

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

Writ Petition No. 7939 of 2009

In the matter of:

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

AND

In the matter of:

Buildtrade Engineering Limited
... Petitioner
-Versus-

Customs, Excise and VAT Appellate Tribunal
and others
... Respondents

Mr. Ahsanul Karim, Senior Advocate with
Mr. Aminul Hoque, Advocate
...For the petitioner

Mr. Tanim Khan, D.A.G. with
Mr. Md. Abdus Samad Azad, D.A.G.
Md. Abdul Jabbar Joel, A.A.G.
Mr. Sk. Naser Wahed (Shemon), A.A.G.
Mr. Ariful Alam, A.A.G and
Mr. Md. Fuad Hasan, A.A.G.
... For the respondents

Heard on: 13.01.2026 and
20.01.2026 Judgment on:
29.01.2026

Present:

Justice Sardar Md. Rashed Jahangir
and
Justice Kazi Waliul Islam

Sardar Md. Rashed Jahangir, J:

On an application under article 102 of the Constitution of the People's Republic of Bangladesh the Rule Nisi was issued in the following term:

“Let a Rule Nisi issue calling upon the respondents to show cause as to why the impugned Order No. সিইভিটি/কেইস(ভ্যাট)-৩৩১/২০০৮ dated 18.08.2009 (Annexure- ‘A’) passed by respondent No. 1 in VAT Appeal No. 331 of 2008 (the said appeal) upholding the Adjudication Order No. ৫২/মুসক/০৮ dated 03.09.2008 passed by respondent No. 2 in VAT Evasion Case No. 106 of 2007 pursuant to the Memo No. ৪/মুসক/৮(৫৭২)বিলট্রেড/অনিয়ম/বিচার/২০০৭/৫৮৫ dated 26.07.2007 demanding alleged evaded VAT and imposing penalty thereon and the Memo No. ৪(এ)মুসক/বিলট্রেড/৩০/২০০৮/১০৪৬ dated 22.10.2009 issued by the respondent No. 3 (Annexure- ‘A-1’) demanding VAT and penalty thereon should not be declared to have been made without lawful authority and are of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.”

At the time of issuance of the Rule by an interim order operation of the order No. সিইভিটি/কেইস(ভ্যাট)-৩৩১/২০০৮ dated 18.08.2009 (Annexure- ‘A’) passed by respondent No. 1 in VAT

Appeal No. 331 of 2008 and the Memo No. 8(এ)মুসক/বিলট্রেড/৩০/২০০৮/১০৮৬ dated 22.10.2009 issued by the respondent No. 3 (Annexure- 'A-1') were stayed.

It is stated that the petitioner is a private limited company incorporated under the Companies Act, 1994 engaged in manufacturing Pre-fabricated Steel Building and marketing of those in the local market. It is further stated that the petitioner has been registered with the VAT authority under section 15 of the VAT Act, 1991 for the purpose of paying VAT and since commencement of its business has been paying all taxes including VAT regularly.

In order to hold a routine audit, a team of the Customs, Excise and VAT Commissionerate (North), Dhaka inspected the factory of the petitioner situated at Kalampur, Dhamrai, Dhaka on 21.03.2007 and after inspection through Mushak-5, the preventive team seized several documents including Truck Challan Books, Sale Register, Purchase Register etc. Thereafter, the officials of the respondent No. 2 again inspected the factory of the petitioner on 15.05.2007 and again seized several business documents and registers through Mushak-5. Thereafter, a Mushak Evasion Case being No. 106 of 2007 under section 6, 31 and 32 of the VAT Act, 1991 has been started. Thereafter, on 24.07.2007 a notice

purportedly under section 55(1) of the VAT Act, 1991 has been issued and served upon the petitioner together with a demand of Tk. 4,31,18,957.17 asking to show cause within the time specified in the notice. The petitioner filed a reply on 06.12.2007 denying all the material allegations brought through the notice, in particular, it claimed that it has not evaded any VAT whatsoever. Thereafter, hearing of the proceeding took place on 26.08.2008, and Managing Director of the petitioner's company along with its VAT consultant attended the hearing. The respondent No. 2 after hearing without applying his judicial mind or without consideration of the reply and contention of the petitioner by his adjudication order dated 03.09.2008 made the demand final under section 55(3) of the VAT Act, 1991 directing the petitioner to make payment of Tk. 4,31,18,957.17 as evaded/unpaid VAT and also imposed a penalty (fine) of Tk. 4,00,00,000/- (four crore) under section 37(2) of the VAT Act, 1991.

