

3 SCOB [2015] HCD 137**HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

WRIT PETITION NO.28 of 2015

Md. Sarowar Alamgir

..... Petitioner

-Versus-

**Government of the People's Republic of
Bangladesh and others**

..... Respondents

Md. Bahadur Shah, Advocate

.... For the petitioner

Mr. S.M. Moniruzzaman, D.A.G with

Mrs. Shuchira Hossain, and

Mr. S.M. Quamrul Hasan, A.A.Gs.

....For the Respondents.

Heard and Judgment on 23.02.2015.

Present:**Mr. Justice Md. Ashfaqu Islam****And****Madam Justice Kashefa Hussain****Value Added Tax Act, 1991****Section 55 and 56:**

Section 56 cannot be construed or interpreted in an isolated manner. Section 55 and 56 must be read together and from a perusal of the same, it is evident that Section 56 is mandatorily preceded by Section 55 of the VAT Act, 1991 which prescribes the issuance of a Show- Cause Notice followed by other procedures and which is exhaustively laid out in the whole Section. The prescription said out in Section 55(1) (2)(3) are mandatory and no action or initiative can be taken or resorted to for realization of any unpaid, less paid or otherwise evaded etc amount, whatsoever under the provisions of Section 56 of the VAT Act, 1991, unless and until firstly the procedure laid out in Section 55 of the VAT Act has been exhausted by the authorities concerned. The principle of law is that Section 56 automatically presupposes a notice under section 55(1) of the Act, followed by the procedure laid out in Sub-section 2 & 3 of the said section 55 and which the respondents cannot avoid under any circumstances. ... (Para 16)

Judgment**Kashefa Hussain, J:**

1. Rule Nisi was issued in the instant Writ Petition calling upon the respondents to show cause as to why the order dated 12.11.2014 passed by the office of the respondent no.3 under Nathi No. 5(13) *KveK/PÆ:/eÛ(mv:)/j vB:/04/2012/11312(35)* withholding the petitioner's Bin Number by way of Bin Lock (VAT) Lock (Annexure-C) should not be declared to have been made without lawful authority and is of no legal effect.

2. The petitioner is a businessman engaged inter-alia in the business of import and that the respondent no. 1. is the Secretary, Ministry of Finance, Internal Resource Division,

respondent No. 2 is the Chairman, National Board of Revenue and Respondent no.3 is the Commissioner of Custom Bond Commissionerate.

3. The fact of the case inter-alia is that the petitioner in course of his business had applied to the authorities for a Bond License and which was issued in his favour on 01.03.2012 being license No. 5(13) KveK/PÆ:/eÛ(mv:)/j vB:/04/2012/11312(35) which is marked as Annexure-A in the Writ Petition. In course of his business the petitioner also obtained VAT Certificate from the concerned Authorities and after completion of all formalities he opened L/C being No.120814041356 dated 27.10.2014 for import of Accessories for 100% Export Oriented Readymade Garments. All of a sudden, the Commissioner Bond issued a letter under Nathi No. 5(13) KveK/PÆ:/eÛ(mv:)/j vB:/04/2012 dated 12.11.2014 withholding the petitioner's BIN (Business Identification Number) without issuing any show cause notice and without any prior demand by the Respondent.

4. Precisely, in the Rule direction has been sought against the respondents challenging the order dated 12.11.2014 passed by the office of the respondent no.3 withholding the petitioner's BIN by way of BIN Lock (VAT) Lock (Annexure-C)

5. For proper analysis let us first reproduce the impugned order Annexure -'C' of the Writ Petition which is quoted below:-

