

IN THE SUPREME COURT OF BANGLADESH
Appellate Division

PRESENT

Mr. Justice Md. Ruhul Amin

Mr. Justice M.M. Ruhul Amin

Mr. Justice Md. Tafazzul Islam

CIVIL APPEAL NOS.287-289 OF 2003.

(From the Judgment and Order dated May 25, 2003 passed by the High Court Division in Writ Petition Nos.3475, 3439 and 3480 of 2002)

National Board of Revenue, represented by its Chairman,
Segunbagicha, Dhaka and others

..... Appellants
(in all the cases)

= Versus =

Intertek Testing Services International Ltd. and another

..... Respondents
(in CA No.287 of 2003)

BIVAC International S.A. Bureau Vertias Group and another

..... Respondents
(in CA No.288 of 2003)

PSI Inspectorate Ltd. and another

..... Respondents
(in CA No.289 of 2003)

For the Appellant No.1
(in all the cases)

:Mr. Mahmudul Islam, Senior Advocate
(Mr. Probir Neagi, Advocate with him) instructed by Mr.
Ahsanullah Patwary Advocate-on-record

For the appellant Nos.2-9
(in all the cases)

:Mr. Fida M. Kamal, Additional Attorney General,
Instructed by Mr. Ahsanullah Patwary, Advocate-on-record

For Respondent No.1
(in CA No.287 of 2003)

:Dr. Kamal Hossain, Senior Advocate (Mr. Salahuddin
Ahmed, Advocate with him) instructed by Mr. A.S.M.
Khalequzzaman, Advocate-on-record

Respondent No.2
(in CA No.287 of 2003)

:Not represented

For the Respondents
(in CA No.288 of 2003)

:Mr. Rokonuddin Mahmud, Senior Advocate & Mr. Kh.
Mahbubuddin Ahmed, Senior Advocate, instructed by Mr.
Syed Mahbubur Rahman, Advocate-on-record.

For the Respondents
(in CA No.289 of 2003)

:Mr. Rafiqur-ul-Huq, Senior Advocate (Mr. Masood R.
Sobhan, Advocate with him) instructed by Mr. Afiah
Hossain, Advocate-on-record.

Date of hearing

: 23.8.2005, 24.8.2005, 27.8.2005, 28.8.2005,
29.8.2005 & 30.8.2005

J U D G M E N T

MD RUHUL AMIN, J:- The appeals by leave are against
the common judgment of the High Court Division dated May
25, 2003 in Writ Petition Nos.3475, 3439 and 3480 of

2002 making the Rules absolute upon declaring the action of the revenue levying VAT on the fees and commissions of the writ-petitioners who acted as Pre-shipment Inspection Agencies to have been passed without lawful authority and of no legal effect.

In Writ Petition No.3475 of 2002 the writ-petitioners impugned the Memo. being নথি নং ৪(২) মুসক/বাস্ত : সেবা ও আধঃ / ৯৭/৪৪২(১-১৭) dated 11.5.2002 of the National Board of Revenue (NBR) communicating the decision to the relevant authorities for realization of VAT treating the Pre-shipment Inspection Agencies (PSI) as (জরিপ সংস্থা), সেবা কোড S 020.00 and the Memo. being নথি নং এস /০২/ রাজস্ব হিসাব/মংলা/৯৯-২০০০ dated 25.6.2002 deducting VAT from the pending bill of the writ-petitioners and that also expressing the intention to realize the arrear VAT from the bills of the writ-petitioners. In Writ Petition No.3439 of 2002 writ-petitioners impugned the Memo. being নথি নং ৪(২) মুসক/বাস্ত : সেবা ও আধঃ / ৯৭/৪৪২(১-১৭) dated 11.5.2002 of the NBR written to the authorities for realization of the VAT from the fees and commissions of the PSI Agencies and the Memo. being নথি নং ১২(২) মুসকঃ নীঃ বাঃ/৯৫ (অংশ-১)/ ২২৪ (১১) dated March 11, 2001 of the NBR to the relevant authority communicating the decision for realization of VAT @15% from the 20% fees and commissions of the PSI Agencies. In Writ Petition No.3480 of 2002 the writ-petitioners impugned the Memo. being নথি নং ৪(২) মুসক/বাস্তঃ সেবা ও আধঃ / ৯৭/৪৪২(১-১৭) dated

11.5.2002 of the NBR to the concerned authority for realization of the VAT from the fees and commissions of the PSI Agencies and the Memo. being নথি নং ১২(২) খসড়া নীঃ বাঃ/৯৫ (অংশ-১)/২২৪ (১১) dated March 11, 2001 of the NBR to the authorities for realization of VAT @15% from the 20% of the total fees and commissions of the PSI Agencies.

The High Court Division has declared the aforesaid Memos. of the NBR to have been passed without any lawful authority and are of no legal effect and thereupon further declared that the PSI Agencies "are not liable to pay VAT". The High Court Division also directed the authorities to refund the VAT already realized from the bills of the PSI Agencies.

The writ petitions were filed more or less with the common contentions, that PSI Agencies were appointed by the Government to render service outside Bangladesh and that VAT being levyable for service rendered in Bangladesh hence PSI Agencies are not liable to be charged with VAT for rendering service to the Government outside Bangladesh, that there is no express provision in the VAT Act, 1991 (Act No.22 of 1991) to levy VAT on the service of the PSI Agencies, that PSI Agencies are not liable to be charged with VAT because of the provision in the Second part of sub-section (1) of section 3 of the VAT Act which provides that except services mentioned in second schedule all services

rendered within Bangladesh are to be charged with VAT, that in the contract signed between the parties i.e. Government of the People's Republic of Bangladesh and the respective PSI Agencies there is no clear stipulation as to payment of VAT on the services rendering by the PSI Agencies and that PSI Order, 1999 and the VAT Act lack indication as to charging of VAT on the services rendered by the PSI Agencies and as such charging of VAT on the fees and commission payable against the services rendering by PSI Agencies is bad in law, that the PSI Agencies rendered service to the Customs or in other words to the Government and as such not liable to be charged with VAT for the service so rendered by the PSI Agencies, that PSI Agencies being an agent of Government as mentioned in paragraph 7, clause 'Gha' of the Second Schedule of the VAT Act, the said agency is not liable to be charged with VAT, that PSI Agencies being the statutory Agents of the Government and the NBR, the same are not required to pay VAT as because service is rendered to the Government. It has lastly been contended that the settled principle of law is that the fiscal law for charging a citizen with tax or levy is to be construed strictly and that for saddling the citizen with tax or levy placing reliance on a particular law there must have clear legislative intention in the said law to saddle the citizen with levy or tax and that legislative intention for saddling the citizen with tax or levy must be in clear and

unambiguous language and in case of ambiguity the benefit of doubt will go in favour of the subject.

In repelling the aforesaid contentions of the writ-petitioners it was contended from the side of the Revenue that in the contract signed between the Government and the PSI agencies there is clear mention that PSI agencies would be required to pay all local taxes including VAT in respect of the income and profit of the PSI agencies, that the service rendered by the PSI agencies is not extra-territorial and that the PSI agencies render service in Bangladesh and submit bill to the authority in Bangladesh claiming fees and commission in terms of Taka and that the payment for the services render by the PSI agencies is being made in Bangladesh with the privilege of converting 80% payment into foreign currency and as such the fees and commissions of the Pre-shipment Inspection Agencies as per provision of section 3 of the VAT Act is liable to be charged at 15%, that in the Second Schedule of the VAT act PSI Agencies have not been exempted from payment of VAT and as such the said agencies are liable to pay VAT on the total fees and commissions as per provision of sections 4 and 5 of the VAT Act, that as per paragraphs 6(ka) and (kha) of the Second Schedule of the VAT Act PSI Agency has not been exempted from payment of VAT or in other words PSI Agency has been excepted in clause 6(ka) and (kha) of the Second Schedule and consequent thereupon the PSI agent is chargeable with VAT.

The High Court Division upon observing that the submission of the learned Additional Attorney General that as PSI Agency has not been mentioned in the Second Schedule of the VAT Act (in the Second Schedule services mentioned other than the services excepted are exempted from payment of VAT) and as such the PSI Agency is liable to pay VAT can not be accepted since acceptance of the said submission would create anomaly, that there was no notification to the effect that service of PSI Agent is vatable service, that PSI Agency performs its primary service outside Bangladesh and that the said Agency renders some services in Bangladesh but as there is no clear cut demarcation as to quantity of service to be rendered in Bangladesh and outside Bangladesh and as such in the absence of determination VAT can not be levied, even if on certain part of the service VAT is levyable, because of uncertainty and ambiguity, that taking into consideration the provision of sections 3 and 5 of VAT Act and the provision of PSI Order, 1999 it appears the legislature and its delegation (NBR) have no intention to levy VAT on the services of PSI Agency, that the NBR as per provision of section 3(5) of the VAT Act has not declared the service of PSI as vatable and that in paragraph 7(IV) of the Second Schedule of the VAT Act it has not been mentioned that PSI Agent would not be exempted from the payment of VAT for the service renders by it, that in the explanation add to 'জরিপ সংস্থা' the NBR expressly or in unambiguous term has not

included service of PSI Agency for levying VAT, that PSI Agency and 'জরিপ সংস্থা' are not synonymous and as such both can not be placed on the same footing in view of the legal terminology in the Customs Act and the PSI Order, that PSI Agency is not engaged in surveying the goods and as such the PSI Agency is not includable in the organization like 'জরিপ সংস্থা' and that explanation given by the NBR in relation to 'জরিপ সংস্থা' can legally be not extended to the service rendered by the PSI Agency.

The background whereof the writ petitions were filed is that Government as per provision of section 25A of the Customs Act, 1969 (inserted in the Customs Act by the Finance Act of 16 of 1999 upon repealing section 25A which was inserted by the Finance Act 11 of 1994) as well as in the light of the provisions of the Pre-shipment Inspection Order, 1999 invited tender for appointment of PSI Agency for the purpose of "verification and certification of the quality, quantity, price, description and customs classification of any goods to be imported into Bangladesh". The writ petitioners' bids were accepted and for the aforesaid purpose contract was entered into between the writ-petitioners and the Government between February 8 and 18 of 2000. The contract so entered into between the Government and the respective PSI Agency was for 3 years effective from February 15, 2000. The writ-petitioners in respect of the service rendered by them submitted

bills and received payment for some time without deduction of VAT. On March 11, 2001 NBR wrote to the concern authorities for charging VAT @15% on the 20% fees and commission of the PSI Agency. It may be mentioned the NBR in support of their decision to levy VAT on the fees and commission of the PSI Agency, categorized the same as 'জরিপ সংস্থা'. The PSI Agency took exception to the aforesaid decision of the NBR and thereupon the NBR by its letter dated May 21, 2001 wrote to the PSI Agency as well as to the customs authorities, that as the PSI Agency has taken exception to the decision of the NBR for charging VAT on the fees and commission of the PSI Agency, the matter is being examined by the NBR and that till the final decision is being made payment may be made to the PSI Agency against their pending bills upon obtaining undertaking from the PSI Agency to the effect that in case final decision is being made to the effect that fees and commission of PSI Agency are chargeable with VAT, the PSI Agency would pay the VAT on their fees and commission and thereupon the PSI Agency upon giving undertaking received payment for the services rendered by the time by them. Finally the NBR cancelled the Memos. i.e. Memo. dated March 11, 2001 and May 21, 2001 and made the decision to charge VAT on the fees and commission of the PSI Agency and communicated the same to the concerned authorities by the Memo. dated May 11, 2002.

Leave was obtained contending that the High Court Division was in error in holding that the PSI Agency does not render services in Bangladesh and thereupon arriving at the finding that the services rendered by the PSI Agency are not covered by section 3 of the VAT Act, that services rendered by the PSI Agency is liable to be charge with VAT as a Survey Agency (জরিপ সংস্থা) under the service code S020.00 of the VAT Act, 1991 and as such in the facts and circumstances of the case the High Court Division was in error in holding otherwise and thereupon in making the Rule absolute, that in paragraph 6 of the Schedule 2 of the VAT Act জরিপ সংস্থা having been clearly indicated as liable to VAT and as such as it was not necessary for the National Board of Revenue (NBR) to issue Gazette Notification to include PSI Agency as one of the Agency liable to be charged with VAT, the High Court Division was in error in holding that services rendered by PSI Agency are not vatable service since there was no notification by the NBR as to that effect.

The concept of verification and certification of the goods imported in Bangladesh by Pre-shipment Inspection Agency was introduced in 1994 through the insertion of section 25A in the Customs Act, 1969 (the Act). Provision of the said section was as follows:

"25A. Notwithstanding anything contained in any other section of this Act, the Government may, by notification in the official

Gazette, declare that the quality, quantity, price and customs classification of goods verified and certified in the prescribed manner by an approved pre-shipment inspection agency will be accepted as the basis for assessment".

