

**10 SCOB [2018] HCD****High Court Division  
(Special Original Jurisdiction)**

Writ Petition No.16300 of 2012

**Eastern Diplomatic Services**  
... PetitionerMr. A.F. Hassain Arif, Advocate with  
Mr. Md. Ramjan Ali Sikder  
...For the Petitioner**Vs.****Anti Corruption Commission and  
another**  
... RespondentsMr. Md. Khurshid Alam Khan, Advocate  
... For the Respondent No.2 (ACC)Date of hearing: 02.08.2017, 25.10.2017,  
26.10.2017, 01.11.2017, 09.11.2017

Date of Judgment: 22.11.2017

**Present:****Mr. Justice M. Enayetur Rahim  
And  
Mr. Justice Shahidul Karim****Section 17 and 19 of the Anti Corruption Commission Act, 2004:****At the stage of inquiry, which is nothing but a fact finding process, there is no scope to arrive at a definite conclusion that the alleged allegation/offence will not fall within the preview of relevant Money Laundering Protirodh Ain, which is in the schedule of the Act of 2004. ... (Para 33)****Moreover, to prevent corruption the commission has got wide and unfettered power. Section 17 (U) of the Act of 2004 contemplated that Commission has the power to do any such act to prevent corruption. The said provision is as under. ... (Para 34)****Judgement****M. Enayetur Rahim, J:**

1. On an application 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 orders (hereinafter referred to as the impugned notices) bearing Memo No.(i) 32225 and (ii) 32337 both dated 29.11.2012 (Annexure-A and A1) issued by the respondent No.2 directing the petitioner to produce certain documents for the purpose of inquiry of allegation of evasion of customs duties and taxes should not be declared to have been passed 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.

2. Short facts for disposal of the Rule are as follows:

The petitioner is the holder of a licence being Licence No.125/Cus/SBW/84 dated 02.08.1984 issued by the Collector of Customs, Excise and Vat under section 13 of

the Customs Act, 1969 to carry out the business of selling goods to diplomats and privileged persons in Bangladesh as Special Bonded Warehouse. The licence is valid till date. The petitioner has been duly paying the applicable duties and taxes to the regulator i.e. the customs authority. However, all of a sudden the petitioner was surprised to receive the impugned notices, Annexures-A and A1 directing him to produce certain documents for the purpose of inquiry of allegation of evasion of customs duties and taxes.

3. It is further stated that the regulators of the petitioner i.e. the office of the Customs Bond Commissionerate, Dhaka and also the Directorate of Narcotic Control, Dhaka, conducted investigation separately and secretly and filed two separate reports, Annexure-I and II confirming, inter alia, that the petitioner did not sale any of its imported goods including the Alcohol and Beer in the open market as alleged.

4. An NGO namely, Save the Rural Development Association (SARDA) based on a newspaper report moved a writ petition being No.10829 of 2014 before the High Court Division wherein a Rule was issued and an order of injunction was passed restraining the petitioner from selling duty free alcohol and beer in open market for a period of three months.

5. Eventually, a Division Bench of the High Court Division, upon taking hearing, discharged the Rule vide judgment dated 15.04.2015 and vacated the aforesaid order of injunction.

6. All warehoused goods are subject to the strict control and supervision of the bond officer and as such, there is no scope for the petitioner to bring into the bonded warehouse or take out therefrom any goods without the presence and prior authorization of the Bond Officer posted by the Customs Bond Commissionerate. The petitioner duly observes the above procedures and only sells the goods to the diplomatic mission/persons or privileged persons under strict control and supervision of the bond officer posted by the Customs Bond Commissionerate.

7. In a similar situation, where the Comptroller And Auditor General (CAG) directed certain business organizations and persons to furnish documents, the High Court Division declared the said demand of the CAG to supply the documents illegal. The National Board of Revenue, against the said Judgment of the High Court Division preferred appeals being Civil Petition for leave to appeal Nos. 3397-3422 of 2015 and Civil Petition for Leave to Appeal No.708 of 2016 before the Appellate Division. The Appellate Division, after hearing the parties, observed that the assesses are not under obligation to furnish or submit documents directly to the Comptroller and Auditor General. The documents may be furnished through the Board of Revenue. The CAG cannot ask any business organization or person to submit documents for the purpose of accounting for ascertaining as to whether they paid VAT in accordance with law.

8. The respondent No.2, Anti Corruption Commission (hereinafter referred to as the Commission) contested the Rule by filing affidavit in opposition.

