

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

WRIT PETITION NO. 5583 OF 2023

IN THE MATTER OF:

Applications under Article 102(2) of the
Constitution of the People's Republic of
Bangladesh.

And

IN THE MATTER OF:

Sonali Dredger Limited

.... Petitioner

-Vs-

***National Board of Revenue, Represented by its
Chairman, NBR Bhaban, Rajaswa Bhaban, Plot
No. F1/A, Agargaon, Sher-E-Bangla Nagar,
Dhaka-1207 and others.***

.... Respondents

Mr. M. Ataul Gani, Advocate

...For the petitioner

Mr. Akhtar Farhad Zaman, Deputy Attorney
General with Ms. Sadia Afrin Shapla, Deputy
Attorney General with Mr. Arif Khan, Deputy
Attorney General with Mr. Sovan Mahmud, Mr.
Md. Faridul Islam and Mr. Md. Nazmul Haque,
Assistant Attorney Generals

.... For the respondent-Government.

Heard on 11.05.2026

Judgment on 17.05.2026

Present:

Mr. Justice S.M. Maniruzzaman

and

Mr. Justice Dihider Masum Kabir

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 demand notice contained in Nathi No.

এস/২২৮/গ্রুপ-৪/এয়াঃ/মোংলা/১৬-১৭/৮১৬৫(৩) dated 15.11.2022 issued by respondent

No. 2 under the signature of respondent No.3 finally demanding Advance Trade VAT (ATV) at the rate of 4% of Tk. 22,95,537.03 under section 83A of the Customs Act, 1969 (Annexure-K) in reference to the demand made in Nathi No. এস/২২৮/গ্রুপ-৪/এ্যাঃ/মোংলা/১৬-১৭/৩৬২৯(৩১) dated 18.06.2017 (Annexure-G) and Letter No. 08.01.0000.068.25.018.15/217 dated 19.06.2022 issued by National Board of Revenue (NBR) to the Commissioner of Customs, Mongla, Customs House, Khulna rendering opinion that H.S. Code of Work Boat is not included in S.R.O. No. 153/law/2015/15/Customs dated 04.06.2015 and as such ATV is applicable on Work Boat of the Dredger as referred to the demand notice dated 15.11.2022 should not be declared to have been issued without lawful 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, relevant for disposal of the Rule, in brief, are that the petitioner is a private limited company incorporated under the Companies Act, 1994 and is engaged in the business of dredging of rivers and canals. In the course of its business, the petitioner opened a Letter of Credit bearing No. 0000086316020013 dated 20.01.2016 for the import of a reconditioned Dredger along with a Work Boat from Netherlands under H.S. Code No. 8905.10.00. After arrival of the goods at Mongla Port, Khulna, the petitioner through its C&F Agent submitted Bill of Entry No. C-15168 dated 31.07.2016 for assessment and released the goods upon payment of the applicable customs duties and taxes.

After submission of the Bill of Entry, respondent No. 2, Commissioner of Customs, Mongla Customs House, Mongla referred the matter to the National Board of Revenue (NBR) for a ruling by letter dated 22.08.2016, stating that the “Work Boat” was an essential part of the Dredger.

Pursuant to the said letter, respondent No. 1, NBR issued a ruling stating that the Work Boat was not an essential part of the Dredger and, accordingly, the Dredger along with the necessary pipes would be classified under H.S. Code No. 8905.10.00, whereas the Work Boat would be classified under H.S. Code No. 8904.00.00. Thereafter, the customs authority assessed the petitioner's items in accordance with the ruling of the NBR and released the same upon payment of the applicable duties and taxes.

Suddenly, respondent No. 3, under the signature of respondent No. 2, issued a demand-cum-show-cause notice dated 25.01.2017, stating *inter alia* that, pursuant to the SROs dated 04.06.2015 and 02.06.2016, certain categories of companies were entitled to exemption from ATV at the time of release of goods, provided that such entities were registered manufacturing or service-providing companies and the capital machinery had been declared by the NBR. However, according to the respondents, the petitioner did not fall within the aforesaid categories of companies entitled to such benefit under the said SROs and therefore, ATV at the rate of 4% amounting to Tk. 22,95,537.03 had not realized from the petitioner at the time of release of the Work Boat.

Upon receipt thereof, the petitioner submitted a reply on 07.02.2017 denying all the material allegations made in the demand-cum-show-cause notice and contending that the petitioner company was not a commercial importer and, as such, 4% ATV was not applicable. However, respondent No. 2, without considering the written reply and the materials on record, passed the demand order bearing Nathi No. এস/২২৮/গ্রুপ-৪/এ্যাঃ/মোংলা/১৬-১৭/৩৬২৯(১) dated 18.06.2017, directing the petitioner to pay Tk. 22,95,537.03 as 4% ATV.

