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

In the matter of an application for special leave to appeal to the Supreme Court of the Democratic Socialist Republic of Sri Lanka under and in terms of Article 128(2) of the Constitution read with the Supreme Court Rules of 1990.

SC Appeal No. 167/2012

SC (Spl. L.A.) No. 132/2012

CA (Writ) Application No. 52/2008

1. Hariharan Selvanathan
   C/O No, 83,
   George R. De Silva Mawatha,
   Colombo 13.

2. Manoharan Selvanathan
   C/O No, 83,
   George R. De Silva Mawatha,
   Colombo 13.

3. Nataraja Ramiah
   No. 17, Stubbs Place,
   Off Dickman's Road,
   Colombo 04.

4. Suresh Kumar Shah
   No. 125/11, Kirula Road,
   Colombo 05.

5. Don Chandima Rajakaruna Gunawardana
   No. 61, Janadhipathi Mawatha,
   Colombo 01.

6. Lional Cuthbert Road De Cabraal Wijetunge
   No. 1, Charles Avenue,
   Colombo 03.

7. Palehenalage Chandana Priyankara Tissera
   No. 55, Swarnadisi Place,
   Koswatta, Nawala.

8. Soren Ask Nielsen
   C/O No. 61,
   Janadhipathi Mawatha,
   Colombo 01.

9. Jesper Bjorn Madsen
   C/O No. 61,
   Janadhipathi Mawatha,
   Colombo 01.

10. Ceylon Brewery PLC
    No. 61,
    Janadhipathi Mawatha,
    Colombo 01.

Appellants

Vs.

1. Mr. S. A. C. S. W. Jayatilleke
   Director-General,
   Customs and Excise Duty,

   Excise Duty Division,
   Department of Sri Lanka Customs,
   Customs House,
   Bristol Street,
   P. O. Box 518,
   Colombo 01.

1st Respondent

2. D. M. W. Menike
   Asistant Director of Excise Duty,
   Customs Department,
   Bristol Paradise Building,
   Bristol Street,
   Colombo 01.

2nd Respondent

AND NOW BETWEEN

1. Hariharan Selvanathan
   C/O No, 83,
   George R. De Silva Mawatha,
   Colombo 13.

2. Manoharan Selvanathan
   C/O No, 83,
   George R. De Silva Mawatha,
   Colombo 13.

3. Nataraja Ramiah
   No. 17, Stubbs Place,
   Off Dickman's Road,
   Colombo 04.

4. Suresh Kumar Shah
   No. 125/11, Kirula Road,
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5. Don Chandima Rajakaruna Gunawardana
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7. Palehenalage Chandana Priyankara Tissera
   No. 55, Swarnadisi Place,
   Koswatta,
   Nawala.

10. Ceylon Brewery PLC
    No. 61,
    Janadhipathi Mawatha,
    Colombo 01.

1st to 7th and
10th Appellants-Appellants

Vs.

1. Mr. S. A. C. S. W. Jayatilleke
   Director-General,
   Customs and Excise Duty,

   Excise Duty Division,
   Department of Sri Lanka Customs,
   Customs House,
   Bristol Street,
   P. O. Box 518,
   Colombo 01.

   1st Respondent-Respondent

2. D. M. W. Menike
   Asistant Director of Excise Duty,
   Customs Department,
   Bristol Paradise Building,
   Bristol Street,
   Colombo 01.

   2nd Respondent-Respondent

3. Soren Ask Nielsen
   C/O No. 61,
   Janadhipathi Mawatha,
   Colombo 01.

4. Jesper Bjorn Madsen
   C/O No. 61,
   Janadhipathi Mawatha,
   Colombo 01.

   8th and 9th Appellants-Respondents

Before : Priyantha Jayawardena PC J
L. T. B. Dehideniya J
Murdu N. B. Fernando PC J

Counsel : Dr. K. Kanag-Isvaran PC with Lakshmanan Jeyakumar and Aslesha Weerasekera for the appellants.

F. Jameel PC, Senior Additional Solicitor-General with S. Barrie, Senior State Counsel and Sureka Ahmed, State Counsel, for the respondents.

