

**IN THE SUPREME COURT OF BANGLADESH**  
**APPELLATE DIVISION**

PRESENT:

**Mr. Justice Hasan Foez Siddique**  
**-Chief Justice**  
**Mr. Justice Md. Nuruzzaman**  
**Mr. Justice Obaidul Hassan**  
**Mr. Justice Borhanuddin**  
**Mr. Justice M. Enayetur Rahim**

**CIVIL APPEAL NO.113 OF 2018**

(Arising out of Civil Petition for Leave to Appeal No.721 of 2017)

WITH

CIVIL PETITION FOR LEAVE TO APPEAL NOS.722-733/17, 767-779/17,  
780-782/17, 568/17, 580/17, 587/17, 825-827/17, 979-982/17, 984/17,  
1421-1422/17, 1532-1534/17, 1620/17, 1300/17, 1322-1324/17, 1333-  
1337/17, 1384/17, 1395-1402/17, 4339-4350/17, 2034-2041/17, 1163-  
1165/17, 1177-1178/17, 783/17, 1500/17, 2849/17, 902-904/17, 851-  
852/17, 876/17, 2111-2112/17, 1838/17, 3826/17 AND 2934-2935/17.

(From the judgment and order dated 24.08.2016 passed by the High Court Division in Writ Petition Nos.8323-8325 of 2011, 8327-8330 of 2011, 9148-9150 of 2011, 10749 of 2011, 253 of 2012, 14346 of 2012, 4821-4822 of 2013, 8307-8317 of 2011, 1233-1234 of 2012, 9319-9320 of 2011, 8497-8498 of 2011, 9136-9137 of 2011, 8140 of 2011, 9573 of 2011, 13266 of 2012, 13357 of 2012, 10233 of 2012, 6893 of 2012, 4422-4429 of 2012, 6631 of 2012, 6847 of 2012, 13712 of 2012, 11023 of 2012, 4707-4708 of 2012, 3008-3009 of 2012, 9119 of 2011, 9201-9202 of 2011, 11002 of 2011, 11213-11220 of 2012, 8513-8520 of 2011, 2146 of 2012, 209 of 2012, 12283-12284 of 2012, 8164 of 2012, 7315 of 2012, 7127 of 2012, 1226 of 2012, 9216 of 2011, 1229 of 2012, 3607 of 2012, 9063 of 2012, 13814 of 2012, 2236 of 2012, 3366 of 2012, 12003 of 2012, 6843-6846 of 2012, 5378-5379 of 2012, 5997-5998 of 2012, 428 of 2012, 12272 of 2014, 9606 of 2013, 4869 of 2014, 2884 of 2015, 11869 of 2015, 4117-4119 of 2014, 445 of 2015, 2635 of 2014, 11381 of 2014, 3114-3115 of 2013, 5309 of 2014, 5761-5763 of 2014, 8075 of 2014, 1935-1936 of 2015 and 3415-3417 of 2015).

S. Alam Beg Manufacturing Mills Ltd., : ....Appellants.  
Chattogram represented by its Director (In C.A. No.113 of 2018)  
and another.

- S. Alam Steels Ltd., Chattogram represented by its Director and another. : ....Petitioners.  
(In C.P. No.722 of 2017)
- S. Alam Cold Rolled Steels Ltd., Chattogram represented by its Director and another. : ....Petitioners.  
(In C.P. No.723 of 2017)
- S. Alam Cement Ltd., Chattogram represented by its Director and another. : ....Petitioners.  
(In C.P. No.724 of 2017)
- S. Alam Hatchery Ltd., Chattogram represented by its Director and another. : ....Petitioners.  
(In C.P. No.725 of 2017)
- Chemon Ispat Ltd., Chattogram represented by its Managing Director and another. : ....Petitioners.  
(In C.P. No.726 of 2017)
- S. Alam Vegetables Oil Ltd., Chattogram represented by its Managing Director and another. : ....Petitioners.  
(In C.P. No.727 of 2017)
- S. Alam Brothers Ltd., Chattogram represented by its Managing Director and another. : ....Petitioners.  
(In C.P. No.728 of 2017)
- S. Alam Super Edible Oil Ltd., Chattogram represented by its Managing Director and another. : ....Petitioners.  
(In C.P. No.729 of 2017)
- S. Alam Refined Sugar Industries Ltd., Chattogram represented by its Managing Director and another. : ....Petitioners.  
(In C.P. No.730 of 2017)
- S. Alam Trading Co. (Pvt.) Ltd., Chattogram represented by its Managing Director and another. : ....Petitioners.  
(In C.P. No.731 of 2017)
- Galco Steel (Bangladesh) Ltd., Dhaka represented by its Managing Director and another. : ....Petitioners.  
(In C.P. No.732 of 2017)
- Mother Textile Mills Limited, Chattogram represented by its Managing Director and another. : ....Petitioners.  
(In C.P. No.733 of 2017)
- Noman Home Textile Mills Limited, Dhaka represented by its Managing Director. : .....Petitioner.  
(In C.P. No.767 of 2017)
- Saad Saan Textile Mills Limited, Dhaka represented by its Managing Director. : .....Petitioner.  
(In C.P. No.768 of 2017)
- Sufia Fabrics Limited, Dhaka represented by its Managing Director. : .....Petitioner.  
(In C.P. No.769 of 2017)

- Yeasmin Spinning Mills Limited, Dhaka : .....Petitioner.  
represented by its Managing Director. (In C.P. No.770 of 2017)
- Zaber Spinning Mills Limited, Dhaka : .....Petitioner.  
represented by its Managing Director. (In C.P. No.771 of 2017)
- Sufia Cotton Mills Limited, Dhaka : .....Petitioner.  
represented by its Managing Director. (In C.P. No.772 of 2017)
- Noman Fabrics Limited, Dhaka represented : .....Petitioner.  
by its Managing Director. (In C.P. No.773 of 2017)
- Talha Spinning Mills Limited, Dhaka : .....Petitioner.  
represented by its Managing Director. (In C.P. No.774 of 2017)
- Zaber & Zubair Accessories Limited, Dhaka : .....Petitioner.  
represented by its Managing Director. (In C.P. No.775 of 2017)
- Zarba Textile Mills Limited, Dhaka : .....Petitioner.  
represented by its Managing Director. (In C.P. No.776 of 2017)
- Talha Tex Pro Limited, Dhaka represented : .....Petitioner.  
by its Managing Director. (In C.P. No.777 of 2017)
- Ismail Textile Mills Limited, Dhaka : .....Petitioner.  
represented by its Managing Director. (In C.P. No.778 of 2017)
- Noman Textile Mills Limited, Dhaka : .....Petitioner.  
represented by its Managing Director. (In C.P. No.779 of 2017)
- Al-Safa Steel Re-rolling Mills Limited, : .....Petitioner.  
Chattogram represented by its Managing (In C.P. No.780 of 2017)  
Director Alhaj Md. Salahuddin.
- T.K. Chemical Complex Limited, Chattogram : .....Petitioner.  
represented by its Chairman Mr. Abul Kalam. (In C.P. No.781 of 2017)
- T.K. Paper Products Limited, Chattogram : .....Petitioner.  
represented by its Chairman Mr. Abul Kalam. (In C.P. No.782 of 2017)
- United Salt Industries Limited, Dhaka. : .....Petitioner.  
(In C.P. No.568 of 2017)
- United Sugar Mills Limited, Dhaka. : .....Petitioner.  
(In C.P. No.580 of 2017)
- Janata Flour and Dal Mills Limited, Dhaka. : .....Petitioner.  
(In C.P. No.587 of 2017)
- BSRM Iron & Steel Co. Limited, Dhaka : .....Petitioner.  
represented by its Managing Director Mr. (In C.P. No.825 of 2017)  
Aameiar Alihussain.

BSRM Steel Limited, Chattogram : .....Petitioner.  
represented by its Managing Director (In C.P. No.826 of 2017)  
Mr. Aameiar Alihussain.

BSRM Wires Limited, Chattogram : .....Petitioner.  
represented by its Managing Director (In C.P. No.827 of 2017)  
Mr. Alihussain Akberali.

Sam Associates Limited, Dhaka : .....Petitioner.  
represented by its Managing Director. (In C.P. No.979 of 2017)

Mars Textiles Limited, Chattogram : .....Petitioner.  
represented by its Managing Director. (In C.P. No.980 of 2017)

Mahmud Denims Limited, Dhaka represented by : .....Petitioner.  
its Managing Director. (In C.P. No.981 of 2017)

Al-Mahmud Filling Station Limited, Dhaka : .....Petitioner.  
represented by its Managing Director. (In C.P. No.982 of 2017)

Smile Food Products Ltd., Dhaka : .....Petitioner.  
(In C.P. No.984 of 2017)

Super Synthetics Limited, Chattogram : .....Petitioner.  
represented by its Managing Director (In C.P. No.1421 of 2017)  
Md. Abul Kalam.

