

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION**

(SPECIAL ORIGINAL JURISDICTION)

Writ Petition No. 5524 of 2016

In the matter of :

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

-And-

In the matter of :

British American Tobacco Company
Bangladesh Ltd.

..... Petitioner

-Versus-

National Board of Revenue, represented by its
chairman and others

... Respondents

Mr. Shah Bakhtiar Elias, Advocate with
Mr. Anwar Pervez, Advocate

.... For the Petitioner

Mr. S.K. Reajul Hoque, Advocate

..... For Respondent no. 4

Present:

Mr. Justice Zubayer Rahman Chowdhury

And

Mr. Justice Kazi Ebadoth Hossain

Date of Hearing : 18.01.2023, 30.01.2023,
& 09.02.2023

Date of Judgment : 15.05.2023

Zubayer Rahman Chowdhury, J :

On an application filed by the petitioner under Article 102(2) of the Constitution, the instant Rule was issued in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the tests conducted by the institute of Food, Science and Technology (IFST) under Bangladesh Council of Scientific and industrial Research (BCSIR) under the instruction of the Commissioner, Large Taxpayer Unit, Value Added Tax, National Board of Revenue (the respondent No. 2) arbitrarily and discriminately without stipulating and objective standard/criteria for ascertaining and classifying such quality should not be declared to be without lawful authority and of no legal effect and why such other or further order or orders should not be passed as to this court may seem fit and proper.”

At the time of issuance of the Rule, the operation of the test report dated 18.05.2014, issued by BCSIR, was stayed for a period of six months, which was subsequently extended from time to time by orders of different dates.

The Rule is being opposed by respondent no. 2 and respondent no. 4. However, an affidavit-in-opposition has been filed only on behalf of the respondent no. 2.

As the issue involved in the present Rule primarily relates to a mixed question of law and procedure which can be disposed of within a very short compass, a detailed narration of the factual aspect of the case is uncalled for.

Three particular brands of the petitioner company, namely Star Filter kings KSF, Bristle Style KSF and Pilot KSF was tested at the behest of respondent no. 2 (Commissioner, large Taxpayer Unit, National Board of Revenue, Dhaka) by the Institute of Food Science and Technology (IFST) under Bangladesh Council of Scientific and Industrial Research (BCSIR). The petitioners contention is that the test that was carried out by IFST is not tenable in law as IFST has no authority to conduct such test. Rather, according to the learned Advocate for the petitioner, the test in question has to be carried out by Bangladesh Standards and Testing Institution (briefly BSTI).

The learned Deputy Attorney General submits that the tests in question were carried out by a statutory organization namely IFST, which has been setup under BCSIR. Referring to the various provision of the VAT Rules, the learned DAG submits that the test conducted by BCSIR was in accordance with law and hence the Rule is liable to be discharged.

In order to decide the issue before us, we may refer to two decisions of the apex Court passed in Civil Petition for Leave to Appeal No. 1439 of 2014 and Civil Appeals No. 509 and 510 of 2017.

In the first case namely, CPLA No. 1439 of 2014, by judgment dated 15.06.2014, the apex Court disposed of the appeals observing as under:

“we are of the further view that the chemical test of the low segment cigarettes of all the cigarette manufacturing company’s should be done by Bangladesh Standards and Testing Institution (BSTI).....”

In the very same judgment, the apex Court directed as under:

“All the chemical test, as directed hearing before, shall be carried out separately by BSTI”

It is to be noted that the chemical test referred to in the aforesaid judgment relates to the products of the appellant namely, British American Tobacco Company Limited.

In Civil Appeal no. 509 and 510 of 2017, by judgment dated 25.07.2018, the full Bench of the Appellate Division observed as under:

“It is further to be noted that the product of examine in the laboratory of BCSIR whereas the Government organization BSTI is the appropriate authority to examination and compare the standard of any product. But in the present case the Government without relying upon their own approve authority for examination and compression of the standard of the company goods so products relied on the report prepared by BCSIR a separate organization. Thus the report of BCSIR always remains question”

From the observation of the apex Court quoted above, there is not an iota of doubt that it is BSTI that is authorized to carry out the test in question. Admittedly, in the instant case, the test was carried out by IFST.

We fail to understand as to how a senior official of NBR, holding the position of the Commissioner of the Large Taxpayer Unit, can be so negligent or callous so as to ignore the order of the apex Court and pass

the impugned direction upon the petitioner to have its products tested at IFST instead of BSTI.

However, as the issue involves substantial amount of Government revenue, NBR shall be a liberty to initiate fresh testing procedure in respect of the petitioner products, which shall be conducted by BSTI.

In the result, the Rule is made absolute.

There will be no order as to costs.

Kazi Ebadoth Hossain, J:

I agree.

Yasir, A.B.O