**IN THE SUPREME COURT OF THE**

**DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

*In the matter of an Appeal in terms of Article 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka.*

**SC APPEAL NO. 120/2021**

SC SPL LA 138/2019

CA Case No. CA (TAX) 17/2017

Tax Appeals Commission No. TAC/IT/012/2014

Stafford Motor Company (Private) Limited,
718/7, Maradana Road,
Colombo 10.

**APPELLANT**

**Vs.**

The Commissioner General of Inland Revenue,
Department of Inland Revenue,
Sir Chittampalam A. Gardiner Mawatha,
Colombo 02.

**RESPONDENT**

**AND NOW BETWEEN**

The Commissioner General of Inland Revenue,
Department of Inland Revenue,
Sir Chittampalam A. Gardiner Mawatha,
Colombo 02.

**RESPONDENT-APPELLANT**

**Vs.**

Stafford Motor Company (Private) Limited,
718/7, Maradana Road,
Colombo 10.

**APPELLANT-RESPONDENT**

**BEFORE** : **P. PADMAN SURASENA, J.**
**KUMUDINI WICKREMASINGHE, J.**
**A.L. SHIRAN GOONERATNE, J.**

**COUNSEL** : Manohara Jayasinghe DSG for the Respondent-Appellant.

Dr. Shivaji Felix PC with Shanaka Amarasinghe and Nivantha Satharasinghe instructed by Julius & Creasy for the Appellant-Respondent.

**ARGUED ON** : 04-04-2024

**DECIDED ON** : 07-07-2025

**P. PADMAN SURASENA, J.**

The Appellant-Respondent (hereinafter sometimes referred to as the Respondent Company) is a company incorporated in Sri Lanka. Its business is importing and distributing products under the brand of "Honda" and "Hero Honda".

The Respondent Company has submitted its Return of Income for the year 2009/2010 on 29-11-2010. The Assessor has rejected the said Return on the basis that the Respondent Company was not entitled to deduct the amount of the Nation Building Tax (hereinafter sometimes referred to as NBT) it had paid at the point of importation. The Respondent Company has made the said deduction having treated the said paid amount of NBT as an allowable deduction when calculating the profit and income of the Respondent Company for the relevant assessable year. Having rejected the afore-said Return of Income submitted by the Respondent Company, the Assessor has issued an assessment in terms of Section 163 of the Inland Revenue Act No. 10 of 2006 (hereinafter sometimes referred to as IRA).

Being aggrieved by the decision of the Assessor to issue the Assessment in terms of Section 163 of the IRA, the Respondent Company then appealed to the Commissioner General of Inland Revenue who stands as the Respondent-Appellant in this Appeal. (The Respondent-Appellant in this case would hereinafter sometimes be referred to as the CGIR). The CGIR, by the Determination dated 18-07-2014 (produced marked **X 1**), dismissed the said Appeal and affirmed the decision of the Assessor to issue the Assessment in terms of Section 163 of the IRA.

Being aggrieved by the aforesaid Determination of the CGIR, the Respondent Company has then appealed to the Tax Appeals Commission.

The Tax Appeals Commission, after considering the said Appeal, by its Determination dated 17-03-2017 (produced marked **X 3**), affirmed the Determination made by the CGIR and dismissed the Appeal of the Respondent Company.

Being dissatisfied with the Determination of the Tax Appeals Commission, the Respondent Company then appealed to the Court of Appeal by stating a case for the opinion of the Court of Appeal. The questions of law formulated for the opinion of the Court of Appeal by the Tax Appeals Commission are as follows:

1. *Is the determination of the Tax Appeals Commission time barred?*

2. *Did the Tax Appeals Commission err in law when it came to the conclusion that the assessment was not time barred?*

3. *Did the Tax Appeals Commission err in law when it came to the conclusion that the Nation Building Tax paid at the point of importation of articles to Sri Lanka is a disallowable expense under section 26(1)(l)(iii) of the Act No. 10 of 2006 as amended?*

4. *In view of the facts and circumstances of the case, did the Tax Appeals Commission err in law when it came to the conclusion that it did?*

The Court of Appeal by its judgment dated 15-03-2018 (produced marked **D**), for the reasons set out therein, acting under Section 11A (6) of the Tax Appeals Commission Act, has decided to annul the Assessment issued by the Assessor.