T.K. Chemical Complex Limited, Chattogram : .....Petitioner.  
represented by its Chairman Md. Abul Kalam. (In C.P. No.1422 of 2017)

Rahman Ship Breakers Limited, : .....Petitioner.  
Chattogram represented by its Managing (In C.P. No.1532 of 2017)  
Director Jahir Uddin.

Mostafa Corporation Limited, : .....Petitioner.  
Chattogram represented by its Managing (In C.P. No.1533 of 2017)  
Director Jahir Uddin.

Mostafa Paper Products Limited, : .....Petitioner.  
Chattogram represented by its Managing (In C.P. No.1534 of 2017)  
Director Jahir Uddin.

Sitalpur Steel Mills Limited, : .....Petitioner.  
Chattogram represented by its Managing (In C.P. No.1620 of 2017)  
Director Md. Nazim Uddin.

Smile Food Products Limited, Dhaka : .....Petitioner.  
represented by its Constituted Attorney (In C.P. No.1300 of 2017)  
Mr. Mohammad Sheikh Kamal.

Shah Cement Power Limited, Chattogram : .....Petitioner.  
represented by its Managing Director. (In C.P. No.1322 of 2017)

- Shah Cement Power Limited, Chattogram : .....Petitioner.  
represented by its Managing Director. (In C.P. No.1323 of 2017)
- Shah Cement Power Limited, Chattogram : .....Petitioner.  
represented by its Managing Director. (In C.P. No.1324 of 2017)
- Gemcon Food and Agriculture Products : .....Petitioner.  
Limited, Dhaka represented by its Chief (In C.P. No.1333 of 2017)  
Operating Officer Mr. Shaheen Khan.
- Gemcon Food and Agriculture Products : .....Petitioner.  
Limited, Dhaka represented by its Chief (In C.P. No.1334 of 2017)  
Operating Officer Mr. Shaheen Khan.
- Gemcon Food and Agriculture Products : .....Petitioner.  
Ltd., Dhaka represented by its Chief (In C.P. No.1335 of 2017)  
Operating Officer Mr. Shaheen Khan.
- Habib Steel Limited, Chattogram : .....Petitioners.  
represented by its Managing Director (In C.P. No.1336 of 2017)  
Mr. Yasin Ali and another.
- Gemcon Food Agriculture Products Ltd., : .....Petitioner.  
Dhaka represented by its Chief (In C.P. No.1337 of 2017)  
Operating Officer Mr. Shaheen Khan
- Otto Spinning Ltd., Dhaka represented : .....Petitioner.  
by its Deputy Managing Director Mr. (In C.P. No.1384 of 2017)  
Abu Jafar Siddique.
- Marine Vegetables Oils Ltd., : .....Petitioner.  
Chattogram represented by its Managing (In C.P. No.1395 of 2017)  
Director Zahir Ahmmed.
- Nurjahan Ghee Plant Ltd., Chattogram : .....Petitioner.  
represented by its Managing Director (In C.P. No.1396 of 2017)  
Zahir Ahmmed.
- Nurjahan CNG Refueling Station Ltd., : .....Petitioner.  
Chattogram represented by its Managing (In C.P. No.1397 of 2017)  
Director Zahir Ahmmed.
- Nurjahan Super Oils Ltd., Chattogram : .....Petitioner.  
represented by its Managing Director (In C.P. No.1398 of 2017)  
Mr. Zahir Ahmmed.
- Nurjahan Bricks Ltd., Chattogram : .....Petitioner.  
represented by its Managing Director (In C.P. No.1399 of 2017)  
Mr. Zahir Ahmmed.
- Jasmir Vegetable Oils Ltd., Chattogram : .....Petitioner.  
represented by its Managing Director (In C.P. No.1400 of 2017)  
Zahir Ahmmed.

Jasmir Super Oils Ltd., Chattogram : .....Petitioner.  
 represented by its Managing Director (In C.P. No.1401 of 2017)  
 Zahir Ahmmed.

Sagarika Bottle & Packaging Industries : .....Petitioner.  
 Ltd., Chattogram represented by its (In C.P. No.1402 of 2017)  
 Managing Director Zahir Ahmmed.

Samannaz Dairy & Food Products Ltd., : .....Petitioner.  
 Chattogram represented by its Managing (In C.P. No.4339 of 2017)  
 Director Shahbuddin Alam.

South Eastern Tank Terminal Ltd., : .....Petitioner.  
 Chattogram represented by its Managing (In C.P. No.4340 of 2017)  
 Director Shahbuddin Alam.

S.A. Oil Refinery Ltd., Chattogram : .....Petitioner.  
 represented by its Managing Director (In C.P. No.4341 of 2017)  
 Mr. Shahbuddin Alam.

Laila CNG Station Ltd., Chattogram : .....Petitioner.  
 represented by its Managing Director (In C.P. No.4342 of 2017)  
 Mr. Monjur Alam.

S.A. Consumer Products Ltd., Chattogram : .....Petitioner.  
 represented by its Managing Director Mr. (In C.P. No.4343 of 2017)  
 Md. Shahbuddin Alam.

Samanna's Condensed Milk Limited, : .....Petitioner.  
 Chattogram represented by its Managing (In C.P. No.4344 of 2017)  
 Director Mr. Md. Shahbuddin Alam.

S.A. Pulp and Paper Products Limited, : .....Petitioner.  
 Chattogram represented by its Managing (In C.P. No.4345 of 2017)  
 Director Mr. Md. Shahbuddin Alam.

Kamal Vegetables Oils Limited, : .....Petitioner.  
 Chattogram represented by its Managing (In C.P. No.4346 of 2017)  
 Director Mr. Shahbuddin Alam.

Laila Vanaspati Products Ltd., : .....Petitioner.  
 Chattogram represented by its Managing (In C.P. No.4347 of 2017)  
 Director Mr. Shahbuddin Alam.

Shraiza Oil Refinery Ltd., Chattogram : .....Petitioner.  
 represented by its Managing Director Mr. (In C.P. No.4348 of 2017)  
 Shahbuddin Alam.

S.A. Beverage Ltd., Chattogram : .....Petitioner.  
 represented by its Managing Director (In C.P. No.4349 of 2017)  
 Shahbuddin Alam.

Samannaz Super Oils Ltd., Chattogram : .....Petitioner.  
represented by its Managing Director (In C.P. No.4350 of 2017)  
Mr. Shahbuddin Alam.

South Eastern Tank Terminal Ltd., : .....Petitioner.  
Chattogram represented by its Managing (In C.P. No.2034 of 2017)  
Director Mr. Md. Shahbuddin Alam.

S.A. Power Generations Ltd., Chattogram : .....Petitioner.  
represented by its Managing Director Mr. (In C.P. No.2035 of 2017)  
Md. Shahbuddin Alam.

S.A. Oil Refinery Ltd., Chattogram : .....Petitioner.  
represented by its Managing Director Mr. Md. (In C.P. No.2036 of 2017)  
Shahbuddin Alam.

S.A. Pulp and Paper Products Ltd., : .....Petitioner.  
Chattogram represented by its Managing (In C.P. No.2037 of 2017)  
Director Mr. Md. Shahbuddin Alam.

Samanna's Condensed Milk Ltd., : .....Petitioner.  
Chattogram represented by its Managing (In C.P. No.2038 of 2017)  
Director Mr. Md. Shahbuddin Alam.

Layla Banaspati Products Ltd., : .....Petitioner.  
Chattogram represented by its Managing (In C.P. No.2039 of 2017)  
Director Mr. Md. Shahbuddin Alam.

S.A. Beverage Ltd., Chattogram : .....Petitioner.  
represented by its Managing Director (In C.P. No.2040 of 2017)  
Mr. Md. Shahbuddin Alam.

S.A. Consumer Products Ltd., Chattogram : .....Petitioner.  
represented by its Managing Director Mr. (In C.P. No.2041 of 2017)  
Md. Shahbuddin Alam.

S.N. Spinning Mills Ltd., Dhaka : .....Petitioner.  
represented by its Managing Director (In C.P. No.1163 of 2017)  
Abdul Gaffar Chowdhury.

