

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

WRIT PETITION NO. 5321 OF 2016

IN THE MATTER OF:

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

And

IN THE MATTER OF:

Petromax Refinery Limited.

.... Petitioner

-Vs-

***National Board of Revenue, represented by its
Chairman and others.***

....Respondents.

Mr. Munshi Moniruzzaman, with
Mr. Yousuf Khan Rajib, Advocates
..... For the Petitioner.

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

Heard on 03.05.2026

Judgment on 04.05.2026.

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. ৪র্থ/এ (১২)৪৩/২০১৩-১৪/স্বাঃ রাঃ অডিট/বাঃ সাঃ-১,২/১৪/১৪ dated 26.02.2015 issued under the signature of the Revenue Officer, Customs, Excises and VAT Circle-2, Bagerhat, respondent No. 4 (as contained in Annexure-G) and subsequent remainders under Nathi Nos. ৩য়/এ (১২)১/স্বাঃ রাঃ অডিট/বাঃ বিঃ /১৪/২০৪, ৩য়/এ (১২) ১/স্বাঃ রাঃ অডিট/বাঃ বিঃ/১৪/২০৫ and ৩য়/এ (১২)১/স্বাঃ রাঃ অডিট/বাঃবিঃ/১৪/২০৬, all dated 13.04.2016, issued by the Assistant Commissioner, Customs, Excise and VAT Division, Bagerhat, respondent No. 3(as contained in Annexure-K, K(1) and K(2) respectively), directing the petitioner to pay Tk.8,31,76,283.00, Tk.9,62,46,784.00 and Tk.1,32,72,070.00 respectively to the Government treasury on the basis of the objection raised by the Local and Revenue Audit Directorate, respondent No. 5, 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.৪র্থ/এ (১২)৪৩/২০১৩-১৪/স্বাঃ রাঃ অডিট/বাঃ সাঃ-১,২/১৪/১৪ dated 26.02.2015 issued under the signature of the Revenue Officer, Customs, Excises and VAT Circle-2, Bagerhat, respondent No.4 (as contained in Annexure-G), was stayed by this Court for a prescribed period.

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 refinery oil under the name and style “Petromax Refinery Ltd.” In course of its business, the petitioner

obtained a VAT Registration Certificate from the concerned VAT office under the Value Added Tax Act, 1991(in short, the Act, 1991) and since then it has been paying VAT regularly in accordance with law.

Suddenly, on 28.12.2014 the Local and Revenue Audit Directorate, respondent No. 5 issued a letter upon respondent No. 3 intimating that upon conducting an audit of the financial activities of the petitioner for the financial year 2013-2014 and after audit, they had found that the petitioner had evaded government revenue under three heads.

It is further stated that while the petitioner has been running its business by complying with all the necessary legal formalities, suddenly respondent No. 4 most illegally and arbitrarily without considering the provision of law passed an order against the petitioner on 26.02.2015. In the said order a reference was made to the letter dated 28.12.2014 issued by the Local and Revenue Audit Directorate, respondent No. 5. In the said notice it was also mentioned that an audit team of the local and Revenue Audit Directorate, the respondent No. 5 after auditing the business activities of the petitioner for financial year 2013-2014 raised three audit objections against the petitioner; firstly, that the petitioner in violation of the terms and conditions of the price fixed by the authority evaded Government revenue amounting to Tk.9,62,46,784.00, secondly that the petitioner showed less production than its actual production and thereby evaded revenue of Tk. 8,31,76,283.00 and thirdly that the petitioner by showing a sale price lower than its actual/fixed sale price and thereby evaded revenue to Tk. 1,32,72,070.00 and the petitioner was requested to

pay the entire amount raised in the audit objection within 7(seven) days from the dated of receipt of the order.

In the said demand notice, respondent No. 4 failed to mention that the alleged notice had been issued in violation of the provisions of Article 128 of the Constitution of the People's Republic of Bangladesh read with Section 5.9, 26(Ka) 35, 36, 55 of the Act, 1991 and before issuance of the demand, the respondents did not issue any notice upon the petitioner under Section 55(1) of the Act, 1991 and nor was any determination made regarding the allegation of alleged evasion before issuance of the impugned notice which is the mandatory provision of the Act, 1991.

The petitioner did not pay the amounts under the said demand notice and thereafter the concerned respondent issued reminder letters dated 13.04.2016 (Annexure-K, K-1 and A-2 respectively).

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

Mr. Munshi Moniruzzaman, the learned Advocate appearing for the petitioner submits that the impugned demand dated 26.02.2015 was issued without serving any show cause notice upon the petitioner and without completing the proceedings under section 55 of the Act, 1991 and thereby depriving the petitioner of an opportunity of being heard.

Mr. Munshi next submits that the impugned demand was issued without following the procedure as provided under sub-section (3) of section 55 of the Act, 1991. As such, the impugned order was issued in violation of the principles of natural justice. In support of his contention,

the learned Advocate relies on the case of Zakir Ahmed (Md.) vs National Board of Revenue and others reported in 20 BLC (HCD) 37.

