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

In the matter of an application for Special Leave to Appeal in terms of Article 154(P) of the Constitution read with Section 9 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990.

K.H. Dayananda,
Revenue Inspector,
Dehiwala – Mt. Lavania Municipal Council,
Dehiwala

- **Complainant**

Vs.

Ceylon Electricity Board,
No. 75/1,
Aththidiya Road,
Ratmalana

- **Defaulter**

SC Appeal 118/2013

SC/(Spl)LA 64/2013

HCMCA 106/2010

MC (Mt. Lav.) 4190/S/09

AND

Ceylon Electricity Board,
No. 75/1,
Aththidiya Road,
Ratmalana

- **Defaulter/Appellant**

Vs.

K.H. Dayananda,
Revenue Inspector,
Dehiwala – Mt. Lavania Municipal Council,
Dehiwala

- **Complainant/Respondent**

AND NOW BETWEEN

Ceylon Electricity Board,
No. 75/1,
Aththidiya Road,
Ratmalana

- **Defaulter/Appellant/Appellant**

Vs.

K.H. Dayananda,
Revenue Inspector,
Dehiwala – Mt. Lavania Municipal Council,
Dehiwala

- **Complainant/Respondent/Respondent**

Before: Priyantha Jayawardena, PC, J
Murdu N.B. Fernando, PC, J
S Thurairaja, PC, J

Counsel: Uditha Egalahewa, PC with Ranga Dayananda for the Defaulter-Appellant-Appellant.
W. Dayaratne, PC with R. Jayawardena for the Complainant-Respondent-Respondent.

Argued on: 07th June, 2019

Decided on: 17th September, 2020

Priyantha Jayawardena, PC, J

Facts of the case

This is an appeal to have the judgment of the High Court of Western Province holden in Colombo [hereinafter referred to as the "High Court"] affirming the judgment of the Magistrate's Court ordering to pay the Trade Tax and Service Charge imposed on the appellant set aside.

The complainant-respondent-respondent [hereinafter referred to as the "complainant"] is the Revenue Inspector of the Dehiwala-Mt. Lavinia Municipal Council. The defaulter-appellant-appellant [hereinafter referred to as the "appellant"] is the Ceylon Electricity Board.

The complainant had instituted proceedings against the appellant in the Magistrate's Court of Mt. Lavinia in terms of section 136(1)(b) of the Code of Criminal Procedure, No.15 of 1979 (as amended), by filing a written report.

In the said report, the complainant had stated that the appellant had failed to pay Rupees Five Thousand Seven Hundred and Fifty (Rs. 5,750/-) as the annual Trade Tax and Rupees Two Thousand and Five Hundred (Rs. 2,500/-) as Service Charge for the year 2008 for using the premises for commercial purposes situated within the administrative limits of the Municipal Council in terms of section 247B of the Municipal Councils Ordinance No. 29 of 1947 as amended by the Municipal Councils (Amendment) Act No. 42 of 1979 [hereinafter referred to as "Municipal Councils Ordinance"].

Upon the receipt of summons, the appellant had appeared in the Magistrate's Court and raised the objection that section 247B of the Municipal Councils Ordinance was applicable only for premises carrying on a trade and that the appellant was only using the premises under reference as a Regional Engineer's Office. The appellant had stated that in the circumstances, it is not liable to pay a Trade Tax and prayed to be discharged from the aforesaid proceedings.

Responding to the said objections, the complainant had stated that the appellant was using the premises under reference to conduct "trading activities". The complainant had also stated that the appellant had paid the Trade Tax and Service Charge for the said premises until the year 2007 without any objection.

Having heard the parties, the learned Magistrate had overruled the said objections raised by the appellant and had delivered a judgment directing the appellant to pay a sum of Rupees Five Thousand Seven Hundred and Fifty (Rs. 5,750/-) as Trade Tax and Rupees Two Thousand Five Hundred (Rs. 2,500/-) as Service Charge and ordered the same to be recovered as a fine in terms of section 247B (4) of the Municipal Councils Ordinance.

