

LEX/BDHC/0204/1997

Equivalent Citation: 1998 18 BLD 477, 50 DLR (1998) 115

**IN THE SUPREME COURT OF BANGLADESH  
(HIGH COURT DIVISION)**

Writ Petition No. 2339 of 1994

**Decided On:** 12.11.1997

Appellants: Dr. Ahmed Husain **Vs.** Respondent: Chairman, Bangladesh Telegraph and Telephone Board, Dhaka and others

**Hon'ble Judges/Coram:**

*K.M. Hasan and Md. Tafazzul Islam, JJ.*

**Counsels:**

*For Appellant/Petitioner/Plaintiff: Ahmed Husain, Advocate*

*For Respondents/Defendant: Serajul Haq, Advocate for Respondent No. 2, Mahmudul Islam with Nahid Mahtab and Ayesha Morshed, Advocates for Respondent No. 3*

**JUDGMENT**

**K.M. Hasan, J.**

**1.** The Rule was is sued calling upon the Respondents to show cause why the amount of Tk. 100.53 added as VAT to the petitioner's Telephone Bill of October. 1994 should not be declared to have been made without lawful authority and is of no legal effect. The facts, as stated in the petition, in short, are that the petitioner who is a Senior Advocate of this Court received as the subscriber of his residence telephone No. 400516, a telephone bill from the Respondent No. 2, a Senior Accounts Officer of Bangladesh Telegraph and Telephone Board, for the month of October, 1994 amounting to Tk. 770.73 including Tk. 100.53 as 15% VAT (annexure-A). He claimed that he is not liable to pay Value Added Tax on his personal telephone set and refused to pay VAT on his telephone bill. On 1.12.94 the petitioner sent a demand of justice notice to the respondent No. 2, but to no effect.

**2.** Being aggrieved the petitioner moved this Court and obtained this Rule.

**3.** The only submission Dr Ahmed Husain, appearing personally has made is that in pursuance of the provisions as contained in Sections 3(1), 2(3), 5(4). 15(1) and 20 of the Value Added Tax Act. 1991, he is not liable to value added tax on his personal telephone set as he is not a registered taxable person rendering services to others but using it for his own use.

**4.** Respondent No. 1. Chairman, Bangladesh Telegraph & Telephone Board, and the Respondent No. 2 Senior Accounts Officer, of the same Board, by filing an affidavit-in-opposition have stated that the Bangladesh Telegraph and Telephone Board is a collecting agent of the Government of Bangladesh and as per direction of the government has been realising the Value Added Tax and depositing the same in the Government treasury, in favour of the National Board of Revenue. Bangladesh Telegraph and Telephone Board levied 15% excise duty on the impugned Telephone bill as\* per direction of the Government as contained in letter No. 1(3) R-1/90/138 dated 14.8.90 (Annexures C & D) to the affidavit-in-opposition of the Respondent Nos. 1 and 2.

**5.** Bangladesh, represented by the Secretary to the Ministry of Finance and Internal Resources Division, who was added as the respondent No. 3 by an Order of this court dated 21.10.97, also by filing an affidavit-in-opposition challenged the petitioner's contention that he is not liable to pay value added tax in pursuance of the provisions of the VAT Act as he is not a registered taxable person under the VAT Act and he is not providing any service to anyone.

**6.** Mr. Mahmudul Islam, the learned Advocate, appearing on behalf of the added Respondent No. 3 has submitted that the petitioner's contention is based upon a misconception about the nature of value added tax realised under the VAT Act. 1991. VAT in its present form, first emerged in France in 1954 and after the formation of the European Economic Community it was adopted as the method of collection of a community wide indirect tax. In the United Kingdom, the purchase tax was replaced by VAT with wider range of tax collection in 1972. In Bangladesh the sales tax has been replaced by VAT Act. 1991.

**7.** Explaining further, he has submitted that a tax levied by Law takes one of the two forms: - direct tax, in case of which the burden falls upon the person who pays the tax, and indirect tax the example of which are excise duty and sales tax, in case of which the burden ultimately falls upon persons other than the persons who pay the tax to the government. He then submits that the very idea of the Value Added Tax in its indirect form is that the trader whether as importer manufacturer, distributor or supplier will realise the tax from the consumer by adding the tax to the price and then pay the tax thus collected to the Government. It is a tax where the burden falls on the consumer, but it is levied in such a manner through each stage of production and distribution that it does not ultimately fall directly or otherwise on any trader whether as importer, manufacturer or distributor. Therefore, he submits that once the nature and structure of VAT are grasped the contention of the petitioner that he is not liable to pay VAT on his telephone bill will be without justification. According to him the Bangladesh Telegraph and Telephone Board is a registered taxable organisation under the Act that render telephone service to its customers. Therefore, the liability to pay VAT is on it. But the nature of Value Added Tax is such that Bangladesh Telephone and Telegraph Board is

not to suffer the burden of it and is entitled to pass it on to its consumers. In this connection he has referred us to Sections 2, 3, 5(4), 9, 15, 20, 31 and 73 of the Value Added Tax Act. 1991.

