

**IN THE SUPREME COURT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA**

*In the matter of an appeal to the Supreme
Court under Article 128 of the Constitution
of the Democratic Socialist Republic of Sri
Lanka.*

SC Appeal 53/2014

SC/ SPL/LA/No. 70/2012

CA Case No: 2/2008 (Tax)

BRA/ BTT - 27

Ceylon Paper Sacks Limited,
47, Maligawa Road,
Etulkotte.

APPELLANT

Vs

Commissioner General of Inland Revenue,
Department of Inland Revenue,
Sir Chittampalam A Gardiner Mawatha,
Colombo-2.

RESPONDENT

And now between

Ceylon Paper Sacks Limited,
47, Maligawa Road,
Etulkotte.

APPELLANT-APPELLANT

Vs

Commissioner General of Inland Revenue,

Department of Inland Revenue,
Sir Chittampalam A Gardner Mawatha,
Colombo-2.

RESPONDENT-RESPONDENT

Before : **P. PADMAN SURASENA J**

KUMUDINI WICKREMASINGHE J

MAHINDA SAMAYAWARDHENA J

Counsel : Romesh De Silva PC with Shanaka Cooray for the Appellant
instructed by Santhoshi S. Herath Associates and Deepika
Herath for the Appellant-Appellant.

Farzana Jameel PC, ASG with Indumini Radeny for the
Respondent-Respondent.

Argued on : 06.06.2022

Decided on : 04.04.2023

P. Padman Surasena J

The Appellant-Appellant (hereinafter referred to as the 'Appellant') is a limited liability company, incorporated under the laws of Sri Lanka, engaged *inter alia*, in the business of manufacturing multi-walled kraft paper sacks for the bulk packing of tea. The Appellant then sells these paper sacks to regional plantation companies in Sri Lanka. The Appellant claimed exemption from Turnover Tax on the sale of these paper sacks to the aforesaid companies claiming that the said companies export bulk tea packed in these paper sacks.

The dispute arose when the Appellant had submitted its Tax returns for certain taxable periods claiming exemption from payment of Turnover Tax under section 4 of the Turnover Tax Act No. 69 1981. To facilitate the easy reference and comprehension by the reader, I would at this initial stage itself reproduce below, section 4 of the Turnover Tax Act No. 69 1981.

Section 4 of the Turnover Tax Act No. 69 of 1981.

“(1). The Minister may, if he is of opinion that it is essential for the economic progress of Sri Lanka, exempt by Order published in the Gazette any business or such business as may be specified, which is carried on by any person, from the turnover tax.

(2). Every Order under subsection (1) shall come into force on the date of its publication in the Gazette or on such later date as may be specified in such Order and shall be brought before Parliament within a period of three months from the date of the publication of such Order in the Gazette or, if no meeting of Parliament is held within such period, at the first meeting of Parliament held after the expiry of such period, by a motion that such Order shall be approved.

(3). Any Order which Parliament refuses to approve shall, with effect from the date of such refusal, be deemed to be revoked but without prejudice to the validity of such Order until the date of such refusal, and the notification of the date on which such Order is deemed to be revoked shall be published in the Gazette.”

The Minister acting under the powers vested in him under the above section then published the Gazette (Extraordinary) No 432/03 dated 16.12.1986. The part of the said Gazette notification relevant to the questions of law in the instant case reads as follows.

"By virtue of powers vested in me under Section 4 of the Turnover Tax Act, No. 69 f 1981, I Ronal Joseph Godfrey de Mel, minister of Finance and Planning, being of opinion that it is essential for the economic

progress of Sri Lanka, do by this Order, with effect from midnight of 31 December 1986/ 1 January, 1987 exempt the following from Turnover Tax:—

- 1)
- 2)
- 3)
- 4) *"any business for the export of any manufactured or processed article;"*
- 5)
-
- 24)

Relying on the item (4) [above mentioned clause], the Appellant had claimed that the paper sacks it manufactured are exclusively for export of tea, and therefore it was entitled to an exemption under item (4) of the above Gazette read with section 4 of the Turnover Tax Act. The Assessor had rejected the Appellant's claim for exemption on the basis that the local supply of such paper sacks to plantation companies does not constitute 'export' as contemplated under the Gazette notification No. 432/03 dated 16.12.1986, which was relied upon by the Appellant. The Assessor had taken the view that any exemption under Section 4 of the Turnover Tax Act No. 69 of 1981, is only available to a business which exports its products, and as the Appellant company does not export paper sacks, and only sells the paper sacks locally to plantation companies, the sales of the Appellant company will not qualify for an exemption under Section 4 of the Turnover Tax Act.

Being aggrieved by the aforesaid decision of the assessor, the Appellant appealed to the Commissioner General of Inland Revenue (hereinafter sometimes referred to as the Commissioner General). The Commissioner General, by the Determination dated 03.09.2001 (produced marked **X1**) had dismissed the said appeal.