Being dissatisfied with the opinion of the Court of Appeal, the CGIR sought Special Leave to Appeal from this Court. This Court, upon hearing the learned Counsel for both parties, by its order dated 15-11-2021, has granted Special Leave to Appeal on the questions of law set out in paragraphs 21 (a) to (e) of the Petition dated 25-04-2019. These questions of law which I have re-numbered as (1) to (5) are reproduced below:

1) *Did the Court of Appeal misdirect itself in law and fact by holding that the 'Parties agree that the assessment in the instant case was made on 30-11-2012', when no such agreement has been recorded before assessor, Commissioner General of Inland Revenue, the Tax Appeals Commission or the Court of Appeal?*

2) *In any event, did the Court of Appeal misdirect itself and err in law by agreeing and or holding that the assessment in the instant case was made on 30-11-2012?*

3) *Did the Court of Appeal err in law by considering the time period for assessment set out in Section 163 (5) of the Inland Revenue Act No. 10 of 2006, as being mandatory?*

4) *Did the Court of Appeal misdirect itself and err in law by disregarding the provisions of section 195 of the Inland Revenue Act No. 10 of 2006?*

5) *Did the Court of Appeal err in law by holding that the assessment was time barred?*

Upon the submissions made by the learned Counsel for the Respondent Company, this Court has also granted Special Leave to Appeal on two additional questions of law. I have re-numbered those two questions of law as Nos. (6) and (7). They are also reproduced below:

6) *Did the Court of Appeal err in law when it held that the Determination of the Tax Appeals Commission was not time barred?*

7) *Did the Court of Appeal err in law when it answered the question, "whether the Tax Appeals Commission erred in law when it came to the conclusion that the*

*Nation Buildings Tax (N.B.T) paid at the point of importation of articles to Sri Lanka is a disallowable expense under section 26(1) (L) (iii) of Act No. 10/2006 as amended?" in the negative.*

Let me first consider the afore-mentioned question of law No. 05 which indeed is the issue whether the Assessor has made the Assessment within the time prescribed by Section 163(5) of the Inland Revenue Act No.10 of 2006. In doing so, let me at the outset, reproduce below, the portion from the said section relevant for this discussion.

S. 163(5) of Inland Revenue Act No. 10 of 2006, as amended by the Inland Revenue (Amendment Act No. 22 of 2011)

*(5) Subject to the provisions of section 72, no assessment of the income tax payable under this Act by any person or partnership -*

*(a) who or which has made a return of his or its income on or before the thirtieth day of November of the year of assessment immediately succeeding that year of assessment,*

*(i) where such year of assessment is any year of assessment commencing prior to April 1, 2013, shall be made after the expiry of a period of two years from the thirtieth day of November of the immediately succeeding year of assessment; and*

*(ii) where such year of assessment is any year of assessment commencing on or after April 1, 2013, shall be made after the expiry of a period of eighteen months from the thirtieth day of November of the immediately succeeding year of assessment:*

*(b) who has failed to make a return on or before such date as referred to in paragraph (a), shall be made after the expiry of a period of four years from the thirtieth day of November of the immediately succeeding year of assessment:*

*[…]*

Section 106(1) of the Inland Revenue Act No. 10 of 2006 has mandated that a taxpayer shall furnish a return of his income for any year of assessment commencing on the 1st day of April of a given year and ending on the 31st day of March of the immediately succeeding year. Under this section, such taxpayers must submit their returns of income before the 30th day of September of the said immediately succeeding year. Thus, the term 'year of assessment' under this Act is a year commencing from 1st April of a given year and ending on the 31st of March of the following year.

The Respondent Company has submitted its return of income for the Year of Assessment 2009/2010 on 29-11-2010. The Year of Assessment which is denoted as 2009/2010 is the year commencing from 1st April 2009 and ending on 31st of March 2010. Therefore, the year of assessment 2009/2010 is a year of assessment which commences prior to April 1, 2013 for the purpose of Section 163(5) (a)(i) of the IRA.

