

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(SPECIAL ORIGINAL JURISDICTION)

**WRIT PETITION NO.4186 OF 2020**

IN THE MATTER OF:

An application under Article 102 of the  
Constitution of the People's Republic of  
Bangladesh

And

IN THE MATTER OF:

***City Edible Oil Limited and others***

- Petitioners

-vs-

***Government of Bangladesh represented by it's  
Secretary, Ministry of Finance, Internal  
Resource Division, Bangladesh Secretariate,  
Ramna, Dhaka and others.***

And

Mr. Fida M. Kamal, Senior Advocate with  
Mr. M. A. Hannan, with  
Mr. Abdus Samad Azad, and  
Mr. Md. Tafsirul Islam, Advocates

.... For the Petitioners.

Mr. Sk. Md. Morshed, Additional Attorney General with  
Mr. Samarendra Nath Biswas, D.A.G with  
Mr. Md. Abul Kalam Khan Daud, A.A.G with  
Mr. Ali Akbor Khan, A.A.G with  
Ms. Rehana Sultana, A.A.G and  
Ms. Nurunnahar, A.A.G

.....For the Respondents Nos. 1 and 2.

Mr. Yousuf Khan Rajib, with  
Mr. Md. Adnan Sarker, with  
Mr. A.K. Fazlul Huq Jr. and  
Mr. Ahmed Ishtiaque, Advocates

.... For the Respondent No.4

**Heard on: 01.09.2021, 02.09.2021, 08.09. 2021,  
09.09.2021, 15.09.2021, 16.09.2021, 23.09.2021,  
10.11.2021 and 17.11.2021.**

**Judgment on: 09.12.2021**

**Present:***Mrs. Justice Farah Mahbub.**And**Mr. Justice S.M. Maniruzzaman***Farah Mahbub, J:**

This Rule Nisi was issued under Article 102 of the Constitution of the People's Republic of Bangladesh, calling upon the respondents to show cause as to why the respondents concerned should not be directed not to take any action by giving effect to the impugned S.R.O. No.104-Law/Income Tax/2020 dated 25.03.2020 published in gazette on 10.05.2020 (Annexure-I) frustrating the order of exemption of tax (আয়কর অব্যহতি) given by the respondent No.2 in favour of the petitioner No.1 pursuant to S.R.O No.81-Law/Income Tax/2019 dated 23.03.2019 for a period of 10(ten) years upto 02.10.2028 issued under Nathi No.08.01.0000.034.05.584.19 dated 30.06.2019 {Annexure-G(2)}.

Subsequently, vide order dated 23.09.2020 a supplementary Rule was issued by this Court on the prayer of the petitioners calling upon the respondents to show cause as to why the impugned orders both dated 14.09.2020 passed by the respondent No.2 under the signature of Second Secretary (Tax Exemption) under Nathi Nos.08.01.0000.034.02.270.18-565 and 08.01.0000.034.01.561.18-566 {Annexure-P and P (1) respectively} refusing to issue tax exemption certificates under the proviso to Rule 17A and Rule 16 of the Income Tax Rules, 1984 in favour of the petitioner No.1 pursuant to impugned S.R.O. No.104-Law/Income Tax/2020 dated 10.05.2020 (Annexure-I) so far as it relates to “ভোজ্য তেল, চিনি, আটা, ময়দা,

সিমেন্ট, লোহা ও লৌহজাতীয় পণ্য ব্যতীত অন্য” should not be declared to have been passed without lawful authority and are of no legal effect.

Later, on 22.06.2021 another supplementary Rule was issued by this Court on the prayer of the petitioners calling upon the respondents to show cause as to why the impugned S.R.O. No.104-Law/Income Tax /2020 dated 25.03.2020 published in Bangladesh Gazette on 10.05.2020 so far as it relates to “ভোজ্য তেল, চিনি, আটা, ময়দা, সিমেন্ট, লোহা ও লৌহজাতীয় পণ্য ব্যতীত অন্য” (Annexure-I), should not be declared to have been passed without lawful authority and hence, of no legal effect and also as to why the respondent No.2 should not be directed to issue Exemption Certificates in favour of the petitioner No.1 under Rules 16 and 17A of the Income Tax Rules, 1984 read with S.R.O. No.81-Law/Income Tax/2019 dated 19.03.2019.

Facts, in brief, are that the petitioners Nos. 1, 3, 5 and 7 are the respective private companies limited by shares, incorporated with the Registrar of Joint Stock Companies and Firms, Dhaka. They obtained trade licence, TIN, VAT registration and other permissions which are necessary under the applicable laws of the country for conducting their respective businesses.

The petitioners Nos.1 to 6 have established and or in the process of establishing their industrial undertaking within City Economic Zone located at Mouja: Uttar Rupshi, Gondhorbpur, Char Gondhorbpur and Noagaon, Upazila - Rupgonj, District-Narayangonj on 77.9655 acres of land. Said area has been declared as “City Economic Zone” by the office of the Prime Minister, Government of Bangladesh vide S.R.O. No. 31-Law/2018 dated 18.01.2018 by publishing in Bangladesh Gazette under

Section 5(1) and (2) of the “বাংলাদেশ অর্থনৈতিক অঞ্চল আইন, ২০২০” ( Act No.42 of 2010). Subsequently, a private economic zone license had been issued by the respondent No. 4 i.e. Bangladesh Economic Zone Authority (BEZA) in the name of City Economic Zone Ltd. on 23.01.2018 initially for a period 15(fifteen) years with the right of renewal. Said zone started commercial operation, obtained certificate under Nothi No. 03.759.014.60.00. 65.2016.758 dated 14.03.2019 and got tax exemption for 12 years under Nathi No.08.01.0000.034.05.572.19.690 dated 04.04.2019 issued by the respondent No. 2 pursuant to S.R.O.No. 227-Law/Income Tax/2015 dated 08.07.2015.

The petitioners Nos. 7 and 8, however, are in the process of establishing their industrial undertaking within “Hoshendi Economic Zone” located at Mouja: Char Betaki, Bhabanipur, Raghur Char, Hoshendi, Upazilla-Gajaria, District- Munshingonj on 108.0570 acres of land. Said area has been declared as “Hoshendi Economic Zone” by the office of the Prime Minister, Government of Bangladesh vide S.R.O. No. 393-Law/2019 dated 19.12.2019 published in Bangladesh Gazette under Section 5(1) and (2) of the Act No.42 of 2010. A private economic zone license had also been issued by the respondent No. 4 in the name of Hoshendi Economic Zone Ltd. on 01.01.2020 initially for a period 15(fifteen) years with the right of renewal. However, said zone is yet to commence it’s commercial production.

The petitioners submitted their respective applications to the respondent No. 4 for approval of setting up industries (manufacturing) in City Economic Zone and Hoshendi Economic Zone respectively. In response thereof said respondent gave approval vide File No. PC-

24Feb20181000190 dated 27.02.2018, PC-19Sep20181000208 dated 22.10.2018, PC-06Dec20181000209 dated 20.12.2018 and PR-18Feb2020-0002 dated 23.03.2020 respectively to the petitioners Nos. 1, 3, 5 and 7 (Annexure-D-D3 respectively).

The petitioner Nos. 3, 5 and 7 are in the process of importation of capital machineries, construction of factory buildings including other erection processes with a view to commence trial production and commercial operation as per schedule in compliance of the approval of the project so has been accorded by the respondent No. 4.

In the meanwhile, the respondent No.1 issued S.R.O. No.226-Law/Income Tax/ 2015 dated 08.07.2015 published in Bangladesh Gazette on 12.07.2015 giving exemption of tax to the respective companies who had started commercial operations within the declared economic zone under Sections 5 and 4 of the Act No.42 of 2010 for a period of 10 years subject to fulfillment of conditions. Subsequently, S.R.O.No.81-Law/Income Tax/2019 dated 19.03.2019 had been issued upon repealing S.R.O. No.226 dated 08.07.2015 giving exemption of tax on similar terms but adding more conditions.

The petitioner No.1 commenced commercial production on 03.10.2018 and in response to the application so made by the said petitioner the respondent No. 2 vide Nathi No. 08.01.0000.034.05.584.19 dated 30.06.2019 gave exemption of tax for a period of 10 years from 03.10.2018 to 02.10.2028 in accordance with the rates fixed vide S.R.O. No. 81 dated 19.03.2019. Pursuant thereto National Board of Revenue (in short, NBR) also issued two certificates bearing No. 10 dated 01.07.2019 under Nathi No. 08.01.0000.034.01.516.18.23 under Rule 16 and No. 12

dated 01.07.2019 vide Nathi No. 08.01.0000.034.02.270.18.27 under Rule 17A of the Income Tax Rules, 1984 (in short, Rules, 1984) [Annexure-G(3) and G(4) respectively] exempting non-deduction of tax at source and Advance Income Tax (AIT). Accordingly, the petitioner No.1 filed income tax return for the assessment year 2019-2020; however, assessment is yet to be made by the authorities concerned. However, petitioner Nos.3 to 8 have not yet started commercial operation and hence, could not file application to the authority concerned for tax exemption.