MbcRvZšy evsj vt`k mi Kvi
Kv÷gm, eÛ KugkbvtiU
42, Gg,Gg, Avj x ti wW, j vj Lvb evRvi, PÆMtg|

bw_ bs-5(13) KveK/PÆ:/eÛ(mv:)/j vB:/04/2012/11312(35) Zwi Lt12.11.2014
tçK t Kugkbvi
Kv÷gm eÛ KugkbvtiU,
PÆMtg|

cçK t Kugkbvi
Kv÷g nvdM, XvKv/PÆMtg/tebvtcvj /gsj v/AvBimW/cvbMub |
`wó AvKI P t imt÷g Gbvij ó/tçMvgvi /mnKvix tçMtgvi /Acçi kb g`vtbRvi, Kv÷g
nvdM, XvKv/PÆMtg/tebvtcvj /gsj v/AvBimW/cvbMub |

wel qt cçZòvtbi BIN Lock KiY|

DchP welçqi cçZ Avcbvi m`q `wó AvKI PceR Rvbtv hv`Q th, ubçñ QçK evYZ eçÛW cçZòvbWU
কার্যক্রম অতি ঝুঁকিপূর্ণ হওয়ায় সরকারী রাজস্বের স্বার্থে ও প্রতিষ্ঠানের নামে আমদানি রোধকল্পে সাময়িকভাবে প্রতিষ্ঠানটির Bin
Lock ivLvi Rb` Abçiva Kiv nçjv|

| | | |
|-------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------|-------------------------------------------------------------|
| cçZòvtbi big I wKvbr | gmK ubeÛb bs I Zwi L | eÛ j vBçmçm bs I Zwi L |
| tçmim` tgStqb GÛviciBR, `wfb cinvoZj x,çtZqev` tijlçq Rskçbi cçWg cçkç, bw` invU, niUnvRvix, PÆMtg | cçeP 2121067235 Zis-19/01/12 eZçvb 24221026322 Zwi L-28/11/2012 | 5(13) KveK/PÆ:/eÛ(mv:)/j vB:/04/2012 Zwi L-01/03/2012 |

(Avçj gvbub wKçvi)
Kugkbvi

6. Mr. Bahadur Shah, Learned Advocate appeared on behalf of the petitioner while Learned Deputy Attorney General Mr. Moniruzzaman appeared on behalf of the respondents.

7. Affidavit in opposition has been filed on behalf of the respondents to oppose the rule.

8. Mr. Bahadur Shah, Learned Advocate opens his submissions contending that no prior notice in the form of show cause or whatsoever was ever issued by the respondents before issuance of the Impugned Notice relating to the sudden BIN locking. He submits that the petitioner was not given any opportunity of being heard before going for such a serious action. He drew our attention to the Impugned Notice i.e. Annexure-C of the Writ Petition. He particularly drew our attention to the fact that while the said Impugned Order being Notice dated 12.11.2014 passed by the Respondent No.3 informing him that his BIN has been locked, no Show Cause notice was ever issued prior to such Notice. He also draws our attention to the fact that if at all any prior notice was ever issued in the context, the number including the details of the notices **are** registered under would be mentioned in the upper part of the Order. The Learned Advocate assails that from the Impugned Order itself it is quite apparent that no show cause notice was served upon him and nowhere in the Impugned Notice is there any reference to any prior notice. He concludes that ,therefore, withholding and locking his BIN without issuing any show cause or any other demand is in utter disregard and in violation of the principles of Natural Justice guaranteed under Article 102 of the constitution and is also violative of the statutory provisions of section 55of the VAT Act, 1991.

9. Mr. Moniruzzaman, the Learned DAG on the other hand opposes the Rule by filing an Affidavit-in-Opposition on behalf of the respondent no.3. He submits that the petitioner obtained Bond facilities for manufacturing garments accessories to supply the same to 100% export-oriented Industries, but after releasing some of the consignments under bond facilities the petitioner without in-bonding those goods in violation of provisions of law sold the same in the local market .The Customs authority found shortage of 4030 bags of raw materials from the petitioner's warehouse .The learned DAG assails that Tax Evasion Case No. 12 of 2014 dated 15.07.2014 was filed by the Customs Authority against the petitioner and issued demand cum show-cause notice upon the petitioner on 30.09.2014 requesting to pay government revenue to the tune of Tk. 40,59,096.00 immediately. The learned DAG in support of his assertion attracts our attention to the photocopies of the said Tax Evasion Case, Statement of factory in-charge and demand notices which are marked as Annexures 1,2 and 3 in the affidavit in opposition.

