

Present:
Mr. Justice Shamim Hasnain
and
Mr. Justice Md. Ruhul Quddus

Writ Petition No.4403 of 2012

Alhaj Md. Mizanur Rahman Chowdhury and
another

...Petitioners

-Versus-

Commissioner of Customs Bond
Commissionerate, Dhaka and others

...Respondents

Mr. M. A. Hannan, Advocate

... for the petitioner

Mrs. Kashefa Hussain, Assistant Attorney
General

... for respondent No.1

Mr. A. K. M. Nurul Alam, Advocate,

... for respondent No.8

Judgment on 10.02.2013

Md. Ruhul Quddus,J:

In this writ petition, the petitioners have challenged initiation of Certificate Case No.6 of 2010 before the General Certificate Officer, Narayanganj by the Customs authority implicating them therein as directors of R. M. Steel Mills Ltd., a company which defaulted in payment of taxes against a private bonded warehouse license; refusal of the Customs authority to delete their names by substituting that of respondents No.10-15 as directors of the said company. The petitioners have also sought for a direction to delete

their names by substituting that of respondents No.10-15 in the certificate case.

The petitioners and respondents No.8-9 as share holder-directors formed several companies including the aforesaid R. M. Steel Mills Ltd. at Bagbari Satgram, Araiহার, Narayangonj. The company applied for a private bonded warehouse license to the Commissioner of Customs Bond Commissionerate, Dhaka (respondent No.1) and after observing all necessary formalities respondent No.1 granted bonded warehouse license No.642/Cus-PBW/88 dated 25.02.1988 in its favour.

Thereafter, the petitioners transferred all their shares in the company to respondents No.10-15. The Registrar, Joint Stock Companies approved the transfer. The record of the company was also modified to that effect and accordingly its board of directors was reconstituted. But the reconstituted board for reason best known to it did not obtain any approval from the respondent No.1.

Long after reconstitution of the board, the Commissioner of Customs Bond Commissionerate, Dhaka in exercise of power under section 202 (1) (f) of the Customs Act, 1969 issued a notice being No.21/2012 dated 07.02.2012 asking the Managing Directors of all scheduled banks to freeze the accounts maintained by R. M. Steel Mills Ltd. (Unit-2) and to deposit the amount to the Government treasury stating that duties and taxes amounting to Taka 51383013.15 only was due against the bond license. The petitioners names were mentioned as directors of the company

against serial Nos.2 and 4 in the said notice. The petitioners presumed that similar notice had been issued in respect of the present demand of Taka 17,86,736/= although no such notice was ever served upon them. The petitioners came to learn about the said notice for the first time from their banks and also learnt that the reconstituted board of the company did not obtain any approval from respondent No.1 after they had left the company by transferring their shares to respondents No.10-15.

Thereafter, the petitioners filed an application on 19.02.2012 to respondent No.1 for deleting their names from the notice dated 07.23.2012 stating that they had transferred their entire shares on 01.07.1999 in favour of respondents No.10-15, who were the sons of respondents No.8 and 9; that the transfer was duly approved by the Registrar, Joint Stock Companies and accordingly the company's record was modified to that effect. The petitioners also filed a joint application on 20.03.2012 for post-facto approval to the reconstituted board of directors of the company (annexure-E).

Respondent No.1 rejected their application by two separate orders both dated 01.04.2012 on the ground that the petitioners did not obtain any approval for transfer of their shares and that a certificate case was pending because of non-payment of taxes against bond license No.499/Cus-bond-PBW-GL/97 (Provisional) dated 17.02.1997 [annexures-F and F(1)]. Having no way, the petitioners moved in this Court with the present writ petition and obtained the Rule.

Mr. M. A. Hannan, learned Advocate for the petitioners submits that they had transferred their entire shares and liabilities to respondents No.10-15 long back in 1999, but the Customs authority without service of any notice as required under section 202 of the Customs Act initiated the certificate case forwarding their names to the Certificate Officer, Narayanganj (annexure-G), which was illegal and without lawful authority. He further submits that as soon as the petitioners came to learn about the notice and the certificate case, they filed application to the Customs authority for withdrawal of their names as directors of the company and thereby giving approval to its reconstituted board, but the Customs authority rejected the same on the plea of pendency of the certificate case.

Mr. Hannan further submits that the terms and conditions as embodied in the license do not provide any time frame for approval to any change of the board of directors of the company. The petitioners were under bonafide impression that the reconstituted board of directors would take necessary approval. However, when they came to know about initiation of the certificate case, filed the application for such approval (annexure-E), which was rejected. The petitioners did not file any application immediately after transfer of their shares does not mean that they will bear the company's liability till eternity.