Being aggrieved by the aforesaid Determination of the Commissioner General, the Appellant appealed to the Board of Review under Section 119 of the Inland Revenue Act No. 28 of 1979, as provided for, by Section 18 of the Turnover Tax Act No. 69 of 1981. The said appeal was presented on the basis that, the Appellant was either an

exporter or an indirect exporter-supplier, and therefore was entitled for an exemption from Turnover Tax under Section 4 of the Turnover Tax Act No.69 of 1981. The Board of Review having heard the submissions of the parties, by its Determination dated 31.03.2008 (produced marked **X3**) had confirmed the assessment issued by the Assessor and dismissed the said appeal of the Appellant.

Being dissatisfied with the Determination of the Board of Review, the Appellant then appealed to the Court of Appeal by stating a case for the opinion of the Court of Appeal.

The question of law formulated for the opinion of the Court of Appeal by the Board of Review is as follows,

"Is the Assessee an exporter and/or an indirect exporter-supplier to claim tax exemption under the Turnover Tax Act No. 69 of 1981 when it did not export but supplied its paper sacks to companies inter alia exporting bulk tea".

The Court of Appeal by its judgment dated 23.02.2012 (produced marked **X5**), upheld the order of the Board of Review which had concluded that 'the Appellant is neither a direct nor indirect exporter and was not in an activity that was exempted from turnover tax'.

Being dissatisfied with the opinion of the Court of Appeal, the Appellant sought Special Leave to Appeal from this Court. This Court, upon hearing the learned counsel for the Appellant and the learned Deputy Solicitor General, by its order dated 01.04.2014, had granted Special Leave to Appeal only on the following question of law:

"Is the Appellant exempt from turnover tax in terms of Section 4 of the Turnover Tax Act No. 69 of 1981 as reflected in the Gazette No. 432/ 3 dated 16.12.1986?"

I will now move on to discuss the question whether the business of the Appellant will classify as "any business for the export of any manufactured or processed article" in order for that business to fall under the exemption set out in clause 4 of the above mentioned Gazette.

The Appellant claims that he is entitled to the above exemption claiming that it is an exporter of a manufactured article on the following basis: the paper sacks

manufactured by the Appellant is not sold for local consumption and is solely used for the export of tea; the paper sacks manufactured by the Appellant are an integral part of the export process of the tea; and therefore, the paper sacks manufactured by the Appellant are an integral part of the export itself.

The Gazette notification (Extraordinary) No. 432/03 dated 16.12.1986 exempts "*any business for the export of any manufactured or processed article*". When taken the literal meaning, it is evident that the Gazette explicitly intends to cover a 'business for the export of any manufactured article', and therefore is imperative that to come under this exemption, the relevant business must be capable of being classified entirely as a business for the export of the article it manufactures.

Let me next consider whether the Appellant's business is a business for export. The Appellant in order to qualify itself as an exporter must satisfy all the characteristics of an exporter, i.e., being engaged in international trade, the existence of an overseas buyer, the relevant shipping documents as well as standard payment methods involved in international trade transaction. Furthermore, the presence of the earned foreign exchange which is the price for the goods exported would be an integral characteristic of an exporter. The Appellant if indeed is carrying on with a business of export, can easily provide proof of at least one of the followings: an international sales arrangement; invoice or an export order; any letter of credit opened; any shipping/air freight document etc., presence of any such evidence would have indicated at least some confirmation of the fact that the Appellant is engaged in exporting of the items it manufactures. However, the Appellant has not provided any such evidence and hence has not established any of the above characteristics of an exporter.

The multi-walled kraft paper sacks manufactured by the Appellant are simply sold to the regional plantation companies. The regional plantation companies do not export the multi-walled kraft paper sacks manufactured by the Appellant, but merely use them for packing the article they endeavour to export, which is tea. Thus, neither the regional plantation companies nor the Appellant is engaged in any business for the export of the multi walled kraft paper sacks manufactured by the Appellant. The

Appellant also does not carry on its business of manufacturing paper sacks either to be exported or for the export market. The Appellant manufactures their paper sacks to be sold to local plantation companies to bulk pack tea. What may be gleaned from the available material is that this tea is then sent to Colombo tea auctions where the tea may or may not be exported. Therefore, the paper sacks sold to the regional plantation companies are not the articles being exported. Thus, I am not satisfied that the Appellant is engaged in exporting of the items it manufactures.

Moreover, as has been already mentioned above, in order to be eligible for an exemption under this section it is imperative that the relevant business must be a 'business of manufacturing or processing articles for export'. I can observe that there are two limbs present in Clause 4 of the relevant Gazette notification. The Clause states: "*any business for the export of any manufactured or processed article*". This means firstly, that the business from which the relevant turnover is derived must be a business for export. That is the first limb. The second part of the Clause 4 sets out clearly as to what kind of goods should be exported by such business. The goods exported must be manufactured or processed articles. That is the second limb.

