

IN THE SUPREME COURT OF BANGLADESH
Appellate Division

PRESENT

Mr. Justice Hasan Foez Siddique, C. J.

Mr. Justice M. Enayetur Rahim

Mr. Justice Jahangir Hossain

CIVIL PETITION FOR LEAVE TO APPEAL NO.3194 OF 2022

(From the judgment and order dated the 3rd day of November, 2022 passed by the High Court Division in Writ Petition No.15839 of 2018).

Bangladesh, represented by the : . . . Petitioners
Secretary, Ministry of Finance,
Bangladesh Secretariat, Ramna,
Dhaka-1000 and others

-Versus-

Deshbandhu Sugar Mills Limited, : . . . Respondent
represented by its Managing
Director, Kawadi, Charsindur,
Palash, Narisingdi, Corporate
Office: House No. 59, Road No.
27, Block No. K, Banani, Dhaka-
1213

For the Petitioners : Mr. A.M. Amin Uddin, Attorney General
with Mr. Sk. Md. Morshed, Additional
Attorney General with Mr. Samarandra
Nath Biswas, Deputy Attorney General
with Mr. Mohammad Saiful Alam,
Assistant Attorney General and
Mr. Sayem Mohammad Murad,
Assistant Attorney General, instructed by
Mr. Md. Helal Amin, Advocate-on-Record

For the Respondent : Mr. Fida M. Kamal, Senior Advocate, with
Mr. Kamal-ul-Alam,
Senior Advocate and Mr. Probir Neogi,
Senior Advocate, instructed by
Mr. M. Ashraf-uz-Zaman Khan,
Advocate-on-Record

Date of hearing and judgment : The 8th day of May, 2023

JUDGMENT

M. Enayetur Rahim, J: This civil petition for leave to appeal is directed against the judgment and order dated 03.11.2022

passed by the High Court Division in Writ Petition No.15839 of 2018 disposing of the Rule.

The relevant facts leading to the filing of the present leave petition, are that the present respondent-writ petitioner imported raw cane sugar in Bulk from Brazil and on 15.01.2009 the writ petitioner made an application to writ respondent No.6 for home consumption private bonded warehouse license in accordance with Section 13(1) of the Customs Act, 1969 and after considering the said application the official concern allowed the said application. From 2009 to 2016, respondent No.6 renewed the said license by accepting the required renewal fees. On 22.12.2016 the writ petitioner deposited the required fees and enclosed required documents with an application for renewal of the said license for the year of 2017 but the writ petitioner did not get any positive response from the authority concern.

Again, on 22.01.2018 the writ petitioner deposited the required fees and enclosed required documents with an application for renewal of the said license for 2018 but avail no response from the writ respondents. Thereafter, the writ petitioner on 02.09.2018 sent a demand of justice notice through their lawyer to writ respondent Nos.4 & 5 and in the said notice the writ petitioner prayed for a direction upon writ respondent No.6 for renewal of the provisional bonded warehouse license but the writ respondents did not take any step for renewal.

The writ petitioner on 21.10.2018 made a further prayer to writ respondent No. 6 and requested to renew their license for the year 2017 and 2018 but the writ respondent did not pay any heed of it.

Being aggrieved by and dissatisfied with the inaction of writ respondent No. 6, the writ petitioner moved before the High Court Division by filing Writ Petition No.15839 of 2018 and obtained Rule *Nisi*.

The respondents opposed the Rule by filing Affidavit-in-opposition contending, *inter alia*, that the writ petitioner was granted provisional home consumption bond license pursuant to the interim order, but after final adjudication of the W.P. No.6634 of 2007 the writ petitioner did not apply for granting it a regular bond license, because it was aware of the fact that it did not qualify to be granted a bond license under the Rules, 2008 inasmuch as it did not fall within any of the 6 categories mentioned in Rule 4.

It was also contended that in the Memos dated 05.10.2021 and 17.01.2022, writ respondent No.6 explained its position as to why he stopped renewal of the provisional license. Moreover, the NBR has stopped issuing home consumption bond license. Therefore, there is no scope in law to grant a regular license to the writ petitioner or renew the provisional license.

In due course after hearing the parties and considering the materials on record the High Court Division disposed of the Rule directing the writ respondents to convert the provisional Bond License of the writ petitioner, which expired on 14.01.2017, into regular up-to-date bonded warehouse license in compliance with the final order passed in Writ Petition No.6634 of 2007 with effect from 15.01.2017 to give effect to the final order dated 14.12.2008 prospectively forthwith without fail.

