

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

Writ Petition No. 16289 of 2023

IN THE MATTER OF:

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

AND

IN THE MATTER OF:

Md. Jamal Hossain Bhuiyan
....Petitioner

Versus

The Bangladesh, represented by the
Secretary, Ministry of Finance, Internal
Resources Division, Government of the
People's Republic Bangladesh,
Segunbagicha, Police Station-Ramna, Dhaka,
and others

....Respondents

Mr. Md. Asraful Hasan Siddique, Advocate
with

Mr. Md. Akramul Haque Baki, Advocate
....For the Petitioner

Mr. Shah Monjurul Hoque, Senior Advocate
with

Mr. Mohammad Ali Azam, Advocate with
Mr. Ali Ahsan Mullah, Advocate

....For the Respondent No. 6

Mr. Md. Aman Ullah, Advocate

....For the Respondent No. 7

Present:

Mr. Justice Md. Iqbal Kabir

And

Mr. Justice Md. Riaz Uddin Khan

Judgment on 28.10.2024.

Md. Iqbal Kabir, J:

This Rule was under adjudication, at the instance of the petitioner,
issued on 20-12-2023, and was in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to
show cause as to why the inclusion of the consignments

imported by the petitioner covered under Letters of Credit and Bills of Entry (described fully in the schedule below) listed in the Catalogues of the Customs Tender Sale No. 06/2023 dated 11.12.2023 being Lot Nos. 5 and 6 (Annexure-C) for auction sale in violation of the provision of Section 82 of the Customs Act, 1969 shall not be declared to have been issued without lawful authority and is of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.”

Short facts narrated in this application are that the petitioner (Jewel Motor Corporation) imported 06 (six) unit reconditioned vehicles under L/C No. 097423010400 dated 21.11.2023 (expiry date 31.01.2024) from Japan, out of which released 04 (four) unit vehicles from the customs authority, but could not release 02 (two) unit imported vehicles and remained unreleased. After the lapse of some time, the Customs Authority purported to sell those 02 (two) unit vehicles, through auction, without giving any notice to the petitioner, against such initiative, this petitioner brought this application and obtained the order of stay on the auction with a direction for release of the (two) unit vehicles within a specific period.

It is pertinent to note that this matter has been fixed for hearing as our Appellate Division by its order dated 02-06-2024 directed to dispose of the Rule.

Mr. Md. Asraful Hasan Siddique, learned Advocate with Mr. Md. Akramul Haque Baki, learned Advocate appearing for the petitioner brings notice to this Court that challenging the order dated 20-12-2023 of this Court a 3rd party i.e., Waqiah BD preferred CMP No. 01 of 2024 claiming himself as owner of the aforesaid imported vehicles under their L/C No. 097422010424 dated 26.12.2022 (amended 18.07.2023) expiry date 21.09.2023. Against which the Judge in the Chamber passed "No Order" in the aforesaid CMP. Thereafter, Waqiah Bd (Respondent No. 7) filed CP No. 187 of 2024 arising out of CMP No. 01 of 2024. However, Waqiah Bd further filed Title Suit No. 18 of 2024 along with the application for

injunction and attachment before judgment in respect of the above vehicles wherein no decision made to date. Waqiah BD also filed a complaint to the customs authority in respect of the above vehicles dated 20.12.2023 and the Customs authority inquired into the matter vide their letters dated 23.01.2023 with the Bank and with this Applicant. The bank in its letter dated 25.01.2024 replied in their observation they found a discrepancy in the L/C of the Waquiah BD and it returned as per instruction eventually the L/C expired and was cancelled.

However, it is noted that the Customs Authority vide its letter dated 12.02.2024 fixed the date for the hearing and asked Waquia BD to appear, wherein this applicant appeared but Waqiah BD did not appear, therefore, the issue was not settled therein.

At this juncture, one Md. Sahabuddin as a 3rd party on the alleged claim of being the purchaser of 01 (one) unit vehicle from Waqiah BD among the above vehicles, preferred C.P No. 273 of 2024 on the self-same grounds and law points of the C.P No. 187 of 2024 of Waqiah BD and obtained an order of status-quo. However upon hearing the C.P No. 273 of 2024 with C.P No. 187 of 2024 Appellate Division by its order dated 02.06.2024 directed to dispose of the writ petition.

