BSAA/20/2023/02 Dated: 01-01-2023

1. **The Governor**
   Bangladesh Bank
   Head Office
   Motijeel C/A, Dhaka.

2. **Chairman**
   National Board of Revenue
   Rajswa Bhaban, Segunbagicha,
   Dhaka.

Subject: Request to implement zero rated VAT on the agency commission of the shipping agents in accordance with the Value Added Tax and Supplementary Duty Act, 2012 and Judgment and Order dated 23.11.2021 in the Writ Petition No. 1691 of 2021.

Dear Sir,
We, Bangladesh Shipping Agents' Association (**"BSAA"**), being entrusted with the responsibility to protect the rights and interest of all shipping agents of Bangladesh by its respected members, would like to draw into your kind attention that the Value Added Tax and Supplementary Duty Act, 2012 (hereinafter "VAT and SD Act 2012") mandated zero rated VAT on the agency commission earned by the shipping agents by rendering services to non-resident and unregistered foreign shipping principals.

After the VAT and SD Act 2012 came into operation, initially Bangladesh Bank and National Board of Revenue refused to declare that VAT on agency commission of the shipping agents shall be zero rated. In this regard, Bangladesh Bank issued letter bearing reference No. Boimubi/Banijjik/334(Bibidh)/2020-365 dated 13.02.2020 declaring that the commission/fees earned against the services provided by the shipping agents are not zero rated, and National Board of Revenue issued Memo bearing Nothi no. 08.01.0000.068.22.058.14/449(1) dated 1.12.2020 refusing to declare that VAT on the commission/fees of the Shipping Agent shall be zero rated. Being aggrieved by the above, Bangladesh Shipping Agents' Association and others, filed Writ Petition No. 1691 of 2021, challenging the aforesaid letters and the Hon'ble High Court Division of the Supreme Court of Bangladesh vide its Judgment and Order dated 23.11.2021 in Writ Petition No. 1691 of 2021, observed and ruled, amongst others, that the deduction of VAT on the fees/commission earned by the members of BSAA including the other petitioners are illegal and without lawful authority and the agency commission of the shipping agent shall be zero rated in accordance with the then operative Section 21 (1) (Ka) and 24 (11) (Ka) and (Gha) read with section 2 (1) and (12) of the Value Added Tax and Supplementary Duty Act, 2012. The copy of the Judgment and Order dated 23.11.2021 is enclosed herewith as "**Enclosure-A**".

Thereafter, the respondents of the said Writ Petition No. 1691 of 2021 filed Civil Petition for Leave to Appeal No. 1402 of 2022 in the Hon'ble Appellate Division of Supreme Court of

Bangladesh for stay operation of the Judgment and Order dated 23.11.2021. The Hon'ble Judge-in-Chamber of the Hon'ble Appellate Division of Supreme Court of Bangladesh upon hearing the matter only stayed operation of only a portion of the said Judgment and Order dated 23.11.2021 so far it relates to the direction of the refund of VAT. Hence, save and except the portion directing refund of VAT, remaining portion of the Judgment and Order dated 23.11.2021 which includes but not limited to the declaration that deduction of VAT on the fees/commission on the agency commission of the shipping agents are illegal and without lawful authority and such VAT shall be zero rated are still in effect and operative. The copy of the Order dated 25.05.2022 passed by the Hon'ble Appellate Division of Supreme Court of Bangladesh is enclosed herewith as "**Enclosure-B**".

Despite the aforesaid operation of VAT and SD Act 2012 and Judgment and Order dated 23.11.2021 in Writ Petition No. 1691 of 2021, it is a matter of deep regret that the shipping agents, being our organization's members, are still being demanded with payment of 15% VAT and submission of the said VAT challan at times of submission of quarterly statement which is not only violative of the VAT and SD Act 2012 but also in contempt of the Judgment and Order dated 23.11.2021 passed in Writ Petition No. 1691 of 2021 by the Hon'ble High Court Division of Supreme Court of Bangladesh. In this regard, the office of the Commissioner, Customs, Excise and VAT Commissionerate, Chittagong has issued letter bearing Nothi No. 4th/A (12) 104/Mushak Bibidh-1/S:D:/2020/3942 (1-8) dated 03.07.2022 to the Divisional Officers instructing them to ensure collection of VAT from the shipping agents on the grounds that zero rated VAT facilities have been withdrawn from supply of services to "**international transport**" and "**loading and unloading and stevedoring service**" by the by the enactment of the Finance Act, 2022 which amended the previous section 24 (11) of the VAT and SD Act 2012. However, we would like to humbly inform you that in accordance with the amended VAT and SD Act 2012 and Judgment and Order dated 23.11.2021, the shipping agents are entitled to zero rated VAT not only on the ground of supply of service to international transport but also for supply of service directly connected to operation or management of ocean-going ships engaged in international transport to a non-resident and unregistered persons. Hence, the amendment made by Finance Act, 2022 does not curtail or revoke the shipping agents' right to avail the facilities of zero rated VAT. The detail explanation on the above are provided hereinbelow. The copy of the letter bearing Nothi No. 4th/A (12) 104/Mushak Bibidh-1/S:D:/2020/3942 (1-8) dated 03.07.2022 is enclosed herewith as **"Enclosure-C".**

