

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

**WRIT PETITION NO. 4530 OF 2007**

IN THE MATTER OF:

An application under Article 102(2)(a)(1) and(ii)  
of the Constitution of the People's Republic of  
Bangladesh.

And

IN THE MATTER OF:

***Abdul Momen Limited***

.... Petitioner

-Vs-

***National Board of Revenue and others***

....Respondents

Mr. Munshi Moniruzzaman, Mr. Minhduzzaman  
Leeton, Ms, Shuchira Hossain, and Mr. S.M  
Shamsur Rahman and Ms. Nahid Sultana Jenny,  
Advocates

... for the Petitioner

Ms. Nasima K. Hakim, Deputy Attorney General,  
Ms. Tahmina Polly, with Mr. Elin Imon Saha,  
and Mr. Ziaul Hakim, Assistant Attorney  
Generals.

... For the Respondents-government.

**Heard on: 13.02.2024 and 28.02.2024**

**Judgment on: 06.03.2024.**

**Present:**

Mr. Justice Md. Iqbal Kabir

and

Mr. Justice S.M. Maniruzzaman

**S.M. Maniruzzaman, J:**

In this Rule, the respondents have been called upon to show  
cause as to why the Order under Nothi No. 4th/A (12)93/Musak/

Co.Panio/2001/1286 dated 15.03.2007 passed by the respondent No. 3 (Annexure-T) directing the petitioner to make payment of Tk. 14,55,189/- failing which action will be taken under Section 56 of the Value Added Tax Act, 1991 in violation of Section 9 and 55(1)(3) of the Value Added Tax Act 1991 should not be declared to have been passed without lawful authority and is of no legal effect and/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 15.03.2007 (Annexure-T) was stayed by this Court for a prescribed period.

Facts, relevant for disposal of the Rule, in short, are that the petitioner is a private limited company incorporated under the Companies Act, 1994 and is engaged in the business of producer “Carbonated Soft Drink” (Coke, Fanta and Sprit). In course of business, the petitioner obtained VAT Registration Certificate from the concerned VAT office under the Value Added Tax Act, 1991 (in short, the Act, 1991) for the purpose of payment VAT and since then it has been paying VAT regularly.

Suddenly, respondent No. 4, Superintendent, Customs, Excise and VAT, Kaptai Circle, Chattogram issued a demand notice upon the petitioner on 13.09.2005 alleging *inter alia* that the petitioner has illegally taking rebate in the fiscal year 2003-2004 against raw materials to the tune of Tk. 25,24,883/- which is liable to be paid by the petitioner or to adjust the said amount to the current account registered. On receipt thereto the petitioner filed an application on 24.09.2005 before the said respondent

requesting to supply the relevant documents on the basis of demand for making reply against the notice. The said respondent without considering the representation issued another notice on 18.10.2005 upon the petitioner directing him to pay the said amount within a stipulated time stated therein. On receipt thereto the petitioner further made a representation before the concern respondent contending that the petitioner has been supplying its products on the basis of declared price which is based on input-output cost analysis and paying VAT regularly and for payment of the VAT the petitioner filed Mushak-1 for fixing its based value and accordingly the petitioner paid VAT in accordance with law. On receipt thereto the said respondent issued several letters upon the petitioner requesting to appear before him for hearing.

During pendency of final decision, the respondent No. 4 further issued a letter on 24.05.2006 asking the petitioner they would conducted an audit of the petitioner company and for that reason the business documents were necessary for audit. In response thereto the petitioner produced necessary documents for the purpose of conducting audit. The respondent without giving any final decision against the demand notice dated 13.09.2005 further issued a notice on 19.04.2006 asking the petitioner to pay an amount of Tk. 14,55,189/- as per audit conducted by the Local and Revenue Audit Directorate in respect of rebate which was taken by the petitioner illegally.

On receipt thereto the petitioner replied thereof on 13.07.2006 contending that the self same matter is pending before the said respondent for final decision but, however, without giving any final decision against

the demand dated 13.09.2005 and 19.07.2006 (Annexure-A and M respectively) the respondent No. 4 issued notice upon the petitioner directing to pay amount of Tk. 14,55,189/- within the period prescribed therein failing which the authority would taken steps under Rules 43 of the Rules 1991. On receipt thereto the petitioner made further objection against the said demand on 11.11.2006 (Annexure-Q) stating that since the demand are still pending before the Divisional officer including the claim of the Local Revenue and Audit Directorate for the Fiscal Year 2004-2005 and as such before finalization of the said demand, the authority cannot impose Rules 43 upon the petitioner but, however, the said respondent without considering the representation of the petitioner has issued notice under Section 56 read with Rules 43 of the VAT Rules 1991 asking the petitioner to pay of Tk. 14,55,189/- within 7(seven) days failing which the operation of the bank account will be fixed and other legal action has been taken against the petitioner.

