

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

**WRIT PETITION NO.6832 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:

***Sun Shining Limited, represented by its  
Managing Director and another  
... Petitioner.***

-VS-

***National Board of Revenue and others.  
... Respondents.***

And

Mr. K.M. Tanjib-ul-Alam, Senior Advocate with  
Mr. Mustafizur Rahman Khan, Senior Advocate  
Mr. Md. Shafiqul Islam, Advocate  
.... For the Petitioner.

Mr. Fida M. Kamal, Senior Advocate with  
Mr. Mohammad Samiul Huq, Advocate and  
Mr. Abdullah Mahmood Hasan, Advocate  
For the respondent No.4

Mr. Samarendra Nath Biswas, D.A.G. with  
Mr. Md. Abul Kalam Khan (Daud), A.A.G. with  
Mr. Md. Modersher Ali Khan (Dipu), A.A.G.  
....For the Respondents-government.

***Heard on:10.06.2024, 11.06.2024  
And judgment on:12.06.2024***

Present:

*Mrs. Justice Farah Mahbub.*

*And*

*Mr. Justice Muhammad Mahbub Ul Islam*

**Farah Mahbub, 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 inaction and failure of the respondents in accepting the Import General Manifest from the local agent of the petitioners i.e. Multiport Shipping Limited, should not be declared to be illegal as being in derogation of the petitioners' fundamental rights enshrined under Articles 27, 31 and 40 of the Constitution of the People's Republic of Bangladesh.

At the time of the issuance of Rule, the respondent No.2 was directed to dispose of the petitioners' application dated 28.05.2024 (Annexure-G) within a prescribed period.

In compliance thereof the respondent No.2 vide office letter dated 30.05.2024 issued under Nothi No.৫/কাঃহাঃস্ট/আই.জি. এম/৭৩৪/সংশোধনী/ ২০২৪/ ৪৮৫৫৬ (Annexure-O of the supplementary affidavit dated 10.06.2024) stated, *inter alia*;

“সূত্রীয় ১ নং পত্রের আলোকে জানানো যাচ্ছে যে, জাতীয় রাজস্ব বোর্ডের এস আরও নং-৫৪ আইন/২০২৪/০৯/কাস্টমস, তারিখ: ১৪/০৩/২০২৪ খ্রি. এর অনুচ্ছেদ-৪(ক) অনুযায়ী কেবল মেনিফেস্ট দাখিলকারী আমদানি মেনিফেস্ট সংশোধনের আবেদন কমিশনার বা কমিশনার কর্তৃক নির্ধারিত যুগ্ম কমিশনার বা তদূর্ধ্ব কর্মকর্তার নিকট তথ্য সংশোধনের কারণ, প্রদত্ত তথ্য ভুল দাখিলে জড়িত ব্যক্তি বা সংস্থার বর্ণনা এবং রাজস্ব ঘাটতির সম্ভাবনা রহিয়াছে কিনা উহার ব্যাখ্যা এবং রপ্তানিকারক বা আমদানিকারকের অনাপত্তিসহ নির্ধারিত ফিস জমা প্রদান করিয়া আবেদন দাখিল করিতে হবে।  
বর্ণিতাবস্থায়, চট্টগ্রাম শিপিং এজেন্সী কর্তৃক দাখিলকৃত আইজিএম বাতিল এবং মাল্টিপোর্ট শিপিং লিমিটেড কর্তৃক MV. SOLIN (IMO: 9629483) জাহাজের IGM দাখিলের ক্ষেত্রে জাতীয় রাজস্ব বোর্ডের এস আরও নং-৫৪ আইন /২০২৪/০৯/কাস্টমস, তারিখ: ১৪/০৩/২০২৪ খ্রি. এর অনুচ্ছেদ-৪ অনুযায়ী শিপিং এজেন্ট কর্তৃক আবেদন দাখিলের বিষয়টি আপনাকে অবহিত করা হলো।”

Subsequent to issuing the said office letter dated 30.05.2024 this Court allowing the application of the petitioners vide order dated

03.06.2024 stayed the operation of the impugned IGM dated 18.05.2024 submitted by the earlier shipping Agent namely Chattogram Shipping Agency for a prescribed period with direction upon the respondent concerned to allow the petitioners to take release of the consignment on payment of customs duties upon accepting the IGM from the present local shipping agent namely Multiport Shipping Limited.

The respondent No.4 being aggrieved moved before the Hon'ble Appellate Division by filing CPLA No.1957 of 2024. Upon hearing the respective contending parties the Appellate Division vide order dated 06.06.2024 stayed the interim order of stay and direction passed by this Court till disposal of the Rule with direction upon this Bench to hear and dispose of the Rule on merit.

