

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Obaidul Hassan

Mr. Justice Borhanuddin

Mr. Justice Md. Abu Zafor Siddique

CIVIL APPEAL NO.142 OF 2009

(From the judgment and order dated 19.02.2006 passed by the High Court Division in Writ Petition No.2251 of 1999).

Commissioner of Customs, Mongla Customs : **....Appellants.**
House, Khulna and another.

-Versus-

M. M. Corporation a proprietary firm, owned : **....Respondent.**
by Mahbub Alam Chowdhury S.F. Chamber (1st
Floor), Strand Road, Chattogram.

For the Appellants. : Mr. Sk. Md. Morshed, Additional
Attorney General instructed by Mr.
Haridas Paul, Advocate-on-Record.

For the Respondent. : No one appears.

Date of Hearing. : **The 11th July, 2023.**

Date of Judgment. : **The 11th July, 2023.**

J U D G M E N T

Borhanuddin, J: This civil appeal by leave arose out of the judgment and order dated 19.02.2006 passed by the High Court Division in Writ Petition No.2251 of 1999 making the Rule absolute.

Facts, in brief, are that the respondent herein as petitioner, a proprietary firm, opened Letter of Credit

No.15/0008/99 dated 25.05.1999 for importation of 6000 metric tons of Grey Portland Cement from Indonesia; Said imported goods arrived at Mongla Port on 07.06.1999; The petitioner through his C & F agent submitted Bill of Entry for releasing 3000 metric tons of cement on 09.06.1999 and duty was assessed without imposing supplementary duty; Budget for the year 1999-2000 was placed before the Parliament on 10.06.1999; The petitioner through his C & F agent submitted Bill of Entry on 15.06.1999 for releasing the rest 3000 metric tons of imported cement but the Customs Authority assessed the goods imposing 15% supplementary duty and 4% surtax pursuant to budget for the year 1999-2000 placed before the Parliament on 10.06.1999 under the declaration vide Section 3 of the Provisional Collection of Taxes Act, 1931; Against the assessment order, the petitioner filed an appeal on 15.06.1999 but the appeal failed; Having no other equally efficacious remedy the petitioner preferred the writ petition.

Upon hearing the petitioner, a Division Bench of the High Court Division issued a Rule Nisi upon the writ-

respondents to show cause with a direction to the writ-respondent Customs Authority to release the goods receiving bank guarantee for the supplementary duty and surtax.

After contested hearing, a Division Bench of the High Court Division made the Rule absolute vide judgment and order dated 19.02.2006 on the findings that:

"Section 1(2) of the Finance Bill, 1999, provides that 'The Provisional Collection of Taxes Act, 1931 (XVI/1931) এবং উহার অধীনে জারিকৃত ঘোষণা সাপেক্ষে, এই আইন ১৯৯৯ সনের ১লা জুলাই কার্যকর হইবে।' and the required declaration has been given in the Finance Bill, 1999 is as under:

'The Provisional Collection of Taxes Act, 1931 (XVI of 1931) এর Section 3 এর বিধান অনুযায়ী এতদ্বারা ঘোষণা করা যাইতেছে যে, এই বিলে ৪ ও ৭ দফাগুলি, উহাতে ভিন্নতর বিধানগুলি সাপেক্ষে, জনস্বার্থে অবিলম্বে কার্যকর করা সমীচীন ও প্রয়োজনীয়।'

This declaration do not show that the tax has been imposed at all not to speak of imposition of the taxes with immediate effect, rather the same is in the nature of suggestion or a proposal. Hence, it cannot be said that the Sections 4 and 7 of the Finance Bill, 1999 were given effect on and from 10.06.1999 i.e. date of placement of the Bill before the Parliament for consideration."

Having aggrieved by and dissatisfied with the impugned judgment and order, the writ-respondents as petitioners filed Civil Petition for Leave to Appeal No.233 of 2007 and obtained leave granting order on 15.01.2009.

Consequently, instant civil appeal arose.

Mr. Sk. Md. Morshed, learned Additional Attorney General appearing for the appellants submits that the interpretation of the High Court Division regarding declaration made in the Finance Bill, 1999 is not correct and valid interpretation. He further submits that Section 3 of the Provisional Collection of Taxes Act, 1931 makes it clear that any imposition or increase of the duty of customs or excise shall have immediate effect.

No one appears for the respondents.

Heard the learned Additional Attorney General for the appellants. Perused the impugned judgment and order alongwith papers/documents contained in the paper book.

Admittedly, budget for the year 1999-2000 was placed before the Parliament on 10.06.1999. The writ-petitioner

submitted Bill of Entry to release the rest 3000 metric tons of cement on 15.06.1999. The Finance Bill, 1999 starts with:

- ১। সংক্ষিপ্ত শিরোনাম ও প্রবর্তন।- (১) এই আইন অর্থ আইন, ১৯৯৯ নামে অভিহিত হইবে।
- (২) *The Provisional Collection of Taxes Act, 1931 (XVI of 1931)* এবং উহার অধীনে জারীকৃত ঘোষণা সাপেক্ষে, এই আইন, ১৯৯৯ সনের ১লা জুলাই তারিখে কার্যকর হইবে।

At the end of the Finance Bill a declaration was made in the following manner:

ঘোষণা

The Provisional Collection of Taxes Act, 1931 (XVI of 1931) এর Section 3 এর বিধান অনুযায়ী এতদ্বারা ঘোষণা করা যাইতেছে যে, এই বিলে ৪ ও ৭ দফাগুলি, উহাতে ভিন্নতর বিধানাবলী সাপেক্ষে, জনস্বার্থে অবিলম্বে কার্যকর করা সমীচীন ও প্রয়োজনীয়।

Clauses 4 and 7 of the Bill relates to-

৪। Act IV of 1969 এর সংশোধন।- *Customs Act, 1969 (IV of 1969)* .

