

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

WRIT PETITION NO.618 of 2024

IN THE MATTER OF:

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

And

IN THE MATTER OF:

Golden Son Limited

... Petitioner

-vs-

National Board of Revenue and others.

... Respondents.

And

Mr. Reja-E-Rabbi Khandoker, 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: 18.02.2024, 20.02.2024, 06.03.2024

And judgment on:10.03.2024

Present:

Mrs. Justice Farah Mahbub.

And

Mr. Justice Muhammad Mahbub Ul Islam

Farah Mahbub, J:

This Rule Nisi was issued under Article 102 of the Constitution of the People's Republic of Bangladesh, calling upon the respondents to show cause as to why the impugned decision of the respondents to disallow the petitioner company to get their lawful import entitlement by passing order dated

22.11.2023 under Nothi No.08.01. 0000.56. 07.003.18 (ongsho-1)/564 by the respondent No.1, should not be declared to have been passed without lawful authority and hence, of no legal effect.

Subsequently, vide order dated 28.02.2024 a supplementary Rule was issued by this Court on the prayer of the petitioner calling upon the respondents to show cause as to why the inaction and failure of the respondents to increase the import entitlement of the petitioner company as per clause No.4(ga) of Order No.14/2008 dated 29.06.2008 of the National Board of Revenue (in short, NBR), should not be declared to have been done without lawful authority and of no legal effect.

Facts, in brief, are that the petitioner is an 100% export oriented industry enjoying the facilities of Bonded Warehouse having license bearing No.৫(১৩)কাসঃবডঃকমি/আঃকাঃ/বড(সাঃ)০৮/০৫ dated 25.05.2005 (Annexure-A). The petitioner imports raw materials under the Bond License as per the entitlement allowed by the Customs Bond Authority, Chattogram and exports the finished goods as per the requirement of the buyer. It regularly submits the Proceed Realization Certificate (PRC) and thus, earns foreign currency. Moreover, the petitioner holds all necessary approvals and certificates to run its respective businesses including the certificate of incorporation, updated trade license, permission certificate from the Board of Investment(now, BIDA), VAT registration certificate, Income Tax registration certificate, Import Registration Certificate(IRC), Export Registration Certificate(ERC) respectively.

In compliance of the condition of the bond license the petitioner regularly renewed the import entitlement “আমদানী প্রাপ্যতা” from time to time. However, in the immediate past entitlement certificates the

petitioner company was allocated 60% entitlement to import raw materials as per production capacity of the machineries (Annexure-B).

On 25.04.2017, the petitioner company filed an application before the respondent No. 2, Customs Bond Commissionerate, Chattogram, for issuing due entitlement. However, having not receipt necessary permission for import entitlement the petitioner filed writ petition being Nos.14826 and 14825 both of 2017. Having found *frima facie* substance this Court issued a Rule Nisi on 24.10.2017 with interim direction upon the respondent No.2 to dispose of its application dated 25.04.2017 (Annexure-C) in accordance with law.

On 29.10.2017 the respondent No.2 without considering the relevant laws and without showing any reason whatsoever and also, without serving any notice upon the petitioner cancelled its respective bond license vide adjudicating order No.75 of 2017. Challenging the same the petitioner preferred appeal before the Tribunal concerned. Vide the interim order dated 25.03.2018 passed by the Tribunal, the operation of the respective bond license of the petitioner was re-activated by the respondent No.2 vide order dated 11.04.2018.

In this regard, the emphatic contention of the petitioner is that during this interim period all operation of the petitioner company was closed down; consequently, the company incurred huge financial loss nearly about 800(Eight hundred crore) with creation of force loan for being unable to export goods within time. Resultantly, the petitioner company lost many buyers and purchase orders. Meanwhile, allowing the prayer of the petitioner the respondent No.2 issued yearly entitlement on

15.10.2019, 22.09.2020, 09.08.2021, 28.02.2022 and 06.06.2022 respectively.