10. We have heard the learned Advocates from both sides, examined the documents and the other materials on record. Upon scrutiny of the documents placed by the Learned DAG in support of his submissions, we are constrained to hold that the learned DAG's submissions are not tenable and acceptable in the instant case, given that, as is apparent from the records placed before us we have not found anything that might even indicate or imply that any of the 3 (three) notices and documents relate to the consignment concerned in the present Writ Petition , against which consignment non- payment of dues to the authority have given rise to the Impugned Order Locking the Petitioner's BIN. Though the Learned DAG has tried to impress upon us all the documents he has shown, particularly the Notice dated 30.09.2014 i.e. Annexure-1 of the Affidavit-In-Opposition and tried to persuade that the documents have a direct bearing with the impugned BIN locking notice issued upon the petitioner dated 12.11.2014, but in the light of the fact and circumstances, considering, that we have not found

any such indication or implication from the records before us that the Annexures he has drawn our attention to, are in any manner connected to the consignment related to the Impugned Order, as such we are of the opinion that the Impugned Notice is not in keeping with the relevant provisions of law, namely Sections 55 & 56 of the VAT Act, 1991.

11. Mr. Bahadur Shah while making his submissions on behalf of the petitioner had taken us through the Impugned Order where he points out that there is no mention of any (ম‌য) which in English generally means “connection or link” and which “ম‌য” should normally precede before issuing any Notice of the sort impugned in the Writ Petition. He argues that said mention of any (ম‌য) being absent in the Impugned Notice, is proof enough that no prior Show-Cause or any other Notice was ever issued to the Petitioner in this context. We are in full agreement with the submissions and the reasoning put forward by the Learned Advocate for the petitioner.

12. There is another point stated and alleged in Paragraph-4 of the Affidavit-In-Opposition and which the Learned DAG while making his submissions also tried to assail is that the petitioner had released some consignments under Bond facilities from the Chittagong Customs House but that without In-bonding the same in the office of the Respondents, the Petitioner had sold the goods in the local market.

13. Now, an allegation of this nature, if established amounts to a violation of Section 97 of the Customs Act, 1969. In pursuance of such an allegation we thoroughly scrutinized the records and which has led us to the Impugned Notice i.e. Annexure-‘C’ of the Writ Petition. We have read the notice, but contrary to the averments of the Learned DAG we have found that no allegation of this nature is mentioned anywhere in the said notice nor could the Respondents show us anything else from the records which could support their claim. Rather it is only stated in the Impugned Notice that “ন‌ম‌স‌হ‌কে ব‌র্ণিত ব‌ন্ডেড প্রতিষ্ঠানটির কার্যক্রম অতি ঝুঁকিপূর্ণ nI qvq mi KviX ivRt`f` t` t` °I cŃZŃtbi brtg Avg` mb tivaKtí mvgvqK fite cŃZŃvbiUi Bin Lock ivLvi Rb` Abtjiva Kiv ntjv`” The Respondents only mentioned in the Impugned Notice that the activities of the Petitioner is ‘SŃKcY’, the word ‘SŃKcY’ in English generally means “hazardous” or “risky”. But the Respondents have omitted to state anything about the selling of the goods in open market as alleged by them and which the Learned DAG tenaciously tried to impress upon us in the Affidavit-in-Opposition, but they have not been able to satisfy us as to what led them to the conclusion that the activities of the petitioner is hazardous or risky ‘SŃKcY’, and, therefore, such an offhand statement without explaining any reasons for their belief is unacceptable and cannot be sustained in law and we must ignore such allegations.