Thereafter, upon receipt of the said demand notice, the petitioner submitted a representation before respondent No. 1 on 19.04.2022 stating that ATV was not applicable against the petitioner's consignment. Pursuant thereto, respondent No. 2 by letter dated 25.05.2022 sought an opinion from the NBR regarding the applicability of ATV to the petitioner's consignment. The petitioner also requested respondent No. 5, Member of the NBR, by letters dated 13.06.2022 and 07.08.2022 providing an opinion regarding the applicability of ATV to the imported Work Boat. However, the NBR did not respond. Thereafter, respondent No. 3 under the signature of respondent No. 2 issued the final demand notice dated 15.11.2022 under section 83A of the Customs Act, 1969 (in short, the Act, 1969) directing the petitioner to pay Tk. 22,95,537.03 as ATV.

Being aggrieved thereby, the petitioner moved this application and obtained the Rule.

Mr. Ataul Gani, the learned Advocate appearing for the petitioner by referring to the unreported judgment of the High Court Division passed in Writ Petition No. 13016 of 2016 dated 03.08.2017 submits that the NBR ruling bearing Nathi No. ৩(২)সং নীঃ ও বাঃ/২০০৭/৪৩৩ dated 18.09.2016 regarding whether a "Work Boat" was an integral parts of the Dredger, was challenged before the High Court Division. Upon a threadbare discussion of the issue, the High Court Division made the Rule absolute and thereby declared the Nathi dated 18.08.2016 to have been issued without lawful authority. In view of the above, the petitioner's consignment ought to have been assessed under H.S. Code No. 8905.10.00. However, by the impugned letter, the petitioner's Work Boat was assessed under H.S. Code No. 8904.00.00 and ATV was imposed accordingly, although ATV is not applicable to a Dredger along with Work

Boat falling under H.S. Code No. 8905.10.00. As such the impugned order is liable to be declared to have been passed without lawful authority.

Mr. Gani further submits that it has been already settled by judicial pronouncements that a Work Boat is an integral parts of a Dredger and that without Work Boat a Dredger cannot function, as held in the judgment and order dated 03.08.2017 passed in Writ Petition No. 13016 of 2016, which was subsequently affirmed in Civil Petition for Leave to Appeal No. 4055 of 2017. Therefore, the respondents acted without jurisdiction and most illegally issued the notice demanding ATV on the Work Boat by not treating the same as capital machinery and as such the impugned order is liable to be declared to have been done without lawful authority.

Mr. Gani also submits that the NBR, itself made opinion by its letter dated 18.09.2016 observing that “কাস্টম হাউস, মংলার পত্রের বক্তব্য এবং আমদানিকৃত পণ্যসমূহের ক্যাটাগরি জাতীয় রাজস্ব বোর্ডে পর্যালোচনা করা হয়েছে। পর্যালোচনায় দেখা যায়, আমদানিকৃত dredger টির সাথে কোন প্রোপেলার না থাকায় তা চলন সক্ষম নয়। এটিকে এক স্থান থেকে আরেক স্থানে স্থানান্তরের কাজে work boat ব্যবহৃত হয়। মাটি খননের কাজে work boat প্রয়োজন না হলেও dredger এর কাজ পরিপূর্ণভাবে সম্পন্ন করার জন্য work boat একান্ত প্রয়োজন। সে হিসাবে dredger এবং work boat কে একে অপরের পরিপূরক বিবেচনা করা যায়। তবে dredger কে স্থানান্তর করা ছাড়াও dredger এর জন্য জ্বালানি বহন করা, dredger এর মেরামত কাজ সম্পন্ন করা এবং মেরামত কাজের জন্য জনবল বহন করাসহ আরো অনেক কাজ করার জন্য work boat ব্যবহৃত হয়।”

In view of the quoted opinion it is evident that the Work Boat is an integral part of the Dredger. However, due to a misconception and misinterpretation of law, the customs authority imposed ATV on the imported Work Boat. Therefore, the impugned demand is liable to be declared to have been issued without lawful authority and is of no legal effect.

Mr. Gani next submits that the petitioner is neither commercial importer nor a trader and the Dredger with Work Boat was imported only for its own use and consumption, but the respondents by misconstruing the relevant law imposed 4% ATV on the Work Boat and as such the impugned demand is liable to be declared to have been issued without lawful authority and is of no legal effect.

On the other hand, Ms. Shadia Afrin Shapla, the learned Deputy Attorney General appearing for the respondent-Government, submits that the impugned order passed under section 83A of the Act, 1969 is an appealable order. However, the petitioner, without availing the alternation forum of appeal, directly filed the writ petition. As such, the writ petition is not maintainable.

We have heard the learned Advocate for the petitioner, the learned Deputy Attorney General for the respondent-Government, have perused the writ petition, relevant materials on record appended thereto and consulted the relevant provision of law.