On 29.12.2022, the petitioner submitted a letter to the respondent No.1, National Board of Revenue (in short, NBR) (Annexure-E) with a prayer for 60% entitlement as per production capacity of the machineries and to take necessary steps to include the raw materials and accessories in connection with bond license according to the order of the buyers. In response thereof respondent No.1 vide office letter dated 01.02.2023 (Annexure-E-1) directed respondent No.2, Customs Bond Commissionerate, Chattogram to dispose of the issue of the petitioner in the light of Order No.14 of 2008, dated 29.06.2008. But, there was no response.

On 28.05.2023, the petitioner filed an application to the respondent No.2, seeking import entitlement for importing raw materials. In response thereof said respondent vide order dated 26.06.2023 issued yearly import entitlement from 26.05.2023 to 25.05.2024 (Annexure-F). At the same time, the period of the bonded warehouse license was auto renewed from 26.05.2022 to 25.05.2024 and annual audit was accepted from 26.05.2022 to 25.05.2023. In this regard, the contention of the petitioner is that the import entitlement which was permitted by the respondent No.2 was insufficient in comparison to the demand of the respective buyers. Accordingly, on 27.09.2023 (Annexure-G) another office letter was issued by the petitioner addressing the respondent No.2 with request to allow the petitioner company to have 60% entitlement to import raw materials as per production capacity of the machineries as well as in view of the office letter dated 01.02.2023 issued by the National Board of

Revenue (in short, the NBR) under Nothi No.08.01.0000.56.07.003.18(অংশ)/82.

In response thereof the office of the respondent No.2 vide order dated 05.10.2023 (Annexure-G-1) informed the petitioner company referring to Order No.14/2008 dated 29.06.2008 that there was no scope for the Bond Commissionerate to consider the application of the petitioner dated 27.09.2023 to increase the entitlement upto 60% stating, *inter-alia*, “সরাসরি ও প্রচ্ছন্ন রপ্তানিমুখী শিল্প (পোশাক শিল্প ব্যতিত) প্রতিষ্ঠানের বার্ষিক আমদানি প্রাপ্যতা নির্ধারণ আদেশ, ২০০৮ বিষয়ক সাধারণ আদেশ নং-১৪/২০০৮, তাং-২৯/০৬/২০০৮ খ্রিঃ এর সংশোধনীর ৪ নং অনুচ্ছেদ অনুযায়ী আপনার প্রতিষ্ঠান Compliant প্রতিষ্ঠান নয়। একই আদেশের অনুচ্ছেদ-৬ এ বলা হয়েছে"কোন প্রতিষ্ঠানের বিরুদ্ধে জালিয়াতি বা পণ্য অবৈধভাবে অপসারণের গুরুতর অভিযোগ প্রতিষ্ঠিত হইয়া থাকিলে অথবা কোন গুরুতর অনিয়ম মামলা থাকিলে উক্ত প্রতিষ্ঠানের আমদানি প্রাপ্যতা বৃদ্ধি করা যাইবে না”। অধিকন্তু গত ১৭/০৯/২০২৩ খ্রি. তারিখে সদস্য (কাস্টমস রপ্তানি, বন্ড ও আইটি) মহোদয় স্বাক্ষরিত ২৭/০৮/২০২৩ খ্রি. তারিখে অনুষ্ঠিত সভার কার্যবিবরণীর অনুচ্ছেদ-৭ এ বর্ণিত পদ্ধতি অনুযায়ী নিঃশর্ত ব্যাংক গ্যারান্টির বিপরীতে বন্ডের আওতায় কাঁচামাল খালাসের বিষয়ে গুরুত্ব আরোপ করেছেন বিধায় আপনাদের সুত্রোক্ত আবেদন বিবেচনার কোন সুযোগ নেই।” However, vide the said order the petitioner company was allowed to release the raw materials so was imported in excess of their entitlement upon furnishing respective bank guarantee under clause 7 of the Order dated 29.06.2008 considering the context that the period of entitlement of the company was going to expire on 25.05.2024.

In the meantime, the petitioner opened several letters of credits for importing raw materials as per the demand of the respective buyers. But the entitlement so was permitted by the respondent No.2 was only upto

30% of the production capacity of machineries, which was way below than 60%; even for some items entitlement was nil. Consequently, the petitioner was unable to import raw materials under bond facilities; hence, the petitioner was unable to fulfill the demand of the buyers.

