

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

**WRIT PETITION NO.4702 of 2020.**

**IN THE MATTER OF:**

An application under Article 102(2) the Constitution of the People's Republic of Bangladesh.

AND

**IN THE MATTER OF:**

S.G. Oil Refineries Limited, represented by its Managing Director.

..... *Petitioner.*

**-V E R S U S-**

Bangladesh Export Processing Zone Authority (BEPZA), represented by its Executive Chairman of BEPZA Complex of House No.19/D, Road-6, Dhanmondi R/A, Dhaka-1205 and others.

.....*Respondents*

Mr. Md. Murad Reza, Senior Advocate with  
Mr. A.S.M. Shahrir Kabir, Advocates

.....*For the petitioner.*

Mr. Sk. Mohammad Morshed, Addl.A.G with  
Mr. ABM Abdullah Al Mahmud, DAG with  
Mr. Md. Humayun Kabir with  
Ms. Farzana Shampa, A.A.Gs.

.....*For the respondents.*

Ms. Quamrun Nahar Mahmud, Advocate

... ..*For the respondent No.1.*

Mr. Taufiq Anwar Chowdhury, Advocate

... ..*For the respondent No.5.*

**Present:**

*Mr. Justice K.M. Kamrul Kader*

*And*

*Mr. Justice Sardar Md. Rashed Jahangir.*

Heard On: 28.02.2022, 10.04.2022,  
16.05.2022, 23.05.2022 & 29.05.2022

**And**

**Judgment On: 19.06.2022.**

**K.M. Kamrul Kader, J:**

Upon an application under Article 102(2) of the Constitution of the People's Republic of Bangladesh this Rule *Nisi* was issued on 13.12.2020, in the following terms:

*“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the respondents should not be directed to allow the petitioner to export its 100% Edible Oils to the Domestic Tariff Areas (DAT) by accepting VAT, Customs duty and Taxes and as to why the respondents should not be directed to allow the petitioner to carry out the subcontract work of refining, filling, packaging of Edible Oil received from DTA after accepting applicable VAT, customs duties and taxes, and/or such other or further order or orders passed as to this court may seem fit and proper.”*

Facts relevant for disposal of the Rule, in short, are that the petitioner is a private limited company incorporated under the Companies Act, 1994 having incorporation no. C64063 (1554/06) dated 09.10.2006. The petitioner obtained Trade License to carry out their business in the Mongla Export Processing Zone (herein after referred to as MEPZ) and the petitioner engaged in manufacturing and producing Edible Oils. The petitioner obtained permission to export the Edible Oils in the Domestic Tariff Areas (herein after referred to as DTA) but the respondents most illegally obstructed the petitioner to execute the said export. It is stated that the petitioner made an application for exporting Edible Oils to the DTAs and the Cabinet Secretary of the Prime Minister’s Office (herein after referred to as PMO) vide Memorandum No.31.39.41.01.00.10.2005.320(6) dated 09.09.2009 allowed the application of the petitioner to export the Edible Oils in DTA and National Board of Revenue (herein after referred to as NBR) included edible oil in the DTA list under serial No.93 and 94. The petitioner on 18.01.2010 signed a contract with Trading Corporation of

