

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

**Writ Petition No. 15482 of 2024**

**With**

**Writ Petition No. 14914 of 2024**

In the matter of:

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

AND

In the matter of:

Ismail Anzuman Ara Fabrics Limited

... Petitioner (in the W.P. No. 15482 of 2024)

Nice Fabrics Processing Limited

...Petitioner (in the W.P. No. 14914 of 2024)

-Versus-

National Board of Revenue and others

... Respondents (in both the Writ Petitions)

Mr. Munshi Moniruzzaman, Advocate with

Mr. Samarendra Nath Biswas, Advocate

Mr. Sakib Rezwan Kabir, Advocate

Mr. Enayet Baten, Advocate

Mr. S.M. Shamsur Rahman, Advocate

...For the petitioner (in both the Writ Petitions)

Mr. Md. Abdus Samad Azad, D.A.G. with

Mr. Tanim Khan, D.A.G. with

Dr. Mohammad Soeb Mahmud, A.A.G.

Mr. Md. Abul Hassan, A.A.G.

Mr. Sk. Naser Wahed (Shemon), A.A.G.

Mr. Md. Azadul Islam (Azad), A.A.G and

Mr. Md. Tareq Rahman, A.A.G

... For the respondents (in both the writ petitions)

**Heard on: 18.11.2025, 25.11.2025  
and 04.12.2025**

**Judgment on: 11.12.2025**

**Present:**

**Justice Sardar Md. Rashed Jahangir**

**And**

**Justice Sheikh Abu Taher**

**Sardar Md. Rashed Jahangir, J:**

In both the writ petitions Rule Nisi have been issued in an identical terms based on similar facts and the parties are same; as such, both the Rules are heard together and disposed of by this single judgment.

In Writ Petition No. 15482 of 2024, Rule Nisi was issued as follows:

*“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the proceeding initiated vide Nothi No. ঢাকা উত্তর/নিঃতঃ/ইসমাইল আঞ্জুমান আরা ফেব্রু/৩(৯)/১৫০/২০২২/১৯৪৪ dated 28.11.2024 by the respondent No. 2 (Annexure- ‘E’) making a demand for the period from July, 2017 to June, 2019, which is entirely time barred under section 55(1) of the Value Added Tax Act, 1991 as the same has been made after expiry of statutory period of limitation shall not be declared to have been initiated without any lawful authority and is of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.”*

In Writ Petition No. 14914 of 2024, Rule Nisi was issued as follows:

*“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the proceeding initiated vide Nothi No. ঢাকা উত্তর/নিঃতঃ/নাইচ ফেব্রু প্রসেসিং/৩(৯)/১৫৩/২০২২/১৮২৭ dated 20.11.2024 by the respondent No. 2 (Annexure- ‘E’) making a demand for the period ranging from July, 2017 to June, 2019, which is entirely time barred under section 55(1) of the Value Added Tax Act, 1991 as the same has been made after expiry of statutory period of limitation shall not be declared to have been initiated without any lawful authority and is of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.”*

Relevant facts necessary for disposal of the Rules Nisi are that the petitioners are private limited companies incorporated under the Companies Act, 1994 and both the companies are sister concern of Noman Group of Industries, having been registered with the VAT authority under section 15 of the VAT Act, 1991 for the purpose of paying VAT. It is also stated that they are regular payers of VAT. The companies have a considerable contribution through paying tax to the Government Exchequer in the past years.

The nature of business of the petitioners to collect Greige Fabrics from customers and thereafter to dye, print, finish and calendar the said fabrics and supply the same to its customers with whom the petitioners have entered into contracts against mere service charge for the aforesaid services.

The Internal Resources Division, Ministry of Finance promulgated SRO No. 224-Ain/2017/774-Musak dated 01.07.2017 and under Table-4 of the said SRO exemption has been given to the concerns like the petitioners under Service Code No. S099.20 stating অন্যান্য বিবিধ সেবাঃ শুধুমাত্র গ্রে-ফেব্রিক্স এর ডাইং, প্রিন্টিং, ফিনিশিং ও ক্যালেন্ডারিং সংক্রান্ত সেবা কার্যক্রম' and the petitioners' business activity fall within the said Service Code and as such, the petitioners are entitled to the exemption provided under the aforesaid SRO.

