

IN THE SUPREME COURT OF BANGLADESH

APPELLATE DIVISION

PRESENT:

Mr. Justice Md. Nuruzzaman

Mr. Justice Borhanuddin

Ms. Justice Krishna Debnath

CIVIL PETITION FOR LEAVE TO APPEAL NO.2408 of 2020.

(arising out of Writ Petition No.5718 of 2016)

With

CIVIL PETITION FOR LEAVE TO APPEAL NO.2432 of 2020

(arising out of Writ Petition No.5770 of 2016)

With

CIVIL PETITION FOR LEAVE TO APPEAL NO.2443 of 2020.

(arising out of Writ Petition No.9277 of 2016)

And

CIVIL PETITION FOR LEAVE TO APPEAL NO. 04 of 2021

(arising out of Writ Petition No.5333 of 2016)

(From the judgment and orders dated 14.03.2019 passed by the High Court Division in Writ Petition Nos.5718, 5770, 9277 and 5333 of 2016).

Government of the People's Republic of Bangladesh, represented by the Secretary, Ministry of Finance, Internal Resources Division, Bangladesh Secretariat, Ramna, Dhaka and others. :Petitioners.
(In all the petitions)

-Versus-

Pragati Insurance Limited, represented by its Managing Director and another. :Respondents.
(In C.P. No.2408/2020)

Phoenix Insurance Company Limited, represented by its Managing Director & CEO and another. :Respondents.
(In C.P. No.2432/2020)

Rupali Insurance Company Limited, represented by its Chief Executive Officer and another. :Respondents.
(In C.P. No.2443/2020)

Reliance Insurance Limited, represented by its Chief Executive Officer and another. :Respondents.
(In C.P. No.04/2021)

For the Petitioners. : Mr. Sk. Md. Morshed, Additional
(In all the leave petitions) Attorney General instructed by Mr. Haridas Paul, Advocate-on-Record.

- For Respondent No.1. : Mr. A.F. Hasan Ariff, Senior Advocate
(In C.P. No.2408/2020) with Mr. M.A. Hannan, Advocate instructed by Mr. Syed Mahbubur Rahman, Advocate-on-Record.
- For Respondent No.2. : Not represented.
(In C.P. No.2408/2020)
- For the Respondents. : Mr. Fida M. Kamal, Senior Advocate
(In C.P. No.2432/2020) instructed by Mr. Syed Mahbubur Rahman, Advocate-on-Record.
- For the Respondents. : Mr. M.A. Hannan, Advocate instructed
(In C.P. No.2443/2020) by Mr. Syed Mahbubur Rahman, Advocate-on-Record.
- For Respondent No.1. : Mr. M.A. Hannan, Advocate instructed
(In C.P. No.04/2021) by Mr. Syed Mahbubur Rahman, Advocate-on-Record.
- For Respondent No.2. : Not represented.
(In C.P. No.04/2021)
- Date of Hearing. : The 30th May, 2022.
- Date of Judgment. : The 30th May, 2022.

J U D G M E N T

Borhanuddin, J: Since the point of law involve is identical and the facts are also same as such all the civil petitions have been taken together for hearing and disposed of by this common judgment.

The respondents herein as petitioners filed separate writ petition being Nos.5333 of 2016, 5770 of 2016, 9277 of 2016 and 5718 of 2016 respectively contending interalia that the petitioners are Insurance Company incorporated under the Companies Act and engaged in the

business of non life general insurance obtaining necessary permission from the relevant authority; Petitioner companies are rendering insurance service under Service Code S027.00 as provided in the Value Added Tax Act (hereinafter stated as 'the VAT Act'); The petitioners have been paying VAT regularly; The respondent VAT authority issued letter upon the petitioner companies charging VAT for the year 2014 at the rate of 15% against "Insurance Agent Commission" under Service Code S099.20 though the petitioner companies are rendering only "Insurance Service" under Service Code S027.00; Since the issue have an effect on all the insurance companies, the association of insurance companies Bangladesh Insurance Association had taken a decision to arrange a meeting with the National Board of Revenue(hereinafter stated as 'the NBR') for discussion about the issue and accordingly made a written representation to the Chairman, NBR; Meanwhile, respondent no.1 Commissioner, Large Taxpayer Unit (LTU), Value Added Tax, issued demand cum show cause notice in 2015 under section 55(1) upon the petitioner companies

demanding VAT on "Insurance Agent Commission" for the year 2014 amounting Tk.75,33,370.20/-; Tk.1,29,03,295.05/-; Tk.1,59,13,798.00/- and Tk.4,52,20,129.00/- respectively asking to reply in writing as to why the amount should not be paid within 15 days and also to apprise whether the petitioners are interested for hearing; The petitioner companies prayed for time till any explanation/order has been passed by the National Board of Revenue in this regard; But after sometime notice has been served upon the petitioner companies fixing date of hearing; The petitioner companies verbally requested the VAT authority not to proceed with the demand notice since no explanation/order has been passed by the NBR regarding VAT on "Commission Agent" and the same is still pending.

