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

Present:

**Mr. Justice Md. Iqbal Kabir**

**And**

**Mr. Justice Md. Riaz Uddin Khan**

WRIT PETITION NO. 10087 OF 2023

IN THE MATTER OF:

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

A N D

IN THE MATTER OF:

Woodland Plywood and Particle Board Mills Limited

... Petitioner

-Versus-

National Board of Revenue and others

... Respondents

Mr. Md. Munshi Moniruzzaman, with
Mr. Sakib Rezwan Kabir and
Ms. Nahid Sultana Jenny, Advocates

... For the Petitioner

Mr. Md. Jasim Sarker, DAG with
Mr. Md. Azadul Islam, AAG,
Ms. Laboni Akter, AAG,

… For the Respondent No.2

Judgment on: 19.03.2025

**Md. Riaz Uddin Khan, J:**

Rule *nisi* was issued upon an application under Article 102(2)(a)(i)(ii) of the Constitution of the People's Republic of Bangladesh asking the respondents to show cause as to why the Order dated 27.12.2022 issued under. Nothi No. ৩য়/ ৮(১৯)আর-এ/নিরীক্ষা/উডল্যান্ড প্লাইউড এন্ড পার্টিক্যাল বোর্ড মিলস লিঃ/২০২২/১০৭৪(১) passed by the respondent No. 2 (Annexure-D) determining Tax and imposing interest by a single Order in violation of Section 73, 127 and 2(24) of the Value Added Tax and Supplementary Duty Act, 2012 and the subsequent Order under Nothi No. ৩য়/ ৮(৬)আর-এ/নিরীক্ষা/উডল্যান্ড প্লাইউড এন্ড পার্টিক্যাল বোর্ড

মিলস লিঃ/২০২২/১৬৫৯(১) dated 12.07.2023 passed by the respondent No. 2 (Annexure-H) imposing penalty of Tk. 1,32,95,251.90 upon the petitioner despite making payment of the entire demanded amount by the petitioner in violation of section 85(2ka) of the Value Added Tax and Supplementary Duty Act, 2012 read with Rule 65 of the Value Added Tax and Supplementary Duty Rules, 2016 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 should not be passed as to this Court may deem fit and proper.

At the time of issuance of Rule further operation of the Order under Nothi No. ৩য়/ ৮(৬)আর-এ/নিরীক্ষা/উডল্যান্ড প্লাইউড এন্ড পার্টিক্যাল বোর্ড মিলস লিঃ/২০২২/১৬৫৯(১) dated 12.07.2023 passed by the respondent No. 2 (Annexure-H) was stayed initially for a period 04 (four) months and lastly extended on 06.11.2024 for a further period of 03 (three) months from date.

Succinct facts as stated by the petitioner are that the petitioner company has been carrying out its business of manufacturing and supplying Plywood & Particle Board. The petitioner company created a large number of jobs for the countrymen and every year deposits a huge amount of Value Added Tax (VAT) and Tax in the Government Exchequer and thereby helping the country in its economic growth. The Petitioner for the purpose of running its business obtained VAT registration certificate from the concerned authority and there is no allegation of evasion of VAT and other government duties and charges against the petitioner. On the basis of the documents submitted by the petitioner, Respondent No.2 issued a notice of show cause purportedly under Section 73 (1)(ga) of the Value Added Tax and Supplementary Duty Act, 2012 on 16.10.2022 demanding Tk.68,50,328.97 as evaded VAT. In the said show cause notice it was alleged that after examining the purchase register (MUSAK-6.1) and Dakhil Patra (MUSAK-9.1), it was