At that juncture, respondent No.1 issued S.R.O.No.104-Law/Income Tax/2020 dated 25.03.2020 published in Bangladesh Gazette on 10.05.2020 excluding the companies manufacturing edible oil, sugar, “atta,” flour, cement, iron and iron type products from enjoying the benefit of tax exemption upon repealing S.R.O. No.81 dated 19.03.2019 by giving immediate effect and at the same time retaining the privilege of tax exemption for all other companies producing all other products in the same economic zone.

In this regard the contention of the petitioners are that S.R.O No. 226 dated 08.07.2015 and S.R.O No. 81 dated 19.03.2019 had been issued by the Ministry of Finance, Internal Resources Division pursuant to the decisions of the respondent No.4, as evident from the decisions so taken by the Governing Board in its meeting dated 18.02.2015, but no such decision was made by said respondent before issuance of the impugned S.R.O No. 104 dated 25.03.2020.

Further contention of the petitioners are that S.R.O. No. 226 dated 08.07.2015 and S.R.O. No.81 dated 19.03.2019 have been made applicable to all companies irrespective of the goods manufactured and

supplied by the respective companies set up in the respective economic zone. Moreso, most of the leading industrial groups of the country relying on the promise so made by the government under the Act No.42 of 2010 have established industries within the economic zone area upon obtaining licenses from the respondent No. 4 and have also commenced commercial operation; some are in the process of establishing and developing the infrastructure within the declared economic zone. However, very few industrial undertaking like the petitioner No.1 could start commercial production. Conversely, the impugned S.R.O. No. 104 has been issued by the respondent No.1 at the instance of the companies manufacturing edible oil, sugar, “atta”, flour, cement, iron and iron type product in their industrial undertaking situated outside the declared economic zone and without any consultation with the authority concerned i.e. respondent No.4 created under the Act No.42 of 2010. As such, it can clearly be construed that in order to deprive tax benefit to the petitioners the impugned S.R.O. No. 104 has been issued by the respondent No.1 against the greater public interest and public purpose of the country.

Under the circumstances, the petitioners made applications on 04.06.2020 and 07.06.2020 respectively to the respondent Nos. 1 and 4 with request to take necessary steps for giving effect to S.R.O. No. 226 dated 08.07.2015 and S.R.O.No.81 dated 19.03.2019 to strengthen the economy of the country and to encourage more investment in the economic zone, but there was no response. Moreover, pursuant to the representation so made by the petitioners on 04.06.2020, the respondent No. 4 vide Memo. No. 03.07.0000.023.014.136.2020-1345 dated 09.07.

2020 requested the respondent No. 2 to retain the existing facilities in favour of the petitioners, but with no result.

In the meanwhile, the respondent No.2 vide Nothi Nos.08.01.0000.034.02.270.18-565 and 08.01.0000.034.01.516.18-566 both dated 14.09.2020 (Annexure- P and P1 respectively) issued under the signature of the Second Secretary (Tax Exemption), NBR rejected the applications made by the petitioner No.1 on 08.06.2020 for issuance of certificates under Rule 16 and Rule 17A of the Income Tax Rules, 1984 regarding non deduction of tax at source and Advance Income Tax (AIT) and thereby had refused to grant tax exemption certificate in view of S.R.O No. 104 dated 10.05.2020.

Finding no other alternative the petitioners have filed the instant writ petition and obtained the present Rule Nisi along with the supplementary Rules.

Mr. Fida M. Kamal, the learned Senior Advocate appearing with Mr. M.A. Hannan and Mr. Abdus Samad Azad, the learned Advocates on behalf of the petitioners submits that vide Section 44(4)(b) of the Income Tax Ordinance, 1984 (in short, the Ordinance, 1984) the respondent No.1 has power to make any exemption, reduction in rate or other modifications in respect of tax in favour of any class of income or in regard to the whole or any part of the income of any class of persons. This delegated power, he submits, does not include the power to curtail and/or withdraw the respective items/products from the exemption granted earlier by the government in the name of modifications. Accordingly, he submits that since the legislative intent is clear, unambiguous and unequivocal hence, no intendment can be found in Section 44(4)(b) to empower the



government to make amendments by way of addition, omission, alteration or qualification in the Sixth Schedule as it may deem fit in the name of modifications. In support he has referred the decision of the case of *Collector of Central Excise and Land Customs and others Vs. Azizuddin Industries Ltd.*, reported in *PLD 1970 SC 439*, where it has been held, “*It is a settled rule that an executive authority cannot in exercise of the rule-making power or the power to amend, vary or rescind an earlier order, take away the rights vested in the citizens by law. If a person has acquired a vested right of exemption from the levy of excise duty on all the goods produced or manufactured by it for a period of four years under Notifications No. S.R.O. 35 (R)/61 of the Central Government that vested right could not, therefore, be taken away by an executive action*”.

He also submits that the impugned S.R.O. No.104 has been issued by the respondent No.1 not only under Section 44(4)(b) of the Ordinance, 1984, but at the same time said respondent has also invoked Sections 4 and 5 of the Act No.42 of 2010. Said Act No.42 of 2010, he goes to argue, is the governing statute under which “City Economic Zone” and “Hosendi Economic Zone” have been declared by the office of the Prime Minister, as is evident from the minutes of the meeting dated 18.02.2015 (Annexure-X of the supplementary affidavit) of the Governing Board of BEZA, respondent No.4 headed by the Hon’ble Prime Minister. Said decision has not yet been altered or cancelled by the said respondent.

He further submits that vide the impugned S.R.O. No.104 the respondent No.1 is making the classification of 7(seven) particular products for the purpose of withdrawal of exemption; thus, hits the

provision of Section 9 of the Act, 2010, for, said provision confers power to BEZA, respondent No.4 for classification for the purpose of giving exemption and other benefits; but it is evident from the affidavit-in-opposition filed by the respondent No.4 that no such classification has been made by it and no recommendation to that effect has been given by the said respondent; whereas S.R.O. No. 226 dated 08.07.2015 as well as S.R.O. No.81 dated 19.03.2019 vide which respondent No.1 gave tax exemption to all the companies situated within the economic zone are evidently the consequence of the decisions of the respondent No.4. In the given context, he submits that respondent No1 has no jurisdiction to issue the impugned S.R.O. No. 104 curtailing only 7(seven) items unilaterally while keeping the exemptions for all other companies established within the economic zone declared under the Act of 2010.

He also submits that the impugned S.R.O.No.104 being a piece of delegated legislation is *ultra-vires* the parent Act i.e. Income Tax Ordinance, 1984 as well as the Act No.42 of 2010, including the decisions of the Governing Board of BEZA dated 18.2.2018 and 19.12.2019 respectively pursuant to which S.R.O. No.226 dated 08.07.2015 and S.R.O. No.81 dated 19.03.2019 were issued by the respondent No.1. In this connection, he goes to argue that it is the established principles of interpretation that construction of a delegated legislation shall not be made in such a way which will ultimately frustrate the very purpose, aims, objectives and provisions of the Act of Parliament. In support he has relied upon the decisions of the case of *Forkan Ali Vs. Bangladesh* reported in **8 BLC 42**, where it has been observed, *inter alia*:

*“The Court is to consider the nature and design of the statute, the consequences which would follow from construing it in one way or other and whether the object of the legislation will be defeated by a particular construction”*,

Also, he has referred the case of *Nasir Hussain Shah Vs. The State* reported in *17 DLR (SC) 26 Para 9*, wherein our apex Court has observed as follows:

*“To arrive at the real purpose behind an enactment, it is necessary to get an exact conception of the aim, scope and object of the whole Act and to consider (i) what was the state of the law before the Act was passed; (ii) what was the mischief or defect for which the law had not been provided; (iii) what remedy the Parliament has appointed; and (iv) the reason of the remedy.”*

He further goes to submit that the decisions so were taken by the Governing Board, constituted under the Act of 2010, dated 18.02.2015 have been acted upon with the issuance of S.R.O. No.226 dated 08.07.2015 and S.R.O. No.81 dated 19.03.2019 with all other benefits. Such statutory promises have been given continuity in the impugned S.R.O. No.104 except curtailing 7(seven) items. In this connection, he submits that in view of the commitments so made vide S.R.O. Nos.226 and 81 the petitioners upon making huge investment have acquired land, constructed factory buildings, imported plant and capital machineries and even, have started commercial productions. Moreso, the petitioner No.1 has also enjoyed tax holiday for a prescribed period. As such, at this stage the respondents are debarred from curtailing tax exemption as being hit by the principles of promissory estoppel.