Section 163(5) (a)(i) of the IRA has stated that the two-year period referred therein commences to run from the thirtieth day of November of the immediately succeeding year of assessment. As the relevant year of assessment is 2009/2010, the immediately succeeding year of assessment thereto, is the year of assessment 2010/2011. This is the year of assessment commencing from 1st April 2010 and ending on 31st of March 2011. Therefore, the thirtieth day of November of the immediately succeeding year of assessment referred to in Section 163(5) (a)(i) of the IRA for the purpose of the instant case would be 30-11-2010.

The Respondent Company has submitted its Return of Income for the year 2009/2010 on 29-11-2010. Hence, it is Section 163(5)(a)(i) of the IRA which applies in respect of the return of income submitted by the Respondent Company in the instant situation. This means that the time period allowed by Section 163(5)(a)(i) of the IRA for making an assessment is a period of two years from the thirtieth day of November 2010. In other words, the afore-said two-year period commences to run from 30-11-2010.

The next question is whether the afore-said two-year period should be calculated from 30-11-2010 or from 01-12-2010. Section 14(a) and 14(b) of the Interpretation Ordinance resolves this question. The said Section is as follows:

<u>Section 14(a) of the Interpretation Ordinance</u>

*In all enactments-*

*a) For the purpose of excluding the first in a series of days or any period of time, it shall be deemed to have been and to be sufficient to use the word "from";*

*b) For the purpose of including the last in a series of days or any period of time, it shall be deemed to have been and to be sufficient to use the word "to";*

As Section 14(a) of the Interpretation Ordinance commences with the phrase "In all enactments" it must apply to the Inland Revenue Act No. 10 of 2006 also. Since Section 163(5)(a)(i) of the IRA has stated "… shall be made after the expiry of a period of two years **from** the thirtieth day of November…", it is clear that the Court must apply Section 14(a) of the Interpretation Ordinance when calculating the period of time stated therein. Thus, upon application of the above rule of interpretation set out in Section 14(a) of the Interpretation Ordinance, the first day of the period i.e., 30-11-2010 must be excluded when calculating the period of time, i.e., the period of two years for the purposes of Section 163(5)(a)(i) of the Inland Revenue Act No. 10 of 2006. Therefore, the two-year period set out in Section 163(5)(a)(i) of the Inland Revenue Act must begin to run on 01-12-2010. On that calculation, the two-year period set out in Section 163(5)(a)(i) of the Inland Revenue Act No. 10 of 2006 must end on 01-12-2012. The impugned Assessment has been issued on 30-11-2012 and therefore the said Assessment has been issued within the period of two years for the purposes of Section 163(5)(a)(i) of the Inland Revenue Act No. 10 of 2006. Therefore, I hold that the said Assessment is not time barred.

Perusal of the judgment dated 15-03-2018 shows that the Court of Appeal has not considered the effect of Section 14(a) of the Interpretation Ordinance when it held that the impugned Assessment in this case is time barred. Therefore, I answer the question of law No. 05 in the affirmative. In view of this conclusion, I am of the view that the questions of law Nos. 01 , 02 and 03 need not be considered as those questions would simply not arise.

Let me now turn to question of law No. 07 and ascertain whether the Court of Appeal has erred in law by answering the question, "whether the Tax Appeals Commission erred in law when it came to the conclusion that the Nation Buildings Tax (N.B.T) paid at the point of

importation of articles to Sri Lanka is a disallowable expense under section 26(1) (l) (iii) of Act No. 10/2006 as amended?", in the negative. In doing so, let me first reproduce below, the relevant extracted portion from Section 26 of Inland Revenue Act No. 10 of 2006.

Section 26 of Inland Revenue Act No. 10 of 2006

(1) For the purpose of ascertaining the profits or income of any person from any source, no deduction shall be allowed in respect of–

(a) domestic or private expenses, including the cost of traveling between the residence of such person and his place of business or employment;

……..

……..

