

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

WRIT PETITION NO. 8233 OF 2010

IN THE MATTER OF:

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

And

IN THE MATTER OF:

Jacinth Electronics Ltd.

.... Petitioner

-Vs-

National Board of Revenue and others.

....Respondents.

Mr. Munshi Moniruzzaman, with

Mr. Yousuf Khan Rajib, Advocates

..... For the Petitioner.

Mr. Akhtar Farhad Zaman with Ms. Shadia Afrin
Shapla with Mr. Arif Khan, Deputy Attorney
Generals with Mr. Sovan Mahmud, Mr. Md.
Faridul Islam and Mr. Md. Nazmul Haque,
Assistant Attorney Generals

.... For the respondent-government.

Heard on 17.05.2026

Judgment on 18.05.2026.

Present:

Mr. Justice S.M. Maniruzzaman

and

Mr. Justice Dihider Masum Kabir

S.M. Maniruzzaman, J:

On an application filed under Article 102 of the Constitution of the
People's Republic of Bangladesh, this Rule Nisi was issued calling upon
the respondents to show cause as to why the order under Nathi No.3/Audit

/08-09/stha:/Ra:/140/09/807 dated 08.02.2010 and order under Nathi No. 3/audit/08-09/stha:/Ra:/140/09/1424 dated 29.09.2010 passed by respondent No. 3 (Annexure-C and E) demanding Tk. 21,64,318.00 from the petitioner as VAT should not be declared to have been passed without lawful authority and is of no legal effect and/or pass such other or further order or orders be passed as to this Court may seem fit and proper.

However, at the time of issuance of the Rule, the operation of the impugned order bearing under Nathi No. 3/Audit/08-09/stha:/Ra:/ 140/09/1424 dated 29.09.2010 passed by respondent No. 3 (Annexure- E) was stayed by this Court till disposal of the Rule.

Facts, relevant for disposal of the Rule, in short, are that the petitioner is a private limited company incorporated under the Companies Act, 1994, and is engaged in the business of manufacturing 14” and 21” colour televisions by using imported raw materials under the name and style of “Jacinth Electronics Ltd.”

In the course of its business, the petitioner obtained a VAT Registration Certificate from the concerned VAT office under the Value Added Tax Act, 1991 (hereinafter referred to as “the Act, 1991”), and since then it has been paying VAT regularly in accordance with law.

Suddenly, on 22.09.2010, the Commissioner, Customs, Excise and VAT Commissionerate, Dhaka (South), Dhaka respondent No. 2 issued a letter to respondent No. 3 intimating that, upon conducting an audit of the financial activities of the petitioner for the Financial Year 2008-2009, it

had found that the petitioner had evaded government revenue under three heads.

It is stated that the Audit and Accounts Officer issued a letter to respondent No. 3 requesting him to submit a statement before the concerned authority. Thereafter, respondent No. 2 issued another letter on 22.09.2010 directing respondent No. 3 to submit a written statement regarding the audit within one week.

It is further stated that on 08.02.2010, the Superintendent, Customs, Excise and VAT, Rajarbagh Circle, Dhaka, respondent No. 3, sent a letter to the petitioner under Nathi No. 3/Audit/08-09/Stha:/Ra:/140/09/807 stating, inter alia, that the petitioner had refrained from disclosing the actual production of its company and had produced and sold a larger quantity of products in the market. As such, the petitioner owed an amount of Tk. 21,64,318.00 as tax for excess sale of products, and since the petitioner failed to pay the said tax, the Government suffered a loss of revenue amounting to Tk. 21,64,318.00. The petitioner was accordingly directed to pay the said amount within 7 (seven) days from receipt of the letter.

The petitioner, on 04.04.2010, replied to the said letter denying the allegation of non-payment of VAT. Thereafter, respondent No. 3 sent another letter under Nathi No. 3/Audit/08-09/Stha:/Ra:/140/09/1424 dated 29.09.2010 to the petitioner stating, inter alia, that while submitting its reply, the petitioner had failed to provide any supporting documents or evidence to substantiate its denial of the allegations made against it.

Consequently, respondent No. 3 directed the petitioner to deposit the evaded VAT amounting to Tk. 21,64,318.00 within 7 (seven) days from receipt of the letter.

Being aggrieved thereby, the petitioner moved this application before this Court and obtained the present Rule along with an interim order of stay.

