

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Md. Ashfaquul Islam
Mr. Justice Md. Rezaul Haque
Mr. Justice S. M. Emdadul Hoque

CIVIL APPEAL NO. 142 OF 2023

with

CIVIL PETITION FOR LEAVE TO APPEAL NO. 1131-1133 OF 2022

(From the judgment and Order dated 09.12.2021 passed by the High Court Division in Writ Petition No. 4186 of 2020)

The Government of Bangladesh, Appellants
represented by its Secretary, (In all the cases)
Ministry of Finance, Internal
Resource Division, Bangladesh
Secretariat, Ramna, Dhaka and
others

-Versus-

City Edible Oil Limited, Respondents
represented by its Managing (In C.A No. 142 of 2023)
Director and others

Sonargaon Steel Fabricate Ltd., Respondents
represented by its Managing (In C.P No. 1131 of 2022)
Director, Mostafa Kamal and another

Meghna Sugar Refinery Ltd., Respondents
represented by its Managing (In C.P No. 1132 of 2022)
Director, Mostfa kamal and others

Aman Cement Mills Unit-2 Ltd., Respondents
represented by its Managing (In C.P No. 1133 of 2022)
Director and another

For the
Appellants/petitioners
(In all the cases)

: Mr. Abdullah Al Mahmud,
Deputy Attorney General
instructed by Mr. Haridas
Paul, Advocate-on-Record

For the Respondents
(In C.A No. 142 of 2023)

: Mr. Fida M. Kamal, Senior
Advocate with Mr. Probir
Neogi, Senior Advocate and
Mr. M.A Hannan, Senior
Advocate instructed by Mr.
Md. Helal Amin, Advocate-on-
Record

For the Respondent No. 1
(In C.P No. 1131 of 2022)

Mr. Fida M. Kamal, Senior
Advocate with Mr. Probir
Neogi, Senior Advocate and
Mr. M.A Hannan, Senior
Advocate instructed by Mr.
Mohammad Ali Azam, Advocate-
on-Record

<u>For the Respondent No. 1</u> (In C.P No. 1132 of 2022)	Mr. Fida M. Kamal, Senior Advocate with Mr. Probir Neogi, Senior Advocate and Mr. M.A Hannan, Senior Advocate instructed by Mr. Mohammad Ali Azam, Advocate-on-Record
<u>For the Respondents</u> (In C.P No. 1133 of 2022)	Mr. Fida M. Kamal, Senior Advocate with Mr. Probir Neogi, Senior Advocate and Mr. M.A Hannan, Senior Advocate instructed by Mr. Md. Helal Amin, Advocate-on-Record
<u>For the Respondent No. 2</u> (In C.P No. 1131 of 2022)	Not Represented
<u>For the Respondent Nos. 2-8</u> (In C.P No. 1132 of 2022)	Not Represented
<u>Date of Hearing</u>	: <u>28.01.2025, 29.01.2025,</u> <u>04.02.2025, 12.02.2025,</u> <u>18.02.2025 and 25.02.2025</u>
<u>Date of Judgment</u>	: <u>03.03.2025</u>

J U D G M E N T

Md. Ashfaqul Islam, J: This Civil Appeal by leave is directed against the Judgment and Order dated 09.12.2021 passed by the High Court Division in Writ Petition No.4186 of 2020 making the Rule absolute.

The Facts, in short, are that the writ-petitioners Nos.1, 3, 5, and 7 (respondents herein) are private companies duly incorporated under the Registrar of Joint Stock Companies and Firms, Dhaka. They sought direction upon the writ-respondents not to implement SRO No.104-

Law/Income Tax/2020 dated 25.03.2020, published in the Gazette on 10.05.2020, which effectively nullified the tax exemption granted by writ-respondent No.2, NBR, under SRO No.81-Law/Income Tax/2019 dated 23.03.2019 for 10 years (up to 02.10.2028).