found that the Petitioner Company, for the financial year 2020-2021 imported and purchased raw materials and pays VAT and thereafter, the Petitioner took rebate on the same as well as upon the electricity bill. But even though the price of goods increased more than 7.5%, but without issuing input-output co-efficient as well as without complying the provision of Section 46 (dha) of the Value Added Tax and Supplementary Duty Act, 2012, the Petitioner took rebate of Tk. 64,01,160.95; it was further alleged that the Petitioner evaded VAT of Tk.1,29,300.00 under the head 'VAT deducted at source', by purchasing raw materials from the local market without issuing Musak challans; it was further alleged that the Petitioner did not pay VAT amounting Tk. 2,76,106.03 as apparent from the CA Report; furthermore, for the said alleged period, the Petitioner took advance tax additionally amounting Tk. 43,762.00 and in this process, the Petitioner company evaded VAT totaling Tk. 68,50,328.97; it was claimed that the action of the Petitioner is violative of Sections 15, 45, 46, 48, 49, 50, 51, 53, 73, and 107 of the Value Added Tax and Supplementary Duty Act, 2012 which are punishable under Section 85 of the said Act. The Petitioner was asked to show cause within 21 working days as to why the said amount shall not be realized from the Petitioner. It was stated in the show cause notice that if the Petitioner fails to reply, then the demand will be finalized under Section 73(2) of the Value Added and Supplementary Duty Act, 2012.

The Respondent No. 2 entered appearance by filing affidavit-in-opposition supporting the action of the respondents.

Mr. Munshi Moniruzzaman, the learned Advocate for the petitioner submits that section 127 of the Value Added Tax and Supplementary Duty Act, 2012 provides that if any person fails to deposit evaded "কর" / "tax" within 'নির্ধারিত তারিখ'/ specific date, then, only, interest may accrue on

him. The definition of "tax" is provided in Section 2(24) of the Act, 2012 which does not include the term "রেয়াত" "rebate", hence, imposing interest on rebate is unlawful and *ultra vires*. Furthermore, neither the Act, 2012 nor the Rules 2016 made there under has provided the definition of 'নির্ধারিত তারিখ. Nevertheless, the primary tax determination notice issued in favour of the Petitioner is under Section 73 of the Act, 2012. Section 73(2)(Kha) of the Act, 2012 states that specific date means the date on which the tax is to be paid, but that date has to be after 15 working days following the date of issuance of the primary tax determination notice. In the present case, the respondent No. 2, by the impugned Order dated 27.12.2022 imposed interest upon the amount of rebate, which admittedly has already been adjusted by the petitioner even before the issuance of the impugned adjudication Order. The Petitioner has admittedly adjusted the excess rebate mistakenly taken earlier with the monthly return of the following month of issuance of the show cause notice and therefore, interest cannot be imposed on the rebate adjusted by the Petitioner.

He then submits that there was no separate proceeding initiated by the Respondent No.2 under Section 73 of the Value Added Tax and Supplementary Duty Act, 2012, to determine Tax, which is sine-qua-non to initiate a later proceeding for claiming interest under section 127 of the Act, 2012 for evasion of Tax. The order itself is unspecific, mala fide and manifestly an instance of miscarriage of justice. The Respondent No.2 is under legal obligation to determine the alleged evaded tax in a proceeding under Section 73 of the Act, 2012, after hearing the petitioner, which is totally absent in the instant case and without such determination imposition of interest under section 127 of the Act, 2012 by a single Order is totally without jurisdiction and without lawful authority.

He further submits that the respondent No. 2 issued show cause notice upon the petitioner on 16.10.2022 claiming rebate of Tk. 64,01,160.95 which was adjusted by the petitioner in the monthly return of October, 2022 and the rest amount of Tk. 4,49,160.02 was also deposited by the petitioner and since the entire demanded amount has been met and as such, in view of the provision of section 85(2ka) of the Value Added Tax and Supplementary Duty Act, 2012, no penalty can be imposed as the said subsection clearly provides "উক্ত ক্ষেত্রে তাহার উপর কোন জরিমানা আরোপ করা যাইবে না।", but the respondent No. 2, in violation of the aforesaid provision of law imposed penalty upon the petitioner which is absolutely without jurisdiction and as such, the Order dated 12.07.2023 suffers from jurisdictional error, consequently, the Order is absolutely illegal and liable to be declared to have been passed without lawful authority and is of no legal effect. The Value Added Tax and Supplementary Duty Act, 2012 does not define the term 'নির্ধারিত তারিখ' which means, the date fixed by the Commissioner for payment of the alleged unpaid amount will be the 'নির্ধারিত তারিখ' and in the present case, respondent No. 2 directed the petitioner to deposit the rest unpaid amount within 15 working days within which time, the rest unpaid amount of VAT has been deposited and as such, no interest can be accrued and as such, the petitioner is entitled to take the benefit of section 85(2ka) of the Value Added Tax and Supplementary Duty Act, 2012; but the respondent No. 2, in violation of the said sub-section imposed interest and in the subsequent proceeding, imposed penalty vide Order dated 12.07.2023, which is absolutely illegal.

