

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

WRIT PETITION NO.9303 of 2014

IN THE MATTER OF:

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

IN THE MATTER OF:

Mohammad Ali

.....Petitioner.

-Versus-

National Board of Revenue, represented by its
Chairman NBR Bhaban, Segunbagicha, Dhaka and
others

.....Respondents.

Mr. Monshi Moniruzzaman with

Mr. Minhaduzzaman, Advocate

.....For the petitioner.

Mr. Ali Akbor Khan, A.A.G

.....For the respondent(State).

Present:

Ms. Justice Md. Jahangir Hossain

And

Mr. Justice Md. Bazlur Rahman

Heard on:-07.05.2023 and 08.05.2023

Judgment on:09.05.2023

Md. Jahangir Hossain, J:

On an application under Article 102 of the Constitution of the
People's Republic of Bangladesh, this Rule Nisi was issued calling upon
the respondent Nos. 1-7 to show cause as to why demand notice dated
25.09.2014 contained in vide Nathi No. এস ২-১৪/এপি/-সকশন-৭(বি)/২০১৪-
২০১৫/৩২০-কাস issued by the Respondent No. 3, on behalf of the
Respondent No. 2 directing the petitioner to deposit Tk. 15,49,367.91
(fifteen lacs forty nine thousand three hundred and sixty seven taka and
ninety one paisa) only within 30 (thirty) days as short levied duties and

charges (Annexure-F) should 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.

The facts relevant for disposal of this Rule, are that the respondent No. 1 is the National Board Revenue, NBR Bhaban, Segunbagicha, Dhaka represented by its Chairman the respondent No. 2 and 3 are the Commissioner of Customs and Assistant Commissioner of Customs, Customs House, Chittagong respectively. The petitioner, in course of business, opened a Letter of Credit No.107213010340 dated 23.12.2013 issued by Al-Arafah Islami Bank Limited, Khatungonj Branch, Chittagong. The petitioner has sent all the shipping documents, namely, Proforma Invoice, Commercial Invoice, Packing List, Bill of Lading, Certificate of Origin to the Bank of the petitioner. After arrival of the consignment, the petitioner through his C & F Agent submitted Bill of Entry No. C-168371 dated 16.03.2014 for release of the goods and the same was received by the concerned section of the Customs House, Chittagong. Before the assistant of the goods was conducted, the Customs Authority made a 100% physical examination of the goods on 18.03.2014 and found that the goods are in accordance with the declaration. In the said physical examination report, it was found that the imported goods were 4,41,000 pieces in number and the net weight of

the goods comes at 661.50 kg. which is in accordance with the invoice and packing list. Thereafter, the Customs Authority printed out the computerized Bill of Entry and accordingly, Assistant Notice was issued and the petitioner released the goods on payment of Customs duties and taxes as per assessment. After about 6 (six) months from releasing the goods, the respondent No. 3, on behalf of the respondent No. 2 issued a demand Notice contained in Nothi No. এস ২-১৪/এপি/-সকশন-৭(বি)/২০১৪-২০১৫/৩২০-কাস on 25.09.2014 directing the petitioner to deposit Tk. ১৫,৪৯,৩৬৭.৯১ (fifteen lacs forty nine thousand three hundred and sixty seven taka and ninety one paisa) only within 30 (three) days as short levied duties and charges stating, inter alia, that it appears from the internal audit that the net weight of the imported goods is 3307.50 kg. but in the physical examination report, the net weight of the goods was determined at 661.50 and as such the net weight was not properly ascertained at the time of submitting Bill of Entry and the goods were released on the basis of wrong weight and as such the after the assessment under section 83A of the Customs Act, 1969 the fact of petitioner's non-payment of Tk. 15,49,367.91 to the Government was revealed; hence, the petitioner is liable to pay Tk. 15,49,367.91 as short levied duties and taxes. In the said demand notice, the petitioner was directed to pay the said amount within 30 (thirty) days and if the

petitioner fails to pay the said amount, then action under section 202 of the Customs Act, 1969 will be brought against the petitioner. Hence the case.

At the time of hearing Mr. Monshi Moniruzzaman, learned Advocate for the petitioner submits that as per Section 83(A)(2) of the Customs Act provides that if the amendment has the effect of imposing a fresh liability or enhancing an existing liability, a Demand Notice in writing shall be given by the Officer of Customs to the persons liable for the duty, and therefore, the Customs Authority without giving any Show Cause Notice and opportunity of hearing issued Demand Notice directly. In the above circumstances, an appropriate declaration of Natural Justice are implicit in section 83A(2) of the Customs since application of provision of Natural Justice has not been excluded expressly in the said section of the Customs Act.