(l) any amount paid or payable by such person by way of—

(i) income tax, or super tax or surtax or any other tax of a similar character in any country with which an agreement made by the Government of Sri Lanka for the avoidance of double taxation is in force (other than the excess of any such income tax, or super tax or surtax or any other tax of a similar character over such maximum amount of the credit in respect of Sri Lanka income tax as is allowed by paragraph (c) of subsection (1) of section 97,; or

(ii) Sri Lanka income tax; or

(iii) **any prescribed tax or levy;** or

(iv) any Economic Service Charge levied under Economic Service Charge Act, No. 13 of 2006; or

(v) the Value Added Tax Act, No. 14 of 2002 and any Nation Building Tax on Financial Services within the provisions of the Nation Building Tax Act, No. 9 of 2009; or

(vi) any Social Responsibility Levy levied under item 4 of the First Schedule to the Finance Act, No. 5 of 2005; or

(vii) any Crop Insurance Levy levied under section 14 of PART IV of the Finance Act, No. 12 of 2013; or

(viii) supper gain tax, Bars and Taverns Levy, Casino Industry Levy, Mobile Telephone Operator Levy, Satellite Location Levy, Dedicated Sports Channel Levy and Mansion Tax imposed and levied under the provisions of the Finance Act, No. 10 of 2015,

Any regulation prescribing a tax or levy for the purpose of this paragraph may be declared to take effect from a date earlier than the date on which such regulation is made ;

(m) any ground rent or royalty payable

.....

.....

While Section 26(1)(l)(iii) of the Inland Revenue Act No. 10 of 2006 has disallowed the deduction of any amount of **any prescribed tax or levy** paid or payable by any person for the purpose of ascertaining the profits or income of such person from any source, the issue placed before this Court by the learned Counsel for both parties is whether the Respondent Company is entitled in law to deduct the amount of Nation Building Tax it had earlier paid at the point of importation.

In this regard, let me first consider the charging section in the Nation Building Tax Act No. 09 of 2009 (as amended by Section 2 of the Nation Building Tax (Amendment) Act No. 10 of 2011).

Nation Building Tax Act No. 09 of 2009 (as amended by Section 2 of the Nation Building Tax (Amendment) Act No. 10 of 2011)

(1) The provisions of this Act shall apply to every person who –

(a) imports of any article, other than any article comprised in the personal baggage of the passenger, into Sri Lanka, ["baggage" shall have the same meaning as in section 107A of the Customs Ordinance (Chapter 235)]; or

(b) carries on the business of manufacture of any article; or

(c) carries on the business of providing a service of any description: or

(d) carries on the business of wholesale or retail sale of any article other than such sale by the manufacturer of that article being a manufacturer to whom the provisions of paragraph (b) applies.

(2) Every person referred to in subsection (1) shall, hereafter in this Act, be referred to as "person to whom this Act applies".

As I have to henceforth embark on the task of interpreting the relevant sections found in fiscal statutes, I would be mindful of the principles that must be applied when interpreting such provisions. It is opportune at this stage to commence this discourse with the following excerpt taken from the judgment of Rowlatt J in the case of *Cape Brandy Syndicate* v. *Inland Revenue Commissioners.*[1]

> *"It is urged by Sir William Finlay that in a taxing Act clear words are necessary in order to tax the subject. Too wide and fanciful a construction is often sought to be given to that maxim, which does not mean that words are to be unduly restricted against the Crown, or that there is to be any discrimination against the Crown in those Acts. It simply means that in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."*

Thus, it is clear that no taxpayer can escape taxation once a liability to income tax is found in the taxing statute in a clear and unambiguous manner unless such person can find an equally

[1] (1921) 1 KB 64, at page 71.

clear section which exempts such person from such liability to pay such tax. It is the same principle that the Court of Appeal has correctly adopted and applied when it said in its judgment "*exemption notifications must be interpreted strictly and, in its entirety, and not in parts [Grasim industries Ltd. & Anvor v. State of Madhya Pradesh & Anvor and Gwalior Sugar Co. Ltd. v. Madhya Pradesh Electricity Board & others (1999) 8 SCC 547]*.[2] Thus, on the face of these provisions, there is no specific provision of law under which the Respondent Company can become entitled to deduct the amount of Nation Building Tax it had earlier paid.