Facts, in brief, are that the respondent No.4 as being the buyer having agreed to import 50,000/- + 10% (MT) of Ukrainian wheat from JSW International Tradecorp PTE Limited Singapore, the seller/ supplier, entered into a sale contract along with another buyer namely SS Trading in January' 2024 (Annexure- I of the affidavit in opposition) fixing price at USD 273 per MT. Pursuant thereto JSW International, the seller/supplier issued respective proforma invoices on 21.03.24 with price of wheat at USD 253.00 per MT [Annexures-III- III (d) respectively of the affidavit in opposition]. Later, revised proforma invoices were issued by the seller/supplier on 04.04.2024 fixing price at USD 253.00 per MT with added specifications in connection with the products in question [Annexures-IV-IV(d) respectively of the affidavit in opposition]. However, prior to issuance of proforma invoice and revised proforma invoice, the respondent No.4 obtained Import Permit under Rule 3(3)(a)

of the “উদ্ভিদ সংগনিরোধ বিধিমালা, ২০১৮” (in short, Rules, 2018) on 19.03.2024 issued by the authority concerned of the Ministry of Agriculture. [Annexures-II(a)-II(c) respectively of the affidavit in opposition] along with phytosanitary certificates dated 02.04.2024 [Annexures-VI-VI(O) respectively of the affidavit in opposition]. Said respondent No.4 also opened respective L/Cs on 28.03.2024 and 31.03.2024 respectively in favour of the seller/supplier [Annexures-V-V(d) respectively of the affidavit in opposition]. Meanwhile, respective Bills of Lading were also issued by the Master of the carrier namely MV SOLIN on 25.03.2024 notifying the respondent No.4 as the importer along with the name of the discharging port agent namely Chittagong Shipping Agency [Annexures-VII-VII(O) respectively of the affidavit in opposition]. The respondent No.4 also obtained insurance on 28.03.2024 against the shipment of the loaded goods to cover potential damage or loss of the consignment during transit covering the period from 28.3.2024 to 27.03.2025 [Annexures-VIII-VIII(d) respectively of the affidavit-in-opposition]. Lastly, on 16.05.2024 respective L/Cs were amended with the consent of the seller/supplier in compliance of UCP 600 [Annexures-IX-IX(L) of the affidavit-in-opposition], which forms the basis of the payment obligation of the respondent No.4.

Meanwhile, the seller/supplier terminated the sale contract with the respondent No.4 on 15.05.2024 via e-mail (Annexure L of the supplementary affidavit dated 09.06.2024). However, prior to said termination of contract, the seller/supplier entered into a sale contract with the petitioners on 14.05.2024 with regard to the consignment in question (Annexure-B of the writ petition). Pursuant thereto on 16.05.2024 the

petitioners opened respective L/Cs in favor of the seller/supplier JSW International [Annexures-B1-B6 respectively of the writ petition). Accordingly, the respective shipping agent issued respective Bills of Lading on 25.03.2024 [Annexures-H-H15 of the supplementary affidavit dated 03.06.2024) in favour of the petitioners on behalf of the Master of the vessel MV SOLIN. The petitioners meanwhile have also obtained import permit dated 19.05.2024 to 21.05.2024 in due compliance of law (Annexure-N-N1 respectively of the supplementary affidavit dated 09.06.2024).

In the meanwhile, as per the charterer's instruction appointment of the earlier shipping agent namely Chattogram Shipping Agency was cancelled on 18.05.2024 and in its place Multiport Shipping Limited was appointed, which was duly notified by the owner of the vessel to Chattogram Shipping Agency on 18.05.24 (Annexures-L1 of the supplementary affidavit dated 09.06.2024).

However, on arrival of the vessel at Chittagong Port, the local shipping agent submitted Import General Manifest (in short, IGM) before the respondent Customs authority. At that juncture, it came to learn that the earlier shipping agent namely Chittagong Shipping Agency submitted IGM with the Customs authority on 16.05.2024 (Annexure X(a) of the affidavit in opposition). On receipt thereof the Customs authority accepted the same with endorsement of registration bearing No 2024/2253 dated 18.05.2024 (Annexure X(c) of the affidavit in opposition) showing the respondent No.4 as the importer of the consignment in question. Consequently, the IGM submitted by the petitioners could not be accepted. In the given context, a letter dated 28.05.2024 was issued by

one Tayybia Trading Corporation on behalf of the seller/supplier JSW International to the Customs authority with request to accord permission to submit IGM by the present shipping agent (Annexure-E of the writ petition), but there was no response.

Under the pressing circumstances, finding no other alternative the petitioners being aggrieved filed the instant application and obtained the present Rule Nisi.