Mr. Akhtar Farhad Zaman, the learned Deputy Attorney General appearing for respondent No. 1 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. 4 did not comply with the said provision before issuing the impugned demand dated 26.02.2015 and subsequently remainders issued under Nathi Nos. ওয়/এ (১২)১/স্বাঃ রাঃ অডিট/বাঃ বিঃ/১৪/২০৪, ওয়/এ(১২)১/স্বাঃরাঃঅডিট/বাঃবিঃ/১৪/২০৫ and ওয়/এ(১২)১/স্বাঃরাঃ অডিট/বাঃবিঃ/১৪/২০৬, all dated 13.04.2016, issued by the Assistant Commissioner, Customs, Excise and VAT Division, Bagerhat, respondent No. 3(as contained in Annexure-K, K(1) and K(2) respectively), directing the petitioner to pay Tk.8,31,76,283.00, Tk.9,62,46,784.00 and Tk.1,32,72,070.00 respectively to the Government treasury on the basis of the objection raised by the Local and Revenue Audit Directorate, respondent No. 5 which is quoted below for ready reference;

“.....উপর্যুক্ত বিষয় ও সূত্রের আলোকে আপনায় অবগতির জন্য জানানো যাচ্ছে যে, ২০১৩-১৪ অর্থবছরের স্থানীয় ও রাজস্ব অডিট অধিদপ্তর, ঢাকা কর্তৃক আপনাদের রেকর্ডপত্র নিরীক্ষায় অনুমোদিত মূল্য ঘোষণার শর্ত উপেক্ষা করে ডিজেল ও কেরোসিনের বিক্রয় মূল্যে উপর মুসক জমা না করায় ৯,৬২,৪৬,৭৮৪/- টাকা রাজস্ব ক্ষতি সংক্রান্ত আপত্তি উত্থাপন করা হয়েছে। উক্ত টাকা এই পত্র প্রাপ্তির ৭(সাত) দিনের মধ্যে ট্রেজারীতে জমা প্রদান পূর্বক ট্রেজারী চালানোর মূল কপি অত্র দপ্তরে দাখিল করার জন্য বলা হলো। অডিট আপত্তির পরিশিষ্ট নং-ক এবং অনুচ্ছেদ-১ সম্বলিত দুই পাতা এই সাথে সংযুক্ত করে প্রেরণ করা হলো।

০২। ২০১৩-১৪ অর্থবছরে প্রকৃত উৎপাদন অপেক্ষা কম উৎপাদন প্রদর্শন করায় মুসক বাবদ ৮,৩১,৭৬,২৮৫/- টাকা কম প্রদানের আপত্তি উত্থাপন করা হয়েছে। উক্ত টাকা এই পত্র প্রাপ্তির ৭(সাত) দিনের মধ্যে ট্রেজারীতে জমা প্রদান পূর্বক ট্রেজারী চালানোর মূল কপি অত্র দপ্তরে দাখিল করার জন্য বলা হলো। অডিট আপত্তির পরিশিষ্ট নং-খ এবং অনুচ্ছেদ-২ সম্বলিত দুই পাতা এই সাথে সংযুক্ত করে প্রেরণ করা হলো।

০৩। ২০১৩-১৪ অর্থবছরে অনুমোদিত বিক্রয়মূল্য অপেক্ষা কম বিক্রয়মূল্য প্রদর্শন করায় মূসক বাবদ ১,৩২,৭২,০৭০/- টাকা কম প্রদানের আপত্তি উত্থাপন করা হয়েছে। উক্ত টাকা এই পত্র প্রাপ্তির ৭ (সাত) দিনের মধ্যে ট্রেজারীতে জমা প্রদান পূর্বক ট্রেজারী চালানোর মূল কপি অত্র দপ্তরে দাখিল করার জন্য বলা হলো। অডিট আপত্তির পরিশিষ্ট নং-গ এবং অনুচ্ছেদ-৩ সম্বলিত দুই পাতা এই সাথে সংযুক্ত করে প্রেরণ 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. 4 issued the demand notice dated 26.02.2015 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. We thus find substance in the Rule.

In the result, the Rule made absolute.

Accordingly, the impugned order dated 26.02.2015 (Annexure- G) issued by respondent No. 4 directing the petitioner to pay the amount of Tk.9,62,46,784.00 and subsequently remainders issued under Nathi Nos. ওয়/এ (১২)১/স্বাঃ রাঃ অডিট/বাঃ বিঃ /১৪/২০৪, ওয়/এ (১২) ১/স্বাঃ রাঃ অডিট/বাঃ বিঃ/১৪/২০৫ and ওয়/এ (১২)১/স্বাঃ রাঃ অডিট/বাঃ বিঃ/১৪/২০৬ all dated 13.04.2016, issued by the Assistant Commissioner, Customs, Excise and VAT Division, Bagerhat, respondent No. 3(as contained in Annexure-K, K(1) and K(2) respectively),

directing the petitioner to pay Tk.8,31,76,283.00, Tk.9,62,46,784.00 and Tk.1,32,72,070.00 respectively to the Government treasury on the basis of the objection raised by the Local and Revenue Audit Directorate, respondent No. 5 are declared to have been issued without lawful authority and of no legal effect.

Respondent No. 2 (Commissioner, Customs, Excise and VAT, Commissionerate, Khulna) 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.