8. Mr. Md. Serajul Haq, the learned Advocate appearing for the Respondent Nos. 1 and 2 adopted the submission of Mr. Mahmudul Islam.

9. Let us now discuss the relevant Sections.

Section 2 is to the effect:-

(খ) "উৎপাদন কর (output tax) অর্থ এই আইনের অধীন আরোপিত মূল্য সংযোজন কর \* \* \* \*  
\* ;  
(গ) উপকরণ (input) অর্থ সকল প্রকার কাঁচামান, মোড়ক সামগ্রী, সেবা এবং যন্ত্রপাতি, ভাৱে শ্রম, ভূমি, ইমারত, অফিস যন্ত্রপাতি ও যানবাহন ইহার অন্তর্ভুক্ত হইবেন;

When translated into English the gist of the Section will be as follows:-

Section- 2

(Kha):- Output tax means the Value Added Tax levied under this Act.

(Ga):- Input tax means VAT on all types of raw materials, wrapping paper materials, service and machineries, but not on labour, land, buildings, office machineries and transports.

The aforesaid Section means that the tax on the supply of any goods or services to taxable person for a business carried, on or to be carried on by him and the tax paid or payable on the importation of any goods used or to be used by a taxable person for the purpose of a business carried on or to be carried on by him is known as "Input tax". And the tax on the supply by taxable person is known as his 'output tax'

Section 3(1) is to the effect:-

৩-মূল্য সংযোজন কর হারে:প-।১। প্রথম তফসিলে উল্লিখিত পণ্য সমূহ ব্যতীত বাংলাদেশে আমদানিকৃত সকল পণ্য এবং উক্ত তফসিলে উল্লিখিত পণ্য সমূহ ব্যতীত সকল পণ্যের সরবরাহের উপর এবং দ্বিতীয় তফসিলে উল্লিখিত সকল সেবার উপর ধারা ৫-এ বর্ণিত মূল্যের ভিত্তিতে পণ্যের শতাংশ হারে মূল্য সংযোজন কর ধার্য ও প্রদেয় হইবে।

When translated into English the gist of the Section will be as follows:-

Section 3(1):- "Tax will be levied and collected on all goods imported in Bangladesh or supplied except the goods mentioned in Schedule 1 and all services mentioned in the Second Schedule at the rate of 15% of the value determined under Section 5.

Section 5 is to the effect:-

- (১) .....
- (২) .....
- (৩) .....
- (৪) সেবা প্রদানের ক্ষেত্রে মূল্য সংযোজন কর ধার্য করা হইবে সর্বমোট প্রাপ্তির উপরঃ- তবে কর্তৃক থাকে যে, কোন নির্দিষ্ট সেবার ক্ষেত্রে বোর্ড, আদেশ দ্বারা প্রকৃত মূল্য সংযোজনের অথবা তৎকর্তৃক এতদ্দেশ্যে সরকারী গেজেটে প্রজ্ঞাপনের মাধ্যমে মূল্য সংযোজনের নির্ধারিত হারের ভিত্তিতে মূল্য সংযোজন কর ধার্য করিতে পারিবে।
- (৫) .....

When translated into English the gist of the Section will be as follows:-

Section 5(1).....

(2).....

(3).....

(4): "In case of service Value Added Tax will be imposed on all vatiable services".

Section 9 is to the effect:-

৯।১। করযোগ্য পণ্যের সরবরাহকারী বা করযোগ্য সেবা প্রদানকারী উপ-ধারা (২) এর বিধান সাপেক্ষে তৎকর্তৃক প্রস্তুতকৃত বা উৎপাদিত পণ্যের সরবরাহ বা প্রদত্ত সেবার উপর প্রদেয় উৎপাদিত পণ্যের সরবরাহ বা প্রদত্ত সেবার উপর প্রদেয় উৎসকরন করের বিপরীতে উপকরন কর রেয়াত গ্রহন করিতে পারিবেনঃ-

তবে শর্ত থাকে যে, মূলধনী যন্ত্রপাতির ক্ষেত্রে উপকরন কর রেয়াত বিধিমালা নির্ধারিত পদ্ধতিতে গ্রহন করিতে হইবে।

(২) .....

