

**IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST**

**REPUBLIC OF SRI LANKA**

In the matter of an Application for Leave to Appeal, under and in terms of Section 5C of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990, as amended by Act No. 54 of 2006, from the Judgment of the High Court of Civil Appeal of the Western Province (Holden in Colombo), dated 11. 01. 2017, in case bearing No. WP/HCCA/COL.27/2015 (RA).

SC (HCCA) LA Application No. 51/2017

WP/HCCA/COL27/2015 (RA).

DC (COLOMBO) CASE No. 75942/TAX

P. M. Dissanayake,  
Deputy Commissioner,  
Unit 14,  
Department of Inland Revenue,  
Colombo 02.

**Complainant**

**Vs.**

Gifuulanka Motors (Pvt.) Limited,  
No. 50/2, Vijaya Road,  
Gampaha.

**Respondent**

**And Between**

Gifuulanka Motors (Pvt.) Limited,  
No. 50/2, Vijaya Road,  
Gampaha.

**Respondent-Petitioner**

**Vs.**

P. M. Dissanayake,  
Deputy Commissioner,  
Unit 14,  
Department of Inland Revenue,  
Colombo 02.

**Complainant-Respondent**

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

**Respondent**

**And Now Between**

Gifuulanka Motors (Pvt.) Limited,  
No. 50/2, Vijaya Road,  
Gampaha.

**Respondent-Petitioner-Petitioner**

**Vs.**

P. M. Dissanayake,  
Deputy Commissioner,  
Unit 14,  
Department of Inland Revenue,  
Colombo 02.

**Complainant-Respondent-Respondent**

Ivan Dissanayake,  
Commissioner General of Inland  
Revenue,  
Department of Inland Revenue,

Sir Chittampalam A. Gardiner  
Mawatha,  
Colombo 02.

Respondent-Respondents

**Before:** Buwaneka Aluwihare, PC. J.  
V. K. Malalgoda, PC. J.  
E. A. G. R. Amarasekara J.

**Counsel:** Nilshantha Sirimanna for Respondent-Petitioner-  
Petitioner.  
M. Corea DSG for Complainant-Respondent-Respondent.

**Argued on:** 29. 11. 2019

**Order on:** 27. 07. 2021

**Aluwihare PC. J.,**

The Respondent-Petitioner-Petitioner [hereinafter the Petitioner] moved this court by way of an application for Leave to Appeal against the judgment of the High Court of Civil Appeals dated 11. 01. 2017. Having heard the Learned Counsel for the Petitioner in support of this application as well as the Learned Deputy Solicitor General for the Complainant-Respondent-Respondent [hereinafter the Complainant] and the Respondent-Respondent, we wish to make following order.

The gravamen of the Petitioner's Application is that the Civil Appellate High Court had erred by failing to consider and adjudicate on the central issue raised by the

Petitioner that, the District Court of Colombo has *no jurisdiction* to order the recovery of Value Added Tax [hereinafter VAT] in terms of Section 43(1) of the Value Added Tax Act No. 14 of 2002 [hereinafter referred to as the VAT Act].

As time and again the jurisdiction of the District Court, regarding tax matters, has been the ground for appeals, we consider it appropriate to clarify the current position so as to clear all doubts and prevent such litigations in the future

The Complainant, sought to recover defaulted VAT, filed in the District Court of Colombo, 'Tax in Default Certificate' dated 28. 01. 2011 against the Petitioner, a limited liability company. The defaulted taxes amounted to; VAT liability amounting to Rs. 7,251,676/- and Economic Service Charge (ESC) liability amounting to Rs. 131,423/- a sum of Rs. 7,383,099/- in total.

Among several matters, the Petitioner in particular has raised the issue as to whether the District Court of Colombo is vested with the jurisdiction to entertain an application for the recovery of VAT under the provisions of the VAT Act.

In subparagraphs (a), (b) and (c) of Paragraph 30 of the petition, the Petitioner has raised the following questions of law;

- (a) *Did the Hon. Civil Appellate High Court of Colombo err by failing to duly and properly consider and adjudicate upon the Petitioner's contention that the District Court of Colombo had no jurisdiction in law to entertain and /or order, inter alia, recovery of VAT under Section 43(1) of the VAT Act No.14 of 2002, in respect of any Certificate of default filed in the said Court and/or by failing to appreciate that the said lack of jurisdiction was patent in nature, in the particular circumstances.*
- (b) *Did the Hon. Civil Appellate High Court of Colombo err by failing to appreciate/find that Section 60 of the Judicature Act No. 2 of 1978 did not vest*

*any power /authority in the relevant Minister to concurrently/additionally vest by Regulation [as published in the Government Gazette Notification, bearing No.1380/17, dated 16/02/2005] a jurisdiction/power in the District Court to recover VAT in default under Section 43 (1) of the VAT Act No. 14 of 2002, when evidently the said power had specifically vested with the Parliament exclusively in the Magistrate's Court and therefore, the recovery of VAT under Section 43 (1) of the VAT Act in the District Court of Colombo under the said purported Tax in Default certificate, was clearly illegal and void?*

- (c) *Did the Hon. Civil Appellate High Court of Colombo err by totally failing to appreciate that the said purported Tax in Default Certificate was clearly filed in and/or addressed to the wrong Court, and was therefore, flawed/ misconceived and liable to be dismissed, and no attempt whatsoever was made by the Respondents to rectify and/or amend the said error.*

### **Jurisdiction of the District Court of Colombo relating to matters under the VAT Act**

Chapter VIII of the VAT Act deals with recovery of tax and Section 43 of that chapter, refers to proceedings for recovery [of tax] before a magistrate. In terms of the said provision, the Commissioner General is empowered to issue a certificate containing the particulars of such tax in default, to a magistrate having jurisdiction in the division in which, such place of business or residence of the defaulter is situate.