S.N. Spinning Mills Ltd., Dhaka : .....Petitioner.  
represented by its Managing Director (In C.P. No.1164 of 2017)  
Abdul Gaffar Chowdhury.

S.N. Spinning Mills Ltd., Dhaka : .....Petitioner.  
represented by its Managing Director (In C.P. No.1165 of 2017)  
Abdul Gaffar Chowdhury.

AGC Spinning Mills Limited, Dhaka : .....Petitioner.  
represented by its Managing Director (In C.P. No.1177 of 2017)  
Abdul Gaffar Chowdhury.

AGC Spinning Mills Limited, Dhaka : .....Petitioner.  
represented by its Managing Director (In C.P. No.1178 of 2017)  
Abdul Gaffar Chowdhury.

Chin Hung Fiber Limited, Chattogram : .....Petitioner.  
represented by its Managing Director (In C.P. No.783 of 2017)  
Mr. Abul Kalam.

Ruby Food Products Ltd., Chattogram : .....Petitioner.  
represented by its Managing Director (In C.P. No.1500 of 2017)  
Mr. Md. Abdus Sattar.

North South Spinning Mills Limited, : .....Petitioner.  
Jessore represented by its Managing (In C.P. No.2849 of 2017)  
Director.

Mutual Milk Products Ltd., Dhaka : .....Petitioner.  
represented by its Managing Director (In C.P. No.902 of 2017)  
(Finance) Mr. Naim Akhter Khandakar.

Mutual Milk Products Ltd., Dhaka : .....Petitioner.  
represented by its Managing Director (In C.P. No.903 of 2017)  
(Finance) Mr. Naim Akhter Khandakar.

Mutual Food Products Ltd., Dhaka : .....Petitioner.  
represented by its Managing Director (In C.P. No.904 of 2017)  
(Finance) Mr. Md. Humayun Kabir.

Quality Feeds Limited, Dhaka : .....Petitioner.  
represented by its Managing Director (In C.P. No.851 of 2017)  
Mr. Ihtesham B. Shajahan.

Quality Feeds Ltd., Dhaka represented : .....Petitioner.  
by its Managing Director Mr. Ihtesham (In C.P. No.852 of 2017)  
B. Shajahan.

Haque Rice Mills Ltd., Dhaka represented : .....Petitioner.  
by its Managing Director Mr. Shah Md. (In C.P. No.876 of 2017)  
Ashraful Alam Chowdhury.

Ehsan Steel Re-Rolling Mills Ltd., : .....Petitioners.  
Chattogram represented by its Managing (In C.P. No.2111 of 2017)  
Director and another.

Ehsan Re-Rolling Mills Ltd., : .....Petitioners.  
Chattogram represented by its Managing (In C.P. No.2112 of 2017)  
Director and another.

Bangladesh Edible Oil Ltd., Dhaka : .....Petitioner.  
(In C.P. No.1838 of 2017)

Zam Zam Spinning Mills Limited, Dhaka : .....Petitioner.  
represented by its Managing Director (In C.P. No.3826 of 2017)  
Mr. Md. Rezaul Karim.

Biswas Poultry & Fish Feeds Ltd., Dhaka. : .....Petitioner.  
(In C.P. No.2934 of 2017)

Aleya Feeds Limited, Dhaka represented : .....Petitioner.  
by its Managing Director Mr. Khandoker (In C.P. No.2935 of 2017)  
Monsur Hossain.

**-Versus-**

Government of Bangladesh, : .....Respondents.  
represented by the Secretary, (In C.A. No.113 of 2018, C.P. Nos.722-733 of 2017,  
Ministry of Finance, Internal C.P. Nos.767-779 of 2017, C.P. No.568 of 2017, C.P.  
Resources Division, Bangladesh No.580 of 2017, C.P. No.587 of 2017, C.P. Nos.979-  
Secretariat, Dhaka and others. 982 of 2017, C.P. No.984 of 2017, C.P. No.1620 of  
2017, C.P. No.1336 of 2017, C.P. No.1384 of 2017,  
C.P. Nos.1395-1402 of 2017, C.P. Nos.4339-4350 of  
2017, C.P. Nos.2034-2041 of 2017, C.P. Nos.1177-  
1178 of 2017, C.P. No.2849 of 2017, C.P. Nos.902-  
904 of 2017, C.P. Nos.851-852 of 2017, C.P.  
Nos.2111-2112 of 2017, C.P. No.2934 of 2017.)

Government of Bangladesh, : .....Respondents.  
represented by the Secretary, (In C.P. Nos.780-783 of 2017, C.P. Nos.825-827  
Ministry of Finance, of 2017, C.P. Nos.1421-1422 of 2017, C.P.  
Bangladesh Secretariat, Dhaka Nos.1532-1534 of 2017, C.P. No.1300 of 2017,  
and others. C.P. No.1322-1324 of 2017, C.P. Nos.1333-1335 of  
2017, C.P. No.1337 of 2017, C.P. No.1500 of  
2017, C.P. No.876 of 2017, C.P. No.1838 of 2017,  
C.P. No.3826 of 2017, C.P. No.2935 of 2017.)

Government of Bangladesh, : .....Respondents.  
represented by the Secretary, (In C.P. Nos.1163-1165 of 2017.)  
Ministry of Law, Justice and  
Parliamentary Affairs, Bangladesh  
Secretariat, Dhaka and others.

For the Appellants. :Mr. Fida M. Kamal, Senior Advocate  
(C.A. No.113 of 2018) (with Mr. M. A. Hannan, Advocate)  
instructed by Mr. Syed Mahbubar  
Rahman, Advocate-on-Record.

For the Petitioners. :Mr. M. A. Hannan, Advocate  
C.P. Nos.722-733 of 2017) instructed by Mr. Syed Mahbubar  
Rahman, Advocate-on-Record.

For the Petitioner. :Mr. A. F. Hassan Ariff, Senior  
(C.P. No.587 of 2017) Advocate instructed by Mr. Zainul  
Abedin, Advocate-on-Record.

For the Petitioner. :Mr. Probir Neogi, Senior Advocate  
(C.P. Nos.568 & 580 of 2017) (with Ms. Anita Ghazi Rahman,  
Advocate) instructed by Mr. Md.  
Zahirul Islam, Advocate-on-Record.

For the Petitioner. :Mr. Tanjib-ul Alam, Senior  
(C.P. Nos.1300, 1322-1324 of 2017) Advocate instructed by Mr. Md.  
Helal Amin, Advocate-on-Record.

For the Petitioner. :Mr. Omar Sadat, Advocate instructed by  
(C.P. Nos.1333-1337 of 2017) Ms. Madhumalati Chowdhury Barua,  
Advocate-on-Record.

For the Petitioner. :Mr. Md. Asaduzzaman, Advocate  
(C.P. No.1838 of 2017) instructed by Mr. Syed Mahbubar  
Rahman, Advocate-on-Record.

|                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|-----------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b><u>For the Petitioner.</u></b><br>(C.P. No.767-779, 979-982 & 984 of 2017)                                                           | :Mr. Ramjan Ali Sikder, Advocate instructed by Mr. Md. Zahirul Islam, Advocate-on-Record.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b><u>For the Petitioner.</u></b><br>(C.P. No.1500 of 2017)                                                                             | :Mr. Zakir Hossain Munshi, Advocate instructed by Ms. Sufia Khatun, Advocate-on-Record.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b><u>For the Petitioner.</u></b><br>(C.P. Nos.780-783, 825-827 of 2017)                                                                | :Mr. Md. Nurul Islam Chowdhury, Advocate-on-Record.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b><u>For the Petitioner.</u></b><br>(C.P. Nos.1421, 1422 & 1532-1534 of 2017)                                                          | :Mr. Satya Ronjon Mondall, Advocate-on-Record.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b><u>For the Petitioner.</u></b><br>(C.P. No. 1620 of 2017)                                                                            | :Mr. Md. Tajul Islam Mojumder, Advocate-on-Record.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b><u>For the Petitioner.</u></b><br>(C.P. No.1384, 4339, 4340-4350 of 2017)                                                            | :Mr. Md. Zahirul Islam, Advocate-on-Record.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b><u>For the Petitioner.</u></b><br>(C.P. Nos.1395-1402, 2034-2041, 1163-1165, 1177-1178, 851-852, 876, 2111-2112 & 2934-2935 of 2017) | :Mr. Zainul Abedin, Advocate-on-Record.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b><u>For the Petitioner.</u></b><br>(C.P. No.2849 of 2017)                                                                             | :Mr. Gias Uddin Ahmed, Advocate-on-Record (dead).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b><u>For the Petitioner.</u></b><br>(C.P. Nos.902-904 of 2017)                                                                         | :Mr. Nurul Islam Bhuiya, Advocate-on-Record.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b><u>For the Petitioner.</u></b><br>(C.P. No.2112 of 2017)                                                                             | :Mr. Syed Mahbubar Rahman, Advocate-on-Record.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b><u>For the Petitioner.</u></b><br>(C.P. No.3826 of 2017)                                                                             | :Mr. M. Ashraf-uz-Zaman Khan, Advocate-on-Record.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b><u>For the Respondents.</u></b><br>(In all the cases)                                                                                | :Mr. A. M. AMin Uddin, Attorney General (with Sk. Md. Morshed, Additional Attorney General, Mr. Samarandra Nath Biswas, Deputy Attorney General, Ms. Mahfuza Begum, Deputy Attorney General, Ms. Tahmina Polly, Assistant Attorney General, Mr. Mohammad Saiful Alam, Assistant Attorney General, Mr. Sayem Mohammad Murad, Assistant Attorney General, Ms. Farzana Rahman Shampa, Assistant Attorney General, Ms. Tamanna Ferdous, Assistant Attorney General and Mr. Md. Humayun Kabir Babul, Assistant Attorney General) instructed by Mr. Haridas Paul, Advocate-on-Record. |
| <b><u>Date of Hearing.</u></b>                                                                                                          | <b><u>:The 15<sup>th</sup>, 24<sup>th</sup>, 29<sup>th</sup>, 30<sup>th</sup> November and 01<sup>st</sup> December, 2022.</u></b>                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b><u>Date of Judgment.</u></b>                                                                                                         | <b><u>:The 14<sup>th</sup> December, 2022.</u></b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