In view of the stated pressing circumstances, the petitioner sent a letter dated 09.10.2023 to the respondent No.1 with a prayer to increase the entitlement for at least 60%. In response thereof vide the impugned order dated 22.11.2023 (Annexure-H) the respondent No.1 instead of increasing 60% entitlement directed the petitioner company to get release of the consignment on furnishing bank guarantee on the excess quantity of raw materials on the plea that “ বর্ধিত পরিস্থিতিতে উক্ত প্রতিষ্ঠানের বিপরীতে অবৈধ অপসারণ সংশ্লিষ্ট একাধিক মামলা চলমান থাকায়”.

Being aggrieved by and dissatisfied with the petitioner preferred the instant application and obtained the present Rule Nisi.

The respondent No.2 entered appearance by filing affidavit-in-opposition and two sets of supplementary affidavit to the affidavit-in-opposition stating, *inter alia*, the petitioner is a licensed bonded warehouse. However, with a prayer for allowing import entitlement the petitioner filed an application to the concerned authority and pursuant thereto the concerned authority vide Note No.513 under Nothi No.৫(১৩) কাবক/আকা/বন্ড(সাঃ)/লাইঃ/০৭/২০০০(অংশ-১৫) mentioned the details of litigations pending against the petitioner and that to date the outstanding dues against the petitioner is Tk.63,74,42,533.81.

In this regard the assertion of the respondent concerned is that the NBR vide Order No.14/2008 dated 29.06.2008 framed a policy regarding fixation of yearly import entitlement for the bond license known as “সরাসরি

ও প্রচলিত রপ্তানীমুখী শিল্প (পোষাক শিল্প ব্যতিত) প্রতিষ্ঠানের বার্ষিক আমদানী প্রাপ্যতা নির্ধারণ আদেশ, ২০০৮” (in short, the Order, 2008). Clause 7 of the said Order provides for release of excess quantity of raw materials imported beyond the yearly entitlement of the company but upon furnishing bank guarantee. Moreover, as a bond license holder, the petitioner is duty bound to comply all the orders and to follow all the provisions as prescribed by the Customs authority from time to time, in view of clause 5 of the general condition of the bond license.

At this juncture, Mr. Reja-E-Rabbi Khandoker, the learned Advocate appearing for the petitioner submits that according to clause 6 of the Order No.14/2008 if any serious allegation “গুরুতর অভিযোগ” is proved against any “প্রতিষ্ঠান” regarding fraudulent or illegal removal of goods or any suit is instituted against that “প্রতিষ্ঠান” for committing irregularities which is serious in nature in that case the embargo to increase import entitlement is applicable. The respondent No.1 while declining to increase the import entitlement found the petitioner company non compliant as per clause 6 of the said Order. In this regard, he goes to submit that admittedly some cases are pending in connection with the petitioner company on the issue of illegal removal of raw materials from its respective bonded warehouse and that those have not yet been disposed of with the findings that the petitioner has committed the offence, as alleged. As such, he contends, prior to disposal of those cases respective allegations against the petitioner company cannot be said to have been established or proved. Accordingly, resorting to clause 6 of the Order No.14/2008 the petitioner company cannot be identified as a non-compliant company.

He further submits that on 14.06.2023 after thorough audit of the petitioner company, the officials of the respondent No. 2 submitted their audit report covering the period from 26.05.2022 to 25.05.2023 and that the audit team proposed to give import entitlement to the petitioner company upto 60% of the production capacity of its machineries. Unfortunately, the respondent No.2 without appreciating the present situation and proposal of the audit team gave only 30% import entitlement of the production capacity of the machineries. In this connection, he goes to submit that as per the sales contract with the buyers, the petitioner opened several Letters of Credit to import raw material in order to manufacture and export finished goods. Upon arrival of those goods at Chattogram port from the respective countries of origin i.e. China, Republic of Korea and Saudi Arabia, the Clearing and Forwarding Agent of the petitioner submitted 10 (ten) Bill of Entry Nos. C- 1992955 dated 19.12.2023, C- 1997476 dated 20.12.2023, C- 124129 dated 18.01.2024, C- 124188 dated 18.01.2024, C- 124196 dated 18.01.2024, C- 124280 dated 18.01.2024, C- 124307 dated 18.01.2024, C- 158999 dated 23.01.2024, C-171734 dated 25.01.2024 and C-174718 dated 25.01.2024 before the Customs authority for release of those goods under bond facilities. However, the respondent-concerned is not willing to release those goods except on receipt of bank guarantee against each of the consignment since the petitioner company has already exhausted its 30% entitlement. Resultantly, the petitioner company is now suffering huge financial loss.