It, however appears from the record that the petitioner imported a Dredger along with a Work Boat declaring H.S. Code 8905.10.00. Prior to assessment of Bill of Entry No. C-15168 dated 31.07.2016 the concerned customs authority referred the matter to the NBR for a ruling regarding the applicable H.S. Code for assessment of the Work Boat.

Pursuant to the letter issued by the customs authority dated 22.08.2016, the NBR issued a ruling vide Nathi No. ৩(২)শঃ নীঃ ও বাঃ/২০০৭/৪৩৩ dated 18.09.2016 with the following findings;

“কাস্টম হাউস, মংলার পত্রের বক্তব্য এবং আমদানিকৃত পণ্যসমূহের ক্যাটাগরি জাতীয় রাজস্ব বোর্ডে পর্যালোচনা করা হয়েছে। পর্যালোচনায় দেখা যায়, আমদানিকৃত dredger টির সাথে কোন প্রোপেলার না থাকায় তা চলন সক্ষম নয়। এটিকে এক স্থান থেকে আরেক স্থানে স্থানান্তরের কাজে work boat ব্যবহৃত হয়। মাটি খননের কাজে work boat প্রয়োজন না হলেও dredger এর কাজ পরিপূর্ণভাবে সম্পন্ন করার জন্য work boat একান্ত প্রয়োজন। সে হিসেবে dredger এবং work boat কে একে অপরের পরিপূরক বিবেচনা করা যায়। তবে dredger কে স্থানান্তর করা ছাড়াও dredger এর জন্য জ্বালানি বহন করা, dredger এর মেরামত কাজ সম্পন্ন করা এবং মেরামত কাজের জন্য জনবল বহন করাসহ আরো অনেক কাজ করার জন্য work boat ব্যবহৃত হয়।”

However, in the said ruling, the NBR directed the concerned customs authority to assess the Dredger under H.S. Code No. 8905.10.00 and the Work Boat under H.S. Code No. 8904.10.00.

Challenging the said ruling of the NBR dated 18.09.2016, M/s Abdul Monem Limited, Kewdhala, filed Writ Petition No. 13016 of 2016 before the High Court Division, Supreme Court of Bangladesh. Upon a threadbare hearing and discussion of the issue, the High Court Division, by its judgment and order dated 03.08.2017, made the Rule absolute and thereby declared the impugned ruling of the NBR dated 18.09.2016 to have been issued without lawful authority and also without jurisdiction.

Pursuant to the said judgment, the Work Boat was held to be an integral part of the Dredger and both were to be assessed under H.S. Code No. 8905.10.00 of the First Schedule of the Customs Tariff applicable during the relevant period i.e. 2016-2017 as well as under SRO No. ১৩৫-আইন/২০১৫/১৫/কাস্টমস dated 02.06.2015, customs duty and taxes under H.S.

Code No. 8905.10.00 was chargeable at the rate of 1%, and ATV along with other duties and taxes were exempted under the said SRO.

It, however further appears from the impugned order that respondent No. 2 demanded ATV on the Work Boat by assessing it under H.S. Code No. 8904.00.00. Since, the High Court Division in Writ Petition No. 13016 of 2016 declared a Work Boat is an integral part of a Dredger and is assessable under H.S. Code No. 8905.10.00. In view of the aforesaid judgment we are of the view that the impugned demand of ATV against the petitioner is absolutely without lawful authority and jurisdiction.

On the other hand, the learned Deputy Attorney General submits that, since the demand in question is an appealable order under the Act, 1969, the present writ petition is not maintainable. In this regard, it is a settled principle of law that when the entire action of a Government authority is ex-facie illegal, malafide, arbitrary and/or without jurisdiction, the aggrieved person may invoke the special original jurisdiction of this Court under Article 102 of the Constitution.

Having considered the facts and circumstances of the case, we find that the present case is properly amenable to the jurisdiction under Article 102 of the Constitution.

Considering the facts and circumstances of the case and the observation and findings made hereinabove, we find substance in the submission advanced by the learned Advocate for the petitioner. Accordingly, the Rule has merit.

In the result, the Rule is made absolute.

The impugned demand order dated 15.11.2022 issued by respondent No. 2 upon the petitioner under the signature of respondent No. 3 finally demanding of Tk. 22,95,537.03 as advance Trade VAT(ATV) at the rate of 4% under section 83A of the Customs Act, 1969 (Annexure-K) in reference to demand made in Nathi No. এস/২২৮/গ্রুপ-৪/এ্যাঃ/মোংলা/ ১৬-১৭/৩৬২৯(৩১) dated 18.06.2017 (Annexure-G) is hereby declared to have been passed without lawful authority and hence, is of no legal effect.

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

There will be no order as to costs.

Communicate the judgment and order at once.

Dihider Masum Kabir, J:

I agree.