14. Now let us look into the relevant statutory provisions from VAT Act, 1991 and which is reproduced below :-

55| Abv`vqx I Kg cwi`tkwæZ gj`-` msthvRb Kimn Ab`wb` [i`é I Ki] Av`vq|]-(1) th`¶t` tKvtbv` ubemŲZ ev`ubéÚb`thvM` e`w³ ev`Urb`Pevi Ki Gi AvI Zvq Zvij KvfŲ ev`Zvij KvfŲi thvM` e`w³, Z`KZŔ aviv` 37 Gi Dc- aviv`(2) G eWŲ GK ev`GKwæK [Aciva msNUtbi] KviY A_ ev`fjyKZ : ev`fjy e`vL`vi KviY, mieivmKZ.cY` ev` cŃÉ tmevi Dci cŃ`q-

K. N (2)

(3) Dc-aviv` (1) Gi Aaxb` i`é I Ki cŃv`tbi Rb` thB e`w³ i` wbKU nBtZ `vex` Kiv nq` tmB e`w³ D³ Dc- avivi Aaxb` KviY `kŲbv` tbvMŲk Dvj`mLZ mgq` mxgvi` gta` vj` mLZ fite` D³ `vexi` meiat`x` AvcmÉ` DŲvcb` Kwi`tj` Zvrv`K` i`bmbi` mthvM` vb` Kwi`Z` nBte` ; AZtci` D³ e`w³ i` DŲvcZ` AvcmÉ` vetePbv` Kwi`qv` msŲkŲ gj`-` msthvRb` Ki` KgRZi`D³ AvcmÉ` `mL`tj` i` [120 (GKKZ` vek)` w`tbi] gta` ev` tKvb` AvcmÉ` `mLj` Kiv` bv` nBtj` D³ Dc-avivi` Aaxb` tbvMŲk` Rvixi` Zvvi`Li` 120 (GKKZ` vek)` w`tbi` gta`` tbvMŲk` `vex`KZ.`i`é I` Kt`i` cwi`gvY,` cŲqv`Rbte`vta,

ব্যবসায়িক কার্যক্রমে চূড়ান্ত বিবরণী, Ges D³ e³ tbnUtk `veiKZ.ev, t³gZ, c³ba³ ié I Ki c³iva
K³ ev`_mK³eb/]

56] miK³ii cvl³Av³vq]- (1) t³t³ t³iv e³ i³ i³ n³ku n³btz avh³z t³iv gj³ m³thv³Rb Kiv ev,
t³gZ, gj³ m³thv³Rb Ki I m³ú³-K i³é m³se³v Av³i³m³z t³iv A_³ú³ m³se³v GB Av³bt³bi ev t³iv m³evai Aaxb
m³ú³m³z t³iv gj³t³ K³ ev Ab³ t³iv `ij³t³ Aaxb `veiKZ. t³iv A_³cú³ `v³t³ t³t³ (m³n³K³ix K³ig³kb³ri
c³gh³vi i³bt³bt³nb Ggb t³iv gj³ m³thv³Rb Ki K³g³z³m³ev³vi i³ba³ i³z c³x³z³z)-
K)..... Q)

[(1K) t³iv e³ i³ i³ n³ku n³btz Dc-aviv (1) G e³v³z cvl³ bv m³ú³Y³z³ Av³vq³ bv n³l qv ch³ev D³ i³jc cvl³ b³ri
Av³b³ib³ i³ú³ú³ bv n³l qv ch³ m³s³k³ K³g³z³v³ e³ i³ i³ be³ú³bc³t³i K³ih³R³vi Zv `m³z i³m³z³ cvl³eb Ges m³gy³
e³ i³, m³evb e³ i³, Ab³ t³iv i³é t³-kb A_³ev i³é³axb c³Y³m³t³ i³v³z t³m³ e³ i³ i³ gv³j K³iv³axb t³iv c³Y³ i³ L³v³m
কার্যক্রম বন্ধ রাখার জন্য সংকট KZ³ t³ i³ R³ c³ú³v K³ i³ z cvl³eb/]

e³ i³ v³ : GB Dc-aviv³ ú³be³ú³bc³t³i K³ih³R³vi Zv `m³z A³ú³ K³ú³ú³vi³BRW³ m³ej Ae G³v³ú³c³m³ims i³m³t³-g gj³
m³thv³Rb Ki be³ú³b b³ij (BIN) e³ú (Lock) K³ i³ v³ i³ A³st³ n³bt³e/]