In this regard, the learned Advocate submits that meanwhile the petitioner has forwarded two separate representations both dated

22.02.2024 (Annexure-M and M1 respectively) to the respondent No.2 under clause 4(ga) of the Order No.14/2008 with a prayer for 80% increase of import entitlement for the remaining period, for, after determination of yearly import entitlement under clause 4(kha) the Bond Commissionerate is empowered to increase the same upto 80% as an ad-interim measure, if necessity arises and that said increase under clause 4(ga) is independent to clause 4(kha) as well as clause 7.

Accordingly, he submits that upon making the Rule absolute, declaring the impugned order dated 22.11.2023 to have been issued without lawful authority necessary direction be given by this Hon'ble Court upon the respondent concerned to dispose of those representations allowing due entitlement to the petitioner under clause 4(ga).

Mr. Samarendra Nath Biswas, the learned Deputy Attorney General appearing for the respondent government submits that vide Section 13(2) of the Customs Act, 1969 the Board has power to impose conditions, limitations or restriction from time to time by notification in the official gazette and exercising said power the NBR has issued Order No.14/2008 dated 29.06.2008. Accordingly, he submits that the petitioner being a licensed bonded warehouse hence, the respective provisions as contained in the said Order are binding upon it.

In this regard he goes submit that the Board exercising power as conferred under Section 219 of the Act, 1969 has framed “বন্ডেড ওয়্যার হাউস লাইসেন্সিং বিধিমালা, ২০০৮” and that vide Rule 17(ka) and (kha) of the said Rules, 2008 the petitioner licensee is duty bound to comply with the SRO/Order/direction passed by the National Board of Revenue or the Licensing Authority, as the case may be.

He also submits that the authority concerned issued bonded warehouse license in favour of the petitioner, but it did not follow the import entitlement allowed by the Customs Bond Authority, Chattogram and had exported finished goods without maintaining consistency of the raw materials; thereby it has caused violation of the terms of the bonded warehouse license. As a result, the Customs authority had initiated respective proceedings against the petitioner. However, respective appeals are pending before this Hon'ble Court as well as Tribunal arising out of those proceedings. In this regard, referring to clause 4(kha)(ই) of the Order No.14/2008 he goes to submit that a “প্রতিষ্ঠান” cannot be indentified as a compliant “প্রতিষ্ঠান” if any dispute over the respective duty is pending before any Court including this Hon'ble Court. Accordingly, he submits that vide clause 6(kha) of Order No.14 of 2008 dated 29.06.2008 since respective litigations are pending against the petitioner, it is not entitled to ask for increase of yearly import entitlement. Considering the position of law and facts the respondent concerned has rightly identified the petitioner as a non compliant “প্রতিষ্ঠান”. In that view of the matter, the respondent No.2 vide the impugned order had informed the petitioner company referring to the Order No. 14/2008 dated 29.06.2008 that there was no scope for the Bond Commissionerate to consider the application dated 27.09.2023 to increase the entitlement upto 60% to import raw-materials from abroad.

Lastly, he submits that clause 4(ga) of the Order No.14/2008 provides scope to increase import entitlement and clause 6 of the said Order prescribes the conditions as to how and when said prayer will be allowed. In the instant case, he submits, the petitioner made application on

27.09.20023 before the respondent No.2 to increase its import entitlement admitting the fact that already it has imported raw materials and that those are lying at the respective port. Considering the said context, the respondent concerned has rightly applied clause 7 of the Order, 2008 for release of the excess quantity of raw materials.