This provision of law was inserted at the instance of the importer for the purpose of facilitating speedy clearance of the imported goods. It may be mentioned from the language of the section it is seen that acceptance of the certificate issued by the pre-shipment Inspection Agency was optional for the Customs Authority and that the matter of getting imported goods verified and certified by the pre-shipment Agency was not compulsory. Later on the Government by the Finance Act No.16 of 1999 substituted the section 25A of the Customs Act, 1969 and the substituted section 25A of the Customs Act reads as:

"25A. Pre-shipment inspection agencies and assessment on the basis of their certificates-

(1) For the purposes of this Act, the Government may, in the prescribed manner, appoint pre-shipment inspection agencies and determine the scope and manner of their certification and related matters.

(2) The Government may, by notification in the official Gazette, declare that the quality, quantity, price, description and customs classification of any goods verified and certified in the prescribed manner by a pre-shipment inspection agency shall be accepted as the basis for assessment.

(3) For the purposes of this section, "price" means value of the goods determined in

accordance with sub-sections (1) and (2) of section 25".

And by the said Finance Act Government also inserted in the Customs Act, 1969 section 25B and 25C which are as follows:

"25B. Mandatory pre-shipment Inspection.- It is mandatory for the importers to have their importable goods inspected by a pre-shipment inspection agency before or at the time of shipment of those goods on board a vessel, aircraft or other conveyance:

Provided that the Government may, by notification in the official Gazette, exempt any class of goods or any goods imported by any class of importers or any goods imported through a customs port or a customs station or any area within such port or station from the mandatory pre-shipment inspection.

25C. Pre-shipment inspection service charge.- The Government may, by notification in the official Gazette, impose pre-shipment inspection service charge on imported goods required to be inspected by pre-shipment inspection agencies at a rate not exceeding one percent of the value of such goods and this charge shall be collected as if it were a customs duty leviable under section 18(1)".

At the time of execution of the contract between the Government and the Pre-shipment Inspection Agencies the above was the law.

From the provision of the newly enacted section 25A and 25B it is seen that certificate issued by the Pre-

shipment Inspection Agency was made basis for assessment of customs duties and other levies and that verification by the Pre-shipment Inspection Agency was made compulsory for the importer in respect of the goods imported. It may be mentioned under the provision of section 25A as enacted in 1999 for the verification of the imported goods the Pre-shipment Inspection Agency was appointed by the Government.

Keeping in view the object and purpose of inspection by the Pre-shipment Inspection Agency the Government in the light of the provision of section 25A of the Act by SRO No.316- Law/99/1807/Cus dated October 19, 1999 issued Pre-shipment Inspection Order, 1999 enabling the Government to appoint Pre-shipment Inspection Agency and audit Agency, setting out the function and responsibility of the said agency, mode of issuance of certificate by the Pre-shipment Inspection Agency and use of the certificate issued by the Pre-shipment Inspection Agency, mode of payment of fees of the Pre-shipment Inspection Agency, etc. The Government floated tender for the appointment of Pre-shipment Inspection Agency on October 20, 1999. In pursuant to the advertisement the Respondent No.1 in the respective appeals dropped its bid and the bid of the Respondent No.1 of the respective appeals having been found acceptable, the Government entered into contract with the Respondent No.1 of the respective appeals between 8th of February, 2000 and 18th of February, 2000. The

effective date of the contract so signed by the respective Pre-shipment Inspection Agency was 15th of February and the period of contract was for 36 months. In the tender document the bidder in its financial proposal was required to include all expenses including the taxes, duties, fees, levies and other charges imposed under the applicable law of Bangladesh as on 01.10.1999 (1st day of October, 1999). In the agreement entered into by the Government and the Respondent No.1 in the respective appeals clause 4 reads as:-

"4. Taxation: All income and profits of the second party accrued or derived by it and under this contract shall be subject to all local taxes including Value Added Tax, where applicable, Similarly import of all goods by the second party shall be subject to payment of all applicable duties, taxes and other charges as are normally applicable to import of such goods".

It may be mentioned prior to the signing of the contract PSI Agency wrote on November 21, 1999 to the National Board of Revenue seeking clarification as to payment of VAT "with regard to the Mandatory PSI Program". The National Board of Revenue in its turn by the letter dated November 21, 1999 wrote to the PSI Agency as follows:

"Dear Sir,

With reference to the above noted letter the undersigned is directed to inform you that 15% VAT is applicable on the charge, commission or fees received by the PSI service renderer as

per VAT Act, 1991. You are requested to contract the Income Tax wing of NBR regarding Income Tax matter".

After the signing of the contract as stated hereinbefore PSI Agency for the service rendered submitted bill and the authority made payment for some time without deducting VAT. On March 11, 2001 NBR wrote to the Internal Resources Division of the Ministry of Finance about the realization of VAT and income tax from the bill submitted by the Pre-shipment Inspection Agency and communicated the copy thereof to the respective Pre-shipment Inspection Agency i.e. Respondent No.1 in the respective appeals. The contents of the letter runs as:

"উপযুক্ত বিষয় ও সুত্রের বরাতে নির্দেশিত হয়ে জানানো যাচ্ছে যে, প্রি-শিপমেন্ট ইন্সপেকশন (PSI) কোম্পানী কর্তৃক সম্পাদিত কার্যাবলী সেবার কোড এস ০২০,০০০ এর আওতায় জরিপ সংস্থা হিসেবে মুসক আরোপযোগ্য মূল্য সংযোজন কর আইন, ১৯৯১ এর ধারা ৩(১) অনুসারে উক্ত কোম্পানী বা সংস্থা কর্তৃক বাংলাদেশ প্রদত্ত সেবার উপর মূল্য সংযোজন কর আরোপিত রয়েছে। PSI সংস্থার ক্ষেত্রে তাদের প্রদত্ত মোট সেবার একটি অংশ বাংলাদেশ প্রদান করা হয়ে থাকে। জাতীয় রাজস্ব বোর্ডের শুদ্ধ অনুবিভাগের প্রি-শিপমেন্ট আদেশ, ১৯৯৯ এর অনুচ্ছেদে ১৪ক (৫) দৃষ্টে স্থানীয় সেবার পরিমাণ ২০% বলে প্রতীয়মান হয়। সুতরাং PSI সংস্থা কর্তৃক প্রদত্ত সেবার বিপরীতে প্রাপ্ত মোট কমিশনের ২০% এর উপর ১৫% হারে মুসক প্রযোজ্য।

'জরিপ সংস্থা' কর্তৃক প্রদেয় মুসক এর বিল পরিশোধকারী কর্তৃক বিল পরিশোধের সময় উৎসে কর্তনযোগ্য নয়। তবে PSI সংস্থা বাংলাদেশ সরকারের সাথে দরপত্রের বিপরীতে মূল্য সংযোজন কর আরোপযোগ্য সেবা সরবরাহ করেছে বিধায় সংস্থার কার্যক্রম একই সাথে জরিপ সংস্থা ও যোগানদার (Procurement Provider) হিসাবে চিহ্নিত। যোগানদার হিসাবে দরপত্র মূল্যের ২০% এর ১৫% হারে অর্থাৎ মোট দরপত্র মূল্যের উপর নীট ৩% হারে মুসক উৎসে কর্তনযোগ্য। সুতরাং যোগানদার সংশ্লিষ্ট সাধারণ আদেশের (আদেশ নং ০১/মুসক/২০০, তাং ২৩/০১/২০০১) অনুচ্ছেদ ০৪ অনুসারে PSI কোম্পানী জরিপ সংস্থা হিসাবে প্রযোজ্য মুসক

পরিশোধ পূর্বক মুসক-১১ চালানের মাধ্যমে বিল উপস্থাপন করলে উৎসে মুসক কর্তনের প্রয়োজন নেই। তবে প্রযোজ্য মুসক পরিশোধ ব্যতিরেকে বিল উপস্থাপিত হলে যোগানদার হিসেবে দরপত্র মূল্যের ২০% এর উপর ১৫% অর্থাৎ মোট দরপত্র মূল্যের ওপর নীট ৩% হারে মুসক উৎস কর্তন করে যথা নিয়মে সরকারী কোষাগারে জমা প্রদান করতে হবে।"

The PSI Agency took exception to the aforesaid decision of the NBR. Thereupon the NBR by the letter dated 21.5.2001 informed the PSI Agency and the other authorities that the matter of payment of VAT by the PSI Agency on their fees or commission is under re-examination and the contents of the latter reads as:

"উপর্যুক্ত বিষয়ও সুন্দের প্রতি আপনার সদয় দৃষ্টি আকর্ষণ পূর্বক জানানো যাচ্ছে যে, উক্ত পত্রে বর্ণিত বিষয়ে বিভিন্ন পিএসআই সংস্থা আপত্তি উপস্থাপন করায় তা জাতীয় রাজস্ব বোর্ডে পুনঃপরীক্ষা করা হচ্ছে। বিষয়টির "চূড়ান্ত নিষ্পত্তি না হওয়া পর্যন্ত আপনার দপ্তরে বিভিন্ন পিএসআই সংস্থার যে সব বিল pending আছে- সেসব বিলের জন্য চূড়ান্ত নিষ্পত্তি পর্যায়ের মুসক প্রদান বিষয়ে আইনানুগ বাধ্যবাধকতা প্রতিষ্ঠিত হলে আমরা উক্ত নিষ্পত্তির পূর্বের সময়ে প্রযোজ্য সকল মুসক প্রদানে বাধ্য থাকবো" - মর্মে সর্বশ্রেষ্ঠ সংস্থা হতে অঙ্গীকারনামা নিয়ে এসব বিল প্রদান করতে আপনাকে অনুরোধ করা হলো।"

In the light of the aforesaid letter the authority paid the fees or commission of the PSI Agencies on their furnishing undertaking for payment of VAT in case of final decision that VAT is to be paid by the PSI Agencies. The NBR by its letter dated May 11, 2002 communicated to the Commissioner of Customs house and Commissioner of Customs Excise and VAT about the cancellation of the letter dated 11.3.2001 and 21.5.2001. The contents of the aforesaid letter dated May 11, 2002 reads as:

"উপযুক্ত বিষয় ও সূত্রের প্রেক্ষিতে পিএসআই সংস্থার সেবার বিনিময়ে প্রদেয় সার্ভিস চার্জ/বিল হতে মুসক কর্তনের বিষয়ে ইতোপূর্বে জাতীয় রাজস্ব বোর্ড থেকে জারীকৃত সকল নির্দেশনা ও সিদ্ধান্ত এতদ্বারা বাতিল করা হলো। পিএসআই সংস্থাদ্বারা প্রদেয় বিল হতে সেবার কোড এস ০২০,০০ এর জরিপ সংস্থার ক্ষেত্রে প্রযোজ্য সমুদয় মূল্য সংযোজন কর আদায়ের জন্য আপনাকে নির্দেশ দেয়া হলো। ইতিমধ্যে অংশীকারনামার বিপরীতে পরিশোধিত বিলে অনাদায়ী মুসক বকেয়া রাজস্ব হিসাবে চলতি বিল এবং পরবর্তী প্রদেয় বিল হতে সমন্বয় পূর্বক আদায়/কর্তন নিশ্চিত করতে হবে। আদায়কৃত/কর্তনকৃত সমুদয় মুসক সরকারী কোষাগারে যথাযথ ঋতে অবিলম্বে জমা প্রদানের জন্য সংশ্লিষ্ট সকলকে নির্দেশ দেয়া হলো।"

It may be mentioned the NBR made the final decision to realize VAT from the fees or commission payable to the PSI Agency treating the said Agency in the category of "জরিপ সংস্থা" under the service code S020.00 of the VAT Act. Above was the background in which the writ petitions were filed by the PSI Agencies.

