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### ***Interest on delay payment of Revenue***

According to s. 37(3) of the Value Added Tax Act 1991 if any registered person or Value Added Tax deductor at source fails to pay or deposit in the government treasury within specific date under this Act any payable or tax deducted at source or imposed monetary penalty or any other dues, he will have to pay monthly interest at the rate of two percent on the unrealized amount from the immediate date after the specific date.

However the question arises when any aggrieved party files any appeal before Customs Excise and VAT Appellate Tribunal under s.42(1) then the alleged impugned order is automatically stayed according to the judgment of honorable High Court Division of Bangladesh Supreme Court in the case **PHP Industries v Customs, Excise and VAT (65 DLR 478)** the court held that “ In as much as the appeal is admitted, the impugned order is automatically stayed” .... "Upon a perusal of the above decisions of this Court, it is now held that when the appeal was registered and admitted for hearing, the order in question which is impugned in the appeal has been automatically stayed.....". If the alleged order of Tribunal is in favor of Government then the aggrieved party has to pay the disputed amount to Govt. exchequer but the **First question is whether the party has to pay interest or not ?**

**Second question : whether time for interest should be calculated from specific paid date of dues or appeal period will be excluded ? Third question : as per s. 42(4) the Appellate Tribunal is at liberty to resolve the disputed matter within two years, if it is solved within two or three months interest will be less in contrary if it takes two years then interest will be more, is it a burden on tax payer ?** This may linger when the aggrieved party again appeals before High Court Division then again before Appellate Division of Bangladesh Supreme Court. Same question arises in case of writ petition. When any company, being aggrieved against any order passed by VAT authority, files writ petition before special original jurisdiction of honorable High Court Division and/or being aggrieved that judgment again appeal before honorable Appellate Division and finally pay government dues by the order of Appellate Division; is there any interest applicable as per s. 37(3) as government dues have not been paid on specific time.

Now we can analyze the demand procedure of value added tax and supplementary duty. S.55 of the VAT Act stated that in a case where a registered or worth or being registered person or a person enlisted under Turnover Tax or worth of being enlisted under Turnover Tax, for undertaking one or more activities by him described under Sub-Section (2) of Section 37 or wrongly or for wrong explanation, payable on goods supplied or service rendered—

- (a) Value Added Tax or, as the case may be, Value Added Tax and Supplementary Duty has not been determined and paid,
- (b) Value Added Tax or, as the case may be, Value Added Tax and Supplementary Duty has been refunded for the same reason,
- (c) Value Added Tax, Supplementary Duty, import duty, Excise Duty, other duties and taxes (except Advance Income Tax) have been given drawback under Section 13,
- (d) adjustment has been made against Value Added Tax or, as the case may be Value Added Tax and Supplementary Duty payable on any goods and service supplied in Bangladesh, in that case, upon that person show cause notice can be issued by the concerned Value Added Tax Officer within five (5) years from the date when Value Added Tax or, as the case may be Value Added Tax or Supplementary Duty had been payable or drawback or refund had been given or adjustment had been made, demanding by notice duties and Value Added Tax cited in the notice for paying the said duties and Value Added Tax within the time mentioned in the notice.
- (2) In the case of imported goods, if any Value Added Tax or, where applicable, Value Added Tax and Supplementary Duty has not, for any reason, been paid or has been short paid or refunded erroneously, it shall be collected in accordance with the provisions of Section 32 and Section 83A of the Customs Act.
- (3) If the person from whom duties and taxes have been demanded under Sub-Section (1) 40 complains in writing against the show cause notice issued under that Sub-Section, he shall be given an opportunity of being heard. Thereafter, the Value Added Tax officer may, after considering the objection raised by the said person within 120 (one hundred and twenty) days of the submission of the objection, shall re-fix finally, if necessary, the amount of duties and taxes demanded by the notice, or where no objection is raised, within 120 (one hundred and twenty) days of the notice issued under the said Sub-Section and the person shall be bound to pay the amount of duties and taxes demanded in the notice or, where applicable, so re fixed.
- (4) The Commissioner may, if the person from whom duties and taxes have been demanded under Sub-Section (1) desires in writing to pay the demanded amount in installments, order to pay the duties and taxes in such installments and terms as he may specify: Provided that, the time-limit for payment of the installments shall not exceed the period of six months.

There is no provision of charging interest in s. 55 , so when demand is issued under s. 55 then no interest is charged. In the case of **Abdul Motaleb Vs. Customs, Excise and VAT Appellate Tribunal (64 DLR 100)** the honorable High Court held that "Nothing short of prior compliance of section 55 of the VAT Act, the VAT authority by any stretch of imagination. Cannot go for an action under section 37 of the Act, which is penal provision. Liability has to be fixed first under section 55 of the Act nothing more nothing less." This principle was also applied in the case of **Hotel Zakaria International vs. The National Board of Revenue (30 BLD 388)** as well as in **United Mineral Water and PET Industries Ltd v Commissioner, Customs Excise and VAT 61 DLR 734.**

In the case **Mr. Baker Cake and Pastry Shop v Commissioner, Customs, Excise and VAT** it was held that the provision of s.37 of the VAT Act is a penal provision, which can be exercised only after determination of the VAT evaded by any person under a given situation. Section 55 of the VAT Act provides for realization of unpaid or less paid VAT and others to the concern authority to issue notice of show cause notice or make demand as the case may be for unpaid VAT, or less paid VAT would not be deposited and adjusted.