It is the contention of the Respondent Company that Section 26(1)(l)(iii) of the Inland Revenue Act No. 10 of 2006 does not apply to the Respondent Company as it is not a person who makes quarterly payments of NBT. The Respondent Company also argues that the payment they make is to Customs at the point of importation of its goods and therefore should not be considered as paying Nation Building Tax. It is the argument advanced on behalf of the Respondent Company that Section 26(1)(l)(iii) of the Inland Revenue Act No. 10 of 2006 cannot be made applicable to the Respondent Company. The Respondent Company also argues that the amount it pays to Customs as NBT is an ad hoc payment based on each transaction which is levied on any person who imports a taxable article. It is the Respondent Company's argument that the liability to pay NBT quarterly is only imposed on persons who are liable to be registered as NBT payers and not on all persons who import/supply such goods.

As pointed out by the learned Deputy Solicitor General, the fact that the subsequent Regulation made by the Minister has allowed one third of the Nation Building Tax charged to be deducted as a prescribed levy in terms of the above-mentioned Section 26(1)(l)(iii) of the Inland Revenue Act No. 10 of 2006, has now confirmed the fact that such deduction was non-existent earlier, in particular, at the time relevant to the impugned Assessment. Let me for the sake of completeness, reproduce below, the said Regulation made by the Minister. The Minister has made this Regulation under Section 212 read with Section 26 of the Inland Revenue Act No. 10 of 2006.

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[2] CA (TAX) No. 17/2017, decided on 15-03-2019, at page 12.

> *"Two third of the Nation Building Tax charged by the Nation Building Tax Act, No. 9 of 2009 payable for the period commencing on May 1, 2009 and ending on June 30, 2009, and for every quarter commencing on or after July 1, 2009, shall for the purposes of Sub-paragraph (iii) of Paragraph (1) of sub-section (1) of section 26 of the Inland Revenue Act No. 10 of 2006 be a prescribed levy".*[3]

In order to counter the above argument also, the learned President's Counsel on behalf of the Respondent Company advanced the same argument. He submitted that the position continues to remain the same even after the afore-mentioned Regulation made by the Minister as the said Regulation has allowed the said deduction of two-third of the Nation Building Tax charged only for the persons who pay NBT quarterly. It is the submission of the learned President's Counsel that the Respondent Company pays NBT at the point of importation on each article and therefore is not caught up within the afore-said Regulation made by the Minister.

I must state here that I need not embark on resolving the issue whether the Respondent Company is caught up within the afore-said subsequent Regulation made by the Minister in order to address the issue placed before me in the instant case. Such a discourse in my view, would be a deviation from the task I have in hand and therefore, I would not embark on such an exercise. For me, it would suffice to state here that whoever is caught up within the afore-said subsequent Regulation made by the Minister was not entitled to make such deduction earlier, i.e., before the said subsequent Regulation, such a concession was non-existent and therefore was not available for the taxpayer.

Moreover, there can only be two possibilities for the issue whether the Respondent Company is caught up within the afore-said subsequent Regulation made by the Minister. The first possibility is that the Respondent Company is caught up within the afore-said subsequent Regulation. Then, the Respondent Company is allowed to make a deduction of one third of the Nation Building Tax charged as a 'prescribed tax or levy 'in terms of Section 26(1)(l)(iii) of the Inland Revenue Act No. 10 of 2006. The second possibility is that the Respondent Company is not caught up within the afore-said subsequent Regulation. Then, since that Regulation does not apply to it, the Respondent Company cannot make a deduction of one

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[3] Published in Gazette Notification No. 1606/31 dated 19-06-2009.

third of the Nation Building Tax charged as a 'prescribed tax or levy 'in terms of Section 26(1)(l)(iii) of the Inland Revenue Act No. 10 of 2006.

The first scenario (i.e., if the afore-said subsequent Regulation applies to the Respondent Company) necessarily means that Section 26(1)(l)(iii) of the Inland Revenue Act No. 10 of 2006 also applies to the Respondent Company.