Being aggrieved by and dissatisfied with the said judgment and order passed by the High Court Division the writ respondents are now before us having filed the instant civil petition for leave to appeal.

Mr. A.M. Amin Uddin, learned Attorney General, appearing on behalf of the leave petitioners submits that the judgment and order dated 03.11.2022 passed by the High Court Division disposing of the Rule with a direction to convert the provisional Bond License of the writ petitioner, which expired on 14.01.2017, into regular up-to-date bonded warehouse license in compliance with the final order passed in Writ Petition No. 6634 of 2007 with effect from 15.01.2017 to give effect to the final order dated 14.12.2008 prospectively forthwith without fail without considering the fact that the writ petitioner does not come with clean hand as there is allegations of dodging about taka 917 core custom duties by misappropriating Raw Sugar from the bonded warehouse. The learned Attorney General further submits that the High Court Division committed an error of law and rules inasmuch as, there is a misconception of background fact of the case as the writ petitioner himself refined the sugar from raw sugarcane whereas the government owned sugar mills are production house of sugar. He also submits that the High Court Division committed an error of law in not considering that the judgment of Writ Petition No. 6634 of 2007 is '*per incuriam*' as the judgment was pronounced on 14.12.2008 whereas the gazette of the 'Bidhimala for Bonded Warehouse' was published in June, 2008. As per Bidhimala, there is no provision for 'Home Consumption' bonded warehouse. Learned Attorney General finally submits that the License of Bonded

Warehouse was not cancelled rather not renewed by the writ respondent. Therefore, no option to follow the section 13 of the Act but the writ petitioner suppressing real facts preferred the instant writ petition and after hearing the High Court Division disposed of the Rule with direction which calls for interference by this Division.

Mr. Fida M. kamal, learned Senior Advocate, appearing for the present respondent has made submission in support of the impugned judgement and order of the High Court Division. The learned Advocate also submits that in view of the provision of section 13(1) of the Customs Act the writ petitioner is entitled to get home consumption warehouse bonded license as it was given earlier and the High Court Division lawfully directed the writ respondents to convert the provisional bonded license to the writ petitioner into regular up to date bonded warehouse license.

We have considered the submissions of the learned Attorney General as well the learned Advocates appearing for the respondent, perused the impugned judgment and order of the High Court Division and other connected papers on record.

Section 13 of the Customs Act provides as follows:

*"13. **Licensing of Private warehouses.**-(1) Subject to sub-section (2), at any warehousing station, the Commissioner of Customs (Bond) or any other Commissioner of Customs authorised by the Board may, license private warehouses wherein dutiable goods imported by or on behalf of the licensee, or any other imported goods in respect of which facilities for deposit in a public warehouse are not available, may be deposited.*

(2) The Board may, from time to time, by notification in the official Gazette, impose conditions, limitations or restrictions-

- (a) on granting license for private warehouse;
- (b) on goods to be warehoused; and
- (c) on import entitlement of the warehouse.

(3) The Commissioner of Customs (Bond) or any other Commissioner of Customs authorised by the Board may, suspend or cancel a license granted under subsection(1)-

- (a) if the licensee contravenes any provision of this Act or the rules made thereunder or commits breach of any of the conditions of the license; or
- (b) in the case where, he deems fit, a license to be suspended or cancelled in the public interest;

Provided that in case of cancellation of any licence, the licensee shall be served with a show cause notice of thirty days, and be given a reasonable opportunity of being heard.

- (c) in case of suspension under clause (b), the Business Identification Number (BIN) of the licensee issued under মূল্য সংযোজন কর আইন, ১৯৯১ (১৯৯১ সনের ২২ নং আইন) shall remain suspended till the disposal of the matter."

Upon perusal of the license given to the writ petitioner on 15.01.2009 under Section 13(1) of the Customs Act it appears that the same was a provisional home consumption bond license for a period of 4(four) months, issued pursuant to

the order of the High Court Division passed in Writ Petition No.6634 of 2007 and the same was extended time to time.

The issuance of such provisional home consumption bonded license does not create any legal or vested right in favour of the writ petitioner-respondent to get a regular home consumption bonded license or to convert the provisional home consumption bonded license into regular one. The writ petitioner-respondent cannot as of right claim to convert the provisional home consumption bonded license into a regular one. The High Court Division by giving impugned direction to the leave petitioners committed serious error of law and failed to appreciate that as per Bidhimala, 2008 for the Bonded Warehouse there is no scope to issue home consumption bonded warehouse license to the writ petitioner and no mandamus can be issued when no legal or vested right has been acquired by the persons sought for the same.