Argued on : 12th July, 2021

Decided on : 16th December, 2022

Priyantha Jayawardena PC, J

The 10th appellant-appellant (hereinafter referred to as the "appellant company") was a manufacturer of beer products. Further, the 1st to 7th appellants-appellants (hereinafter referred to as the "1st to the 7th appellants") and 8th to 9th appellants-respondents (hereinafter referred to as the "8th and 9th appellants") were directors of the appellant company. Moreover, the 1st respondent-respondent (hereinafter referred to as the "Director-General of Excise" or "1st respondent") was the Director-General of Excise, and the 2nd respondent-respondent (hereinafter referred to as the "2nd respondent") was the Assistant Director of Excise, at all times material to the issue under consideration.

In terms of section 3(1) of the Excise (Special Provisions) Act No. 13 of 1989, as amended, excise duty shall be charged on every article manufactured or produced in Sri Lanka, at such rate as may be specified by the minister by an Order published in the Government Gazette (hereinafter referred to as the "excisable article").

The rate of excise duty payable in respect of 'beer made from malt' for the relevant period was specified as 10% in the Government Gazette bearing No. 1052/15. As a result, the appellant company became liable to pay excise duty at the rate of 10% on the 'value' of beer it had made from malt, within one calendar month from the last date of each quarter in which such excisable article was removed from the factory, in terms of section 5(1)(a) of the said Act.

However, a dispute had arisen between the parties with regard to the calculation of the 'value' of the said excisable article under section 7 of the said Act. The appellant company had sent its returns of excise duty calculated on the basis of the 'ex-factory price' of its beer products as specified in the circular issued to all its distributors marked and produced as "P5". However, the 1st respondent contended that the excise duty should be calculated based on the 'wholesale price' specified in the said circular marked and produced as "P5".

Section 9(1) of the said Act states that where excise duty has not been paid in whole or in part, an excise officer may, within a period of five years from the relevant date, serve a notice on such

person chargeable with excise duty requiring him to show cause as to why the amount specified in the notice should not be paid.

In the instant appeal, the excise officer had issued a show cause notice under section 9(1) of the said Act marked and produced as "P8", requiring the appellant company to show cause (if any) on or before 29th February, 2000 as to why a sum of Rs. 8,623,394.90 should not be paid as excise duty. The appellant company had subsequently shown cause by letter dated 4th April, 2000 marked and produced as "P10".

In terms of section 9(2) of the said Act, where such person upon whom a notice under section 9(1) of the said Act was served, had shown cause within the stipulated time, the Director-General of Excise is required to make a determination in respect of the amount of excise duty payable by such person, and notify him accordingly.

However, the Director-General of Excise had not made a determination under section 9(2) of the said Act in respect of the show cause notice marked and produced as "P8". Instead, the excise officer had once again issued a second show cause notice under section 9(1) of the said Act which was marked and produced as "P16(a)", requiring the appellant company to show cause (if any) on or before 15th October, 2002 as to why a sum of Rs. 44,432,207.32 should not be paid as excise duty.

In the meantime, Inland Revenue (Special Provisions) Act, No. 10 of 2003 which was enacted and came into force on 17th March, 2003 granted, *inter alia*, concessions to persons who made a declaration of their previously undisclosed income and assets. The appellant company had made a declaration thereunder, and the same was acknowledged by the Commissioner-General of Inland Revenue. Thereafter, the appellant company had forwarded the aforesaid declaration and the acknowledgment to the Director-General of Excise and informed him that the matter in dispute shall be treated as concluded.

However, the aforesaid Act, No. 10 of 2003, was subsequently repealed by Inland Revenue (Regulation of Amnesty) Act, No. 10 of 2004 which came into force on 20th October, 2004. Thus, the Director-General of Excise had reopened the aforesaid inquiry which was closed due to the declaration made by the appellant company in terms of the said Act, No. 10 of 2003. By letter dated 2nd May, 2005 marked and produced as "P21", the appellant company was informed that the said amnesty which was granted in respect of the excise duty due had been withdrawn, and that a sum of Rs. 48,121,634.29 was payable as excise duty due together with a penalty.

Thereafter, the Director-General of Excise had issued a final notice dated 26th September, 2006 marked and produced as "P30(a)" in respect of the said excise duty due from the appellant company.

In the instant appeal, the Director-General of Excise had filed a certificate purportedly under section 12(1) of the said Act stating that a sum of Rs. 48,121,634/29 is payable by the appellant company as excise duty. The said certificate had been marked and produced as "P39". Thereupon, the Magistrate's Court of Fort summoned the 1st to the 9th appellants and the appellant company to show cause as to why further proceedings for the recovery of the excise duty alleged to have been defaulted by the appellant company shall not be taken against them.

