

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

WRIT PETITION NO. 9400 OF 2007

IN THE MATTER OF:

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

And

IN THE MATTER OF:

Mrs. Fatema Begum

.... Petitioner

-Vs-

***Customs, Excise and VAT Appellate Tribunal,
Dhaka-1000 and others***

.... Respondents.

Mr. Munshi Moniruzzaman with Ms. Shuchira Hossain, Mr. Yousuf Khan Rajib, Ms. Nahid Sultana Jenny, Mr. Shakib Rejowan Rejowan Kabir, Mr. S.M Shamsur Rahman and Ms. Mosammat Suraiya Khatun, Advocates

..... For the Appellant.

Ms. Nasima K. Hakim, Deputy Attorney General with Mr. Md. Hafizur Rahman, Mr. Md. Ali Akbor Khan, Mr. Elin Imon Saha, and Mr. Ziaul Hakim, Assistant Attorney Generals

..... For the Appellant-government.

Heard on 13.02.2024.

Judgment on 18.02.2024.

Present:

Mr. Md. Iqbal Kabir

and

Mr. Justice S.M. Maniruzzaman

S.M. Maniruzzaman, J:

In this Rule *Nisi*, issued under Article 102 of the Constitution of the People's Republic of Bangladesh, the respondents have been called upon to show cause as to why the order dated 28.08.2007 under Nathi

No. CEVT/CASE(VAT)-276/2006/378 (1-2) passed by respondent No. 1 (Annexure-G) dismissing the appeal for failure of the petitioner to deposit 15% of the demanded amount under Section 42(2)(Kha) of the Value Added Tax Act, 1991 without considering the application filed by the petitioner under Section 42(1Ka)(Kha) of the Value Added Tax Act, 1991 read with the proviso of Section 194 of the Customs Act, 1969 to hear the appeal without deposit should not be declared to have been passed without lawful authority and is of no legal effect and/or such other or further order of orders passed as to this court may seek fit and proper.

At the time of issuance of the Rule, the operation of the impugned order dated 24.09.2006 issued under Nothi No. 4/Musak-Faki/Bichar/05/785 (Annexure-B) was stayed by this Court for a prescribed period.

The issue involved in the instant writ petition is that whether the provision of Section 194 of the Customs Act, 1969 for waiver deposit of demanded amount is applicable in the Value Added Tax Act, 1991. The said issue has already been settled by our Appellate Division in the Case of ***Sunshine Cables and Rubber Works Ltd. and another-Vs-National Board of Revenue and others*** reported in **18 BLC(AD)168** wherein, it has been held *inter alia*;

Provision contained in Section 42(2)(Kha) of the Act to deposit 25% of the demanded VAT or the penalty imposed is a mandatory requirement for filing an appeal and according to the provisions of Section 42(1)(Ka)(Kha) of the Act, after failing of the appeal the Appellate Tribunal shall dispose of the appeal in accordance with the provisions of the Customs Act.

It has been further observed that-

Appeal before the Tribunal was incompetent or not in form and that the Tribunal has no jurisdiction to relax or dispense with the deposit of the mandatory requirement of 25% of the demanded VAT or penalty for accepting an appeal as required under the provisions of Section 42(2)(Kha) of the Act by applying the provisions of second proviso to Section 194(1) of the Customs Act.

However, the learned Advocate for the petitioner prays for giving an accommodation as given to the petitioner by the aforesaid judgment. By the said judgment the Appellate Division directed the Tribunal to hear and dispose of the appeal after depositing of the statutory amount by the appellant.

In view of the above context we are inclined to allow the petitioner to deposit the remaining amount 15% of the demand VAT within 30 (thirty) days from the date of receipt of this judgment and order. After deposit of such amount, the Tribunal will be at liberty to dispose of the appeal in accordance with law. Failing to deposit such amount, the VAT Authority will be at liberty to realize the demanded amount in accordance with law.

In view of the above direction, this Rule is disposed of, however, without any order as to costs.

The order of stay granted earlier by this Court is hereby recalled and vacated.

Communicate the copy of this judgment and order forthwith.

Md. Iqbal Kabir, J:

I agree.

M.A.Hossain-B.O