

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

**WRIT PETITION NO. 8687 OF 2006**

**IN THE MATTER OF:**

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

And

**IN THE MATTER OF:**

Ahsanul Kabir

.... Petitioner

-Vs-

Customs, Excise and VAT Appellate Tribunal,  
Jibanbima Bhaban (3<sup>rd</sup> Floor) 10, Dilkusha  
Commercial Area, Dhaka-1000 and others  
....Respondents.

Mr. Munshi Moniruzzaman with Ms. Shuchira  
Hossain, Mr. Yousuf Khan Rajib, Ms. Nahid  
Sultana Jenny, Mr. Shakib Rejowan Rejowan  
Kabir, Mr. S.M Shamsur Rahman and Ms.  
Mosammat Suraiya Khatun, 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: 06.02.2024**

**Judgment on: 13.02.2024.**

**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 10.04.2006 passed by the respondent No. 1 under Nothi No. CEVT/CASE/(VAT)-73/2005 (Annexure-I) dismissing the appeal with modification of the order No. 19/Ab/Appeal/2005 dated 15.01.2005 (Annexure-G) passed by the respondent No.2 by which order No. 30/Ab/2003 dated 12.01.2003 (Annexure-E) issued by the respondent No. 4 was affirmed should not be declared to have been passed without lawful authority and is of no legal effect 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 operation of the impugned order dated 10.04.2006 passed by the respondent No. 1 (Annexure-I) was stayed by this Court for a prescribed period.

Facts, relevant for disposal of the rule, in short, are that the petitioner is a business man engaged in the business of manufacturing Biri for selling the same in the local market under the name and style "M/S. Alam Biri Factory". In course of business, the petitioner obtained necessary permission from the Government authority as well as the VAT registration certificate from the concerned VAT office under the Value Added Tax Act, 1991.

Suddenly, office of the respondent No. 5 audited the petitioner factory and submitted an audit report on 21.04.2001. Pursuant to the said audit report the respondent No. 4, Assistant Commissioner, Customs, Excise and VAT, Barisal Division, Barisal issued a show cause notice upon the petitioner alleging *inter alia* that the petitioner evaded revenue to the tune of Tk. 26,61,120.70. It has been further stated that the petitioner did

not maintain the purchase register and thereby the petitioner has evaded such amount of revenue. By the said notice, the petitioner was further asked as to why penalty should not be imposed under Section 11(C) of the Excise and Salt Act, 1944. On receipt thereto, the petitioner replied to the said notice on 10.03.2002 denying all the material allegations so made in the notice and prayed for exonerating him from the payment of government revenue.

Thereafter, the said respondent without considering the reply to the show cause notice and materials on record so available before him made the demand final on 12.01.2003 and thereby directed the petitioner to pay Tk. 26,61,120.70 as evaded revenue and penalty to the tune of Tk. 2000/- under Section 210 of the Exercise and Salt Act, 1944.

Challenging the said order the petitioner preferred appeal before the respondent No. 2 [Commissioner, Customs, Excise and VAT (Appeal)], Dhaka but the Commissioner without hearing the petitioner and without considering the evidence on record rejected the appeal and thereby affirmed the adjudication order by his order dated 15.01.2005.

Feeling aggrieved thereby the petitioner preferred 2<sup>nd</sup> appeal before the Customs, Excise and VAT Appellate Tribunal (Tribunal) being No. CEVT/Case (VAT)/73/2005 depositing 25% of the demanded amount as required under the law and the Tribunal after hearing the contending parties allowed the appeal in part modifying the order and thereby directed the petitioner to pay Tk. 17,74,080/- instead of Tk. 26,61,120.70 and thereby affirmed the penalty so passed by the Commissioner of Appeal below.

Being aggrieved by and dissatisfied with the order passed by the Tribunal, the petitioner filed the instant writ petition invoking Special Original Jurisdiction under Article 102 of the Constitution of the People's Republic of Bangladesh.

Mr. S.M. Shamsur Rahman, learned Advocate for the petitioner mainly submits that the respondent No.1 committed error of law in fixing Tk. 16/- on the wages of labour for manufacturing 1000 sticks Biri without assigning any reason of such fixing in disbelieving the statement of the petitioner and as such same is liable to be declared to have been passed without lawful authority. Mr. Rahman next submits that the respondent No. 2 has illegal enhanced the number of production of Biri by curtailing a portion from wages of the labour and fixing a fresh number of production of Biri and making demand duty upon the same and the respondent Nos. 1 and 2 have erred in law in affirming the same and as such same is liable to be declared to have been done without lawful authority. Mr. Rahman further submits that the respondent No. 1 on misconstruing the provision of Section 11C of the Excise and Salt Act, 1944 and Rule 210 of the said Rules have arrived at an erroneous finding which is liable to be declared to have been passed without lawful authority.

*Per contra*, Ms. Nasima K. Hakim, learned Deputy Attorney General appearing for the respondent No. 2 submits that the Tribunal considering the provision of law as well as the evidences on record allowed the appeal in part and thereby determined the evaded revenue by fixing the wages of 1000 sticks of Biri at Tk. 12/- to Tk. 16/- considering the evidence on

record. In view of the above there is no illegality on the face record of the impugned order and as such the Rule is liable to be discharged.

We have considered the submissions of the learned Advocate and the learned Deputy Attorney General and gone through the writ petition and annexures appended thereto.

In the instant writ petition the moot contention of the petitioner is that the adjudication authority as well as two appellate authorities determined the evasion of the revenue fixing Tk. 16/- on the wages labour for manufacturing 1000 sticks of Biri but the authority below without considering the other expenses determined the evasion of revenue which is absolutely illegal.

In this regard, it, appears that the adjudication authority as well as the appellate forum i.e. Commissioner of Appeal fixing Tk. 12/- on the wages of labour for manufacturing 1000 sticks of Biri. Pursuant to the said fixation both the authorities below detected Tk. 26,61,120.70 as has been evaded as revenue by the petitioner. Considering the submission so advanced by the petitioner before the Tribunal and the Tribunal increased the wages of Tk. 12/- to Tk. 16/- of labour wages and other expenses for manufacturing 1000 sticks of Biri. In the said increasing of Tk. 16/- on the wages of labour and other charges, the Tribunal fixed the evasion of revenue of Tk. 17,74,080/- instead of Tk. 26,61,120.70.

In view of the said fixation of evaded revenue, the petitioner cannot place and illegality before this Court in which law has been violated by the Tribunal for fixing the evaded revenue of Tk. 17,74,080/-. Moreover, the

Tribunal considering the submission of the petitioner fixed the wages of the labour and other charges of Tk. 16/- for manufacturing 1000 sticks Biri.

Considering the stated facts and circumstances of the case we do not find any error of law in passing the impugned order by the Tribunal.

Accordingly, the Rule is discharged, however without any order as to costs.

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

Communicate the copy of the judgment and order forthwith.

***Md. Iqbal Kabir, J:***

I agree.

**M.A. Hossain-B.O.**