## J U D G M E N T

**Borhanuddin, J:** Since the instant civil appeal by leave and all other aforementioned civil petitions involve identical points of law based on similar facts as such all are taken together for hearing and disposed of by this common judgment.

The civil appeal by leave is directed against the judgment and order dated 24.08.2016 passed by a larger Bench of the High Court Division in writ petitions mentioned hereinabove discharging all the Rules.

Facts relevant are that present appellant of the civil appeal and other petitioners of civil petitions as petitioner invoked writ jurisdiction under Article 102 of the Constitution separately challenging incorporation of Section 16 CCC of Income Tax Ordinance, 1984 (hereinafter stated as 'the Ordinance, 1984') through Finance Act, 2011 being ultra-vires and violative of fundamental rights enshrined under Articles 26, 27, 31, 40 and 42 of the Constitution contending, inter alia, that the petitioners in all the writ petitions are private limited company incorporated under the Companies Act, 1994 and

regularly paying income tax; The petitioners filed separate return for the assessment year 2009-2010 based on audited accounts under Section 35(3) of the Ordinance, 1984; But the legislature suddenly incorporated Section 16 CCC in the Ordinance, 1984 through the Finance Act, 2011, imposing liability of paying minimum tax @ 0.50% on gross receipts for every company irrespective of its profit or loss in an assessment year from all sources; Previously similar provision was also incorporated in the Ordinance, 1984 as Section 16 CC through the Finance Act, 2006 which was subsequently omitted by Finance Act, 2008 realizing illegality and inconsistency of the provision with the Ordinance, 1984; The provision of newly inserted Section 16 CCC being inconsistent and contrary to the provisions of Sections 16, 17, 20, 28(1), 29, 35, 37, 38, 42, 83(2) and definition clauses (34), (46), (65) of Section 2 of the Ordinance, 1984 as such is in conflict and contradictory with the aim, spirit, purposes, object and basic concept of the Ordinance, 1984; The fundamental rights of the petitioners guaranteed under Articles 26, 27, 31, 40 and 42 of the Constitution have been grossly

violated and thus impugned Section 16 CCC of the Ordinance, 1984 is liable to be declared violative of the fundamental rights enshrined in the Constitution and also relevant provisions of the Ordinance, 1984.

Upon hearing learned Advocates for the petitioners in all the writ petitions, different Benches of the High Court Division issued separate Rule Nisi upon the respondents to show cause.

The respondents contested the Rules by filing separate affidavit-in-opposition controverting the averments made in the writ petitions and stating, inter alia, that the incorporation of Section 16 CCC in the Ordinance, 1984 is neither illegal nor ultra-vires to the Constitution; The very understanding of the writ-petitioners regarding incorporation of Section 16 CC of the Ordinance, 1984 and subsequent omission thereof, is misconceived; The 'Minimum Tax' is a modern tax concept and Bangladesh as a member of the Global Tax Unity also embraced this modern concept of 'Alternative Tax' in the name of 'Minimum Tax'; The newly inserted provision of Section 16 CCC of the Ordinance, 1984 is applicable for a firm or a company tax payer having gross receipt of more

than Tk.50,00,000.00 and charge tax @ 0.50% on gross receipts; It is also stated that, imposition/revocation/amendment of tax liability including minimum tax is legislative prerogative as well as a policy decision of the Government and as such all the Rules are required to be discharged.

After contested hearing, a larger Bench of the High Court Division constituted for disposal discharged all the Rules.

Feeling aggrieved, the writ-petitioner nos.01 and 02 of the Writ Petition No.9201 of 2011 as petitioners preferred civil petition for leave to appeal invoking Article 103 of the Constitution and obtained leave granting order on 11.03.2018.

Consequently, the civil appeal arose.

Other writ petitioners also preferred separate civil petition for leave to appeal which are mentioned above.

Mr. Fida M. Kamal, learned Senior Advocate appearing for the appellant submits that the High Court Division erred in law inasmuch as instead of substantiating the

issue raised by the writ-petitioner that Section 16 CCC adversely affect the basic structure of the income tax law introduced a new issue terming Section 16 CCC as a "beneficial statute". He again submits that the High Court Division failed to appreciate that "gross receipts" does not fall within the ambit of the definition of "income" under the Ordinance, 1984 and as such Parliament has acted beyond its jurisdiction in promulgating impugned Section 16 CCC imposing minimum tax on "gross receipts" negating basic structure of the Ordinance, 1984. He further submits that the High Court Division failed to consider that the assesseees have put in such as inflexible precondition to admit and pay tax under Section 16 CCC before or on filing of return without raising any objection or taking any ground even in a case where admittedly tax under Section 16 CCC is several times higher than regular tax of 35% or in some cases it is higher than the "total income" estimated by the DCT in the assessment order itself which resulting the impugned legislation of "minimum tax" contrary to the basic concept of law of Income Tax Legislation or mala-fide act being unreasonable inasmuch as citizen's fundamental

right to hold the property is expropriation and exacting capital or asset of the company-assessee without compensation. He next submits that the impugned Section 16 CCC is discriminatory under the provisions of the Constitution. He again submits that the High Court Division erred in law in not considering that the impugned Section 16 CCC is inconsistent and in direct contradiction with the provisions of the Ordinance, 1984 and as such abrogated the existing Ordinance, 1984 inasmuch as it controverting the provisions of Sections 16, 17, 20, 28(1), 29, 35, 37, 38, 42, 43, 83, 153, 158, 160 read with the definition clause 2(34), 2(46) and 2(65) of the Ordinance, 1984. He lastly submits that the High Court Division failed to appreciate that the plenary power of the Parliament having been conferred by the Constitution and exercise of such power is always subject to compliance of Articles 7(2), 8(2), 26, 65, 80, 81, 83, 152 of the Constitution and failure of such compliance in incorporating Section 16 CCC is ultra-vires to the Constitution and as such the impugned judgment and order is liable to be set-aside.

Mr. A. F. Hassan Ariff, learned Senior Advocate appearing for the leave petitioner in Civil Petition no. 587 of 2017 submits that the High Court Division failed to appreciate that similar legislation as Section 16 CC was repealed in 2008 because it does not fit with the Ordinance, 1984 as such impugned Section 16 CCC is against the spirit and object of said Ordinance and also the budget speech by the then Finance Adviser is significant element of canons in interpreting the statute. He again submits that Government realised through experience the impracticability in application of minimum tax resulting preposterous consequence as such Section 16 CCC has again been repealed in 2016. He next submits that the High Court Division failed to appreciate that gross receipts is not income under the Ordinance, 1984 as such incorporation of Section 16 CCC is not a reasonable legislation. He further submits that the proposition as regard levy in the garb of tax on gross receipts is subjecting petitioner to irrational, unreasonable restriction and curbing his fundamental right to carry on business and also discriminatory as such ultra-vires to the Constitution, thus the impugned

judgment and order passed by the High Court Division is liable to be set-aside.