The learned advocate next submits that it is well established principle that taxing statutes are to be strictly construed. A fiscal statute imposing a burden on the subject is to be strictly construed and no tax can be imposed on a person without using unambiguous and clear

words by which tax is imposed. When there is doubt, an interpretation which is favourable to the subject should be preferred. Interest is considered as additional tax and since the Petitioner has adjusted the excess rebate mistakenly taken by him with the prescribed period, hence, additional burden imposed on him by the impugned order dated 16.10.2022 is unlawful and illegal.

He then submits that in light of Section 85(2Ka) of the Act, 2012 the present situation does not entitle the VAT authority to impose penalty under table Clause (Ja) of section 85(1) of the Act, 2012, however, under the amended Section 85(1)(Ja) of the Act, 2012 (Amendment made by Finance Act, 2021) maximum penalty can be imposed up to 100% of the rebate taken illegally; but in the present case, the Commissioner, respondent No. 2 imposed penalty to the tune of 200% which is absolutely illegal. Section 85(2Ka) of the Act, 2012 provides that if any person mistakenly or on mistaken believe or for interpretation of law takes excessive rebate and subsequently, returns the excess amount in accordance with the concerned provision of law with interest, in that case, penalty cannot be imposed on him. This amendment was made by the Finance Act, 2022 which came into force on 01.07.2022; the show cause notice was issued on 16.10.2022, therefore, the Petitioner is entitled to take benefit of this provision. In the present case, by virtue of Section 73 of the Act, 2012 interest does not accrue on the Petitioner and hence the petitioner is entitled to get the benefit of section 85(2ka) of the Act, 2012; but the respondent No. 2, in violation of the said sub-section imposed penalty vide impugned Order dated 12.07.2023, which is absolutely illegal. In view of the clear provision laid down in section 85(2ka) of the Act, 2012, no proceeding under Section 85 of the said Act can be initiated against a person who has met the demand, but in the instant case, the Respondent No.2 passed the impugned

Order for imposition of penalty which is not permissible in law and the said proceeding is hit by jurisdictional error, consequently, the impugned Order is liable to be declared to have been initiated without lawful authority and is of no legal effect.

He further submits that the Petitioner has the fundamental right guaranteed under Article 27 of the Constitution having equal protection of law and under Article 31 of the Constitution to be treated in accordance with law. His right as to profession/ occupation/ business is guaranteed under Article 40 of the Constitution. But the Petitioner has not only been dealt with arbitrarily, unfairly but in a most discriminatory manner.

The learned advocate lastly submits that it has been settled by the Apex Court of the land that availability of alternative remedy by way of appeal or revision will not stand in the way of invoking writ jurisdiction raising purely a question of law or interpretation of statute. Since the petitioner raised question of law for interpretation of some provisions of the Value Added Tax and Supplementary Duty Act, 2012, the present writ petition is maintainable. In support of his submission he cited the decisions of M.A. Hai, Md. Wazed Ali Miah & Md. Moslem Vs Trading Corporation of Bangladesh reported in 40 DLR (AD) 206; British American Tobacco Vs National Board of Revenue reported in 70 DLR 601 and upheld by the Appellate Division in the same case reported in 25 BLC (AD) 49.

Per contra, Mr. Md. Azadul Islam, the learned Assistant Attorney General (AAG) submits that though the petitioner has paid/adjusted the demanded amount after getting the Demand cum Show Cause Notice U/S 73(1) of VAT & SD Act, 2012 without any objection, still there is a legal obligation upon the respondents to finalize the tax and issue Final Tax Determination Notice U/S 73(2) of VAT & SD

Act, 2012. Accordingly, the respondent No.2 finalized the tax determination and issued Final Tax Determination Notice dated 25.01.2023 U/S 73(2). Since the petitioner agreed with the demand of unpaid VAT and paid/adjusted it without any objection and as such it was proved and established that the demanded VAT was not paid in due time; so as per provisions of Section 127 of the VAT & SD Act, 2012 interest on the principal amount was imposable from the next day of the due date till the date of payment. Accordingly, the respondent No.2 imposed the interest upon the petitioner. Further the Final Tax Determination and imposition of interest in the same single Order is consistent with Section 73(2) and section 127 of the VAT & SD Act, 2012; and there is no provision that interest cannot be imposed with Final Tax Determination in a single Order.