The next question is, as to who should have manufactured the articles referred to in Clause 4. The first observation I make is that any article must have been manufactured by somebody at some point of time for articles cannot fall from the sky. If this aspect of Clause 4 is forgotten, export of anything would attract the exemption granted under that provision. That is the reason as to why the law has only empowered the Minister to exempt by Order published in the Gazette any business from turnover tax only if he is of opinion that the exemption of such business would be essential for the economic progress of Sri Lanka. In the instant situation, what the Minister has exempted is "*any business for the export of any manufactured or processed article*". This must be understood as a business which exports any manufactured or processed article. In the instant case, a business which exports any manufactured article. The Appellant is not engaged in any such business.

The Appellant referring to both 'direct export' as well as 'indirect export' in its written submissions¹, has sought to argue that the Court of Appeal had failed to consider the definition of both direct and indirect export. Let me now consider this aspect.

When the Appellant sells the paper sacks to the Plantation Companies, the sale transaction between them has been completed as the property in the goods stand transferred to the Plantation Companies. Therefore, at that point itself the relevant transaction is completed between the Appellant and the plantation companies. The Appellant thereafter is not entitled to monitor or to know the use to which the plantation companies would put the paper sacks they had purchased. In any case, the argument of the Appellant is not that the plantation companies export the paper sacks they had purchased but that the plantation companies export tea packed in the paper sacks they had purchased.

The paper sacks are manufactured by the Appellant and then sold to local plantation companies to bulk pack tea which is then sent to Colombo tea auctions where the tea may or may not be exported. Indeed, the Appellant has not adduced any evidence to establish as to what really happens to the multi-walled kraft paper sacks after they are sold to the regional plantation companies. Be that as it may, one thing is clear; the Appellant cannot be regarded as either a direct or indirect exporter of the multi-walled kraft paper sacks it manufactures. The Appellant plays no part in the part of any transaction involving any export. The Appellant was only the manufacturer who supplied their finished product to the local plantation companies, who then use these paper sacks for packing their tea and therefore, the Appellant cannot be classified as an 'indirect exporter'.

Therefore, I am unable to accept the argument of the Appellant that they do not sell any of the manufactured paper sacks for local consumption itself and all of the manufactured paper sacks are used for the export of tea and hence the paper sacks manufactured by the Appellant form an integral part of the export process of the tea. It must be stressed that the relevant exporters, export tea and not paper sacks. On

¹ Written submissions Dated 02.10.2015 filed before this Court by Ceylon Paper Sacks Limited.

this basis, I am unable to conclude that the Appellant's business is a 'business for the export of any manufactured article within the meaning of the Gazette (Extraordinary) No 432/03 dated 16.12.1986.

Before I part with this judgment, let me also refer to the case of Perera & Silva Ltd. Vs. Commissioner General of Inland Revenue,² which had considered the question whether a business for supplying material for the packaging of export goods will also classify as a 'business for export'.

Although the question of law in this case was based on a subsequent statute, the basis for argument for the exemption of turnover tax by the Appellant in the case of Perera & Silva, was similar to the argument advanced by the Appellant in the instant case.

Perera & Silva Ltd. was a firm manufacturing wooden boxes and shooks (a component part used in assembling wooden boxes). A part of its production was on orders by persons who exported goods such as tea, batteries, and spices from Sri Lanka. The dispute in that case was whether the turnover relating to the sale of wooden boxes and shooks by Perera & Silva Ltd., which were subsequently used by buyers for the export trade, should be excluded from the liability of turnover tax of Perera & Silva Ltd. The Commissioner General of Inland Revenue had held that those transactions of Perera & Silva Ltd. are liable to business turnover tax and confirmed the tax charged by the Assessor.

The Board of Review on Appeal held that: the wooden boxes and shooks though manufactured in Ceylon were not exported by the assessee; the assessee became liable to pay tax on the proceeds of sale, immediately after the sale was concluded, whether the proceeds of sale, were actually received or only became receivable; the proceeds of sale which are liable to tax at the time the turnover is made cannot by a process of interpretation be converted into proceeds of sale which would be exempted from tax.

² 79 NLR (Volume II) page 164.

At the time of the case of Perera & Silva Ltd. the turnover tax was payable in respect of the completed transactions, unless those transactions came within one of the exceptions provided under section 121 (1) of the Finance Act No. 11 of 1963. For easy reference for the reader, I would set out below, Section 121 (1) of the Finance Act.

" (1) The Minister may by order published in the Gazette declare any article specified in such Order to be an excepted article for the purposes of this Part of the Act. Different articles may be declared to be excepted articles in respect of different classes or descriptions of businesses.