Bangladesh (herein after referred to as TCB) to sell 6000 M.T. of Edible Oils in the DTAs and the respondent Nos. 2 and 8 approved the said sale and the petitioner sold 100% edible oil to TCB by making payment of all Tax and duties. The petitioner company suspended its total production from 2012 to 2017 and abandoned the said plant. It is also stated that on 2017, Dubai based investor purchased 100% shares of the petitioner-company and invested a huge amount of money to renovate the said factory and plant. From 2018, the new management imported palm from Malaysia and Indonesia and manufactured Edible Oils and thereafter, exported the said Edible Oils to India under South Asian Free Trade Areas agreement (herein after referred to as SAFTA). The petitioner has daily production capacity of 350 MT and 1.05 lakh MT per annum and from 2018 till now, the petitioner imported 44,614.36 MT of palm oil and from the said palm oil, the petitioner procured 42,145.96 MT of Edible Oils and exported the same to India under SAFTA and earned USD 3.6 Crore. It is further stated that on 06.03.1996, NBR passed standing order No.1655/96/Customs and according to the said order the petitioner is entitled to sell 10% Edible Oil into the DTA for home consumption and vide letter dated 19.12.2017, the respondent No.1 certified that the petitioner entitled to export 10% Edible Oils to DTA subject to payment of necessary VAT and Tax. Next, it is also stated that the Customs Authority did not allow the petitioner to export Edible Oils to DTA, on the plea that there is no H.S. Code. The petitioner on 24.09.2018 and 26.12.2018 made an application before the respondent No.1, but availed no remedy and on 21.01.2019 the members of the

Bangladesh Board of Investment served notice upon the respondent No.1 and directed to allow the petitioner to export 10% Edible Oils in DTAs.

It is also stated that on 20.10.2019, the respondent No.1 issued circular and on 26.10.2019, seeking for H.S. Code of the Edible Oils. On 11.11.2019, the petitioner sent a letter attaching copies of the H.S. Code stating that local importer imported the edible oil under the said Code and therefore, there is no need for new Code. On 05.03.2020, the respondent No.1 directed NBR to republish fresh SRO and kept the existing H.S. Code. It is also stated that on 08.01.2020, the Government of Indian, imposed restriction upon importing Edible Oils and the petitioner wrote to the Ministry of Commerce and the Deputy Secretary vide letter dated 28.01.2020, informed the petitioner that after obtaining license from the Director General of Foreign Trade of India and the petitioner may export Edible Oils to India. The Government of India issued 39 licenses and under the said licenses, the petitioner exported the said Edible Oils but on 11.05.2020 the Government of India permanently restricted import of Edible Oils and on 11.05.2020, the Government of India cancelled all the 39 licenses. The petitioner's entire production is suspended and the respondent No.1 and the Customs Authority failed to allow the petitioner to export the Edible Oils to the DTA. The petitioner made several applications to the respondents to allow the petitioner to export 100% edible Oils to the DTA, but the authority did not pay any heed to the same.

Being aggrieved by and dissatisfied with the standing order No.1655/96/customs dated 06.03.1996 passed by the respondent No.8,

having no other alternative efficacious remedy, the petitioner filed this writ petition before this Court and obtained the instant Rule.

Mr. Md. Murad Reza the learned Senior Counsel with Mr. A.S.M. Shahriar Kabir, the learned Advocate appearing on behalf of the petitioner submits that NBR on 31.08.2009 passed a standing order being No. 18/2009/customs and Clause 03 of the said order repealed the earlier order No. 1655/96/customs dated 06.03.1996 and On 26.05.2022, the respondent No.5, Ministry of Commerce, passed an office order under memo No. 26.00.0000.113.93.005.20 (part-2).338 dated 22.05.2022 directed the Bangladesh Export of Processing Zone (herein after referred to as BEPZA) to allow the petitioner to sell 6,000 MT of edible oil. Learned Counsel submits that under Clause 13A of the permission letter dated 17.10.2006 (ANNEXURE "B" to the writ petition) BEPZA permitted the petitioner to export its 100% edible oil but in absence of any restriction, BEPZA's refusal to export in DTA is contradictory with its own permission letter. In that view of the matter, the refusal to permit the petitioner to export edible oil in DTA is illegal. Furthermore, BEPZA published a list of EPZ goods allowed to export in the DTA and edible oil is included in the said list under Sl. No 93 (ANNEXURE- "C-1" to the writ petition). He also submits that the edible oil manufactured by the petitioner is not a restrictive item. Therefore, BEPZA ought to allow the petitioner to export 100% edible oil to the DTA. In that view of the matter, in absence of any legal bar, the petitioner should be allowed to export 100% edible oil in DTA. Learned Counsel also submits that Rule 2(e) of the Customs (Export Processing