In support of the statements so made in the writ petition and the supplementary affidavits to the writ petition Mr. K.M. Tanjib-ul-Alam, the learned Senior Advocate goes to argue that JSW International, the supplier while in communication with the respondent No. 4 regarding the opening of L/C for the purpose of shipping 55,000 or 50,000 MT +/- 10% of wheat pursuant to sale contract executed amongst the respondent No. 4, SS Trading and the supplier, the respondent No. 4 by an e-mail dated 18.03.2024 requested the supplier to issue 5 (five) number of proforma invoice showing USD 245 per metric ton as the price of the cargo instead of the contractual price of USD 273 per metric ton hoping that they would adjust the differential amount within 6 to 8 months. Subsequently, the supplier by an e-mail dated 19.03.2024 notified the respondent No. 4 that such proposal could not be accepted by the supplier as the same was not in line with the contract.

However, to the utter surprise of the supplier, he submits, the respondent No. 4 issued another e-mail dated 26.03.2024 to the supplier attaching 5 (five) numbers of forged proforma invoices showing USD 253 per metric ton of the cargo and informed the supplier that the same had been forwarded to the United Commercial Bank PLC to process the

Letters of Credit. However, on 26.03.2024 the supplier again notified the said respondent that the proforma invoices attached in the e-mail of the said respondent was not in line with the contract. Subsequently, the supplier also requested the respondent No. 4 on 23.04.2024 to amend the L/Cs issued by the respondent No. 4 by deleting or amending certain clauses of the L/Cs to make the same workable under the contract. However, the respondent No.4 did not take any step to that effect. Later, the supplier issued an e-mail dated 10.05.2024 notifying the respondent No. 4 that despite repeated request from the supplier said respondent having not taken necessary steps to provide workable L/C for the purpose of supplying the cargo was violative of the terms and conditions of contract. The supplier further informed the respondent No. 4 to rectify such breach, failing which the supplier would have no other option but to terminate the contract.

He further submits that despite the above e-mail from the supplier, the respondent No.4 did not take any step whatsoever. Accordingly, by an e-mail dated 15.05.2024 the supplier terminated the contract with the respondent No. 4. Subsequently, the supplier also terminated the appointment of Chattogram Shipping Agency as their shipping agent and replaced the same with Multiport Shipping Limited and notified the same to the Master of the cargo carrying vessel MV Solin by an e-mail dated 17.05.2024. Subsequently, the owner of the vessel notified such development to the local agent of the petitioners, i.e., Chattogram Shipping Agency, by an e-mail dated 17.05.2024.

However, despite having clear knowledge about the termination of nomination by the supplier, Chattogram Shipping Agency submitted the IGM bearing Registration No. 2024/2253 before the Customs authority on 18.05.2024. Considering the given context, he submits, submission of IGM by the replaced shipping agent cannot be considered as a valid IGM in the eyes of law since vide Sections 43 and 45 of the Customs Act, 1969 IGM can only submitted by the Master of the vessel or its authorized agent which, in the present case, is Multiport Shipping Limited, not Chattogram Shipping Agency as they were terminated on 17.05.2024, a day prior to the date of the submission of IGM by the Chattogram Shipping Agency. As such, he submits that as the IGM submitted by the earlier shipping agent cannot be considered as a valid IGM under the Customs Act, 1969; hence, the same cannot be subject to amendment under the Pre-arrival Processing Rules, 2024 (in short, Rules, 2024); hence, is liable to be cancelled being an IGM submitted without proper authorization and being the product of forgery.

Conversely, Mr. Fida M. Kamal, the learned Senior Advocate appearing on behalf of the respondent No.4 submits that Rules, 2024 has been framed by the National Board of Revenue (in short, NBR) in exercise of power as provided under Section 43 of the Customs Act, 1969 (in short, the Act, 1969) to deal with, among others, issuance and amendment of Import General Manifest (in short, IGM). Rule 3 deals with the procedure for taking release of the goods imported and Rule 4 deals with amendment of IGM subject to procedures as laid down therein; it does not provide for cancellation of IGM nor contemplates for normal more than one IGM. As such, under the said Rules, 2024 the Customs



authority is not authorized to cancel the IGM issued in favour of respondent No.4 and substitute it with the IGM submitted on behalf of the petitioners. He further submits that following this procedure as provided under Rule 4, the respondent No. 3 on behalf of respondent No.2 had advised the petitioner's representation vide office letter dated 30.05.2024 to formally apply in due compliance of law.

Accordingly, he submits that with the disposal of the application vide order dated 30.05.2024 there remains no cause of action in the present Rule. In other words, this Rule has become infructuous. Moreover, he submits, unless the order dated 30.05.2024 issued by the respondent concerned is struck down, it is not possible to issue fresh IGM in favour of the petitioners. However, fact remains that the order dated 30.05.2024 is not under challenge; therefore, the petitioners having ceased to become “*aggrieved person*” because of the order dated 30.05.2024 they are not entitled to the relief as sought for in the present Rule.

