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

WRIT PETITION NO. 11734 of 2022

<u>IN THE MATTER OF:</u>

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

And

<u>IN THE MATTER OF:</u>

IIDFC Securities Limited
                       .... Petitioner
            -vs-
National Board of Revenue and others.
                       ....Respondents.
            And

Mr. Munshi Moniruzzaman, Advocate with
Mr. Sakib Rezwan Kabir, Advocate
Mr. Md. Adnan Sarker, Advocate
Ms. Shuchira Hossain, Advocate
Ms. Sabina Yasmin, Advocate
Ms. Shamima Binte Habib, Advocate
Ms. Nahid Sultana Jenny, Advocate
Ms. Shamsun Nahar Nely, Advocate
Ms. Mosammat Suraiya Khatun, Advocate
Ms. Ismet Nashra Khan, Advocate
Ms. Jesmin Akter, Advocate and
Mr. S.M. Shamsur Rahman, Advocate
                       .... For the Petitioner.

Mr. Samarendra Nath Biswas, D.A.G. with
Mr. Md. Abul Kalam Khan (Daud), A.A.G. and
Mr. Md. Modersher Ali Khan (Dipu), A.A.G.
                       .... For the Respondents-government.

<u>**Heard 23.01.2024 and**</u>
<u>**Judgment on:24.01.2024**</u>

<u>Present</u>:

Mrs. Justice Farah Mahbub.
        And
Mr. Justice Muhammad Mahbub Ul Islam

Farah Mahbub, 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 impugned order dated 30.06.2022 passed under Nothi No.৪/ মূসক/৮/(৬৯২) কর ফাঁকি/বিচার/২০২১/১১১৩ by the respondent No.2 (Annexure-D) so far it relates to making demand from 01.01.2015 to 09.02.2017, as being time barred under Section 55(1) of the Value Added Tax Act, 1991, should not be declared to have been passed without lawful authority and hence, of no legal effect.

At the time of issuance of the Rule the operation of the impugned order dated 30.06.2022 passed under Nothi No.৪/ মূসক/৮/(৬৯২) কর ফাঁকি/বিচার/ ২০২১/১১১৩ by the respondent No.2 (Annexure-D) so far it relates to making demand from 01.01.2015 to 09.02.2017, was stayed by this Court for a prescribed period.

In view of the statements so made in the writ petition Mr. Munshi Moniruzzaman, the learned Advocate appearing for the petitioner submits that the respondent No.2 issued the impugned final demand dated 30.06.2022 under Section 55(3) of the VAT Act, 1991 (Annexure-D). In this regard, he goes to contend that part of the said demand from 01.01.2015 to 09.02.2017 is time barred under Section 55(1) of the VAT Act, 1991. Hence, making final demand covering the said respective period is wholly without jurisdiction.

Conversely, Mr. Md. Abul Kalam Khan (Daud), the learned Assistant Attorney General appearing for the respondents-government submits that the impugned final demand dated 30.06.2022 issued by the respondent concerned under Section 55(3) of VAT Act, 1991 is an

appealable order; hence, without invoking alternative forum filing the instant writ petition is liable to be discharged as being not maintainable.

The petitioner has challenged the impugned final demand dated 30.06.2022 (Annexure-D) issued by the respondent concerned under Section 55(3) of VAT Act, 1991 mainly on the ground that part of the said demand is time barred from 01.01.2015 to 09.02.2017.

Vide Section 55(1) of VAT Act 1991 the authority concerned is empowered to make demand for the evaded or less paid VAT within 5(five) years. Since the impugned demand so made for the respective period 01.01.2015 to 09.02.2017 is barred by limitation; hence, making final demand covering the said period is without jurisdiction.

In view of the above, the Rule is made absolute in part.

The impugned order dated 30.06.2022 passed under Nothi No.8/ মূসক/৮/(৬৯২) কর ফাঁকি/বিচার/২০২১/১১৩ by the respondent No.2 (Annexure-D) so far it relates to making demand from 01.01.2015 to 09.02.2017, is hereby declared to have been passed without lawful authority and hence, of no legal effect.

The petitioner, however, is at liberty to prefer appeal for the remaining part of the demand but in due compliance of law.

There will be no order as to costs.

Communicate the judgment and order to the respondents concerned at once.

Muhammad Mahbub Ul Islam, J:

I agree.

Montu (B.O)