In the Supreme Court of Bangladesh
High Court Division
(Special Statutory Jurisdiction)

Value Added Tax Appeal No. 28 of 2015

IN THE MATTER OF:
A memorandum of appeal under section 42(1)(Ga) of the VAT Act, 1991.

And
IN THE MATTER OF:

Airtel Bangladesh Limited
...Appellant
-Versus-

Customs, Excise and VAT Appellate Tribunal, Dhaka and another
...Respondents

Mr. Md. Ramzan Ali Sikder, Senior Advocate
with
Mr. Kazi Ataul-Al-Osman, Advocate
…..For the Appellant

Mr. Md. Monjur Alam, 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

Present:

Justice Sardar Md. Rashed Jahangir
And
Justice Md. Abdul Mannan

Heard on: 30.06.2025, 07.07.2025, 15.07.2025 and 06.08.2025
Judgment on: 20.08.2025

Sarder Md. Rashed Jahangir, J:

The instant appeal filed under section 42 of the Value Added Tax Act, 1991 directed against the judgment and order

dated 09.02.2025 vide Memo No. CVET/Case/VAT-146/2012 by the Customs, Excise and VAT Appellate Tribunal, Dhaka upholding and demand made purportedly under section 55(3) of the Value Added Tax Act, 1991 for an amount of Tk.31,54,26,335.00 passed by the Commissioner of Customs, Large Taxpayers Unit (LTU), Dhaka under Nathi No. 178/Mushak/12 dated 29.07.2012.

Relevant facts for disposal of the appeal are that upon auditing of the Large Taxpayers Unit (hereinafter referred as 'LTU'), Dhaka and upon holding the commercial activities of M/s. Motorola Incorporation, Unic Oval, Dhaka for the year 2007, 2008, 2009 submitted an audit report from which it transpires that M/s. Airtel Bangladesh Limited (Ex-Warrid Telecom Limited). For the relevant point of time recipient services from M/s. Motorola Incorporation for an amount of Tk.310,57,89,674.00 out of which Value Added Taxable payment was Tk.2,94,18,62,350.00. It is further alleged that the Airtel Bangladesh Limited had an obligation to deduct VAT @ 4.5% from the payment but it fail to deduct and thereby deposit the same in the Government exchequer in accordance with the provision of VAT Act and the Rules made thereunder and the amount of deductable VAT was Tk.(13,23,83,806-2,58,38,828)= Tk.10,65,44,978.00 (Ten crore sixty five lac forty four thousand

nine hundred seventy eight) and due to aforesaid failure on the part of M/s. Airtel Bangladesh Limited being the service recipient institution is responsible for making payment of the aforesaid amount under section 6(4)(Ka)(Ka) of the VAT Act, 1991 read with Rule 18(Ka) of the VAT Rules, 1991 and SRO No. 169/Ain/2004/415-Mushak dated 10.06.2024 and SRO No. 113/Ain/2009/52-Mushak dated 11.06.2009 and accordingly a show cause notice was issued upon the appellant-company demanding the aforesaid unpaid/less realized VAT asking him to show cause on 20.11.2011 within 7(seven) days in writing. The appellant-company on 16.02.2012 submitted a written reply to the said show cause notice and thereafter upon hearing the representative of the appellant and on perusal of the written reply the Commissioner of Customs, Excise and VAT, Large Taxpayer Unit, Dhaka by the order No. 178/Mushak/12 dated 29.07.2012 made a final demand purportedly under section 55(3) of the VAT Act, 1991 demanding in total Tk.31,54,26,335.00.

Having been aggrieved the appellant filed an appeal before the Customs, Excise and VAT Appellate Tribunal, Dhaka being CEVT/Case/VAT-146/2012. The Tribunal after hearing both the parties by its judgment and order dated 09.02.2015 upholding the demand finalized by the Commissioner, Large Taxpayer Unit, Dhaka.

Mr. Ramzan Ali Shikder, learned Senior Advocate appearing with Mr. Kazi Ataul-Al-Osman, learned Advocate for the appellant submits that the impugned period inspection of which the alleged demand is made years, 2007, 2008 and 2009 but the provision of VAT is to be paid by the service recipient when the service is rendered outside the territorial area of Bangladesh. Having been introduced in the VAT Act under the Finance Act, 2010 and since the legislature has not given the aforesaid enactment any retrospective effect and as such, the said provision is not appealable in respect of the service recipient from the year, 2007, 2008 and 2009 and as such, the demand having been made against the present appellant cannot be sustainable in the eye of law.