Moreover, he submits that Section 21 of the General Clauses Act, 1897 shall not be applicable as in clear terms it includes a power exercisable in the like manner and subject to the like sanction and conditions (if any), to add, to amend, vary or rescind any notifications,

orders, rules or bye-laws so issued, but is not vested with the power of curtailment of exemption. Further, he submits that the impugned SRO No.104 and two of its earlier SROs i.e. S.R.O. Nos. 226 and 81 though have been issued in exercise of power under Section 44(4)(b) of the Ordinance but those are, in fact, rooted in Sections 4 and 5 of the Act No.42 of 2010. On the face of the said admitted position of facts there is no contention by the respondent Nos. 1, 2 and 4 that while issuing the impugned S.R.O. No.104 the power and authority have been exercised by the respondent No.1 in the like manner and subject to the like sanction and conditions (if any). Rather, it is apparent from record that said power has been exercised by the respondent No. 1 at the instance of respondent No.2 without any involvement of the Act No.42 of 2010 retaining the exemptions for all other companies set up within the economic zone and at the same time has excluded the companies who are producing 7(seven) different essential commodities without citing a single reason whatsoever.

Lastly, he submits with reference to the case of *National Board of Revenue, Government of Bangladesh and another Vs. M/S Bata Shoe Company (Bangladesh) Limited* reported in *42 DLR (AD) 195, paragraph 16* that in the said case the categorical findings of our apex Court are that-

*“It is also the established principles of law that the fiscal legislation is to be strictly construed and where there is doubt, an interpretation favourable to the subject should be preferred.”*

Accordingly, he submits, there can be no doubt to construe that issuance of S.R.O. No.104 by the respondent No.1 so far excluding the companies who are producing 7(seven) different products in the respective economic zone is tainted with *malafide* as well as it is a glaring instance of abuse of power of the executive. Hence, it is liable to be struck

down for having been issued without any lawful authority and as such, is of no legal effect.

Mr. Sk. Md. Morshed, the learned Additional Attorney General appearing with Mr. Samarendra Nath Biswas, the learned Deputy Attorney General by filing affidavit- in-opposition and supplementary affidavit to the affidavit-in-opposition on behalf of the respondent No.2 submits that earlier the respondent No.1 by invoking power under Section 44(4)(b) of the Ordinance, 1984 issued S.R.O.No.226-Law/Income Tax/2015 dated 08.07.2015 gave exemption of tax to the respective companies producing goods upon setting up industrial establishments within the declared economic zone under Sections 5 and 4 of the Act No.42 of 2010 for a period of 10 years. Said S.R.O. was subsequently repealed with the issuance of S.R.O. No.81-Law/Income Tax/2019 dated 19.03.2019 giving tax exemption in similar terms but adding some more conditions. In this regard, he goes to argue that the respondent No.1 by exercising same power as conferred under Section 44(4)(b) of the Ordinance, 1984 issued the impugned S.R.O. No.104 dated 25.03.2020 upon repealing S.R.O. No. 81 dated 19.03.2019 for the purpose of development of all the economic zones situated within the territory of Bangladesh for maintaining international standard in comparison to other economic zones of the world, procurement of manpower, protection of air and water pollution, ensuring sustainable balance of market competition and also, for greater public interests.

He further submits that the Legislature has promulgated “বাংলাদেশ অর্থনৈতিক অঞ্চল আইন, ২০১০” and that from a plain reading of its preamble it appears that one of the main objects is to increase export of goods

produced by the respective industries established within the economic zone. To that effect Section 5 of the Act of 2010 provides for declaration of economic zone and Section 6 provides for acquisition of land for economic zone. Section 13 of the Act, he submits, empowers the government to give exemption on the applicability of the statutes as referred therein; however, Income Tax Ordinance, 1984 is incorporated in Section 13(1) clause (ख). He also submits that the respondent No.1 had issued S.R.O. No.81 dated 19.03. 2019 under Section 44(4)(b) of the Ordinance, 1984 upon repealing S.R.O. No.226. The Member, Tax Appeal and Exemption, however, had issued order dated 30.06.2019 [Annexure-G(2)] giving exemption of income tax subject to applicability of S.R.O No.81 dated 19.03.2019 and also subject to compliance of the conditions as specified therein. Accordingly, he submits that since by exercising power under the said provision of law respondent No.1 has issued S.R.O. No.104-Law/income tax/2020 dated 25.03.2020 as such, with the repeal of SRO No.81 the orders/ certificates so have been issued by the respondent No.2 dated 30.06.2019 and 01.07.2019 (Annexure-G2 and G3 respectively) have lost its force. As such, the petitioners cannot claim any right pursuant to those certificates dated 30.06.2019 and 01.07.2019 issued under the repealed S.R.O. No.81.

Earlier, he submits, the government in some cases by exercising power as conferred under Section 44(4) (b) of the Ordinance, 1984 gave exemption and subsequently, exercising the same power has withdrawn the same. Accordingly, he submits that no vested right is accrued in favour of the petitioners pursuant to S.R.O. Nos.226 and 81; hence, subsequent withdrawal of tax exemption on the respective items vide

S.R.O. No.104 cannot be termed to have been issued without lawful authority.

Further, he submits that there is an unfair market competition between the industries situated within the economic zone and outside the economic zone with regard to the marketing of essential commodities (goods as mentioned in the impugned gazette notification). Like, the industrial undertaking who are producing the products in question are marketing the same in the local market without any tax benefit; conversely, the petitioners are also marketing the said goods in the local market but with certain tax benefit, which is a clear violation of equal protection of law. For a fair competition a proposal was made to withdraw exemption on those products. However, after obtaining necessary approval from the Hon'ble Prime Minister of the country steps were taken by the respondent No.1 to withdraw tax exemption on those 7(seven) products by issuing the impugned S.R.O.No.104 dated 25.03.2020 published in gazette notification dated 10.05.2020.

With regard to the contention of the petitioners as to promissory estoppel he submits with reference to the case of *Bakul Cashew Co. and others –Vs- State Tax Officer, Quilon and another* reported in *AIR 1987 (SC) -2239* and *Baby Biscuit Company @ Siqua Industrial Enterprise – Vs- Sales Tax Officer and another* reported in *3 BSCR page-6* that since the government by exercising power under Section 44(4) (b) of the Ordinance, 1984 has withdrawn tax exemption benefit on the respective products for greater public cause hence, said principle is not attracted in the present case.

In this regard he submits that Article 40 of the Constitution of the People's Republic of the Bangladesh guarantees freedom of profession or occupation but subject to any restriction imposed by law. Section 44(4)(b) of the Ordinance, 1984, he submits, empowers the government to give any exemption, reduction in rate or other modifications in respect of tax in favour of any class of income or in regard to the whole or any part of income of any class of persons. Accordingly, he submits that the impugned SRO No.104 dated 25.03.2020 having been issued with lawful authority and having not curtailed any fundamental rights of the petitioners hence, this Rule along with the supplementary Rules being devoid of any substance are liable to be discharged.

Heard the learned Senior Advocate appearing for the petitioners, the learned Additional Attorney General along with the learned Deputy Attorney General appearing on behalf of the respondent Nos.1 and 2 and the learned Advocate appearing for the respondent No.4, have perused the writ petition, supplementary affidavits and the affidavit-in-opposition filed by the respondent Nos.2 and 4 along with the supplementary affidavit to the affidavit-in-opposition and the affidavit-in-reply to the affidavit-in-opposition filed by the petitioners.

The cardinal issue, which is centering around the instant Rule as well as the supplementary Rules, is whether the respondent-government while issuing S.R.O.No.104-Law/Income Tax/2020 dated 25.03.2020, published in gazette on 10.05.2020 under Section 44(4)(b) of the Income Tax Ordinance,1984 (in short, the Ordinance), is empowered to classify the respective companies which have been set up in the "economic zone" under the Act No. 42 of 2010 and produce "ভোজ্য তেল, চিনি, আটা, ময়দা, সিমেন্ট,



লোহা ও লৌহজাতীয় পণ্য” for the purpose of excluding them from getting the benefit of exemption of payment of income tax for a prescribed period.

Vide the impugned S.R.O. No.104 the respondent-government by exercising power under Section 44(4)(b) of the Ordinance, 1984 gave tax exemption for a prescribed period on the income of the respective companies, as defined under Section 2(20) of the Ordinance, 1984 situated in the “অর্থনৈতিক অঞ্চল” as declared under Section 5 of the Act No.42 of 2010, who have started commercial productions/operations, except those companies who are producing “ভোজ্য তেল, চিনি, আটা, ময়দা, সিমেন্ট, লোহা ও লৌহজাতীয় পণ্য”.