He also goes to contend that this Hon’ble Court while exercising writ jurisdiction cannot decide who is entitled to the consignment of wheat carried in bulk by the vessel named MV SOLIN as it would involve adjudication of substantive disputed questions of facts necessitating examination and evaluation on evidence. Such evaluation and examination cannot be entertained under writ jurisdiction, as has been observed by the Appellate Division in *Shamsunnahar Salam and others vs. Mahammad Wahidur Rahman and others* reported in *51 DLR(AD) 232 [Paragraph No. 15]* and the case of *Md. Nuruddin vs. Manager, Sales (C&B), Zone-4 of Titas Gas transmission and Distribution*

***Company Ltd and others*** reported in ***18 BLD(AD) 273 [Paragraph No. 6)]***.

He further argues that the petitioners had entered into sales contract with the supplier, JSW International on 14.05.2024, while the original sales contract between the respondent No.4 and the seller JSW International still existed. At that point of time, the purported cancellation of sales contract with respondent No. 4 took place on 15.05.2024. As such, the sales contract dated 14.05.2024 is clearly void and *non est*. The seller being aware of the existence of the first contract with respondent No.4 committed fraud which is apparent on the face of the record. Furthermore, even on 16.05.2024, the seller's bank requested for amendment of the L/ C; such request could be made only if the seller agreed and instructed.

He also submits that Chattogram Shipping Agency, the earlier shipping agent was not appointed by the petitioners but by the owners and managers of the vessel MV SOLIN; as such, according to the laws of agency, Chattogram Shipping Agency has to follow instructions from its principal only, which is the owners and managers of the vessel. Chattogram Shipping Agency acting on behalf of the owners and managers of the said vessel submitted the IGM to the Customs authority declaring the arrival of the vessel at Chattogram Port and requested anchorage permission on 16.05.2024. This information was promptly communicated to the seller and charterer/shipper on the same day at 5:53 pm. On 16.05.2024, neither there was any instruction from the principal of abrogation of its agency nor there was any immediate objection raised upon receipt of the email dated 16.05.2024. Subsequently, anchorage

permission was granted to Chattogram Shipping Agency on 17.05.2024 and the IGM was updated on 18.05.2024. It is, thus, evident from these events that Chattogram Shipping Agency applied for the IGM on 16.05.2024 with full authority from its principal, i.e., owners and managers of MV SOLIN prior to receiving an e-mail regarding the alleged cancellation of their agency appointment on 17.05.2024. Moreover, he submits that according to Rule 3(Ka) and (Kha) of the Rules, 2024 once the Customs House receives the IGM from the agent, they must verify all the documents and issue the IGM within 24 hours. Since 17.05.2024 was Friday hence, the Customs House registered the IGM on 18.05.2024. Hence, he submits that Chattogram Shipping Agency has committed no illegality or fraud, as alleged by the petitioners in submitting the IGM on 16.05.2024 in respect of the vessel.

Lastly, he submits that admittedly there is dispute between the seller, the petitioners and the respondent No.4 which culminated in filing the instant writ petition. However, vide Rules, 2024 the Customs authority is not permitted to adjudicate the dispute(s) and in particular, determine whether the contract were lawfully terminated and/or entered into and then proceed with issuance of a fresh IGM. Considering the present context the respondent No.4, the petitioners and seller are required to resolve the dispute amicably or through arbitration, as contained in the respective sales contract, should there be any loss incurred by any of the parties.

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

From record it appears that pursuant to the sales contract being entered into by the seller/supplier JSW International and the buyer respondent No.4 on 18.01.2024 (Annexure-A of the writ petition) respective Bills of Lading were issued in favour of the respondent No.4, respective L/C were opened at the instance of the respondent No.4; even, on 16.05.2024 L/Cs amendment confirmation was received by the respective local bank from the bank concerned of the seller/supplier.

However, during the subsistence of the sale contract with the respondent No.4 the seller/supplier JSW International entered into a separate sales contract with the petitioners on 14.05.2024 with regard to the consignment in question and on the next date i.e. on 15.05.2024 terminated the sales contract with respondent No.4 (Annexure-H of the supplementary affidavit dated 03.06.2024). Subsequently, as per the charterer's instruction the earlier shipping agent namely Chattogram Shipping Agency was replaced with Multiport Shipping Ltd. with notice to the earlier shipping agent on 18.05.2024 (Annexure-L1 of the supplementary affidavit dated 09.06.2024).