Zone) Rules, 1984 gave the definition of Tariff Area and Rule 2(f) gave the definition of Zone (ANNEXURE- "S-1", to the supplementary affidavit filed on 23.01.2022) and pursuant to the above definition, EPZ shall be deemed to be a territory outside Bangladesh. Section 2(62) of the VAT Act, 2012 gave definition of 'deemed export' and supply of any goods within the territory of Bangladesh against foreign exchange under cover of a local L/C shall be treated as a 'deemed export'. In the premises, it is submitted that goods exported from EPZ to DTA shall have to be treated as 'deemed export'. Under the above provision of law BEPZA is supposed to allow the petitioner to export 100% edible oil in DTA by allowing the petitioner's application (ANNEXURE- "J" & "J-2" of the writ petition) instead of illegally rejected the same (ANNEXURE "Q-2" of the Supplementary Affidavit filed on 23.01.2022) and as such, the rejection order of BEPZA is illegal, without lawful authority and is of no legal effect. Learned Counsel next submits that Rule-5 deals with the procedure of exporting goods from a zone, Rule 6 stated the procedure for removal of goods from a zone to tariff area and Rule 10 does not impose any restriction on goods which are exported in accordance with Rules 5 and 6. Under Section 4A of the Bangladesh Export Processing Zones Authority Act, 1980, BEPZA is supposed to foster and promote economic development of Bangladesh and the said Act did not impose any restriction for exporting goods from EPZ to DTA. As per provisions of the Act and the Rules, BEPZA do not impose any restrictive covenant. In that view of the matter, BEPZA's said refusal letter dated 20.01.2020 (Annexure-Q-2 of the Supplementary Affidavit

filed on 23.01.2022), pretended that those rules and regulations of BEPZA does not allow the petitioner to sell 100% edible oil to DTA, is manifestly illegal, erroneous in law, unreasonable and against the public interest.

Learned Senior Counsel then submits that the said BEPZA Rules, 1984 (ANNEXURE-"S-1" of the Supplementary Affidavit filed on 23.01.2022) was promulgated by the virtue of section 22 of the BEPZA Act and the said Rules do not empower the authority to further delegate their power to promulgate by-laws or issue circulars, conflicting with the Act or the Rules. It appears that the authority purported to impose restrictive covenants for exporting edible oils from EPZ to DTA; by issuing circular dated 06.03.1996 (ANNEXURE-"F" of the writ petition) restricting exporting only 10% of edible oil which is clear violation of the said Act and the Rules. Since there are no restrictive clauses in the said Acts and the Rules, therefore, such action of BEPZA, the respondent No.1 imposing such condition in the said circular is illegal, without lawful authority and is of no legal effect. Upon perusal of the said Act and the Rules it transpires that, there is no condition to limit the export of the goods from EPZ to DTA after paying Tax and duties, BEPZA does not have any power or authority to impose any restrictive Covenant or condition on export by issuing circular, which is neither expressly nor impliedly anticipated in the said Acts or the Rules.

Learned Senior Counsel also submits that the production capacity of the petitioner is 60,000 MT. per year and on 18.01.2010, TCB signed a contract with the petitioner to import 100% edible oil (ANNEXURE- "D"