Accordingly, he submits that this Rule being devoid of any substance is liable to be discharged.

As being the bonded warehouse licensee the claim of the petitioner company is that after determination of yearly entitlement under clause 4(kha) of the Order 14/2008 if requirement to increase entitlement crops up at any stage of the said respective period the Bond Commissionerate may increase entitlement upto 80% of the yearly production capacity of the factory of the company. Further contention of the petitioner is that said increase of entitlement is an ad-interim measure, which is resorted to if necessity arises and is independent to the entitlement so given under clause 4(kha). Moreso, in order to invoke 4(ga) the company concerned need not be a compliant “প্রতিষ্ঠান”. Hence, refusing to increase entitlement of the petitioner company under clause 4(ga) by the respondent No.2 on the plea that “উক্ত প্রতিষ্ঠানের বিপরীতে অবৈধ অপসারণ সংশ্লিষ্ট একাধিক মামলা চলমান থাকায়” and giving direction to release the excess raw materials upon furnishing bank guarantee under clause 7 is unlawful.

The petitioner company is the licensee of the respective bonded warehouse who obtained the respective bond license bearing No.৫(১৩)কাসঃবন্ডঃকমি/ আঃকাঃ/ বন্ড(সাঃ)০৮/২০০৫ dated 25.05.2005 (Annexure-A). However, vide Rule 17(kha) of the Bonded Warehouse Licensing Rules, 2008 (in short, Rules, 2008) it is bound to comply the Orders /

directions/instructions issued by the National Board of Revenue or the Licensing Authority from time to time.

In exercise of power as provided under Section 13(2) of the Customs Act, 1969 the NBR issued Order No. 14/2008 dated 29.06.2008 in the name and style “সরাসরি ও প্রচ্ছন্ন রপ্তানীমুখী শিল্প (পোষাক শিল্প ব্যাতিত) প্রতিষ্ঠানের বার্ষিক আমদানী প্রাপ্যতা নির্ধারণ আদেশ, ২০০৮” (in short, Order, 2008). Clause 4(Kha) prescribes the manner vide which the yearly entitlement is determined while extending the period of bond license of a “শিল্প প্রতিষ্ঠান”, which has been issued by the licensing authority prior to issuance of Order No. 14/2008.

However, a “প্রতিষ্ঠান” is said to be a “compliant প্রতিষ্ঠান” as defined in clause 4(kha) if it fulfills the conditions as prescribed under sub-clause (অ), (আ), and (ই) of clause 4(kha). Subject to fulfillment of those conditions it shall be eligible for having yearly entitlement upto 60% basing on the production capacity of the machineries, which may be extended upto 80% in special circumstances.

Clause 4(kha), being relevant for disposal of the Rule, is quoted below:

“০৪। (খ) এই আদেশ জারি হওয়ার পূর্বে যে সকল শিল্প প্রতিষ্ঠানের বন্ড লাইসেন্স প্রদান করা হইয়াছে এবং মেশিনের উৎপাদন ক্ষমতা নির্ধারণ করা হইয়াছে সেই সকল শিল্প প্রতিষ্ঠানের বন্ড লাইসেন্স নবায়নের সময় বার্ষিক আমদানি প্রাপ্যতা নিম্নরূপে নির্ধারণ করিতে হইবে:

উক্ত প্রতিষ্ঠান কর্তৃক অব্যবহিত পূর্ববর্তী বছরের রপ্তানিতে যে পরিমাণ কাঁচামাল ব্যবহৃত হইয়াছে তাহার সাথে শতকরা ২০ (বিশ) ভাগ পরিমাণ কাঁচামাল যোগ করিয়া মজুদসহ প্রাপ্যতা নির্ধারণ করিতে হইবে। তবে Compliant প্রতিষ্ঠানের বার্ষিক আমদানি প্রাপ্যতা মেশিনের উৎপাদন ক্ষমতার শতকরা ৬০ ভাগ পর্যন্ত প্রদান করা যাইতে পারে, যাহা ক্ষেত্রবিশেষে কোন ক্রমেই শতকরা ৮০ ভাগের অধিক হইবে না।