He then submits that rebate is not related to কর rather it is related to Input Tax (উপকরণ কর) which has been defined by Section 2(19) of the VAT & SD Act, 2012. Further according to Section 85(1) Table Clause (ja) and Section 127(4) of The VAT & SD Act, 2012 and Rule 127 the respondents are authorized to impose interest and therefore, the imposition of interest is absolutely legal.

The learned AAG further submits that according to Section 127 of the VAT & SD Act, 2012 the interest with the principal amount is to be paid but in the instant case the petitioner has paid the demanded tax only but has not paid interest on the principal amount and as such he is legally liable to pay interest on the principle of unpaid tax, as provided by section 127 of the VAT & SD Act, 2012. In the instant case the petitioner has committed offence and irregularity by way of evading VAT, by taking excess rebate and excess decreasing adjustment of Advance Tax and as such the provision of Section 85(2KA) is not applicable in the petitioner's case. Therefore, the respondent No. 2 as per

power conferred upon Section 85 of the VAT and SD Act, 2012 read with Rule 65 of the VAT and SD Rule, 2016 rightly initiated proceedings against the petitioner.

He further submits that Section 33 of the VAT and SD Act, 2012 provides what is the due date ('নির্ধারিত তারিখ'). Thus, the due date ('নির্ধারিত তারিখ') of payment of tax is the date on which the goods are supplied to the consumer/supply receiver. The Commissioner sets the date of the demanded (principal) amount of unpaid/evaded tax in the Final Tax Determination Notice. Subsequently interest is imposed and demanded and that as provided by section 127 interest will accrue. Therefore, the order dated 16.02.2023 passed by the respondent No.2 asking the petitioner to deposit interest, into the government treasury is legal. The Tax Determination Notice was issued on 16.10.2022 under section 73(1) demanding Tk. 68,50,328.00 as unpaid VAT, excess taken rebate and excess adjustment of VAT. The petitioner agreed with the demand and paid the demanded amount without any objection. Since the petitioner paid the demanded amount so the respondent No.2 as a legal requirement finalized the tax determination and issued Final Tax Determination Notice under Section 73(2) of the VAT & SD Act, 2012 on 27.12.2022 and simultaneously imposed interest on the unpaid/demanded amount. There is no such provision of VAT law which prohibits the simultaneous application of Section 73 and 127 of The VAT and SD Act, 2012.

He next submits that the petitioner took excess rebate in the financial year 2020-2021, and at that time Section 85(1) (Ja) of the Value Added Tax and Supplementary Duty Act, 2012 which was in force provided for imposing penalty twice the amount of illegally/irregularly taken rebate. The provision of imposing penalty of minimum half and maximum equal to the amount of irregularly taken rebate has been substituted by Finance Act, 2022.

The learned AAG finally submits that the writ petition is not maintainable; because it has been filed without availing the alternative remedy provided by Section 122 of The VAT and SD Act, 2012, which provides that the petitioner being aggrieved by the Order passed by respondent No. 2 is legally required to prefer an appeal before the Customs, Excise & VAT Appellate Tribunal and thus the rule is liable to be discharged.

In reply, Mr. Munshi Moniruzzaman, the learned Advocate for the petitioner reiterated his earlier submissions adding that the Value Added Tax and Supplementary Duties Rules, 2016 embodied only 119 rules and thus referring to rule 127 by the respondent is misleading.

We have heard the learned Advocates of both the parties, perused the applications, affidavit-in-oppositions and all the documents annexed there with.