He next submits that the responsibility of paying VAT having been stipulated under section 55(3) of the VAT Act, 1991 and section 6(4) (Ka)(Ka) of the VAT, 1991 having over riding effect upon section 3(3) the VAT Act, 1991 and as such the VAT authority cannot claim the said VAT as liable to the appellant company. He next submits that the respondent No. 2 erroneous and upon misconception of law provision of 6(4)(Ka)(Ka) of the VAT Act, 1991 upon the appellant in tandem with (i) SRO No. 169/2004 dated 10.06.2024, (ii) SRO No. 113/2004 dated 11.06.2009, (iii) SRO No. 170/2000 dated 08.06.2000 and (iv)

175/2011 dated 09.06.2011 imposing responsibility upon the appellant being recipient of the service to deduct VAT at source @ 4.5% for the service rendered by Motorola Incorporation of USA.

He next submits that the service rendered by the Motorola Incorporation cannot be treated as "নির্মান সংস্থা" under the service Code No. S004.00 rather such service provider shall be treated as "টেলিফোন, টেলিপ্রিন্টার, টেলেক্স, ফ্যাক্স বা ইন্টারনেট সংস্থা ও সিমকার্ড সরবরাহকারী". Having service Code S012.10 and as such, the withholding Value Added Tax or VAT deductable at source is not applicable in the aforesaid case and as such, the impugned demand cannot be sustainable in any manner.

He further submits that it is settled principle of law that none of the provision 37 of the VAT Act, 1991 cannot be resorted/applying any final demand is mad in pursuant to section 55(3) of the VAT Act, 1991 but from a bare reading of the second part of the show cause notice dated 20.11.2011 issued by the respondent No. 2 imposing and interest @ 2% purportedly under section 37(3) of the VAT Act, 1991. Meaning thereby the said interest having been imposed upon the appellant before finalized the alleged impugned demand under section 55(3) of the VAT Act, 1991. Thus, the show cause notice dated 20.11.2011 cannot

be tenable under the settle principle of law. Upon which the impugned demand has been finalized.

He finally submits that in the facts and circumstances, the impugned demand cannot be sustainable in the eye of law.

Learned Advocate for the petitioner referred several judgment| that 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, in the case of RAK Ceramics (Bangladesh) Private Limited Vs. Bangladesh, represented by Secretary, Ministry of Internal Resources Division and others reported in 59 DLR 274, in the case of Mr Baker Cake and Pastry Shop and others Vs. Commissioner, Customs, Excise and VAT and others reported in 66 DLR 359, and in the case of Gopal Biri Factory Limited Vs. Commissioner of Customs, Excise and VAT, Khulna and others reported in 69 DLR 398.

On the other hand, learned Deputy Attorney General appearing for the respondent No. 2 made his submission supporting the final demand made in pursuant to section 55(3) of the VAT Act, 1991. In course of argument, learned Deputy Attorney General took us through the SRO No. 169-Ain/2004/415-Mushak dated 10.06.2004, SRO No. 113-Ain/2009/521-Mushak dated 11.06.2009, SRO No. 193-Ain/2008…… SRO No. 170-Ain/2000/269-Mushak dated

08.06.2000 and SRO No. 175-Ain/2011/598-Mushak dated 09.06.2011 together with the provision of sections 3 and 6 of the VAT Act, 1991, in particular section 3(5) and 6(4)(Ka)(Ka) of the VAT Act, 1991 and submits that under section 3(5) of the VAT Act, 1991 the National Board of Revenue (NBR) for the public interest by notification in the official gazette may fixed and explained the scope an application of taxable service and on the strength of aforesaid provision the National Board of Revenue under the SRO No. 170 of 2000 dated 08.06.2000 and SRO 175 of 2011 dated 09.06.2011 specified the scope of application and relevant explanation of taxable service. He continues to submit that under service Code No. S000.00 under the heading "নির্মান সংস্থা" it is stipulated "নির্মান সংস্থা" means any such institutions, organize or person which or whom on the commercial basis engaged in establishing infrastructure and maintenance thereof and admittedly the Motorola Incorporation under a turnkey agreement having been engaged to establish and implementation of GSM network system on turn-key basis in the territory and all allied and supporting system within the territory of Bangladesh and as such, the service rendered by the service provider of the appellant-company shall very much come within the scope of ambit of "নির্মান সংস্থা" have a service Code No. S004.00. He next submits that under section 6(4)(Ka)(Ka) of the VAT Act. It is