Mr. Probir Neogi, learned Senior Advocate appearing for the leave petitioners in Civil Petition nos. 568 and 580 of 2017 submits that the High Court Division erred in law in not considering that gross receipts cannot be made taxable since the same is beyond the scope of income tax as set out in the Ordinance, 1984 as a whole. He again submits that the High Court Division failed to appreciate that impugned Section 16 CCC is inconsistent and violative of the different Articles of the Constitution and therefore is ultra-vires to the Constitution and as such this colorable legislation is not immune from judicial review.

Mr. Tanjib-ul Alam, learned Senior Advocate appearing for the leave petitioners in Civil Petition nos. 1300, 1322-1324 of 2017 submits that the High Court Division failed to appreciate that for the purpose of charging income tax and assessing the income of an assessee under the Ordinance, 1984, the total income is required to be computed as per provision of Section 43 of the said Ordinance and as such inclusion of Section 16 CCC created

an anomaly in the scheme of the Ordinance, 1984. He again submits that the High Court Division erred in law in not considering that the provision of Section 16 CCC is contrary with the provisions of the Ordinance, 1984 inasmuch as "gross receipts" does not fall within the definition of income as such the impugned Section 16 CCC is liable to be declared to have been inserted without lawful authority and is of no legal effect.

Mr. Omar Sadat, learned Advocate appearing for the leave petitioners in Civil Petition nos. 1333-1337 of 2017 submits that the High Court Division failed to appreciate that the entire scheme of the Ordinance, 1984 is contrary to the concept of "minimum tax" since tax is charged on income but not on gross receipts. He again submits that profit, income and receipts are three different words and cannot synonyms to each other and as such the High Court Division erred in law in passing the impugned judgment and order. He next submits that the High Court Division erred in law in not considering that Section 16 CCC is an arbitrary legislation as well as violative of the provisions of the Constitution and the Ordinance, 1984.

Mr. Md. Asaduzzaman, learned Advocate appearing for the leave petitioner in Civil Petition no. 1838 of 2017 submits that the impugned judgment and order passed by the High Court Division discharging the Rule suffers from gross infirmity inasmuch as imposition of tax on "total receipts" violating the petitioner's vested right of having its income deductible under Sections 28, 29, 33, 43 and 44 of the Ordinance, 1984 and then computation of its income under Section 43 is completely denied which is in violation of Article 31 of the Constitution. He again submits that impugned Section 16 CCC is not only contradictory to the provisions of the Ordinance, 1984 but also to the provisions of the Constitution and as such it is discriminatory. He next submits that the High Court Division erred in law in not considering that the Ordinance, 1984 itself is void-ab-initio in the light of the judgment and order passed by this Division in Civil Appeal No.48 of 2011 inasmuch as the Ordinance, 1984 has not been laid down before the Parliament as a Money Bill to make it an Act of the Parliament and as such the impugned Section 16 CCC is a nullity in the eye of law

and hence the impugned judgment and order passed by the High Court Division is liable to be set aside.

Mr. Ramjan Ali Sikder, Mr. Zakir Hossain Munshi, Mr. M. A. Hannan, Mr. Md. Nurul Islam Chowdhury, Mr. Satya Ronjon Mondall, Mr. Md. Tajul Islam Mojumder, Mr. Md. Zahirul Islam, Mr. Gias Uddin Ahmed, Mr. Nurul Islam Bhuiyan, Mr. Syed Mahbubur Rahman and Mr. M. Ashraf-uz-Zaman Khan learned Advocates appearing for the respective petitioner supports and adopts submissions of the learned senior Advocates.

On the other hand Mr. A. M. Amin Uddin, learned Attorney General appearing for the respondents submits that the impugned Section 16 CCC is not contradictory to the basic structure of the Ordinance, 1984 nor it conflicts with Sections 2(34), 2(62) and 2(65) of the said Ordinance. He again submits that Section 16 CCC is an alternative charging Section and is fully consistent with the object, principle and basic structure of Income Tax Law inasmuch as loss of income and gain is also treated as income. Thus, the term "gross receipts" falls very much within the definition of "income". He next submits that the impugned Section 16 CCC starts with the

non-obstante clause as such the same shall prevail over all other provisions of the Ordinance, 1984. He also submits that impugned Section 16 CCC is an alternative taxing method and does not create any double tax burden. He further submits that the arguments put forward by the appellants as well as other leave petitioners that earlier similar provision of Section 16 CC was declared as unconstitutional by the then Finance Advisor of the Caretaker Government in his budget speech as such the subsequent provision of Section 16 CCC is unconstitutional is not tenable in the eye of law inasmuch as budget speech of the Finance Advisor is not enactment of the Parliament but financial proposals. He lastly submits that the impugned Section 16 CCC is not violative of Articles 7, 27 31, 40 42 or any other Articles of the Constitution as such the impugned judgment and order passed by the High Court Division is immune from interference by this Division.

Heard the learned Advocates for the respective parties. Perused the papers/documents contained in the appeal and leave petitions.

The question requires to be addressed in this civil appeal and all other civil petitions is that whether incorporation of Section 16 CCC in the Ordinance, 1984 is against the aim, spirit, purpose and object of said ordinance and also violative of the Constitution.

Taxation is an unilateral decision of the parliament in exercise of its sovereign power. Every legislation is enacted with the object of public benefit and taxation law operates as tool of raising revenue to meet the expenditure of the Government as well as contributes in the development of the country which ultimately enjoyed by the mass people of country. Thus the intention of the legislature in enacting taxation law is to raise the revenue of the Government for public benefit. Furthermore, what is best in the national economy and in what manner and to what extent the fiscal policy is formulated, offered and implemented is ultimately to be decided by the Parliament.

First of all we have to discuss Section 16 CCC and other provisions of the Ordinance, 1984 to address the question arose in the instant case. For better

understanding Section 16 CCC of the Ordinance, 1984 runs as follow:

**16 CCC. Charging of Minimum tax-**

*Notwithstanding anything contained in any other provisions of this Ordinance, every company shall, irrespective of its profits or loss in an assessment year for any reason whatsoever, including the sustaining of a loss, the setting off of a loss of earlier year or years or the claiming of allowances or deductions (including depreciation) allowed under this Ordinance, be liable to pay minimum tax at the rate of zero point five zero (0.50%) percent of the amount representing such company's gross receipts from all sources for that year.*

**Explanation:** *For the purposes of this Section, 'gross receipts' means-*

- (a) all receipts derived from the sale of goods;*
- (b) all fees or charges for rendering services or giving benefits including commission or discounts;*
- (c) all receipts derived from any heads of income.*

Again, the term income defines under Section 2(34) of the Ordinance, 1984 in the following manner:

**(34) "income" includes-**

- (a) any income, profits or gains, from whatever source derived, chargeable to tax*

under any provision of this Ordinance under any head specified in Section 20;

(b) any loss of such income, profits or gains;

(c) the profits and gains of any business of insurance carried on by a mutual insurance association computed in accordance with paragraph 8 of the Fourth Schedule;

(d) any sum deemed to be income, or any income accruing or arising or received, or deemed to accrue or arise or be received in Bangladesh under any provision of this Ordinance:

but does not include, in the case of a shareholder of a Bangladeshi company, the amount representing the face value of any bonus shares or the amount of any bonus declared, issued or paid by the company to its shareholders with a view to increasing its paid-up share capital;

Provided that the amount representing the face value of any bonus share or the amount of any bonus declared, issued or paid by any company registered in Bangladesh under কোম্পানী আইন, ১৯৯৪ (১৯৯৪ সালের ১৮ নং আইন) to its shareholders with a view to increase its paid-up share capital shall not be included as income of that share holder;"

(emphasis supplied)

Thus, from Section 2 (34) of the Ordinance, 1984 it transpires that the term "any income", "profits or gains" as well as "loss of such income, profits or gains" are

included in the definition of income. Therefore, as the term "loss of income or gain" is within the purview of income as such there is no reason to hold that the gross receipts is not within the purview of income as mentioned in Section 2 (34) of the Ordinance, 1984.