The 1st objection raised by the respondents is whether the writ petition is at all maintainable having a clear provision of appeal against any order passed by the respondent no.2 against which the present writ petition has been filed. The petitioner claimed that question of interpretation of law, such as, whether ‘rebate’ is ‘tax’ and some other provisions of Value Added Tax and Supplementary Duties Act, 2012 are involved in the writ petition. The petitioner further claimed that the respondents in violation of clear provision of sections 73, 127 read with 85(2ka) of the Value Added Tax and Supplementary Duties Act, 2012 passed the impugned order causing infringement of both statutory as well as fundamental right which is illegal, *mala fide* and arbitrary on the face of the record. Citing the decision of British American Tobacco Bangladesh Company Ltd Vs. National Board of Revenue and others reported in 25 BLC(AD) 49 wherein it has been observed that when there is apparent violation of

law causing infringement of both statutory as well as fundamental right and when the entire action of the VAT authority appears to be illegal, *mala fide* and arbitrary on the face of the record, invoking article 102 of the Constitution, under such circumstances, without preferring statutory appeal, is no bar; the petitioner claimed as such the present writ petition is maintainable.

Since maintainability of a writ petition is a mixed question of fact and law, we have to examine the facts of the present case along with the law applicable herein. It is well-settled principle that taxing statute is to be strictly construed especially a fiscal statute imposing a burden on the subject/people is to be strictly construed and no tax can be imposed on a person without using unambiguous and clear words by which tax is imposed. By strict construction of taxing statute it is meant that the subject/people is not to be taxed unless the words of the taxing statute unambiguously impose the tax on him. If the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by an inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter. A taxing statute means any Act making compulsory imposition whether tax or fee. When there is doubt an interpretation which is favourable to the subject/people should be preferred. Every Act of Parliament must be read according to the natural construction of its words. Taxing statute is to be looked merely at what is clearly said and there is no room for intendment. Nothing is to be read in, nothing is to be implied and one can only look fairly at the language used.

The above mentioned principles have been settled long before by the Courts of England and consistently followed by the superior Courts of this Sub-continent including Bangladesh. However, the modern attitude of the

Courts is that the revenue from taxation is essential to the running of State and the duty of the judiciary is to aid in its collection while remaining fair to the subject/people. A taxing statute must be construed reasonably and must receive purposive construction so as to give effect to the purport and object sought to be achieved. A construction which would have made it impossible for the revenue authority to raise an assessment should be rejected. The general principle of construction that the object of the legislature has to be kept in view and a construction in conformity with the object has to be placed on the words used if there be ambiguity, is also applicable in case of taxing statutes. In doing so the context and the scheme of the taxing statute has to be taken into consideration. Considerations of public policy are also relevant in interpreting a taxing statute. The modern view has been explained by Kemaluddin Hossain, CJ in the case of Director of Taxation Vs. Mehdi Ali Khan reported in 32 DLR (AD) 139 wherein he observed:

> "In interpreting a taxing statute controversy often arises and learned authorities are cited in support of the proposition that a taxing statute is to be construed strictly in favour of the subject. But I find that this view though not abandoned in case of unresolved ambiguity, does no longer get the one-sided support from the judicial authorities. The view of strict construction prevailed at a time when the doctrine of *laisezz faire* was the ruling principle of economy of a State, but almost all the leading States of the world have long abandoned the doctrine, and adopted the welfare doctrine of economy. Even a country like England where the doctrine of *laisezz faire* originated has abandoned it in favour of welfare economy. The newly emerging nations like ours mostly adopted the welfare doctrine. In England therefore

rule of strict construction in taxing statute has undergone a modification, though not abandoned.

A taxing statute is to be interpreted on the language used in the statute. No tax can be imposed on the citizen without the word in an Act of the Legislature clearly showing the intention to lay a burden on him. When that intention is sufficiently shown, it is not open to speculate on what would be the fairest and most equitable mode of levying tax. In a fiscal or taxing one has to look merely at what is clearly said therein, for there is no room for any intendment, nor for any equity or for any presumption. In case of unresolved ambiguity, it may be interpreted favourably to the citizen but nothing more."

The present position is therefore if the language of the statute is fairly susceptible of a construction which brings a person or property within some specific charging provisions thereof, then such person or property should not be allowed to escape. However, a provision enacted for the benefit of the assessee should be construed in a way which enables the assessee to get its benefit. One taxing statute should not be interpreted by analogy with another taxing law. A provision of exemption from tax in a fiscal statute is to be strictly construed. It is a well-known principle that a person who claims an exemption or concession has to establish it and the rule of strict construction does not negative its application and this principle applies in case of exemption and concession granted in taxing statutes as well.