Section 3 of the VAT Act, 1991 (Act No.22 of 1991) is the charging section i.e. levying of VAT on the services rendered except the services mentioned in the Schedule 2. Provision of sub-section 1 of section 3 of the VAT Act, which was the law on the date of signing of the contract, as follows:

"৩। মূল্য সংযোজন কর আরোপ:- (১) প্রথম তফসিলে উল্লিখিত পণ্যসমূহ ব্যতীত বাংলাদেশে আমদানিকৃত সকল পণ্য ও উক্ত তফসিলে উল্লিখিত পণ্যসমূহ ব্যতীত সকল পণ্যের সরবরাহের উপর এবং দ্বিতীয় তফসিলে উল্লিখিত [বাংলাদেশে প্রদত্ত] সকল সেবার উপর ধারা ৫ এ বর্ণিত মূল্যের ভিত্তিতে পনের শতাংশ হারে মূল্য সংযোজন কর ধার্য ও প্রদেয় হইবে।"

and later on because of the amendment in July 2000 the provision of sub-section 1 of section 3 of the VAT Act stood as follows:

"৩। মূল্য সংযোজন কর আরোপ।- (১) প্রথম তফসিলে উল্লিখিত পণ্যসমূহ ব্যতীত বাংলাদেশে আমদানিকৃত সকল পণ্য ও উক্ত তফসিলে উল্লিখিত পণ্যসমূহ ব্যতীত সকল পণ্যের সরবরাহের উপর এবং [দ্বিতীয় তফসিলে উল্লিখিত সেবাসমূহ ব্যতীত] [বাংলাদেশে প্রদত্ত] সকল সেবার উপর ধারা ৫ এ বর্ণিত মূল্যের ভিত্তিতে পনের শতাংশ হারে মূল্য সংযোজন কর ধার্য ও প্রদেয় হইবে।"

And the entries in paragraph Nos.6(ক), (খ) as well as 7(ঘ) of the second Schedule of the Act as per provision of sub-section 1 of section 3 of the VAT Act stood as follows:

"৬। ব্যক্তিগত সেবাঃ (ক) সাংবাদিক, অভিনেতা, গায়ক, বেতার ও টেলিভিশন পারফরমার, লেখক, পেশাদার ড্রীড়াবিদ, নৃত্য শিল্পী, অনুবাদক, জ্যোতির্বিদ, টাইপিষ্ট, বিবাহ রেজিষ্ট্রার, ঘটকালী প্রতিষ্ঠান, প্লাস্টার, কাঠমিস্ত্রি, ইলেকট্রিক্যাল মিস্ত্রী (কনসালট্যান্টসী ফার্ম ও সুপারভাইজারী ফার্ম ও জরিপ সংস্থা ব্যতীত)

(খ) শিক্ষা বিষয় সংশ্লিষ্ট গবেষক, টেকনিক্যাল বিষয় সংশ্লিষ্ট গবেষক, কম্পিউটার বিশেষজ্ঞ (কনসালট্যান্টসী ফার্ম ও সুপারভাইজারী ফার্ম ও জরিপ সংস্থা ব্যতীত)

৭। (ঘ) সরকার, স্থানীয় কর্তৃপক্ষ, স্থানীয় কর্তৃপক্ষের সংঘ অথবা প্রতিষ্ঠান যাহারা সরকারের জন্য কাজ করে এইরূপ সেবা প্রদানকারী প্রতিষ্ঠান (ওয়াসা, বিদ্যুৎ বিতরণকারী, নির্মাণ সংস্থা, ভূমি উন্নয়ন ও ভবন নির্মাণ, ভূমি বিক্রয়কারী, ব্যাংক ও বীমা প্রতিষ্ঠান ব্যতীত)"

(Other entries in the said two paragraphs are not relevant for the purpose of disposing of the appeals).

The NBR has directed the authorities to levy VAT on the fees or commission of the PSI Agency categorizing the said Agency as "জরিপ সংস্থা". "জরিপ সংস্থা" was in the Schedule of the Act from the very inception thereof as an Organization on which VAT was levyable. "জরিপ সংস্থা" on the date of signing of the contract as an organization levyable with VAT was as follows:

"সেবা কোড- 5020.00

জরিপ সংস্থাঃ

ব্যাখ্যাঃ

"জরিপ সংস্থা" অর্থ বাণিজ্যিক ভিত্তিতে আমদানিকৃত, রপ্তানিকৃত, দেশের অভ্যন্তরে মজুদকৃত বা সরবরাহকৃত পণ্যের জরিপ কার্বে অথবা বীমা সংক্রান্ত জরিপ কার্বে অথবা ভূমি জরিপসহ সকল প্রাকৃতিক, আর্থিক, মানব ও কারিগরি সম্পদ পরিমাপ বা জরিপ কার্বে বা আর্থ-সামাজিক জরিপ কার্বে বা অন্য যে কোন জরিপ কার্বে নিয়োজিত যে কোন ব্যক্তি, প্রতিষ্ঠান বা সংস্থা।"

The contention of the appellants was that the services render by the PSI Agencies is very much of the kind of the services render by the "জরিপ সংস্থা" and as such the NBR has quite legally directed the relevant authority to levy VAT on the fees or commission received by the Agency against the service renders by the Agency.

As against the aforesaid contention of the appellants the Respondents' contention was that PSI Agency does not survey the goods nor inspect the goods, and the PSI Agency only verify the goods to be imported in Bangladesh and issue certificate in respect of the goods verified and the PSI Agency does not render service in Bangladesh, rather the Agency renders service outside Bangladesh i.e. in the country wherefrom the goods imported into Bangladesh and issue certificate in the country wherefrom goods imported.

The learned Counsel for the appellants submitted that services of PSI Agency is very much like that of the service renders by the "জরিপ সংস্থা" and that the Agency initiates its service in Bangladesh and that to give completeness to its service the Agency also renders

service outside the Country i.e. the Country wherefrom goods imported.

The learned Counsel for the appellants has submitted that "জরিপ সংস্থা" was vatable since inception of the VAT Act and as the service of PSI Agency is like that of the "জরিপ সংস্থা" the service of the PSI Agency is very much vatable. It has also been submitted by the learned Counsel that before PSI order the PSI Agency had no responsibility as to the certificate issued or in other words service rendered by it, but with the promulgation of PSI Order the PSI Agency became liable for the services it render. He continued that as at the beginning i.e. in 1994 there was no existence of PSI Agency in Bangladesh as such the service of the same was not vatable but when the PSI Agency in the light of the provision of PSI Order, 1999 started rendering service and that the service so rendered as is very much of the kind of the service rendered by the "জরিপ সংস্থা", the service of the PSI Agency became vatable. The learned Counsel for the appellant to substantiate his contention that PSI Agency initiates its service in Bangladesh has referred to clause 'গ' of Article 5 of the PSI Order, (৮), (৮৮), (৯) of clause 7 of the PSI Order and clause 9 of the PSI Order. It has been argued by the learned Counsel for the appellants that the High Court Division was wrong in relying on paragraph 7(খ) of the second Schedule of the VAT Act since same is as residual

paragraph while there is specific paragraph i.e. paragraph 6(ক) and (খ) and the same clearly indicates that service of the "জরিপ সংস্থা" is vatable and as such service rendered by the PSI being like that of the service rendered by the "জরিপ সংস্থা" the same was and is vatable. The learned Counsel continued that the High Court Division was not correct in observing that there was no notification specifying that service of PSI order is vatable since there is specific provision in the second Schedule of the VAT Act that services of the Organization which are like that of the "জরিপ সংস্থা" are vatable.

The learned Counsel Mr. Md. Salah Uddin Ahmed for the Respondent Nos.1 and 2 in Civil Appeal No.287 of 2003 submitted that sole question in the appeals is whether PSI Agency renders service in Bangladesh and that whether service renders by PSI Agency is vatable. The learned Counsel continued that PSI Agency is supposed to perform its function in the abroad and that the nature of the function of the PSI Agency explicitly shows that functions of the PSI Agency are to be performed in the abroad, that the functions to be performed by the PSI Agency as mentioned in the contract are to be performed in the abroad. The learned Counsel referring to the expression "বাংলাদেশে প্রদত্ত" as in sub-section 1 of section 3 of the VAT Act submitted that the same clearly specified for what service VAT is to be

charged. It has also been contended that PSI Agency is not the "জরিপ সংস্থা" and that even if for argument's sake PSI Agency is considered as "জরিপ সংস্থা", in that case also PSI Agency can not be charged with VAT since the Agency renders service outside Bangladesh and does not render any service in Bangladesh. It has also been contended by the learned Counsel upon referring to the expression "বাংলাদেশে প্রদত্ত" as in sub-section 1 of section 3 of the VAT Act and to the word "আমদানিকৃত" as in the ব্যাখ্যা to "জরিপ সংস্থা" that the same clearly show that when an Organization renders service in Bangladesh then the service of the said Organization, say "জরিপ সংস্থা", is vatiable but PSI Agency does not render service in Bangladesh and as such the service of the said Agency can not be equal with the service of the "জরিপ সংস্থা" for the purpose of levying VAT or charging VAT. The learned Counsel continued that provision of section 3(1) of the Act is not attracted for charging the service rendered by the PSI Agency because of the fact the said Agency renders service abroad and that by no stretch of imagination the service renders by the PSI Agency can be consider to have been rendered in Bangladesh. The learned Counsel has referred to clause (এ) of Article 2 of the PSI Order as well as clause (গ) of the said Article. He has also referred to (গগ) as well as (গ) of Article 5 of the PSI Order and thereupon emphasised that no service is rendered by the PSI Agency in Bangladesh

and that the local office of the PSI Agency acts as a post office and that whatever the minor acts are performed by the local office of the PSI Agency prior to the submission of the report those are of so insignificant nature that the same can not be considered substantial service renders by the PSI Agency. It has been submitted on behalf of the Respondents that there was no statutory provision in the VAT Act, 1991 or elsewhere that the service of PSI Agency will be liable to VAT and that there is nothing in the contract or in the PSI Order, 1999 that the service of the PSI Agency would be charged with VAT. It has also been contended that to charge a citizen with the tax or levy there must have clear intention of the legislature in the legislation on the basis of which legislation the citizen is charged with taxes or levies and that in the legislation there must have specific and clear mention that the service of specific kind renders by an Organization irrespective of the matter whether service is rendered in Bangladesh or outside Bangladesh is chargeable with VAT. It has also been contended that a fiscal statute is to be construed having regard to the strict letter of the law and not merely to the spirit of the statute or the substance of the law. In connection with the aforesaid submission the learned Counsel has referred to the case of Oriental Bank Corporation Vs. Henry B. Wright, 1980 Appeal Cases Vol. V (PC) 842, Megh Raj Vs. Ruchand Uttam Chand, AIR 1946 Lahore, 280 (FB),

Mrs. Momtaz Begum Vs. Taxim Officer reported in PLD 1969, Dhaka, 803 and the case of A.V. Fernandez Vs. State of Kerala, AIR 1957 SC, 657. Suffice it to say the law is now settled that fiscal statute is to be construed strictly and that in case of any ambiguity, as to the intention of the legislature, the benefit thereof would go to the subject or citizen.

In Civil Appeal No.287 of 2003 for the Respondent Nos.1 and 2 Dr. Kamal Hossain also made submissions. It has been submitted by the learned Counsel that the Government has challenged part of the judgment or in other words Government has not challenged part of the judgment and as such the finding of the High Court Division that PSI Agency is appointed by the Government to verify and certify the quality, quantity, price, description and customs classification of importable goods and issue certificate in the foreign territory from where the goods imported into Bangladesh and with the issuance of the certificate primary duty of the PSI Agency is fully performed, that although the agent of the PSI Agency has represented its principal within the territory of Bangladesh and the representative has its office in Bangladesh and that the said representative does some ancillary job in connection with the release of the goods imported as certified, but to what length the local Agency is rendering service in Bangladesh that remains undetermined, that the contention of the learned Additional Attorney General that since PSI Agency does

not find its place in the exclusionary Second Schedule it is liable to pay VAT, if such contention is accepted plainly that will create great anomaly and would lead to absurdity since thereby person supplying chicken to a wedding reception, a rickshaw puller rendering services to the passengers and the tiny boy who is carrying fishes, vegetables and other goods from the kitchen market to the purchaser's kitchen will come under the VAT area and in that case there would be a situation "as to who is to pay VAT to what extent whom to pay VAT" and that there can not be any such "unguided legislation" and as such the legislative device and policy as adopted and has been indicated in sub-section 5 of section 3 of the VAT Act is that the Board in order to fulfill the objects of the section in the public interest by notification in the official gazette shall declare the vatiable goods and class of goods as vatiable goods and the Board also in order to determine the periphery of vatiable services can give explanation, that the Board of Revenue has not by any Gazette Notification declared the PSI Agency's service as vatiable service remains unchallenged. The learned Counsel has submitted that there was no legislation for charging VAT in respect of the services rendered by the Agency and that Tax can not be imposed by silence and exclusion and that if VAT was required to be paid by PSI Agency then there would have no expression in clause 4- (Taxation) "where applicable", that in the facts and circumstances of the

case it is evident that VAT was not levyable on the services rendered by PSI Agency and that the NBR was in uncertainty about levying of VAT on the services of PSI Agency and in that uncertainty the NBR wrote letter to the concerned Authority that VAT would be levyable at the rate of 15% on the 20% of the Tender value but lateron cancelled that letter without assigning any reason and that thereafter on May 11, 2002 cancelled the letter dated March 11, 2001 and communicated the unreasonable decision to the relevant authority that VAT would be levyable on the service of the PSI Agency taking the same in the category of জরিপ সংস্থা under the service Code No.S020.00, that Tax can be levied and collected in the light of the provision as in Article 83 of the Constitution i.e. only on the basis of legislation made by the Parliament and that as there is no legislation authorizing the Tax collecting authority to charge VAT on the service of the PSI Agency the action of the revenue charging VAT on the service of the PSI Agency is not legally sustainable, that no leave has been obtained in respect of the findings and decision made by the High Court Division to the effect that acceptance of contention of the learned Additional Attorney General plainly since PSI Agency does not find its place in the exclusionary Second Schedule the said Agency is liable to pay VAT, will create great anomaly and would lead to absurdity and that also would lead to a uncertain position "as to who is to pay VAT to what

extend whom to pay VAT" and that there can not be any such unguided legislation, that legislative policy has been indicated in sub-section 5 of section 3 of the VAT Act authorizing the NBR to make official Gazette Notification declaring the vatiable goods and class of job as vatiable and that also empowering the NBR to give explanation for the purpose of determining the periphery of vatiable services, that VAT is not Income Tax nor the same is the substitute of sale Tax, that it is not seen from the petition for leave to appeal and the leave granting order in what respect High Court Division was wrong in holding that learned Additional Attorney General was not correct in contending that as PSI Agency does not find place in the exclusionary Second Schedule, the same is liable to VAT, since acceptance of the said contention would create great anomaly and also would lead to absurdity as because thereby supplier of chicken to weeding reception, rickshaw pullar, the hawkers selling vegetables and the boy carrying the vegetables and other articles purchased in the kitchen market to the purchasers home would be brought within the net of VAT and in the said situation "the position would be such as to who is to pay VAT to what extend whom to pay VAT" and as such there can not be any such unguided legislation and that sub-section 5 of section 3 of the VAT Act has authorized the NBR to make notification in the public interest for obtaining the object of the provision of law relating to VAT declaring which goods

are vatiable and what class of goods would be vatiable and that also authorized the NBR to determine the periphery of vatiable services.