The appellant had deposited the aforesaid total sum of Rupees Eight Thousand Two Hundred and Fifty (Rs.8,250/-) at the Magistrate's Court of Mt. Lavinia but had filed an appeal in the High Court to have the said judgment set aside, *inter alia,* on the following grounds:

a) the [judgment] of the learned Magistrate was contrary to law,
b) the learned Magistrate failed to analyse and interpret section 247B of the said Ordinance according to law,
c) the learned Magistrate failed to take cognizance of the fact that the Regional Engineer's Office is merely an office and not a place where any business activity or industry or any activity which yields any profit is carried out, and
d) the learned Magistrate erred in law by determining that the decision in *Ceylon Electricity Board v. A.D.A. Wijesuriya* SC minutes 5th November, 2011 was not binding on him.

Having heard the parties, the High Court had affirmed the aforesaid judgment of the learned Magistrate and dismissed the appeal. The said judgment of the High Court held *inter alia* that;

a. the said premises were liable to pay a Trade Tax and Service Charge as it came under Item No. 02, i.e. storing office equipment in the premises, of the Regulations issued by Gazette No. 1542 dated 19th March, 2008
b. the judgment in *Ceylon Electricity Board v A.D.A. Wijesuriya* SC Minutes 5th November, 2011 has no application to the instant appeal as it was a settlement entered according to the facts and circumstances of the said case, and
c. the appellant failed to establish that it was not liable to pay the Trade Tax and Service Charge on the premises in question.

Being aggrieved by the aforesaid judgment of the High Court, the appellants sought special leave to appeal from this court to have the said judgment set aside.

Having heard the submissions of the parties, this court granted special leave to appeal on the following questions of law:

(a) Did the Hon. Provincial High Court judge misdirect herself in interpreting the section 247B of the said Ordinance as applicable to the petitioner?

(b) Did the Hon. Provincial High Court judge err in law when she came to the finding that the petitioner was carrying on a trading activity at the Regional Engineer's Office, Ratmalana which was liable to pay Trade Tax in terms of section 247B of the said Ordinance read with the Government Gazette Notification bearing No. 1542?

On 20th September, 2013 this court, with the consent of the appellant, had directed the complainant to produce material to show that the premises under reference are being used for a commercial

purpose. Consequently, the complainant had filed receipts issued to consumers by the appellant for the payment of electricity bills and obtaining of electricity connections at the premises under reference.

The applicability of the judgment delivered in ***Ceylon Electricity Board v A.D.A. Wijesuriya*** **SC Minutes dated 5th November, 2011** in respect of a previous settlement entered by the parties in the Supreme Court relating to another matter will not be considered in this judgment as leave was not granted in respect of the applicability of the said judgment in the instant appeal.

Submissions of the appellant

The learned President's Counsel for the appellant submitted that in terms of section 247B of the English language text [hereinafter referred to as the "English text"] of the Municipal Councils Ordinance, a Municipal Council is conferred with the power to impose and levy a tax on "any trade" carried on within its administrative limits.

However, section 247B of the Sinhala language text [hereinafter referred to as the "Sinhala text"] of the Municipal Councils Ordinance states that the Municipal Council has the power to impose a tax on any *"කර්මාන්තය"* carried on within its administrative limits.

The learned President's Counsel submitted that the word *"කර්මාන්තය"* means an "industry" in the English language and not a "trade". Thus, it was submitted that there is an inconsistency between the Sinhala and English texts of the said section.

It was further submitted that in terms of Article 23(1) of the Constitution, the text in the Official language shall prevail over the text in the English language when there is an inconsistency. Thus, Sinhala being the official language in terms of Article 18 of the Constitution, at the time of enactment of section 247B of the said Ordinance, the Sinhala text of the Municipal Councils Ordinance should prevail.

It was further submitted that section 247B of the said Ordinance only confers power on a Municipal Council to impose and levy a tax on any *"කර්මාන්තය"*, meaning an industry in the English language, carried on within its local limits of administration and not on a trade.

In the circumstances, the learned President's Counsel submitted that a *"කර්මාන්තය"* (meaning an industry) was not carried on at the premises under reference as it was not used to manufacture

goods. Thus, it was submitted that the appellant is not liable to pay a Trade Tax under section 247B of the said Ordinance.

In support of the said submission, learned President's Counsel for the appellant cited the case of *Crest Gems Ltd v The Colombo Municipal Council* [2003] 1 SLR 370 which held:

> *"The activity of the petitioner is a trade or a "Veladama" in Sinhala and does not fall within the meaning of the word "Karmanthaya"; since the petitioner does not manufacture in the said place, no tax under section 247B could be levied."*

Moreover, the learned President's Counsel for the appellant submitted that certain items including Item No. 2 of the said Gazette are not industries (*"කර්මාන්තය"*) as stated in section 247B of the said Ordinance. Thus, it was contended that the Regulations published in the said Gazette is *ultra vires* the said section of the said Ordinance and must be struck down.