In the backdrop, the petitioner companies filed separate writ petition before the High Court Division under Article 102(1)(2) of the Constitution and obtained separate Rule in the following terms:

"Let a Rule Nisi be issued calling upon the respondents to show cause as to why sections 71 Kaka, 71 Kha of the Value Added Tax Act,1991 and section 71 Ga so far as it relates to formation and utilization of

"পুরস্কার ও আর্থিক প্রদান তহবিল" under Sub-section 1(Kha), 2(Kha), 3,6 and its explanation Kha quoted in Paragraph No.17(varied) of this petition and S.R.O.No.134/2007/479-Musak dated 27.06.2007 quoted in Paragraph No.18(varied) of this petition, should not be declared ultra vires to the Constitution and other provision of VAT Act,1991 and as to why charging VAT at the rate of 15% on "Insurance Agent Commission" on the petitioner no.1 Insurance Company vide Nothi No.(varied) issued by the respondent no.3 (Annexure-'A') and impugned Nothi No.(varied) issued by the respondent no.1 demanding VAT of Tk.(amount varied) on "Insurance Agent Commission" under Service Code S099.20 "Other Miscellaneous Service" (Annexure-'D'), should not be declared to have been issued without lawful authority and of no legal effect and/or such other or further order or orders as to this Court may seem fit and proper should not be passed."

At the time of issuance of the Rule, operation of charging VAT at the rate of 15% on "Insurance Agent Commission" and operation of demand cum show cause notice under section 55(1) of the VAT Act are stayed.

The respondent no.1 opposed the Rule by filing affidavit-in-opposition.

The petitioners by filing a supplementary affidavit annexed gazette notification dated 07.06.2018 regarding withdrawal of 15% VAT on "Insurance Agent Commission" pursuant to budget speech of the Finance Minister in the Parliament at the time of placing the budget for the year 2018-2019.

After hearing the parties, a Division Bench of the High Court Division made all the Rule absolute by separate judgment on different dates holding that imposition of VAT on the insurance companies as insurance commission agent under Service Code S099.20 within the ambit of "Other Miscellaneous Service" tantamount to "Double Taxation" upon the petitioner companies who are already paying VAT at the rate of 15% under Service Code S027.00 as insurance company.

Feeling aggrieved, the writ-respondents as petitioners preferred aforementioned civil petitions for leave to appeal before this Division.

Mr. Sk. Md. Morshed, learned Additional Attorney General submits that the High Court Division failed to

consider that though the Government by promulgating SRO No.167-Ain/2018/790-Musak dated 07.06.2018 under section 14(1) of the VAT Act,1991 exempted VAT on "Insurance Agent Commission" but operation of the SRO has taken effect prospectively and not retrospectively because retrospectivity is not to be presumed unless it is expressly made to have a retrospective operation as such the impugned judgment and orders are liable to be set aside. He also submits that the service of the petitioners classified under S027.00 as the "Insurance Company" but as the companies engaged "Agent" for their service and pay commission to them and thus this service fall under "Other Miscellaneous Service" within Service Code S099.20 and for that they have to pay 15% VAT at source under section 6(KaKa) of VAT Act and Rule 18(Uma) of VAT Rules as such findings of the High Court Division is not tenable in the eye of law. He further submits that the High Court Division erred in law in not considering that the demand cum show cause notice issued under section 55(1) of the VAT Act upon the petitioner companies and the petitioner companies prayed for time to

reply on the plea that the association of the petitioner companies filed representation to the Chairman, NBR, seeking clarification regarding VAT on "Insurance Agent Commission", which is pending for disposal and after waiting for few months on the request of petitioner companies the VAT authorities issued two notices fixing date for hearing but the writ-petitioners without appearing before the statutory authority and exhausting the process of adjudication initiated under section 55 of VAT Act invoked the writ jurisdiction to frustrate the adjudication process and as such the impugned judgment and orders are liable to be set aside.