The second scenario (i.e., if the afore-said subsequent Regulation does not apply to the Respondent Company; this is the argument advanced by the learned counsel for the Respondent Company) would then necessarily mean that Section 26(1)(l)(iii) of the Inland Revenue Act No. 10 of 2006 must be interpreted without recourse to the afore-said subsequent Regulation made by the Minister. Indeed, I have chosen to take that path in coming to the conclusion I have reached prior to the discussion on the issue of applicability of the afore-said subsequent Regulation made by the Minister to the Respondent Company. The said conclusion is that there is no specific provision of law under which the Respondent Company can become entitled to deduct the amount of Nation Building Tax it had earlier paid. That is why as already adverted to above by me, I have taken the view that I need not embark on resolving the issue whether the Respondent Company is caught up within the afore-said subsequent Regulation made by the Minister in order to address the issue placed before me in the instant case.

Moreover, the Respondent Company does not claim that it is an entity which has not paid NBT at the time of importing its products. It does not seek to argue that NBT is not a prescribed tax or levy. It also does not show any other provision which makes it entitled to have an exemption from Section 26(1)(l)(iii) of the Inland Revenue Act No. 10 of 2006. What then is the result? The result is that the Respondent Company is not entitled to deduct the amount of Nation Building Tax it had earlier paid, in its return of income. This is because the liability of the Respondent Company to income tax without such deduction is found in a clear and unambiguous manner in the taxing statute coupled with the fact that the Respondent Company has failed to show any other provision which makes it entitled to have an exemption from Section 26(1)(l)(iii) of the Inland Revenue Act No. 10 of 2006.

Furthermore, I observe that in Section 5(1) of the NBT Act No. 9 of 2009, the Director General of Customs only functions as a collector of NBT at the point of importation of goods. I also observe that the Act itself in section 5(2), has stated that any amount so collected by the

Director General of Customs, as per the above provision shall be deemed to be the tax chargeable in respect of the tax liability of the turnover arising from the importation of such article. Further, such tax is deemed to have been paid by such a person to the Commissioner General on the day on which such amount was collected by the Director General of Customs. Therefore, I am satisfied that it is the NBT that is collected by the Director General of Customs on behalf of the CGIR at the point of importation of goods.

According to section 5(3) of the NBT Act, the NBT is collected by the Director General of Customs as if it is a customs duty. This, in my view, is only a mechanism put in place by the Act for the easy recovery of NBT in case of a default. Moreover, the liability of the Respondent company to pay NBT to the Director General of Customs at the time of importation, is imposed, not by Customs Ordinance but by the NBT Act. The charging section for payment of NBT when the Respondent Company pays this tax to the Director General of Customs is the same charging provision of law which is Section 2 and Section 3 of the NBT Act. There is no separate section in the NBT Act which compels the Respondent Company to make such payments to the Director General of Customs. As I stated before, Section 5 only deals with the recovery process to ensure that the NBT is paid at the time of importation. Therefore, in my view, there is no merit in the argument advanced on behalf of the Respondent Company that Section 26(1)(l)(iii) of the Inland Revenue Act No. 10 of 2006 has no application to the Respondent Company. For those reasons, I reject the said argument. I hold that the decision of the Assessor to reject the Return of Income submitted by the Respondent Company and issue the Assessment in terms of section 106(1) of the Inland Revenue Act No. 10 of 2006 is justified and lawful.

For the foregoing reasons I answer the question of law No. 07 in the negative.

Let me now turn to the question whether the Court of Appeal has erred in law in holding that the determination of the Tax Appeals Commission was time barred. This is the question of law No. 06. This question revolves around the interpretation of Section 10 of the Tax Appeals Commission Act [as amended by Section 7 of the Amendment Act No. 20 of 2013] which is as follows:

> *The Commission shall hear all appeals received by it and make its determination in respect thereof, within two hundred and seventy days from the date of the commencement of its sittings for the hearing of each such appeal:*

> *Provided that, all appeals pending before the respective Board or Boards of Review in terms of the provisions of the respective enactments specified in Column I of Schedule I, or Schedule II to this Act, notwithstanding the fact that such provisions are applicable to different taxable periods as specified therein shall with effect from the date of coming into operation of the provision of this Act be deemed to stand transferred to the Commission, and the Commission shall notwithstanding anything contained in any other written law make its determination in respect thereof, within twenty four months from the date on which the Commission shall commence its sittings for the hearing of each such appeal.*

The appeal to the Tax Appeals Commission has been made by the Petition of Appeal dated 16-10-2014. The determination of the Tax Appeals Commission is dated 17-03-2017. It is the Respondent Company's position that although the said determination indicates the dates of hearing as 23-06-2016 and 13-10-2016, there had been an oral hearing prior to this on 02-12-2014 at 2.30 P.M. which should be considered as the first oral hearing of the appeal. It is the Respondent Company's submission that as the TAC determination was given more than 270 days after the date of the first oral hearing (02-12-2014), it is time barred by operation of law.