**In the case of Alhaj Ahsanullah Khan Moni v NBR (Writ No-5417/2008) the honorable High Court Division held that** “ ..... Section 37 of the VAT Act is absolutely an independent penal provision having no nexus with section 55 of the VAT Act and section 37 is not in any way dependent on section 55 of the VAT Act.....”

.....

“ ..... section 37 and 55 were incorporated in VAT Act by the legislature for two different purposes one not being connected with/dependent on the other in any way. ....”

It is apparent that section 55 is related to collecting less paid or unpaid VAT or Supplementary Duty. On the other hand section 37 is a penal provision; it has two parts. One is S. 37(3) which empowers the VAT Authority to charge interest and second one is S. 37(2) which empowers the VAT Authority to impose penalty when intentional evasion is proved. However, S 37(2 Kha) provided that when a person mistakenly does not pay VAT or pay less VAT then no penalty is imposed but interest must pay.

Intention of parliament for inserting a penal provision i.e. S. 37 is to restrict nonpayment or less payment of VAT or SD. That means interest is charged so that no person keeps himself away from paying VAT or SD in the specified time. Interest is calculated from specific date when the person was under a duty to pay the Revenue to the date immediate before paying unrealized amount.

### **Answer of First Question:**

There is no provision in Value Added Tax Act 1991 for avoiding interest. Interest is applicable on service sector from the very beginning of VAT Act; however interest is first applied on manufacturing goods in case of delay payment in the Finance Act 2010.

Effect of repeal and Repeal of Act making textual amendment in Act or Regulation has been stated in section 6 and section 6A of the General Causes Act, 1897. If we glean section 6 and

section 6A of the General Causes Act, 1897 we find that, no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act.

### **Answer of Second and Third Question:**

For calculating interest appeal period will not be excluded. It was decided in the case **Hotel Zakaria International (Pvt.) Ltd. v Customs, Excise & VAT Appellate Tribunal (Writ 3604/2002)**. The ratio of this judgment :

"..... it is clear that in fact, the petitioner evaded payment of VAT for which he was liable to pay 2% additional taxes in accordance with law."

Many lawyers argue that interest should not be charged for the appeal period. They argue that appeal time depends on Tribunal because it is absolute power of Tribunal to pronounce verdict within two years however there is no time limit in case of Supreme Court. Besides, they argue that interest is a hindrance to exercise fundamental rights of justice.

This argument might not be correct as In the case of **Alhaj Ahsanullah Khan Moni v NBR (Writ No-5417/2008)** the honorable High Court Division made it clear that section 55 and section 37 are completely independent and were incorporated in VAT Act by the legislature for two different purposes; one not being connected with/dependent on the other in any way. It is apparent that intension of section 37(3) is to protect evasion and indirect avoidance of Government Revenue. Merely for an example, if interest is not applicable during pendency of any case before Tribunal or High Court Division or honorable Appellate Division, many companies will be willing to go against SRO or General Order or Rules before court for temporary avoidance of revenue. They may think judgment might be announced after several years and then they will pay only principal amount. If it had happened Government would have lost huge amount of revenue as well as no of cases would have increased extremely. Interest is applicable during pendency of appeal period which is clear from the ratio of the case **Hotel Zakaria International (Pvt.) Ltd. v Customs, Excise & VAT Appellate Tribunal** in the Writ petition no 3604/2002. Interpretation of law is decisive in this regard; Purposive Approach of interpretation may focus at this juncture. In a leading case of House of Lords, **Magor and St. Mellons Rural District Council v Newport Corporation [1952] A.C. 189** In the course of his judgment Denning L.J. said 1: "This was so obviously the intention of the Minister's Order that I have no patience with an ultra-legalistic interpretation which

would deprive" [the appellants] "of their rights altogether. I would repeat what I said in Seaford Court Estates Ltd. v. Asher. 2 ***We do not sit here to pull the language of Parliament and of Ministers to pieces and make nonsense of it.*** That is an easy thing to do, and it is a thing to which lawyers are too often prone. ***We sit here to find out the intention of Parliament and of Ministers and carry it out,*** and we do this better by filling in the gaps and making sense of the enactment than by opening it up to destructive analysis."

According to the above judgment of House of Lords, court should try to find out the intention of the Parliament while interpreting the law. Thus by taking into account the intention of the Parliament for incorporating section 37(3) which is related to charging interest, there should be no ambiguity of charging interest under any circumstances if any person fails to pay VAT or SD within the specified time.

ADR (Alternative Dispute Resolution) is a great opportunity to resolve all sorts of cases within thirty working days. Customs, Excise and VAT Appellate Tribunal may take two years to resolve a case, High Court Division or Appellate Division may take several years to finalize a case however ADR may take few days to resolve the impugned case in consideration. However ADR has some limitations; when the litigation is regarding a question of law then the competent court is honorable Supreme Court i.e. High Court Division or Appellate Division, on the other hand when the litigation is regarding a question of fact then ADR may be the suitable one.