15. From a close reading of both sections 55 and 56 of the VAT Act, 1991, it is clear that section 56 of the VAT Act, 1991 only sets out different modes of realizing the dues that may be owed to the Government by any person at a given time. Those dues could be the determined or ascertained amount of VAT or supplementary duties or it could be any penalty imposed upon any person from whom those may be due or the basis of any undertaking or bond “*g³t³ K³i*” executed under this Act or any other law or by virtue of any demanded amount under any other deed or document that may be due from any person. As we already stated above, Section 56 only sets out the modes of realization of the dues from any person and such modes of realization are to be determined by Rules made in that behalf and the relevant corresponding rules to be followed when realizing dues under Section 56 of VAT Act, 1991 is Rule 43 of the VAT Rules 1991 where the rules to be followed in realizing dues is clearly set out.

16. But Section 56 cannot be construed or interpreted in an isolated manner. Section 55 and 56 must be read together and from a perusal of the same, it is evident that Section 56 is mandatorily preceded by Section 55 of the VAT Act, 1991 which prescribes the issuance of a Show- Cause Notice followed by other procedures and which is exhaustively laid out in the whole Section. The prescription said out in Section 55(1) (2)(3) are mandatory and no action or initiative can be taken or resorted to for realization of any unpaid, less paid or otherwise evaded etc amount, whatsoever under the provisions of Section 56 of the VAT Act, 1991, unless and until firstly the procedure laid out in Section 55 of the VAT Act has been exhausted by the authorities concerned. The principle of law is that Section 56 automatically presupposes a notice under section 55(1) of the Act, followed by the procedure laid out in Sub-section 2 & 3 of the said section 55 and which the respondents cannot avoid under any circumstances. The procedure in Section 55 (2) (3) must be at first complied with before proceeding to Section-56. But we regret to say that in the case before us, as is apparent from the records and the submissions made by both sides, the Respondents did not comply with the statutory provisions as set out in the VAT Act, 1991 and did not issue any notice to the petitioner prior to the Impugned Notice that is Annexure-C of the Writ Petition and have thereby transgressed the provisions of the statute in flagrant violation of the law leading to infringement of the fundamental rights of the Petitioner.

17. In support of our findings in the present case, we have upon a research in to the common laws come upon a decision of this Court in the case of Diamond Steel Products Co. - Vs- Customs reported in 11 BLC (2006) where the principle of law enunciated therein is very

much relevant to the context of the case we are dealing with at present and which is reproduced below.

Value Added Tax Act (XXII of 1991)

Section 55 and 56

“The admitted position is that in issuing both the impugned demands neither the respondent No.1 nor the respondent No.2 did care to follow the provision of sub-section (1)” of section 55 of the VAT Act and without issuance of any show cause notice they have straightaway made the demand without giving any opportunity of being heard to the petitioner and also without passing any adjudication order. The demands in question appear to have been issued pursuant to the provision of section 56 of the Act but the respondent cannot resort to section 56 of the Act without complying with the provisions of section 55. Therefore, it appears that in issuing the impugned demands the respondents have acted illegally and beyond their jurisdiction and the demands therefore, do not withstand the scrutiny of law. Thus the demands are liable to be struck down as being illegal and without jurisdiction.”

18. Under the facts and circumstances, our considered view is that issuing the notice, only directly informing the petitioner that his BIN has been locked temporarily without any prior Show-Cause or demand Notice is absolutely violative of the principles of Natural Justice granted under the constitution and is violative of his statutory rights prescribed under Section 55 of the Act,

19. Therefore, we find merits in the Rule.

20. In the result, the Rule is made absolute without any order as to costs. The notice impugned against is declared to have been made without lawful authority having no legal effect and hereby set aside.

21. Let a copy of this judgment be sent to the office of the Commission, Custom Bond Commissionerat, for future reference and guidance.