of the writ petition) and the petitioner duly exported the 100% edible oil to the TCB. Therefore, BEPZA cannot plead that the petitioner is not allowed to export the goods in DTA as BEPZA is, therefore, barred under the principle of waiver, estoppels and acquiescence. BEPZA by refusal to allow the petitioner to export 100% edible oil in DTA, despite the fact that Ministry of Commerce, the respondent No.5, vide its memo dated 27.01.2020 (ANNEXURE-"J-1" of the writ petition) already directed BEPZA to take initiative to allow the petitioner to export 100% edible oil in DTA, which violated the order of the Ministry of Commerce. In this regard, it is submitted that such decision of Ministry of Commerce is binding upon BEPZA. The refusal of BEPZA to allow the petitioner even 20% of its manufactured edible oil as permitted in বিধি ৩খ of the সম্পূর্ণ রপ্তানিমুখি শিল্পপ্রতিষ্ঠান (স্থানিয় বাজারে বিক্রয়) বিধিমালা, ১৯৯৬ (ANNEXURE "S-2" of the Supplementary Affidavit filed on 23.01.2022) which allow 20% of produced goods be exported in DTA and as such, the impugned order of refusal of BEPZA (ANNEXURE "Q-2" of the Supplementary Affidavit filed on 23.01.2022) is unlawful, illegal and without lawful authority. BEPZA is thereby approbating and reprobating in same breath, which is not permitted in Law, as decided in the case of *Delowar Hossain Mollah and others –Vs.- Bangladesh represented by the Secretary, Ministry of Establishment and others, 9 MLR, AD 89 para 21.*

Learned Senior Counsel further submits that BEPZA tried to defend its refusal order relating to disallow the petitioner to export its edible oil in DTA on the ground of its so-called policy decision. It is a fact that, BEPZA



earlier allowed the petitioner to export 100% edible oil to TCB in DTA, but now purporting to disallow the petitioner by refusing the petitioner's application. Such action of BEPZA is without any cause and reason, which not only illegal but also unreasonable and such action of BEPZA is against the Wednesbury Principle.

Learned Counsel lastly submits that the petitioner filed an instant writ petition against the BEPZA's refusal letter for exporting 100% edible oil in DTA. Under Rule 6 of the Customs (Export Processing Zone) Rules, 1984 dated 10.12.1984 (ANNEXURE- "S-1", of the Supplementary Affidavit filed on 23.01.2022), BEPZA is the only authority to allow the petitioner to export 100% edible oil in DTA. Under Rule 2(b) "authority" means Bangladesh Export of Processing Zone (BEPZA) authority and under Rule, 2(bb) "board" means board of governor of BEPZA. Under Section 2(a) of BEPZA Act, 1980 (Page 11 of the legal submission bundle) "authority" means the Bangladesh Export of Processing Zone (BEPZA) authority and under section 2(b) of the said Act "board" means board of governor of BEPZA. Section 5A(2) of the said Act states as follows: *"The policies formulated, orders given and instruction issued by the Board shall be deemed to be the policies formulated, orders given and instructions issued by the Government and shall be followed accordingly; and they shall not require any formal approval of any Ministry or Division dealing with the matters for their implementation"*. From the above definitions, it appears BEPZA is the only authority to give permission to the petitioner to sell 100% edible oil to DTA or carry out the sub- contract

work. The petitioner can only export 100% edible oil to DTA by following the terms and conditions laid down in Rule 5 and 6 of the Customs (Export Processing Zone) Rules, 1984 after making payment of VAT, duties etc. The BEPZA Act and Rules do not impose any restrictive condition upon exporting 100% edible oil from EPZ to DTA. He again submits that, Ministry of Commerce, the respondent No.5 has no say preventing petitioner from exporting 100% edible oil in DTA upon perusal of the letter dated 22.05.2022 (ANNEXURE-BB of the Supplementary Affidavit filed on 25.05.2022). From the said letter it is evident that the Government also seeking permission from BEPZA to allow the petitioner to export 100% edible oil in DTA. Had it been so that if the Ministry had power to allow or disallow the petitioner from exporting edible oil in DTA, it would never asked BEPZA for permission to allow the petitioner to export 100% edible oil in DTAs. BEPZA in its refusal letter did not mention that the petitioner is barred from exporting edible oil in DTA or the Government has put embargo/restriction on exporting edible oil in DTA. It rather said that it is not within their policy, rules and regulation. Though BEPZA failed to show any such policy, rules and regulation which refused the petitioner to export 100% edible oil in DTA. In fact, BEPZA has no such prohibition provision in respect of petitioner's right to export edible oil in DTA or carry out the sub-contract work. BEPZA even have no policy to restrict the petitioner's right to export edible oil in DTA, as such, the decision of BEPZA is arbitrary and contrary to the Wednesbury Principle. The circular dated 06.03.1996 issued by NBR, respondent No.8, admittedly was not published