Bring aggrieved by the foregoing, the 1st to the 9th appellants and appellant company filed a writ application in the Court of Appeal stating, *inter alia,* that the said certificate of excise duty in default was *ultra vires* the said Act, as it was issued without following the procedure laid down in the said Act.

Further, in the writ application filed in the Court of Appeal the appellants prayed, *inter alia*, to;

> *"(c) Grant a mandate in the nature of a Writ of Certiorari, quashing the purported Certificate of Excise Duty in Default and penalty, issued by the 1st respondent, marked "P39";*
>
> *(d) Grant a mandate in the nature of a Writ of Prohibition, prohibiting the 1st and 2nd respondents from taking any step or action to prosecute the proceedings in M.C. Fort Case No. S/65898/07/B against the 1st to the 10th petitioners."*

Proceedings before the Court of Appeal

In the Court of Appeal, the parties had admitted that the said final notice marked and produced as "P30(a)" was a determination made by the Director-General of Excise in terms of section 9(2) of the said Act, and the letter marked as "P31" was an appeal preferred by the appellant company against such determination in terms of section 10(1) of the said Act.

In paragraph 66 of the petition filed in the Court of Appeal, the appellants had stated as follows:

> *"1st Respondent makes his determination*

Thereafter, 1st Respondent issued a purported final notice dated 26th September 2006 together with a statement signed by the 1st Respondent purporting to set out sum of Rs. 48,121,634/29 as excise duty in arrears and a penalty due from the 10th Petitioner and thus making a determination and stating, inter alia, that unless the excise duty with penalties are paid within 14 days of the receipt of this letter, legal action will be instituted against the 10th Petitioner Company in terms of section 24(1) of the Act.

True copies of the said Notice dated 26th September 2006 and the statement annexed thereto signed by the 1st Respondent are annexed herewith marked as "P30(a)" and "P30(b)" respectively and pleaded as part and parcel hereof."

[Emphasis added]

Further, paragraph 69 of the said petition stated as follows:

"By letter dated 24th November 2006, the 1st Respondent acknowledged the aforesaid appeal preferred by the 10th Petitioner marked "P31" and presumably in terms of 10(5) of the Act requested the 10th Petitioner to participate in a discussion at 3.p.m. on 30th November 2006 in respect of the said Appeal.

A true copy of the said letter dated 24th November 2006 addressed to the 10th Petitioner and sworn English translation thereof are marked "P32" and "P32(a)" respectively and annexed hereto and pleaded as part and parcel hereof."

[Emphasis added]

In response, the respondents had expressly admitted the aforementioned paragraphs 66 and 69 of the petition and paragraph 5 of the statement of objections filed in the Court of Appeal.

Paragraph 5 of the statement of objections filed in the Court of Appeal stated as follows:

"The Respondents admit the averments contained in paragraphs 2, 3, 4, 5, 8, 9, 10, 11, 12, 14, 31, 32, 35, 37, 38, 39, 45, 53, 56, 57, 61, 65, 66, 69, 70, 76 and 77 of the Petition and corresponding averments in the affidavit filed on behalf of the Petitioners."

[Emphasis added]

Furthermore, Senior Additional Solicitor-General who appeared for the respondents had admitted the same during the course of the hearing before the Court of Appeal on the 16th of November 2011.

Minutes of the Court of Appeal dated 16th November, 2011 is reproduced below:

> *"Counsel for the Respondents admits P31, the receipt of P31, Paragraphs 69 and 70 of the Petition, and Counsel for the Respondents further admits that P31 was not rejected, and no determination was made on P31."*
>
> [Emphasis added]

However, irrespective of the said admission by the parties, the Court of Appeal held, *inter alia*, that the said "final notice" marked and produced as "P30(a)" did not amount to a determination under and in terms of section 9(2) of the said Act.

The Court of Appeal had held that:

> *"The final notice is not a determination that falls within section 9(2) of the Act. Therefore, no appeal can be filed against that final notice."* (Page 14 of the Court of Appeal judgment dated 18th June 2012).
>
> [Emphasis added]

Further, the Court of Appeal went on to hold that no valid appeal had been made under section 10(1) of the said Act.

In this regard, the Court of Appeal had held:

> *"But the facts narrated by me in this case show that there was no valid appeal under section 10(1) for determination under section 10(4)."* (Page 13 of the Court of Appeal judgment dated 18th June 2012).
>
> [Emphasis added]

The Court of Appeal further held that, since the appellant company had not made an appeal in terms of section 10(1) of the said Act, the 1st respondent was entitled to issue a certificate under section 12(1) of the said Act to initiate proceedings against the 1st to the 9th appellants and the appellant company to recover the said amount of excise duty defaulted by the said appellant company.