It is pertinent to be mentioned here that by the gazette notification dated 26.06.2008 Bonded Warehouse License Bidhimala 2008 has been promulgated and in Bidhi 4 it has been mentioned which organization is entitled to get the bonded warehouse license. Bidhi 4, 7, 8 and 9 of the bonded warehouse license Bidhimala, 2008 are as follows:

৪। প্রয়োগ।- এই বিধিমালার অধীন নিম্নবর্ণিত প্রতিষ্ঠানকে লাইসেন্স প্রদান অথবা, প্রয়োজ্য ক্ষেত্রে, বন্ড রেজিস্ট্রেশন করা যাইবে, যথা:-

(ক) সরাসরি রপ্তানিমুখী শিল্প প্রতিষ্ঠান;

(খ) প্রচ্ছন্ন রপ্তানিমুখী শিল্প প্রতিষ্ঠান;

(গ) ডিপ্লোমেটিক, ডিউটি ফ্রি, ডিউটি পেইড প্রতিষ্ঠান;

(ঘ) সরকারি ও বেসরকারি রপ্তানি প্রক্রিয়াকরণ অঞ্চলে (ইপিজেড) অবস্থিত শতভাগ প্রচ্ছন্ন ও সরাসরি রপ্তানিমুখী শিল্প প্রতিষ্ঠান;

(ঙ) বাংলাদেশ অর্থনৈতিক অঞ্চল আইন, ২০১০ (২০১০ সনের ৪২ নং আইন) এর ধারা ৭ এর উপ-ধারা (১) এর-

(অ) দফা (ক) তে উল্লিখিত রপ্তানি প্রক্রিয়াকরণ এলাকা এবং দফা (খ) তে উল্লিখিত অভ্যন্তরীণ প্রক্রিয়াকরণ এলাকায় স্থাপিত শিল্প ইউনিট, এবং

(অ) দফা (ক) তে উল্লিখিত বাণিজ্যিক এলাকায় স্থাপিত ওয়্যারহাউস বা সেবা সরবরাহকারী শিল্প ইউনিট, যাহারা বন্ড সুবিধায় আমদানিকৃত পণ্য বা সেবা অর্থনৈতিক অঞ্চলের রপ্তানি প্রক্রিয়াকরণ এলাকা বা অভ্যন্তরীণ প্রক্রিয়াকরণ এলাকায় স্থাপিত শিল্প ইউনিটে প্রক্রিয়াকরণার্থে বৈদেশিক মুদ্রায় সরবরাহ করে বা দেশের বাহিরে বৈদেশিক মুদ্রায় রপ্তানি করে; এবং

(চ) বাংলাদেশ হাই-টেক পার্ক কর্তৃপক্ষ আইন, ২০১০ (২০১০ সনের ৮নং আইন) এর অধীন প্রতিষ্ঠিত হাই-টেক পার্কে স্থাপিত শিল্প ইউনিট।

৭। লাইসেন্সের মেয়াদ।-

(ক) লাইসেন্সের মেয়াদ হইবে লাইসেন্স প্রদানের তারিখ হইতে ২ (দুই) বছর; এবং

(খ) লাইসেন্সিকে প্রতি বছর তদসংশ্লিষ্ট প্রতিষ্ঠানের অডিট সম্পন্ন করিতে হইবে।

৮। লাইসেন্স নবায়ন।- লাইসেন্সের মেয়াদ উত্তীর্ণ হইবার ৩০(ত্রিশ) দিন পূর্বে লাইসেন্স নবায়ন ফি বাবদ বার্ষিক ৫০০০/- (পাঁচ হাজার) টাকা হারে ২ (দুই) বছরের নবায়ন ফি ট্রেজারি চালানোর মাধ্যমে সংশ্লিষ্ট কোডে জমা প্রদান করিয়া প্রয়োজনীয় দলিলাদি সংশ্লিষ্ট এসোসিয়েশনে জমা প্রদান করিলে লাইসেন্স স্বয়ংক্রিয়ভাবে পরবর্তী মেয়াদের জন্য নবায়িত হইবে এবং সংশ্লিষ্ট এসোসিয়েশন উক্ত নবায়ন সংক্রান্ত তথ্য নবায়নের তারিখ হইতে ৩০ (ত্রিশ) দিনের মধ্যে কমিশনার (বন্ড) বা সংশ্লিষ্ট কমিশনার বরাবরে প্রেরণ করিবে।