(৩) .....

When translated into English the gist of the Section will be as follows:-

Section 9(1):- "Subject to provision of subsection (2) a supplier of taxable goods manufactured or produced by him or the supplier of service may claim a refund of the input tax against the output tax payable on such goods and services.

Provided.....

(2).....

(3).....

Section 15 is to the effect:-

১৫(১) কৰ যোগ্য পন্থৰ সৰ্বস্বত্বকাৰী বা  
কৰযোগ্য সেৱা প্ৰদানকাৰী বা যে কোন পন্থৰ  
আমদানিকারক বা যে কোন পন্থ বা যে কোন পন্থ  
বা সেৱাৰ রূপান্তরকারকে বিধি द्वारा निर्धारित  
पद्धतिতে संश्लिष्ट कर्मकर्ता निकाट निबन्धित हुने  
हने।

(২) .....

(৩) .....

(৪) .....

When translated into English the gist of the Section will be as follows:-

15(1) "A supplier of goods and services and an importer of goods shall have to be registered with VAT authority in accordance with the procedure prescribed by the authority".

(2).....

(3).....

(4).....

**10.** A careful study of Sections 3(1), 5(4), 9(1) and 15(1) to the VAT Act will reveal that the value added tax is an indirect tax on consumption of goods or services. It is a tax that is collected fractionally along the whole chain of distribution, from the point of production or importation to the supply to the consumers. It is levied, in such a manner that none is applied a directly on the trader whether he is an importer, a manufacturer, or a distributor. Ultimately it falls on the consumer. The only duty lies on any trader is to keep an accurate record and pay over the tax thus collected to the Government.

**11.** VAT under Sections 3 and 5 is charged on the supply of goods and services where goods or services are supplied by a taxable person in the course of business carried on by him. Under Section 15(1) the trader known as a taxable person has to account for the tax at the specified rate on all "outputs" which are liable to tax. A further requirement under this Section is that a taxable person shall have to be registered with the VAT authority in accordance with the procedure prescribed by Law.

**12.** It also appears from Section 3(1) that commodity lists of vatable items are included in the legislation. Telephone is stated at serial No. S012 of the list of ratable services given in the second schedule of the VAT ART. 1991. However, the lists thus provided are not final. The Government may from time to time as it thinks necessary, provided with respect to any description of transaction that it is to be treated as a taxable service or goods.

**13.** The aforementioned Sections also lay down the procedure for tax collection. It involves a mechanism by which a taxable person who had to pay tax on the goods supplied to him is entitled to set off that tax against the tax charged by him on the goods supplied by him other persons. It makes him accountable only for the excess of the tax on the supplies from him over the tax on the supplies to him.

**14.** These Sections also deal with the responsibility of the taxable person to account for tax at a specified rate on the sale of all output that are liable to tax Under Section 31 of the VAT Act all tax thus collected must be paid over to the VAT authority. A credit mechanism is created under Section 9(1) for a taxable person to recover the tax has been charged on the inputs coming from business. Any excess payment of the tax only leaves that amount of money temporarily in the hands of the Government. It must be paid back to the taxable person.

**15.** Therefore, it will appear that two types of taxes are involved in a business, first, there is output tax, at a specified rate dependent on the nature of goods or service charged to all customers and later paid over to the authority. Secondly, there is input tax distinguishable from output tax. This tax is charged to the trader by his supplier and paid to them when paying for the goods or service. This amount of tax is subsequently recoverable from the authority.

**16.** It is only by keeping output and input tax separate and bringing them together at the time of settlement, the simplicity of VAT is extended into the accounting system of the registered taxable person. This responsibility to keep an account of the tax is given under Section 31 to the taxable person. The only cost incurred by him is in keeping accurate record and periodical paying, over to the Government tax thus collected in forms prescribed in the VAT Rules. 1991.

**17.** The other relevant Sections of the VAT Act referred to by Mr. Mahmudul Islam are Sections 20, 21 and 73 which are taken up now for a better understanding of the value added tax system and their application in the instant case.

Section 20 is to the effect:-

২০। বোর্ড এই আইন ও বিধি কার্যকর করার উদ্দেশ্যে, সরকারী গেজেটে প্রজ্ঞাপন দ্বারা, প্রজ্ঞাপনে উল্লিখিত যে কোন এলাকার জন্য যে কোন ব্যক্তিকে

(ক) .....

