

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

Writ Petition No. 9440 of 2016

With

Writ Petition No. 9441 of 2016

With

Writ Petition No. 9442 of 2016

With

Writ Petition No. 9443 of 2016

With

Writ Petition No. 9444 of 2016

With

Writ Petition No. 9445 of 2016

With

Writ Petition No. 9446 of 2016

With

Writ Petition No. 9447 of 2016

With

Writ Petition No. 4714 of 2016

With

Writ Petition No. 6042 of 2016

With

Writ Petition No. 15027 of 2016

In the matter of:

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

AND

In the matter of:

Apex Foods Limited

... Petitioner (in the W.P. No. 9440 of 2016)

Fresh Foods Limited

...Petitioner (in the W.P. No. 4714 of 2016)

M. U. Sea Foods Limited

...Petitioner (in the W.P. No. 6042 of 2016)

M/s. Anraj Fish Products Industries Limited

...Petitioner (in the W.P. No. 9441 of 2016)

M/s. Mashud Fish Processing & Ice Complex Ltd.

...Petitioner (in the W.P. No. 9442 of 2016)

M/s. Ark Sea Foods Limited.
 ...Petitioner (in the W.P. No. 9443 of 2016)
 M/s. Meenhar Sea Foods Limited
 ...Petitioner (in the W.P. No. 9444 of 2016)
 M/s. Seamark (BD) Limited
 ...Petitioner (in the W.P. No. 9445 of 2016)
 M/s. Pacific Sea Foods Limited
 ...Petitioner (in the W.P. No. 9446 of 2016)
 M/s. Meenhar Fisheries Limited
 ...Petitioner (in the W.P. No. 9447 of 2016)
 M/s. Sea Fresh Limited
 ...Petitioner (in the W.P. No. 15027 of 2016)

-Versus-

Government of Bangladesh and others
 ... Respondents (in all the Writ Petitions)
 Mr. Md. Yousuf Ali, Advocate
 ... For the petitioner (in all the Writ Petitions)
 Mr. Tanim Khan, D.A.G. with
 Mr. Md. Abdus Samad Azad, D.A.G. with
 Mr. Shadia Afrin Shapla, D.A.G. with
 Dr. Mohammad Soeb Mahmud, A.A.G.
 Mr. Md. Abul Hassan, A.A.G.
 Mr. Sk. Naser Wahed (Shemon), A.A.G.
 Mr. Md. Azadul Islam (Azad), A.A.G and
 Mr. Md. Tareq Rahman, A.A.G
 ... For the respondents (in all the writ petitions)

**Heard on: 28.10.2025, 05.11.2025,
 09.11.2025, 17.11.2025 and 24.11.2025**

Judgment on: 18.12.2025

Present:

**Justice Sardar Md. Rashed Jahangir
 And
 Justice Sheikh Abu Taher**

Sardar Md. Rashed Jahangir, J:

Rules Nisi have been issued in all this writ petitions upon applications under article 102 of the Constitution of the People's Republic of Bangladesh in an identical terms. The question of law involved in all the writ petitions are identical, based on identical

facts and the parties are also same, thus all of those are heard together and disposed of by the signal judgment.

In Writ Petition No. 9440 of 2016, Rule Nisi is as follows:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the impugned Memo being No. 33.02.0000.315.59.001.16-83 dated 29.06.2016 issued by respondent No. 4 requiring the petitioner to pay 15% VAT upon the fees paid for the service of microscopic organism and chemical test of the collected fish and shrimp samples for the purpose of exporting the same (Annexure-‘A’) should not be declared to have been issued without lawful authority and is of no legal effect and/or such other or further order or orders be passed as t this Court may seem fit and proper.”