On the other hand, Mr. A.F. Hasan Ariff learned Senior Advocate appearing for the respondent no.1 in Civil Petition for Leave to Appeal No.2408 of 2020 by referring budget speech of the Finance Minister in the Parliament on 07.06.2018 at the time of placing the budget for the year 2018-2019 submits that the Finance Minister in his budget speech proposed for withdrawal of the VAT upon the "Insurance Agent Commission" to avoid "Double Taxation" as such the High Court Division justly

and legally held that imposition of VAT upon the "Insurance Commission Agent" tantamount to "Double Taxation". He also submits that the Finance Minister admitted in his budget speech in clear terms that:

“বীমা প্রতিষ্ঠানগুলো ইন্সুরেন্স পলিসির উপর ১৫ শতাংশ হারে মূসক প্রদান করে থাকে। এ পলিসির বিপরীতে প্রযোজ্য সেবা প্রদানের জন্য একজন বীমা এজেন্ট নিয়োজিত থাকেন। এ বীমা এজেন্টের কমিশন মোট পলিসি মূল্য থেকেই প্রদান করা হয়। তাই সর্বমোট পলিসি মূল্য থেকে পূর্বেই মূসক পরিশোধ করায় বীমা এজেন্ট কমিশন বাবদ প্রদেয় মূসক দ্বৈতকর হয়। এ দ্বৈতকর পরিহারের উদ্দেশ্যে বীমা এজেন্ট কমিশনের উপর প্রযোজ্য ১৫% ভ্যাট অব্যাহতি প্রদানের প্রস্তাব করছি।”

Mr. Ariff continues that the reason that has been enumerated in the budget speech as quoted above categorically shows that imposition of 15% VAT on "Agent Commission" would resulting "double taxation" and the same proposition is applicable for the period under challenge in the writ petitions for which the impugned orders i.e. charging of VAT on "Insurance Commission Agent" and demand thereof are without lawful authority and of no effect. He next submits that though the SRO dated 07.06.2018 exempted VAT on insurance commission agent without expressly made to have a retrospective operation but the budgetary speech of the Finance Minister on 07.06.2018 and promulgation of the SRO No.167

on the very day clearly intends applicability of retrospective effect of the SRO dated 07.06.2018 by necessary implication from the language employed in the budget speech of the Finance Minister in the Parliament. He further submits that if it is a necessary implication from the language employed that the legislature intended a particular promulgation or section to have a retrospective operation, the courts will give it such an operation as such impugned charging of VAT and demand thereof being tantamount to double taxation are liable to be declared without lawful authority and of no legal effect. He again submits that in the absence of a retrospective operation having been expressly given in the SRO No.167 but from the language of the budget speech by the Finance Minister and the SRO 167 promulgated on the very day the court can construe the provisions and answer the question in affirmative that the legislature had sufficiently express that intention giving the statute retrospectivity. He lastly submits that it is not necessary that an express provision be made to make a statute retrospective and the presumption against

retrospectivity may be liberated by necessary implication in a case where the new law is made to cure and acknowledge evil for the benefit of the community as a whole inasmuch as VAT on "Insurance Agent Commission" has never been imposed from the inception of VAT Act in 1991 but for the first time it was imposed and demanded in the year 2014 and 2015 by the Annexure-'A' and 'D' to the writ petition as such the leave petition does not merit any consideration. In support of his submissions, learned Advocate referred to the case of Customs and Excise Commissioner Vs. Thorn Electrical Industries Limited, reported in (1975) All England Law Reports 439 and the case of Shakti Tubes Limited Vs. State of Bihar and others, reported in (2009) 7 SCC 673.

Mr. Fida M. Kamal, learned Senior Advocate appearing for the respondents in Civil Petition for Leave to Appeal No.2432 of 2020 by adopting submissions made by learned Senior Advocate Mr. A.F. Hasan Ariff submits that the VAT Act being a fiscal Act has to be interpreted strictly and it is the admitted position that the petitioner company is not providing the service of "Insurance Agent

Commission" and the service of "Insurance Agent Commission" has not been classified and explained under any SRO by the respondents as such charging VAT on the "Insurance Agent Commission" on such unspecified item cannot be sustained in law. He also submits that though section 6 of the VAT Act provides certain obligation to deduct at source and in case of failure liability to pay has also been made but the said provision shall not be applicable in the instant case as the respondents have completely failed to specify the service of the "Insurance Agent Commission" as a Vatable service specifying the Service Code and the limit of the service neither in the second schedule nor in the SRO made under section 3(5)(Kha) and hence the impugned orders are liable to be declared to have been made without lawful authority. He further submits that the petitioner no.2 sought enforcement of fundamental rights guaranteed under Article 26, 27, 29, 31 and 40 of the Constitution under Article 102(1) read with Article 44(1) of the Constitution as such the question of alternative remedy cannot arise and thus the writ petition is maintainable.