There are two methods of calculation of tax i.e. regular method of taxation and alternative method of taxation. Section 16 CCC is an alternative method of taxation under the caption "Charge of minimum tax". In order to prevent tax evasion, defeat "Zero taxation", decrease tax inequality among corporate taxpayers (some company pay tax and others do not, there becomes an uneven tax treatment amongst them) as well as to ensure revenue adequacy, the concept of Alternative Minimum Tax (AMT) has been introduced in many countries around the world where taxpayer requires to pay a minimum amount of tax if tax liability under regular method falls short of a minimum amount of tax. Bangladesh as a member of global tax community adopt this modern concept of charging alternative minimum tax. In calculating tax liability under Section 16 CCC any tax

paid in advance, at source or under Section 74 is duly given credit. Moreover, when any income of a taxpayer falls under the ambit of final settlement of tax liability under Section 82 C that income does not come within Section 16 CCC. So, there is no space for double taxation under impugned Section 16 CCC. The ultimate object and purpose of the taxation law is to increase revenue for smooth running of the economy as well as to prevent tax evasion as such Section 16 CCC is fully consistent with the purpose and objective of the Ordinance, 1984 and also in line with globally recognized tax practice.

The High Court Division upon elaborate discussions arrived at findings on this point in the impugned judgment and order and we do not find any reason to differ with the findings.

Another contention of the appellant and petitioners is that incorporation of Section 16 CCC in the Ordinance, 1984 is not in accordance with law.

To address this issue we have to refer Articles 80(1), 80(2), 80(5), 81(3) and 83 of the Constitution which runs in the following manner:

**80(1)** *Every proposal in Parliament for making a law shall be made in the form of a Bill.*

**80(2)** *When a Bill is passed by Parliament it shall be presented to the President for assent.*

**80(5)** *When the President has assented or is deemed to have assented to a Bill passed by Parliament it shall become law and shall be called an Act of Parliament.*

**81(3)** *Every money Bill shall, when it presented to the President for his assent bear a certificate under the hand of the Speaker that it is a Money Bill, and such certificate shall be conclusive for all purposes and shall not be questioned in any court.*

**83.** *No tax shall be levied or collected except by or under the authority of an Act of Parliament.*

From the mandate of aforementioned Articles of the Constitution it is crystal clear that for the purpose of insertion of Section 16 CCC in the Ordinance, 1984 a bill was presented before the Parliament as per the provision of Article 80(1) of the Constitution which is obviously a money bill. Again, Article 81(3) of the Constitution

ensures that the aforementioned money bill while presented to the President for his assent, bears a certificate under the hand of the Speaker and such certificate is conclusive and shall not be questioned in any court. Again as soon as the President assented that money bill under Article 80(5) of the Constitution it becomes an Act of the Parliament. Thus from the above discussions it transpires that after the assent of the President, the Finance Act, 2011 through which Section 16 CCC came into force became an Act of Parliament fulfilling the Constitutional requirement. From the above discussions it appears that the insertion of Section 16 CCC has been done within the constitutional domain and competence as such contention of the appellant as well as the petitioners in this regard does not hold water.

Another contention of the appellant as well as the petitioners is that the impugned Section 16 CCC of the Ordinance, 1984 is a piece of discriminatory legislation amongst the businessman viz-a-viz company and firm.

By now it is a settled that a law will not be discriminatory if it is equally applicable to all in the same group.

In this regard, we need to refer Section 2(46) of the Ordinance, 1984 which states that-

**(46)** *"person" includes an individual, a firm, an association of persons, a Hindu undivided family, a local authority, a company and every other artificial person;*

Analyzing the aforementioned Section it appears that the subject of tax includes person, company, firm and many more. So there are different classes of person/group as mentioned in said Section and amongst them some are individual, some are service holder whether Government or Private, some are company or firm who are doing business and making profit or loss etc. It should be kept in mind that in order to impose tax upon a particular group it is not necessary to impose tax upon all the groups. But what is necessary to ensure equal treatment upon all the members of the same group. Thus individual or company as mentioned in Section 2(46) of the said Ordinance are not entitled to get equal protection of tax law and all the provisions of said Ordinance are not equally applicable to them since two groups are not same. Again, from the language of Section 16 CCC it is clear that this Section is equally applicable upon all the companies or firms.

The Supreme Court of India in the case of *Spences Hotel Pvt. Ltd. and Ors. vs. State of West Bengal and Ors.*, reported in [1991] 1 SCR 429, held:

*"Taxation will not be discriminatory if, within the sphere of its operation, it affects alike all persons similarly situated. It, however, does not prohibit special legislation, or legislation that is limited either in the objects to which it is directed, or by the territory within which it is to operate. In the words of Cooley: It merely requires that all persons subjected to such legislation shall be treated alike, under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed. The rule of equality required no more than that the same means and methods be applied impartially to all the constituents of each class, so that the law shall operate equally and uniformly upon all persons in similar circumstances."*

From the above discussions and the principle enunciated in the referred case, we have no hesitation to hold that Section 16 CCC is not a discriminatory legislation.

Further contention on behalf of the appellant as well as the leave petitioners is that similar provision was also incorporated in the Ordinance, 1984 as Section 16 CC through the Finance Act, 2006 and subsequently upon the

speech of the then Finance Adviser while presenting the budget said Section was omitted by Finance Act, 2008 realizing illegality and inconsistency of the provision with the Ordinance, 1984. Thus subsequent incorporation of Section 16 CCC through Finance Act, 2011 is deviation from the budget speech by the Finance Advisor.

The question of legal implication of the Budget Speech by the Finance Minister is raised before the Indian Supreme Court. The Supreme Court of India in the case of *Amin Merchant vs. Chairman, Central Board of Excise & Revenue and Others*, reported in AIR 2016 (SC) 3920, held:

*"Budget speeches by the Union Finance Minister are not enactments by the Parliament and a Government cannot be bound under the law by them."*

It is also observed that:

*"The Finance Minister's speech only highlights the more important proposals of the Budget. Those are not the enactments of the Parliament. The law was enacted is what is contended in the Finance Act after it is legislated upon by the Parliament."*

Their lordship further observed:

*"The financial proposal put forth by the Finance Minister reflects the Governmental*

*view for raising revenue to meet the expenditure for the financial year and it is the financial policy of the central Government. The Finance Minister's speech only highlights the more important proposals of the Budget."*

*(emphasis supplied)*

Thus from the discussions made above it is apparent that the budget speech by the Finance Adviser/Finance Minister is not enactment of the Parliament but only financial proposals as such speech by the then Finance Adviser has no implication in this regard.

Now we are going to discuss about the submissions regarding legality of the Ordinance, 1984 made by Mr. Md. Asaduzzaman, learned Advocate appeared for leave petitioner in Civil Petition No.1838 of 2017. Though leave was not granted upon this point but since at the time of hearing the very point is agitated before us, we are of the view that the question regarding the legality of the Ordinance, 1984 should be looked into. It is to be noted that the Ordinance, 1984 has come into force during the period of Martial Law. This Division though declared all the Proclamations, Ordinances and Orders promulgated between 24.03.1982 to 11.11.1986 i.e. during the Martial

Law period as void-ab-initio through Civil Appeal No. 48 of 2011 but condoned provisionally all other Governmental functions, orders, acts, actions, transactions, proceedings of the Martial Law Courts etc. as mentioned above, which are past and closed.

Relevant portions of the judgment and order passed in the case of *Siddique Ahmed Vs. Government of Bangladesh and Others* (Civil Appeal No.48 of 2011), reported in 65 DLR (AD) (2013) 08, are quoted below:

**"271.** However, the whole purpose of granting condonation is to maintain the continuity and status quo in the workings and functions of the Government but it was never to bless the autocrats or the usurpers or their illegal regimes. Let us take the present case. The Martial Law Proclamations etc. of 1982 to 1986 are all illegal and shall remain so far all time to come. Nobody can deny it. There can be no condonation in respect of those. But numerous administrative decisions were taken, orders were passed, transactions both national and international were made, proceedings of the trials were conducted by the Martial Law Courts, international treaties were entered into, which are inevitable in the running of the Government during the said period of Martial Law which continued for more than 4 (four) and half years from 24 March 1982 to till 11 November 1986. Those functions

cannot be erased even though were done by an illegal and unconstitutional Government through its illegitimate organs. But those are there, mostly after so many years, as past and closed transactions. Legally speaking all those functions of the Government for the said period are all illegal and no right can be created and founded infavour of anybody during the said period. Even the emoluments paid to the Government servants will be illegal to cite one example amongst thousands. Those would definitely create not only chaos but a wholesale devastation in the entire Republic, nationally and internationally. The Republic would lose its credibility in all its spheres. This simply cannot be allowed to happen. In order to avoid such a havoc, we have to call up the aid of the maxim 'salus populi suprema lex' and while declaring the Martial Law Proclamations etc., and Section 3 of the Constitution (Seventh Amendment) Act 1986, as void, all other Governmental functions, Orders, acts, actions, transaction, proceedings of the Martial Law Court etc., as mentioned above, which are past and closed, are condoned but condoned provisionally.