The benefit of this strict construction rule is given to the subject/people only when the words used are ambiguous and reasonably open to more than one interpretation; if the legislature fails to express itself clearly and the taxpayer escapes by not being brought within the letter of the law, no question of unjustness as

such arises. Strict construction of a taxing statute does not mean that where the subject falls clearly within the letters of the law, the Court can avoid the tax by putting a restricted construction on the basis of some supposed hardship or on the ground that the tax or penalty imposed is heavy or oppressive. It is only where two views are possible that the Court is to go for the construction which is favourable to the subject/people. When the intention is clear, it cannot be defeated by a mere defect in phraseology on the ground that the provision could have been more artistically drafted. The legal effect of the transaction cannot be displaced by probing into the substance of the matter. Penal provisions made to meet tax evasion are subject to strict construction and it is for the Revenue to prove that the conditions laid down for imposition of penalty are satisfied. A penalty provision in a taxing statute does not attract the rule of presumption of mens rea. In applying a statute designed to detect fraud, two competing public interests are involved- (i) offences involving tax fraud should be detected and punished and (ii) the right of the individual to the protection of law from unjustified interference with his use and enjoyment of his private property should be protected. But the judge should not be over-zealous in searching ambiguities in the words which are plain simply because he is out of sympathy with the policy which the Act appears to give effect. [IRC Vs. Rossminster Ltd, (1980) 1 All ER 80]. The language used in the statute is not to be either stretched, in favour of the Revenue or narrowed in favour of the taxpayer. Just as the Courts will not narrow provisions designed to curb evasion of tax, so they often apply ordinary charging sections with an eye to the substance of the transaction to be taxed rather its form.

In the present case Respondent No.2 issued a notice of show cause under Section 73 (1)(ga) of the Value

Added Tax and Supplementary Duty Act, 2012 (hereinafter referred to as the Act, 2012) on 16.10.2022 demanding Tk.68,50,328.97 as evaded VAT. In the said show cause notice it was alleged that after examining the purchase register (MUSAK-6.1) and Dakhil Patra (MUSAK-9.1), it was found that the Petitioner Company, for the financial year 2020-2021 imported and purchased raw materials and pays VAT and thereafter, the Petitioner took rebate on the same. But even though the price of goods increased more than 7.5%, but without issuing input-output co-efficient as well as without complying the provision of Section 46 (dha) of the Act, 2012, the Petitioner took rebate of Tk. 64,01,160.95; it was further alleged that the Petitioner evaded VAT of Tk.1,29,300.00 under the head 'VAT deducted at source', by purchasing raw materials from the local market without issuing Musak challans; it was further alleged that the Petitioner did not pay VAT amounting Tk. 2,76,106.03 as apparent from the CA Report; furthermore, for the said alleged period, the Petitioner took advance tax additionally amounting Tk. 43,762.00 and in this process, the Petitioner company evaded VAT totaling Tk. 68,50,328.97 which are punishable under Section 85 of the said Act. The Petitioner was asked to show cause within 21 working days as to why the said amount shall not be realized from the Petitioner. It appears from impugned order, Annexure-H to the writ petition that after issuance of such notice admittedly the writ petitioner adjusted the said amount except the interest and fine imposed upon him. The petitioner claimed that he is not obliged to pay the interest upon the rebate he has taken earlier mistakenly and no fine can be imposed for the same reason.

On the other hand the respondent claimed that the petitioner did not pay the ‘tax’ within time as sush is liable to pay interest and also fine according to section 127 of the Act, 2012.

It will be convenient, if at this stage, we read Section 127 of the Act, 2012 which provides as under:

" প্রদেয় করের উপর সুদ আরোপ। (১) যদি কোন ব্যক্তি নির্ধারিত তারিখে বা উক্ত তারিখের পূর্বে, কমিশনার বা ধারা ৮৬ এর সারণীতে বর্ণিত যথোপযুক্ত কর্মকর্তার নিকট প্রদেয় কর পরিশোধ করিতে ব্যর্থ হন, তাহা হইলে তাহাকে নির্ধারিত তারিখের পরবর্তী দিন হইতে পরিশোধের দিন পর্যন্ত প্রদেয় করের পরিমাণের উপর মাসিক ১(এক) শতাংশ সরল হারে সুদ পরিশোধ করিতে হইবে।"

From reading the above provision it reveals that if payable 'tax' is not paid within 'due date' then interest is applicable from the next date of 'due date' till the date of payment. So, we have to look into the definition of 'Tax' and meaning of 'due date'. We have also look into the provision of section 85(2ka) of the Act under which the petitioner claimed exemption from imposing any fine and section 85(3) under which the respondents claimed that they are empowered to take penal or other proceedings against the tax payer.