তবে এইরূপ হিসাবকৃত আমদানি প্রাপ্যতা কোন কাঁচামালের ক্ষেত্রে যদি এমন হয় যে তাহা এক কন্টেইনার এর কম কিংবা এমন পরিমাণ হয় যে তাহা আমদানি করিতে অসুবিধা

হইবে, সেই ক্ষেত্রে এক কন্টেইনার এর সমপরিমাণ কিংবা এমন পরিমাণ আমদানি প্রাপ্যতা নির্ধারণ করিতে হইবে যাহা আমদানি করা যায়।

এই অনুচ্ছেদে উল্লেখিত “Compliant প্রতিষ্ঠান” বলিতে নিম্ন বর্ণিত শর্তসমূহ পূরণকারী প্রতিষ্ঠানকে বুঝাইবে, যথা:

(অ) The Customs Act, 1969 এর যে কোন Section এবং বন্ডেড ওয়ারহাউজ লাইসেন্সিং বিধিমালা, ২০০৮ এর যে কোন বিধি বা এতদসংক্রান্ত কোন বিধি-বিধান ভঙ্গের দায়ে কোন প্রতিষ্ঠানের বিরুদ্ধে বিগত ০৩ (তিন) বছরে কোন মামলা/দাবীনামা প্রাথমিকভাবে প্রমাণিত হয়নি। এ ক্ষেত্রে প্রাথমিকভাবে প্রমাণিত বলতে উক্ত আইনের Section 179 এর অধীন সংশ্লিষ্ট ন্যায় নির্ণয়কারী কর্মকর্তা কর্তৃক প্রদত্ত ন্যায় নির্ণয় আদেশের মাধ্যমে অপরাধ /অনিয়ম প্রতিষ্ঠিত হওয়া;

(আ) বিবেচ্য প্রাপ্যতা মেয়াদের অব্যবহিত পূর্ববর্তী ন্যূনতম ০১ (এক) অর্থবছরে মূল্য সংযোজন কর দাখিলপত্র (মূসক- ৯.১) সংশ্লিষ্ট ভ্যাট কার্যালয়ে জমা প্রদানে ব্যর্থ হন নাই, এবং

(ই) বিকল্প বিরোধ নিষ্পত্তির আওতায় সহায়তাকারী (Facilitator) এর নিকট আবেদন দাখিলের ক্ষেত্র ব্যতীত, সংশ্লিষ্ট কমিশনারেট বা কোন আপীল কর্তৃপক্ষ বা কোন আদালতে শুল্ক-কর এর দাবী সংক্রান্ত কোন বিরোধ বা আপত্তি বিচারাধীন নাই।”

Vide clause 4(ga) at any stage of the respective bond period the Bond Commissionerate considering necessity may increase the entitlement of the respective “প্রতিষ্ঠান” so determined under clause 4(kha), upto 80% of the yearly production capacity.

Clause 4(ga) runs as under:

“(গ) উপ-অনুচ্ছেদ ৪(খ) এ বর্ণিত পদ্ধতিতে বার্ষিক আমদানি প্রাপ্যতা নির্ধারণ করার পর সংশ্লিষ্ট মেয়াদের কোন পর্যায়ে আমদানি প্রাপ্যতা বৃদ্ধি করার আবশ্যিকতা দেখা দিলে সংশ্লিষ্ট প্রতিষ্ঠান কর্তৃক উক্ত সময় পর্যন্ত ব্যবহৃত কাঁচামালের আনুপাতিকহারে বন্ড লাইসেন্স নবায়নকৃত মেয়াদের অব্যবহিত পূর্বের মেয়াদের কাঁচামালের মজুদের জেরসহ প্রতিষ্ঠানের বার্ষিক উৎপাদন ক্ষমতার অনধিক শতকরা ৮০ (আশি) ভাগ পর্যন্ত বৃদ্ধি করা যাইবে।”

Clause 6(ka) fixes the parameter with regard to increase of the respective yearly entitlement so given either under clause 3 or 4 or 5 which cannot exceed more than 80% of the yearly production capacity.