Mr. Munshi Moniruzzaman, the learned Advocate appearing for the petitioner, submits that without issuing any notice under section 55(1) of the Act, 1991, respondent No. 3 issued the demand notice upon the petitioner on 29.09.2010, and as such the said notice is liable to be declared to have been passed without lawful authority and to be of no legal effect.

Mr. Munshi next submits that the respondents did not issue any notice upon the petitioner under section 55(1) of the Act, 1991, nor was any determination made regarding the allegation of VAT evasion before issuance of the impugned notice, which is a mandatory requirement under the provisions of the Act, 1991 and the Rules framed there under. As such, the impugned order has been issued without jurisdiction and is liable to be declared to have been passed without lawful authority and is of no legal effect.

Mr. Munshi further submits that respondent No. 3 directly passed the impugned demand order against the petitioner without serving any show-cause notice under section 55(1) of the Act, 1991 and without affording the petitioner an opportunity of being heard, as required under section 55(3) of

the said Act. Consequently, the demand has been made behind the back of the petitioner in violation of the principles of natural justice as well as the provisions of law, and as such the same is illegal and liable to be declared to have been issued without lawful authority.

Per contra, Mr. Akhtar Farhad Zaman, the learned Deputy Attorney General appearing for respondent No. 2 submits that the proceedings for realization of less paid/unpaid VAT have not been initiated by the VAT authority. The Revenue Officer merely requested the petitioner by the impugned order to deposit the less paid VAT as per audit report of the Local Revenue and Audit Directorate. Before initiation of any proceeding under the Act, 1991 the petitioner filed the instant writ petition, despite having an alternative efficacious remedy of appeal under section 42 of the Act, 1991. The petitioner without exhausting the alternative and efficacious remedy, filed the instant writ petition and hence the writ petition is not maintainable at this stage.

We have considered the submissions of the learned Advocate as well as the learned Deputy Attorney General, gone through the writ petition, relevant materials on record appended thereto and consulted the relevant provisions of law.

The moot contention of learned Advocate for the petitioner in the instant case is that the VAT authority without initiation any proceedings as required under Section 55 (1)(3) of the Act, 1991 issued directly demand upon the petitioner to deposit the alleged evaded VAT, which is not permissible under law.

Section 55(1) of the VAT Act provides for issuing of a show cause notice to the person liable to pay less paid/unpaid/evaded VAT and subsection (3) thereof provides an opportunity for the concerned person to be heard and thereafter on the basis of his reply, if any, to make the demand final within 60 (sixty) days.

In the instant case, respondent No. 3 did not comply with the said provision before issuing the impugned demand dated 08.02.2010 issued under Nathi No. 3/Audit/08-09/stha:/Ra:/140/09/807 dated 08.02.2010 and subsequently remainders issued under Nathi No. 3/audit/08-09/stha:/Ra:/140/09/1424 dated 29.09.2010 (Annexure-C and E), directing the petitioner to pay Tk.21,64,318 to the Government treasury on the basis of the objection raised by the Local and Revenue Audit Directorate, which is quoted below for ready reference;

“.....উপর্যুক্ত বিষয় ও সূত্রের প্রেক্ষিতে আপনাকে জানানো যচ্ছে যে, স্থানীয় ও রাজস্ব অডিট অধিদপ্তর কর্তৃক ২০০৮-২০০৯ অর্থ বছরের অডিটকালীন সময়ে আপনার প্রতিষ্ঠানের প্রকৃত উৎপাদন অপেক্ষাকম উৎপাদন প্রদর্শনের কারণে মূল্য সংযোজন কর বাবদ (১৫,৪২,৫৬২+৬,২১,৭৫৬) মোট=২১,৬৪,৩১৮/- টাকা রাজস্ব ক্ষতির বিষয়টি উদঘাটিত হয়।

এমতাবস্থায় এ পত্র প্রাপ্তির ০৭(সাত) দিনের মধ্যে উল্লেখিত টাকা সরকারী কোষাগারে ট্রেজারী চালানের মাধ্যমে জমা প্রদান করে চালানের মূলকপি এ দপ্তরে দাখিল করার জন্য অনুরোধ করা হলো।

In this regard, in the case of *Sekandar Spinning Mills Ltd. vs Commissioner, Customs Excise and VAT and others, 63 DLR (HCD) 272* is relevant, where it has been held:

“The law provides that the VAT authority ought to have issued a notice under section 55(1) of the Act on account of any discrepancy for paying VAT by any company or person who registered under VAT authority. Without complying with the procedure as laid down under section 55 of the VAT Act issued the demand notice is not sustainable in law. The law does not provide that the respondent VAT authority can issue any demand notice on the request of the audit team but it is their absolute power in case of any discrepancy found, it may initiate proceeding under section 55 of the Act.”