Subsequently, the Internal Resources Division promulgated SRO No. 167-Ain/2018/790-Musak dated 07.06.2018 exempting certain services at service stage (সেবা পর্যায়ে) under Table-4 of the said SRO, the petitioners' service namely, অন্যান্য বিবিধ সেবাঃ শুধুমাত্র গ্রে-ফেব্রিক্স এর ডাইং, প্রিন্টিং, ফিনিশিং ও ক্যালেন্ডারিং সংক্রান্ত সেবা কার্যক্রম shall come within the exemption from payment of VAT.

It is further stated that a team of respondent No. 2 conducted audit of the petitioners companies from July, 2017- June, 2019 and thereafter submitted audit report to the respondent No. 2 on 01.09.2023 and 21.09.2023 respectively together with opinion that the petitioners have evaded VAT of Tk. 23,78,96,761 and Tk. 58,76,25,196 respectively for the period ranging from July 2017 to June, 2019.

Pursuant to the reports dated 01.09.2023 and 21.09.2023, the respondent No. 2 issued show cause-cum-demand notices on 28.11.2024 and 20.11.2024, respectively purportedly under section 55(1) of the VAT Act, 1991 asking for making payment of the evaded VAT of Tk. 23,78,96,761 and Tk. 58,76,25,196, for the period 01.07.2017 - 30.06.0219; challenging the aforesaid demand-cum-show cause notices dated 24.11.2024 and 20.11.2024 the petitioners filed these writ petitions and obtained the Rules.

Mr. Munshi Moniruzzaman, learned Advocate appearing for the petitioners submits that the notices purportedly under section 55(1) of the VAT Act, 1991 vide memos dated 28.11.2024 and 20.11.2024 having been issued after expiry of the stipulated period of 5(five) years and as such the claim of the respondent is absolutely without jurisdiction being barred by limitation.

On the other hand, Mr. Md. Abdus Samad Azad, learned Deputy Attorney General appeared for respondent No. 2 by filing affidavits-in-opposition and submits that writ petitions under article 102 of the Constitution of the People's Republic of Bangladesh are not maintainable because, those have been filed against mere issuance of show cause notices, without availing the opportunity to reply, directly came to the Supreme Court. He next submits that the designated authority of VAT is competent to decide all the relevant question including limitation.

In support of his submission, he relied upon the judgment of the case of Government of the People's Republic of Bangladesh Vs. Pragati Insurance Ltd. and another, reported in 74 DLR (AD) 261. wherein it has been categorically held that "Though the respondents had adequate

remedy under the VAT Act which they could avail of but the respondents did not avail the statutory forum provided in the statute which was competent to decide all questions of fact and law.”

He also relied upon the case of Mr. Baker Cake and Pastry Shops Vs. Commissioner, Customs, Excise and VAT [66 DLR (HCD) 359].

He also contended that section 37 of the VAT Act is a penal provision, which can be exercised only after determination of VAT evasion. Section 55 of the VAT Act provides for realization of unpaid or less paid VAT and as such, the show cause notice issued under section 55(1) is lawful, because under the proviso to section 55(1), if the petitioners committed offences under section 37(2), then the question of limitation of 5(five) years is not applicable.

He next submits that the Legislature amended the proviso to section 55(1) of the VAT Act in the year 2013 inserting the words “অপরাধ সংঘটন করেন”, thus, it is clear that if any offence has been committed under section 37(2) of the said Act, then the period of limitation of 5(five) years for initiating the proceeding, is not a bar rather even after expiry of 5(five) years, the VAT authority may initiate proceeding under section 55(1) for recovery of unpaid or less paid VAT and also to initiate separate proceeding under section 37(2) for imposing penalty for committing the offences as set-forth therein.