It is stated that the petitioners are public/private limited companies incorporated under the Companies Act, 1994 and running their business of fish processing and refrigeration and exportation of shrimps and processed fish in different countries of the World. The project of the companies, under title ‘Fish Processing and Refrigeration’ have been duly registered with the Board of Investment (BOI) having specific registration numbers. Petitioners are registered with the VAT authority under section 15 of the VAT Act for the purpose of paying VAT. While the petitioners are caring on their business processing and refrigerating of shrimps and processed fish in order to export those to the

different countries of the world, the respondent No. 4 by an office memo dated 29.06.2016 addressing the Deputy Director, Fisheries Inspection and Quality Control Bureau, Chattogram requiring him to ensure that 15% VAT upon the fees of the service of microscopic organism and chemical test has been paid by the petitioners' company (Annexure- 'C').

Thereafter, the Deputy Director, Fisheries Inspection and Quality Control Bureau under a memo dated 30.06.2016 asking the Vice President of Bangladesh Frozen Foods Exporters Association for the strict compliance of the payment of 15% VAT on the fees of service of microscopic organism and chemical test of the collected processed fish and shrimps samples for the purpose of obtaining to ensure the 'Salubrity Certificate'.

Challenging the memo dated 29.06.2016 and its subsequent communication to the Vice President of the Bangladesh Frozen Food Exporters Association, the petitioners have filed this writ petitions and obtained the Rules Nisi.

Mr. Md. Yousuf Ali, learned Advocate appearing with Mr. Gobinda Biswas, learned Advocate for the petitioners submits that sub-section (2) of section 3 of the VAT Act, 1991 stipulated that zero rated VAT shall be applicable/imposed on the goods and services exported or deemed to be exported from Bangladesh.

He further submits that under clause (Ga) of section 2, উপকরণ (input) has been defined, which means all the raw materials excluding labour, land, building office apparatus and vehicle the laboratory re-agent, laboratory equipment, laboratory accessories, any of the gases, any of the fuels, packaging materials, any service and machinery and parts of machinery.

He next submits that under sub-clause (অ) of clause-(শা) of section 2, the term ‘deemed export’ having been defined, wherefrom it appears that to be qualified as ‘deemed export’ the raw materials, equipment, infrastructure or other materials necessary for the purpose of manufacturing exported goods is to be bought in foreign currency. But the services like supply of water, power, gas, telephone or any other services used as a component for manufacturing, management, transportation or marketing of the exported goods may also be come within the definition of ‘deemed export’. He continues to submit that wherefrom it is clear that the service of microscopic organism and chemical test received by the petitioners is also a component of ‘exported’ and ‘deemed exported’ product upon which 0(zero) rated VAT is applicable under section 3(2) of the VAT Act, 1991.

He again submits that under Rule 11 of the “মৎস্য ও মৎস্য পণ্য (পরিদর্শন ও মান নিয়ন্ত্রণ) বিধিমালা, ১৯৯৭”, the petitioners are required to obtain ‘Salubrity Certificate’ after getting it’s product tested in

laboratory for the purpose of exporting the processed fish and frozen shrimps and without having 'Salubrity Certificate', no processed fish and frozen shrimps can be exported. Referring to the aforesaid provisions, he submits that the 'Salubrity Certificate' is an essential component/ingredient/impute of processed fish and frozen shrimps to be exported, the aforesaid service received by the petitioners in the process of exportation of fish and frozen shrimps, thus, the service is enjoying zero rated VAT imposition. Meaning thereby, the service received in the process of exportation of their product is not liable with imposition of VAT, in other words, the service is exempted.

He further submits that since the laboratory testing service is an essential input/component of exportation, thus, the petitioners have no liability to pay any VAT on the fees of such test and therefore the impugned memo requiring the petitions to pay 15% of VAT on the microscopic organism and chemical test of the samples of processed fish and frozen shrimps is liable to be declared without lawful authority and is of no legal effect.