Being aggrieved thereby the petitioner moved this application before this Court and obtained the *Rule* and also the *interim* order of stay.

Mr. Minhaduzzaman Leeton, learned Advocate appearing for the petitioner mainly submits that against the demand the petitioner filed an appeal before the respondent No. 3 and the said respondent by his order dated 21.08.2006 though admitted the facts that the demand is still pending before the Divisional Officer including the claim of Local Revenue and Audit Department for the Fiscal Year, 2004-2005 amounting to Tk. 14,55,189 but most illegally and arbitrarily issued the impugned demand and as such the impugned demand is liable to be declared to have been

made without lawful authority and is of no legal effect. Mr. Leeton next submits that against the alleged claim canceling the rebate, the petitioner filed written statement denying all the allegations of the respondents and the matter is waiting for proper adjudication, but without disposing the said claim the respondent No. 3 arbitrarily demanded Tk. 14,55,189.00 to the petitioner alleging the rebate which was taken illegally but without disposing their earlier claim the subsequent claim, of the respondent No. 3 is violated of the provisions of Section 9(2) (2Kha) and 55 (1)(3) of the Act, 1991 and as such the impugned demand is liable to be declared to have been issued without lawful authority and is of no legal effect.

Mr. Leeton further submits that the petitioner was taken rebate on the basis of Section 9 of the Act, 1991 and the respondent have illegally passed an order directing him to refund the same and as such the impugned order is illegal and liable to be declared to have been passed/issued without lawful authority and is of no legal effect.

Mr. Leeton also submits that the respondent No.3 directly passed the order of demand upon the petitioner but before issuance of the said demand order no notice of show cause was served upon the petitioner giving any opportunity to the petitioner for making reply as required under Section 55(3) of the Act, 1991 and as such the demand has been made behind the back of the petitioner and in violation of the principal of natural justice as well as the provision of law and as such the same is illegal and liable to be deleted to have see issued without lawful authority and is of no legal effect, In view of the aforesaid submissions, the learned Advocate prays for making the rule absolute.

On the other hand, Mr. Ali Akbor Khan, learned Assistant Attorney General appearing for the respondent No. 2 Commissioner, Customs, Excise and VAT Commissionerate, Chattogram by filing an affidavit-in-opposition submits that the Divisional Officer passed the impugned order but the petitioner did not adjust the excess rebate which was taken illegally in violation of the Section 9 of the Act, 1991 and thereafter the respondent No. 3, Assistant Commissioner and Divisional Officer issued the final demand on 15.03.2007, however, the petitioner without exhausting forum against the said demand filed the instant writ petition and as such the writ is not maintainable. Mr. Khan further submits that the petitioner did not adjust the excess rebate which amount was taken by the petitioner in violation of the provision of Section 9 of the Act, 1991. In that event the VAT Authority has compelled the petitioner to pay Government revenue by issuing the notice for freezing the bank account of the petitioner under Rules 3 of the Rules, 1991. In view of the above there is no illegality in the impugned order.

We have considered the submission of learned Advocate and learned Assistant Attorney General and gone through the writ petition, affidavit-in-opposition, relevant materials on record appended thereto.

Admittedly a notice was issued upon the petitioner on 13.09.2005 asking to adjust rebate amounting to Tk. 25,24,910/- under Section 9 of the Act, 1991 (Annexure-A to the writ petitioner). Against the said demand the present petitioner made objection on 13.10.2005 and which was duly received by the concerned respondent and thereafter issued several letters on 10.11.2005, 01.01.2006 and 24.01.2006 to appear before the concerned

respondent for hearing the matter. In response thereto the representative of the petitioner appeared before the concerned VAT Authority for hearing the matter and submitted necessary documents in support of their written objection. During pendency of final decision against the demand, the said respondent on the basis allegation of Local and Revenue Audit, Directorate further issued another demand on 24.05.2006 (Annexure-L) asking the petitioner to pay to the tune of Tk. 14,55,189/-. On receipt thereto the petitioner further made objection against said demand on 13.07.2006 which is still pending for final disposal. It is quite surprise that the VAT Authority after receiving written objection against the demand dated 13.09.2005 and 19.07.2006 and before finalization of the said demands issued the impugned order under Rule 43 of the Rules, 1991 directing the petitioner to pay demanded amount otherwise action would be taken against the petitioner under Section 56 of the Act, 1991 however, Section 9(2) provides *inter alia*;