Mr. M.A. Hannan, learned Advocate appearing for the respondents in Civil Petition for Leave to Appeal Nos.2443 of 2020 and 04 of 2021 by adopting submissions of both the learned Senior Counsel Mr. A.F. Hasan Ariff and Mr. Fida M. Kamal submits that section 3 of the VAT Act provides that VAT is payable on all service rendered in Bangladesh except the services mentioned in the second schedule wherein clause 6 provides personal services in which "Insurance Agent Commission" neither mention in the exempted list nor in the exclusion list under sub-clause (Ka) of the second schedule and hence the impugned orders are liable to be declared without lawful authority.

Learned Advocate Mr. M. A. Hannan submits that Civil Petition for Leave to Appeal Nos.1156 of 2021 and 1378 of 2021 are inadvertently filed impugning the judgment and orders of the High Court Division which are subject matter of Civil Petition for Leave to Appeal Nos.2432 of 2020 and 04 of 2021 respectively and as such he does not want to press Civil Petition for Leave to Appeal Nos. 1156 of 2021 and 1378 of 2021.

Heard the learned Additional Attorney General for the petitioners in all the civil petitions for leave to appeal and learned Senior Counsel Mr. A.F. Hasan Ariff, Mr. Fida M. Kamal and learned Advocate Mr. M.A. Hannan appearing for the respondents in their respective cases. Perused the leave petitions and papers/documents contained therein.

It appears that all the writ petitions filed in 2016 challenging sections 71 Kaka, 71 Kha of the Value Added Tax Act and section 71 Ga so far as it relates to formation and utilization of "পুরস্কার ও আর্থিক প্রনোদনা তহবিল" under Sub-section 1(Kha), 2(Kha), 3, 6 and its explanation as well as charging VAT at the rate of 15% on "Insurance Agent Commission" under Service Code S099.20 "Other Miscellaneous Service" upon petitioner companies and demanding VAT on "Insurance Agent Commission". Subsequently the petitioners filed supplementary affidavit by swearing affidavit in January, 2019 annexing budget speech of the then Finance Minister in Parliament on 07.06.2018 when placed budget for the year 2018-2019 and SRO No.167-Law/2018/790-Musak dated 07.06.2018. It

also appears that the High Court Division passed the impugned judgment and orders though separately in separate writ petition but findings are similar. At the time of hearing of the Rule, learned Advocate for the petitioners did not press the first part of the Rule so far as it relates to challenging the vires of section 71 Kaka, Kha and Ga of the VAT Act.

The High Court Division made all the Rule absolute holding that "it is clearly evident from budget speech of the Finance Minister, delivered at the Parliament, that the very issue of 'double taxation' has been acknowledged and admitted by the concern minister himself and accordingly, he proposed to withdraw the same. From the gazette notification dated 07.06.2018, it appears that in pursuance of the aforesaid decision of the Government, a notification was issued withdrawing the imposition of 15% VAT on 'Insurance Agent Commission'." Thereafter came to a conclusion that "in our view, although no retrospective effect has been given to the said notification dated 07.06.2018 that ipso facto will not clothe the impugned demand with legality. In other words, as the Government

has withdrawn the imposition of 15% VAT on 'Insurance Commission Agent' the demand made earlier in the year 2014 upon the petitioner under the very same head 'Insurance Agent Commission' cannot be sustained in law."

The High Court Division did not make any findings regarding initiation of adjudication process under section 55 of the VAT Act.

The questions are to be decided (i) whether the budget speech by the Finance Minister in the Parliament can be treated as an enactment of the Parliament which has binding effect under the law (ii) whether the SRO No.167-Law/2018/790-Musak published in the official gazette on 07.06.2018 should be regarded retrospective in nature though not expressly made to have retrospective operation in the gazette notification and (iii) whether writ of certiorari is maintainable when alternative remedy is provided in the statute.