stipulated that notwithstanding contend in any other provision of section by the National Board of Revenue the notification in the official gazette the responsibility of paying VAT which impose VAT any service recipient also that as the case may be at the time of making payment of service cost or commission the service recipient shall deduct VAT at the time of making payment and deposit at in the prescribed manner in the tribunal and under SRO No. 169 of 2004 and SRO No. 113 of 2009 it is contemplated that the service recipient shall deduct and collect VAT at the time of making payment to the service provider "নির্মান সংস্থা" under service Code No. S004.00. He continues to submit that under the aforesaid SROs being empowered under section 3(5) and section 6(4)(Ka)(Ka) the appellant-company being service recipient was responsible for the relevant point of time to deduct tax at the time of making payment of service provider.

He lastly submits that the respondent No. 2 after issuing show cause notice and providing opportunity to submit written reply and herein made the demand final resorting the provision of section 3(5), 6(4)(Ka)(Ka), 6(4)(Chha) of the VAT Act, 1991 read with SRO No. 169-Ain/2004/415-Mushak dated 10.06.2004, SRO No. 113-Ain/2009/521-Mushak dated 11.06.2009, 193-Ain/2008…… SRO No. 170-Ain/2000/269-Mushak dated 08.06.2000 and SRO No. 175-Ain-2011/598-Mushak dated

09.06.2011…. made the demand final under section 55(3) within the ambit of VAT and the Tribunal considering the provision of law justly and rightly upheld the impugned demand and as such, the appeal is liable to be dismissed.

Heard learned Advocate for the appellant and learned Deputy Attorney General for the respondent and perused the appeal.

It is contended by the appellant that at the relevant point of time i.e. for the year, 2007, 2008 and 2009 the provision of section 3(3)(Gha) was not available before the Finance Act, 2010 was come in to force stipulating that the VAT is to payable by the service recipient in case of receiving service rendered from the outside of the territory of Bangladesh. It is further contended that admittedly Motorola Incorporation incorporated in USA rendered service out of the territory of Bangladesh and thus in absence of an such provision, the VAT authority cannot claim the demanded VAT from the service recipient, appellant Airtel Bangladesh Limited.

Upon examination of the contention of appellant it appears that although under section 3(3)(Gha) of the VAT Act, 1991 (as the VAT Act was before Finance Act, 2010). The VAT is to be paid by the service provider usually under the contract between Motorola Incorporation and Airtel Bangladesh Limited the

responsibility of paying VAT is upon the service provider i.e. Motorola Incorporation. But at the same time, under section 6 of the VAT Act under the heading "পরিশোধের সময় ও পদ্ধতি" is stipulated the manner and time of making payment of the Value Added Tax providing detail processing thereof.

Under sub-section (4)(Ka)(Ka) of section 6 it is further stipulated that whatever the manner of time having been stipulated in the provision of section 6 is provided that the Government may by notification in the official gazette specifying that in case of specified services rendered by the service provider the service recipient as the case may be at the time of making payment shall deduct VAT payable by the service provider at the prescribed manner and date and thereby deposit the same in the Government treasury. Meaning thereby although the VAT is payable by the service provider under section 3(3)(Ga) of the VAT Act, 1991 but such payable VAT can be collected and deducted in the manner prescribed by the Government by publishing in the official gazette under the authority sub-section (4)(Ka)(Ka) of section 6 of the VAT Act, 1991 by the service recipient.

Although it is further intended by the appellant that since there is no overriding effect of section 6(4)(Ka)(Ka) over the section 3(3) of the VAT Act, 1991. Thus, the VAT authority

cannot take resort of the provision of section 6(4)(Ka)(Ka) ignoring the provision of section 3(3) of the VAT Act, 1991.

On careful examination, we do not find any conflict between section 3(3) and section 6(4)(Ka)(Ka) of the VAT Act, rather in sub-section (4)(Ka)(Ka) it is stipulated that the VAT payable by the service provider can be collected or deducted by the service recipient in the prescribed manner and procedure at the time of making payment against the service rendered i.e. the service recipient is thunder obligate to collect VAT payable by the service provider at the time of making payment. Meaning thereby, the VAT is not payable by the service recipient but merely deductable by the service recipient at the time of making payment of the VAT payable by the service provider. Thus, we find no conflict between both the provisions of the VAT Act.