Said impugned S.R.O. No.104 dated 25.03.2020 (Annexure-I) is quoted as under:

“ গণপ্রজাতন্ত্রী বাংলাদেশ সরকার  
অর্থ মন্ত্রণালয়  
অভ্যন্তরীণ সম্পদ বিভাগ  
(আয়কর)

প্রজ্ঞাপন

তারিখ: ১১ চৈত্র, ১৪২৬ বঙ্গাব্দ/২৫মার্চ, ২০২০ খ্রিষ্টাব্দ

এস, আর, ও নং ১০৪-আইন/আয়কর/২০২০। Income tax Ordinance, 1984 (Ordinance No. XXXVI of 1984), অতঃপর উক্ত Ordinance বলিয়া উল্লিখিত, এর section 44 এর sub-section (4) এর clause (b) তে প্রদত্ত ক্ষমতাবলে সরকার, নিম্নবর্ণিত শর্তে, বাংলাদেশ অর্থনৈতিক অঞ্চল আইন, ২০১০ (২০১০ সনের ৪২নং আইন) এর ধারা ৫ এর অধীন ঘোষিত অর্থনৈতিক অঞ্চলে, অতঃপর উক্ত অর্থনৈতিক অঞ্চল বলিয়া উল্লিখিত, উক্ত Ordinance এর section 2 এর clause (20) এ সংজ্ঞায়িত কোনো কোম্পানি কর্তৃক ভোজ্য তেল, চিনি, আটা, ময়দা, সিমেন্ট, লোহা ও লৌহজাতীয় পণ্য ব্যতীত অন্য পণ্য বা সেবা উৎপাদনের মাধ্যমে উদ্ধৃত আয়ের উপর বাণিজ্যিক উৎপাদন শুরুর তারিখ হইতে ১ম, ২য় ও ৩য় বৎসরের জন্য ১০০%, ৪র্থ বৎসরের জন্য ৮০%, ৫ম বৎসরের জন্য ৭০%, ৬ষ্ঠ বৎসরের জন্য ৬০%, ৭ম বৎসরের জন্য ৫০%, ৮ম বৎসরের জন্য ৪০%, ৯ম বৎসরের জন্য ৩০%, ১০ম বৎসরের জন্য ২০% হারে প্রদেয় আয়কর হইতে অব্যাহতি প্রদান করিলে, যথা:-

শর্তাবলি

(ক) উক্ত অর্থনৈতিক অঞ্চলের বাহিরে অবস্থিত সংশ্লিষ্ট কোম্পানির কোনো শিল্প ইউনিটকে উক্ত অর্থনৈতিক অঞ্চলে স্থানান্তর (relocation) করা যাইবে না;

(খ) বাংলাদেশে ইতঃপূর্বে পণ্য বা সেবা উৎপাদন ব্যবহৃত হইয়াছে এইরূপ কোনো মেশিন, যন্ত্রপাতি, ইত্যাদি উক্ত অর্থনৈতিক অঞ্চলে কোনো শিল্প ইউনিট স্থাপনে ব্যবহার করা যাইবে না;

(গ) সংশ্লিষ্ট কোম্পানি কর্তৃক উক্ত অর্থনৈতিক অঞ্চলের অভ্যন্তরে এবং বাহিরে (যদি থাকে) পরিচালিত শিল্প ইউনিটের জন্য পৃথক পৃথক বাণিজ্যিক হিসাব এবং ব্যাংক হিসাব সংরক্ষণ করিতে হইবে;

(ঘ) সংশ্লিষ্ট কোম্পানি কর্তৃক উক্ত অর্থনৈতিক অঞ্চলের অভ্যন্তরে এবং বাহিরে (যদি থাকে) পরিচালিত শিল্প ইউনিটের মধ্যে কোনো আন্তঃইউনিট লেনদেন সংঘটিত হইলে উক্তরূপ সকল লেনদেনের বিস্তারিত তথ্য উক্ত কোম্পানির আয়কর রিটার্নের সহিত সংশ্লিষ্ট উপ-কর কমিশনার এর নিকট দাখিল করিতে হইবে; এবং

(ঙ) সংশ্লিষ্ট কোম্পানিকে উক্ত Ordinance এর section 35 অনুযায়ী যথাযথভাবে হিসাব সংরক্ষণ করিতে হইবে এবং section 75,75A,108 এবং 108A অনুযায়ী রিটার্ন, Certificate, বিবরণী বা তথ্য নির্ধারিত সময়ে সংশ্লিষ্ট আয়কর কর্তৃপক্ষের নিকট দাখিল করিতে হইবে।

২। এই বিভাগ কর্তৃক ২৩ মার্চ, ২০১৯ খ্রিস্টাব্দ তারিখে জারিকৃত প্রজ্ঞাপন এস.আর. ও নং- ৮১আইন/আয়কর/২০১৯ এতদ্বারা রহিত করা হইল।

৩। এই প্রজ্ঞাপন অবিলম্বে কার্যকর হইবে।

রাষ্ট্রপতির আদেশক্রমে

আবু হেনা মো: রহমাতুল মুনিম  
সিনিয়র সচিব। ”

In view of the impugned S.R.O.104, let us first have a look at Section 44(4)(b) of the Ordinance, 1984, which runs as follows:

“44. Exemption;

(4) The government may, by notification in the official gazette-

(a) .....

(b) make any exemption, reduction in rate or other modifications in respect of tax in favour of any class of income or in regard to the whole or any part of the income of any class of persons.”

Evidently, vide the said provision of law, the Legislature has empowered the government to make any “*exemption*”, “*reduction in rate*” or “*other modifications*” in respect of tax, by gazette notification in favour of any “*class of income*” or in regard to the whole or part of the income of any “*class of persons*” and exercise of the said power by the government is applicable for whole Bangladesh.

In exercise of power as provided under Section 44(4)(b) of the Ordinance the respondent-government has issued the impugned

S.R.O.No.104 with a view to extend special financial benefits to those companies who are established, operate and are being governed under the Act No.42 of 2010. At the same time, while giving exemption to all other categories of companies situated within the “অর্থনৈতিক অঞ্চল” the respondent-government has also created a class of persons or companies in order to exclude them from getting the said privilege.

In other words, vide SRO No.104 the respondent-government in one hand is giving benefit of tax exemption to the respective companies and at the same time excluding a class of companies from getting the said privilege, who are all situated in the respective economic zone, declared and created under Act No.42 of 2010.

Since, SRO No.104 is rooted in the Act No.42 of 2010 as such, prior to adjudication of the said SRO the context of the Act No.42 of 2010 along with its relevant provisions, are required to be looked into.

With a view to “দ্রুত অর্থনৈতিক উন্নয়ন তথা শিল্পায়ন, কর্মসংস্থান, উৎপাদন এবং রপ্তানী বৃদ্ধি ও বহুমুখীকরণে উৎসাহ প্রদানের জন্য পশ্চাৎপদ ও অনগ্রসর এলাকাসহ সম্ভাবনাময় সকল এলাকায় অর্থনৈতিক অঞ্চল প্রতিষ্ঠা এবং উহার উন্নয়ন, পরিচালনা, ব্যবস্থাপনা ও নিয়ন্ত্রণসহ আনুষঙ্গিক অন্যান্য বিষয়ে বিধান প্রণয়কল্পে” the Legislature has promulgated “বাংলাদেশ অর্থনৈতিক অঞ্চল আইন, ২০১০” ( Act No. 42 of 2010) (in short, the Act, 2010), which is applicable for the “অর্থনৈতিক অঞ্চল” as declared and created under Section 5 of the said Act.

It is, thus, apparent that Act No.42 of 2010 has come into existence for creation of economic zone with the backward and underdeveloped areas of the country with a view to fast economic development through industrialization. Hence, creating scope for employment, increase in productions and export of different categories of products.

To materialize the said objects the “কর্তৃপক্ষ” as defined in Section 2(3) of the Act of 2010 is empowered to classify the respective commercial establishments which have been set up in the said zone in order to provide special financial privileges towards fast economic growth, as provided under Section 9 of the Act, 2010.

Section 9 is, accordingly, quoted below:

“অর্থনৈতিক অঞ্চল স্থাপিতব্য শিল্প ও বাণিজ্যিক প্রতিষ্ঠানের শ্রেণী, ইত্যাদি।- অর্থনৈতিক অঞ্চলসমূহে সুবিধাদি প্রদানের লক্ষ্যে কর্তৃপক্ষ, সময় সময়, কোন অর্থনৈতিক অঞ্চলে স্থাপিত শিল্প এবং বাণিজ্যিক প্রতিষ্ঠানের শ্রেণী নির্ধারণ করিতে পারিবে।”

At the same time, in exercise of power as provided under Section 10 of the Act, 2010, the government by publishing in gazette is empowered to provide special tax benefit (বিশেষ শুল্ক সুবিধা ) to the respective economic zone or to any part thereof and may even introduce special procedure under the Customs Act, 1969 with regard to the process of export and import of those companies, which have been set up in the said zone.