৭। ১৯৯১ সনের ২২নং আইন সংশোধন।- মূল্য সংযোজন কর আইন, ১৯৯১ (১৯৯১ সনের ২২নং আইন)।

From the above declaration of the Finance Bill it is apparent that Clauses 4 and 7 of the Bill shall have the immediate effect under Sections 3 and 4 of the Provisional Collection of Taxes Act, 1931 which runs as follows:

"3. Where a Bill to be introduced in the [Central Legislature] on behalf of Government provides for the imposition or increase of a duty of customs or excise, the [Central Government] may cause to be inserted in the Bill a declaration that it is expedient in the public interest that any provision of the Bill relating to such imposition or increase shall have immediate effect under this Act.

4.-(1) A declared provision shall have the force of law immediately on the expiry of the day on which the Bill containing it is introduced.

(2) A declared provision shall cease to have the force of law under the provisions of this Act-

(a) when it comes into operation as an enactment, with or without amendment, or

(b) when the [Central Government], in pursuance of a motion passed by the [Central Legislature], directs, by notification in the [official Gazette], that it shall cease to have the force of law, or

(c) if it has not already ceased to have the force of law under Clause (a) or Clause (b), then on the expiry of the sixtieth day after the day on which the Bill containing it was introduced.

(emphasis supplied)

Article 83 of the Constitution provides that *'No tax shall be levied or collected except by or under the authority of an Act of Parliament.'* Proviso to Article 65(1) thereof provides that *'Provided that nothing in this Clause shall prevent Parliament from delegating to any person or authority, by Act of Parliament, power to make orders, rules, regulations, bye-laws or other instruments having legislative effect.'*

If we read above provisions of law together with the declaration of the Finance Bill, 1999 alongwith Sections 3 and 4 of the Provisional Collection of Taxes Act, 1931 there would be no doubt that imposition of supplementary duty and surtax have force of law having been made under valid legislature from the date of placement of budget till it is passed by the Parliament.

In the case of *Mahfuzul Hoque and others vs. The Collector of Customs, Customs House, Chattogram and others*, reported in 4 ADC (2007), 236 this Division held:

"Imposition of the supplementary duty having the force of law as Article 83 of the Constitution clearly provides that 'no tax shall be levied or collected except by or

under the authority of an Act of Parliament.' But proviso to Article 65(1) provides for delegation of the Parliament to any other sub-ordinate authority to make orders, rules, regulations, bye-laws and other legislature instrument having legislature effect. So far the customs duty, VAT and supplementary duty are concerned the same are leviable under Section 18 of the Customs Act read with first schedule to the said Act and Section 3 read with Section 7(1) of the VAT Act read with third schedule respectively providing statutory basis for imposition of customs duty, supplementary duty and VAT respectively. The said provisions together with the provision of Sections 3 and 4 of the Provisional Collection of Taxes Act, 1931 has made provision for any imposition of taxes of the nature from the placement of budget till it is passed by the Parliament as valid and as such the imposition of customs duty, supplementary duty etc. have force of law having been made under valid legislature."

In view of the discussions made above in line with Sections 3 and 4 of the Provisional Collection of Taxes Act, 1931 and heading of the Finance Bill, 1999 alongwith the declaration made therein under section 3 of the Provisional Collection of Taxes Act, 1931 it is amply clear that the High Court Division wrongly arrived at a finding that:

'the declaration of the Finance Bill do not show that the tax has been imposed at all not to speak of imposition of the taxes with immediate effect, rather the same is in the nature of suggestion or a proposal.'

The true import of the declaration made in the Finance Bill, 1999 under Section 3 of the Provisional Collection of Taxes Act, 1931 is that the imposition of supplementary duty and surtax as provided in Clauses 4 and 7 of the Finance Bill shall have immediate effect i.e. from the date of placement of the budget before the Parliament till it is passed by the Parliament.

As such the petitioner is bound to pay the supplementary duty and surtax as per Finance Bill placed before the Parliament on 10.06.1999 since he has presented the Bill of Entry on 15.06.1999.

Accordingly, the civil appeal is allowed.

The impugned judgment and order dated 19.02.2006 passed by the High Court Division in Writ Petition No.2251 of 1999 is hereby set-aside.

The Customs Authority is at liberty to encash the bank guarantee furnished by the petitioner at the time of

releasing the goods pursuant to interim order passed by the High Court Division at the time of issuance of the Rule Nisi.

However, there is no order as to costs.

J.

J.

J.

The 11th July, 2023.
Jamal/B.R./Words-*1724*