Accordingly, judgment had been delivered in favour of the respondents and the appeal was dismissed by the Court of Appeal.

Being aggrieved by the aforesaid judgment of the Court of Appeal, the 1st to the 7th appellants and 10th appellant company had filed an application for special leave to appeal to this court, and special leave to appeal was granted on the following questions of law raised by the said appellants:

"a. Could the Court of Appeal have come to a finding of fact that no appeal had been preferred by the 10th Petitioner-Petitioner Company under and in terms of Section 10 of the Excise (Special Provisions) Act, as amended, in the facts and circumstances of this case?

b. If the appeal preferred by the 10th Petitioner-Petitioner Company under and in terms of Section 10 of the Excise (Special Provisions) Act, as amended, was pending determination by the 1st Respondent-Respondent, could the 1st Respondent-Respondent have issued a certificate for the recovery of the amount of the excise duty purportedly to be in default in terms of Section 12 (1) of the Excise (Special Provisions) Act, as amended?

c. If the appeal preferred by the 10th Petitioner-Petitioner Company under and in terms of Section 10 of the Excise (Special Provisions) Act, as amended, was pending determination by the 1st Respondent-Respondent, could the 10th Petitioner-Petitioner have been prosecuted in M.C. Fort Case No. S/65898/07/B under and in terms of Section 12 (1) of the Excise (Special Provisions) Act, as amended?

d. Could the 1st to 7th Petitioner-Petitioners and the 8th and 9th Petitioners-Respondents, as Directors of the 10th Petitioner-Petitioner Company, have been prosecuted in M.C. Fort Case No. S/65898/07/B pursuant to the purported certificate issued under Section 12 (1) by the 1st Respondent-Respondent under the provisions of the Excise (Special Provisions) Act, as amended?

e. Could the Court of Appeal have called in aid the provisions of section 25 of the Excise (Special Provisions) Act, as amended, to justify the prosecution of the 1st to 7th Petitioner-Petitioners and the 8th and 9th Petitioners-Respondents in M.C. Fort Case No. S/65898/07/B in the facts and circumstances of this case?

f. Is the 'Ex-factory' price at which the beer manufactured by the 10th Petitioner-Petitioner Company was sold to its distributors in the 'wholesale trade' at its factory premises, the 'normal price' within the meaning of the provisions of the Excise (Special Provisions) Act, as amended?

g. *Is the 10th Petitioner-Petitioner Company and/or the 1st to 7th Petitioner-Petitioners and the 8th and 9th Petitioners-Respondents, under any legal obligation and/or liability to pay the amount sought to be recovered in M.C. Fort Case No. S/65898/07/B?"*

Thereafter, the 1st and 2nd respondents had raised the following questions of law:

"1. Is P31 an appeal in terms of section 10 (1) of the Excise (Special Provisions) Act No. 13/1980, as amended?

2. *Is P30(a) a determination within the meaning of section 9 (2) of the said Act?*

3. *If any one or more of the above questions are answered in the negative, is the Petitioner entitled to succeed in this appeal?"*

Further, the following consequential question of law had been raised on behalf of the 1st to 7th appellants and 10th appellant company:

"Are the 1st and 2nd Respondents-Respondents entitled by reason of the admissions on record in the Court of Appeal proceedings in this case and the admissions contained in the Statement of Objections filed on behalf of the 1st and 2nd Respondents-Respondents, to raise the above questions 1, 2, 3 for determination by this Court?"

I now proceed to consider the following question of law upon which special leave to appeal was granted by this court.

Could the 1st to 7th Petitioner-Petitioners and the 8th and 9th Petitioners-Respondents, as Directors of the 10th Petitioner-Petitioner Company, have been prosecuted in M.C. Fort Case No. S/65898/07/B pursuant to the purported certificate issued under Section 12 (1) by the 1st Respondent-Respondent under the provisions of the Excise (Special Provisions) Act, as amended?

Where a determination has been made by the Director-General of Excise under section 9(2) of the said Act, any person dissatisfied with such determination should appeal to the Director-General of Excise for re-consideration of such determination by him, within a period of 30 days of receiving notice of such determination in terms of section 10(1) of the said Act.