It is further contended by the appellant that provided by the service provider "টেলিফোন, টেলিপ্রিন্টার, টেলেক্স, ফ্যাক্স বা ইন্টারনেট সংস্থা ও সিমকার্ড সরবরাহকারী" under the service Code S012.10 not as "নির্মান সংস্থা" under the service Code S004.00.

For better understanding, let us examine the SRO No. 170 of 2000 dated 08.06.2000 under service Code S012.10 or S012.00 under the heading "টেলিফোন, টেলিপ্রিন্টার, টেলেক্স, ফ্যাক্স বা ইন্টারনেট সংস্থা ও সিমকার্ড সরবরাহকারী" under the said SRO providing explanation its further stipulated that: "টেলিফোন, টেলিপ্রিন্টার, টেলেক্স, ফ্যাক্স বা ইন্টারনেট

সংস্থা ও সিমকার্ড সরবরাহকারী- অর্থ- টেলিফোন, টেলিপ্রিন্টার, টেলেক্স, ফ্যাক্স বা ইন্টারনেট-এর মাধ্যমে বাণিজ্যিক ভিত্তিতে যোগাযোগ স্থাপন, তথ্য বা উপাত্ত আদান-প্রদানের ব্যবস্থাকারী কোনো ব্যক্তি, প্রতিষ্ঠান বা সংস্থা।"

From a bare reading for the aforesaid examination it appears that under service Code No. S012.00 or S012.10, it is provided that "টেলিফোন, টেলিপ্রিন্টার, টেলেক্স, ফ্যাক্স বা ইন্টারনেট সংস্থা ও সিমকার্ড সরবরাহকারী" means the institution, person or organization arranging in commercial basis. The communication or information or date "টেলিফোন, টেলিপ্রিন্টার, টেলেক্স, ফ্যাক্স বা ইন্টারনেট সংস্থা ও সিমকার্ড সরবরাহকারী" in the case before us the appellant Airtel Bangladesh Limited can be treated as such institution or organization but indeed the service is not provided by Airtel Bangladesh Limited or the rendered service is all together different or the service provided by the appellant and in the case in hand, the service provided to the appellant-company by the service provider is to establish infrastructure of communication system and it is complete maintenance which shall come within ambit of explanation one under service Code No. S004.00, rendering by the Motorola Incorporation, thus, the service of Motorola Incorporation (service provider) shall definitely follow under heading "নির্মান সংস্থা" and meaning thereby shall come within the ambit of SRO Nos. 169/2004, 193/2008 and 113/2009 under

which the service recipient is responsible or collect and deduct of VAT at source at the time of making payment.

It is also contended by the appellant that in the second part of the show cause notice issued under section 55(1) of the VAT Act, 1991 the respondent No. 2 demanding and imposed interest @ 2% purportedly under section 37(3) of the VAT Act, 1991. It also contended that the principle has been settled of the provision 37 cannot be applied/resorted until any final demand can be made under section 55(3) of the VAT Act, 1991 referring several judgment of this Court (which has been referred in above). On examination of the final demand made under Order No. 178/Mushak/12 dated 29.07.2012 wherein under the heading অপরিশোধিত করাদি নিম্নরুপ:

> "It is found that the need unpaid/less paid VAT was for an amount of Tk.17,14,27,356/- (in total paid amount at Bangladeshi Tk.438,36,92,980.59 and deductable VAT @ 4.5% shall be Tk.19,72,66,184/-. Out of which through took treasury chalan that has been deposited for an amount of Tk.2,58,38,828.00)."

It is further found that the appellant-company was liable to pay the VAT on or before October, 2008 and since then upto April, 2012.

During 42 months the payable/deductable was not deposited and as such, under section 6(4)(Chha) of the VAT Act, 1991 the monthly interest shall be imposed @ 2% i.e. in total Tk.14,39,98,979/-.

Meaning thereby under the final demand order the interest has been imposed invoking the provision of section 6(4)(Chha) of the VAT Act, 1991 not under section 37 of the VAT Act, 1991. Thus, the aforesaid referred judgment has no relevancy in any manner of the instance case and from bare reading of section 6(4)(Chha), we do not find any illegal of making demand of interest including the principle demand.

In the premise above, we do not find any substance in the appeal or in the contention of the appellant.

Accordingly, the appeal is dismissed without any order as to cost.

The order of stay granted earlier by this Court is hereby recalled and vacated and the respondent officials is at liberty to take recourse for the realization for the unpaid VAT in accordance with law.

Md. Abdul Mannan, J.

I agree.

Obaidul Hasan/B.O.