Section 10 is also quoted as under:

“অর্থনৈতিক অঞ্চলের জন্য বিশেষ শুল্ক সুবিধা- আপাততঃ বলবৎ অন্য আইনে যাহা কিছুই থাকুক না কেন, সরকার, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, নির্দিষ্ট মেয়াদের জন্য অর্থনৈতিক অঞ্চল বা উহার কোন এলাকাকে বিশেষ শুল্ক সুবিধা প্রদান করিতে পারিবে এবং Customs Act, 1969 (Act No. IV of 1969) এর বিধান অনুযায়ী অর্থনৈতিক অঞ্চলে স্থাপিত প্রতিষ্ঠানসমূহের আমদানী ও রপ্তানী কার্যক্রম পরিচালনার সুবিধার্থে বিশেষ ব্যবস্থা প্রবর্তন করিতে পারিবে।”

In addition to providing “বিশেষ শুল্ক সুবিধা ” under Section 10, the government by publishing in gazette is also empowered under Section 13 to give exemption to any “অঞ্চল” or any establishment of the said “অঞ্চল” from the application of all or any provision of all the referred statutes or any statute as referred therein, or may even give direction, subject to any change or amendment in the said notification, as to the application of the

provisions of all or any of the referred statute. Income Tax Ordinance, 1984, however, is incorporated in clause (ছ) of Section 13(1) of the Act, 2010.

Section 13(1) is quoted as follows:

“কতিপয় আইনের প্রয়োগ হইতে অব্যাহতি প্রদানের ক্ষমতা।- (১) সরকার, সরকারী গেজেটে প্রজ্ঞাপন দ্বারা, কোন অঞ্চল বা অঞ্চলের কোন প্রতিষ্ঠানকে নিম্নবর্ণিত সকল বা যে কোন আইনের সকল বা যে কোন বিধান হইতে অব্যাহতি দিতে পারিবে, অথবা এই মর্মে নির্দেশ দিতে পারিবে যে, উক্ত সকল বা যে কোন আইনের বিধানাবলী, উক্ত প্রজ্ঞাপনে বিধৃত পরিবর্তন বা সংশোধন সাপেক্ষে, কোন অঞ্চলের ক্ষেত্রে প্রযোজ্য হইবে, যথাঃ-

.....

(ছ) Income Tax Ordinance, 1984 (Ordinance No. XXXVI of 1953);”

On a critical examination of the above quoted provisions of law, it becomes clear that on publication in gazette notification the government is empowered to give “বিশেষ শুল্ক সুবিধা ” under Section 10, “আর্থিক বিশেষ প্রণোদনা ও সুবিধা” under Section 11, and may even exempt from the application of the respective statutes as mentioned in Section 13(1) including Income Tax Ordinance, 1984 [Section 13(1)(ছ)] to those industries established in the respective economic zone with the approval of BEZA authority. In other words, said financial incentives/benefits/privileges are all standing on the platform of the Act, 42 of 2010.

As has been observed earlier, the government by issuing S.R.O. No. 104 though has provided tax exemption benefit to all other categories of companies established in the respective economic zone who have started commercial operation but at the same time by inserting an exclusionary clause has excluded those companies, established in the said zone, who are producing “ভোজ্য তেল, চিনি, আটা, ময়দা, সিমেন্ট, লোহা ও লৌহজাতীয় পণ্য”. Consequently, a class of persons has been introduced by the said

impugned S.R.O. No.104 with a view to exclude them from getting the said privilege.

However, in support of creation of the said class of persons for exclusion of tax exemption benefit the learned Deputy Attorney General categorically contended that it is fact that vide S.R.O. Nos. 226 and 81 respectively published in gazette on 08.07.2015 and 19.03.2019 the government did give exemption from payment of tax on the income of all kinds of productions of the respective companies situated within the economic zone, but question of repealing S.R.O. No. 81 arose with a view to maintaining level playing field for all other companies/industrial establishments situated outside the economic zone who are paying tax on the income of their production and supply of similar items in the local market. In this regard, referring to Section 21 of the General Clause Act, 1897 (in short, Act of 1897) he submits that the authority who can do certain things has also power to undo the same. Accordingly, he submits that since no legal rights accrues on tax exemption benefits given earlier by the respondent-government under Section 44(4)(b) of the Ordinance as such, insertion of an exclusionary clause in S.R.O. No. 104 having been based on justifiably reason and issued with *bona-fide* intention with greater public cause hence, it cannot be termed to have been issued without lawful authority.

Earlier, vide S.R.O. No.226 dated 08.07.2015, published in gazette on 12.07.2015 (Annexure-G) the government in exercise of power as provided under Section 44(4)(b) of the Ordinance, 1984 gave tax exemption for a prescribed period to all those companies who have started commercial production in the respective economic zone as

declared and established under Sections 4 and 5 of the Act No. 42 of 2010 subject to certain conditions.

S.R.O. No.226 dated 08.07.2015 (Annexure-G) is quoted below:

“ গণপ্রজাতন্ত্রী বাংলাদেশ সরকার  
অর্থ মন্ত্রণালয়  
অভ্যন্তরীণ সম্পদ বিভাগ  
(আয়কর)

প্রজ্ঞাপন

তারিখ: ২৪ আষাঢ়, ১৪২২ বঙ্গাব্দ/ ০৮ জুলাই, ২০১৫ খ্রিষ্টাব্দ

এস, আর, ও নং ২২৬-আইন/আয়কর/২০১৫। Income tax Ordinance, 1984 (Ordinance No. XXXVI of 1984), অতঃপর উক্ত Ordinance বলিয়া উল্লিখিত, এর section 44 এর sub-section (4) এর clause (b) তে প্রদত্ত ক্ষমতাবলে সরকার, বাংলাদেশ অর্থনৈতিক অঞ্চল আইন, ২০১০ (২০১০ সনের ৪২নং আইন) এর ধারা ৫ ও ৪ এর বিধান অনুযায়ী যথাক্রমে ঘোষিত ও প্রতিষ্ঠিত অর্থনৈতিক অঞ্চলে পণ্য উৎপাদন বা সেবা প্রদানের লক্ষ্যে পরিচালিত এবং উক্ত Ordinance এর section 2(20) অনুসারে সংজ্ঞায়িত কোম্পানীকে উক্ত অর্থনৈতিক অঞ্চলে পরিচালিত ব্যবসায়িক কার্যক্রম হইতে উদ্ভূত সকল আয়ের উপর প্রদেয় আয়কর হইতে ১ম, ২য় ও ৩য় বৎসরের জন্য ১০০%, ৪র্থ বৎসরের জন্য ৮০%, ৫ম বৎসরের জন্য ৭০%, ৬ষ্ঠ বৎসরের জন্য ৬০%, ৭ম বৎসরের জন্য ৫০%, ৮ম বৎসরের জন্য ৪০%, ৯ম বৎসরের জন্য ৩০%, ১০ম বৎসরের জন্য ২০% হারে অব্যাহতি প্রদান করিলে, যথা:-

তবে শর্ত থাকে যে, উক্ত অর্থনৈতিক অঞ্চলে স্থাপিত কোম্পানীকে-

- (ক) টি আই এন গ্রহণ করিতে হইবে; এবং
- (খ) উক্ত Ordinance এর Section 35 অনুযায়ী যথাযথভাবে হিসাব সংরক্ষণ করিতে হইবে এবং Section 75 এ নির্ধারিত সময়ের মধ্যে আয়কর রিটার্ন সংশ্লিষ্ট আয়কর কর্তৃপক্ষের নিকট দাখিল করিতে হইবে।

রাষ্ট্রপতির আদেশক্রমে

মোঃ নজিবুর রহমান  
সচিব। ”

S.R.O. No.81 dated 19.03.2019, published in gazette on 23.03.2019 [(Annexure-G(1))] was subsequently issued upon repealing S.R.O.No.226 but retaining the privileges i.e. tax exemption given earlier to the companies who have started commercial operations in the respective economic zone, with modification of the conditions in order to enjoy the said financial benefit, which runs as under:

“ গণপ্রজাতন্ত্রী বাংলাদেশ সরকার  
অর্থ মন্ত্রণালয়  
অভ্যন্তরীণ সম্পদ বিভাগ  
(আয়কর)