The learned Counsel has submitted that in the background of the decision made by the High Court Division as to that in the absence of Gazette Notification specifying that the service of the PSI Agency is vatiable, the authority was not competent to charge VAT on the service rendered by PSI Agency, the appellants have made the contention in a very narrow compass i.e. whether PSI Agency is in the exclusionary service mentioned in the Second Schedule and as to whether the PSI Agency is 'জরিপ সংস্থা' and that the said argument has been made without looking to the provision of sub-section 5 of section 3, that in the absence of specific and definite description which particular service is to be considered as 'সেবা' and that if particular service is considered as 'সেবা' then how the service so rendered is to be vated there can not be levy of VAT. The learned Counsel has submitted that the action of the NBR canceling its earlier notification i.e. notification dated March 11, 2001 whereby NBR directed the authorities to levy 15% VAT on the 20% of the tender value of the PSI Agency and thereupon issuing fresh notification for charging VAT on the fees or commission of the PSI Agency was arbitrary and the action of the NBR as manifests unguided power to make notification is not sustainable in law or in other words

bad in law, that reading law relating to VAT it is seen that legislature has never intended to give unguided power to the NBR to issue notification levying VAT on the service rendered by a particular Agency or body and that it is the settled principle of law that a particular legislation giving unguided power to subordinate Agency to levy Tax is a bad legislation and not sustainable in law, that there is no guideline for the NBR to determine amount of VAT levyable on the service of the PSI Agency and that there is no notification by the NBR that the service of the PSI Agency would be levyable with VAT, that law provides for Notification authorizing the NBR to determine the periphery of the services chargeable with VAT keeping in view the public interest or in other words explicitly showing that particular kind of service would be subject to VAT.

The learned Counsel has referred to the case of Haji Ghulam Zamin and Abul Hossain Vs. A.B. Khondkar and others reported in 16 DLR, 486 for the purpose of showing that delegation of power by the legislature to the subordinate Agency how much permissive and in the reported case it has been observed "Delegation by the Legislature is permitted within prescribed limits in order to execute the legislative norms and provisions that have been enacted. . . . Legislation being the exclusive function of the Legislature, it cannot abdicate such function; the Legislature, after having

enunciated the essential legislative principles and standards, is, however, entitled to delegate to outside agencies such functions which are essential to an effective exercise of the legislative power with which it has been endowed by the Constitution; the Legislature, however, cannot efface itself and delegate all its functions to an extraneous agency.

Thus failure to enact standards for guidance has been equated to transference of essential legislative function".

It has also been contended by the learned Counsel that the notification of the NBR dated 11.5.2002 i.e. the notification by which the earlier two notifications dated March 11, 2001 and May 21, 2001 were cancelled and thereupon directing the concerned authorities to levy VAT on the fees or commission of the PSI Agency considering the said Agency as 'জরিপ সংস্থা' under the 'সেবা' code S020.00 was arbitrary since in the said notification there is no reference of the Rule or SRO/ circular on the basis whereof the said notice was issued, that if the VAT Act is considered as authorizing the NBR to treat any service whatsoever other than the services expressly excluded by the Second Schedule to be VAT-able then the VAT Act would in effect be providing unguided delegation by conferring on the NBR power to treat any service under the earth, other than those excluded, as VAT-able and such unguided delegation is not permissible in law, that VAT can be charged in

respect of the service of a particular Agency when there is a notification under section 3(5) of the VAT Act and that by such notification periphery of the VAT service is fixed, that charging of VAT on the fees or commission of the PSI Agency is not sustainable in law since no Rule has been framed in that regard or no SRO has been issued relating to the matter of charging VAT on the service of PSI Agency, that a proper construction of the Second Schedule would show that PSI Agency should be treated as being part of the entities appointed by Government as described in the Second Schedule in paragraph 7(gha), that as VAT is an indirect tax, as such entities from which Government receives services are not vatiable as otherwise the effect would be that the Government would collect VAT from the end users and reimburse the service provider.

It is relevant in the background of the submission of the learned Counsel made upon referring to the provision of section 3(5) of the VAT Act to put the same on the record for the purpose of seeing the relevancy of the said provision in the background of the facts and circumstances of the case as well as to consider soundness of the submission factually. The provision of section 3(5) of the VAT Act reads as:

"(৫) এই ধারার উদ্দেশ্য পূরনকল্পে বোর্ড, জনস্বার্থে, সরকারী গেজেটে প্রজ্ঞাপন দ্বারা-

(ক) যে কোন করযোগ্য পণ্য বা পণ্য শ্রেণীকে করযোগ্য সেবা এবং যে কোন করযোগ্য সেবাকে করযোগ্য পণ্য হিসাবে ঘোষনা করিতে পারিবে, এবং

(খ) করযোগ্য যে কোন সেবার, পরিধি নির্ধারণের লক্ষ্যে, ব্যাখ্যা প্রদান করিতে পারিবে।”

In Civil Appeal No.288 of 2003 submissions have been made by Mr. Rokonuddin Mahmud as well as by Khandker Mahbubuddin Ahmed for the Respondent Nos.1 and 2.

It has been submitted by Mr. Rokonuddin Mahmud that by the provision of section 25A of the Customs Act Government has not been authorized to appoint PSI Agency to survey the goods to be imported but PSI Agency has been appointed to verify the goods to be imported and to issue certificate as to the quality, quantity, price, description and customs classification of the goods verified, that function of the PSI Agency is limited to the provision of section 25A (2) of the Customs Act i.e. verification of the quality, quantity, price, description and customs classification of the goods to be imported in Bangladesh and to issue certificate, that in the background of such verification and under the provision of the law certificate so issued by the PSI Agency “shall be accepted as the basis for assessment” i.e. assessment of customs duties, that as per provision of section 25B of the Customs Act it is mandatory for the importers to have their importable goods inspected by Pre-shipment Inspection Agency before or at the time of shipment of those goods on vessel, aircraft or any other conveyance and thus the function whatever the PSI Agency performs is performed outside Bangladesh, that

PSI Agency performs its function as per provision of PSI Order and that Pre-shipment Inspection Agency as defined in section 2(qq) of the Customs Act means any person appointed under section 25A of the Customs Act as a Pre-shipment Inspection Agency and include a representative of that person, that in the letter inviting offer from the Pre-shipment Inspection Agency the aim of the programme was mentioned verification of genuineness of importer, import authorization etc. and that PSI Agency shall render service in accordance with the provision of PSI Order, 1999 and that matters relating to Taxes and levies shall be governed as per provision of law as on October 1 of 1999, that as per terms of reference as was in the tender document the function of the PSI Agency limited to checking of description, quality, quantity, classification and verification of the correctness of value of all imports prior to shipment including the endorsement of invoice and the packing list in the manner as provided in Pre-shipment Order, 1999 and to issue certificate and that PSI Agency was also required to verify genuineness of letter of credit etc. and that during the inspection the PSI Agency shall inspect the goods for issuance certificate in the country of shipment, that PSI Agency renders its service in abroad and not in Bangladesh and as such VAT is not levyable on the fees or commission of the PSI Agency, that writ petitioner No.2 i.e. Bureau Verites (BIVAC) Bangladesh Ltd. is the subsidiary of the writ petitioner No.1 i.e.

BIVAC Intervention S.A. Bureau Verities Group, that clause 14 of PSI Order prescribed the minimum fees for the specific function of the PSI Agency and clause 14(ka) of the PSI Order provides the mode of payment of bill submitted by the PSI Agency and that 80% of the total fees or commission is converted into foreign currency as per sub-clause 5 of Clause 14 of the Pre-shipment Order, that as per provision of section 3 of the VAT Act, VAT is levyable in respect of the service as mentioned in the Schedule while the same is rendered in Bangladesh and as the PSI Agency does not render any service in Bangladesh the fees or commission of the PSI Agency is not vatable, that as per clause (ख) of paragraph 7 of the Schedule 2 of the VAT Act PSI Agency is not required to pay VAT since the PSI Agency works for the Government and renders service to the Government, that in section 3 of the VAT Act it has been clearly mentioned that the service mentioned in the Second Schedule is not vatable, that because of the nature of the service renders by the PSI Agency the same comes within the class of service mentioned in clause (ख) of Paragraph 7 in the Second Schedule since PSI Agency renders service to the Government, that PSI Agency does not render personalized service and as such the same does not come in the exclusionary category of services mentioned in paragraph 6 of the Second Schedule, that there is lack of certainty as to amount on which VAT is to be paid in case service of the PSI

Agency becomes vatable, that as per sub-clause (ক) and (গ) of clause 5 of the PSI order, the PSI Agency is required to render its service in respect of "আমদানীকৃত্য" and as such it is evident that the PSI Agency is required to render service outside Bangladesh and that being so fees or commission of the PSI agency is not vatable, that PSI Agency has been appointed for inspection of importable goods and not for imported goods and consequently as the PSI Agency has no occasion to render service inside Bangladesh, the service renders by the said Agency not vatable. The learned Counsel in summing up his submissions submitted that as per provision of section 3 of the VAT Act in the case of service rendered in Bangladesh by an organization the said Organization for the rendered service is required to pay 15% VAT but as PSI Agency does not render any service in Bangladesh it is not required to pay VAT on its fees or commission at the rate as mentioned in section 3 of the VAT Act, that services except in exclusionary list, mentioned in Schedule 2 of the VAT Act are not vatable and that service renders by the PSI Agency being one of the class of the services as mentioned in clause (খ) of paragraph 7 of the Second Schedule, the PSI Agency is not required to pay VAT on the fees or commission payable for the services rendered, that PSI Agency does not render or perform any of the works done by the 'জরিপ সংস্থা', that

the services to be rendered by PSI Agency specifically have been mentioned in the PSI Order, 1999, that the services render by PSI Agency are in no way of the kind of services render by 'জরিপ সংস্থা', that PSI Agency has been appointed by the Government as per provision of section 25A of the Customs Act, that for the purpose of determination whether PSI Agency is 'জরিপ সংস্থা' or not it is to be read with reference to service renders by PSI Agency and 'জরিপ সংস্থা' and that on careful reading of the kind of service renders by the PSI Agency and the জরিপ সংস্থা, the services render by the PSI Agency can no way be considered like that of the services of the 'জরিপ সংস্থা', and as such fees or commission of the PSI Agency is not vatable considering the PSI Agency as 'জরিপ সংস্থা'.