(খ) .....

(গ) .....

(ঘ) .....

(ঙ) .....

(চ) .....

(ছ) .....

(জ) অন্য যে কোন পদবীর মূল্য সংযোজন করা কর্মকর্তা নিয়োগ করিতে পারিবে।

When translated into English the gist of the Section will be as follows:-

Section 20: " For the purpose of giving effect 10 the Act and the Rules the Board may by notification in the official gazette appoint any of the following persons as VAT authority in any area mentioned in the notification.

a).....

b).....

c).....

d).....

e).....

f).....

g).....

h) any person of any other designation"

Under this Section the Bangladesh Telegraph and Telephone Board can appoint VAT authorities in different areas by gazette notification to give effect to the provisions of Law and Rules.

Section 21 is to the effect:-

১১। ধারা ২০ এর অধীন নিযুক্ত কোন মূল্য সংযোজন কর কর্মকর্তা এই আইনের দ্বারা বা অধীনে তাহাকে প্রদত্ত ক্ষমতা প্রয়োগ এবং তাহার উপর অর্পিত কর্তব্য পালন করিবেন; এবং তিনি তাহার অধঃস্থন যে কোন কর্মকর্তাকে প্রদত্ত বা তাহার উপর অর্পিত সকল ক্ষমতা প্রয়োগ ও কর্তব্য সম্পাদন করিতে পারিবেনঃ

ভবে শর্ত থাকে যে, এই আইনের বা তদধীনে প্রণীত বিধিমালায় বাহা কিছুই থাকুক না কেন, বোর্ড, সাধারণ বা বিশেষ আদেশ দ্বারা উক্ত ক্ষমতা প্রয়োগ ও কর্তব্য পালনের উপর উহা যেকোন উপযুক্ত বিবেচনা করে, সেইরূপ পরিসীমা নির্ধারণ ও শর্ত আরোপ করিতে পারিবে।

১২। মূল্য সংযোজন কর কর্মকর্তাগণ মূল্য সংযোজন কর, সম্পূর্ণরূপে উন্নত ও টার্নওউটার করের পরিমাণ নির্ধারণ ও উহা আদায়সহ তৎসংক্রান্ত যাবতীয় কার্যাবলী সম্পাদন করিবেন।

When translated into English the gist Of the Section will be as follows:-

Section 21(1): The VAT authority appointed under Section 20 shall exercise all powers and shall perform the duties as are conferred and imposed on him by the Act and he shall be entitled to exercise all powers and perform all duties which shall be conferred or imposed on any office subordinate to the VAT authorities.

Provided that notwithstanding anything contained in the Act or in the Rules framed thereunder the Board may by general or special Order put a limit or condition on the exercise of such power and the performance of such duties as it may consider proper.

(2):- VAT authorities shall perform all functions relating to determination and collection of value added tax, supplementary duty and turn over tax".

This Section lays down that by gazette notification VAT authorities shall be appointed by the Board in an area. It also deals with the powers of the VAT authorities thus appointed. Subject to limits or conditions imposed by the Board, by general or special Order, VAT authorities shall perform all duties conferred or imposed on him and perform all functions relating to determination and collection of value added tax, supplementary duty and turn over tax. The VAT authorities will also be entitled to exercise all duties conferred or imposed on any official subordinate to the VAT authority.

Section 73 is to the effect:-

(1) এই আইন প্রবর্তনের সঙ্গে সঙ্গে Business Turnover Tax Ordinance, 1982 (XVII of 1982) এবং Sales Tax Ordinance, 1982 (XVIII of 1982) অতঃপর উক্ত অধ্যাদেশগুলি বলিয়া উল্লিখিত, রহিত হইবে।

(2) উক্ত অধ্যাদেশগুলি উক্তরূপে রহিত হওয়া সত্ত্বেও-

(Ka) উক্ত অধ্যাদেশগুলির অধীনকৃত বা গৃহীত ব্যবস্থা, যতদূর পর্যন্ত উহা এই আইনের বিধানাধীন নহিত অসঙ্গতিপূর্ণ না হয় ততদূর পর্যন্ত, ইতিমধ্যে কৃতকাজ কর্ম বা গৃহীত ব্যবস্থা ক্ষুণ্ণ না করিয়া এই আইনের অধীনকৃত বা গৃহীত হইয়াছে বলিয়া গণ্য হইবে:

(Kha) উক্ত অধ্যাদেশগুলির অধীন প্রনীত সকল

বিধি, প্রদত্ত সকল আদেশ, জারীকৃত সকল প্রজ্ঞাপন বা নোটিশ এই আইনের বিধানাবলীর সহিত সামঞ্জস্যপূর্ণ হওয়া সাপেক্ষে, রহিত বা সংশোধিত না হওয়া পর্যন্ত, বলবৎ থাকিবে এবং এই আইনের অধীন প্রণীত, প্রদত্ত, বা জারীকৃত হইয়াছে বলিয়া গণ্য হইবে;

(Ga) উক্ত অধ্যাদেশগুলির কোন একটির দ্বারা বা উহার অধীন আরোপিত কোন কর বা ফিস বা অন্য কোন পাওনা, এই আইন প্রবর্তনের অব্যবহিত পূর্বে, অনাদায়ী থাকিলে উহা উক্ত অধ্যাদেশ অনুযায়ী আদায় করা হইবে, যেন উক্ত অধ্যাদেশ, রহিত হয় নাই।

(3) .....

(4) .....

When translated into English the gist of the Section will be as follows:-

Section 73(1)" On the commencement of this Act, Business Turnover Tax Ordinance, 1982 and Sales Tax Ordinance, 1982 shall stand repealed.

(2) Notwithstanding the repeal of the said Ordinances

(a) All the acts done or actions taken, under the afore-mentioned Ordinances, so far as they are not inconsistent with the provisions of the Act Shall be deemed to have been done or taken under the Act actions already done or taken.

(b) All the Rules, orders, notifications and notices passed or issued under those Ordinances so far as they until they are consistent with this Act shall until they

are repealed or modified remain in force and shall be deemed to have been passed and issued under this Act

(c) Any tax, fee or any other dues imposed under any of the repealed Ordinances remaining in arrear at the time of commencement of the Act shall be collected under the repealed Ordinances as if these Ordinances have not been repealed.

(3).....

(4).....

Under this Section the aforementioned Ordinances have been repealed and the Sales tax is reenacted in the form of VAT Act with a wider sphere to include many other items, e.g. services which was not previously taxed under the Sales Tax Ordinance.

**18.** On an analysis of all the relevant Sections of the VAT Act referred to above we are persuaded to agree with Mr. Mahmudul Islam, the learned Advocate for the respondent No. 3, with his primary contention that the instant writ petition ensued from a misconceived idea of the nature, object and purpose of the VAT Act. To understand the legal provisions of the VAT Act or to ascertain the meaning of a particular Section of the Act recourse should be had to all the relevant provisions of the VAT Act and no Section of the Act should be relied upon isolatedly. It is from an understanding of the scheme as contemplated in the VAT Act a correct interpretation to a certain Section may be given. This is where the mistake is made by the petitioner. He put a particular construction to Sections 2 and 3 of the Act, in total disregard of other Sections, to claim that as a subscriber of a telephone he is not providing service to any one as a registered taxable person with the VAT authority but using it for his own purpose and that he is only a customer of service rendered by Bangladesh Telegraph and Telephone Board.

**19.** In conclusion, we find that the VAT tax as introduced in Bangladesh is an indirect tax in place of Sales tax and Business Turn Over tax to simplify the taxation system (Section 73). Under the VAT scheme as laid down in the Act the Bangladesh Telegraph and Telephone Board is one of the registered taxable persons providing service by offering telephone to its customers (Section 15) and VAT is charged on the service supplied by it to its customers in the course of business carried on by it (Sections 3 and 5). The tax is, therefore, payable by the Bangladesh Telegraph and Telephone Board as a registered person supplying the service to its customers. but this liability to pay tax is passed on to the customers including the petitioner in the course of business carried on by it (Section 3). The petitioner is only one of the customers of Bangladesh Telegraph and Telephone Board. By accepting its service the petitioner made himself liable to bear the burden of value added tax under the indirect tax system. Under the indirect tax system it is always the customers or consumers of goods or services who bear the

burden of tax levied. Section 3 confers the responsibility on the Bangladesh Telegraph and Telephone Board, as a registered taxable person to collect the value added tax from its subscribers, including the petitioners, and under Section 31 further responsibility is given to it to deposit the tax thus collected to the VAT account of the Government. But the value added tax shall have to be paid by the petitioner as one of its consumers. Therefore, the petitioner is liable to pay VAT on the impugned telephone bill. In view of the above, the Rule is discharged without any Order as to cost. Stay Order granted earlier in respect of realisation of the disputed portion of VAT is hereby vacated.

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