প্রজ্ঞাপন

তারিখ: ০৫ চৈত্র, ১৪২৫ বঙ্গাব্দ/১৯ মার্চ, ২০১৯ খ্রিষ্টাব্দ

এস, আর, ও, নং ৮১-আইন/আয়কর/২০১৯।- Income tax Ordinance, 1984 (Ordinance No. XXXVI of 1984), অতঃপর উক্ত Ordinance বলিয়া উল্লিখিত, এর section 44 এর sub-section (4) এর clause (b) তে প্রদত্ত ক্ষমতাবলে সরকার, নিম্নবর্ণিত শর্তে, বাংলাদেশ অর্থনৈতিক অঞ্চল আইন, ২০১০ (২০১০ সনের ৪২নং আইন) এর ধারা ৫ এর অধীন ঘোষিত অর্থনৈতিক অঞ্চলে, অতঃপর উক্ত অর্থনৈতিক অঞ্চল বলিয়া উল্লিখিত, উক্ত Ordinance এর section 2 এর clause (20) এ সংজ্ঞায়িত কোনো কোম্পানি পণ্য বা সেবা উৎপাদনের মাধ্যমে উদ্ভূত সকল আয়ের উপর বাণিজ্যিক উৎপাদন শুরুর তারিখ হইতে ১ম, ২য় ও ৩য় বৎসরের জন্য ১০০%, ৪র্থ বৎসরের জন্য ৮০%, ৫ম বৎসরের জন্য ৭০%, ৬ষ্ঠ বৎসরের জন্য ৬০%, ৭ম বৎসরের জন্য ৫০%, ৮ম বৎসরের জন্য ৪০%, ৯ম বৎসরের জন্য ৩০%, ১০ম বৎসরের জন্য ২০% হারে প্রদেয় আয়কর হইতে অব্যাহতি প্রদান করিলে, যথা:-

শর্তাবলি

(ক) উক্ত অর্থনৈতিক অঞ্চলের বাহিরে অবস্থিত সংশ্লিষ্ট কোম্পানির কোনো শিল্প ইউনিটকে উক্ত অর্থনৈতিক অঞ্চলে স্থানান্তর (relocation) করা যাইবে না;

(খ) বাংলাদেশে ইতঃপূর্বে পণ্য বা সেবা উৎপাদন ব্যবহৃত হইয়াছে এইরূপ কোনো মেশিন, যন্ত্রপাতি, ইত্যাদি উক্ত অর্থনৈতিক অঞ্চলে কোনো শিল্প ইউনিট স্থাপনে ব্যবহার করা যাইবে না;

(গ) সংশ্লিষ্ট কোম্পানি কর্তৃক উক্ত অর্থনৈতিক অঞ্চলের অভ্যন্তরে এবং বাহিরে (যদি থাকে) পরিচালিত শিল্প ইউনিটের জন্য পৃথক পৃথক বাণিজ্যিক হিসাব এবং ব্যাংক হিসাব সংরক্ষণ করিতে হইবে;

(ঘ) সংশ্লিষ্ট কোম্পানি কর্তৃক উক্ত অর্থনৈতিক অঞ্চলের অভ্যন্তরে এবং বাহিরে (যদি থাকে) পরিচালিত শিল্প ইউনিটের মধ্যে কোনো আন্তঃইউনিট লেনদেন সংঘটিত হইলে উক্তরূপ সকল লেনদেনের বিস্তারিত তথ্য উক্ত কোম্পানির আয়কর রিটার্নের সহিত সংশ্লিষ্ট উপ-কর কমিশনার এর নিকট দাখিল করিতে হইবে; এবং

(ঙ) সংশ্লিষ্ট কোম্পানিকে উক্ত Ordinance এর section 35 অনুযায়ী যথাযথভাবে হিসাব সংরক্ষণ করিতে হইবে এবং উক্ত Ordinance এর section 75 এ নির্ধারিত সময়ের মধ্যে আয়কর রিটার্ন সংশ্লিষ্ট আয়কর কর্তৃপক্ষের নিকট দাখিল করিতে হইবে।

২। এই বিভাগের ২৪ আষাঢ়, ১৪২২ বঙ্গাব্দ মোতাবেক ৮ জুলাই, ২০১৫ তারিখে প্রজ্ঞাপন এস.আর. ও নং-২২৬-আইন/আয়কর/২০১৫ এতদ্বারা রহিত করা হইল।

রাষ্ট্রপতির আদেশক্রমে

মোঃ মোশারফ হোসেন ভূঁইয়া, এনডিসি  
সিনিয়র সচিব। ”



The government, however, while issuing the impugned S.R.O. No.104 dated 25.03.2020, published in gazette on 10.05.2020 (Annexure-I) retained the privileges given earlier to all other categories of companies who have started commercial operation in the respective economic zone, so created under Section 5 of the Act, 2010, except those who are producing “ভোজ্য তেল, চিনি, আটা, ময়দা, সিমেন্ট, লোহা ও লৌহজাতীয় পণ্য”.

No doubt, giving exemption of tax under Section 44(4)(b) to the respective companies, situated in the economic zone, on their income in connection with the production of the respective items is the absolute discretion of the respondent-government and that in view of Section 21 of the Act, 1897 the government has power to the withdraw the same, but until such time a decisive step has been taken pursuant to the earlier notification.

As has been observed earlier, the context of S.R.O. No.104 is rooted in Act No.42 of 2010 where the Governing Board constituted under Section 21 of the Act, 2010 and headed by the Hon’ble Prime Minister of the country controls, administers, regulates the economic zone with a view to develop backward area of the country for fast economic development. Said high powered body also formulates policy with regard to categories of incentives to be given to those industries established in the economic zone.

In the instant case, it is evident from Annexure-‘X’ to the supplementary affidavit to the writ petition that pursuant to the decision taken by the Governing Board headed by the Hon’ble Prime Minister dated 18.02.2015 S.R.O. No.226 was issued by the government under

Section 44(4)(b) of the Ordinance, which was followed with the issuance of subsequent S.R.O. bearing No.81 dated 19.03.2019.

In response thereof the petitioner No.1 has established industries in the respective economic zone upon obtaining necessary permission from all the respective departments of the government [Annexures-A and A(1) respectively] and with the approval given by the BEZA authority dated 27.02.2018 (Annexure-D) said petitioner went to commercial operation from 03.10.2018, as is certified by BEZA dated 09.10.2018 (Annexure-E). Also, in view of S.R.O. Nos.226 and 81 the National Board of Revenue (in short, NBR) appears to have issued respective certificates in favour of the said petitioner under Section 53 of the Ordinance, 1984 read with Rule 16 of the Income Tax Rules, 1984 and also under Section 52 read with Rule 17A giving exemption on Advance Income Tax (AIT) for a prescribed period from 03.10.2018 to 02.10.2028 (Annexures-G2, G3 and G4 respectively). To that effect, return for the assessment year 2019-2020 has also been submitted by the said petitioner (Annexure-‘H’ to the writ petition). In other words, S.R.O. Nos.226 and 81 have been acted upon so far petitioner No.1 is concerned. Hence, there can be no doubt to find that a vested right is created *qua* such notification. Such right of the petitioner No.1, which is rooted in the Act No.42 of the 2010 cannot be taken away in the garb of withdrawal unless by expressed terms it is spelt out based on just and cogent reason, which is absent in the present case. Hence, Section 21 of the General Clause Act, 1897 has failed to provide support to the contention of the respondent-government.

Moreover, the plea of the respondent-government towards exclusion of those 7(seven) items from getting tax exemption with a view

to maintaining level playing field cannot be regarded as a justifiable reason in view of the admitted facts that the respective industrial establishments set up in the economic zone are managed, controlled and governed under the Act, 2010 including other ancillary matters, which are being regulated in accordance with the terms and conditions as provided under the said Act of 2010. As such, in no way it can be deduced that those industries situated within the respective economic zone are at par with the other industries situated outside the said zone. Accordingly, the contention of the respondents-government as to maintaining level playing field, miserably falls through.

In this connection, the learned Deputy Attorney General further submits that S.R.O. No.104 is independent to S.R.O. No.81, not a continuity of the earlier notification and since vide clause (2) of the S.R.O. No.104 the earlier S.R.O. No.81 has been repealed; as such, the petitioners' claim to have a continued right so created under S.R.O. No.81 has no leg to stand.

It is the cardinal principle of construction that *“every statute is prima-facie prospective unless it is expressly or by necessary implication made to have retrospective operation, as has been observed in **Keshavan Vs State of Bombay AIR 1951 (SC) 128.***

In the words of Lord Blanesburg, *“provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment,”* as has been observed in ***Delhi Cloth and General Company Ltd. –Vs- CIT, Delhi, AIR. 1927 (PC) 242, P-244.***

Evidently, in the impugned S.R.O.No.104 the respondent-government neither by express terms nor by necessary intendment has made the exclusionary clause applicable for those companies situated in the economic zone who have started commercial operations and have also enjoyed the tax exemption benefit for a prescribed period pursuant to the certificates issued by the NBR under Rules 16 and 17A of the Income Tax Rules, 1984 vide S.R.O. Nos. 226 and 81 respectively. As such, there is no doubt to find that S.R.O. No.104 dated 10.05.2020 is prospective in effect, not retrospective.