by way of gazette notification and the same was admitted by the respondent No.5 in paragraph No.8 of the Affidavit-in-Opposition. NBR had no power to issue such circular overriding the BEPZA's exclusive power to allow the petitioner to export 100% edible oil in DTA, which would be considered as deemed export under Section 2(62) (ga) of VAT Act 2012. However, it transpire that the standing order No.18/2009/customs dated 31.08.2009 (ANNEXURE-BB of the Supplementary Affidavit) withdrawing the limitation of 10% by cancelling the earlier standing order No.1655/96/customs dated 06.03.1996 (ANNEXURE-F of the Writ Petition). The present standing order shows that the item of the petitioner has not been included in the said wherein the right of export 10% of the other goods have been mentioned, in the premises there is no hurdle whatsoever in allowing the petitioner to export 100% edible oil in DTA or carry out the sub contact work. BEPZA has failed to give a cognizable reason for refusing the petitioner to export 100% edible oil to DTA or carry out the sub-contracting work. Thus, the petitioner has every right to export 100% edible oil in DTA to meet the demand in local market, had there been any legal embargo in BEPZA's Act, Rule, Regulation or any policy restricting the petitioner from exporting edible oil in DTA then Ministry of Commerce could not have asked permission from BEPZA to allow the petitioner to export 100% edible oil in DTA. Considering the above facts and circumstance of the case the learned Counsel prays for making the Rule absolute.

Ms. Quamrun Nahar Mahmud, learned Advocate appearing on behalf of the respondent No.1 by filing an affidavit-in-opposition opposes the Rule and submits that M/S. S.G. Oil Refineries Limited is permitted or sanctioned to set up their project in Mongla EPZ vide letter No. IP:PJT-Mongla/33/2095 dated 17.10.2006 and allowed to import raw materials, manufacture as permitted flow chart and export produced Edible Oil. Section 13(a) of the sanction letter depicted "The Company will export the entire product of its factory" and as per sell to DTA policy, EPZ enterprise can sell maximum 10% of its previous years export quantity subject to enlistment of the specific product in the concerned list approved by the government. She further submits that the product 'Edible Oil' is approved to enlist in 10% DTA sell by the Principal Secretary, Prime Minister Office in the 7<sup>th</sup> meeting on 30.08.2009 and it was directed to publish an SRO in this regard by the NBR which is under process in the NBR. In the Standing Order No: 1655/96/Customs, dated 06.03.1996 it was mentioned only products in Annexure-'A' of the supplementary affidavit, wherein 'Edible Oil' was not enlisted therein. It has been approved in the 7<sup>th</sup> PMO meeting dated 30.08.2009. Afterwards on 31.08.2009 a revised Standing Order was published by NBR combining all the 87 items approved in previous six different meetings in this regard, cancelling their earlier Order No: 1655/96/Customs, dated 06.03.1996. She again submits that in reply of the petitioner's letter dated 27.05.2020, BEPZA responded as 'according to the existing law of the land there is no scope to allow the petitioner to sell edible oil to DTA produced in EPZ vide letter No.