It was submitted that the High Court has erred in law in holding that the appellant was liable to pay Trade Tax in terms of section 247B of the said Ordinance and the Regulations published in the said Gazette in respect of Regional Engineer's Office on the basis that a trading activity is being conducted in the said premises.

Further, it was submitted that the notice issued by the complainant to the appellant to recover Trade Tax should be declared null and void as an "industry" in terms of the Sinhala text of section 247B of the Municipal Councils Ordinance is not being conducted at the Regional Engineer's office.

Submissions of the complainant

The learned President's Counsel appearing for the complainant submitted that even though the appellant claimed that the said premises are being used as an administrative office, it had in fact been used to generate income for the appellant. It was submitted that the said premises have been used as an office where consumers of electricity can pay their bills and obtain new electricity connections.

It was further submitted that, the Regulations published in the Gazette No. 1542 dated 19th March, 2008 had been published in terms section 247B of the Municipal Councils Ordinance. Hence, the said Gazette is not *ultra vires* section 247B of the Municipal Councils Ordinance as amended.

Furthermore, it was submitted that, in terms of the Regulations published under section 247B of the said Ordinance, the appellant's premises under reference are subject to tax under Item No.2 which refers to an office storing and/or selling office equipment, Item No.68 which refers to offices used for commercial purposes, and/or Item No.205 which refers to commercial entities which do not pay licensed taxes or taxes for maintaining a commercial business.

In the circumstances, it was submitted that the said premises of the appellant fall within the Sinhala text of section 247B of the Municipal Councils Ordinance and the Regulations published in the Gazette No. 1542 dated 19th March, 2008.

The learned President's Counsel for the complainant further submitted that there is no inconsistency between the word *"කර්මාන්තය"* in the Sinhala text and the word "trade" in the English text of section 247B of the said Ordinance. Thus, the premises of the appellant can be taxed under section 247B of the said Ordinance under the Regulations published in the Gazette No. 1542 dated 19th March, 2008.

Main issues to be considered in the instant appeal

The issues that need to be considered in this appeal are:

(a) whether the Sinhala text of 247B of the Municipal Councils Ordinance prevails over the English text,
(b) whether the Sinhala text is applicable to the appellant if the appellant is not using the premises under reference for a purpose within the meaning of the said section,
(c) whether there is an inconsistency between the Sinhala and English texts of section 247B of the Municipal Councils Ordinance,
(d) whether the Regulations published under section 247B of the said Ordinance are *ultra vires,* and;
(e) whether the appellant is liable to pay Trade Tax and Service Charges for the premises under reference under section 247B of the Municipal Councils Ordinance.

Is there an inconsistency between the Sinhala and English texts of section 247B of the Municipal Councils Ordinance?

In the Magistrate's Court, the appellant had taken up the position that it was not liable to pay taxes under section 247B of the Municipal Councils Ordinance as the premises under reference have only been used as an administrative office and not as a place of business.

Further, the appellant submitted that section 247B of the Sinhala text of the Municipal Councils Ordinance refers to a "කර්මාන්තය" which means an "industry" in the English language. Hence, it was contended that the appellant is not engaged in an "industry" in the premises under reference.

Moreover, section 247B (1) in the Sinhala text of the Municipal Councils Ordinance confers power on the Municipal Council to impose and levy a tax on a "කර්මාන්තය" while the English text stipulates to levy a tax on any "trade". Thus, it was contended by the appellant that there is an inconsistency between the Sinhala and English texts of section 247B of the said Ordinance.

In the circumstances, it is necessary to consider which text shall prevail over the other.

The Municipal Councils Ordinance No. 29 of 1947 was enacted in the English Language. Section 247 of the said Ordinance was amended on 25th June, 1979 by introducing sections 247A, 247B, 247C, 247D and 247E by the Municipal Councils Ordinance (Amendment) Act No. 42 of 1979. Thus, the provisions of the 1978 Constitution prior to being amended by the 13th Amendment apply to the section 247 as amended.