At the same time, it is pertinent to observe that S.R.O. No.104 cannot go to touch the existing right being accrued in favour of the petitioner No.1 having established and started commercial operation with the approval of BEZA authority and having enjoyed incentive of tax exemption pursuant to the order/certificates issued by the NBR under S.R.O. Nos. 226 and 81 respectively. In that view of the matter refusal of the respondent No.2 under Nothi Nos.08.01.0000.034.02.270.18-565 and 08.01.0000.034.01.516.18-566 both dated 14.09. 2020 (Annexures- P and P1 respectively) to issue tax exemption certifications to the said petitioner under the proviso to Rule 17A and Rule 16 of the Income Tax Rules, 1984 pursuant to the said impugned S.R.O. No.104 is hit by the principles of promissory estoppel and hence, cannot be mandated as lawful.

However, in the midst of hearing of the instant Rule, the petitioners have raised another issue touching the legality and propriety of the impugned S.R.O. No.104 dated 10.05.2020 on the count that from record i.e. Annexure-X of the supplementary affidavit to the writ petition it is apparent that pursuant to the decision taken by the Governing Board

presided over by the Hon'ble Prime Minister, which is constituted under Section 21 of the Act, 2010, S.R.O. No.226 as well as S.R.O. No.81 were issued by the government under Section 44(4)(b) of the Ordinance, 1984. But prior to the issuance of S.R.O. No.104, BEZA authority has not been consulted with especially with regard to withdrawal of tax exemption on the products as specified therein. As such, on that score as well the impugned S.R.O.No.104 is liable to be knocked down so far making classification by excluding only those companies, who are producing 7(seven) different categories of products, from getting tax exemption.

At this juncture, Mr. Yousuf Khan Rajib, the learned Advocate appearing on behalf of the respondent No.4 i.e. BEZA by filing affidavit-in-opposition submits that the powers and functions of BEZA have been clearly spelt out in Section 22 of the Act, 2010 and that withdrawal of benefit of tax exemption given earlier by the government does not come within the ambit of the said provision of law. As such, he submits that it cannot be said that inserting an exclusionary clause in the impugned S.R.O. No.104 by the government under Section 44(4)(b) without taking approval of BEZA, makes its unlawful.

It has been observed earlier that the respondent-government in general has power to give exemption of tax to any class of income or class of persons under Section 44(4)(b). However, when question of giving tax exemption to a class of persons comes i.e. the respective companies situated within the economic zone, it takes a different stand.

As we have seen, economic zone is the creature of Act No.42 of 2010 which is established with the sole object of fast economic development and that invitations are also made under the said Act

No.2010 to the aspiring companies to set up industrial establishment therein in lieu of the incentives including exemption from the application of the Income Tax Ordinance , 1984 [like, Section 13(1)(ছ)]. In response thereof when the respective industries are established therein with the approval of BEZA authority, starts commercial operation with the approval of the said authority and also starts enjoying the privileges of tax exemption with the sanction of National Board of Revenue at that juncture, taking decision by the respondent-government independently with regard to those class of industrial establishments without consulting or taking opinion of BEZA authority, all the more when that decision of the government is going to adversely affect those class of persons makes the purpose/ object of the Act No.42 of 2010 nugatory.

In addition, Act No.42 of 2010 has been promulgated by the Legislature with the sole object of fast economic development, increase scope of employment as well as export and import etc. To fulfill the object/purpose of the Act, 2010 a high powered Governing Board is constituted under Section 21 of the said Act headed by the Hon'ble Prime Minister of the country wherein, amongst others, the Chairman of National Board of Revenue is the ex-officio member of the said Board.

For ready reference Section 21 is quoted below:

“২১। গভর্নিং বোর্ড। (১) এই আইনের উদ্দেশ্য পূরণকল্পে, এবং উপ- ধারা (২) এর বিধান সাপেক্ষে, নিম্নবর্ণিত সদস্য সমন্বয়ে গঠিত গভর্নিং বোর্ড নামে একটি বোর্ড থাকিবে, যথাঃ-

(ক) প্রধানমন্ত্রী বা তৎকর্তৃক মনোনীত কোন সদস্য, যিনি একজন মন্ত্রী, যিনি গভর্নিং বোর্ডের চেয়ারম্যানও হইবেন;

(খ) শিল্প, বাণিজ্য, অর্থ, পরিকল্পনা, বিজ্ঞান এবং তথ্য ও যোগাযোগ প্রযুক্তি, বিদ্যুৎ জ্বালানী ও খনিজ সম্পদ, যোগাযোগ, শ্রম ও কর্মস্থান, পরিবেশ ও বন মন্ত্রণালয় বা বিভাগের দায়িত্বে নিয়োজিত মন্ত্রী/ প্রতিমন্ত্রীগণ, পদাধিকারবলে;

(গ) প্রধানমন্ত্রীর মুখ্য সচিব, পদাধিকারবলে;

(ঘ) বাংলাদেশ ব্যাংকের গভর্নর, পদাধিকারবলে;

(ঙ) বিনিয়োগ বোর্ডের নির্বাহী চেয়ারম্যান, পদাধিকারবলে;

(চ) শিল্প, বাণিজ্য, অর্থ, পরিকল্পনা, কৃষি, শ্রম ও কর্মসংস্থান, ডাক ও টেলিযোগাযোগ, বিজ্ঞান এবং তথ্য ও যোগাযোগ প্রযুক্তি, পররাষ্ট্র, জ্বালানী ও খনিজ সম্পদ, বিদ্যুৎ, স্বরাষ্ট্র, নৌ-পরিবহন, পরিবেশ ও বন মন্ত্রণালয় বা বিভাগ ও প্রধানমন্ত্রীর কার্যালয়ের সচিব এবং চেয়ারম্যান, জাতীয় রাজস্ব বোর্ড, পদাধিকারবলে;

(ছ) সভাপতি, ফেডারেশন অব বাংলাদেশ চেম্বার অব কমার্স এন্ড ইন্ডাস্ট্রিজ (এফবিসিসিআই), পদাধিকারবলে;

(জ) অর্থনৈতিক অঞ্চল সংশ্লিষ্ট জেলার চেম্বার অব কমার্স এন্ড ইন্ডাস্ট্রিজ এর সরকার কর্তৃক মনোনীত প্রতিনিধি;

(ঝ) সরকার কর্তৃক মনোনীত ২(দুই) জন মহিলা উদ্যোক্তা;

(ঞ) বিশেষায়িত চেম্বার অব কমার্স এন্ড ইন্ডাস্ট্রিজ-এর সভাপতি;

(ট) নির্বাহী চেয়ারম্যান, পদাধিকারবলে, যিনি উহার সচিবও হইবেন।

(২) উপ-ধারা (১) এর দফা (ঞ) তে উল্লিখিত ব্যক্তিগণ নির্ধারিত পদ্ধতিতে পালাক্রমের (by-rotation) ভিত্তিতে গভর্নিং বোর্ডের সদস্য হইবেন।

(৩) সরকার, সরকারি গেজেট প্রজ্ঞাপন দ্বারা, যে কোন ব্যক্তিকে, প্রজ্ঞাপনে উল্লিখিত উদ্দেশ্য ও মেয়াদের জন্য, গভর্নিং বোর্ডের সদস্য হিসাবে যে কোন সময় কো-অপ্ট করিতে পারিবে।”

Respective functions of the said Board have been provided in Section 22 of the Act, which runs as under:

“২২। গভর্নিং বোর্ডের কার্যাবলী, নীতি বাস্তবায়ন, ইত্যাদি।-(১) গভর্নিং বোর্ড নিম্নবর্ণিত কার্যাবলী সম্পাদন করিবে-

(ক) অর্থনৈতিক অঞ্চলের উন্নয়ন, পরিচালনা, ব্যবস্থাপনা এবং নিয়ন্ত্রণ বিষয়ক নীতি প্রণয়ন;

(খ) অর্থনৈতিক অঞ্চলের পরিচালনা, প্রশাসন, ব্যবস্থাপনা ও নিয়ন্ত্রণ সম্পর্কিত উদ্যোক্তা কোম্পানীর কর্মকান্ড পর্যালোচনা;

(গ) অর্থনৈতিক অঞ্চলের প্রতিষ্ঠার প্রস্তাব অনুমোদন;

(ঘ) সময় সময় নির্বাহী বোর্ড এবং অর্থনৈতিক অঞ্চলের সামগ্রিক কর্মকান্ড পর্যালোচনা; এবং