Writ-petitioners Nos. 1-6 established their industrial operations in the City Economic Zone, Narayanganj, on 77.9655 acres of land. They were granted tax exemptions under SRO No. 81/2019 for a 10-year period. Similarly, Writ-petitioners Nos. 7 and 8 are in the process of establishing their operations in the Hoshendi Economic Zone, Munshigonj. Both groups of petitioners, relying on the tax exemptions, complied with all regulatory requirements, including obtaining trade licenses, TIN, and VAT registration.

However, the Ministry of Finance issued SRO No. 104/2020 on 25.03.2020, which excluded certain goods, such as edible oil, sugar, cement, and others, from the benefit of tax exemptions. The issuance of SRO effectively revoked the exemptions granted under the earlier SROs, and the petitioners were adversely affected. They argued that the new SRO was issued without

proper consultation with the Bangladesh Economic Zone Authority (BEZA), and it unjustly deprived them of the tax benefits promised to encourage investment in the economic zones.

The Government, in defense, Stated that the new SRO was issued under its authority to ensure fair market competition and was in line with the provisions of the Income Tax Ordinance, 1984. The Government argued that the petitioners were enjoying benefits that were not intended for companies marketing their goods locally. They also emphasized that the changes were made in compliance with the overriding legal authority granted under the Income Tax Ordinance.

The High Court ruled in favor of the petitioners, but the Government, dissatisfied with this judgment, filed an appeal. The Government contended that the issuance of SRO No. 104/2020 was within its legal rights and served the public interest. This appeal, therefore, seeks to reverse the High Court's decision, arguing that the tax exemptions should be withdrawn in accordance with the new SRO to ensure equitable market conditions.

The learned Deputy Attorney General for the appellants submits that the Government, under section 44(4)(b) of the Income Tax Ordinance, 1984, has the authority to grant tax exemptions via Notifications (SROs) for specified periods. In this case, SRO No. 81 (2019) was issued, granting tax exemptions to the relevant entities, but this was subsequently repealed by SRO No. 104 (2020). He argues that the tax exemptions granted under the aforementioned SROs were conditional in nature and subject to modification or withdrawal by the Government. The learned Deputy Attorney General submits that the writ petitioners, in this case, do not have any vested rights that compel the Government to continue the exemptions, especially after their repeal through the lawful issuance of a subsequent SRO. The repeal of SRO No. 81 (2019) was a valid exercise of the Government's power, and the petitioners cannot claim any entitlement to these exemptions after they were legally rescinded.

He further submits that the High Court Division failed to recognize the conditional nature of the exemptions under the repealed SROs and misinterpreted critical provisions of law, specifically sections

44(4)(b) and 184F of the Income Tax Ordinance, 1984, as well as the Bangladesh Economic Zone Act, 2010. In fact, the exemptions were contingent upon the SROs being in effect, and once repealed, no such right could exist.

It was argued that that the Government, under the Income Tax Ordinance, 1984, has absolute discretion to grant or withdraw tax exemptions, as is clearly outlined in section 44(4)(b). The exemptions provided under SRO Nos. 226 and 81 were privileges conferred upon the entities, but these were not irrevocable or absolute rights. They were explicitly subject to the Government's discretion and could be withdrawn at any time. He emphasizes that tax exemptions are policy decisions made for fiscal and economic purposes and are within the purview of the executive branch of the Government. These decisions are not open to judicial scrutiny unless they are arbitrary, discriminatory, or unconstitutional, which is not the case here.

In continuation, he submits that the High Court Division mistakenly conflated the Income Tax Ordinance, 1984, and the Bangladesh Economic Zone Act, 2010, in its

judgment. The Government's decision to withdraw the tax exemptions was based on the provisions of the Income Tax Ordinance, not on the Bangladesh Economic Zone Act. He asserts that the two pieces of legislation are distinct and separate in their scope and applicability. The Economic Zone Act does not govern the issuance or withdrawal of tax exemptions, which is the exclusive domain of the Income Tax Ordinance. The petitioners' reliance on the Economic Zone Act to argue for continued exemptions is misplaced, and the judgment of the High Court Division on this point is erroneous.