Khondker Mahbubuddin Ahmed has submitted that neither in the petition for leave to appeal nor in the leave granting order any point has been raised that the High Court Division was wrong in disposing of the point raised in the writ petition and that there is also no contention from the side of the appellants that point raised by the writ-petitioner-Respondents before the High Court Division was wrongly answered by the said Division. The learned Counsel upon referring to the clause 4 - Taxation of the Contract, which runs as:

"4. Taxation: All income and profits of THE SECOND PARTY accrued or derived by it and under this contract shall be subject to all local taxes including Value Added Tax, where

applicable. Similarly import of all goods by THE SECOND PARTY shall be subject to payment of all applicable duties, taxes and other charges as are normally applicable to import of such goods".

submitted that contract entered into between the PSI Agency and the Government clearly shows that PSI Agency shall not be liable to pay VAT. The learned Counsel upon referring to the provision of section 3 of the VAT Act, particularly putting emphasis on the words "২য় তফসিলে উল্লেখিত সেবা সমূহ ব্যতীত বাংলাদেশে প্রদত্ত সকল সেবার উপর" and to the clause 'ঘ' of paragraph 7 of the Second Schedule submitted that PSI Agency was not required to pay VAT since the said Agency does not render service in Bangladesh and that service as renders by the PSI Agency the same is rendered to the Government. The learned Counsel upon referring to the entries in paragraph 6 of the Second Schedule submits that when an individual renders service styling itself as firm then the said firm is chargeable with VAT, but when the service mentioned in paragraph 6 of the Second Schedule is rendered by an individual, he is not required to pay VAT. The aforesaid submission has been made in the context of entries in the paragraph 6 of the Second Schedule as regard the organization জরিপ সংস্থা within the periphery of which PSI Agency has been brought in and thereupon service rendered by the PSI Agency has been made vatable. The learned Counsel upon referring to the clause (ঘ) of paragraph 7 of the Second Schedule of the

VAT Act and to the provision of section 2(qq): definition of Pre-shipment Inspection Agency, in the Customs Act submitted that when the said provisions are read together then the same imply that PSI Agency acts for Government and as such not chargeable with VAT. It has also been submitted upon referring to the 'ব্যাখ্যা' as has been inserted in the light of the provision of sub-section 5 of section 3 of the VAT Act to the 'জরিপ সংস্থা' that the definition or explanation so given by inserting the said 'ব্যাখ্যা' is not consistent with the definition of PSI Agency as given in section 2(qq) of the Customs Act, that NBR through the notification is not authorized to insert explanation or 'ব্যাখ্যা' to the 'জরিপ সংস্থা' and thereby in bring PSI Agency within paragraph 6 of the Second Schedule of the VAT Act and taking out PSI Agency from paragraph 7(ঘ) of the Second Schedule. The learned Counsel has emphatically submitted that the explanation added to the 'জরিপ সংস্থা' by the notification issued by the NBR is wrong and illegal since the said explanation has been inserted to the জরিপ সংস্থা only to extend periphery of VAT and that by the said wrong explanation NBR has intended to bring PSI Agency within the net of VAT. The learned Counsel also submitted that PSI Agency does not perform any work of inspection in Bangladesh under the law and that by inserting wrong explanation or 'ব্যাখ্যা' to the 'জরিপ সংস্থা' the NBR is legally not authorized to bring the PSI Agency within the net of

VAT, that by legal fiction service rendered by PSI Agency outside Bangladesh can not be considered to have been done in Bangladesh, that High Court Division in making the decision that the PSI Agency is not vatiable has not committed any wrong, that law does not empower the NBR to give 'ব্যাখ্যা' to a particular entry in the Schedule of the VAT Act and thereupon to bring particular service within the net of VAT which is otherwise not vatiable.

Mr. Rafique-ul-Huq, the learned Counsel for the Respondent Nos.1 and 2 in Civil Appeal No.289 of 2003 has submitted that the contract entered into between the Government and the PSI Agency is a statutory contract and that PSI Agency has been appointed by the Government for rendering the service which the Government was to render and as such service rendered by the PSI Agency is the service rendered to the Government. In support of the aforesaid contention the learned Counsel has referred to the Second paragraph of the contract which reads as follows "Whereas the first party desires to appoint the second party as Pre-shipment Inspection Agency to provide Pre-shipment Inspection Services (hereinafter referred to as "PSI Services") in respect of verification and certification of quality, quantity, description, H.S. code classification and valuation of goods, prior to their shipment for the importation into Bangladesh" The learned Counsel upon referring to the PSI services i.e.

verification and certification of quality, quantity, description, H.S. code classification and valuation of goods prior to their shipment for the importation into Bangladesh submits that PSI Agency renders service outside Bangladesh and that the service so renders by the PSI Agency is being rendered to the Government and as such in the light of the entries in paragraph 7(4) of the Second Schedule of the VAT Act, the service renders by the PSI Agency has been excluded from VAT. The learned Counsel upon referring to the clause 4- Taxation clause of the Contract document submitted that language of the said clause clearly shows that VAT was not applicable in respect of the service rendered by PSI Agency and in connection with the aforesaid submission the learned Counsel has also referred to the section 6 and the Second Schedule of the VAT Act. The learned Counsel continued that the nature of the work performed by the PSI Agency is such that the same cannot be rendered in Bangladesh and that the service of the PSI Agency can also be not treated to have been rendered in Bangladesh, that upon referring to clause 7(4) of the PSI order the learned Counsel has submitted that the said provision clearly shows wherefrom certificate i.e. clean report of finding is to be issued and that the said provision clearly shows that the work of PSI Agency is done outside Bangladesh and that service of PSI Agency can not be rendered in Bangladesh. The learned Counsel upon referring to section 2- Information to

bidders, of the tender document submits law relating to imposition of taxes, duties, fees, levies and other charges would be as on 1st day of October, 1999 and that on that date VAT was not levyable on the service rendered by the PSI Agency, that provision of section 25B of the Customs Act has made it mandatory for the importer to have their imported goods inspected by PSI Agency before or at the time of shipment of the goods on board a vessel, aircraft or any other conveyance and from the provision of the said section it is clear that the goods to be imported into Bangladesh not to be inspected after the same being imported into Bangladesh, that the law requires that the goods to be imported is to be inspected before or at the time of shipment, that at the time of signing of the contract the Government ought to have told the PSI Agency that the said Agency would be required to pay VAT, that Government is rendering service to the importer through PSI Agency and charging the importer for the service so rendered by it to the importer through the PSI Agency and as such VAT is not levyable on the service rendered by the PSI Agency. The learned Counsel upon referring to regulation 17 of মূল্য সংযোজন কর বিধিমালা, ১৯৯১ has submitted that the provision of the said regulation is not contemplated for PSI Agency. It has also been contended that since PSI Agency renders service outside Bangladesh, as such tax if any payable for such service by the said Agency is to be paid where, that no procedure has been provided in

the VAT Act prescribing procedure for the PSI Agency to pay VAT if any chargeable on the service renders by it, that considering the relevant provision of law relating to the service renders by the PSI Agency, the PSI Agency does not come within the ambit of VAT Act and the Rules and Regulations framed thereunder, the learned Counsel upon referring to the provision (গণ) of clause 5 of the PSI Order, 1999 has submitted that the provision therein is not applicable to the PSI Agency which service renders service outside Bangladesh and that provision of the said sub-clause relates to the service renders by the Agent of the PSI Agency to its principle, that the tender document is completely silent as to payment of VAT on the service renders by PSI Agency, that by inserting 'ব্যক্তি' to the 'জরিপ সংস্থা' the nature and character of the service of the PSI Agency which render service outside Bangladesh is not changed and as such can not be charged with VAT. It has also been submitted that PSI Agent's service does not come within the provision of VAT Act and that as per contract PSI Agency is not required to pay VAT, that PSI Agency quoted its commission and fees for the service to be rendered on the understanding that VAT was not to be paid for the services to be rendered by it and that it will be liable to pay taxes in respect of the service in the light of the law as was on 1.10.1999. The learned Counsel submits that on 1.10.1999 there was no law, notification, Rule and Instruction as to payment of VAT and as such NBR was

not authorized to make notification for levying VAT on the fees or commission of the PSI Agency, that NBR is estopped in the background of the principle of promissory estoppel to charge VAT on the fees or commission of the PSI Agency, that because of the agreement SRO subsequent to 25.1.2000 was not applicable to the PSI Agency for assessment of taxes including VAT, that as per contract the PSI Agency was not bound to pay VAT, that because of the nature and character of the service and also the place where the service is rendered by PSI Agency, the Agency is not required to pay VAT for the service rendered, that PSI Agency does not render a single function in Bangladesh to the Government of Bangladesh or the NBR, that the services rendered by the local Agent stationed in Bangladesh are only ancillary services for the purpose of rendering actual service outside Bangladesh by PSI Agency, that NBR at all material times knew that VAT is not liable to be levied for the services rendered by PSI Agency and that for levying VAT on the service of the PSI Agency there requires appropriate regulations and that as such regulation is absent and that there is also absence of Rule for realization of VAT from PSI Agency, that as per Article 83 of the Constitution no tax can be levied or collected except by or under the authority of an act of Parliament and that VAT Act does not recognize levy of VAT in respect of the service renders by the PSI Agency and as such the attempt of NBR to levy VAT against the

PSI Agencies is unconstitutional, that with regard to the CRF certificate issued by the PSI Agency outside Bangladesh nothing is done in Bangladesh and that each and every service is given from outside Bangladesh and as such as per provision of section 3 of the VAT Act, VAT can not be imposed on PSI Agency for the service renders by them, that 'জরিপ সংস্থা' was never meant to include PSI agencies, that PSI Agency is not 'জরিপ সংস্থা' since PSI Agency has been defined in section 2(qq) of the Customs Act and as such the service of the PSI Agency is a defined service, that there is no definition of 'জরিপ সংস্থা' in the VAT Act or in the Customs Act and জরিপ সংস্থা has also not been defined by the SRO dated 8.6.2000 and that had the legislature intend to levy VAT on the service of the PSI Agency then there would have been an independent entry in the Schedule of the VAT Act in respect of PSI Agency, that paragraph 7(খ) of the Second Schedule of the VAT Act exempt a service provider which provides service to the Government from payment of VAT, that the PSI Agency renders service to the Government and as such clearly falls within the category of services as in paragraph 7(খ) of the Second Schedule of the VAT Act, that there is no scope to co-relate "ব্যক্তি সেবা" as in paragraph 6 of the Second Schedule and "অন্যান্য সেবা" as in paragraph 7(খ) of the Second Schedule of the VAT Act, that as the PSI Agency renders service to the Government against public money the service falls

within the scope of item 'ঘ' of paragraph 7- heading "অন্যান্য সেবা" of the second schedule of the VAT Act and as such no VAT is levyable for the service renders by the PSI Agency, since PSI Agency renders service outside Bangladesh, that the submission made on behalf of the appellant to bring PSI Agency within the scope of VAT is mis-conceived and against the whole scheme of the VAT Act, that from the cumulative effect of Sections 4 and 6 of the VAT Act and Sections 25, 25A and 25B of the Customs Act it follows that PSI Agency does not come within the definition of "জরিপ সংস্থা" and is not liable to pay VAT because services are rendered before import of goods in Bangladesh, that according to provision of Sections 25 and 79 of the Customs Act duties are levied when goods come to Bangladesh and as such under Sections 4 and 6 of the VAT Act, no service is leviabale when the service is given outside Bangladesh, that service of "জরিপ সংস্থা" relates to an act of survey of goods accumulated for supply within Bangladesh and as such the word in the SRO dated 8.6.2000 on which appellant placed reliance by its own words negate the perception that the definition of "জরিপ সংস্থা" cannot include PSI Agency in the context of its correct perspective, that the well settled principle of law is that if there is any ambiguity of interpretation of Fiscal law and if there is a possibility of more than one interpretation, then in such circumstance the interpretation which is more

favourable to the assessee shall be adopted by the Court, and NBR by its letter dated 11.3.2001 mentioned that 80% of the work of the PSI Agency is done outside Bangladesh and that 20% of the work is done in Bangladesh and thereupon directed the authority to levy VAT on the 20% of the total service renders by PSI Agency, but later on by the Memo. dated 11.5.2002 the NBR directed the relevant authorities to realize VAT on the fees or commission of the PSI Agency and that also to realize the arrear VAT, that the letter so issued was an arbitrary one and the same was issued in clear contravention of the specific provision of Section 55 of the VAT Act, that the demand for VAT has been made without issuing statutory show cause notice and personal hearing and as such demand of VAT made by the Authority by the Memo. dated 11.5.2002 is illegal and void.

In reply the learned Counsel for the appellant has submitted that 'জরিপ সংস্থা' with 'ব্যখ্যা' was very much the law on 1.10.1999 i.e. the date mentioned in the tender document for appointment of PSI Agency and that also on the date of signing of the Contract between 8th February and 18th February, 2000 entered into by the Government and the PSI Agency, that in the background of the letter dated November 21, 1999 i.e. letter of the NBR written to the PSI Agency on its query as to payment of VAT by the PSI Agency on the charge, commission or fees to be received by the PSI Agency for the service to be rendered it can very much be said that the PSI Agency

made its bid keeping in mind the question of payment of VAT, that the word *আবদান* in the VAT Act and the other related Rules, Regulations as well as in the Pre-shipment Inspection Order, 1999 is referable to the goods surveyed and brought into Bangladesh, since question of payment of charge, fees or commission to the PSI Agency for the service rendered would arise only when inspected goods reached in Bangladesh and that the undisputed position is that in case of frustrated cargo there would be no question of payment of charge, fees or commission to the PSI Agency, that from the Annexure-2 [undertaking by the PSI Agency to abide by the Rules and orders by the Inspection Agencies] to the PSI Order, 1999 it is seen that the said Agency has been engaged for inspection of goods, verification of price and for issuance of CRF certificate and other related matters and as such it can not be said that the PSI Agency only verify the goods and does no other thing. The learned Additional Attorney General appearing for the appellants in Civil Appeal No.288 of 2003 has submitted that the service rendered by the PSI Agency is bundle of services which initially originated in Bangladesh and that for making the service originated in Bangladesh a complete one part of the service is rendered outside Bangladesh and that since part of the services is rendered outside Bangladesh it can not be said that PSI Agency rendered service outside Bangladesh and does not render service in Bangladesh, that PSI Agency submitted its bill for

the service rendered in Bangladesh in terms of taka and that receives payment in Bangladesh in taka with the option of converting 80% of the payment into foreign exchange. The learned Counsel as regard interpretation of fiscal law has referred to (1982) 1 All ER, 867 (Inland Revenue Commissioners Vs. Berrill and another) wherein it has been observed "the modern attitude of the courts is that the revenue from taxation is essential to the running of the state, and that the duty of the judiciary is to aid its collection while remaining fair to the subject".