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**274.** We may reiterate that the whole purpose of condonatoin is to ameliorate the sufferings of the ordinary people whose legal rights may be jeopardized unless the functions and the transactions of the illegal regimes of the usurpers and

*violators of the Constitution are condoned but never to condone their own illegalities.*

**275.** *The 'suprema lex' is for 'salus populi' not for the usurpers and violators of the Constitution of the 'populi'. They personally remain liable for violation of the Constitution and for their illegal activities for all time to come."*

From the principle enunciated in the above cited case, it can be held that though the Martial Law is unconstitutional, but in order to protect and preserve the continuity and status quo in the workings and functions of the Government as well as to remove the suffering of the mass people of the country all other Governmental functions, Orders, acts, actions, transaction taken by the then illegal and unconstitutional Martial Law Ruler condoned provisionally as they are past and closed transactions.

In this context, the question arose regarding the legality of the Ordinances like the Ordinance, 1984 which were enacted at that period are related to preserve the rights of the people under the Rule of Law as well as to protect and preserve the continuity and status quo in the workings and functions of the Government. In such

situation Honorable President of Bangladesh issued an Ordinance under Article 91(1) of the Constitution on 21.01.2013 through which special provision was promulgated to give effect to those Ordinances which were issued during the abovementioned Martial Law period and the Ordinance dated 21.01.2013 was placed before 16<sup>th</sup> session of Ninth National Parliament on 27.01.2013 and Act No.07 of 2013 was passed by the Parliament which is called "১৯৮২ সালের ২৪ মার্চ হইতে ১৯৮৬ সালের ১১ নভেম্বর তারিখ পর্যন্ত সময়ের মধ্যে জারীকৃত কতিপয় অধ্যাদেশ কার্যকরকরণ (বিশেষ বিধান) আইন, ২০১৩" (hereinafter stated as 'the Act No. 07 of 2013'). The preamble, Sections 04 and 05 of the Act No. 07 of 2013 are relevant in this context and for better understanding they are reproduced below:

*"প্রস্তাবনা- যেহেতু সংবিধান (পঞ্চদশ সংশোধন) আইন, ২০১১ (২০১১ সনের ১৪ নং আইন) দ্বারা ১৯৮২ সালের ২৪ মার্চ হইতে ১৯৮৬ সালের ১১ নভেম্বর তারিখ পর্যন্ত সময়ের মধ্যে জারীকৃত অধ্যাদেশসমূহ অনুমোদন ও সমর্থন (ratification and confirmation) সংক্রান্ত গণপ্রজাতন্ত্রী বাংলাদেশের সংবিধানের চতুর্থ তফসিলের ১৯ অনুচ্ছেদ বিলুপ্ত হওয়ায় উক্ত অধ্যাদেশসমূহ কার্যকারিতা হারাইয়াছে; এবং*

*যেহেতু সিভিল আপীল নং ৪৮/২০১১ এ সুপ্রীমকোর্টের আপীল বিভাগ কর্তৃক প্রদত্ত রায়ে সংবিধান (সপ্তম সংশোধন) আইন, ১৯৮৬ (১৯৮৬ সনের ১নং আইন) এর ধারা ৩ এবং গণপ্রজাতন্ত্রী বাংলাদেশের সংবিধানের চতুর্থ তফসিলে ১৯ অনুচ্ছেদ বাতিল ঘোষিত হওয়ায় উক্ত সময়ের মধ্যে জারীকৃত উক্ত অধ্যাদেশসমূহ কার্যকারিতা হারাইয়াছে; এবং*

*যেহেতু উক্ত অধ্যাদেশসমূহ ও উহাদের অধীনে প্রণীত বিধি, প্রবিধান বা আদেশবলে কৃত কাজ-কর্ম, গৃহীত ব্যবস্থা বা কার্যধারাসমূহ, অথবা প্রণীত, কৃত, গৃহীত বা সূচীত বলিয়া বিবেচিত কাজ-কর্ম, ব্যবস্থা বা কার্যধারাসমূহ আইনের শাসন, জনগণের অর্জিত অধিকার*

সংরক্ষণ এবং প্রজাতন্ত্রের কর্মের ধারাবাহিকতা বহাল ও অক্ষুণ্ণ রাখিবার নিমিত্ত, জনস্বার্থে, উহাদের কার্যকারিতা প্রদান আবশ্যিক; এবং

যেহেতু উক্ত সময়ে জারীকৃত কতিপয় সংশোধনী অধ্যাদেশ (amending Ordinance) দ্বারা প্রচলিত আইন সংশোধন করা হইয়াছে বিধায় আইনের শাসন, জনগণের অর্জিত অধিকার সংরক্ষণ এবং প্রজাতন্ত্রের কর্মের ধারাবাহিকতা বহাল ও অক্ষুণ্ণ রাখিবার নিমিত্ত, জনস্বার্থে, উহাদের কার্যকর রাখা আবশ্যিক; এবং

যেহেতু উক্ত অধ্যাদেশসমূহের অধীন সূচীত কার্যধারাসমূহ বা গৃহীত ব্যবস্থা বা কাজ-কর্ম বর্তমানে অনিষ্পন্ন বা চলমান থাকিলে, জনস্বার্থে, উক্ত কার্যধারাসমূহ বা গৃহীত ব্যবস্থা বা কাজ-কর্ম চলমান রাখা আবশ্যিক; এবং

যেহেতু উক্ত অধ্যাদেশ কার্যকারিতা হারাইবার ফলে সৃষ্ট আইনী শূন্যতা পূরণ করিবার লক্ষ্যে আশু ব্যবস্থা গ্রহণের প্রয়োজনীয় পরিস্থিতি বিদ্যমান রহিয়াছে মর্মে রাষ্ট্রপতির নিকট সন্তোষজনকভাবে প্রতীয়মান হওয়ায় এবং সংসদ অধিবেশনে না থাকিবার কারণে বিগত ২১ জানুয়ারি ২০১৩ তারিখে রাষ্ট্রপতি গণপ্রজাতন্ত্রী বাংলাদেশের সংবিধানের ৯৩(১) অনুচ্ছেদে প্রদত্ত ক্ষমতাবলে উক্ত অধ্যাদেশসমূহকে তফসিলভুক্ত করিয়া ২০১৩ সালের ২ নম্বর অধ্যাদেশ জারী করেন; এবং

যেহেতু সংবিধানের ৯৩(২) অনুচ্ছেদের নির্দেশনা পূরণকল্পে, নবম জাতীয় সংসদের ১৬তম অধিবেশনের ২৭ জানুয়ারি ২০১৩ তারিখে অনুষ্ঠিত প্রথম বৈঠকে ২০১৩ সালের ২নং অধ্যাদেশ উপস্থাপিত হইয়াছে এবং উহার পরবর্তী ৩০ দিন অতিবাহিত হইলে অধ্যাদেশটির কার্যকরতা লোপ পাইবে; এবং

যেহেতু দীর্ঘসময় পূর্বে জারীকৃত অধ্যাদেশসমূহ যাচাই-বাছাই পূর্বক বাংলায় নূতনভাবে আইন প্রণয়ন করা সময় সাপেক্ষ; এবং

যেহেতু উপরি-বর্ণিত প্রেক্ষাপট বিবেচনায় ১৯৮২ সালের ২৪ মার্চ হইতে ১৯৮৬ সালের ১১ নভেম্বর তারিখ পর্যন্ত সময়ের মধ্যে জারীকৃত অধ্যাদেশসমূহের মধ্যে কতিপয় অধ্যাদেশ কার্যকর করা সমীচীন ও প্রয়োজন;-----

ধারা-৪। কতিপয় অধ্যাদেশের কার্যকারিতা প্রদান- ১৯৮২ সালের ২৪ মার্চ হইতে ১৯৮৬ সালের ১১ নভেম্বর তারিখ পর্যন্ত (উভয় দিনসহ) সময়ের মধ্যে জারীকৃত -

(ক) তফসিলভুক্ত অধ্যাদেশসমূহ, এবং

(খ) অন্যান্য অধ্যাদেশসমূহ দ্বারা প্রচলিত কোন আইন, আদেশ বা অধ্যাদেশ সংশোধন করা হইয়া থাকিলে উক্ত সংশোধনী অধ্যাদেশসমূহ (amending Ordinances),