Clause 6(ka) is quoted below:

“০৬। সাধারণ শর্তাবলি: (ক) অনুচ্ছেদ-০৩ অথবা অনুচ্ছেদ- ০৪ অথবা অনুচ্ছেদ-০৫ অনুযায়ী কোন মেয়াদে নির্ধারিত বার্ষিক আমদানি প্রাপ্যতা ও পূর্ববর্তী মেয়াদের মজুদ কাঁচামালের সমাপনী জেরসহ একত্রে তাহা যেন কোন ক্ষেত্রেই প্রতিষ্ঠানের বার্ষিক উৎপাদন ক্ষমতার শতকরা ৮০ ভাগের অতিরিক্ত না হয় তাহা নিশ্চিত করিতে হইবে। ”

Clause 6(kha), however, prescribes the contexts which disentitles the “প্রতিষ্ঠান” concern to make prayer for “increase” of import entitlement namely:

- (a) *If major allegations like forgery or illegal removal of the goods is proved; or*
- (b) *if there is pending “গুরুতর অনিয়ম মামলা”; or*
- (c) *if there is pending demand which the company has failed to pay despite giving direction by the authority concerned.*

However, while order under Section 202 of the Customs Act,1969 is in operation the authority concern cannot “approve” import entitlement.

Clause 6(kha) provides as follows:

“খ। কোন প্রতিষ্ঠানের বিরুদ্ধে জালিয়াতি বা পণ্য অবৈধভাবে অপসারণের গুরুতর অভিযোগ প্রতিষ্ঠিত হইয়া থাকিলে অথবা কোন গুরুতর অনিয়ম মামলা থাকিলে উক্ত প্রতিষ্ঠানের আমদানি প্রাপ্যতা বৃদ্ধি করা যাইবে না। এছাড়া, কোন প্রতিষ্ঠানের বিরুদ্ধে দাবিনামা থাকিলে এবং উক্ত দাবিনামার অর্থ পরিশোধের জন্য কর্তৃপক্ষের আইনানুগ নির্দেশ পালনে ব্যর্থ হইলে সেই ক্ষেত্রে আমদানি প্রাপ্যতা বৃদ্ধি করা যাইবে না। কোন প্রতিষ্ঠানের বিরুদ্ধে শুল্ক আইনের ২০২ ধারা কার্যকর থাকিলে সেই ক্ষেত্রে আমদানি প্রাপ্যতা অনুমোদন করা যাইবে না।”

[Emphasis given]

On a close reading of clause 6 with clause 4(kha) and (ga) it, thus, becomes abundantly clear that a “প্রতিষ্ঠান” being a licensee of a bonded warehouse is legally entitled to have yearly entitlement upto 20% to be added with the raw materials used for export in the preceding year.

However, a “compliant প্রতিষ্ঠান” which fulfils the conditions as provided in clause 4(ka), (ক), (খ), and (ই) is entitled to have yearly import entitlement upto 60% of the production capacity of the machineries, which may be extended upto 80% subject to circumstances. After determination of yearly import entitlement under clause 4(kha) if necessity arises to increase the import entitlement for the respective period the authority concerned may do so but upto 80% of the yearly production capacity. In other words, clause 4(ga) is subject to clause 4(kha) which is exercised as an interim measure in case of necessity and the increase of entitlement under clause 4(ga) is in addition to the entitlement given under clause 4(kha). Conversely, if allegations of forgery or illegal removal of goods is proved or there is pending “গুরুতর অনিয়ম মামলা” against any “প্রতিষ্ঠান” its import entitlement cannot be increased in view of clause 6(kha).

Clause 7 on the other hand authorizes the respective “প্রতিষ্ঠান” to release the excess raw materials imported in addition to the import entitlement so given either under clause 3 or 4 or 5, be it a compliant or non-compliant “প্রতিষ্ঠান”, upon furnishing bank guarantee provided that said excess quantity so imported for the respective period cannot exceed more than 80% of the yearly production capacity and that upon export of the goods so have been produced with those raw materials the company is allowed to have release of the bank guarantee on submissions of the PRC (Proceed Realization Certificate).