It was argued that that the Government's decision to withdraw the tax exemptions was a legitimate exercise of sovereign power in the public interest. The Government had the responsibility to ensure that fiscal policy remained fair and equitable, and the withdrawal of these exemptions was intended to prevent market distortion and ensure a level playing field. The principle of promissory estoppel does not apply to the Government's exercise of its sovereign functions, particularly when these functions serve the broader public interest.

He finally submits that the High Court Division's judgment should be set aside as it misinterprets the applicable laws and ignores the discretionary powers of the Government to grant or withdraw tax exemptions. The judgment of the High Court Division incorrectly assumes that the petitioners had an unconditional right to the tax exemptions, which was never the case. The petitioners' reliance on the expired SROs and the incorrect application of the Economic Zone Act are legal errors that must be corrected by this Court.

On the other hand Mr. Fida M. Kamal, along with Mr. Probir Neogi and Mr. M.A. Hannan, the learned Senior Advocate(s) on behalf of the respondents supports the impugned judgment of the High Court Division, arguing that the Bangladesh Economic Zones Authority (BEZA) Act, 2010 (Act No. 42 of 2010) was enacted to establish economic zones with guaranteed financial benefits under Section 11, akin to the Bangladesh Export Processing Zone Act, 1980.

He further submits that the Governing Board of BEZA, chaired by the Prime Minister, approved these benefits on 18.02.2015, instructing concerned ministries, including

the Ministry of Finance, to issue necessary orders. Consequently, S.R.O. No. 226 dated 08.06.2015 was issued, not as an independent policy decision, but under Section 44(4)(b) of the Income Tax Ordinance, 1984, to implement BEZA's directives. However, the subsequent S.R.O. No. 104 dated 25.03.2020 excluded seven key items (ভোজ্য তেল, চিনি, আটা, ময়দা, সিমেন্ট, লোহা ও লৌহ জাতীয় পণ্য) from exemption without consulting BEZA, thereby overriding primary legislation through subordinate legislation.

He further contends that the Ministry of Finance was never the independent authority to grant exemptions but acted as a conduit for BEZA's directives. By issuing S.R.O. No. 104 under Section 44(4)(b), the Ministry of Finance overstepped its jurisdiction, violating Section 21 of the General Clauses Act. The arbitrary exclusion of seven items constitutes "pick and choose," rendering BEZA Act, 2010 ineffective. Additionally, this move discriminates against companies within economic zones compared to those outside, violating fundamental rights.

Next he contends that the exemption under S.R.O. Nos. 226 and 81 led petitioner No. 1 to establish industries with proper approvals and investment. The National Board

of Revenue (NBR) issued exemption certificates under Sections 52 and 53 of the Income Tax Ordinance, valid for ten years (2018-2028). By retroactively denying exemptions, the Government violates the doctrine of promissory estoppel, depriving petitioners of their vested rights.

Finally, he submits that fiscal statutes must be strictly construed. The BEZA Act, being special legislation, overrides the general provisions of the Income Tax Ordinance. The respondents argue that S.R.O. No. 104 negates the parent Act and should be declared ultra vires.

We have heard the submissions of the learned Advocates and the Deputy Attorney General for the respective parties, perused the impugned judgment and order passed by the High Court Division as well as the other materials on record placed before us.

The Rule was issued in the instant writ petition challenging the propriety and legality of the SRO No. 104 of 2020. This SRO lifted the exemption of tax given in pursuance of earlier two S.R.O Nos. 226 of 2015 and 81 of 2019 under section 44(4)(b) of the Income Tax Ordinance,

1984 (hereinafter referred to as Ordinance, 1984) in respect of some specified items (ভোজ্য তেল, চিনি, আটা, ময়দা, সিমেন্ট, লোহা ও লৌহ জাতীয় পণ্য) within economic Zones.