“(২) উপ-ধারা (১) এ বর্ণিত ক্ষেত্রসমূহে উপকরণ কর রেয়াত গ্রহণের অধিকার নাথাকা সত্ত্বেও কোনো ব্যক্তি উক্তরূপ কর রেয়াত গ্রহণ করিলে সংশ্লিষ্ট কর্মকর্তা, ধারা ৩৭ এ যাহা কিছুই থাকুক না কেন, গৃহীত রেয়াত নাকচ করিয়া চলতি হিসাব বা দাখিলপত্রে প্রয়োজনীয় সমন্বয় সাধনের নির্দেশ দিতে পারিবেন।

(২ক) এই আইনের অন্যান্য বিধানে যাহা কিছুই থাকুক না কেন, উপ-ধারা (২) এর অধীন সংশ্লিষ্ট কর্মকর্তা কর্তৃক প্রদত্ত নির্দেশের ফলে কোনো ব্যক্তি সংশ্লিষ্ট হইলে, তিনি উক্ত নির্দেশের বিরুদ্ধে উক্ত সংশ্লিষ্ট কর্মকর্তার উর্ধ্বতন মূল্য সংযোজন কর কর্মকর্তার নিকট লিখিত আপত্তি উত্থাপন করিতে পারিবেন।

(২খ) উপ-ধারা (২ক) এর অধীন কোনো লিখিত আপত্তি দাখিল করা হইলে, উক্ত কর্মকর্তা লিখিত আপত্তি দাখিলের তারিখ হইতে সাত কার্যদিবসের মধ্যে আপত্তি দাখিলকারী ব্যক্তিকে শুনানির যুক্তিসঙ্গত সুযোগ প্রদানপূর্বক, উহা নিষ্পত্তি করিবেন এবং উক্ত কর্মকর্তার অনুরূপ কোনো আদেশ চূড়ান্ত হইবে।”

On a plain reading of Sub-section 2 of Section 9, it, however, appears that notwithstanding anything contained in section 37, where any person without having legal right to take inputs tax credit in the cases mentioned in Sub section (1), takes such credit, the concerned Officer may, direct for necessary adjustment in the Current Account or in the return canceling the credit taken. In the instant case, the respondent without taking action as per Sub-section (2) (1) of Section 9 has taken proceeding under Section 56 of the Act, 1991 by the impugned demand which is not permissible under the law.

Furthermore the concerned VAT Authority without giving final decision against the demand dated 15.03.2007 issued the impugned notice under Rule 43 of the Rules 1991 asking the petitioner to deposit the demanded amount failing which the action under Section 56 of the Act, 1991 will be taken against the petitioner.

In view of the facts and circumstances of the case, observations and findings, we find substance in the submissions so made by learned Advocate for the petitioner and thus merit in the Rule. Accordingly, the rule is made absolute, however, without any order as to costs.

The impugned order No. 4th/A (12)93/Musak/Co.Panio/2001/1286 dated 15.03.2007 passed by the respondent No. 3 (Annexure-T) directing the petitioner to make at payment of Tk. 14,55,189/- failing which action will be taken under Section 56 of the Value Added Tax Act, 1991 in violation of Section 9 and 55(1)(3) of the Act, 1991 is hereby declared to have been passed without lawful authority.



The Divisional Officer, Customs, Excise and VAT Chandgaon Division, Chattogram is directed to finally dispose of the notice/demand dated 13.09.2005 and 19.07.2006 (Annexure-A and M) within 30(thirty) days from the date of receipt of this judgment and order by giving an opportunity of being heard to the petitioner, but in accordance with law.

Communicate a copy of this judgment and order to the concerned respondent No. 2.

Md. Iqbal Kabir, *J*:

I agree.

Md. Mashud sikder-A.B.O.