The cause of action arose when the earlier shipping agent namely Chattogram Shipping Agency submitted IGM on 16.05.2024 [Annexure-X(a) of the Affidavit in Opposition], which was duly registered by the Customs authority bearing Registration No. 2024/2253 dated 18.05.2024 (Annexure-X(c) of the affidavit in opposition) showing the respondent No.4 as the importer of the consignment in question.

The issue being raised by the petitioners is that the sales contract with the seller/supplier and the respondent No.4 had been cancelled/terminated by the seller on 15.05.2024 via e-mail. Moreover,

the vessel owner also had cancelled the appointment of the earlier shipping agent on 18.05.2024 with notice; as such, submission of IGM by the earlier shipping agent on 16.05.2024 being registered by the Customs authority on 18.05.2024 has no force of law.

Chapter VII of the Customs Act, 1969, inclusive Sections 42-59, deals with the subject matter of arrival and departure of conveyance.

However, vide Section 42 on arrival of vessel/conveyance at the respective place/customs station the person in charge of such conveyance shall immediately report to the officer of Customs concerned of its arrival.

Section 42 is quoted as under:

***“42. Arrival of conveyance-***

*(1) The person-in-charge of conveyance entering Bangladesh from any place outside Bangladesh shall not cause or permit the conveyance to call or to land in the first instance at any place other than a customs-station.*

*(2) The provisions of sub- section (1) shall not apply in relation to any conveyance which is compelled by accident, stress of weather or other unavoidable cause to call or land at a place other than a customs-station but the person-in-charge of any such conveyance-*

*(a) shall immediately report its arrival to the nearest officer of Customs or the Officer-in-Charge of the police- station and shall on demand produce before him either the cargo book or the manifest or the log-book belonging such conveyance;*

*(b) shall not, without the consent of any such officer, permit any goods carried in the conveyance to be unloaded from, or any of*

*the crew or passenger to depart from its vicinity;*

*(c) shall comply with any direction given by such officer with respect to any such goods; and no passenger or member of the crew shall, without the consent of any such officer, leave the vicinity of conveyance:*

*Provided that nothing in this shall prohibit the departure of any passenger or member of the crew from the vicinity of, or the removal of goods from, conveyance where such departure or removal is necessary for reasons of health, safety or the preservation of life or property.”*

Section 43(1) and (2) makes it mandatory to submit Import General Manifest (in short, IGM) to the officer of customs in order to pass the place in a river or port or to transmit it to the customs computer system by a registered user within 24 hours after the vessel anchors by the master of the said vessel. However, vide the proviso to Section 43(3) the master of the vessel shall be allowed a further period of 24 hours to submit IGM if he was prevented for circumstances beyond his control to submit IGM within 24 hours after anchor.

Section 43(5), however, empowers the Board to specify the procedures for submitting a complete electronic import manifest by the master of the vessel or his authorized agent prior to departure of the vessel from the last port of call.

Section 43 (1), (2), (3) and (5) are quoted as under being relevant for disposal of the Rule:-

***“43. Delivery of import manifest in respect of a vessel.- (1)The Board may, by notification in the official***

*Gazette, fix a place in any river or port beyond which no vessel arriving shall pass until an import manifest has been delivered to the pilot, [officer of Customs, or other person duly authorised to receive the same, or as the case may be, until the manifest has been transmitted to the Customs computer system by a registered user.]*

*(2) If in any river or port wherein a place has been fixed by the Board under this section, the master of any vessel arriving remains outside or below the place so fixed, such master shall, nevertheless, within twenty-four hours after the vessel anchors, deliver an import manifest to the pilot, officer of Customs or other person duly authorised to receive the same.*

*(3) If any vessel arrives at any customs-port in which a place has not been so fixed, the master of such vessel shall, within twenty-four hours after such vessel has anchored within the limits of the port, deliver an import manifest to the pilot, officer of Customs or other person authorised to receive the same.*

*Provided that if an officer not below the rank of [Revenue Officer] is satisfied that the master of the vessel was prevented by circumstances beyond his control from delivering the import manifest within twenty-four hours after the vessel anchored outside or below the place fixed by the Board under sub-section (1), allow it to be delivered within a further period of twenty-four hours or immediately after the first lighter vessel takes berth, whichever is earlier.]*

*(4) .....*

*[(5) The Board may, by notification in the official gazette, specify the procedures for submitting a complete electronic import manifest by the master of*

*the vessel or his authorized agent prior to the departure of the vessel from the last port of call.]”*

Vide Section 45(1) IGM has to be signed by the person in charge of the conveyance or his duly authorized agent. According to Section 45(2) appropriate officer shall permit the person in charge of the conveyance or his authorized agent to correct any obvious error which resulted from accident or inadvertence by furnishing an amended or supplementary import manifest.

