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

Herbal Holiday Resorts (Private) Limited,
Ayurveda Walauwa,
Warahena,
Bentota.
Appellant

SC APPEAL NO: SC/APPEAL/6/2022
CA NO: CA/TAX/7/2017
TAC NO: TAC/VAT/23/2015

Vs.

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

AND THEN

Herbal Holiday Resorts (Private) Limited,
Ayurveda Walauwa,
Warahena,
Bentota.
Appellant-Appellant

Vs.

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

AND NOW

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

Vs.

Herbal Holiday Resorts (Private) Limited,
Ayurveda Walauwa,
Warahena,
Bentota.
Appellant-Appellant-Respondent

Before: Hon. Justice Vijith K. Malalgoda, P.C.
Hon. Justice Mahinda Samayawardhena
Hon. Justice K. Priyantha Fernando

Counsel: Sumathi Dharmawardena, P.C., Additional Solicitor General with Sabrina Ahmed, S.C., for the Respondent-Respondent-Appellant.

Riad Ameen with Rushith Rodrigo for Appellant-Appellant-Respondent.

Written Submissions:

By the Respondent-Respondent-Appellant on 28.03.2022

Argued on: 17.01.2024

Decided on: 03.06.2024

Samayawardhena, J.

This is an appeal filed by the Commissioner General of Inland Revenue (appellant) with leave obtained against the judgment of the Court of Appeal dated 24.11.2020 whereby it was held that Herbal Holiday Resorts (Private) Limited (respondent) is entitled to the tax exemption as set out in paragraph (b) item (xii) of Part II of the First Schedule of the Value Added Tax Act, No. 14 of 2002, as amended (VAT Act), which exempts "*All health care services provided by the medical institutions or professionally qualified persons providing such care*" from VAT liability.

The respondent provides health care services in the holiday resort by the name of "Hotel Paradise Island" situated in Bentota. The respondent claims that it is "*a pure Ayurveda clinic, not a wellness SPA*". It must be noted that though there appears to be no dispute that the respondent provides "health care services", not all health care service providers are eligible for the VAT exemption. Only medical institutions or professionally qualified individuals providing health care services are entitled to it.

The respondent claimed the VAT exemption asserting itself as a "medical institution" providing "health care services". While the terms "health care services", "medical institutions" and "professionally qualified persons providing health care" are not defined in the VAT Act, they are defined in the *Guide to Value Added Tax in Sri Lanka* issued by the appellant to tax

collectors of the Department of Inland Revenue as an internal document (293-294 of the brief). Though the Court is not bound to follow the definitions contained in the said Guide, the Court is not debarred from referring to it to understand how the appellant has interpreted the said terms for tax collecting purposes. According to the said Guide, "medical institutions" means "*institutions which look after patient care and include both private and State run hospitals and dispensaries registered under Medical Ordinance, No. 26 of 1927, Ayurveda Act, No. 31 of 1961 or Homeopathy Act, No. 7 of 1970.*" At the inquiry held in the Department of Inland Revenue, the appellant concluded that since the respondent had not registered with the Department of Ayurveda during the relevant period for which the respondent seeks the VAT exemption, the respondent is not entitled to it.

On appeal, the Tax Appeals Commission did not follow the Guide as it has no force of law, but dismissed the appeal of the respondent *inter alia* on the basis that "*The term 'medical institution' is not interpreted in the VAT Act. It is important to note that, in order to legally qualify as a medical institution that institution must register with the relevant authorities. After obtaining a registration certificate from the relevant authority, it can enjoy all the benefits under the law. Therefore, we are of the view that the registration with the Department of Ayurveda is a mandatory requirement and that would be the best evidence to provide the existence of a medical institution for VAT exemption.*"

When the respondent came before the Court of Appeal against this determination by way of a case stated for the opinion of the Court under section 11A of the Tax Appeals Commission Act, No. 23 of 2011, as amended, the only question formulated and decided by the Court of Appeal was "*Whether an exemption from VAT liability could not be granted if the institution is not registered under the Ayurveda Act?*" The Court of

Appeal answered this question in favour of the respondent and quashed the determination of the Tax Appeals Commission.

The Court of Appeal did not address the most critical question of whether the appellant qualifies as a "medical institution" for the purpose of granting the VAT exemption. The Court of Appeal proceeded on the basis that "*the question whether the appellant (the respondent before this Court) operates a medical institution that supplies health care has never been disputed by the Commissioner General of Inland Revenue before the Tax Appeals Commission. I would further add that the Tax Appeals Commission has not reached a finding on any evidence led before it that the appellant has not maintained a medical institution*". As a result, the Court assumed that the respondent qualifies as a "medical institution" for the purpose of the VAT exemption. It is thereafter, that the Court considered the question "*Whether an exemption from VAT liability could not be granted if the institution is not registered under the Ayurveda Act?*" This is the mistake committed by the Court of Appeal.