এমনভাবে কার্যকর থাকিবে যেন উহা এই আইনের উদ্দেশ্য পূরণকল্পে ,জাতীয় সংসদ কর্তৃক প্রণীত কোন আইন:

তবে শর্ত থাকে যে, এই ধারার অধীন ১৯৮২ সালের ২৪ মার্চ হইতে ১৯৮৬ সালের ১১ নভেম্বর তারিখ পর্যন্ত সময়ের মধ্যে জারীকৃত কতিপয় অধ্যাদেশ কার্যকর করা হইলেও যতটুকু উহাদের বিষয়বস্তুর (contents) সহিত সংশ্লিষ্ট শুধুমাত্র ততটুকু গ্রহণ করা হইয়াছে মর্মে গণ্য হইবে এবং উক্ত সময়কালে অবৈধ ও অসাংবিধানিকভাবে রাষ্ট্রক্ষমতায় আসীন সামরিক শাসন আমলের কৃতকর্মের অনুমোদন ও সমর্থন (confirmation and ratification) করা হইয়াছে বলিয়া কোনক্রমেই বিবেচিত হইবে না।

ধারা-৫। হেফাজতকরণ- (১) অধ্যাদেশসমূহ ও উহাদের অধীন প্রণীত বিধি, প্রবিধান বা আদেশবলে কৃত কাজ-কর্ম, গৃহীত ব্যবস্থা বা কার্যধারা সমূহ, অথবা প্রণীত, কৃত, গৃহীত বা সূচীত বলিয়া বিবেচিত কাজ-কর্ম, ব্যবস্থা বা কার্যধারাসমূহ এমনভাবে নিষ্পন্ন হইয়াছে বলিয়া গণ্য হইবে যেন এই আইনের বিধানাবলী বলবৎ ছিল।-----

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Analyzing the preamble of the Act No.07 of 2013 it is apparent that at the time of promulgating this Act, the judgment and order of Civil Appeal No.48 of 2011 passed by this Division has been taken into consideration. Again, from the plain reading of the condition attached to Section 04 of the Act No.07 of 2013 it transpires that the Ordinances which were given effect through Act No.07 of 2013 are not at all related to the confirmation and ratification of the then illegal and unconstitutional Martial Law rather the Ordinances have been implemented so far as it relates to their contents as to preserve the rights of people under the Rule of Law as well as to

protect and preserve the continuity and status-quo in the workings and functions of the Government. From this point of view, the Act No.07 of 2013 is in no manner enacted to circumvent the judgment and order passed by this Division in Civil Appeal No.48 of 2011 rather the Act No.07 of 2013 is enacted pursuant to the said judgment and order of this Division. Again, Section 04 of the Act No.07 of 2013 stipulates that the Ordinances which were promulgated during 24.03.1982 to 11.11.1986 shall remain in force in such manner as if they were passed by the Parliament. Thus the language of Section 04 of the Act No.07 of 2013 is very clear that the Ordinances which are included in the schedule of the said Act were not required to be placed in Parliament as Money Bill or any other Bill. Furthermore, Section 05(1) of the Act No.07 of 2013 gives retrospective effect of the same to the extent that the Ordinances which were promulgated during 24.03.1982 to 11.11.1986 shall be deemed to have been carried out as if the provisions of said Act are in force. Moreover, the Ordinance, 1984 is included in the schedule of the Act No.07 of 2013 as such the provisions of the said Act are applicable to the Ordinance, 1984.

Consequently, we find no substance in the submissions made by the learned Advocate Mr. Md. Asaduzzaman in this regard.

The final contention of the appellant as well as the petitioners is that the provision of Section 16 CCC is arbitrary, unreasonable and violative of the Constitution.

It is a settled principle of law that a very wide latitude is available to the legislature in the matter of formulation of tax law i.e. fiscal policy and in exercise of the power of judicial review, court do not ordinarily interfere with the policy decisions, unless such policy could be faulted on the ground of mala-fide, arbitrariness, unreasonableness, unfairness etc.

Taxation is a fiscal policy i.e. policy decision of the Government. The economic wisdom relating to tax is within the executive province of the legislature. In matter of economic policy, the court gives large latitude to the legislature in considering diverse factors for formulating the policy in the overall large interest of the economy. Consequently, the court therefore would

prefer to allow the legislature/Government to evolve fiscal policy in the public interest and to act upon the same.

Tax evaders are enemy to the tax system. The prevailing situation of our country cannot be ignored as some of the large companies and firms while submitting their income tax returns can afford to hire renowned accountants to take various scheme and leaving no stone unturned to avoid tax and thereby end up paying 'Zero Tax' despite having turnover in millions or sometime even in billions of money taking advantage of Section 35(3) of the Ordinance, 1984. Such tax evasion and avoidance erodes tax base and hampers revenue collection thereby bringing serious threat to the fiscal health of the country. Again the evil consequences of tax avoidance affects our mass people directly because expenditure of the Government including the implementation/execution of the development project can be meet up by the revenue which is earned through collection of tax.

The Supreme Court of India in the case of *McDowell and Co. Ltd. vs. Commercial Tax Officer*, reported in

(1985) 3 SCC 230, discussing about the evil consequences of tax avoidance held:

*"The evil consequences of tax avoidance are manifold. First there is substantial loss of much needed public revenue, particularly in a welfare State like ours. Next there is the serious disturbance caused to the economy of the country by piling up of mountains of black money, directly causing inflation. Then there is 'the large hidden loss' to the community (as pointed out by Master Sheatcroft in 18 Modern Law Review 209) by some of the best brains in the country being involved in the perpetual war waged between the tax-avoider and his expert team of advisers, lawyers and accountants on one side and tax-gatherer and his perhaps not so skillful adviser on the other side."*

To prevent tax avoidance the Government has to adjust the burden with a fair and reasonable degree of equality. By incorporating Section 16 CCC in the Ordinance, 1984 through the Finance Act, 2011, Government collects revenue and such revenue benefits the mass people of the country as such Section 16 CCC is very much within the ambit of Article 7 of the Constitution inasmuch as said Article stipulates all powers in the Republic belongs to the people and the Constitution is the solemn expression of the will of the people. So, the impugned Section 16

CCC is a reasonable piece of legislation as it is incorporated to prevent tax evasion as well as for the betterment of the nation at large.

The Supreme Court of India in the case of *Small Scale Industrial Manufactures Association vs. Union of India (UOI) and Ors.*, reported in (2021) 8 SCC 511, held:

*"Legality of policy, and not the wisdom or soundness of the policy, is the subject of judicial review. The scope of judicial review of the Governmental policy is now well defined. The courts do not and cannot act as an appellate authority examining the correctness, stability and appropriateness of a policy, nor are the courts advisers to the executives on matters of policy which the executive are entitled to formulate."*

Again the Supreme Court of India in the case of *Hoechst Pharmaceuticals Ltd. and others vs. State of Bihar and others*, reported in (1983) 4 SCC 45, held:

*"On question of economic regulations and related matters, the court must defer to the legislative judgment. When the power to tax exists, the extent of the burden is a matter for discretion of the law-makers. It is not the function of the court to consider the propriety or justness of the tax, or enter upon the realm of legislative policy. If the evident intent and general operation of the tax legislation is to adjust the burden with a fair and reasonable degree of equality,*

*the Constitutional requirement is satisfied."*

Further, the Apex Court of India in the case of *Amin Merchant vs. Chairman, Central Board of Excise & Revenue and Others*, reported in AIR 2016 (SC) 3920, held:

*"Even assuming that the amount of tax is excessive, in the matter of taxation laws, the Court permits greater latitude to the discretion of the legislation."*

From the above discussions and principle enunciated in the aforementioned cases it is apparent that the court must, therefore, act within their judicial permissible limitation to uphold the Rule of Law and harness their power in public interest and if the intent and general operation of the impugned tax legislation is to adjust the burden with a fair and reasonable degree of equality, Constitutional requirement is satisfied and in this regard a taxation law enacted by the Parliament in accordance with law is not amenable to judicial review. It has been consistently held by this Division that in matters of policy decision of the Government the court requires restraint.

Considering the discussions made above in the light of cited decisions, we are of the view that impugned

Section 16 CCC is enacted for betterment of the people of the country and to prevent tax evasion and the enactment is not arbitrary, unreasonable, unfair as well as not violative of any of the provisions of the Ordinance, 1984 or of the Constitution.

Accordingly, Civil Appeal No.113 of 2018 is dismissed without any order as to costs.

All the civil petitions are disposed of in the light of the judgment delivered in C.A. No.113 of 2018.

**C.J.**

**J.**

**J.**

**J.**

**J.**