Section 85(2ka) of the Act, 2012 reads as under:

"কোন ব্যক্তি ভুলবশত বা ভুল ব্যাখ্যার কারণে কর পরিশোধ না করিলে বা কর অনাদায়ী থাকিলে বা কর ফেরত গ্রহণ করিলে বা অধিক রেয়াত গ্রহণ করিলে বা যথাযথভাবে হ্রাসকারী/বৃদ্ধিকারী সমন্বয় না করিলে এবং পরবর্তীতে আইনের সংশ্লিষ্ট ধারা অনুযায়ী নিরুপিত চূড়ান্ত কর সুদসহ পরিশোধ করিলে, উক্ত ক্ষেত্রে তাহার উপর কোনো জরিমানা আরোপ করা যাইবে না।"

While Section 85(3) of the Act, 2012 provides:

"কোন ঘটনায় অপরাধ ও ব্যর্থতা বা অনিয়মের উপদান থাকিলে অপরাধের জন্য ফৌদারী মামলা এবং ব্যর্থতা বা অনিয়মের জন্য কার্যধারা গ্রহণে এই আইনে কোন কিছুই ধারা ৮৬ তে উল্লিখিত মূসক কর্মকর্তাকে বাধাগ্রস্থ করবে না।"

The definition of 'Tax' has been provided in section 2(24) while the definition of 'Input tax' has been defined in section 2(19) of the Act, 2012 which are as follows:

"২(২৪) "কর" অর্থ মূসক, টার্নওভার কর ও সম্পূরক শুল্ক, এবং বকেয়া আদায়ের উদ্দেশ্যে সুদ, জরিমানা ও অর্থদন্ডও উহার অন্তর্ভুক্ত হইবে।"

"২(১৯) "উপকরণ কর" (Input Tax) অর্থ কোন নিবন্ধিত ব্যক্তি কর্তৃক উপকরণ হিসাবে আমদানিকৃত পন্য বা সেবার বিপরীতে আমদানি পর্যায়ে পরিশোধিত মূল্য সংযোজন কর (আগাম কর ব্যতীত) এবং স্থানীয় উৎস হইতে উপকরণ হিসাবে ক্রয়কৃত বা সংগৃহীত পণ্য বা সেবার বিপরীতে পরিশোধিত মূল্য সংযোজন কর।"

From plain reading of the above definitions of tax and input tax we do not find the word ‘rebate’. We have already noticed that by various decisions of Court of England as well as of this subcontinent including our apex Court unequivocally pronounced that taxing statute is to be strictly construed especially a fiscal statute imposing a burden on the subject/people is to be strictly construed and no tax can be imposed on a person without using unambiguous and clear words by which tax is imposed. By strict construction of taxing statute it is meant that the subject/people is not to be taxed unless the words of the taxing statute unambiguously impose the tax on him. If the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by an inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter. Since in the present statute, i,e The Value Added Tax and Supplementary Duty Act, 2012 has not included ‘rebate’ as tax, the interest cannot be imposed as per section 127 of the Act, 2012 for taking ‘rebate’ mistakenly taken by the petitioner if adjusted within ‘due date’.