Exemption was given by two S.R.O's being No. 226 of 2015 and 81 of 2019 upon the aforesaid specified items by the Government and all the three S.R.O.s including the impugned one (S.R.O No. 104 of 2020) were issued under Section 44(4)(b) of the Ordinance, 1984.

The High Court Division after hearing the parties made the Rule absolute mainly on the point that the essence of all the S.R.O's including the impugned order rooted in অর্থনৈতিক অঞ্চল আইন, ২০১০ (২০১০ নম্বর ৪২ নং আইন) and in terms of the said law, exemption that was given by the S.R.O Nos. 226 of 2015 and 81 of 2019 was in absolute compliance of the same but lifting of the said exemption by the impugned S.R.O No. 104 of 2020 has paved the way of pick and choose among the similar group of companies belong to the Economic Zones.

Leave was granted to consider the submissions of the learned Deputy Attorney General, whether the withdrawal

of tax exemptions granted under earlier SROs by SRO No. 104 of 2020 issued under Section 44(4)(b) of the Income Tax Ordinance, 1984 is justified in the light of express provisions of fiscal law, its strict interpretation, and the constitutional mandate.

Admittedly the law is settled that in case of any conflict of interpretation in a given situation, benefit should be in favour of the public at large.

In this context submissions of the learned DAG holds good that companies producing specified products, even if they are outside of the Economic Zone, will benefit from the issuance of S.R.O No. 104 of 2020.

In other words the manufacturer of those products inside the Economic Zone and outside the Zone would equally come within the scope of S.R.O impugned against.

Moreover, it is also known that Section 44(4)(b) will override all other laws in terms of Section 184(F) of the Ordinance, 1984 read with Section 21 of the General Clauses Act, 1897.

Further it is to be noted that all the S.R.Os have been issued after consultation with the Prime Minister as the Chairperson of the Board and therefore, it is absolutely in terms of Articles 48(3) and 55(5) of the Constitution.

That being the position let us first examine the relevant provisions of law as hinted above for better understanding.

Section 44(4) (b) of the Ordinance, 1984 stipulates:

"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."

Section 184(F) of the Ordinance, 1984 States as under:

"184F. Notwithstanding anything contained in any other law for the time being in force, the provisions of this Ordinance or any proceedings thereunder shall

prevail over any other law in respect of the imposition and the collection of tax, the exemption of any income from tax, the reduction of the rate of tax, the calling for any information for the purpose of taxation, and the protection of information under this Ordinance."

Section 21 of the General Clauses Act, 1897 States:

"21. Where, by any [Act of Parliament] or Regulation, a power to issue notifications, orders, rules, or bye-laws is conferred, then that power 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."

Article 48(3) of the Constitution States:

"In the exercise of all his functions, save only that of appointing the Prime Minister pursuant to clause (3) of article 56 and the Chief Justice pursuant to clause (1) of article 95, the President shall act in accordance with the advice of the Prime Minister:

Article 55(5) of the Constitution States:

"The President shall by rules specify the manner in which orders and other instruments made in his name shall

be attested or authenticated, and the validity of any order or instrument so attested or authenticated shall not be questioned in any court on the ground that it was not duly made or executed."

Fiscal law should be interpreted and construed in its strict application. In the renowned decision of Director of Taxation and Excise of Government of East Pakistan vs Mehdi Ali Khan Panni 32 DLR (AD) 138 our Appellate Division came down heavily in interpreting fiscal statutes alongside doctrine of laissez-faire and welfare economy. His Lordships Justice Kemaluddin Hossain observed as under:

"In interpreting a taxing statute a controversy often arises and learned authorities are cited in support of the proposition that a taxing statute is to be construed strictly in favour of the subject. But this view though not abandoned in case of unresolved ambiguity, does no longer get the one-sided support from the judicial authorities. The view of strict construction

prevailed at a time when the doctrine of laissez faire was the ruling principle of economy of a State, but almost all the leading States of the world have long abandoned the doctrine, and adopted the welfare doctrine of economy. Even a country like England where the doctrine of laissez-faire originated has abandoned it in favour of welfare economy. The newly emerging nations like ours have mostly adopted the welfare doctrine.