He further submits that although Section 83A of the Customs Act, 1969 does not provide for giving show cause notice upon the petitioner. But the Section 83A (2) envisages about the intimation of fresh liability to the person liable for the duty, and therefore, it is fair and just to give a Show Cause Notice with an opportunity of hearing complying the cardinal Principle of Natural Justice since such imposition of liability affects the rights of the petitioner adversely, and as such, impugned direct

demand without complying the said provision of Principle of Natural Justice. The Customs Authority has been made a 100% physical examination of the goods under section 83A of the Customs Act and found that the goods are in accordance with the declaration. Later way the Custom Authority is taking a fresh charge against the petitioner on the basis of the internal audit authority with due date for payment against the aforesaid Demand Notice shall be 30(thirty) working days from the date of issue of such a written Demand Notice by the Officer of Customs. In the instant case, the impugned Demand Notice was issued under Section 83A (2) of the Customs Act without giving 30 (thirty) working days time for payment of amended duty as per Section 83A (3) of the said Act, and as such the impugned order dated 25.09.2014 is ex-facie illegal and without jurisdiction. Further he submitted no written Demand Notice was issued under Section 83A (2) of the Customs Act without giving 30 (thirty) working days. The impugned demand without giving show cause notice is violative of the fundamental rights of the petitioners as guaranteed under Article 27, 31 and 40 of the Constitution of Peoples Republic of Bangladesh. The petitioner should have been given a show cause notice before issuing the impugned Demand Notice imposing fresh liability. Lastly he submits that the impugned order has been beyond in violation the order of Section 83A(2) of the Customs Act, 1969.

In support of his submission he referred 23 BLC(2018), page 669 and 670 wherein it is held that:-

“ Section 83A of the Customs Act,1969 on the other hand arises when the respondents Customs authorities subsequent to the release of the goods think that sufficient duty was not paid by the petitioner due to wrong assessment and in such case a Customs Officer not below the rank of Assistant Commissioner of Customs may amend the assessment to ensure the correctness of assessment and if in the process the duty is enhanced then he is required to make a written demand from the petitioner or person liable to pay the duty by giving him 30 working days time. The statute does not mention any requirement of prior show cause notice. The question therefore arises as to whether in a demand made pursuant to section 83A of the Customs Act, 1969 the rule of Natural Justice are to be complied with or any prior show cause notice is to be served.

The Rules of Natural Justice require that whenever an authority is vested with the power to take a decision against another person which may prejudice the other person before such decision is taken he must be given a notice of what the decision is likely to be and also an opportunity of a fair hearing. In the case of Russel vs Russel, 14 Chancery Division page 471 (478), Jessel MR Quoted with approval from an earlier

decision. “ They are bound in their exercise of their functions, by the rule expressed in the maxim audi alteram partem, that no man shall be condemned to consequences resulting from alleged misconduct unheard and without having the opportunity of making his defence.”

Their act is bound to affect the assessee importer and also prejudice him if duty is increased. Before such amendment of assessment therefore justice demands that he should be served with a prior show cause notice allowing him to make any statement that he considers important in his defence, even though section 83A does not speak of any prior show cause notice. In the case of Chairman, Board of Intermediate and Secondary Education, Jessore vs Amir Hossain reported in 56 DLR (AD) 24 it has been held by the Appellate Division that “ it is now settled that even where provision for show cause notice and opportunity of personal hearing are not available, the principle of natural justice shall be applied unless it is specifically barred.”

We have gone through the record and extensively perused the annexure papers with the record and the referred cases by the petitioner. Mr. Ali Akbor Khan, learned Assistant Attorney General frankly submits that in this case no prior notice has been issued before the petitioner and petitioner did not find any scope to make explanation before regarding the charge of duties brought against him. We find that the demand notice

of the Customs authority is a fresh demand of the custom duties. Further it transpires Section 32 of the Customs Act, clearly specified the service of prior show cause notice before making the additional demand and in the aforesaid cases were demands have been made without any prior show cause notice pursuant to 32 of the Customs Act, 1969 the notice of demand are clearly illegal.

Even though section 83A does not speak of any prior show cause notice to be issued. As our opinion the justice of the common law will supply the omission of the legislature. As it was hold by our Court that notice issued pursuant to section 83A of the Customs Act, 1969 demanding additional duties and charges are illegal for having been in breach of the rules of Natural Justice and the demand having been made without any prior show cause notice. There is no submission from the opposite party. The reffers decisions as being interfere by the any other Court or the honorable Apex Court.

On the aforesaid observation we find substance in the Rule. It transpires to us error of law is apparent on the face of record and the impugned notices are wholly without jurisdiction. It has been decided by our Apex Courts that when the illegality is apparent on the face of record and the respondents performing the function of the republic have acted totally without jurisdiction. A citizen can come to this Court under

Article 102 of the Constitution for appropriate decision and remedy.

Upon such it appears the petitioner come to this Court under that category. Upon such circumstances the notices of demand are all illegal and without lawful authority for not being preceded by a show cause notice.

On the above facts and circumstances we are not inclined to go into the merit of the case.

The petitioners however should not be allowed to profit from this technicality of law and as such, the respondents Customs authorities are at liberty to issue fresh demand upon the petitioners by issuing appropriate show cause notices.

Upon such observation this Rule is made absolute and the impugned notice is hereby declared to have been passed without lawful authority and of no legal effect.

Send a copy of this judgment to the Chariman, Natinal Board of Revenue and Secretary, Ministry of Finance for information and necessary action.

Md. Bazlur Rahman, J;

I agree.