From Respondents' side it was asserted that PSI Agency renders service to the Government and as such is not required to pay VAT. Section 25A of the Customs Act provides for appointment of Pre-shipment Inspection Agency for the purpose of inspection/verification of the quality, quantity, price, description and customs classification of any goods and certification in the prescribed manner and that the certificate of the Pre-shipment Inspection Agency "shall be accepted as the basis for assessment" of customs duties and other levies. It has been submitted by the respondents that the Pre-shipment Inspection Agency verify the goods imported into Bangladesh and that does not survey the goods. The submission that PSI Agency does not survey the goods has been made by the Respondents in the background of the fact that PSI Agency has been bracketed with the 'অসি মসজিদ' for the purpose of levying

VAT on the charges, fees or commission payable to the PSI Agency for the service or services it render. The appellants contended that the words 'inspection', 'survey', 'verification' and 'verify' convey the same meaning and in support thereof has placed reliance on the meaning of the said words in The Oxford English Dictionary. One of the meanings of the word 'inspection' is careful scrutiny or survey. The word 'survey' amongst others means the act of viewing, examining or inspecting, in detail, specially for some specific purpose. The word 'verify' conveys amongst others: to ascertain or test the accuracy or correctness of (something), specially by examination or by comparison with known data and the word 'verification' amongst others means: the action of establishing or testing the truth or correctness of a fact, theory, statement, etc., by means of special investigation or comparison of data. The Government as per provision of section 25A of the Customs Act hires the service of PSI Agency upon fixing charge, fees or commission for ascertaining the quality, quantity, price, description and customs classification of the goods to be imported in Bangladesh. The whole purpose of having the particular imported goods verified or inspected or surveyed by the PSI Agency is to ascertain the quality, quantity, price, description and customs classification as declared by the importer. In the background of the aforesaid state of the matter hardly any distinction can be made for the use of the

expression verified or verification, surveyed or inspected any goods by the PSI Agency. The nature and kind of service renders by the PSI Agency is limited to examination or inspection or verification of the quality, quantity, price, description and customs classification of the goods intended to be imported by a particular importer into Bangladesh. The appellants have gone for charging VAT on the fees or commission of the PSI Agency treating the said Agency as 'জরিপ সংস্থা' in the background of adding 'ব্যাখ্যা' to the 'জরিপ সংস্থা' by the gazette notification of 1998 in the Schedule of the VAT Act and the same reads as:

"ব্যাখ্যা:

"জরিপ সংস্থা" অর্থ বানিজ্যিক ভিত্তিতে আমদানিকৃত, রপ্তানিকৃত, দেশের অভ্যন্তরে মজুদকৃত বা সরবরাহকৃত পণ্যের জরিপ কার্বে অথবা বীমা সংক্রান্ত জরিপ কার্বে অথবা ভূমি জরিপসহ সকল প্রাকৃতিক, আর্থিক, মানব ও কারিগরি সম্পদ পরিমাপ বা জরিপ কার্বে বা আর্থ-সামাজিক জরিপ কার্বে বা অন্য কোন জরিপ কার্বে নিয়োজিত যে কোন ব্যক্তি, প্রতিষ্ঠান বা সংস্থা।"

So it is seen from the aforesaid 'ব্যাখ্যা' that individual, any establishment or any organization when renders service in respect of any of the matters mentioned in the 'ব্যাখ্যা' then charge, fees or commission of the individual, or the organization is chargeable with VAT. As stated earlier there is no difference as to the meaning of the words 'inspection', 'survey', or 'verification' and 'verify'. The said words convey examination of particular thing or matter to ascertain the quality, truth of statement or fact etc. of the same. In the aforesaid state of the matter we are of the

view that the contention of the Respondents that PSI Agency does not survey goods but verify the goods and as such being not a 'জরিপ সংস্থা' the charge, fees or commission of the PSI Agency is not vatiable appears to be not correct. It may be mentioned that the PSI Agency prior to dropping its bid made an inquiry from the NBR whether the service that would be rendered by the PSI Agency would be vatiable. In reply to that the NBR by its later dated November 21, 1999 i.e. before the date of signing of the agreement specifically mentioned in the said letter addressed to the PSI Agency that 15% VAT applicable on the charge, commission or fees received by the PSI Agency for the service/ services rendered as per VAT Act, 1991. Keeping the information as obtained from the NBR the PSI Agency dropped its bid and signed the agreement for rendering the service of PSI Agency. In the afore state of the matter the contention of the Respondents that at the time of signing of the contract PSI Agency was not told or that there was no information to the PSI Agency that fees that would be charged by the Agency for the service rendered would be vatiable is not correct. We are of the view since the PSI Agency having had signed the agreement with the knowledge that charge, fees or commission whatever PSI Agency would charge for the service rendered by it would be vatiable, the NBR in instructing the concerned authority to realize VAT from the PSI Agency has committed no wrong and that action of the appellants can not be considered wrong or

unsustainable. It has been argued by the appellants that since 'জরিপ সংস্থা' or for that matter PSI Agency is not one of the organizations as exempted in the Second Schedule from payment of VAT, charge, fees or commission of the PSI Agency for the services it render is very much chargeable with VAT and in that respect the learned Counsel for the appellants has referred to the clause (kha) of paragraph 6 of the Second Schedule. As against that the learned Counsel for the Respondents upon referring to clause(খ) of paragraph 7 in the Second Schedule of the VAT Act has submitted that service of the PSI Agency is not vatiable since PSI Agency renders service to the Government. It may be mentioned as per provision of section 25A of the Customs Act that the matter relating to verification or inspection or survey of the quality, quantity, price, description and customs classification of any importable goods would be obtained on payment of fees, charge or commission through the service of PSI Agency. Since PSI Agency renders service to the Government in lieu of charge, fees or commission, hence as per provision of VAT Act service of such Agency is vatiable. It can not be said that charge, fees or commission of the PSI Agency is not chargeable with VAT since the service so renders is rendered to the Government. It is not correct to say that the service as renders by the PSI Agencies is in fact service rendered by the Government since Government gets the act of inspection of imported goods done on payment of fees or

commission to PSI Agency. The admitted position is that for the purpose as contemplates by the provision of section 25A of the Customs Act the Government has appointed the PSI Agency and as such it cannot be said that the kind of services as are being rendered by PSI Agency is being rendered by the Government in that services obtained by the Government through a contractor or through Agent can in no way be considered that the service so rendered by the contractors or Agency has been rendered by the Government. As stated hereinbefore that the PSI Agency having had the information from the NBR that their service would be charged with 15% VAT under the VAT Act dropped its bid and that its bid having been accepted by the Government, the Agency entered into an agreement. It is evident in the background of the information obtained as to payment of VAT the PSI Agency quoted the charge, fees or commission for the service renders by it in its bid. In clause 4 of the agreement there is specific mention that all income and profits of the PSI Agency accrued or derived by it under the contract shall be subject to all local taxes including VAT. It has been submitted on behalf of the Respondents that in the VAT Act there is no mention of PSI service like the entries of the kind of services or things chargeable with VAT and as such NBR by adding 'व्याख्या' (explanation) to one of the entries in the Schedule of the VAT Act is not authorized to charge VAT on the charge, fees or commission of the PSI Agency and

that there having had absence of PSI Agency in the Schedule of the VAT Act the Government lateron inserted PSI Agency in the Schedule as vatable organization. It may be mentioned that under section 3(5) (Kha) the NBR is quite competent to add 'ব্যক্তি' to a particular entry in the schedule through Gazette notification. 'অফিস সার্ভিস' was very much in the Schedule of the VAT Act from its very day of legislation and that in 1998 by the Finance Act of 1998 'ব্যক্তি' was added to the 'অফিস সার্ভিস' and the 'ব্যক্তি' so inserted clearly shows that an organization or establishment engaged in the survey of importable goods would have to pay VAT for fees or commission received for the services rendered by it. Thus it is not correct to say that there was no law to charge VAT on the charge, fees or commission of the PSI Agency. Although there was provision in the VAT Act for levying VAT on the charge, fees or commission of the PSI Agency but to make the thing explicit lateron service of the PSI Agency was entered in the schedule in the category of the services or things liable to be charged with VAT. The Government made the position clear by new enactment that service of the PSI Agency is vatable. As has already been mentioned that in fact since 1998 there was provision in the VAT Act for levying VAT on the charge, fees or commission of the organization that performs the function as contemplated by section 25A(2) of the Customs Act.

It has been argued by the learned Counsels of the Respondents that appellant has not taken exception to the vital finding of the High Court Division and as such has also not obtained leave as regard the said finding and decision. In elaborating the aforesaid contention it has been submitted that High Court Division has held that PSI Agency renders service outside the territory of Bangladesh and that service if any renders by its representative within Bangladesh the same is undetermined, that the Revenue (NBR) has not by any Gazette Notification declared that PSI Agency's service is vatable service and that legislative policy and device requires the Revenue as per sub-section 5 of Section 3 of the VAT Act to make Gazette Notification declaring the goods vatable and the services vatable and that on the basis of unguided legislation the Revenue is not authorized to charge the service of PSI Agency with VAT only on the ground that service renders by the PSI Agency is not in the "exclusionary Second Schedule" of the VAT Act.

Leave was granted amongst others to consider the contention that the services rendered by the PSI Agency as Survey Agency is liable to be charged with VAT under the service Code S020.00 of the VAT Act, 1991 and in the facts and circumstances of the case, the High Court Division erroneously held otherwise and thereby made the Rule absolute illegally and that in paragraph 6 of the Second Schedule *অরিপ সংস্থা* having been clearly indicated

as liable to VAT and as such it was not necessary for the NBR to issue Gazette Notification to include PSI Agency as an agency or organization liable to VAT and as such the High Court Division was wrong in holding otherwise.

From the aforesaid contention of the appellants upon which leave was granted, it is very much seen that the view expressed, observations made and the finding arrived at by the High Court Division that there was no Gazette Notification by the Revenue mentioning the service of the PSI Agency vatable and that the Revenue has charged the VAT on the charge, fees and commission of the PSI Agency on unguided legislation and that the service of the PSI Agency and its representative functioning within the territory of Bangladesh are 'undetermined' were challenged. The High Court Division, in our view, was not correct in holding that the service of the PSI Agency rendered outside the territory of Bangladesh and the service rendered by the representative of the PSI Agency within the territory of Bangladesh is not a single transaction but different transactions by different Agencies or that by the two separate functionaries of the same Organization in that in fact the service renders by the PSI Agency is a single transaction which is initiated in Bangladesh and that to give finality to the service renders by the PSI Agency i.e. inspection of the goods importable into Bangladesh, part of the service of the PSI Agency is

done outside the territory of Bangladesh and then as regard the result of the inspection certificate is issued and then the same is deposited in Bangladesh with the relevant authority and thereupon the PSI Agency submits its bill for the service so rendered in Bangladesh in Taka amount, 80% whereof is convertible into foreign currency. The other observation of the High Court Division that PSI Agency renders service to the Government and as such their service is not vatiable also not correct since PSI Agency being appointed by the Government to do certain works in connection with importable goods i.e. inspection of the goods which is imported into Bangladesh and the PSI Agency renders its service in lieu of fees or commission. The service so renders by the PSI Agency is vatiable since as per provision of VAT Act PSI Agency is an Organization under the service code S020.00. It is not correct to say that PSI Agency, which has been treated as an organization or agency under the service Code S020.00 is not required to pay VAT since it renders service to the Government as because under the VAT Act particular Agency or organization rendering service to the Government or any other body is to pay VAT or not has been specified in the Schedule to the VAT Act and that PSI Agency being not one of the Organizations which have been exempted from payment of the VAT as mentioned in the Second Schedule of the VAT Act, the same is to pay VAT. It has been submitted by the Respondents since there is no