03.06.2616.315.33.040.17-999 dated 12.07.2020, BEPZA responded in the similar way earlier on 20.01.2020. Ministry of Commerce requested BEPZA to take necessary steps in accordance with existing law regarding DTA sell. BEPZA informed the petitioner several times to take clearance from NBR. After NOC from NBR, BEPZA could have take decision as per existing law, however, there is no scope to sell 100% EPZ product to DTA. She also submits that NBR cancelled their Standing Order dated 06.03.1996 by their other related Revised Order dated 31.08.2009. The product 'Edible Oil' & 'Fatty Acid' are approved to enlist in 10% DTA sell by the Principal Secretary in the PMO meeting held on 30.08.2009, but not yet published in SRO by NBR. For that purpose, BEPZA collected H.S. Codes from the investors and provided to NBR on 05.03.2020 specially the H.S. Code of the items approved in 7<sup>th</sup> meeting, on demand of NBR. She further submits that as per sell to DTA policy, the petitioner can sell maximum 10% of their previous years export. But it couldn't be implemented due to absence of published SRO in this regard. It is worth to mention herein that, BEPZA allowed selling 4,215 M.T. Oil to DTA under 10% policy in the light of the prior permission of Mongla Customs on 17.09.2020 based on the Judgment of this Court in Writ Petition No: 23 of 2020. Learned Advocate for the respondent No.1 further submits that S.G. Oil is a 100% export-oriented A type enterprise in Mongla EPZ since 2008. In 2017 new investors added with S.G. Oil and reinstall new machinery with the hope to work sub-contract in DTA and rest produced oil will be export to India under SAFTA. The said company applied earlier

mentioning some of their vendors would import and give them edible oil and they will just do the work of refining/packing and after that they will return the same to the vendors. She lastly submits that Export Processing Zone (EPZ) is the customs bonded area and the company within EPZ is allowed to import raw materials as duty free and export the produced product as duty free. The company several time applied for the same, but the Authority is not in a position to allow the same under the existing rules and regulations of BEPZA and hence, she prayed for discharging the Rule.

Mr. Taufiq Anwar Chowdhury, learned Advocate appearing on behalf of the respondent No.5 by filing an affidavit-in-opposition opposes the Rule and submits that as like all other Export Processing Zones (EPZ) factory, the prime condition for granting permission for setting up the said Edible Oil Industry in Mongla Export Processing Zone is to export the entire product of its factory and the said condition has been incorporated in Clause 13a of the permission letter issued on 17.10.2006 by Bangladesh Export Processing Zones Authority (BEPZA). He further submits that the petitioner made an application to the Prime Minister's Office requesting permission for exporting 10% its products that include edible oil and fatty acid to the Domestic Tariff Area (DTA). Regarding this application of the petitioner with other similar applications of 5 different EPZ-factories, in the 7<sup>th</sup> meeting of a High Powered Permanent Committee of BEPZA constituted for this purpose, which was Chaired by the Cabinet Secretary of Prime Minister's Office on 30.08.2009 (Annexure-C of the writ petition) a resolution was taken to the effect that National Board of Revenue should

take necessary steps to include 07 (seven) goods including 02 (two) goods of the petitioner's factory to the relevant Standing Order with H.S Codes for allowing to export not more than 10% of the previous year export to the Domestic Tariff Area (DTA). He also submits that a contract was signed by the petitioner with the Trading Corporation of Bangladesh (TCB) to sell 6000 MT edible oil or alternatively, buyer Trading Corporation of Bangladesh (TCB) will supply crude oil and Seller (petitioner) will refine that at his refinery located at Mongla Export Processing Zone. He next submits that Trading Corporation of Bangladesh which has been established under the Trading Corporation of Bangladesh Order, 1972 and Section 12 of the Order enumerate functions of the Corporation that included in Sub-rule (a) of carrying the business of imports and exports of goods, commodities, materials and merchandise from and to all countries in the world in accordance with the policy of the Government from time to time and as such, it is apparent that the contract in question was executed in view of urgency as per the policy of the government. He lastly submits that the petitioner in the instant writ petition has raised several disputed questions of facts which cannot at all be resolved in summary jurisdiction like writ jurisdiction and as such, the instant writ petition is not maintainable and the Rule may be discharged.