9. The respondent No.2 in its affidavit denied the material statements made in the writ petition as well as in supplementary affidavit and further contended that the allegation against the petitioner is that he evaded customs duties and taxes which is found through inquiry and the respondent No.2 rightly directed the petitioner to submit certain documents for proper

inquiry but the petitioner did not submit the same. It is found in the inquiry that the petitioner did not pay the applicable duties and taxes regularly to the Customs authority. The Commission is an independent Institution constituted by the Anti Corruption Commission Act of 2004 (hereinafter referred as to Act of 2004). Hence, the respondent No.2 rightly and lawfully directed the petitioner to produce certain documents for the purpose of inquiry of allegation of evasion of customs duties and taxes under the Anti Corruption Commission Act,2004.

10. The offence committed by the petitioner is under the schedule of the Act of 2004 and the Commission or authorized person by the Commission may investigate or inquire any person who commits the offences in any institution under the Act of 2004 and hence the inquiring officer was accorded sanction from the Commission to inquire into the offence of 'revenue evasion' and as such writ petition is not maintainable in its present form.

11. It is further contended that the term money laundering has been defined in section 2(d) of the Money Laundering Protirodh Ain, 2012. In view of the definition mentioned in section 2 of the Money Laundering Protirodh Ain, 2012 it is clearly found that the allegations of 'evasion of customs duty' mentioned in the notice dated 29.11.2012 is an offence under the Ain of 2012 and as such the Commission has got the authority to make any inquiry on the issue.

12. Section 19 of the Act of 2004 deals with the special powers of commission in inquiry or investigation. The Commission shall have the powers in matters of inquiry or investigation against any corruption and as such there is no illegality in issuing the impugned notices and thus, the Rule is liable to be discharged.

13. Mr. Hasan Arif, learned Advocate appearing for the petitioner with Mr. Ramjan Ali Shikder in support of the Rule has submitted as under:

- i. the respondents are not authorized under the Act of 2004 to inquire/investigate into any allegations of offence under Customs Act,1969 in particular 'evasion of tax' since offence under Customs Act,1969 is not a Schedule offence under the Act of 2004;
- ii. the office of the Customs Bond Commissionerate, Dhaka and also the Directorate of Narcotic Control, Dhaka, conducted investigation separately and secretly and filed two separate reports confirming, inter alia, that the present petitioner did not sale any of its imported goods including the Alcohol and Beer in the open market as alleged;
- iii. an NGO, Save the Rural Development Association (SARDA) based on a newspaper report moved writ petition No.10829 of 2014 before the High Court Division seeking direction to refrain the present petitioner from selling duty free alcohol and beer in open market for a period of three months and after hearing the Rule was disposed of.
- iv. the allegation as mentioned in the impugned notices do not come with the mischief of Money Laundering Ain and as such the Commission has got no authority to inquiry into the allegation as mentioned in the notices.

14. Mr. Khurshid Alam Khan, learned Advocate for the respondent No.2, rebutting the submissions of the learned Advocate for the petition submits that as per the law i.e Act of 2004 the Commission has got every authority to make inquiry or investigation, as the case may be, relating to any corruption and as such the Commission having legal authority issued



assist the Commission either to proceed further by lodging an FIR or to keep it with the record, if found no basis to the allegation. As such, the word “inquiry” as used in section 2(4) of the Act of 1981 (Bankers Book Evidence Act) has no manner of application for enquiry by the Commission since at the stage of enquiry by the Commission question of giving evidence does not arise at all . . . . .  
“Over and above, the provisions of Act of 2004 being special in nature shall prevail over other laws notwithstanding the fact that the provisions of other laws were not excluded by any non-obstante clause.” [Underlines supplied]

20. We have gone through the judgment passed in writ petition No.10829 of 2014 which was filed by a NGO in the capacity of public interest litigation. In the said writ petition Rule Nisi was issued on the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why they should not be directed to take appropriate legal steps against the respondent No.6 from selling duty free beverage including alcohol and beer to others violating the terms of Bonded Warehouse License as reported in the national daily newspaper namely Jugantor dated 28.05.2013 (Annexure-D) and/or pass such other or further order or orders passed as to this Court may seem fit and proper”

21. In the said petition the writ petitioner relying on a newspaper report sought a direction upon the respondents to take steps against the present writ petition for selling duty free beverage, including alcohol and beer in violation of the Bonded Warehouse licence.

22. The above writ petition was disposed of with the following observation:  
“The learned Counsel for the petition sought our intervention for direction to investigate into this serious issue. We note that two separate authorities have conducted investigation and took the view that the report published against the respondent No.6 was not correct. Since specific investigation was carried out and the allegation raised in the report dated 28.05.2013 were investigated into, we think that the writ has become infructuous and further interference is not necessary.”