৯। লাইসেন্স স্থগিতকরণ বা বাতিলকরণ।- [লাইসেন্স নবায়ন সংক্রান্ত তথ্য সংশ্লিষ্ট এসোসিয়েশন হইতে লাইসেন্স এর মেয়াদ উত্তীর্ণের ৩০ (ত্রিশ) দিনের মধ্যে কমিশনার (বন্ড) বা সংশ্লিষ্ট কমিশনারের দপ্তরে প্রেরণ না করিলে অথবা নিরীক্ষার উদ্দেশ্যে প্রয়োজনীয় দলিলাদি দাখিল না করিলে অথবা আইন বা এই বিধিমালা বা লাইসেন্সের কোনো শর্ত ভঙ্গ করিলে লাইসেন্সিং কর্তৃপক্ষ লাইসেন্স স্থগিত (Suspend) করিতে পারিবেন এবং লাইসেন্সিকে যুক্তিসঙ্গত কারণ দর্শানোর সুযোগ প্রদান করিয়া আইনের Section 13 (2) এর বিধান মোতাবেক লাইসেন্স বাতিল করিতে পারিবেন।”

In view of the above Bidhimala there is no scope to issue any bonded warehouse license in favour of writ petitioner, particularly the home consumption bonded license. Because the writ petitioner does not fall within the category as mentioned in Bidhi 4(ক)-4(ঙ). In Writ Petition No. 6634 of 2007 as well as in the impugned judgment the High Court Division directed the writ respondents to consider the prayer of the writ petitioners in accordance with the applicable law/rules and prevailing practices. In view of the above direction the writ petitioner cannot as of right claim home consumption bonded warehouse license on the basis of the

decision passed in Writ Petition No. 6634 of 2007 under the present Bonded Warehouse License Bidhimala, 2008.

Upon perusal of the impugned judgment and order it transpires that the High court Division disposed of the Rule directing the writ-respondents to convert the provisional license of the writ petitioner, which expired on 14.01.2017 into a regular up to date bonded warehouse license in compliance with the final order dated 14.12.2008 passed in Writ Petition No. 6634 of 2007 with effect from 15.01.2017.

The High Court Division further directed the writ respondents to consider the prayer of the writ petitioner in accordance with the applicable law/rules and prevailing practices. (Underlines supplied).

We have perused the judgment passed in Writ Petition No. 6634 of 2007, which was heard along with some other writ petitions. In the said writ petitions the respondents were directed to grant bonded warehouse license as prayed for by the writ petitioner without delay, if qualified on the basis of the prevailing practice. (Underlines supplied).

It appears to us that the High Court Division in one hand directed the writ respondents to convert the provisional bonded warehouse license of the writ petitioner into a regular up to date bonded license, on the other hand it was also directed to consider the case of the writ petitioner in accordance with the applicable law/rules and prevailing practices. These directions of the High Court Division appear to be contradictory. It is true that in writ petition No. 6634 of 2007 judgment was passed on 14.12.2008 but prior to that judgment on 26.06.2008 a Gazette notification was

published in order to implement section 13 regarding the issuance of bonded warehouse license. However, the said Bidhimala was not placed before the High Court Division at the time of the disposal of Writ Petition No. 6634 of 2007, thus, the same was not considered by the High Court Division.

We have already observed that in this particular case, no legal or vested right has been created in favour of the writ petitioner to get the regular home consumption bonded warehouse license in absence of any particular law or rules.

Mr. Fida M. Kamal, the learned Advocate having referred the office orders dated 26.12.2008 and 04.10.2008 issued by the Customs authority tried to convince us that the Customs authority has allowed some of the importers by giving facility of home consumption bonded license and as such the writ petitioner-respondent is also entitled to get the same. In reply to the above submission, the learned Attorney General informed the Court that, in fact pursuant to the order of the High Court Division in Writ Petition No. 6634 of 2007 the above facility was given to those persons, though law/Bidhimala, 2008 does not permit so.

Having considered and discussed as above, we are of the view that the High Court Division in giving direction to convert the provisional bonded license of the writ petitioner into the regular one committed gross illegality, thus the impugned judgment and order is required to be interfered.

Since, we have heard both the parties at length, we are inclined to dispose of the civil petition for leave to appeal without granting any leave to avoid future delay in disposing of the case.

In view of the above, the civil petition for leave to appeal is disposed of. The impugned judgment and order dated 03.11.2022 passed by the High Court Division is set aside.

C. J.

J.

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