

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

***WRIT PETITION NO.2174 of 2023***

IN THE MATTER OF:

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

And

IN THE MATTER OF:

***Mohammed Helal Uddin***

..... *Petitioner*

-vs-

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

..... *Respondents*

And

Mr. Mohammad Nasim Miah, Advocate with  
Mst. Halima Khatun Kona, 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

***Heard on: 24.07.2024 and***  
***Judgment on:01.08.2024***

***Present:***

*Mrs. Justice Farah Mahbub.*

*And*

*Mr. Justice Muhammad Mahbub Ul Islam*

***Farah Mahbub, J:***

In this Rule, 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 19.12.2022 passed under Nothi No.8<sup>র্থ</sup>/এ (১২) ২০৩/মুসক ফাঁকি/ওয়েল এন্টারপ্রাইজ/সপ্তদঃ/২০২১/৮৪৬৫ by the respondent No.2 so far it relates to imposition of penalty of Tk.14,83,442.49/- under Section

৮৫(১)(ড) of the VAT and Supplementary Duty Act, 2012 (Annexure-F), should not be declared to have been issued without lawful authority and hence, of no legal effect.

At the time of issuance of the Rule the operation of the impugned order dated 19.12.2022 passed under Nothi No.৪৪/এ (১২) ২০৩/মুসক ফাঁকি/ওয়েল এন্টারপ্রাইজ/সপ্তদঃ/২০২১/৮৪৬৫ by the respondent No.2 so far it relates to imposition of penalty of Tk.14,83,442.49/- under Section ৮৫(১)(ড) of the VAT and Supplementary Duty Act, 2012 (Annexure-F), was stayed by this Court for a prescribed period.

In support of the statements so made in the writ petition, we have heard Mr. Mohammad Nasim Maih, the learned Advocate appearing for the petitioner and Mr. Samarendra Nath Biswas, the learned Deputy Attorney General appearing for the respondents-government.

The issue in question has earlier been resolved by this Bench in connection with W.P. No.14643 of 2022 in the case of *The Cox Today Limited -Vs- The Secretary, Internal Resources Division, Ministry of Finance, Bangladesh and others*, an unreported decision, vide judgment and order dated 10.03.2024 categorically observing, *inter-alia*:

*“Section 73 of the VAT and Supplementary Duty Act, 2012 (in short, the Act, 2012) empowers the Commissioner concerned to make demand of VAT on the contexts as provided under Clause (ka) – (gha) of Section 73(1), but subject to issuance of show cause notice and upon hearing the person concerned if objection thereto is raised by him.*

*Section 85, however, fixes the parameter for imposition of penalty by the respective VAT officers concerned as mentioned in Section 86.*

*Rule 65 of the VAT and Supplementary Duty Rules, 2016 on the other hand prescribes the procedure for imposition of penalty.*

*Rule 65(1) deals with the contexts as prescribed under clause (ছ), (জ), (ঝ) and (ড) of Section 85(1). Rule 65(2) provides for “ধারা ৮৫ এর উপধারা (১) এ বর্ণিত কর ফাঁকি সংক্রান্ত ব্যর্থতা বা অনিয়ম ব্যতীত অন্য যে কোন ধরনের ব্যর্থতা বা অনিয়মের জন্য”. However, in both the cases question of imposition of penalty arises only after final determination of unpaid or less paid or evaded amount of VAT “ধারা ৭৩ এ উল্লেখিত কর নির্ধারণ কার্যক্রম সম্পন্ন করিয়া” but subject to issuance of show cause notice in Form Mushok 12.12. with particulars as prescribed in Rule 65(3). In addition, on receipt of reply thereto the officer concerned has to give/provide opportunity of personal hearing under Rule 65(6). Subsequent thereto, the VAT officer will be empowered/entitled to pass adjudicating order in Mushok Form 12.13.*

*In view of the above, it can clearly be discerned that question of imposition of penalty arises only after final determination of unpaid/less paid/evaded amount of VAT and that is also, subject to issuance of show cause notice and personal hearing of the person concerned.”*

*“..... As has been observed earlier, Act, 2012 empowers the VAT officer concerned to impose penalty but only after final determination of the evaded amount of VAT or less paid VAT and subject to the procedures as have been prescribed under*

*Rule 65 i.e. with the issuance of show cause notice in prescribed form along with personal hearing. Said requirement of law has not been complied with by the officer concerned in the instant case prior to imposition of penalty. In the light of the observations so made by one of the Benches of this Division in **PET Industries Ltd. Vs. Commissioner, Customs, Excise and VAT, 61DLR734** “the concerned authority is therefore, duty bound to follow the procedure as laid down in the Act, for each and every action.*

*In that view of matter, we have no manner of doubt to find that imposing penalty by the respondent concerned under Rule 65(6) while making final demand under Section 73(2) without first issuing a notice in Form Mushok 12.12. asking to show cause to that effect with personal hearing of the petitioner concern, is an order passed without lawful authority. ....”*

Said observations and findings are still in operation.

In the present case, claiming evaded amount of VAT to the tune of Tk.47,25,000/- (Taka forty seven lac and twenty five thousand only) the officer concerned issued a demand-cum-show cause notice in exercise of power as provided under Section 73(1) of the Value Added Tax and Supplementary Duty Act, 2012. In response thereof the petitioner duly replied on 18.01.2022 (Annexure-C-1). Ultimately, the respondent concerned made a final demand of VAT on 19.12.2022 under Section 73(2) of the said Act (Annexure-F); at the same time had imposed penalty of Tk.14,83,442.49/- (Taka fourteen lac eighty three thousand four hundred forty two and forty nine poisa only).

In view of the above observations and finding given by this Bench in connection with writ petition No.14643 of 2022 as well as considering the facts and the position of law, we have no manner of doubt to find that imposing penalty of Tk.14,83,442.49/- (Taka fourteen lac eighty three thousand four hundred forty two and forty nine poisa only) by the respondent concerned under Section 65(6) while making final demand of Tk.14,83,442.49/- (Taka fourteen lac eighty three thousand four hundred forty two and forty nine poisa only) under Section 73(2) of the Act, 2012 without first issuing a notice in Form Mushok 12.12 asking to show cause to that effect with personal hearing of the petitioner concern so far it relates to imposition of penalty, are liable to be struck down for having been issued issuing without lawful authority and hence, of no legal effect.

In the result, this Rule is made absolute.

The impugned order dated 19.12.2022 passed under Nothi No.৪৪/এ (১২) ২০৩/মুসক ফাঁকি/গয়েল এন্টরপ্রাইজ।/সঙ্গঃ/২০২১/৮৪৬৫ by the respondent No.2 so far it relates to imposition of penalty of Tk.14,83,442.49/- under Section ৮৫(১)(ড) of the VAT and Supplementary Duty Act, 2012 (Annexure-F) is hereby declared to have been passed without lawful authority and hence, of no legal effect.

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.