A taxing statute is to be interpreted on the language used in the statute. No tax can be imposed on the citizen without the word in an Act of the Legislature clearly showing the intention to lay a burden on him. When that intention is sufficiently shown, it is not open to speculate on what would be the fair and most equitable mode of levying tax.

In a fiscal or taxing statute one has to look merely at what is clearly said therein, for

there is no room for any intendment, nor for any equity or for any presumption. In case of unresolved ambiguity, it may be interpreted favorably to the citizen but nothing more. The attempt of the Court in case of justice and fairness and to try to arrive at a true meaning of the word."

In the case of Government of Bangladesh vs. North South University 16 LM(AD) 2024 63 it has been observed:

"Pursuant to Section 44(4)(b) of the Ordinance, 1984, the Government is empowered to make any exemption, reduction in rate or other modification in respect of tax infavour of any class of income or in regard to the whole or any part of the income of any class of persons and the impugned SROs having been issued/promulgated by the Government pursuant to the above mentioned provision of law, as such it cannot be said by any means that the impugned SROs were issued/promulgated without lawful authority.

Moreover, no new tax is being imposed through the impugned SROs; rather the rate of exemption is modified only. The rate of exemption can never be treated as right rather same is a privilege which can recalled/withdrawn/rescind by the Government at time any considering the prevailing economic condition of our country as a basis of necessity."

One of the core principles of a fair and just tax system is equality. The withdrawal of tax exemptions can be justified as a measure to ensure that all industries dealing with similar commodities face a level playing field. If certain sectors within the Economic Zones receive preferential tax treatment, it can create distortions in the market by giving those industries an unfair advantage over those outside the zones. The principle of equal treatment ensures that businesses, regardless of their location or sector, are subject to similar tax obligations when dealing with the same set of commodities.

Removing these exemptions ensures that all industries dealing with the same commodities are taxed in a uniform manner, thereby preserving the integrity of the tax system. This can help create a tax system that is not only fairer but also more effective in generating revenue for the State.

The withdrawal of tax exemptions can be justified in the light of broader national fiscal policy objectives. For example, if the Government's fiscal policy shifts towards ensuring a more sustainable and comprehensive taxation system, it might be necessary to reduce or remove exemptions that apply to specific sectors. By applying the same tax regime to all industries dealing with the same set of goods, the Government can ensure that its fiscal policy is consistent across the economy, reflecting a more transparent and predictable tax environment.

The Government, under Section 44(4)(b) of the Income Tax Ordinance, 1984, holds substantial discretion in granting tax exemptions. These exemptions are policy-

based decisions meant to stimulate industrial development and economic growth. However, it is essential to understand that these exemptions are conditional, subject to the Government's policy goals, and can be adjusted or withdrawn when deemed necessary. The fact that the Government issued SRO Nos. 226 and 81 initially does not create an irrevocable entitlement. The ability of the Government to amend or withdraw these exemptions should be respected, especially when the need arises to adjust fiscal policy to ensure a fairer playing field across various sectors and markets. Thus, the respondents' reliance on the exemption as a vested right must be rejected because the exemptions were always subject to revision.

The issuance of SRO No. 104-Law/Income Tax/2020 is in full compliance with Section 44(4)(b) of the Income Tax Ordinance. The Government's power to modify tax exemptions through subordinate legislation is explicitly mentioned in the Income Tax Ordinance. The withdrawal of exemptions from specific goods like ভোজ্য তেল, চিনি, আটা, ময়দা, সিমেন্ট,

লোহা ও লৌহ জাতীয় পণ্য , while keeping the exemptions for other sectors intact, reflects a nuanced approach to avoid market distortion. This action is within the Government's legislative competence and is intended to ensure fairness in competition. Furthermore, Section 184F of the Ordinance provides that the provisions of the Income Tax Ordinance shall prevail over conflicting provisions in other laws, solidifying the Government's authority to issue such notifications without interference from other statutory instruments.