Now, naturally the question arises what is the ‘due date’. In the definition section, i,e section 2 of the Act, 2012 has not defined ‘due date’. Neither the Act, 2012 nor Rules, 2016 made under the said Act defined the ‘due date’. In this regard the learned AAG submitted that Section 33 of the Act, 2012 provides what is the due date ('নির্ধারিত তারিখ'). Thus, according to him, the due date ('নির্ধারিত তারিখ') of payment of tax is the date on which the goods are supplied to the consumer/supply receiver. The Commissioner sets the date of the demanded (principal) amount of unpaid/evaded tax in the Final Tax Determination Notice. Subsequently interest is imposed and demanded as interest will accrue as provided by section 127. Therefore, the

order dated 16.02.2023 passed by the respondent No.2 asking the petitioner to deposit interest, into the government treasury is legal. The Tax Determination Notice was issued on 16.10.2022 under section 73(1) demanding Tk. 68,50,328.00 as unpaid VAT, excess taken rebate and excess adjustment of VAT. The petitioner agreed with the demand and paid the demanded amount without any objection. Since the petitioner paid the demanded amount so the respondent No.2 as a legal requirement finalized the tax determination and issued Final Tax Determination Notice under Section 73(2) of the Act, 2012 on 27.12.2022 and simultaneously imposed interest on the unpaid/demanded amount. On the other hand the learned advocate for the petitioner submitted that the primary tax determination notice issued upon the petitioner is under Section 73 of the Act, 2012. Section 73(2)(Kha) of the Act, 2012 states that specific date means the date on which the tax is to be paid, but that date has to be after 15 working days following the date of issuance of the primary tax determination notice. In the present case, the respondent No. 2, by the impugned Order dated 27.12.2022 imposed interest upon the amount of rebate, which admittedly has already been adjusted by the petitioner even before the issuance of the impugned adjudication Order. The petitioner has admittedly adjusted the excess rebate mistakenly taken earlier with the monthly return of the following month of issuance of the show cause notice and therefore, interest cannot be imposed on the rebate adjusted by the Petitioner. After going through the provision of section 73(2)(Kha) we find substance in the submission of the learned advocate for the petitioner. In that view of the matter the petitioner is not liable to pay the interest along with fine for mistakenly taken rebate which has been admittedly adjusted after receiving the notice under section 73 of the Act. The rebate was taken mistakenly because the petitioner adjusted the same within

the demanded time without raising any objection or taking any dilly dally tactic on the part of the petitioner. However, the petitioner is liable to pay all sorts of recoverable tax and VAT other than the interest and fine imposed on the 'rebate' earlier taken mistakenly. The impugned order has been passed disregarding the clear provision of the Act, 2012 as discussed above.

The petitioner herein has challenged the legality and propriety of an Order which has been passed in complete disregard to the prevailing laws, and it is a settled principal of law as has been settled in the case of British American Tobacco Bangladesh Company Ltd Vs. National Board of Revenue, reported in 25 BLC (AD) 49, wherein it has been held that "when the entire action of the VAT authority appears to be illegal, mala fide and arbitrary on the face of the record, invoking Article 102 of the Constitution, under such circumstances, without preferring statutory appeal, is no bar". Therefore, where legal question is involved, in such case, writ petition is maintainable even though alternative remedy is available. Since in the present writ petition interpretation of law is involved, it is maintainable though alternative remedy of appeal is available.

In the facts and circumstances of the case and the position of law as discussed above, we find merits in the Rule. In the result, the Rule is made **absolute**.

The Order dated 27.12.2022 issued under. Nothi No. ৩য়/ ৮(১৯)আর-এ/নিরীক্ষা/উডল্যান্ড প্লাইউড এন্ড পার্টিক্যাল বোর্ড মিলস লিঃ/২০২২/১০৭৪(১) passed by the respondent No. 2 (Annexure-D) determining Tax and imposing interest by a single Order and the subsequent Order under Nothi No. ৩য়/ ৮(৬)আর-এ/নিরীক্ষা/উডল্যান্ড প্লাইউড এন্ড পার্টিক্যাল বোর্ড মিলস লিঃ/২০২২/১৬৫৯(১) dated 12.07.2023 passed by the respondent No. 2 (Annexure-H) imposing penalty of Tk. 1,32,95,251.90 upon the petitioner despite making payment of the entire demanded amount by the petitioner is hereby declared to

have been passed without lawful authority and is of no legal effect. However, the respondents are at liberty to recover any recoverable tax and VAT other than the interest and fine imposed on the ‘rebate’ earlier taken mistakenly by the petitioner.

Communicate the judgment and order at once.

**Md. Iqbal Kabir, J:**

I agree.

Ziaul Karim
Bench Officer