Clause 7 is quoted below for ready reference:

“০৭। নির্ধারিত বার্ষিক আমদানি প্রাপ্যতার অতিরিক্ত কাঁচামাল আমদানি: অনুচ্ছেদ-০৩
অথবা অনুচ্ছেদ-০৪ অথবা অনুচ্ছেদ-০৫ এ উল্লিখিত পদ্ধতিতে কোন প্রতিষ্ঠানের বার্ষিক আমদানি

প্রাপ্যতা নির্ধারিত হওয়ার পর সংশ্লিষ্ট মেয়াদে উক্তরূপ আমদানি প্রাপ্যতার অতিরিক্ত কাঁচামাল আমদানি করা হইলে তাহা প্রযোজ্য শুল্ক করাদির সমপরিমাণ অর্থাৎ নিঃশর্ত ব্যাংক গ্যারান্টির বিপরীতে বন্ডের আওতায় খালাস দেওয়া যাইবে এই শর্তে যে, কোন ক্ষেত্রেই সংশ্লিষ্ট মেয়াদে মোট আমদানির পরিমাণ ও পূর্ববর্তী মেয়াদের মজুদ কাঁচামালের জেরসহ একত্রে তাহা প্রতিষ্ঠানের বার্ষিক উৎপাদন ক্ষমতার শতকরা ৮০ ভাগের অতিরিক্ত হইবে না। ব্যাংক গ্যারান্টির বিপরীতে খালাসকৃত কাঁচামাল দ্বারা উৎপাদিত সমুদয় পণ্য রপ্তানি শেষে ব্যাংকের যথাযথ পিআরসি/প্রত্যয়নপত্র দাখিল করা হইলে উক্ত ব্যাংক গ্যারান্টি অবমুক্ত করিতে হইবে।”

In the instant case, admittedly several proceedings in connection with “কাঁচামাল অবৈধ অপসারণ” including “রাজস্ব ফাঁকি” relating to the petitioner are pending before this Court as well as the Tribunal. As such, in view of sub-clause (ই) of clause 4(খ) the findings so given by the respondent No.2 vide order dated 05.10.2023 (Annexure-G1) that the petitioner is not a “compliant প্রতিষ্ঠান” and thereby refusing to increase its import entitlement, being affirmed by the respondent No.1 vide order dated 22.11.2023 (Annexure-H), is mandated as lawful.

Further, it is pertinent to observe that the petitioner while making representation dated 27.09.2023 (Annexure-G) with a prayer to respondent No.2 for increase of import entitlement has categorically stated, *inter-alia*, that “বর্তমানে বেশ কিছু কাঁচামাল আমদানি করার জন্য আমরা এল/সি খুলেছি (কপি সংযুক্ত) যা আমাদের আমদানি প্রাপ্যতার মধ্যে নেই বা চাহিদার তুলনায় কম আছে এবং এর মধ্যে বেশ কিছু কাঁচামাল ইতিমধ্যে বন্ডেরে এসে পরেছে”.

Considering the given context, the respondent No.2, being affirmed by the respondent No.1, has rightly directed the petitioner to have recourse to clause 7 in order to release the excess quantity of raw materials upon furnishing bank guarantee. In other words, we do not find any illegality in the impugned order requiring intervention by this Court.

In view of the above observations and findings the petitioner, however, is at liberty to have release of the goods (raw materials) so have been imported in addition to the due entitlement for the respective period upon furnishing bank guarantee subject to compliance of clause 7 of the Order No.14/2008.

However, pending hearing and disposal of the present Rule, the petitioner filed respective applications both dated 22.02.2024 (Annexure-M and M1 respectively) before the respondent No.2 under Clause 4(ga) basing on the context as stated therein. Accordingly, the concerned respondent is hereby directed to dispose of the same in due compliance of law preferably within 7(seven) working days from the date of receipt of the copy of this judgment and order.

In view of the observations and directions this Rule is accordingly disposed of without any order as to costs.

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

Muhammad Mahbub Ul Islam, J:

I agree.