Mrs. Kashefa Hussain, learned Assistant Attorney General appearing for the Government-respondents without filing any

affidavit-in-opposition submits that admittedly the petitioners did not obtain any prior/post-facto approval for transfer of their shares in the company, even they did not inform it to the Customs authority. Section 202 of the Customs Act gives power to the Customs authority to prepare a certificate specifying amount of duties and taxes or any penalty payable by any person and send it to the Collector or Certificate Officer of a District to recover the amount as a public demand. So, there is nothing wrong in initiation of the certificate case against the petitioners.

Mr. A. K. M. Nurul Alam, learned Advocate appearing for respondent No.8 contests the Rule by filling an affidavit-in-opposition wherein it has been impliedly admitted that the writ petitioners had left the company. However, learned Advocate contends that since the petitioners had executed the bond, they cannot be exempted from any liabilities accrued thereon. Whether they had any liability against the bond license being a question of fact cannot be decided in a writ petition and as such the Rule is liable to be discharged.

We have considered the submissions of the learned Advocates and perused the records. It has not been stated anywhere in the writ petition that the claim of duties and taxes against the bond license as made by the Commissioner of Bond Commissionerate is not correct or that it became payable after the petitioners had left the company. In such a position and at this stage we do not find any illegality in issuance of any notice or

initiation of the certificate case against the petitioners, especially when they did not obtain any approval against transfer of their shares in the company.

However, it appears that the bonded warehouse license No.642/Cus-PBW/88 dated 25.02.1988 was issued on certain terms and conditions, of which clause 5 runs as follows:

৷(৫) লাই সন্সধারী প্রতিষ্ঠা নর গঠনতন্ত্র বা ব্যবস্থাপনা পরিষদ পরিবর্ত নর ক্ষেত্র কমিশনা রর অনু মাদন নি ত হই বা ব ভর ওয়্যারহাউজ স্থানান্তর বা সম্প্রসারণ বা কোনরূপ পরিবর্তন/পরিবর্ধ নর ক্ষেত্র কমিশনা রর পূর্বানুমতি গ্রহন করি ত হই বা।

It comes out from a plain reading of the above quoted clause that an approval was necessary in respect of subsequent change in the board of directors of the company. But shifting of the warehouse to any other place, or any extension or change thereof would require prior approval. So it is clear that approval in respect of any change in the board of directors may be prior or post-facto. In the present case, change of the board of directors took place after transfer of the petitioners' shares, therefore, primarily it was the duty of the reconstituted board to obtain necessary approval from respondent No.1.

The petitioners executed the bond in the capacity of share holder-directors of R. M. Steel Mills Ltd. When they transferred their entire shares and the board of directors was reconstituted, they should not be held responsible for any liability, which accrued after such reconstitution.

Whether the petitioners had any liability against the bond license is a question of fact, but nevertheless it is also admitted that they had left the company long back in 1999 and since they left the company, the Customs authority is under obligation to approve the reconstituted board of directors of the company after transfer of their shares to respondents No.10-15 and the authority cannot hold them responsible for any liability that was accrued after reconstitution of the board. In that view of the matter, we find substance in the Rule so far it relates to rejection of the petitionersq application by the impugned memoranda dated 01.04.2012 [annexures-F and F(1)]

Accordingly, the Rule is made absolute in part. The impugned memoranda No.5(13)2009/ Cus-Bond/ 95/5381(2) and 5(13)2009/ Cus-Bond/ 95/ 5381(4) both dated 01.04.2012 rejecting the petitionersq application for withdrawal of their names and approval to the reconstituted board of R. M. Steel Mills Ltd. is declared to have been issued without lawful authority. The Commissioner of Customs Bond Commissionerate, Dhaka (respondent No.1) is directed to give post-facto approval to the reconstituted board of directors of R. M. Steel Mills Ltd. having its factory at Bagbari Satgram, Araiহার, Narayangonj that has been functioning after transfer of the petitionersqshares to respondents No.10-15. The respondent No.1 is further directed to assess whether the petitioners had any liability against the bonded warehouse license No.642/Cus-PBW-88 dated 25.02.1988 prior to the transfer of their shares in the said company on 01.07.1999 and

to furnish a report to the General Certificate Officer, Office of the Deputy Commissioner, Narayanganj within three months from receipt of this judgment. In the event their liability is found to be in the negative, the certificate case shall proceed against the company and its directors, who were at the helm of affairs of the company at the relevant time. If their liability is found in the affirmative, the certificate case will continue against the petitioners as well. The respondent No.1 may give the petitioners as well as respondents No.7-15 an opportunity of being heard, if he thinks it necessary to determine the issues referred.

Communicate the judgment to respondents No.1-7.

Shamim Hasnain, J:

I agree.