Mr. Sheikh Mohammad Morshed, learned Additional Attorney General with Mr. ABM Abdullah Al Mahmud, learned Deputy Attorney General with Mr. Md. Humayun Kabir, learned Assistant Attorney General appearing on behalf of the respondent No.11 by filing an affidavit-in-

opposition opposes the Rule by denying all the averments made in the writ petition and submits that the petitioner made an application to Prime Minister's Office for exporting edible oils to Domestic Terrif Area (DTA). The Cabinet Secretary of Prime Minister's Office issued a meeting resolution. One of the decision of that meeting was National Board of Revenue should take necessary steps to include H.S. Code of 07 (seven) goods in this related existing standing order. Thus, said goods can be allowed to export not more than 10% of total amount of last year's export to the Domestic Tariff Area (DTA). Edible Oil was one of the above said 07(seven) goods. He further submits that the petitioner was not allowed to export edible oil to DTA because edible oil was not mentioned in **Annexure-A** of the writ petition of Sanding Order No.1655/96/customs dated 06.03.1996 of National Board of Revenue (NBR) and then BEPZA requested NBR to replace goods list including all H.S. Codes which were proposed to include at 11 different meeting of Prime Minister's office. He again submits that according to Sanding Order No.1655/96/customs dated 06.03.1996 of National Board of Revenue (NBR) goods specified in Annexure-A of the said order shall only be permitted to export to DTA annually shall not exceed 10% of the goods exported by the concerned enterprise during the previous financial year. Edible Oil is not included in Annexure-A of above said order. So, the customs authority did not allow exporting 10% of edible oil to DTA exported by the concerned enterprise during the previous financial year and as such, the Rule is liable to be discharged.



We have heard the learned Advocate for the parties, perused the instant writ petition, supplementary affidavits, affidavit-in-oppositions filed by the respondent Nos.1, 5 & 11 and all other material documents annexed herewith.

It appears from the record that the petitioner M/S. S.G. Oil Refineries Limited obtained permission to set up their Edible Oil Refineries project in Mongla EPZ vide letter No. IP:PJT-Mongla/33/2095 dated 17.10.2006 and allowed to import raw materials, manufacture as permitted flow chart and export produced Edible Oil to foreign countries not in the DTAs. However, the petitioner made an application for exporting Edible Oils to the DTAs and the Prime Minister's Office vide Memorandum No. 31.39.41.01.00.10.2005.320(6) dated 09.09.2009 allowed the application of the petitioner to export the Edible Oils in DTAs and the NBR included edible oil in the DTAs list under serial No.93 and 94. Thereafter, on 18.01.2010, an agreement was signed between the petitioner and Trading Corporation of Bangladesh to sell 6000 M.T. of Edible Oils in the DTAs and the respondent Nos. 2 and 8 approved the said sale and the petitioner sold 100% edible oil to TCB by making payment of all Tax and duties. Next, the petitioner company suspended its total production from 2012 to 2017 and abandoned the said plant and in 2017, Dubai based investor has purchased 100% shares of the petitioner-company and the new management has started operation in the year of 2018, exported the produced Edible Oils to India under South Asian Free Trade Areas agreement (SAFTA). Next, on 06.03.1996, NBR passed standing order

No.1655/96/Customs and according to the said order the petitioner is entitled to sell 10% Edible Oil into the DTAs for home consumption and vide letter dated 19.12.2017, the respondent No.1 certified that the petitioner entitled to export 10% Edible Oils to DTAs subject to payment of necessary VAT, Tax and other duties. But the Customs Authority did not allow the petitioner to export Edible Oils to DTA, on the plea that there is no H.S. Code. The petitioner on 24.09.2018 and 26.12.2018 made applications before the respondent No.1 seeking for H.S. Code of the Edible Oil. On 05.03.2020, the respondent No.1 directed NBR to republish fresh SRO and kept the existing H.S. Code, but respondents did not pay any heed to it. In the meantime, Government of India has suspended import of Edible Oils to India. However, after obtaining license from the Director General of Foreign Trade of India and the petitioner has started export of Edible Oils to India, but on 11.05.2020, the Government of India permanently restricted import of Edible Oils Thus, petitioner's entire production is suspended and the respondent No.1 and the Customs Authority failed to allow the petitioner to export the Edible Oils to the DTAs. Thereafter, the petitioner made an application to the respondent No.2 to allow the petitioner to export 100% edible Oils to the DTA, but the authority did not pay any heed to it.