(2) Where an article is, under subsection (1), declared to be an excepted article in respect of any class or description of business, the sum realized from the sale of such article shall not be taken into account for the purpose of ascertaining the turnover from such class or description of business."

Just like in the instant case, in Perera & Silva's case also the then Minister acting under Section 121 (2) had declared by the Schedule to the Gazette notification No. 14,864/9 of 02.08.1969 that "articles manufactured in Ceylon and exported" be excluded from the liability of turnover tax.

Upon the application of Perera & Silva Ltd. The Board of Review had stated a case for the opinion of the Supreme Court under section 138A (1) of the Finance Act, No. 11 of 1963. The questions of law stated for the opinion of the Supreme Court in that case are,

- i. Does "articles manufactured in Ceylon and exported " in the order published in Gazette No. 14,864/9 of 2.8.69, mean articles manufactured in Ceylon and exported in a single business.*
- ii. Is the turnover arising from wooden boxes and shooks, sold by the assessee during the quarters 31.12.69, 31.3.70, 30.6.70 and exported by others exempt from business turnover tax under the order made under 121 (1) published in the Gazette Extraordinary 14,864/9 of 2.8.69.*

Thamotheram J giving the opinion of the Supreme Court in Perera and Silva's case, stated as follows.

"In our opinion the business carried on by Perera and Silva Ltd. was only one of manufacture. It is only when the business in question includes both manufacture and export that the exception to liability can arise; the turnover tax is in respect of the turnover made by that person (Perera & Silva Ltd.) from that business (manufacture of wooden boxes). The exception is when that business— includes both manufacture and export.

Our opinion therefore is as follows :

(1) " Articles manufactured in Ceylon and exported " in the order published in Gazette No. 14,864/9 of 2.8.69 means articles manufactured in Ceylon and exported in a single business;

(2) The turnover arising from wooden boxes and shooks sold by the assessee during the quarters 31.12.64, 31.3.70 and 30.6.70 and exported by others are not exempted from business turnover tax under the order made under 121 (1) published in the Gazette Extraordinary No. 14,864/9 of 2.8.69.

I may also add that in our view when an article, e.g., tea, is exported in wooden boxes, it is wrong to say that the boxes in which tea is exported are themselves exported— it is true the literal meaning of ' export' is 'sending out'— but export connotes a business transaction between some person in Sri Lanka with a person outside. If a Sri Lankan firm exports tea to a firm abroad, I think, it does violence to the English language to say that the firm also exported wooden boxes in which the tea was sent. It is not any part of the particular export business.

The order made by the Minister on 2.8.69 had been amended by an order published in Gazette No. 83/8 of 1.11.73. One of the excepted articles

mentioned in the latter order is "articles manufactured in Sri Lanka and exported by the manufacturer."

This amendment was no doubt due to the point taken in the present case being taken by many an assessee. We however do not think that the statute was not express or that it was ambiguous."

It was on the above basis that this Court in that case held that the words "manufactured in Ceylon" and "exported" should be read conjunctively and accordingly the exemption is available only in respect of articles manufactured in Ceylon and exported in the course of the same business.

In the instant case too, undoubtedly when the Appellants sell these paper sacks they manufacture to local plantation companies, there is no element of 'export' involved in that business transaction. This could be further illustrated by referring to Section 5 of the Turnover Tax Act No. 69 of 1981 which stipulates the meaning of "turnover" as being, *"the total amount received or receivable from transactions entered into in respect of that business or for services performed in carrying on that business"*. The transaction in relation to the Appellant's business namely the sale of the multi-walled kraft paper sacks to the plantation companies for the packaging of tea was a completed transaction entered into, in respect of that business. It is at that point that the Appellant becomes liable for the payment of turnover tax.

For the foregoing reasons, I am of the view that the Appellant is not entitled for the relevant exemption under Section 4 of the Turnover Tax Act No. 69 of 1981. Therefore, I hold that the Board of Review has correctly concluded that the Appellant is not entitled to any exemption under Section 4 of the Turnover Tax Act No. 69 of 1981. I also hold that the Court of Appeal too has correctly taken the same view.

Accordingly, I answer the question of law in respect of which this Court has granted Special Leave to Appeal as follows:

"The Appellant is not entitled for an exemption from turnover tax in terms of Section 4 of the Turnover Tax Act No. 69 of 1981 read with the Gazette No. 432/ 3 dated 16.12.1986."

I affirm the judgment dated 23.02.2012 of the Court of Appeal and dismiss this Appeal with costs.

JUDGE OF THE SUPREME COURT

Kumudini Wickremasinghe, J

I agree,

JUDGE OF THE SUPREME COURT

Mahinda Samayawardhena, J

I agree,

JUDGE OF THE SUPREME COURT