Having been aggrieved by the aforesaid adjudication order dated 03.09.2008, the petitioner preferred an appeal under section 42 of the VAT Act, 1991 before the Customs, Excise and VAT Appellate Tribunal, Dhaka and the Tribunal after hearing both the parties by its order dated 18.08.2009 dismissed the appeal

affirming the adjudication order being No. 52/Mushak/08 dated 03.09.2008.

Mr. Ahsanul Karim, learned Senior Advocate appearing with Mr. Md. Munshi Moniruzzaman, learned Advocate for the petitioner submits that the adjudication order dated 03.09.2008 (Annexure- 'F') as well as the notice dated 26.07.2007 are ex-facie illegal since the VAT officials are authorized under section 55 of the VAT Act, 1991 to issue notice for realization of unpaid/less paid and evaded VAT simplicitor. But in the instant case under the aforesaid notice purportedly issued under section 55 of the VAT Act, 1991, the petitioner was also asked to show cause that as to why it would not be punished under section 37 of the said Act and thereafter in the proceeding of section 55 of the VAT Act, 1991, the petitioner was illegally awarded a penalty under section 37(2) of the VAT Act, 1991, and a fine of Tk. 4,00,00,000/- (four crore) was imposed.

He next submits that the notice as well as adjudication order were without jurisdiction since the element of section 37 has been added into the notice to put upon the petitioner an illegal pressure and thereafter a penalty was imposed under section 37 of the VAT Act, 1991 in a proceeding of section 55 of the VAT Act, 1991.

He continues to submit that the penalty was imposed upon the petitioner purportedly under section 37 of the VAT Act without initiating any independent proceeding or issuing any notice to that effect, whatsoever, and as such, the impugned order is liable to be declared to be without lawful authority and is of no legal effect.

In support of the submission, learned Advocate cited judgments of (i) the case of Shah Cement Industries Limited Vs. Chairman, Customs, Excise and VAT Appellate Tribunal and others, reported in 63 DLR 684; (ii) the case of United Mineral Water and PET Industries Limited Vs. Commissioner, Customs Excise and VAT Commissionerate and others, reported in 61 DLR 734; (iii) the case of Grand Azad Hotel, Dhaka Vs. Customs, Excise and VAT Appellate Tribunal, Dhaka and others, reported in 24 BLC(2019) 898; the case of Mr. Baker Cake and Pastry Shop and others Vs. Commissioner, Customs, Excise and VAT and others, reported in 66 DLR 359; the case of Abdul Motaleb and others Vs. Customs, Excise and VAT Appellate Tribunal, reported in 64 DLR 100 and the case of Mrs. Momtaz Mallik Vs. The Taxing Officer (Registrar, High Court, Dacca), reported in 20 DLR 599.

On the other hand, learned Deputy Attorney General Mr. Tanim Khan appearing on behalf of the respondents submits that tagging section 37 of the VAT Act, 1991 with the notice as well as the proceeding under section 55 of the VAT Act does not ipso facto made the proceeding illegal because, there was prima-facie evidence of evasion of VAT against the petitioner.

He next submits that the petitioner was given adequate opportunity upon service of notice providing opportunity of being heard to refute the allegation brought under the notice and as such the order of adjudication has been passed justly and legally. In view of above, he prayed for discharging the Rule.

Heard learned Advocate and learned Deputy Attorney General, perused the writ petition together with the annexures appended thereto. Having gone through relevant provisions of law.

Admittedly, the notice was issued under section 55 of the VAT Act and the petitioner was asked to show cause within 7(seven) days of receipt of the notice as to why the demand specified in of notice of evaded VAT would not be realized from the petitioner. In the said notice the petitioner was also asked to show cause as to why he would not be punished under section 37 of the VAT Act 1991 for violation of the provision of sections 6,

31 and 32 of the VAT Act, 1991 read with rule 16, 22, 23 of the VAT Rules, 1991.