The Government's decision to withdraw tax exemptions for specific goods produced within economic zones is motivated by the need to level the playing field and prevent market distortions. It is unfair for companies within economic zones to enjoy tax benefits while competing with others in the local market who do not receive similar advantages. This selective advantage could potentially lead to unfair pricing, where goods produced within economic zones are artificially cheaper than those manufactured outside. The withdrawal of tax

exemptions for certain goods ensures that all market participants, regardless of their location, compete on equal terms. Therefore, the Government's intervention is in the broader public interest, aiming to maintain equity in the national economy.

While the respondents argue that the tax exemptions were granted under the auspices of BEZA's directives, it is crucial to understand that the Government has ultimate authority over fiscal matters, including taxation. The Government's discretion to issue or revoke SROs is rooted in the Income Tax Ordinance, not BEZA's recommendations. The economic zones were established with the goal of attracting investment and promoting industrial growth, and tax exemptions were one of the tools used to achieve this. However, as economic conditions evolve, it is the prerogative of the Government to adjust these exemptions to ensure that the fiscal system remains balanced and equitable. The Government's decision to exclude certain goods from tax exemptions aligns with this broader policy and aims to safeguard national economic interests.

The petitioners argue that the doctrine of promissory estoppel should prevent the Government from withdrawing the tax exemptions. However, this argument is misplaced. Promissory estoppel applies when a party has made a promise upon which another party has relied to their detriment. In this case, the exemptions were never an unconditional promise but a fiscal policy decision subject to change. Tax exemptions are a matter of public policy, not contractual obligations. The Government's decision to withdraw the exemptions was not arbitrary or made in bad faith, but rather to rectify an imbalance in the market. Therefore, the petitioners cannot claim that they have suffered detrimental reliance on an assumption of continued tax exemptions.

The respondents assert that the Bangladesh Economic Zone Act, 2010, should override the provisions of the Income Tax Ordinance, but this is a misinterpretation of the legal framework. The Economic Zone Act is a specialized law that deals with the establishment and management of economic zones, whereas the Income Tax

Ordinance governs taxation and tax exemptions. These two pieces of legislation operate in different domains. The Economic Zone Act does not grant the Government or BEZA the power to impose tax exemptions independently. Tax exemptions, as seen in this case, are granted under the Income Tax Ordinance, which provides a legal basis for the withdrawal of such benefits. Therefore, the Income Tax Ordinance prevails in matters related to taxation, and the Government's decision to amend the exemptions is in full compliance with the provisions of that law.

The Government's primary responsibility is to act in the public interest. The withdrawal of these tax exemptions is a measure aimed at preventing economic distortion and ensuring that the benefits of tax relief are not concentrated in the hands of a few entities. The public interest argument is central here: by withdrawing the exemptions from specific sectors, the Government is ensuring that public resources are allocated in a way that benefits the broader economy. The legal and fiscal decisions made in this case are in line with the

Government's role to regulate the economy effectively, and they are not subject to judicial interference unless there is clear evidence of arbitrariness or bad faith, which does not exist in this case.

Fiscal policy, including tax exemptions, is within the discretion of the Government. The Government's right to determine its fiscal policy is fundamental to maintaining a stable economy and ensuring that the tax system works in the national interest. The issuance and withdrawal of tax exemptions are policy decisions designed to reflect the evolving economic landscape. The decision to withdraw the exemptions for certain sectors is a legitimate exercise of the Government's discretion, aimed at improving the fairness of the tax system and promoting a more equitable economic environment. The respondents cannot assert entitlement to continued exemptions merely because they made business decisions based on past policies. The Government retains the right to amend its fiscal policies in response to changing economic conditions and policy goals.