(ঙ) কর্তৃপক্ষকে এবং অর্থনৈতিক অঞ্চল সম্পর্কিত বিষয়াদির দক্ষ ব্যবস্থাপনার উদ্দেশ্যে তথ্যবিবেচনায় কর্তৃপক্ষ প্রয়োজনীয় আদেশ বা নির্দেশ প্রদান।

(২) উপ-ধারা (১) এর অধীন গভর্নিং বোর্ড কর্তৃক গৃহীত কোন সিদ্ধান্ত বাস্তবায়নের ক্ষেত্রে কোন মন্ত্রণালয় বা বিভাগের সম্পৃক্ততা থাকিলে উক্ত মন্ত্রণালয় বা বিভাগের অনুমোদন গ্রহণ সাপেক্ষে বাংলাদেশ অর্থনৈতিক অঞ্চল কর্তৃপক্ষ উহা বাস্তবায়ন করিবে।

(৩) কর্তৃপক্ষ উপ-ধারা (১) এর অধীন গভর্নিং বোর্ড কর্তৃক প্রণীত নীতি, প্রদত্ত অনুমতিপত্র মঞ্জুরীকৃত লাইসেন্স বা জারীকৃত আদেশ বা নির্দেশ সরকারী গেজেটে প্রজ্ঞাপন দ্বারা প্রকাশ করিবে।

(৪) উপ-ধারা (৩) এর অধীন কোন প্রজ্ঞাপন জারী করা হইলে, উহাতে উল্লিখিত নীতি অনুমতিপত্র, লাইসেন্স এবং আদেশ বা নির্দেশ অগ্রাধিকার ভিত্তিতে সংশ্লিষ্ট মন্ত্রণালয় বা বিভাগ বা কর্তৃপক্ষ কর্তৃক বাস্তবায়ন করিতে হইবে। ”

However, said Board executes its decisions through the BEZA “কর্তৃপক্ষ” constituted under Section 17 of the said Act. Said “কর্তৃপক্ষ” also has wide administrative powers and function over economic zone, as has been spelt out in Section 19 of the said Act.

Thus, it is apparent that BEZA is the authority which controls, administers and regulates the economic zone with a view to develop backward areas of the country. Also, it formulates policy decision with

regard to giving incentives to those industries established in the economic zone including tax exemption.

From Annexure-‘X’ of the supplementary affidavit, the minutes of the meeting of the Governing Board dated 18.02.2015 headed by the Hon’ble Prime Minister, it appears that said Board is giving approval, amongst others:

“.....

সিদ্ধান্ত- ৬.১ঃ অর্থনৈতিক অঞ্চল ডেভেলপার ও অর্থনৈতিক অঞ্চলের বিনিয়োগকারী ও ব্যবহারকারীদের জন্য প্রস্তাবিত প্রণোদনা প্যাকেজ ও সুযোগ সুবিধা প্রদানের সুপারিশ অনুমোদন করা হলো (সংযুক্তি-২)।

সিদ্ধান্ত- ৬.২ঃ প্রণোদনা প্যাকেজ, সুযোগ- সুবিধা নিশ্চিত করার জন্য সংশ্লিষ্ট মন্ত্রণালয়, বিভাগ দপ্তরসমূহ বিষয় ভিত্তিক আদেশ, এস আর ও, পরিপত্র জারীর প্রয়োজনীয় ব্যবস্থা গ্রহণ করবে।

.....

**অর্থনৈতিক অঞ্চল ডেভেলপার এবং অর্থনৈতিক অঞ্চলের বিনিয়োগকারী ও ব্যবহারকারীদের জন্য প্রস্তাবিত প্রণোদনা প্যাকেজ ও সুযোগ সুবিধা।**

(ক) .....

(খ) অর্থনৈতিক অঞ্চল ব্যবহারকারী/ বিনিয়োগকারীদের জন্য প্রণোদনাঃ

ক্রমিক	প্রণোদনা	আলোচ্য বিষয়	সুপারিশ
১।	TAX HOLIDAY	For Dhaka & Chittagong Division: Income Tax Holiday (ITH) First 2 years 100% 3 <sup>rd</sup> & 4 <sup>th</sup> year 50% 5 <sup>th</sup> year 25%  For other areas: Income Tax Holiday (ITH)- First 3years 100% 4 <sup>th</sup> , 5 <sup>th</sup> & 6 <sup>th</sup> year 50% 7 <sup>th</sup> year 25%	১ম এবং ২য় বছরের জন্য ১০০%, ৩য় বছরের জন্য ৮০% ৪র্থ বছরের জন্য ৭০% ৫ম বছরের জন্য ৬০% ৬ষ্ঠ বছরের জন্য ৫০% ৭ম বছরের জন্য ৪০% ৮ম বছরের জন্য ৩০% ৯ম বছরের জন্য ২০% ১০ম বছরের জন্য ১০% হারে কর মওকুফ করার প্রস্তাব বিবেচনা করা যায়।

S.R.O. No.226, however, is the product of the said decision of the Governing Board dated 18.02.2015, which has been followed up with the issuance of S.R.O. No.81 dated 19.03.2019. It is, thus apparent that



incentive of tax exemption given to those companies situated in the economic zone is mandated by statute i.e. Act No.42 of 2010 with the approval of the Hon'ble Prime Minister as the head of the said Governing Board constituted under the said Act.

In view of the said legal and factual position there is no doubt to find that prior to taking decision by the respondent-government under Section 44(4)(b) of the Ordinance, 1984 consultation with and clearance of BEZA, constituted under the Act No.42 of 2010, was essentially required in order to exclude special privileges given to those companies who are situated and have started commercial operations in the respective economic zone. In the present case, respondent-government did not file any affidavit-in-opposition. However, in the affidavits-in-opposition filed by the NBR, respondent No.2 and respondent No.4 there is no reference that before issuance of the impugned S.R.O. No.104 BEZA has been consulted with.

Thus, it is evident that pursuant to the independent decision of the respondent No.1 impugned S.R.O. No.104 dated 25.03.2020 has been issued under Section 44(4)(b) of the Ordinance, 1984. Not only that, vide the said impugned S.R.O. No.104 the respondent-government has picked up only those companies situated in the economic zone who are producing 7(seven) different categories of products, for the purpose of excluding them from getting the benefit of tax exemption without expressing a single reason whatsoever for taking the said impugned decision. At the same time vide the said S.R.O. No.104 the respondent-government has retained the privilege of tax exemption for all other companies situated in the said zone. Said act of the respondent-government is a glaring instance

of pick and choose as well as executive highhandedness and arbitrariness; hence, it cannot sustain in the eye of law.

Be that as it may, the impugned S.R.O. No.104 so far excluding those companies who are producing “ভোজ্য তেল, চিনি, আটা, ময়দা, সিমেন্ট, লোহা ও লৌহজাতীয় পণ্য” by commencing commercial production is liable to be struck down for having been issued without lawful authority.

However, in this writ petition except petitioner No.1 who produces “ভোজ্য তেল” the other 3(three) companies i.e. petitioner Nos. 3, 5 and 7 though got approval from BEZA authority for setting up industrial establishment in the respective economic zone but process of construction of the factory/building and importation of plant and capital equipments are yet to be completed. In other words, those companies have not yet started commercial operations. As such, in view of our above observations and findings since the petitioner Nos.3 5 and 7 have not yet started commercial operations have no *locus-standi* to challenge the impugned S.R.O. No.104.

In the result, the Rule as well as the supplementary Rules so have been issued at the instance of petitioner No.1 only, who produces “ভোজ্য তেল” are hereby made absolute.

The impugned S.R.O. No.104-Law/Income Tax/2020 dated 25.03.2020 published in Bangladesh gazette on 10.05.2020 issued by the respondent-government under Section 44(4)(b) of the Income Tax Ordinance, 1984, in so far as it relates to “ভোজ্য তেল” (Annexure-I) is hereby declared to have been issued without lawful authority and hence, is of no legal effect.

Consequently, the impugned orders both dated 14.09.2020 passed under Nathi Nos.08.01.0000.034.02.270.18-565 and 08.01.0000.034.01.516.18-566 by the respondent No.2 under the signature of Second Secretary (Tax Exemption) refusing to issue tax exemption certificates under the proviso to Rule 17A and Rule 16 of the Income Tax Rules, 1984 to the petitioner No.1 {Annexure-P and P (1) respectively} are also hereby declared to have been issued without lawful authority and are of no legal effect.

Accordingly, the respondent No.2 is hereby directed to issue Exemption Certificates in favour of the petitioner No.1 under Rules 16 and 17A of Income Tax Rules, 1984 read with S.R.O. No.81-Law/Income Tax/2019 dated 19.03.2019 for the respective period.

There will be no order as to costs.

Communicate the judgment and order to the respondents concerned at once.

**S.M. Maniruzzaman, J:**

I agree.