Gazette Notification by the Revenue that service of the PSI Agency is vatiable, the NBR illegally made the decision that PSI Agency would be required to pay VAT for the service same renders. The submission so made is not tenable in law as in clause (খ) of paragraph 6 of the Second Schedule it has been mentioned that the service renders by 'জরিপ সংস্থা' is not exempted from payment of VAT and as such there was no necessity of separate notification for inclusion of the service of the PSI Agency in VAT net as kind of service renders by the 'জরিপ সংস্থা' is of the category of service renders by the PSI Agency and hence there was no separate notification signifying service of PSI Agency is vatiable. It may be mentioned on the date on which tender documents were made available to the intending bidders seeking appointment of PSI Agency and that the date mentioned in the tender document as regard application of law relating to payment of taxes, duties, fees, levies and other charges and that on the date when query was made by PSI Agency as to whether charge, fees or commission of the PSI Agency would be chargeable with VAT and the reply made thereto by the Revenue and that on the day of signing of the agreement between the Government and the PSI Agency relating to rendering of service by the PSI Agency 'ব্যাখ্যা' to the 'জরিপ সংস্থা' was very much part of the VAT Act. From the reading of the 'ব্যাখ্যা' to the 'জরিপ সংস্থা' it is clear that the service

renders by the PSI Agency was very much vatable. It can with certainty be assumed the PSI Agency having had the notice of the 'ক্যাশ' to the 'জরিপ সংস্থা' to make itself sure about the payment of VAT in respect of the service renders by it sought for information from the Revenue by the letter dated November 21, 1999 and the Revenue replied in the positive, that service of the PSI Agency would be charged with VAT @15% on the charge, commission or fees received by the PSI Agency for the service renders by it. The learned Counsels for the Respondents also contended that the letter dated May 11, 2002 cancelling the letter dated March 11, 2001 of the Revenue communicating to the relevant authority that the VAT would be charged on the 20% service of the PSI Agency rendered within the territory of Bangladesh and thereupon making of the decision to levy VAT on the entire amount of the charge, fees or commission receives by the PSI Agency for the service renders is arbitrary, as the said decision was made considering the service of the PSI Agency like that of the service of 'জরিপ সংস্থা' under service Code S020.00. It appears the Revenue was in uncertainty while writing the letter dated 11.3.2001 and that when exception was taken by the PSI Agency to the act contemplated in the letter dated 11.3.2001 the Revenue kept in abeyance the decision communicated by the aforesaid letter and directed the authority to make payment upon taking undertaking from the PSI Agency that in case decision is made that service of the PSI Agency

is chargeable with VAT in that case amount due on account of VAT would be realized from the commission or fees of the PSI Agency. The PSI Agency upon giving undertaking to pay the VAT if final decision is made that service of the PSI Agency is vatiable received payment for the service rendered by it. The Revenue examined the matter and finally made the decision that service of the PSI Agency is vatiable like that of the service renders by the জরিপ সংস্থা under the service code S020.00. In our view it can not be said that the cancellation of the letter dated 11.3.2001 and the letter dated 21.2.2001 whereby authorities were directed to make payment to the PSI Agency till taking of final decision as regard payment of VAT by the PSI Agency upon obtaining undertaking from the PSI Agency that in case of final decision that services of the PSI Agency are vatiable then VAT would be realized on the charge, commission or fees to be paid to the PSI Agency for rendering services by the said Agency and that finally making of decision that service of PSI Agency is vatiable are not arbitrary because of the fact that the PSI Agency keeping in view the 'ব্যাখ্যা' to the 'জরিপ সংস্থা' inserted in 1998 i.e. long before the floating of the tender for the appointment of the PSI Agency and signing of the agreement between the Government and the PSI Agency for rendering service as per provision of PSI Order, 1999 and also the information obtained from the Revenue, the PSI Agency entered into the agreement for

rendering services. It has been submitted on behalf of the Respondents since there is no specific legislation for levying VAT on the services of the PSI Agency the NBR by adding 'ব্যাংক' to a certain organization already mentioned in the Schedule of the VAT Act and consequent thereupon expanding the periphery of the VAT Act is not authorized to charge the service of the PSI Agency with VAT and that the said action of the PSI Agency is clear violation of the provision of Article 83 of the Constitution since no tax or duties can be levied or collected by an Organization except "by or under the authority of Act of Parliament". The submissions so made is not legally sound since there has been already law in the VAT Act i.e. 'ব্যাংক' added to the 'জরিপ সংস্থা' in the Schedule of the VAT Act very much authorizing the Revenue to charge VAT in respect of the fees or commission of the PSI Agency receives for the services rendered by the PSI Agency. The other contention that there is no guideline for the Revenue to determine the amount of VAT on the commission or fees receives by the PSI Agency for the services rendered by it is also not well founded since by the letter dated November 21, 1999 the Revenue informed the PSI Agency that 15% VAT is applicable on the charge, commission or fees received by the PSI Agency for the services rendered by it. In section 3 of the VAT Act also there is specific mention of percentage of VAT on the specified services excepting the services mentioned in the Second Schedule to the VAT

Act. The contention that the contract signed between the parties i.e. Government of Bangladesh and the PSI Agency does not show that VAT would be payable by the PSI Agency for the services rendered by it or in other words from the contract it is seen that PSI Agency shall not be required to pay VAT in respect of the charge, fees or commission received by the PSI Agency for the services rendered by it is not legally sustainable since in clause 4- (Taxation) of the contract signed between the Government and the PSI Agency there is stipulation that the income and profits of the PSI Agency "accrued or derived" by the PSI Agency under the contract shall be subject to all local taxes including Value Added Tax and that because of the information obtained by the PSI Agency before signing the contract through its letter dated November 21, 1999 and the reply made thereto by the Revenue on November 21, 1999. It is seen from the noting made in the letter dated November 21, 1999 written by the PSI Agency to the Revenue (Annexure-1 in the affidavit-in-opposition of the writ-Respondent Nos.1 and 2 at page 163 of the paper book of Civil Appeal No.287 of 2003), that decision was made by the authority prior to the writing of the letter on November 21, 1999 by the PSI Agency to the Revenue to the effect that services of the PSI Agency would be vatatable. The Respondents tried to take the service of the PSI Agency out of the net of the VAT upon referring to clause (৭) of paragraph 7 of the Second Schedule to the VAT Act

contending that the PSI Agency rendered service to the Government and as such not vatiable. The contention so made is of no merit since the nature and kind of services rendered by the PSI Agency answer to the kind of services renders by the Survey Agency under the code S020.00 in the Schedule of the VAT Act and that the service of the 'জরিপ সংস্থা' has been excluded from the category of the service exempted from payment of VAT as mentioned in the Second Schedule. The contention that the PSI Agency rendered services to the Government is also not well founded since it is seen from the provision of the section 25A of the Customs Act that provision has been made with regard the services those are to be required to be performed by the Pre-shipment Inspection Agency and that those would be obtained upon appointment of the said Agency. The Government does the same thing as in the case of other services received by it in different fields. In those cases unless there is exemption Government charges VAT. As has already been mentioned that services render by the 'জরিপ সংস্থা' as well as by the other Organizations and Agencies in the background of the 'ব্যাখ্যা' to the said 'জরিপ সংস্থা' as is vatiable or in other words has not been excluded from the payment of VAT like the Agency or Organization as mentioned in the Second Schedule to the VAT Act and that as the services of PSI Agency falls in the category of one of the services mentioned in the 'ব্যাখ্যা' to the 'জরিপ

সংস্থা' and thus being vatable, the Revenue quite legally made the decision to levy VAT on the charge, commission or fees received by the PSI Agency for the services rendered by it. The Revenue has added the 'ব্যাবস্থা' to 'জরিপ সংস্থা' in the light of the provision of the VAT Act and as such the 'ব্যাবস্থা' inserted to the 'জরিপ সংস্থা' was quite legal and thus charging of VAT in respect of the services which come within any one of the kinds of services mentioned therein is quite legal.

It has been submitted by the learned Counsels of the Respondents that reading the provision in paragraph 7(ঘ) of the Second Schedule in the VAT Act and the definition of the Pre-shipment Inspection Agency as given in section 2(qq) of the Customs Act it becomes evident that the PSI Agency acts for Government and as such the service rendered by the PSI Agency is not chargeable with VAT. It is seen from section 2(qq) that PSI Agency means a person appointed under section 25A of the Customs Act as a Pre-shipment Inspection Agency and includes a representative of that person. From the provision of section 25A of the Customs Act as stated hereinbefore it is seen that the Government for getting the services required to be performed in connection with the goods to be imported into Bangladesh would get the said services performed through certain Agency and that the said Agency is Pre-shipment Inspection Agency. There is nothing in the provision of section 25A of the

Customs Act that it is the Government itself would perform the services as mentioned in the said section in respect of the importable goods. That for having the things as mentioned in section 25A(2) of the Customs Act get done Government appointed PSI Agency and the PSI Agency does the things mention in section 25A(2) of the Customs Act in exchange of fees or commission. In that state of the matter we are of the view that the services rendered by PSI Agency in connection with the goods imported into Bangladesh is the services of the Agency itself and the said work of the PSI Agency is not the work of the Government. The services of the PSI Agency is the service of an Organization from whom service would be received by the Government on payment of fees or commission for the service so rendered and as regard that provision has been made in the VAT Act and that there was also stipulation in the contract that the service to be rendered by the PSI Agency would be vatiable and that the PSI Agency prior to entering into contract got the position cleared as to payment of VAT on the charge, commission or fees received by the PSI Agency for the service to be rendered by it. The other contention of the Respondents that reading the 'ব্যাংকা' to 'জরিপ সংস্থা' as inserted by the Finance Act, 1998 and the definition of the Pre-shipment Inspection Agency as given in section 2(qq) of the Customs Act it will be seen that the same are inconsistent. The contention so made in our view is of no merit since definition as

given in section 2(qq) of the Customs Act is to be read with the provision of section 25A of the said Act and that when the provision of section 25A of the Customs Act is read keeping in view the 'ব্যাখ্যা' to 'জরিপ সংস্থা' it will be seen that the person, establishment or Organization while renders service in respect of one of the category of the matters mentioned in the 'ব্যাখ্যা' then the said person, agency or organization very much comes within net of VAT and the category of the services rendered by the PSI Agency as mentioned in section 25A of the Customs Act is one of the category of matters in 'ব্যাখ্যা', the 'ব্যাখ্যা' and the definition in section 2(qq) of the Customs Act are not inconsistent. It has also been contended from the side of the Respondents that even if for argument's sake it is taken that the service rendered by the PSI Agency very much comes in the category of the services rendered in connection with the matters mentioned in the 'ব্যাখ্যা' to 'জরিপ সংস্থা' even then the services rendered by the PSI Agency are not vat-able since the PSI Agency rendered its service in connection with the goods imported into Bangladesh in foreign territory. The contention so made is not well founded in that the service of the PSI Agency starts in Bangladesh as is seen from the provision of PSI Order, 1999 and then for the purpose of completeness of the work PSI Agency required to perform, the said agency after initiating its function for the performance whereof said

Agency has been appointed, the PSI Agency goes to the foreign territory and performs the remaining part of the work there since it is the requirement of the law that the goods are to be verified/ surveyed / inspected before shipment for importing into Bangladesh and upon doing part of the services in the foreign territory the PSI Agency submits its certificate, i.e. when the work undertaken by the PSI Agency is completed, in Bangladesh to the prescribed authority. It may be mentioned PSI Agency while participating in the bid being quite aware of the nature of the work it would be required to perform made inquiry from the NBR whether services to be rendered by them would be vatiable and that the NBR made the reply in the affirmative i.e. the services of the PSI Agency would be liable to charge with VAT at the rate of 15% and having had same known to the PSI Agency, the Agency dropped its bid and then signed the contract with the Government of Bangladesh to render the services of the PSI Agency as in the contract. In that state of the matter we are of the view the services rendered by the PSI Agency can not be said to have been rendered outside Bangladesh territory and that the service so rendered by the PSI Agency was not vatiable. The contention that 'জরিপ সংস্থা' renders its service in relation to goods within the territory of Bangladesh is also not well founded since it is seen from the 'ব্যাখ্যা' to 'জরিপ সংস্থা' as in the Schedule of the VAT Act that services mentioned therein rendered by a person,

establishment or Organization is vatable. Services renders by PSI Agency in connection with the matters when considered in the light of the provision of section 25A of the Customs Act then it is seen that the services render by PSI Agency may also be related to the matters outside Bangladesh territory. The composite service of PSI Agency comprises service inside and out side Bangladesh and there is no scope for segregating one part from the other as in that case completeness of the service renders by PSI Agency would be non-existent. The contention on behalf of the Respondents that service of PSI Agency comes within the category of service or organization mentioned in clause 'ব' of paragraph 7 of the Second Schedule of the VAT Act is not well founded since service of the PSI Agency is not of the service of organizations as mentioned in the said clause, reather service renders by PSI Agency comes within the category of services mentioned in 'ব্যাখ্যা' to 'জরিপ সংস্থা' and in paragraph 6 service of the 'জরিপ সংস্থা' has been made vatable or in other words has been taken out from the list of the person or category of the organization exempted from payment of VAT. It has already been mentioned that services rendered by PSI Agency is very much of the category of the services which has been made vatable by the VAT Act in the background of the kind of the services mentioned in the 'ব্যাখ্যা' to 'জরিপ সংস্থা'. The contention of the Respondents that because of the nature