He further submits that generally the word, ‘অপরাধ সংঘটন’ means ‘অপরাধ সংঘটন বলতে বোঝায়- অবৈধ কার্যকলাপে জড়িত থাকা এবং এমন প্রমাণ রেখে যাওয়া যা শনাক্তকরণ এবং বিচারের দিকে পরিচালিত করতে পারে’ or “if an offence is committed” mean that a Crime, as defined by law, has been committed. This phrase is often used in legal contexts to describe the condition under which specific

penalty or action is applied. More clearly saying he contends, it refers to the moment the act is performed or when the legal conditions for the offence are fulfilled, i.e. the crime/offence is finished. Further, to “commit an offence’ means to do something illegal, bad or against the rules. It is a legal or moral transgression, such as committing a crime or violation of a law, customs or rule or do something illegal.

In reply Mr. Munshi Moniruzzaman submits that if the show cause notice is apparently being issued completely without jurisdiction then the petitioner is not required to give reply and as such the writ petitions are quite maintainable.

In support of the submission Mr. Munshi cited the case of M/s Luna Plastic Industries Limited Vs. Commissioner of Customs, Excise and VAT Commissionerate, Dhaka(South), Dhaka and others in Writ Petition No. 2294 of 2006 and the case of M.A. Hai Md. Wazed Ali Miah & Md. Moslem Vs. Trading Corporation of Bangladesh, reported in 40 DLR(AD) 206 and the case of British American Tobacco Bangladesh Company Limited Vs. National Board of Revenue and others, reported in 25 BLC(AD) 49 and an unreported judgment of the case of Square Cephalosporins Limited Vs. Commissioner of Customs, Excise and VAT Commissionerate, Dhaka passed in Writ Petition No. 1139 of 2015.

Heard learned Advocate and learned Deputy Attorney General perused the writ petitions together with the annexures. We have gone through the cited judgments and the provisions of law.

The only question is required to be adjudicated under the case in hand, the show cause-cum-demand notice issued under memos dated

28.11.2024 and 20.11.2024 are barred under the provision of section 55(1) of the VAT Act, 1991 or not?

It is evident that the demand-cum-show cause notices dated 28.11.2024 and 20.11.2024 having been issued under section 55(1) of the VAT Act, 1991 claiming certain amount as evaded VAT payable within the period of First July, 2017 to 30<sup>th</sup> June, 2019.

Before entering into the merit, it is profitable to examine the provision of section 55(1) of the VAT Act, 1991, which runs as follows:

“৫৫। অনাদায়ী ও কম পরিশোধিত মূল্য সংযোজন করসহ অন্যান্য [শুল্ক ও কর আদায়] ১-(১) যেক্ষেত্রে কোনো নিবন্ধিত বা নিবন্ধনযোগ্য ব্যক্তি বা টার্নওভার কর এর আওতায় তালিকাভুক্ত বা তালিকাভুক্তির যোগ্য ব্যক্তি, তদকর্তৃক ধারা ৩৭ এর উপ-ধারা (২) এ বর্ণিত এক বা একাধিক [অপরাধ সংঘটনের] কারণে অথবা ভুলবশত: বা ভুল ব্যাখ্যার কারণে, সরবরাহকৃত পণ্য বা প্রদত্ত সেবার উপর প্রদেয়-

(ক) মূল্য সংযোজন কর বা, ক্ষেত্রমত, মূল্য সংযোজন কর ও সম্পূরক শুল্ক ধার্য বা পরিশোধ করা হয় নাই,

(খ) একই কারণে মূল্য সংযোজন কর বা, ক্ষেত্রমত, মূল্য সংযোজন কর ও সম্পূরক শুল্ক ফেরত প্রদান করা হইয়াছে,

(গ) ধারা ১৩ এর অধীন মূল্য সংযোজন কর, সম্পূরক শুল্ক, আমদানি শুল্ক, অবগারি শুল্ক, অন্যান্য শুল্ক ও কর (আগাম আয়কর ব্যতীত) প্রত্যর্পণ করা হইয়াছে,