The Commissioner General has taken the view that this statutory requirement is not mandatory and hence does not require strict compliance. The Respondent Company however contends that one cannot ignore a statutory provision. It further emphasised the importance of the fact that it has been amended twice with retrospective effect. It has further submitted that if Parliament has enacted that the recovery process must be completed within 270 days, this period cannot be extended by Courts and can only be done by Parliament itself.

The learned Judge of the Court of Appeal has addressed the question as to whether the time limit given in Section 10 of the TAC Act is directory or mandatory. The Court of Appeal has gone on the basis that if the violation of a provision is penal, then it is mandatory and if there is no penalty attached, it is directory. I agree.

Although Section 10 of the Tax Appeals Commission Act states that the commission shall hear all appeals… and make its determination… within 270 days…., I observe that the TAC Act has not imposed any sanction in case the Tax Appeals Commission fails to make its determination

within the stipulated time period. Thus, the question which comes to the fore in these circumstances is the question as to what follows next in such a situation.

In order to find out an answer to the above issue, let me compare Section 10 of the TAC Act with section 165(14) of the Inland Revenue Act No. 10 of 2006. One can find that Section 165(14) of the IRA has specifically provided that 'the appeals shall be deemed to have been allowed and tax charged accordingly…'. This is in case the CGIR has failed to determine the appeal within two years. However, there is no similar provision in the TAC Act. If the legislature intended to impose a sanction for failure to determine an appeal before the Tax Appeals Commission within the stipulated time period, it could have very well introduced a similar provision as in Section 165(14) of the IRA. In the absence of a specific provision to that effect, there is nothing to follow in case the Tax Appeals Commission has failed to adhere to the time limits specified in law.

In any event, the appeal pending before the Tax Appeals Commission is an appeal lodged by the Respondent company. If I am to uphold the argument put forward on behalf of the Respondent company that the determination of the Tax Appeals Commission is time-barred, the resultant position would be the preservation of the validity of the determination made by the CGIR. This is because if the Tax Appeals Commission's determination is time-barred, whatever the steps that have thereafter been taken would also not be valid in the face of an invalidity of the TAC determination.

Bindra on Interpretation of Statutes (10th edition), at pages 1016 and 1025, states as follows:

> *"A statutory provision which pertains to an official action is generally construed as directory rather than mandatory.*
>
> *[…]*
>
> *When a statute regulates the time at or within which an act is to be done by a public officer or body, it is generally construed to be permissive only as to the time, for the reason that the public interests are not to suffer by the laches of any public officer.[4] It is well settled that the word 'shall' does not necessarily indicate that the provision is*

[4] Looney v Huges 26 NY 514.

*mandatory. The object of the provision has to be ascertained, and it has to be seen whether a time clause in it is a matter of substance. In other words, the time clause will not be considered to be mandatory unless its non-observance will result in the object of the provision being frustrated.*[5] *The courts will hold such provisions to be mandatory if the nature of the acts to be performed or the phraseology of the statute indicates an intention on the part of the legislature to exact a literal compliance with the requirement of time. The court seek to achieve a just result in not ascribing an invalidating effect to the failure of the public officers to observe the time provisions of statutes; a contrary rule would operate unfairly in prejudicing the rights of persons who have no control over the conduct of public officers."*

Maxwell on Interpretation of Statutes (11th edition) at page 369:

*"On the other hand, where the prescriptions of a statute relate to the performance of a public duty, and where the invalidation of acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, yet not promote the essential aims of the legislature, such prescriptions seem to be generally understood as mere instructions for the guidance and government of those on whom the duty is imposed, or, in other words, as directory only. The neglect of them may be penal, indeed, but it does not affect the validity of the act done in disregard of them. It has often been held, for instance, when an Act ordered a thing to be done by a public body or public officers and pointed out the specific time when it was to be done, then the Act was directory only and might be complied with after the prescribed time."*

In *Visuvalingam* v. *Liyanage* (1983) 1 Sri LR 203, a nine judge bench of this Court, having considered a similar issue that arose for determination pertaining to the time limit stipulated in Article 126(5) of the Constitution, proceeded to hold that the adherence of the time limit in Article 126(5) of the Constitution would be directory and not mandatory.