In the instant cases, the writ-respondents charged VAT upon the petitioner companies on account of "Insurance Commission Agent" at the rate of 15% in 2014

and issued demand cum show cause notice under section 55(1) in 2015 for the year 2014. The petitioner companies prayed time for reply on the plea of representation by the Association of the insurance companies seeking explanation on the issue from the NBR which was pending. The petitioner companies preferred writ petitions and obtained Rule in 2016. The budget speech was made by the Finance Minister in the Parliament for the year 2018-2019 on 07.06.2018. The SRO No.167-Law/2018/790-Musak dated 07.06.2018 published in the gazette notification on 07.06.2018.

First, we deal with budget speech by the Finance Minister in Parliament. Relevant Rules of Procedure of Parliament of Bangladesh provides as under.

111. Presentation of the Budget

(1) The annual financial statement or the statement of the estimated receipts and expenditure of the Government of Bangladesh in respect of each financial year (hereinafter referred to as "the budget") shall be presented to Parliament in accordance with the provisions of Article 87 of the Constitution.

112. Budget not to be discussed on presentation

Except the speech of the Finance Minister when presenting the Budget, there shall be no discussion

on the Budget on the day on which it is presented to the House.

113. Stages of the Budget debate

The Budget shall be dealt with by the House in the following stages, namely:

- (i) general discussion on the Budget as a whole;
- (ii) (a) discussion on demands for grants and appropriations in respect of charged expenditure;
- (b) voting on demands for grants relating to other expenditure:

Provided that the demands for grants in respect of charged expenditure shall not be submitted to the vote of the House.

115. General discussion of the Budget

1) On a day to be appointed by the Speaker subsequent to the day on which the Budget is presented and for such time as the Speaker may allot for this purpose, the House shall be at liberty to discuss the Budget as a whole or any question of principle involved therein, but no motion shall be moved at this stage nor shall the Budget be submitted to the vote of the House.

2) The Finance Minister shall have a general right of reply at the end of the discussion.

Chapter II, Legislative and Financial Procedures

provides in Article 80 of the Constitution as under:

80. (1) Every proposal in Parliament for making a law shall be made in the form of a Bill.

(2) When a Bill is passed by Parliament it shall be presented to the President for assent.

 (5) When the President has assented or is deemed to have assented to a Bill passed by Parliament it shall become law and shall be called an Act of Parliament.

83. No tax shall be levied or collected except by or under the authority of an Act of Parliament.

The question of legal implication of the budget speech by the Finance Minister raised before the Indian Supreme Court. The Supreme Court of India in the case of *Amin Merchant Vs. Chairman, Central Board of Excise & Revenue and others*, reported in AIR 2016 (SC) 3920, held:

"Budget Speeches by the Union Finance Minister are not enactments by the Parliament and a Government cannot be bound under the law by them."

It is also observed that:

"The Finance Minister's Speech only highlights the more important proposals of the Budget. Those are not the enactments by the Parliament. The law as enacted is what is contended in the finance Act after it is legislated upon by the Parliament."

Their lordships further observed:

"The financial proposals put forth by the Finance Minister reflects the Governmental view for raising revenue to meet the

expenditure for the financial year and it is the financial policy of the central Government. The Finance Minister's speech only highlights the more important proposals of the Budget."

The apex court of India also highlighted that taxation is an unilateral decision of the Parliament and it is the exercise of the sovereign power:

"Even assuming that the amount of tax 'excessive' in the matter of taxation laws, the court permits greater latitude to the discretion of the legislature and it is not amenable to judicial review."

From the discussions above, it is apparent that budget speech by the Finance Minister is not enactment of Parliament but only financial proposals. The law is enacted when it is legislated by the Parliament and assented by the President of the Republic.

Now the question is whether SRO dated 07.06.2018 without having retrospective effect expressly can be regarded retrospective in nature.

It is cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective

operation. It is to be mentioned here that the SRO dated 07.06.2018 promulgated without giving retrospective effect expressly.

Maxwell on 'interpretation of statutes' regarding presumption against a construction of retrospective effect explains:

'If, however, the language or the dominant intention of the enactment so demands, the Act must be construed so as to have a retrospective operation, for "the Rule against the retrospective effect of a statute is not a rigid or inflexible Rule but is one to be applied always in the light of the language of the statute and the subject-matter with which the statute is dealing." Before the presumption against retrospectivity is applied, a court must be satisfied that the statute is in fact retrospective. In the words of Craies on a Statute Law, a statute is retrospective "which takes away or impairs any vested right accrued under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already past." Other statutes, though they may relate to acts or events which are past, are not retrospective in the sense in which the word is used for the purposes of the Rule under consideration.'