(ঘ) বাংলাদেশে সরবরাহকৃত কোন পণ্য বা সেবার উপর প্রদেয় মূল্য সংযোজন কর বা, ক্ষেত্রমত, মূল্য সংযোজন কর ও সম্পূরক শুল্কের বিপরীতে সমন্বয় করা হইয়াছে,

সেক্ষেত্রে উক্ত ব্যক্তিকে তাহার উপর যে তারিখে উক্ত মূল্য সংযোজন কর বা, ক্ষেত্রমত, মূল্য সংযোজন কর ও সম্পূরক শুল্ক প্রদেয় হইয়াছিল বা প্রত্যর্পণ বা ফেরত প্রদান বা সমন্বয় করা হইয়াছিল সেই তারিখ হইতে পাঁচ (৫) বৎসরের মধ্যে সংশ্লিষ্ট মূল্য সংযোজন কর কর্মকর্তা নোটিশ দ্বারা, নোটিশে উল্লিখিত শুল্ক বা মূল্য সংযোজন কর দাবি করিয়া, উহাতে উল্লিখিত সময়সীমার মধ্যে উক্ত শুল্ক বা মূল্য সংযোজন কর পরিশোধের জন্য কারণ দর্শানো নোটিশ জারি করিবেন।

তবে শর্ত থাকে যে, যদি কোন ব্যক্তি ধারা ৩৭ এর উপ-ধারা (২) এর দফা (ক), (গ), (চ), (জ), (ঝ), (ট) ও (ঠ) এর অধীন অপরাধ সংঘটন করেন, তাহা হইলে মূল্য সংযোজন কর কর্মকর্তা বা ক্ষেত্রমত সংশ্লিষ্ট ব্যক্তির ক্ষেত্রে এই উপ-ধারায় উল্লিখিত (পাঁচ) বৎসর সময়সীমা প্রযোজ্য হইবে না।”

From a bare reading of the quoted provision of section 55 of the VAT Act, it appears that the concerned VAT official upon issuing a demand-cum-show cause notice can claim from the concerned person

(VAT payer) to make payment the unpaid or evaded VAT within the period of 5(five) years from the date on which the VAT was at first actually payable.

Meaning thereby, in general the demand can only be made in respect of the proceeding 5(five) years and not beyond that.

It is further provided that aforesaid limitation of 5(five) years shall not be applicable against the person who has committed offence under clause (ক), (গ), (চ), (জ), (ঝ), (ট) এবং (ঠ) of sub-section (2) of section 37 of the VAT Act, 1991.

Learned Deputy Attorney General in course of hearing referring to the last portion of clause ০৬(খ) of the demand-cum-show cause notices dated 28.11.2024 and 20.11.2024 contends that under the proviso to section 55(1) of the VAT Act, 1991, it is contemplated that the limitation period of 5(five) years shall not be applicable, in case where the persons have committed offence under section 37(2) of the VAT Act, and as such, the concerned VAT official, in the instant cases, has rightly issued demand-cum-show cause notice even beyond the period of 5(five) years. He also contends that since the petitioner committed offence under sub-section (2) of section 37 of the VAT Act, 1991 thus, the limitation period having been provided under section 55(1) is not applicable for them.

We have considered the submission of learned Deputy Attorney General. From the contemplation of section 55(1) of the VAT Act, 1991, it appears that a special provision having been incorporated, contemplating that the concerned VAT official can make his demand of unpaid/less paid VAT in respect of only the proceeding 5 (five) years, not beyond that.

But the provision of proviso to section 55(1), authorizes the official to make his claim, even beyond the period of 5 years, if some specific facts exists i.e. if any person has committed offence within the meaning of clause (ক), (গ), (চ), (জ), (ঝ), (ট) এবং (ঠ) of sub-section (2) of section 37 of the VAT Act, then the period of limitation of 5(five) years shall not be applicable for the VAT officials in claiming/ demanding evaded VAT.