Section 45(3) empowers the Board by passing special order to specify the manner, conditions, limitations or restrictions under which the appropriate officer shall permit the person in charge of a conveyance or his authorized agent to submit an amended or supplementary import manifest.

Section 45 is reproduced below for ready reference:-

***“45. Signature and contents of import manifest and amendment thereof.- (1) Every manifest delivered under Section 43 or Section 44 shall be signed by the person-in-charge of the conveyance or his duly authorised agent and shall specify all goods imported in such conveyance showing separately all goods, if any, intended to be landed, transhipped, transited or taken on to another customs- station or to a destination outside Bangladesh and stores intended for consumption at the customs-station or in the outward voyage or journey, and shall be made out in such form and contain such further particulars as the Board may from time to time direct.***



*[Provided that the manifest transmitted to the Customs computer system by a registered user shall be deemed to have been signed by him.]*

*(2) The appropriate officer shall permit the person-in-charge of a conveyance or his duly authorised agent to correct any obvious error in the import manifest or to supply any omission which in the opinion of such officer results from accident or inadvertence, by furnishing an amended or supplementary import manifest and shall levy thereon such fees as the Board from time to time directs.*

*[(3) Notwithstanding anything contained in sub-section (2), the Board may specify, by special order, the manner, conditions, limitations or restrictions under which the appropriate officer shall permit, the person-in-charge of a conveyance, or his duly authorised agent, to submit an amended or supplementary import manifest in special circumstances and shall levy thereon such fees as the Board may direct.]”*

In exercise of power as provided under Sections 219, 43(5), 44 and 77 of the Customs Act, 1969 the National Board of Revenue framed “পি-অ্যারাইভাল প্রসেসিং বিধিমালা, ২০২৪” (in short, the Rules, 2024) published in gazette on 24.03.2024.

However, according to Rule 2(a) of the said Rules, an agent includes shipping agent. Vide Rule 2(b) Import Manifest means the import manifest as defined in Section 2(11) of the Customs Act, 1969.

In this regard Rule 3, being relevant for disposal of the Rule, are quoted below for ready reference.

“(৩) আমদানি মেনিফেস্ট দাখিল ও গণ্যচালান খালাসের ক্ষেত্রে অনুসরণীয় পদ্ধতি।  
আমদানি গণ্যচালানের আমদানি মেনিফেস্ট দাখিলের ক্ষেত্রে নিম্নবর্ণিত পদ্ধতি অনুসরণ করিতে হইবে,  
যথা:-

(ক) জাহাজ, উড়োজাহাজ, ট্রাক, রেল কার্গো বা যে কোনো বর্ণনার কার্গো সর্বশেষ বন্দর (last port of call) ত্যাগের পূর্বেই উক্ত কার্গোর ক্যাপ্টেন, শিপিং এজেন্ট, ফ্রেইট ফরওয়ার্ডার্স এজেন্ট, এয়ারলাইন্স কর্তৃপক্ষ অথবা রেল কার্গো, ট্রাক বা অন্যান্য কার্গোর ক্ষেত্রে ট্রান্সপোর্ট এজেন্ট বা তৎকর্তৃক ক্ষমতাপ্রাপ্ত ব্যক্তি কর্তৃক সিস্টেমে আমদানি মেনিফেস্ট দাখিল করিতে হইবে;

(খ) দফা (ক) এর অধীন আমদানি মেনিফেস্ট দাখিলের ২৪ (চব্বিশ) ঘন্টার মধ্যে সংশ্লিষ্ট কমিশনারেট বা কাস্টম হাউসের Import General Manifest (IGM) শাখা কর্তৃক মাস্টার বিল অব লেডিং ও হাউস বিল অব লেডিং বা মাস্টার এয়ারওয়ে বিল ও হাউস এয়ারওয়ে বিল বা ট্রাক রিসিট বা রেল কার্গো রিসিট, প্রযোজ্য ক্ষেত্রে, সমন্বয়পূর্বক জাহাজ, উড়োজাহাজ, ট্রাক, রেল কার্গো বা অন্যান্য কার্গোর রেজিস্ট্রেশন নম্বর প্রদানের কার্য সম্পন্ন করিতে হইবে:

তবে শর্ত থাকে যে, জাতীয় রাজস্ব বোর্ড স্বয়ংক্রিয়ভাবে রেজিস্ট্রেশন নম্বর প্রদানের ব্যবস্থা গ্রহণ করিতে পারিবে;

(গ) দফা (খ) এর অধীন রেজিস্ট্রেশন নম্বর পাওয়ার পর আমদানি মেনিফেস্টে কোনো অসংগতি পরিলক্ষিত হইলে রেজিস্ট্রেশন নম্বর প্রাপ্তির ২৪ (চব্বিশ) ঘন্টার মধ্যে বিধি ৪ এর বিধান সাপেক্ষে, উহা সংশোধনের আবেদন করিতে হইবে:

তবে শর্ত থাকে যে, রাজস্ব ফাঁকি, চোরাচালান বা বাণিজ্যে অনাবশ্যক হয়রানি সৃষ্টিতে অবহেলাবশত ভুল তথ্য সংবলিত আমদানি মেনিফেস্ট প্রদান করা হইলে, তথ্য প্রদানকারী ও পূরণকারীর বিরুদ্ধে Customs Act, 1969 এর section 156 এর sub-section (1) অনুযায়ী প্রযোজ্য দণ্ড আরোপ এবং, প্রযোজ্য ক্ষেত্রে, ফ্রেইট ফরওয়ার্ডার্স (লাইসেন্সিং ও কার্ড-পরিচালনা) বিধিমালা, ২০০৮ অনুযায়ী ব্যবস্থা গ্রহণ করা যাইবে;

(ঘ) স্থল শুল্ক স্টেশনের ক্ষেত্রে ট্রান্সপোর্ট অপারেটর আমদানি মেনিফেস্ট দাখিল করিতে পারিবে;

ব্যাখ্যা।-এই দফার উদ্দেশ্যপূরণকল্পে, “ট্রান্সপোর্ট অপারেটর” অর্থ কাস্টমস কর্তৃপক্ষের নিকট স্থল শুল্ক স্টেশনের ক্ষেত্রে আমদানি মেনিফেস্ট দাখিলের উদ্দেশ্যে ক্ষমতাপ্রাপ্ত এজেন্ট;

(ঙ) আমদানি মেনিফেস্টের রেজিস্ট্রেশন নম্বর পাওয়ার পর আমদানিকারক বা তাহার মনোনীত এজেন্ট বিল অব এন্ট্রি দাখিল করিতে পারিবেন;

(চ) উড়োজাহাজ, জাহাজ, ট্রাক, রেল কার্গো, বা যে কোনো বর্ণনার কার্গোর আগমনের পূর্বেই প্রয়োজনীয় দলিলাদি দাখিল সাপেক্ষে, দাখিলকৃত বিল অব এন্ট্রি, সিস্টেমে রেড লেনের মাধ্যমে কায়িক পরীক্ষার জন্য নির্বাচিত বিল অব এন্ট্রি ব্যতীত, আইনে বিদ্যমান

পদ্ধতি অনুসরণ করিয়া শুদ্ধায়ন কার্যক্রম সম্পন্ন করিয়া রাখা যাইবে এবং, প্রযোজ্য ক্ষেত্রে, পণ্যচালান খালাসের সময় নমুনা পরীক্ষা করিয়া ঘোষণার যথার্থতা নিশ্চিত করা যাইবে তবে, ইহার মধ্যে কোনো পণ্যচালানের বিষয়ে গোপন সংবাদ থাকিলে উহা আগমনের পর, প্রযোজ্য ক্ষেত্রে, সংশ্লিষ্ট সংস্থার উপস্থিতিতে বিদ্যমান আইনানুগ পদ্ধতিতে শতভাগ কার্যিক পরীক্ষাপূর্বক নিষ্পত্তি করা যাইবে।”

On a plain reading of Rule 3 it appears that respective IGM has to be submitted in the customs computer system by the captain of the cargo or his shipping before leaving the last port of call. Process of registration of IGM shall have to be completed within 24 hours of submission of IGM. If, however, there is an anomaly in the IGM an application for amendment thereof shall have to be made within 24 hours of receipt of registration number subject to compliance of Rule 4. After receipt of IGM registration number the importer or his agent shall be entitled to submit Bill of Entry.

Rule 4 prescribes the procedures to be followed for amendment of IGM, which runs as under:

“৪। আমদানি মেনিফেস্ট সংশোধনের পদ্ধতি।-আমদানি মেনিফেস্ট সংশোধনের ক্ষেত্রে নিম্নবর্ণিত পদ্ধতি অনুসরণ করিতে হইবে, যথা:-

(ক) কেবল মেনিফেস্ট দাখিলকারী আমদারি মেনিফেস্ট সংশোধনের আবেদন কমিশনার বা কমিশনার কর্তৃক নির্ধারিত যুগ্ম কমিশনার বা তদূর্ধ্ব কর্মকর্তার নিকট তথ্য সংশোধনের কারণ, প্রদত্ত তথ্য ভুল দাখিলে জড়িত ব্যক্তি বা সংস্থার বর্ণনা এবং রাজস্ব ঘাটতির সম্ভবনা রহিয়াছে কিনা উহার ব্যাখ্যা এবং রপ্তানিকারক বা আমদানিকারকের অনাপত্তিসহ নির্ধারিত ফিস জমা প্রদান করিয়া আবেদন দাখিল করিবেন;