Similar view has been expressed in the case of *Zakir Ahmed (Md.) vs National Board of Revenue and others*, 20 BLC (HCD) 37 where this Division observed:

“Sales Tax /VAT Section 53, 55, 56 of the Value Added Tax Act, 1991; Rule 43 01 VAT Rules – Appeal against order under nothi and notice under nothi issued by respondent No.7 imposing Section 56 of the Value Added Tax Act, 1991 and Section 202 of Customs Act, 1969 upon petitioner and requesting other respondents not to release petitioner’s imported goods on ground that his Business Identification Number (BIN) has been locked – Whether impugned notice by Respondent treated as legal and authorized? Held, court finds no provision for locking Business Identification Number (BIN) in Customs Act, 1969 Business identification number can only be locked under Section 56 of VAT Act for recorvery of Government dues – As per Rule 43 of VAT Rules more than one notice demanding payment of Government dues required to be issued Locking BIN and

stopping petitioner from running business is stringent action taken on part of Customs authority without assigning any reason – Action or step could only be enforced after service of sufficient notice must by Officer not below rank of Assistant Commissioner Court finds before imposition of Section 56 of VAT Act, no notice under Section 55(1) of VAT Act issued – No decision was given under Section 55(3) of VAT Act no notice as required under Rule 43 of VAT Rules was served upon petitioner – Locking of BIN of petitioner by impugned memos respectfully are without legal sanction – Action absolutely unauthorized and uncalled for Rule made absolute. Impugned memos issued by Assistant Commissioner, Customs, Excise and VAT was done without any lawful authority and of no legal effect.”

In the case of Marble Di Carrara (Pvt.) Ltd, represented by its Managing Director, Rashadur Rahman, South Shaina, Joydevpur, Gazipur-1703 -vs- National Board of Revenue, represented by its Chairman, NBR Bhaban, Segunbagich, Dhaka and others in Writ Petition No. 14243 of 2012, where it has been categorically observed, inter-alia;

"Prior to making demand of unpaid or less paid VAT respective procedures as provided under Section 55 of the VAT Act, 1991 have to be complied with mandatorily i.e. with the issuance of demand-cum- show cause notice within 5(five) years an opportunity of personal hearing has to be provided to the person concerned with option to place supporting documents in order to controvert the claim of the respondent concerned. Upon considering the reply of the person concerned as well as the relevant documents, final demand can be made under Section 55(3) of the Act. If the demanded

amount of VAT so claimed under Section 55(3) of the Act remains unpaid only then the authority concern is empowered to opt for the provision of Section 56 of the Act, 1991 for recovery of the VAT amount."

Admittedly, in the instant case, respondent No. 3 issued the demand notice dated 29.09.2010 without issuing any show cause notice as required under sub-section (1) and without giving any opportunity to the petitioner of being heard as required under sub-section (3) of section 55 of the Act, 1991 which is not permissible under the VAT Act and subsequently the impugned remainder letters.

Considering the facts and circumstances of the case, we find substance in the submissions so advanced by the learned Advocate for the petitioner and thus merit of the Rule.

In the result, the Rule is made absolute.

Accordingly, the impugned order issued under Nathi No. 3/Audit /08-09/stha:/Ra:/140/09/807 dated 08.02.2010 and order under Nathi No. 3/Audit/08-09/stha:/Ra:/140/09/1424 dated 29.09.2010 issued by respondent No. 3 (Annexure-C&E) by the Revenue Officer, Superintendent, Customs, Excise and VAT, Rajarbag, Dhaka directing the petitioner to pay Tk. 21,64,318.00 to the Government treasury on the basis of the objection raised by the Local and Revenue Audit Directorate are hereby declared to have been issued without lawful authority and of no legal effect.

Respondent No. 2, Commissioner of Customs, Excise and VAT, Commissionerate, Dhaka (south), Dhaka is, however, at liberty to initiate proceedings for realization of the unpaid VAT under Section 55 of the

VAT Act, 1991 within 30 (thirty) days from receipt of this judgment and order.

There will be no order as to costs.

Communicate a copy of this judgment to the respondents.

Dihider Masum Kabir, J:

I agree.