Interpreting fiscal law (or tax law) requires a specific and often strict approach due to its unique nature. Fiscal law deals with the rules and principles governing taxation—how the Government collects money from individuals and businesses to fund public expenditure. Great question—that goes to the heart of how the Government balances fiscal policy, public interest, and legal certainty.

Governments usually have the legislative power to alter or withdraw tax exemptions or benefits, unless a binding commitment or contract exists. Courts have consistently held that tax exemptions are privileges, not rights. There is no certainty in tax exemption unless it is contractually guaranteed. Tax benefits are generally policy tools, not permanent entitlements.

A 10-year tax holiday or incentive scheme can be withdrawn unless there is a legal guarantee that it will remain in effect for 10 years without change. Generally, tax exemptions are granted to promote investment, development, or specific sectors. However, if Government priorities change and it determines that the continuation

of the benefit is no longer in the public interest, it can withdraw it. Courts have given wide discretion to economic policy decisions, even if they cause hardship.

In the case of *Kasinka Trading vs. Union of India* (UOI) AIR 1995 SC 874 it was held that:-

"..... the Government could withdraw an exemption granted by it earlier only if such withdrawal could be made without offending the rule of promissory estoppel and without depriving an industry entitled to claim examination for the entire specified period for which exemption had been promised to it at the time to giving incentive..... In our opinion, no justifiable prejudice was cause to the appellants in the absence of any unequivocal promise by the Government not to act and review its policy even if the necessity warranted and the "public interest" so demanded."

In the case of *Shrijee Sales Corporation vs. Union of India* (1997)3SCC 398 it was held:

"The primary focus of the judgment in the case of *Bombay Conductors* (supra) was that imposition

of taxes and withdrawal thereof are legislative functions and since there can be no estoppel against the legislature, the withdrawal Notification was not hit by the principles of estoppel; however, the impugned judgment does not dispute that the doctrine of promissory estoppel can be attracted against the State. However, after an analysis of various previous judgments of this Court on the question of promissory estoppel against public authorities, the judgment concludes that the question of promissory estoppel cannot be invoked when the public interest requires otherwise."

The Government can withdraw a tax benefit if (1) there is no contractual obligation, (2) it is justified by public interest, revenue protection, or policy changes, and (3) it is not arbitrary or discriminatory.

The Ministry of Finance, while issuing S.R.O. No. 104 under Section 44(4)(b) of the Income Tax Ordinance, 1984, acted well within its statutory authority. The claim that

the Ministry merely serves as a "conduit" for BEZA's directives is misleading, as tax exemptions and fiscal policies inherently fall within the purview of the Ministry of Finance. Section 44(4)(b) of the Income Tax Ordinance, 1984 explicitly grants the Government the power to issue exemptions, and the exercise of this power does not contravene Section 21 of the General Clauses Act, 1897. Where two statutes operate in distinct domains—taxation and industrial development—the more specific legislation shall prevail only within its scope. In matters of taxation, the Income Tax Ordinance retains overriding force unless otherwise expressly provided.

Furthermore, the exclusion of specific items from the exemption list is a matter of policy discretion rather than an arbitrary "pick and choose" approach. The BEZA Act, 2010, does not override the Government's fiscal authority but operates within the broader regulatory framework, ensuring that exemptions align with national economic and revenue interests.

This Court underscores that while fiscal incentives remain a potent tool of industrial policy, their

continued application must align with evolving economic conditions and constitutional principles of fairness and equity. We hold that tax exemptions granted under Section 44(4) (b) of the Ordinance are conditional, discretionary, and subject to lawful withdrawal. The doctrine of promissory estoppel cannot limit sovereign fiscal discretion unless statutory guarantees exist.

Accordingly, the appeal is allowed without any order as to costs. The impugned judgment and order passed by the High Court Division is hereby set aside. The Civil Petition for Leave to Appeal Nos. 1131-1133 of 2022 are disposed of in the light of the judgment delivered in Civil Appeal No. 142 of 2023.

J.

J.

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