Further, where no such appeal has been preferred under the said section, the amount determined by the Director-General of Excise under section 9(2) of the said Act is deemed to be the final and conclusive amount of excise duty payable in terms of section 11 of the said Act.

Moreover, if a valid appeal has been lodged in terms of section 10(1) of the said Act against a decision made under section 9(2) of the said Act, the amount increased, reduced or confirmed by the Director-General of Excise on such appeal, shall be deemed to be the final and conclusive amount of excise duty payable in terms of section 11 of the said Act

Thereafter, the Director-General of Excise shall issue a certificate under section 12(1) of the said Act stating the final and conclusive amount of excise duty payable, and proceedings would thereupon be instituted in the Magistrates' Court for the recovery of the said sum of excise duty.

Section 12(1) of the said Act states as follows:

> *"Where the payment of any excise duty is in default, the Director-General may issue a certificate containing particulars of the amount of the excise duty in default and the name and last known place of business or residence of defaulter to a Magistrate having jurisdiction in the division in which such place of business or residence is situated. The Magistrate shall thereupon summon such defaulter before him to show cause why further proceedings for the recovery of the excise duty shall not be taken against him, and in default, of sufficient cause being shown, the excise duty in default shall be deemed to be a fine imposed by a sentence of the Magistrate on such defaulter for an offence punishable with fine only or not punishable with imprisonment, and the provisions of subsection (1) of section 291 (except paragraphs (a), (d). and (i) thereof) of the Code of Criminal Procedure Act, No. 15 of 1979, relating to default of payment of a fine imposed for such an offence shall thereupon apply, and the Magistrate may make any direction which, by the provisions of that Subsection, he could have made at the time of imposing such sentence:*
>
> *Provided that, nothing in this section shall authorize or require the Magistrate in any proceeding there under to consider, examine or decide the correctness of any statement in the certificate of the Director-General."*
>
> [Emphasis added]

The words "where the payment of any excise duty is in default" in the above section contemplates that a determination has been made under section 9(2) of the said Act (and section 10(1) of the said Act, if there is an appeal), as one cannot be deemed to be in default of payment of excise duty unless and until the Director-General of Excise has determined the amount of excise duty due from such person. Thus, a determination under section 9(2) of the said Act (and section 10(1) of the said Act, if there is an appeal) is a condition precedent to invoking the provisions of section 12 of the said Act.

Hence, I will first consider whether a determination had been made under and in terms of section 9 of the said Act prior to instituting proceedings in the Magistrates' Court.

Was there a valid determination made by the Director-General of Excise in terms of section 9(2) of the Excise Duty (Special Provisions) Act?

As stated above, section 9(1) of the said Act empowers an excise officer who is satisfied that the taxpayer has not paid excise duty, either in whole or in part, to issue a show cause notice to the taxpayer requiring it to show cause as to why the sum specified in the said notice should not be paid.

Section 9(1) of the said Act states as follows:

> *"Where any excise duty has not been levied or paid on any excisable article or has been levied or paid only in part on such excisable article or where it has been erroneously refunded, an excise officer may, within a period of five years from the relevant date serve notice on the person chargeable with excise duty which has not been levied or paid or which has not been levied or paid in full or to whom a refund has been erroneously made, requiring him to show cause why he should not pay the amount so specified in the notice: […]."*
>
> [Emphasis added]

Section 9(2) of the said Act thereby imposes a duty on the Director-General of Excise to consider the representations made by the taxpayer, if any, and determine the amount of excise duty due from such taxpayer.

Section 9(2) of the said Act states as follows:

> *"The **Director-General** shall, after considering the representations, if any, made by the person on whom notice is served under subsection (1), determine the amount of excise duty due from such person, **not being an amount in excess of the amount specified in the notice**, and notify him accordingly, and thereupon such person shall pay the amount so determined."*
>
> [Emphasis added]

During the course of submissions before this court, the initial position on behalf of the respondents was that "P30(a)" was the determination made under section 9 of the said Act. Later, the respondents relied on "P21" as the determination made under the said section.

In view of the above, I will consider both documents to ascertain whether there was a determination made in terms of section 9 of the said Act.

(a) Is "P30(a)" a determination within the meaning of section 9(2) of the said Act?

At the hearing of this appeal, the respondents submitted that "P30(a)" was the determination made by the Director-General of Excise in terms of section 9(2) of the said Act. A careful consideration of "P30(a)" shows that it is only a final notice and not a determination made under the said section.