On the other hand, Mr. Md. Abdus Samad Azad, learned Deputy Attorney General submits that the service of microscopic organism and chemical test of the collected fish and shrimp samples, as received by the petitioners as service recipient, is liable to pay VAT at the rate 15% on the fees paid by the petitioners

according to section 3(1) of the VAT Act, 1991 read with section 6(4kaka). The said service neither included in the Second schedule of the VAT Act, 1991 nor any specific SRO provides for an exemption of Laboratory Test Charge, for the relevant period.

He further submits that regardless of entitlement of Zero rated VAT under the provision of section 3(2)(Ka) read with section ২(গ) and ২(শ)(অ) of the VAT Act, 1991, it is required to fulfill the conditions that the service must be treated as input (উপকরণ) and the transaction must be through foreign currency, in furtherance, according to the provisions of general order No. 3/Musuk/2014, the dated 05.06.2014 respondent No. 4 issued a general notice on 29.06.2016 for collecting and deducting VAT at source on laboratory service charge and challenging the same filing of writ petitions are absolutely premature. He further submits that in case of exporter, after the export is completed he/it may claim refund/duty drawback under section 13, and or 68 of the VAT Act, 1991 in accordance with law.

He next submits that in absence of any circular issued by the NBR clearly given exemption from payment of VAT for receiving the service namely “ল্যাবরেটরী টেস্ট চার্জ” at that relevant time i.e. in the year 2016, the petitioner cannot claim exemption upon the said test service. Though subsequently in the year 2019 vide SRO 188-Ain/2019/45-Mushak dated 13.06.2019 VAT has been exempted on

said service “ল্যাবরেটরী টেস্ট চার্জ”, which came into force on and after 13.06.2019. Operation of the said SRO has taken effect prospectively but not retrospectively and as such, the SRO 188 dated 13.06.2019 has no manner of application in the instant cases and hence, the petitioners are bound to pay VAT on test service at source and as such, the Rules as have been issued are liable to be discharged.

He next submits that through General Order No. 24/Musuk/2013 dated 06.06.2013, the NBR made provisions to deduct VAT at source under the authority of section 6(4kaka) of the VAT Act, providing Service Codes and the deducting authority/withholding entity. NBR also issued guidelines on deduction of VAT at source through General Order No. 03/Musuk/2014 dated 05.06.2014 and in clause (3) under heading “যে সব ক্ষেত্রে উৎসে মূসক কর্তন করতে হবে না” wherein Laboratory Test Service is absent, while gas, electricity, telephone, mobile phone, water service bill having been mentioned specifically upon which the VAT is not deductible and hence, it is the responsibility upon withholding entity to deduct VAT at source on laboratory test service at the rate of 15%, hence issuance of notice for payment of VAT on fees paid on laboratory testing charge is legal and as such, the Rules as have been issued are liable to be discharged for ends of justice.

In course of hearing, Mr. Tanim Khan, learned Deputy Attorney General also appearing for the respondents and made his extensive argument upon submitted a written submission. The contention of Learned DAG is that the petitioner is a public limited company having registered under the Companies Act, 1994. The petitioner is running business of processing fish and shrimps and also to export of the same to foreign country. According to section 5 of the Fish and Fish Products (Inspection and Quality Control) Ordinance, 1983- “No person shall export or sell for export or have in his possession for export, or deal in, any fish or fish products intended for human consumption which is decomposed, unwholesome or contaminated with pathogenic organisms.”

He further submits that the Rule 11 of the মৎস্য ও মৎস্য পণ্য (পরিদর্শন ও মান নিয়ন্ত্রণ) বিধিমালা, ১৯৯৭ provided ‘Salubrity Certificate’- ‘(1) No person shall export any fish or fish products unless that person obtains salubrity certificate regarding every lot of fish or fish products from the authorized officer.’ According to rule 11(1) of these Rules, if the Deputy Director or any other authorized officer responsible for the inspection and quality control of fish and fish products prepared for export is satisfied that the product is healthy/wholesome and fit for export, they shall issue a health or salubrity certificate in the prescribed ‘Form-III’.