Mr. Baki submits that WAQIAH BD had no right and/or title to the vehicles through their documents as per the terms and conditions (clause 10) of the Bill of Ladings read with the provisions of the Bill of Lading Act, 1856, as they are not the consignee nor the endorsee but was merely a notify party which was subsequently canceled/amended by the shipper/seller on the return of documents upon discrepancy. The petitioner being an endorsed holder of his bill of ladings has obtained lawful rights and title on the vehicles. According to him Respondent Nos. 6 and 7 have no locus-standi in the instant matter. But in contrast, clear endorsement can be seen in the name of the petitioner in his submitted

Bill of lading. Therefore, the petitioner is the lawful owner of the goods through his bill of ladings.

He submits that respondents making their claims based on contradictory, erroneous, incomplete, and unauthorized documents that have no lawful effect and or legal value and thus, pass no title on the vehicles in any manner under the law inasmuch as it has claimed no existence of the original document and none of the documents are endorsed or certified by any authority to claim title under international trade. Moreover, the content of submitted documents of Waqiah BD is erroneous, incomplete, and also unauthorized as admittedly original documents were recalled and returned to the shipper/seller, and were never delivered or presented to Waqiah BD, and hence collection and/or reliance on these documents cannot be supported by the law.

He claims that respondents have not suffered any loss or injury instead of their claims. According to him, claims are untrue and frivolous, having no cogent reason. Clause F78 of the L/C clearly states no payment will be effected unless original documents are received and presented. In this case, documents of Waqiah BD were admittedly returned to the shipper/seller, therefore no payment took place under their L/C, which can also be confirmed by examining their bank statement for the whole financial year of June, 2023 to 2024.

He submits that the subject matter L/Cs are subject to the provisions of UCP 600 and according to Article 16 of UCP 600, the issuing bank on its sole judgment can return the non-complying/discrepant documents without giving any notice to the importer/applicant.

On behalf of Respondent No. 7, Mr. Md. Aman Ullah, learned Advocate by filing an affidavit-in-opposition contested the Rule and denied the material assertion. However, he submits that the petitioner in collusion with the negotiating bank of respondent No. 7 and Exporter, at

the back and behind this respondent, opened L/C on 21-11-2023 in respect of six units of vehicles and by doing forgery got Bills of lading in the name of petitioner without obtaining any No objection letter from the respondent No. 7 and fraudulently in violation of Pre-arrival Processing Rules, 2024 and amended IGM.

He claims that the question of issuance of no objection by respondent No.7 does not arise. According to him no objection certificate is forged and manufactured, it has been prepared in collusion with the Bank and Customs Officials. Therefore, subsequent L/C opened by the petitioner have no force of law and the right, title, and interest of the goods have already accrued upon respondent No. 7.

Mr. Shah Monjurul Hoque, learned Senior Advocate with Mr. Mohammad Ali Azam, learned Advocate for the Respondent No. 6 submits that 6 units of vehicles including the TOYOTA HARRIER bearing chassis No. ZSU60-0163336, Engine Type: 3ZR-C400690 arrived on 12-05-23 under L/C No. 097422010424 dated 26-12-2022 and B/L dated 12-05-2023 bearing No. YM053AA024. Respondent No. 7, M/S WAQIAH BD by an agreement dated 21-08-2023 sold out the TOYOTA HARRIER in favour of respondent No. 6 and received total payment. According to him title and interest had been transferred thus, respondent No. 6 is entitled to get delivery of the above-mentioned TOYOTA HARRIER.

He reiterates the submission of respondent No. 7 that the petitioner claimed the vehicles under L/C No. 097423010400 dated 21-11-2023 although the vehicles were not imported through his L/C dated 21-11-2023 as such it is clear that the petitioner is not the owner of alleged vehicles. According to him, the vehicle in question cannot be auctioned as the M/S WAQIAH BD is the importer of the vehicle.

He claims that the petitioner is not the owner of those vehicles as documents are forged, the question of NOC is disputed, and no notice to the original importer M/S WAQIAH BD was served. According to him

petitioner in collusion with the negotiating bank of respondent No. 7 and Exporter, at the back and behind this respondent, got an L/C opened on 21-11-2023 in respect of six units vehicles and by doing forgery got Bills of lading in the name of petitioner without obtaining any No objection letter from the respondent No. 7 and amended IGM fraudulently in violation of Pre-arrival Processing Rules, 2024.