The respondent's position was that, since it engages in the business of providing Ayurvedic treatments to foreign guests at its holiday resort in Bentota, the respondent should have been recognised as a medical institution which provides health care services and granted the VAT exemption. The appellant never conceded that the respondent is a "medical institution" in the eyes of the law. The argument of the appellant before the Tax Appeals Commission was that the respondent cannot be considered as a medical institution for the purpose of granting the VAT exemption due to it not being registered in the Department of Ayurveda as mandated by section 10 of the Ayurveda Act, No. 31 of 1961. The Tax Appeals Commission concluded that "*the registration with the Department of Ayurveda is a mandatory requirement and that would be the best*

evidence to provide the existence of a medical institution for VAT exemption."

In terms of section 10 of the Ayurveda Act, no premises shall be used for the purpose of an Ayurvedic hospital, Ayurvedic pharmacy, Ayurvedic dispensary or Ayurvedic store, unless such premises are registered by the Commissioner of Ayurveda for that purpose, and a violation of the above constitutes a punishable offence. It is in that context the Tax Appeals Commission stated that "*the registration with the Department of Ayurveda is a mandatory requirement*". In essence, what the Tax Appeals Commission stated was that the registration "*would be the **best** evidence to provide the existence of a medical institution for VAT exemption*", not the only evidence.

In terms of section 89 of the Ayurveda Act, a "hospital" means "*any premises (howsoever described) used or intended to be used for the reception, nursing and treatment of persons suffering from any illness or infirmity, and includes a nursing home or maternity home, but does not include a dispensary*". Since the respondent provides Ayurvedic health care services in a holiday resort, in terms of section 10 of the Ayurveda Act, registration with the Department of Ayurveda is mandatory.

A statute should be interpreted as a cohesive whole. As *Maxwell on the Interpretation of Statutes*, 12th edition, points out at page 47, citing *Canada Sugar Refining Co. Ltd. v. R* [1898] AC 735, a statute shall be read as a whole and "*every clause of a statute is to be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute.*" In the recent case of the UK Supreme Court in *R (on the application of O) v. Secretary of State for the Home Department* [2022] UKSC 3, Lord Hodge declared: "*Words and passages in a statute derive their meaning from their context. A phrase or passage must be read in the context of the section as*

a whole and in the wider context of a relevant group of sections. Other provisions in a statute and the statute as a whole may provide the relevant context."

Since there is no definition given in the VAT Act for the term "medical institution", in my view, the Tax Appeals Commission was not in error when it stated that registration with the Department of Ayurveda by the respondent would be the best evidence to establish the existence of a medical institution for the purpose of the VAT exemption. It is not reading words into the statute but rather finding a mechanism to understand the term "medical institution". The question of law suggested before the Court of Appeal by the respondent, i.e. "*Whether an exemption from VAT liability could not be granted if the institution is not registered under the Ayurveda Act?*" is misleading and does not address the core issue.

In the context of tax liability, in the oft-cited case of *The Cape Brandy Syndicate v. Inland Revenue Commissioners* [1921] 1 KB 64 at 71, Rowlatt J. stated 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.*" However, in the instant appeal what is considered is not tax liability, but tax exemption. As a general rule, exemptions are subject to strict interpretation against the party for whose benefit they are introduced. This is equally applicable to tax exemptions. If there is any ambiguity in the exemption, the benefit should be given to the tax collector, not to the tax payer.

In the landmark judgment of *Commissioner of Customs (import), Mumbai v. M/s Dilip Kumar and Company* (2018) 9 SCC 1, the Constitution Bench of the Supreme Court of India, consisting of Five Justices, overruling the Three Judge Bench decision of the Supreme Court of India in *Sun Export Corporation, Bombay v. Collector of Customs, Bombay* (1997) 6 SCC 564

and all the decisions which followed it, unanimously held that the benefit of any ambiguity in a tax exemption provision must be interpreted in favour of the revenue, not in favour of the subject. The Court also held that in such cases, the exemption will be allowed only if the taxpayer can prove that the exemption falls within the parameters enumerated in the section and that he has satisfied all of the conditions precedent.

The ambiguity in the exemption in the instant case is how "medical institutions" should be identified for the purpose of determining the VAT exemption due to the term "medical institutions" not being defined in the VAT Act. This has not been explained by the respondent to the satisfaction of the Tax Appeals Commission or this Court.

After the determination of the Tax Appeals Commission, the respondent has rightly registered with the Department of Ayurveda and now enjoys the benefit of the VAT exemption.

The respondent cannot be allowed to present a different case before this Court stating that it was registered in the Department of Ayurveda at the relevant time, which is a pure question of fact.

The first question of law on which leave to appeal was granted, i.e. "*Did the Court of Appeal err in law in deciding the case stated in favour of the respondent?*" is answered in the affirmative. There is no necessity to answer the other questions of law raised by the appellant separately. The judgment of the Court of Appeal is set aside and the determination of the Tax Appeals Commission is restored. I make no order as to costs.

Judge of the Supreme Court

Vijith K. Malalgoda, P.C., J.
I agree.

Judge of the Supreme Court

K. Priyantha Fernando, J.
I agree.

Judge of the Supreme Court