The provision runs as follows:

“তবে শর্ত থাকে যে, যদি কোন ব্যক্তি ধারা ৩৭ এর উপ-ধারা (২) এর দশ (ক), (গ), (চ), (জ), (ঝ), (ট) ও (ঠ) এর অধীন অপরাধ সংঘটন করেন, তাহা হইলে মূল্য সংযোজন কর কর্মকর্তা বা ক্ষেত্রমত সংশ্লিষ্ট ব্যক্তির ক্ষেত্রে এই উপ-ধারায় উল্লিখিত (পাঁচ) বৎসর সময়সীমা প্রযোজ্য হইবে না।”

The contention of learned Deputy Attorney General is that if any allegation of committing offence under clause (ক), (গ), (চ), (জ), (ঝ), (ট) এবং (ঠ) of sub-section (2) of section 37 of the VAT Act, 1991 having been brought against any person, then the limitation period of 5(five) years shall not be applicable for him.

From further examination of section 55(1) of the VAT Act, 1991, it appears that the Legislature by declaration prohibits/invalidates proceedings against general VAT payers after expiry of the period of 5(five) years, from the date when the VAT was payable, meaning thereby, declaring some sort of right/privilege to the VAT payers, unless he has committed offence under section 37(2) of the VAT Act, 1991, after expiry of 5(five) years he shall not be disturbed.

The intention of the Legislature is that the unscrupulous person who is found guilty of certain offences within the meaning of 37(2) of the VAT Act, 1991 shall not be entitled to get the special benefit of section 55(1) of the VAT Act, 1991.

Meaning thereby, there shall be a vested right of the VAT payers that after expiry of 5(five) years they shall not be disturbed. The only exception is the qualifying clause for the VAT officials appended to the sub-section (1) of section 55 of the VAT Act, 1991, that is, the aforesaid vested right shall not be available for the unscrupulous person, who has committed offence within the meaning of clause (ক), (গ), (চ), (জ), (ঝ), (ট) এবং (ঠ) of sub-section (2) of section 37 of the VAT Act, 1991.

On examination of the aforesaid provision, we cannot agree with the contention of learned Deputy Attorney General, because, if the VAT officials is allowed to initiate the time barred claim/demand upon bringing mere allegation of committing offence or incorporating mere allegation in the demand-cum-show cause notice within the meaning of provision of sub-section (2) of section 37 of the VAT Act, then whole purpose of imposing limitation in section 55(1) or the intention of legislature shall be frustrated, because, the wording used by the Legislature is, ‘whoever commits offence under section 37(2) of the Act, i.e. the commission of offence has to be established beyond all reasonable doubt to deprive the VAT payer from the right declared under section 55(1) of the VAT Act, 1991.’

Thus, the notices impugning in the instant writ petitions issued beyond the period of limitation has no sanction of law, unless the committing of offence within the meaning of 37(2) of the VAT Act, 1991 having been proved/established under a valid proceeding.

The cited cases of learned Deputy Attorney General are of no assistance to improve his case.

In view of the discussions made in above, we find merit in the Rules.

Accordingly, the Rules are made absolute.

The proceeding initiated vide Nothi No. ঢাকা উত্তর/নিঃতঃ/ইসমাইল আঞ্জুমান আরা ফেব্রিক্স/৩(৯)/১৫০/২০২২/ ১৯৪৪ dated 28.11.2024 by the respondent No. 2 (Annexure- 'E') making a demand for the period from July, 2017 to June, 2019, under section 55(1) of the Value Added Tax Act, 1991 and The proceeding initiated vide Nothi No. ঢাকা উত্তর/নিঃতঃ/নাইচ ফেব্রিক্স প্রসেসিং/৩(৯)/ ১৫৩/২০২২/১৮২৭ dated 20.11.2024 by the respondent No. 2 (Annexure- 'E') making a demand for the period ranging from July, 2017 to June, 2019, under section 55(1) of the Value Added Tax Act, 1991 are hereby declared to have been initiated without any lawful authority and are of no legal effect.

No order as to cost.

**Sheikh Abu Taher, J:**

I agree.