Further, I am inclined to agree with the finding of their Lordships of the Court of Appeal that "P30(a)" does not amount to a determination in terms of the said section.

As the respondents have not filed an appeal contending the said finding, the respondents cannot dispute the said finding of the Court of Appeal in the instant appeal.

(b) Is "P21" a determination within the meaning of section 9(2) of the said Act?

Further, during the course of oral submissions, the respondents also submitted that the letter dated 2nd May, 2005 marked and produced as "P21" was the determination made by the Director-General of Excise in terms of section 9(2) of the said Act.

Section 9(2) of the said Act provides that, after considering the representation made by a person on whom a notice is served, the amount of excise duty due from such person shall be determined

by the Director-General of Excise. Further, the sum specified in the said determination shall not exceed the sum specified in the show cause notice.

However, the amount specified in the purported determination marked and produced as "P21" (i.e., a sum of Rs. 48,121,634/29, which included the excise duty in a sum of Rs. 23,062,080/43 and the penalty in a sum of Rs. 25,059,553/86) was in excess of the sum specified in the second show cause notice marked and produced as "P16(a)" (i.e., a sum of Rs. 44,432,207/32 as excise duty and penalty).

Further, the said letter merely states that the amnesty granted by Inland Revenue (Special Provisions) Act, No. 10 of 2003 has been repealed by Inland Revenue (Regulation of Amnesty) Act, No. 10 of 2004 and, therefore, the duty that the appellant company was liable to pay should be paid within 30 days of the receipt of such letter.

Hence, I am of the opinion that "P21" cannot be considered as a valid determination under section 9(2) of the said Act. In fact, it is only a letter sent on behalf of the Director-General of Excise by the Deputy Director of Excise.

In the circumstances, I am of the view that there is no valid determination made by the Director-General of Excise in terms of section 9(2) of the Excise Duty (Special Provisions) Act.

Moreover, as there was no determination under section 9(2) of the Act it is not possible to invoke section 10 of the said Act.

Applicability of section 12 of the Excise Duty (Special Provisions) Act

As there is no determination made by the Director-General of Excise under sections 9(2) or 10 of the said Act, it is not possible to invoke section 12 of the said Act.

In the circumstances, the certificate marked "P39" issued by the Director-General of Excise purporting to be made under section 12(1) of the said Act to institute proceedings against the 1st to the 9th appellants in the Magistrates' Court is ultra vires.

Therefore, I quash the said certificate marked "P39" and action filed in the Magistrates' Court of Fort bearing case No. S/65898/07/B.

Due to the foregoing, I answer the questions of law upon which special leave to appeal was granted by this court as follows:

Could the 1st to 7th Petitioner-Petitioners and the 8th and 9th Petitioners-Respondents, as Directors of the 10th Petitioner-Petitioner Company, have been prosecuted in M.C. Fort Case No. S/65898/07/B pursuant to the purported certificate issued under Section 12 (1) by the 1st Respondent-Respondent under the provisions of the Excise (Special Provisions) Act, as amended?

No.

Is the 10th Petitioner-Petitioner Company and/or the 1st to 7th Petitioner-Petitioners and the 8th and 9th Petitioners-Respondents, under any legal obligation and/or liability to pay the amount sought to be recovered in M.C. Fort Case No. S/65898/07/B?

The above should be decided only after a determination is made under section 9 and the other relevant provisions of the said Act.

In view of the above, the remaining questions of law do not require consideration.

Accordingly, I allow the appeal and set aside the judgment of the Court of Appeal dated 18th June, 2012 and direct the Director-General of Excise to consider the representations made by the appellant company in respect of the second show cause notice marked and produced as "P16(a)" and make a determination under section 9(2) of the said Act.

I further direct the Director-General of Excise to conclude the inquiry within six months from the date of this judgment.

Thereafter, both parties are entitled to take steps in terms of the said Act.

However, the security deposited by the appellants, purportedly under section 10(1) of the said Act, should not be withdrawn until a determination is made in terms of section 9(2) and the other relevant provisions of the said Act are complied with.

The Registrar of the Supreme Court is directed to forward a copy of this judgment to the Court of Appeal and Director-General of Excise to act in terms of the law.

I order no costs.

Judge of the Supreme Court

L. T. B. Dehideniya, J

I agree.

Judge of the Supreme Court

Murdu N. B. Fernando PC, J

I agree.

Judge of the Supreme Court