He next submits that according to section 5 of the Ordinance of 1983 read with Rule 11 of the Rules of 1997, without obtaining Salubrity Certificate from authorized officer, no person shall export any fish or fish products. So obtaining the 'salubrity certificate' is a regulatory requirement or precondition prior to export the fish or sell for export or have in his possession for export, or deal in, any fish or fish products intended for human consumption, but is not an input of the export fishes/shrimps.

He next submits that in accordance of the Ordinance of 1983 as well as Rules of 1997, on the basis of the letter dated 19.06.2016 issued by the Director General, on 29.06.2016 the Quality Control Laboratory, Fish Adhidaptor, Chattogram sent a letter to the Deputy Director, Fish Inspection and Quality Control Department, Chattogram giving some requirements for test relating to the quality control of fishes including the payment of VAT.

He next submits that according to section 3(1) of the VAT Act, 1991, 'VAT shall be imposed and payable at the rate of 15% on the Value mentioned, on all goods imported into Bangladesh, except the goods listed in the First schedule to this Act, and on all services rendered in Bangladesh, except services specified in the Second schedule of this Act,'. So 15% VAT must be imposed on all goods/ service rendered in Bangladesh. So the VAT on the fees of

test is imposed legally and accordingly, the petitioner is bound to pay the said VAT.

These conditions are cumulative, not alternative. Any supply that does not satisfy both statutory requirements cannot be brought within the deeming fiction created under section ২(ক). In the present case, the petitioner has clearly stated that:

- the laboratory testing service was procured locally,
- the payments were to be made in local currency, and
- the service was rendered entirely within Bangladesh, without any transaction involving foreign currency or Back-to-Back L/C arrangements.

It is therefore evident in law that the laboratory test service cannot be classified as input of deemed export under section 2(ক). Consequently, the benefit of the zero rate VAT under section ৩(২) is not available for such services. Thus, in view of the explicit statutory language, legislative intent, and financial documentation requirements embedded in the VAT regime, the petitioners claim that the laboratory test constitutes a deemed export input is not tenable in law. The supply remains a domestic service, taxable at the standard VAT rate, and cannot attract zero rate treatment under the Vat Act, 1991.

He next submits that the statutory interpretation requires not only a literal meaning but also a contextual and purposive analysis.

When examining the remaining components listed in section ২(গ)(অ), a common and consistent characteristic becomes evident:

- সকল প্রকার কাঁচামাল,
- ল্যাবরেটরি রিএজেন্ট,
- গ্যাস/জ্বালানী,
- মোড়ক সামগ্রী,
- যন্ত্রপাতি ও যন্ত্রাংশ,

All are inherently and directly connected to the manufacturing or production process. Therefore, it can be assumed that the legislative intent was to define ‘উপকরণ (Input)’ as those items that form an essential part of, or are directly consumed in, the manufacturing process leading to the production of goods.

He next submits that the Apex Court has reaffirmed that *noscitur a sociis*- ‘it is known by its associates’- requires that the meaning of a doubtful or ambiguous word be understood from the words with which it is grouped. As held in *Attorney-General for Ontario Vs. Mercer* and repeatedly endorsed, every word should ordinarily be given its natural meaning unless the statutory context demands a narrower, associated, and harmonized meaning. Where a general expression appears in the company of clearly defined and specific terms, and where those terms form a coherent class, the adjoining general expression cannot be given an unlimited or free-floating scope.

He next submits that in the provision of section ২(গ), the word ‘সেবা (service)’ appears alongside items such as raw materials,

gas, fuel, packaging materials, and machinery all of which share a distinct and unmistakable functional identity: they are tangible inputs directly and integrally connected to the manufacturing process. Applying the principle explained in Maxwell on Interpretation ('words take their colour from each other'), the general term 'সেবা' must be restricted to a cognate, analogous sense, meaning services that perform the same functional role as the preceding specific items- namely, to contribute to production.

Heard learned Advocates of both the parties, perused the writ petitions together with the annexures. We have gone through the written submissions, the cited judgments and the provisions of law.