It is at this juncture clear that the respondent claims photocopy of the Bills of Lading have been adduced against the original which admittedly had been with the Bank. According to him those copies having not been disputed by anyone, rather the same being the true copies of the original ones and supported by the based on other import documents the same can be considered as per the decision and principle enunciated in M.T. Dolores case reported in 45 DLR-740 and the concern Bank is lawfully bound to produce the originals of the same.

Against which it has been submitted that respondent No. 6 and 7 are making their claims on the basis of unauthorized documents which have no lawful effect and or legal value. It claims there is no existence of the original. The copy of the bill of ladings submitted by the respondents is unclear with their contents and also these documents are incomplete as the respective back page containing terms and conditions with imported information about the title of the same has not been submitted. Further, it has been submitted that these documents have been returned to the shipper/seller by the consignee by notifying discrepancy, it is conclusive that these documents were never delivered or provided to the respondents in a lawful or authorized manner, thus reliance cannot be made to establish title under these documents in the eye of law. Moreover, the petitioner submitted original documents along with the last page of the bill of leadings which contained terms and conditions with imported information about the title of the same, thus the cited decision doesn't apply to the present case.

Upon hearing the parties, it appears that originally the goods were imported by the Waqiah BD under the L/C 097422010424 subsequently, in respect of the subject matter vehicles the concerned seller entered into a lawful contract by issuing pro-forma invoice No. NV/TC-08/2023 dated 08.11.2023 with the petitioner. Against which the Bank issued L/C No. 097423010400 dated 21.11.2023 (Date of expiry 31.01.2024) in the name of the petitioner who made full payment therein and the seller sent all the relevant original documents including respective Bill of Ladings and upon receiving the same being lawfully endorsed in his name the petitioner released 04 (four) vehicles and sold them out, but in respect of the rest 02 (two) vehicles holding the relevant original documents awaiting for the lawful release, and in the whole transaction and process the respondent Nos. 6 and 7 with their frivolous claims are mere strangers without any lawful claim and/or authenticated original documents.

This petitioner also brings to the Court notice that it is a common practice in international trade that the seller can amend the bill of lading which is also termed as a 'switch bill of lading' in pursuance to a subsequent contract in respect of his goods not delivered, and in this regard as a common procedure the declared Import General Manifest (IGM) can be amended as per the provisions of section 45 of the Customs Act, 1969. In this context, it was also submitted that in the above process, the importer whether present, previous, or subsequent being a mere notifying party is a mere stranger without/ before valid endorsement and/or actual presentation/ delivery of the documents in the trade.

Indeed title of the petitioner in the subject matter vehicles is acknowledged and proved by appropriate evidence and authorities, e.g., seller, carrier, customs authorities, and issuing bank. Furthermore, continuous efforts and diligent actions of the petitioner show his demeanor regarding the vehicles which a true owner can provide, but in

contrast, nobody acknowledged and/or there are no valid documents to prove the title of Respondent No. 7 in the vehicles.

Knowing the above position, there is reason and substance that the 3rd party Respondent No. 6 is a stranger to the dispute and with an ulterior motive to take illegal undue advantage entered in this case under the profile of M/s WAQIAH BD.

It transpired that L/C No. 097422010424 of M/s WAQIAH BD is an expired and canceled document. After cancellation, it has no legal force by which respondents cannot make such a claim. Furthermore, it appears no payment took place under the above-noted L/C causing any detriment, and all the documents prepared for presentation under the L/C were admittedly recalled and returned to the Seller/Exporter without passing any title through delivery/endorsement to M/s Waqiah BD.

In light of the above, this Court finds merit substance, and force in the submissions made by the petitioner.

Accordingly, the Rule is made Absolute.

The order of stay granted at the time of issuance of the Rule is hereby recalled and vacated.

The respondents concerned are directed to release the consignments imported by the petitioner covered under Letters of Credit and Bills of Entry listed in the Catalogues of the Customs Tender Sale No. 06/2023 dated 11.12.2023 being Lot Nos. 5 and 6.

There will be no order as to cost.

Communicate the order at once.

Md. Riaz Uddin Khan, J:
I agree