of the services rendered by PSI Agency as the same can not be rendered in Bangladesh and for that as it can not be considered that PSI Agency renders its service in Bangladesh, the NBR was wrong in making decision for levying VAT on the service of the PSI Agency. It is not wholly correct to say that no part of the service of PSI Agency is rendered in Bangladesh since PSI Agency initiates its service in Bangladesh at the first and then for the completion of the work so initiated in Bangladesh some portion is also done in the area outside Bangladesh and that finally PSI Agency submits its certificate as to the completion of its work in Bangladesh to the prescribed authority. In that state of the matter it is not correct to say that PSI Agency do not render service in Bangladesh. Moreover prior to the signing of the agreement between the Government and the PSI Agency, the PSI Agency got the matter cleared from the competent authority as to whether the service that would be rendered by it would be vatiable and that reply from the authority, from whom information was sought, was in the affirmative and keeping that very much in mind PSI Agency signed the agreement incorporating the taxation matter. The contention that before signing of the agreement by the PSI Agency it should have been informed that service that would be rendered by it would be vatiable does not reflect factually correct state of the matter, in that in reply to the PSI Agency's letter dated November 21, 1999 the NBR informed the PSI Agency

that the charge, commission or fees that would be received by the PSI Agency for the services rendered would be charged with 15% VAT as per provision of the VAT Act. It is not correct to say that the PSI Agency keeping in mind that they would be governed by the law as on 1.10.1999 and in that background they assessed its expenses and submitted bid in that by the letter dated November 21, 1999 PSI Agency sought for information from the NBR whether the service as would be rendered by it would be chargeable with VAT and in reply to that the NBR informed the PSI Agency that its services would be charged with 15% VAT as per provision of VAT Act, 1991.

It has been contended from the Respondents' side that 'জরিপ সংস্থা's service is limited to the goods which are imported into Bangladesh and on the contrary the service of the PSI Agency relates to the goods to be imported into Bangladesh and as such as service renders by the PSI Agency is not rendered in Bangladesh, the service so rendered is not vatiable. The contention so made is not correct in that PSI Agency renders services in respect of the goods intended to be imported into Bangladesh and that in the absence of inspection of goods to be imported into Bangladesh there is no occasion for the PSI Agency to render any service and to claim fees, but the scheme of the PSI Agency is for verification or inspection of the goods for the import whereof L.C. is opened and for no other purpose, as such the contention that PSI Agency's service is not rendered

to any "আমদানীকৃত" goods is not tenable in the background of the purpose for which PSI Agencies are appointed. It may be mentioned that the certificate issued by the PSI Agency on inspection of the goods to be imported into Bangladesh becomes effective when the goods reaches its destination i.e. it brought within the territory of Bangladesh and in case the goods inspected but for any reason was not brought into the territory of Bangladesh in that case certificate prepared in connection with the inspection of the goods for which L.C. was opened and that submitted with the prescribed authority is of no purpose for the PSI Agency for charging fees or commission. In that state of the matter the contention as have been made from the side of the appellant that the service of the PSI Agency is very much vatable appears to be sound and meaningful. It is also the contention of the Respondents that there is ambiguity as to charging of VAT as regard fees or commission of the PSI Agency with VAT and as such because of the accepted principle of law that in case of ambiguity in the fiscal law then interpretation of the Fiscal law which is more favourable to the citizen, who has been charge with the taxes, is adopted by the Court. There is no reason to take a different view to the settled principle of law that in case of ambiguity in the Fiscal law the benefit would go to the citizen or in other words where there is doubt about charging citizen with the tax then the benefit of doubt should be in favour of the citizen. But

in the instant case in the background of the materials on record as well as the circumstances as discussed hereinbefore there is no ambiguity that the service of the PSI Agency was vatiable and that PSI Agency because of the letter of the NBR dated November 21, 1999 written in reply to the letter of the PSI Agency seeking information as to whether services that would be rendered by the Agency would be vatiable the Agency entered into contract with the Bangladesh Government for rendering services in connection with the goods to be imported into Bangladesh. The NBR in its letter dated November 21, 1999 categorically stated while replying the letter of the PSI Agency dated November 21, 1999 that the service that would be rendered by the Agency would be charged with 15% VAT as per provision of the VAT Act.

The question that calls for consideration in the appeals whether service of PSI Agency can be considered as of the category of services render by 'জরিপ সংস্থা' in the context of the 'বাস্তা' to that and thus charge, fees or commission receives by PSI Agency is chargeable with 15% VAT as decided by the NBR and communicated to the relevant authority for deducting the VAT from the charge, commission or fees of the PSI Agency. Respondents upon referring to the words used in the contract i.e. the service of the PSI Agency would be "in respect of verification and certification of quality, quantity, description, H.S. Code classification and

valuation of goods prior to their shipment for importation into Bangladesh" has submitted that the PSI Agency verify the goods and do not survey the goods as contended by the appellant and as such as the goods to be imported into Bangladesh are not surveyed by the PSI Agency their services are not vatable. It is seen from the appendix-F (under taking by PSI to abide by the Rules and orders) that the PSI Agency would conduct "the activities relating to the inspection of goods, verification of price, issuance of CRF certificates and all other matters connected therewith". Though in section 25A of the Customs Act it has been mentioned that PSI Agency would verify the quality, quantity, price, description and customs classification of any goods and that in the contract it has been mentioned that PSI Agency would render service of verification and certification of the quality, quantity, description, H.S. code classification and valuation of goods and that also in clause (d) of terms of reference in section 5 of the tender document (P-107 of the paper book of Civil Appeal No.287 of 2003) there is mention of the word inspection as mentioned earlier in the Annexure-F there is also mention of the word inspection i.e. it is seen that in fact the parties to the contract was very much aware that the words 'verification' and 'verify' are also referable to the word inspection or in other words the work of the PSI Agency is to inspect or to verify the quality, quantity, description, H.S. code

classification, valuation of goods as mentioned hereinbefore. The word 'survey' as in The Oxford English Dictionary means the act of viewing, examining or inspecting in detail specially for some specific purpose, 'verification' means the action of establishing or testing the truth or correctness of a fact, theory, statement etc. by means of special investigation or comparison of data, 'verify' means ascertaining the accuracy or correctness of something and the word 'inspection' amongst other means careful scrutiny or survey. So the words 'verification', 'verify', 'survey' and 'inspection' convey the meaning of ascertainment of the correctness of a fact. The whole function of the PSI Agency as in section 25A of the Customs Act and in the contract document is ascertainment of the correctness of the statement made by the importer in respect of the goods to be imported, particularly as to quality, quantity, price, description, H.S. code classification or in other words customs classification of any goods as well as valuation. The customs authority has made the decision to charge VAT @15% on the service rendered by the PSI Agency considering the service of the PSI Agency as of the nature of service of the 'জরিপ সংস্থা' and particularly in the background of the 'ব্যাখ্যা' to the 'জরিপ সংস্থা'. So keeping in mind the service rendered by the PSI Agency as in section 25A of the Customs Act and in the contract document and the services mentioned in

the 'ব্যাখ্যা' to the 'জরিপ সংস্থা' it is seen that since the category of services mentioned in the 'ব্যাখ্যা' to 'জরিপ সংস্থা' and the services which the PSI Agency were required to render in the light of the agreement entered into by the Government and the PSI Agency as well as as per provision of section 25A of the Customs Act we are of the view that the services of the PSI Agency is vatiable. In our view one's service of an Organization comes in one of the category of services mentioned in the 'ব্যাখ্যা' to 'জরিপ সংস্থা' in the Schedule of the VAT Act the services rendered by such Organization whose services fall in one of the category of the services mentioned in the 'ব্যাখ্যা' to 'জরিপ সংস্থা' is chargeable with VAT and as services of the PSI Agency fall in one of the category of services mentioned in the 'ব্যাখ্যা' to 'জরিপ সংস্থা' in the Schedule of the VAT Act as such PSI Agency is to pay VAT @15% as in section 3 of the VAT Act, in respect of the charge, fees or commission received by PSI Agency for the services rendered by it. It is pertinent to mention since on the date of signing of the contract between the PSI Agency and the Government 'জরিপ সংস্থা' with the 'ব্যাখ্যা' was the law of the land, (on 1.10.1999 জরিপ সংস্থা with ব্যাখ্যা was also the law of the land), as such the services of the PSI Agencies are vatiable. In the background of the discussions since service of the PSI Agency falls in one of the category of services mentioned in the 'ব্যাখ্যা' to 'জরিপ সংস্থা' and the provision as in section 3 of the VAT

Act implies that the services of the 'জরিপ সংস্থা' vatable at the time of the signing of the contract, we are of the opinion the services of the PSI Agency is vatable. It was also the contention of the Respondents that as the PSI Agency renders services out side Bangladesh and as such service of the said সংস্থা is not vatable. The contention so made is of no merit since the performance of the category of services to be rendered by the PSI Agency as per provision of section 25A of the Customs Act as well as as per contract signed between the Government and the PSI Agency starts with verification of L.C and other papers within the territory of Bangladesh and that ends with the reaching of the certificate issued by the PSI Agency at customs house. On behalf of the Respondents it has been emphatically argued that PSI Agency rendered service to the Government and as such in the background of the entries made in clause 'W' of paragraph 7 of the Second Schedule of the VAT Act the services of the PSI Agency is not vatable. The said submission is not correct in that services rendered by the PSI Agency as fall in one of the category of services mentioned in the 'স্বাক্ষর' to 'জরিপ সংস্থা' and that because of the entries in paragraph 6 of the Second Schedule of the VAT Act as the services of the 'জরিপ সংস্থা' is vatable, the services of the PSI Agency is also vatable. The High Court Division in our view was not correct in holding that as there is no Gazette

notification to the effect that the services of the PSI Agency is vatiable since there was no necessity of Gazette Notification as service of the PSI Agency falls in one of the category of the services mentioned in the 'ব্যাখ্যা' to 'অরিপ সংস্থা' and that services render by the 'অরিপ সংস্থা' has not been excluded from the payment of VAT as seen from the clauses (ক) and (খ) in paragraph 6 of the Second Schedule of the VAT Act. It has been argued in the light of the letter dated 11.3.2001, communicating decision of the authority to the concerned offices that 15% VAT on the 20% service of the PSI Agency would be charged, letter dated 21.5.2001 written to the relevant authorities including the PSI Agency that the decision communicated by the letter dated 11.3.2001 has been kept in abeyance and that payment may be made to the PSI Agency upon obtaining undertaking from the said Agency that in case of decision in the affirmative i.e. services of the PSI Agency would be vatiable, in that case VAT that has fallen due would be recovered from the charge, fees or commission of the PSI Agency and the letter dated 11.5.2002 cancelling the aforementioned 2 letters and communicating the decision of charging the service of the PSI Agency with VAT, that the aforesaid actions of the NBR was arbitrary and there is no logic in making the decision that service of the PSI Agency is chargeable with VAT.

It appears that the letter dated 11.3.2001 was written by the personnel of the NBR being quite

unmindful of the law and the facts and circumstances in the background whereof PSI Agency signed the Contract with the Government for rendering PSI services and as such the PSI Agency can not take advantage of the said letter. Moreover there was no occasion for dividing the service of the PSI Agency as seen from the letter dated 11.3.2001 since the service of the PSI Agency is a single transaction i.e. rendering of service by the PSI Agency starts with the inspection of LC and other papers and that ends when the certificate issued by the PSI Agency is reaching Customs house. It is pertinent to mention that PSI Agency submitted the bid being fully aware of the nature of the service it would be required to render and that the service which it would render would be vatiable at 15% because of the law which was in operation when the tender was floated and the contract was signed and that prior to the signing of the contract the PSI Agency inquired of the NBR by the letter dated November 21, 1999 and the NBR replied to the said letter by the letter dated 21.11.1999 specifically mentioning that the service of the PSI Agency or in other words charge, commission or fees that would be received by the PSI Agency would be charged with 15% VAT. The NBR by the said very letter directed the PSI Agency to contract the Income Tax wing as regard the income tax matter. This being the position the contention that the PSI Agency was not earlier told that their services would be vatiable is not correct. The PSI Agency signed the

contract with the Government to render service keeping very much in mind that the charge, fees or commission that would be received by it as against the service that would be rendered would be charged with VAT at 15%.

In the background of the discussions made hereinbefore we find merit in the appeals.

Accordingly the appeals are allowed without any order as to cost.

J.

J.

J.

The 17th November, 2005.
Mehdi Hasan/B.R./ *Words 10,281*