Admittedly, like all other Export Processing Zones factory, the prime condition for granting permission for setting up the said Edible Oil Industry in Mongla Export Processing Zone is to export the entire product of its factory and the said condition has been incorporated in Clause 13a of

the sanction letter issued on 17.10.2006 by Bangladesh Export Processing Zones Authority (BEPZA) Section 13(a) of the sanction letter depicted "The Company will export the entire product of its factory". Learned Advocate appearing on behalf of the respondent No.1 argued that it is also a policy decision of the Government not to allow export in the DTAs to save the local importers and industries. Learned Senior Counsel for the petitioner argued that BEPZA tried to defend its refusal order relating to disallow the petitioner to export its edible oil in DTAs on the ground of its policy decision and such action of BEPZA is without any cause and reason, thus illegal and against the Wednesbury Principle. (*Associated Provincial Picture Houses Ltd. –Vs.- Wednesbury Corporation (1947 2 All ER page 680)*). The said principle has been adopted by the Hon'ble Appellate Division in Civil Review Petition No.40 of 2019 by stating that: "*The policy decision of the Government may be interfered with only when the same is illegal or unconstitutional or shockingly arbitrary in the Wednesbury sense.*"

We also noticed that the total demand of edible oil in the local market is fulfilled by importing edible oil from abroad and only 04 local importers, imports 100% crude edible oil from abroad and the local importers fulfilled the 100% demand of edible oil in the domestic market by refining the said crude edible oil. Thus, the importers controlled the wholesale market and retail price in local markets, which goes against the interest of public at large. Learned Counsel for the petitioner argued that if BEPZA allows the petitioner to export edible oil in the local market i.e.

DTAs and also allows to carry out the sub-contracting jobs, it will rather ease the price of the commodity, which protects the interest of the public at large. Further, the Government of Bangladesh spends large amount of foreign currencies for the said import, if BEPZA allows the petitioner to process the edible oil and export the same in DTAs, the Government can save considerable amount of foreign currencies and time. The Government also can earn revenue at least Taka 40 to 50 Crore per month under the head of Tax, VAT and other duties, it will definitely serve greater public purpose and will be in public interest. We find support of this contention in the cases of *A R Shams-ud Doha –Vs.- Bangladesh and others*, 46 DLR 405 and *Commissioner of Customs, Customs House, Chittagong and another –Vs.- Bangladesh Trader*, 7 BLT(AD) (2004), 98.

Considering this aspect of the matter, we are of the view that justice would better serve if we direct the respondents to reconsider applications dated 27.05.2020 and 02.01.2020 and 21.07.2020 respectively (Annexure – J and J-2 to the writ Petition and Annexure –P-3 to the application for direction filed on 30.11.2020) for allowing the petitioner to export Edible Oils to the Domestic Tariff Areas (DTAs) after accepting VAT, Customs duty and Taxes etc. and to allow the petitioner to carry out the subcontract work of refining, filling, packaging of Edible Oil received from DTAs, after accepting applicable VAT, customs duties and taxes etc. from the petitioner company and export the same to the Domestic Tariff Areas (DTAs) as and when necessary, in the light of recommendation made under Memo No. 26.00.0000.113.93.005.20(part-2).338 dated 22.05.2022 by the

Ministry of Commerce (Annexure-BB in the supplementary affidavit filed on 25.05.2022) for greater public interest.

In the result, the Rule is disposed of and the respondents are directed to reconsider the petitioner's applications dated 27.05.2020 and 02.01.2020 and 21.07.2020 respectively (Annexure –J and J-2 to the writ Petition and Annexure –P-3 to the application for direction filed on 30.11.2020) in accordance with law, as soon as possible preferably within 03(three) months from the date of receipt of this order.

There is no order as to cost.

Communicate the judgment and order at once.

**Sardar Md. Rashed Jahangir, J:**

*I agree.*