In the case of Shakti Tubes Ltd. vs. State of Bihar, reported in (2009) 7 SCC, 673 Indian Supreme Court held:

"24. Generally, an Act should always be regarded as prospective in nature unless the legislature has clearly intended the provisions of the said Act to be made applicable with retrospective effect."

"13. It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. [The aforesaid] rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective only—*nova constitutio futuris formam imponere debet non praeteritis*—a new law ought to regulate what is to follow, not the past. (See Principles of Statutory Interpretation by Justice G.P. Singh, 9th Edn., 2004 at p. 438.) It is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication especially in a case where the new law is made to cure an acknowledged evil

for the benefit of the community as a whole."

In the case of Zile Singh Vs. State of Haryana, reported in (2004) 8 SCC 1, Indian Supreme Court held:

"15. Though retrospectivity is not to be presumed and rather there is presumption against retrospectivity, according to Craies (Statute Law, 7th Edn.), it is open for the legislature to enact laws having retrospective operation. This can be achieved by express enactment or by necessary implication from the language employed. If it is a necessary implication from the language employed that the legislature intended a particular section to have a retrospective operation, the courts will give it such an operation. In the absence of a retrospective operation having been expressly given, the courts may be called upon to construe the provisions and answer the question whether the legislature had sufficiently expressed that intention giving the statute retrospectivity. Four factors are suggested as relevant: (i) general scope and purview of the statute; (ii) the remedy sought to be applied; (iii) the former state of the law; and (iv) what it was the legislature contemplated. The rule against retrospectivity does not extend to protect from the effect of a repeal, a privilege which did not amount to accrued right."

Neither the explanation made in interpretation of law by Maxwell nor the above decisions regarding retrospectivity lend support to the case of the respondents herein.

Last but not the least is maintainability of writ petition when statute provides alternative forum.

Admittedly, in the cases in hand competent VAT authority issued demand cum show cause notice upon the respondent-companies under section 55(1) of the VAT Act. Respondent companies prayed time for reply on the plea of pending representation of their Association to the NBR regarding explanation on the issue of charging VAT on "Insurance Commission Agent". Waiting for few months, VAT authority issued notice fixing date of hearing. But the respondents without appearing in the hearing invoked the writ jurisdiction under Article 102 of the Constitution.

From the demand cum show cause notice it is apparent that an adjudication process was initiated and the respondents sought time in writing to reply and thus the process awaiting adjudication. Against the adjudication

order, forum of appeal is prescribed in the VAT Act. At this juncture, the writ petitions filed by the respondents as petitioners are not maintainable. The High Court Division lost sight of the pending adjudication process as such the impugned judgment and orders are not tenable in law.

When there is a statutory forum to avail under the VAT Act against an order passed by the VAT official then the judicial review under Article 102(2) of the Constitution bypassing the forum created under the law is not maintainable.

Article 102(2) of the Constitution provides that the High Court Division may give direction or orders under the Article where there is no other equally efficacious remedy provided by law.

But remedy against the order of VAT official provided in section 42 of the VAT Act.

Section 42(4) of the VAT Act provides that:

“[(৪) উপ-ধারা (১) বা, ক্ষেত্রমত, উপ-ধারা (১ক) এর অধীন আপীল দায়ের হইবার পর [১(এক) বৎসরের মধ্যে] কমিশনার (আপিল) বা, ক্ষেত্রমত, [২(দুই) বৎসরের মধ্যে] Appellate Tribunal কর্তৃক আপিল নিষ্পত্তি করিতে হইবে:

তবে শর্ত থাকে যে, উক্ত সময়সীমার মধ্যে আপিলটি নিষ্পত্তিক্রমে সিদ্ধান্ত প্রদান করা না হইলে উহা কমিশনার (আপিল) বা, ক্ষেত্রমত, Appellate Tribunal কর্তৃক মঞ্জুর করা হইয়াছে বলিয়া গণ্য হইবে।”

In view of the timeframe prescribed in section 42(4) of the VAT Act it cannot be said that the remedy under section 42 of the Act is not efficacious.

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.

Thus all the civil petitions are disposed of.

Judgment and orders dated 14.03.2019 passed in Writ Petition Nos.5333 of 2016, 5770 of 2016, 9277 of 2016 and 5718 of 2016 respective are set aside.

J.

J.

J.