 mechanically without even taken into consideration the fact of revised price approval order dated 23.07.2005.

Being aggrieved by and dissatisfied with the order of Tribunal dated 24.04.2006 petitioner filed this writ petition and obtained the Rule.

Mr. A.H.M. Ziauddin, learned Advocate for the petitioner submits that upon the prayer of petitioner-company respondent No. 2, Commissioner of Customs, Excise and VAT Commissionarate, Chattogram sent the matter for expert opinion from Chattogram University of Engineering and Technology, Chattogram for determining actual use of raw materials, component and wastage thereof in the process of producing C.R. Coil and the same has been categorically admitted in the order of respondent No. 2 dated 24.02.2005 (Annexure-'D' to the writ petition); since the respondent No. 2 has not received any opinion from the University of Engineering and Technology, Chattogram on or before 24.02.2005, i.e. on the date of passing his order and as such he rejected the application noting his finding to that effect. He continues that the petitioner having no other alternative preferred an appeal before the respondent No. 1, Customs, Excise and VAT Appellate Tribunal, Dhaka, being No. CEVT/Case(VAT)-82/2005. He next submits that during pendency of that appeal the respondents received the expert opinion from the Chattogram University of Engineering and Technology, Chattogram and accordingly the respondent No. 4 by his order dated 23.07.2005 revised the earlier price approval order dated 12.01.2005, basing upon the opinion of CHUET and as such, he submits that the price approval order dated 12.01.2005 has no more existence; because, the said order has been revised by the order dated 23.07.2005 (Annexure- 'E-1'). Thus, the subject matter of the appeal has become infructuous. But the Tribunal

failed to consider the said aspect of the appeal and mechanically passed its order on 24.04.2006 upholding the order of respondent No. 2 dated 24.02.2005 and as such, the same is liable to be declared to have been passed without lawful of authority and is of no legal effect. He further submits that the Tribunal ought to have disposed of the appeal in light of the revised price approval order dated 23.07.2005. He again submits that the petitioner would have non-prosecuted the appeal, but due to wrong advice the appeal could not be non-prosecuted, because by the revised price approval order dated 23.07.2005 the appeal before the Tribunal has became infructuous. And accordingly, he prays for making the Rule absolute.

On the other hand, Mr. Nawroz Md. Rasel Chowdhury, learned Deputy Attorney General submits that no copy of the expert opinion from the Chattogram University of Engineer and Technology, Chattogram has been annexed with the writ petition and he continues the said opinion might not be submitted before the Tribunal before passing the impugned order and as such he prays for sending the case on remand. In the said backdrop, when the Court asked learned Deputy Attorney General whether the revised price approval order dated 23.07.2005 passed by the respondent No. 4 was good enough for considering the contents of the expert opinion or not. In reply learned DAG feels difficulties to answer properly.

We have heard learned Advocate for the petitioner, learned Deputy Attorney General for the respondents, perused the writ petition along with the annexures.

It appears that on 01.01.2005 petitioner-company submitted a price declaration before the Division Officer of Customs, Excise and VAT, Feni Division, Feni in Musak-1 and the Assistant Commissioner (Divisional Officer) by his order dated 12.01.2005 approved the VAT payable base value in a modified manner, refusing to accept the petitioner's declared version. On being aggrieved, the petitioner filed an appeal (application) under sub-rule (7) of Rule 3 of the VAT Rules, 1991.

It is to be mentioned here that before submitting the price declaration petitioner-company made a representation before the respondent No. 2 to send the matter for an expert opinion to determine the actual use of raw materials, component and wastage thereof in producing C.R. Coil and accordingly on 14.09.2004, the respondent No. 2 sent the matter seeking an opinion from the Head of Department, Mechanical Engineering, Chattogram University of Engineering and Technology, Chattogram after allowing the prayer of petitioner (see paragraph-5 of Annexure- 'C' to the writ petition) and during pendency of said expert opinion, the petitioner-company submitted a price declaration on 05.01.2005 and the Divisional Officer, respondent No. 4 having not received any opinion from the expert made his approval order at his own on 12.01.2005. It is also evident from the order of respondent No. 2 (Annexure-'D'), where in it was categorically held that the case of petitioner could not be considered at the moment, because the expert opinion from the Chattogram University of Engineering and Technology, Chattogram is yet to be received and thus the application of petitioner-company was rejected by his order dated 24.02.2005.

The petitioner having no other alternative constrained to file an appeal before respondent No. 1 against the order dated 24.02.2005 of respondent No. 2. During pendency of the appeal before the respondent No. 1, the expert opinion has been received into the hand of respondents, which is evident from the Annexure-‘E-1’ and the respondent No. 4 upon perusal and taken into consideration the said opinion revised his earlier order dated 12.01.2005 by his order dated 23.07.2005.

If we read together the Annexures-‘B’, ‘C’, ‘D’ and ‘E-1’, then it would be crystal clear that the respondent No. 4 having no expert opinion on 12.01.2005 approved VAT payable base value at his own and soon after getting the opinion he revised his price approval order on 23.07.2005, superseding his earlier order dated 12.01.2005. Meaning thereby, the price approval order dated 12.01.2005 has no legal existence after passing the revised price approval order dated 23.07.2005 and as such, the subject matter of the appeal before the respondent No. 1 under Nothi No. CAVT/Case(VAT)-82/2005 had become infructuous and thus, the Tribunal on being acquainted with the facts of the revised price approval order dated 23.07.2005 ought to have disposed of the appeal in the light of revised price approval order; but it failed to consider the said aspect of the appeal and as such, it stepped outside the given jurisdiction.

In the premise above, we find substance in the Rule.

Accordingly, the Rule is made absolute.

The judgment and order dated 24.04.2006 passed by the respondent No. 1 under Nothi CEVT/Case(VAT)-82/2005 131(1-3) is hereby set-aside and the revised price approval order dated 23.07.2005 under Nothi

No. ৪র্থ/সিই-এ(১২)৮/মুসক/৯৭/২৭৭৯ (Annexure-‘E-1’) is hereby restored, so far it relates to the subject matter and the period under the case in hand.

No order as to cost.

Send down the lower court record (LCR).

Communicate this order at once.

Md. Shahinur Islam, J:

I agree.

Obaidul Hasan/B.O.