The legislature has amended the previous section 24 (11) of the VAT and SD Act 2012, which was in force at the time of the pronouncement of the Judgment and Order dated 23.11.2021 through the enactment of the Finance Act, 2022. As per the current amendment, the previously in force section 24 (11) (Ka) of the said Act (which stated that VAT on the supply of service to international transport shall be zero rated) has been repealed. However, in claiming zero rated VAT, the petitioners also claimed the benefit of zero rated VAT under the then operative section 24 (11) (Gha) of the VAT and SD Act 2012, which in essence stated that supply of services directly connected to the operation or management of an ocean-going ship or an aircraft engaged in international transport to a non-resident, who is also not registered, shall be zero rated. In this regard, the Hon'ble Court has ruled that previously in force section 24 (11) (Ka) and (Gha) both are statutory scheme to enable zero rated VAT both of which enabled the shipping agents to claim zero rated VAT. The Hon'ble Court in its Judgment and Order dated 23.11.2021 in page No. 21 and 22 stated that:

Quote

.....Upon a perusal of the pleadings and consideration of the submissions made by both sides this Court finds at the outset that whereas SRO No. 186 was issued to introduce the individual contours and the periphery of many types of taxable agency services inclusive of shipping agency services each necessarily set apart and categorized under distinct service codes by reference to their unique spheres of operations, the parent statute being the VAT and SD Act sets out a statutory scheme to make certain of these services zero-rated services. Sections 2l(l)(Ka) and 24(11)K a) and (Gha) are in that respect the cornerstones of such a scheme. The declarations, therefore, in section 24(11) (Ka) and (Gha) that the supply of services to any "international transport" and "directly connected to the operation or management of an ocean-going ship or an aircraft engaged in international transport" shall be zero-rated connects readily to the rendering of section 2(12) "international transport " services under the statutory scheme. Upon a plain reading of these provisions we can readily deduce, therefore, that whoever performs the activities as mentioned section 24(1l)(Ka) and (Gha) read with section 2(12) of the VAT and SD Act shall be entitled to zero-rated VAT.

Quote End

As such, in declaring that the deduction of VAT on the fees/commission earned by the members of BSAA including the other petitioners are illegal and without lawful authority, the Hon'ble Court did not only rely on the then operative section 24(1) (Ka) of the VAT and SD Act 2012 but also categorically relied on and provided reference of the then operative section 24(1) (Gha) of the VAT and SD Act 2012. The said section 24 (11) (Gha) of the VAT and SD Act 2012 has been renumbered as section 24 (11) (Ga) of the VAT and SD Act 2012 by the Finance Act, 2022 and the legal provision itself remain as it was before. Thus, albeit being renumbered as section 24 (11) (Ga) by the Finance Act, 2022, the provision of section 24 (11) (Gha) as enumerated in the Judgment and Order dated 23.11.2021 is still in force. Hence, despite the amendment of the Finance Act, 2022, pursuant to the Judgment and Order dated 23.11.2021 and currently in effect section 24 (11) (Ga) of the VAT and SD Act 2012, the shipping agents are entitled to receive the facilities of zero-rated VAT as they are providing services which are directly connected to operation and management of ocean-going ship to non-residents and who are also not registered in Bangladesh.

In view of the above, since the services provided by our members, being the shipping agents are directly connected to the operation or management of an ocean-going ship and such services are provided by shipping agents to non-resident and non-registered persons, you are hereby kindly requested:

(i) to withdraw or to pass direction to withdraw the letter bearing Nothi No. 4th/A (12) 104/Mushak Bibidh-1/S:D:/2020/3942 (1-8) dated 03.07.2022 issued by the office of the Commissioner, Customs, Excise and VAT Commissionerate, Chittagong within 15 days of receiving this letter;

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(ii) not to restrict the shipping agents from availing the facilities of zero-rated VAT on the wrongful ground of the amendment of section 24 (11) of the VAT and SD Act 2012 by the Finance Act, 2022; and
(iii) to allow and facilitate the shipping agents to avail the facilities of zero-rated VAT pursuant to currently in effect section 24 (11) (Ga) of the VAT and SD Act 2012 and Judgment and Order dated 23.11.2021 passed in Writ Petition No. 1691 of 2021 by the Hon'ble High Court Division of Supreme Court of Bangladesh.

In the event the aforesaid requested steps are not taken, we will be constrained to initiate necessary steps in accordance with law.

Sincerely yours,

(Syed Mohammad Arif)
Chairman

Enclo:
1. **Enclosure-A**: Copy of the Judgment and Order dated 23.11.2021 passed by the Hon'ble High Court Division of Supreme Court of Bangladesh.
2. **Enclosure-B**: Copy of the Order dated 25.05.2022 passed by the the Hon'ble Appellate Division of Supreme Court of Bangladesh.
3. **Enclosure-C**: Letter bearing Nothi No. 4th/A (12) 104/Mushak Bibidh-1/S:D:/2020/3942 (1-8) dated 03.07.2022.

Cc to:
1. The General Manager, Foreign Exchange Policy Department, Bangladesh Bank, Chittagong.
2. Members of the Board of Directors, BSAA.
3. All Member Agents, BSAA.

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বাংলাদেশ ব্যাংক
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