(খ) আবেদনপত্রের সহিত শিপিং এজেন্ট এবং সংশ্লিষ্ট লিয়েন ব্যাংকের অনাপত্তিপত্র দাখিল করিতে হইবে এবং এনসি-বিহীন অর্থাৎ সরাসরি অর্থ পরিশোধের মাধ্যমে আমদানিকৃত পণ্যচালানের ক্ষেত্রে আমদানি নীতি আদেশ ২০২১-২০২৪ এ বর্ণিত বিধান প্রতিপালিত হইয়াছে কিনা উহা যাচাই করিয়া আইনানুগভাবে নিষ্পত্তি করিতে হইবে;

(গ) আমদানিকারকের নাম পরিবর্তনের ক্ষেত্রে আমদানি মেনিফেস্টে উল্লিখিত আমদানিকারকের অনাপত্তি পত্র ও সংশোধনীর মাধ্যমে যে আমদানিকারকের নাম অন্তর্ভুক্ত হইবে তাহার সম্মতিপত্র থাকিতে হইবে;

(ঘ) পণ্যচালান শতভাগ কায়িক পরীক্ষা করিয়া শুষ্কায়নযোগ্য মূল্য, কান্ট্রি অব অরিজিন এবং শ্রেণিবিন্যাস সম্পর্কে যথাযথ অনুসন্ধানপূর্বক শুষ্কায়ন সম্পন্ন করিতে হইবে;

(ঙ) পণ্যের কায়িক পরীক্ষাকালে কিংবা দাখিলকৃত দলিলাদিতে কোনো অনিয়ম পাওয়া গেলে পণ্যচালানের শুষ্কায়ন বন্ধ থাকিবে এবং দলিলাদির সঠিকতা প্রাপ্তি সাপেক্ষে পণ্যের শুষ্কায়ন ও খালাস দেওয়া যাইবে;

(চ) আমদানি মেনিফেস্টে বর্ণিত আমদানিকারক এবং সংশোধনীর মাধ্যমে যে আমদানিকারকের নাম অন্তর্ভুক্ত হইবে, প্রযোজ্য ক্ষেত্রে, উভয় ক্ষেত্রে পণ্যচালান ছাড়করণের স্বগিতাদেশ, ১ (এক) মাসের বেশি ভিন্ন কোনো নিষ্পত্তাধীন বিল অব এন্ট্রি বা *Customs Act, 1969* এর *section 202* অনুসারে কোনো কার্যক্রম চলমান নাই মর্মে নিশ্চিত হইতে হইবে এবং এই ধরনের তথ্য প্রাপ্ত হইলে কমিশনার শুনানি গ্রহণপূর্বক আইনানুগ পদ্ধতিতে উহা নিষ্পত্তি করিবেন;

(ছ) আমদানি মেনিফেস্টে উল্লিখিত পণ্যের মূল্য সংশোধনের ক্ষেত্রে সংশ্লিষ্ট কমিশনার পণ্য সংক্রান্ত দলিলাদি যাচাইপূর্বক আইনানুগ পদ্ধতি অনুসরণ করিয়া নিষ্পত্তি করিবেন। ”

In view of the conditions as provided under Rule 4 only the person who submitted IGM is entitled to make application for amendment of IGM with no objection certificates from the exporter or importer, as the case may be, with required fees along with no objection certificates from the respective shipping agent and the concerned lien bank respectively.

Thus, it is apparent that no where within the four corners of the Rules, 2024 the framers of the Rules have authorized the Customs authority to accept a separate IGM submitted by the concerned shipping agent for the consignment in question upon cancelling the registered IGM submitted earlier by a different shipping agent for the said consignment save and except for amendment of the registered IGM subject to the procedures to be complied with as prescribed under Rule 4.

In view of the stated position of law the Customs authority while disposing of the representation of the petitioners vide office letter dated 30.05.2024 has rightly directed them to take necessary steps in view of Rule 4, for, it has no authority under the Rules, 2024 to allow a separate local shipping agent to submit and accept a fresh IGM showing the petitioners as importers of the consignment in question upon cancelling the earlier one; hence, question of violation of fundamental rights as guaranteed under Articles 37, 31 and 40 of the Constitution of the People's Republic of Bangladesh, as alleged by the petitioners, does not arise at all.

Considering the facts and circumstances of the case, observations and findings so made above we find no ground for interference.

In the result, the Rule is discharged without any order as to costs.

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

**Muhammad Mahbub Ul Islam, J:**

I agree.