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[5] Lakshman Shastri v State of Bihar AIR 1967 Pat 160, per Sahai J; Ramachander Prasad Sahi v State of Bihar AIR 1965 Pat 250.

In *Jayanetti* v. *Land Reform Commission* (1984) 2 Sri LR 172, and in *Ramalingam* v. *Thangaraja* (1982) 2 Sri LR 693, this Court having considered similar issues, proceeded to hold that in the absence of any consequence stipulated in the Act for the failure to adhere to the time limits relevant to those cases in the relevant statutes, there is no basis to hold that such process is a nullity in those circumstances.

I have perused the judgment of the Court of Appeal which has dealt with this issue in detail. Indeed, I find that His Lordship, Justice of the Court of Appeal, has even proceeded to quote Maxwell on Interpretation of Statutes (11th edition) at page 369; a paragraph from *Nagalingam* v. *Lakshman de Mel* (78 NLR 231); a paragraph from *Visuvalingham* v. *Liyanage* (1983) 1 Sri LR 203; and several other authorities in the process of considering the issue whether the adherence to the time limit set out by Section 10 of the Tax Appeals Commission Act is mandatory or directory. Having gone through the reasoning in the Court of Appeal judgment, I find myself in agreement with the whole of that part of the Court of Appeal judgment. I endorse that it is a correct reflection of the legal position with regard to that issue.

Since I have held that the requirement for the Tax Appeals Commission to make a determination within 270 days is only directory, indeed the calculation of the dates between the first sitting for the hearing of the appeal and the determination would not arise.

For the above reasons, I proceed to hold that the determination of the Tax Appeals Commission is not time barred. The Court of Appeal has not erred when it held that the determination of the Tax Appeals Commission is not time barred. Accordingly, I answer the question of law No. 6 in the negative.

Although the question of law No. 04 refers to the issue whether the Court of Appeal has misdirected itself and erred in law by disregarding the provisions of Section 195 of the IRA, neither party has pursued this question of law any further. Indeed, the Respondent Company in its written submission also has stated that the parties did not pursue this question of law.[6] The Respondent company in paragraph 14(b) of the said written submission, has even proceeded to state that this Court need not further consider that question of law. In view of the above, I would not endeavour to consider the question of law No. 04 in this judgment.

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[6] paragraph 14 of the written submission dated 26-06-2024 filed by the Respondent Company.

The Court of Appeal, by its judgment dated 15-03-2018, acting in terms of section 11A(6) of the Tax Appeals Commission Act, has annulled the assessment as it had held that the Tax Appeals Commission has erred in law when it came to the conclusion that the assessment is time barred. However, for the reasons set out in this judgment, I have held that the said assessment is not time-barred and the Court of Appeal has erred in law when it held that the said assessment is time barred. On this basis, I set aside the conclusion of the Court of Appeal that the Tax Appeals Commission has erred in law when it came to the conclusion that the assessment is not time-barred. I proceed to set aside the decision of the Court of Appeal to annul the assessment affirmed by the Tax Appeals Commission. The Court of Appeal judgment is set aside to that extent and should stand altered to that extent.

Thus, the assessment issued by the assessor, the determination made by the CGIR, and the determination made by the Tax Appeals Commission affirming the assessment issued by the assessor, will remain unaltered and affirmed. That would be the resultant position.

**JUDGE OF THE SUPREME COURT**

**KUMUDINI WICKREMASINGHE, J.**

I agree.

**JUDGE OF THE SUPREME COURT**

**A. L. SHIRAN GOONERATNE, J.**

I agree.

**JUDGE OF THE SUPREME COURT**