Sub-section (2) of section 3 of the VAT Act, 1991 provides that notwithstanding anything contained in sub-section (1) of section 3, any product or service exported or deemed exported from Bangladesh shall be imposed with zero rated VAT. It is not denied by the respondents that the petitioners are 100% export oriented companies exporting fish and frozen shrimp to different countries of the world to earn huge foreign currency. In order to encourage the exporter of goods including processed fish and fish product, the legislature provides a special benefit to the effect that their product is not liable with imposition of VAT i.e. shall enjoy zero rated VAT. Under section 5 of the Fish and Fish Product (Inspection and Quality Control) Ordinance, 1983, it is provided that: "No person

shall export or sell for export or have in his possession for export, or deal in, any fish or fish products intended for human consumption which is decomposed, unwholesome or contaminated with pathogenic organisms.”

Under the authority of section 3 read with section 15 of the Fish and Fish Product (Inspection and the Quality Control), Ordinance 1983 Government promulgated SRO No. 276 of 1997 framing the মৎস্য ও মৎস্য পণ্য (পরিদর্শন ও মান নিয়ন্ত্রণ) বিধিমালা, ১৯৯৭.

Rule 11 of the said Rules provides that no person shall export fish or fish product without obtaining ‘Salubrity Certificate’ from authorized officer. Meaning thereby, the ‘Salubrity Certificate’ issued after holding the service of microscopic organism and chemical test is an integral part of the process of exported product within the meaning of section ২(গ)(অ) of the VAT Act, 1991 and as such, the said service is prescribed with imposition of zero rated VAT under sub-section (2) of section 3 read with section 2(ফ) of the VAT Act, 1991.

On a bare reading of the aforesaid provisions, it appears that no VAT shall be imposed upon exported or deemed exported goods or service under sub-section (2) of section 3 of the VAT Act, 1991 and in the process of production or processing the aforesaid goods or service if any VAT or Supplementary Duty is collected or paid,

shall be in the language of clause (ফ) of section 2 of the VAT Act, 1991 shall, “ফেরত প্রদেয় হইবে।”

We have also examined the provision of section 13, 67 together with clause (ফ) of section 2 of the VAT Act, 1991, and the provisions of Rule 22, 28 and 29 of the VAT Rules, 1991, wherefrom it will be crystal clear to us the word ‘ফেরৎ’ used under the definition clause (ফ) of section 2, shall fall within the ambit of ‘duty drawback’ under section 13 of the VAT Act, 1991, because, if any VAT or supplementary duty is imposed or collected in the process of exportation that VAT or duty shall be subjected to duty drawback under section 13 read with section ২(ফ) with the aid of 3(2) of the VAT Act, 1991 and Rules 28 and 29 of the VAT Rules, 1991. Although the petitioners product/goods are enjoying privilege of zero rated VAT i.e. no VAT shall be imposed upon the petitioners product, but under the definition of ‘zero rated VAT’ [clause (ফ) of sub-section 2], it is provided that if any VAT is collected or paid against any component in the process of exportation that shall be subjected to duty drawback under the provision of section 13 read with section ২(ফ), of the VAT Act, 1991 and Rule 28 and 29 of the VAT Rules. Meaning thereby the petitioners product shall not be burdened with imposition of VAT and if any VAT is collected, the petitioners shall be entitled to drawback the said paid/collected VAT under section ২(ফ) read with

section 13, of the VAT Act, 1991 and Rule 28 and 29 of the VAT Rules, 1991 subject to compliance of all the requirement/element of exportation, and law.

In the premise above, we do not find any illegality in issuance of the memo dated 29.06.2016 requiring collection of 15% VAT upon the fees paid for the service of microscopic organism chemical test of processed fish and frozen shrimp sample.

Accordingly, the Rules are discharged. No order as to cost.

Communicate the judgment and order at once.

Sheikh Abu Taher, J:

I agree.