On a bare reading of the section 55 of the VAT Act, 1991 it appears that under the aforesaid provision the VAT officials authorized to initiate proceeding upon making demand for realization of unpaid/less paid or evaded VAT within the stipulated manner and procedure and for the said purpose they have to issue a notice under section 55(1) providing the petitioner opportunity to file written reply and to provide the opportunity of being heard, if any demanded by the petitioner and after such hearing they are empowered to make the demand final. On the other hand section 37 of the said Act defines various offences and specifying punishment of those offences. The principle of natural justice requires before imposing punishment each and every person should be given a chance of hearing and to refute the allegation brought against him, notifying about the materials going to use for the purpose of adjudication of his offence.

Proceeding under section 55 of the VAT is only related with realization of demand of evaded unpaid/less paid VAT.

In the case of Grand Azad Hotel, Dhaka Vs. Customs, Excise and VAT Appellate Tribunal, Dhaka and others, reported in 24 BLC(2019) 898 it has been categorically held that:

“But, imposing of such penalty and claiming addition tax, without initiating independent proceeding under section 37 of the Act, 1991 is not permissible in the eye of law. In this regard, one of the Benches of this Division, in the case of Provati Insurance Company Ltd. Vs. Commissioner of Customs, Excise and VAT, reported in 17 BLC 450 observed, inter alia:-

‘in the absence of compliance with the requirements of section 55(1) of the Act, thereafter of demands made twice as required under section 37(2)(Kaka), the penalties under section 37(2) and 3793) have been illegally imposed.’

In the case of M/s. Hotel Zakaria International (Pvt.) Limited Vs. Customs, Excise and VAT Appellate Tribunal in writ petition No. 3605 of 2002 it has been observed as under;

‘However though the petitioner evaded VAT/Supplementary duty but the VAT authority issued demand VAT notice/letter under section 55 of the Vat Act clamming the unpaid amount of VAT from the petitioner. As the demand notice was issued under section 55 of the VAT Act demanding unpaid VAT/Supplementary duty taxes etc. there was no scope to impose 2% additional taxes under section 37(3) of the VAT Act.’ ”

In the case of United Mineral Water and PET Industries Limited Vs. Commissioner, Customs Excise and

VAT Commissionerate and others, reported in 61 DLR 734, it has been categorically held that:

“If the entire provision of section 55 is considered then it would be clear that section 55 empowers the concerned VAT authority to take steps for realization of unpaid or less paid VAT or tax upon first issue of a notice asking to show cause and then, upon hearing, within 90 days to make a final demand in respect of any VAT or tax unpaid, evaded or less paid.

On the other hand, section 37 of the said Act defines various offences and punishments for such offence. Before any final demand could be made under section 55(3), none of the provisions of section 37 could be resorted to. It is needless to say as the fiscal law demands strict interpretation so equally demands for strict application by an authority authorized to apply. The VAT Act is a comprehensive tax law. It has defined the tax to be paid as VAT on the specified sales and/or services. Similarly, it has laid down elaborate procedure for realization of the tax and punishment for any violation or omission. The concerned authority is therefore, duty bound to follow the procedure as laid down in the Act for each and every action. The Act does not empower any of the authorities created to become zealot to overpower and/or overawe any tax payer. Invoking and/or resorting to section 37 while issuing a notice under section 55(1) of the VAT Act therefore could not be said to have been issued bonafide for the simple reason that at the time of issue of the notice, the authority concerned had not yet arrived at as to any evasion of VAT by the petitioner.”

In view of above, we are of the view that imposition of penalty under section 37(2) of the VAT Act, 1991, without initiating separate proceeding or serving independent show cause notice, in the proceedings of section 55 of the VAT Act has no

sanction under the scheme of the VAT Act, 1991 and as such, we are of the view that the adjudication order so far imposition of the penalty of fine of Tk. 4,00,00,000/- (four crore) is concerned under section 37(2) of the VAT Act is hereby set aside and so far the making of the demand final in respect of unpaid/ less paid and evaded VAT of Tk.4,31,18.957.17 under section 55(3) is hereby upheld.

Accordingly, the Rule is made absolute in part without any order as to cost.

However, the respondents are at liberty to initiate proceeding, if any, is permitted under the concerned law for any offence allegedly committed by the petitioner upon serving specific and separate notice.

Communicate the judgment and order at once.

Kazi Waliul Islam, J:

I agree.