23. Mr. Arif after referring to various provisions of the Money Laundering Protirodh Ain, 2003 (hereinafter referred to as the Ain of 2003), Money Laundering Protirodh Ain, 2009 (hereinafter referred to as the Ain of 2009) and Money Laundering Potirodh Ain, 2012 (hereinafter referred to as the Ain of 2012) has tried to convince us that in the Ain of 2003 and the Ain of 2009 ‘evasion of tax’ was not included as ‘predicate offence’ and this offence was included only in the Ain of 2012 as one of the predicate offences and that in the impugned notices the allegation as sought to be inquired was alleged to have been committed before the promulgation of the Ain of 2012 and as such the Commission has no authority under the Act of 2004 to continue with the inquiry.

24. It reveals from the impugned notices that the subject matter of inquiry i.e the allegations as sought to be inquired was alleged to have been committed in between 2007 and 2012.

25. In section 2( ) of the Ain of 2009 the following offences have been included as ‘predicate offence’ amongst other offences:

- (/ ) ~~b~~ i 0!
- (1) i 2 l b b i 4 a #!
- (/5) i K i i 6 s 6 7xl w i 7xgy38 \$ i!

26. And in section 2(7) of the Ain of 2012 the following offences have been included as 'predicate offence' amongst other offences:

- (/ ) `b0Z l +0!
  - (/9) †`7xl w†`7xgÿ38 \$ i!
  - (/: ) \$ i\$ bxl ; < #s= >? 8 i a!
  - (/1) Ki #s= >? 8 i a!
- [Underlines supplied]

27. If we consider the subject matter of the inquiry against the petitioner coupled with the above 'predicate offence' as mentioned in the Ain of 2009 and the Ain of 2012, then we are convinced that *prima facie* smell of 'predicate offence' like `00ZA 4 a # A6 7xl w†`7xgÿ3 8 \$ i 0 sKi #s= >B 8 i a are available in the impugned notices, which falls either under the Ain of 2009 or the Ain of 2012.

28. In the Ain of 2003 the 'predicate offence' was not included but the definition of money laundering as defined in section 2(V) was very wide, which runs as follows:

- (C) 0g vb E wisF . 0
- ( ) 4 a 8>H 8Z - 8†i - † rwiZ wK0 #LM !
- ( ) Na 4 a 8>H 8Z - 8†i - † rwiZ wK0 #LM` i 4 a r0?>?A iB >?A 0#bi 6\* 8bKib ' ( K†K #nIZ Ki %

[underlines supplied]

29. In view of the above, we are unable to accept the submission of Mr. Arif that in the impugned notices there is no reflection of any allegation which could have come within the preview of the Ain of 2003, the Ain of 2009 and the Ain of 2012.

30. Having regard to the fact that in the above cited writ petition the Commission was not made a party, it is our considered view that the findings made in the judgment has got no binding effect on the Commission and the Commission is not debarred from making its lawful inquiry against the petitioner on the basis of the power and jurisdiction conferred on it by section 17 and 19 of the Act of 2004.

31. Two departmental reports, Annexure-I and II are also subject to scrutiny with other materials by the Commission and as such the Commission is not bound to stop the inquiry, relying on those reports only.

32. Moreover, upon a plain reading of the said reports we do not find any nexus between the reports, Annexure-I and II and the subject matter of inquiry in question.

33. At the stage of an inquiry, which is nothing but a fact finding process, there is no scope to arrive at a definite conclusion that the alleged allegation/ offence will not fall within the preview of relevant Money Laundering Protirodh Ain, which is in the schedule of the Act of 2004.

34. Moreover, to prevent corruption the Commission has got wide and unfettered power. Section 17(U) of the Act of 2004 contemplated that Commission has the power to do any such act to prevent corruption. The said provision is as under:

- DQ (, ) `b0Z 8w††i†ai Kb 8†i Kb† w† \$Z b 0 (K b K) 0#LM` b Ki %F

35. In the light of the above provisions of law if we consider the submissions made by Mr. Arif, then we have no other option but to hold that the Rule deserves no consideration.

36. Having considered and discussed as above, we find no merit in the Rule.

37. Accordingly, the Rule is discharged.

38. However, there is no order as to cost.

39. The order of stay passed at the time of issuance of the Rule which was extended time to time is hereby re-called and vacated. The Commission is at liberty to proceed with the matter in accordance with law.