In the year 1979, the Minister of Justice, by virtue of the powers vested in him under section 61 of the Judicature Act No. 2 of 1978 [hereinafter the Judicature Act], read with Section 5 (1) of the said Act, *inter alia*, designated the District Court of Colombo to try and adjudicate on all matters under the Inland Revenue Act No. 4 of 1963 [Gazette No. 43/4 dated 2<sup>nd</sup> July 1979].

The above Gazette was amended in the year 2005 [Gazette No.1380/7 dated 16. 02. 2005]. The Minister, acting under the aforesaid powers, designated the District Court of Colombo to **try and adjudicate on all matters** under the VAT Act No.14 of 2002.

It should to be noted that the validity of the Gazettes aforesaid has not been challenged when promulgated and has been in force since 1979 and 2005 respectively. On the other hand, the original jurisdiction vested with the magistrate's court in terms of the provisions of the VAT Act, continues to remain in force. As such, the District Court of Colombo has island wide jurisdiction concurrent with that of the magistrate's court of the relevant division, over matters relating to recovery of VAT. As observed by the Court of Appeal in the case of **Costa v. Deputy Commissioner of Inland Revenue** [1986 Sri Lanka Tax Cases Vol. IV 268 at 270]

*“... for all matters referred to in the regulation the District Court of Colombo has island wide jurisdiction. This jurisdiction is concurrent with that of the several Magistrate's Courts throughout the island, in the matter of proceedings for the recovery of taxes, by imposing the amount as a fine with power to impose a term of imprisonment in default.”* (Emphasis added.)

The preamble to the Judicature Act, spelling out the legislative intent, states, that it is *“An Act to..... define the jurisdiction of and to regulate the procedure in and before such courts....”* and Section 61 of the Judicature Act vests the Minister with the power to make regulations for carrying out or giving effect to the principles and provisions of the Judicature Act. Section 60 of the Judicature Act clearly vests the Minister with the power to nominate a court or courts anywhere in Sri Lanka to hear and determine such categories of civil or criminal proceedings or any other matters, by regulation notwithstanding anything to the contrary, in any other written law. This court wishes to observe that the Gazettes referred to, have not by any means taken away the powers, the Parliament has vested, with the magistrate's court to deal with recovery of taxes, but has only complemented that jurisdiction by vesting similar powers with the District Court of Colombo as well.

This court also notes that in terms of Section 19 of the Judicature Act, District Courts are empowered, in the exercise of their jurisdiction, to impose fines, penalties and forfeitures over persons. As such, we do not envisage that the District Court encountering any difficulty in the enforcement of its orders in relation to the matters in question.

In the circumstances, we are of the view that there is no merit in the application to grant leave to proceed on the questions of law referred to in (a) and (b) above.

The learned Counsel for the Petitioner also submitted that the Tax in Default Certificate was addressed to the magistrate's Court and not to the District Court and thereby is flawed and/or misconceived and liable to be dismissed for that reason. It is well-settled that an exercise of a power will be referable to a jurisdiction which confers validity upon it and not to a jurisdiction under which it will be nugatory. This principle has been applied even to cases where a Statute which confers no power has been quoted as authority for a particular act, as there was in force another Statute which conferred that power [See **L. C. H. Peiris v. Commissioner of Inland Revenue** 65 NLR 457]. Similarly, this principle should apply to instances where the jurisdiction had been correctly invoked, but in doing so, the forum is wrongly stated.

The Deputy Commissioner of Inland Revenue had correctly invoked the jurisdiction of the District Court of Colombo and had used a printed form No.101G (new) where the word 'magistrate' is printed, to issue the Tax in Default Certificate.

Furthermore, the Civil Appellate High Court could have relied on the proviso to Article 138 (1) of the Constitution, which states, *"Provided that no judgement, decree or order of any court shall be revised or varies on account of any error, defect or irregularity, which has not prejudiced the substantial rights of the parties or occasion a failure of justice."*

There is no material before this court to arrive at a finding that the rights of the Petitioner were prejudiced in any way due to the aforesaid defect and we see no merit in the argument, to grant leave to appeal on the said question of law as well.

Accordingly, leave to appeal is refused and the application is dismissed.

*Application Dismissed*

**Judge of the Supreme Court**

**V. K. Malalgoda, PC. J.**

I agree.

**Judge of the Supreme Court**

**E. A. G. R. Amarasekara, J.**

I agree.

**Judge of the Supreme Court**