The Amendment to section 247 of the said Ordinance does not stipulate which text shall prevail over the other. However, at the time of the enactment of the aforementioned Amendment, the Official Language of Sri Lanka was Sinhala in terms of Article 18 of the Constitution. Further, Article 23(1) of the Constitution stated that the text in the Official Language should prevail in the event of any inconsistency between any two texts. In light of the above, I am of the view that the Sinhala text of the Municipal Councils Ordinance shall prevail over the English text.

Hence, the Sinhala text of the Municipal Councils Ordinance will be considered first in this judgment.

What does "කර්මාන්තය" in section 247B mean?

The Sinhala text of the said section 247B (1) of the said Ordinance states:

> "යම් මහ නගර සභාවක පාලන සීමා තුළ කර ගෙන යම් <u>කර්මාන්තයක්</u> වෙනුවෙන් බද්දක් නියම කොට අය කිරීම් ඒ මහ නගර සභාව විසින් කල හැකිය." [Emphasis added]

It was submitted by the appellant that the premises under reference were not used for the purposes of a "කර්මාන්තය" which means for the purposes of an "industry". Hence, the appellant is not liable to pay the taxes imposed by the complainant as the Sinhala text prevails over the English text of the section 247B of the said Act.

Thus, it is necessary to interpret the word "කර්මාන්තය" in section 247B of the said Ordinance.

Application of the principles of Literal Interpretation to interpret the word "කර්මාන්තය"

According to the principles of literal interpretation, if a word or phrase has not acquired a technical meaning, it needs to be used in its literal meaning. This rule is generally applied when a word or phrase has not been defined in the Statute itself.

Maxwell on The Interpretation of Statutes, 12th Edition, at page 81 states:

> *"The first and most elementary rule of construction is that it is to be assumed that the words and phrases of technical legislation are used in their technical meaning if they have acquired one, <u>and otherwise in their ordinary meaning</u>".*
>
> [Emphasis Added]

The word "කර්මාන්තය" is not defined in the Municipal Councils Ordinance. Thus, it is necessary to consider the ordinary meaning of the word "කර්මාන්තය" by applying the principles of literal interpretation.

The *"Buddhadasa Hewage Sinhala-English Dictionary",* at page 234, states that the word "කර්මාන්තය" means "business", "industry" and "trade" in the English language.

Further, in "*සිංහල විශ්වකෝෂය*", *6th Edition, compiled by the Department of Cultural Affairs and published by the Department of Government Printing*, at page 396, the word "කර්මාන්තය" is defined as follows:

"*කර්මාන්තය යන පදයට විවිධ නිර්වචන ඉදිරිපත් කොට ඇත. ඇතැම් විට එය නිෂ්පාදන කිරීම යන අර්ථයෙන් යෙදේ. තවත් විටෙක* ***<u>මිනිසාගේ සියලුම ආර්ථික කටයුතු කර්මාන්ත වශයෙන් හැඳින්වීමට උත්සාහගෙන ඇත</u>***.

.....

මිනිසාගේ ආර්ථික කටයුතු ඒවායේ ස්වභාවය අනුව වර්ග කළ හැකිය: ප්‍රාථමික කර්මාන්ත (primary industries), ද්විතීය කර්මාන්ත (Secondary industries) හා තෘතීයික කර්මාන්ත (tertiary industries) වශයෙනි.

.....

ප්‍රාථමික අංශයෙන් නිෂ්පාදනය කෙරෙන ද්‍රව්‍ය උපයෝගී කොටගෙන මිනිසාට අවශ්‍ය භාණ්ඩ සකස් කරන්නේ ද්විතීය අංශයයි. ..... ප්‍රාථමික කටයුතුවලටත් ද්විතීය කටයුතුවලටත් අවශ්‍ය පරිවාර සේවා සපයනු ලබන්නේ තෘතීයික අංශය මගිනි. ***<u>විදුලිය,</u>*** *<u>ගෑස්, ජලය හා සනීපාරක්ෂක සේවාවන්</u> ද ප්‍රවාහන, ගබඩා කිරීම හා පණිවිඩ හුවමාරුව ද තොග හා සිල්ලර වෙළඳාම ද බැංකු හා රක්ෂණ කටයුතු ද රාජ්‍ය පරිපාලන හා ආරක්ෂක කටයුතුද වෛද්‍ය, ඉංජිනේරු, නීතිඥ, සංගීත, නැටුම්, හෝටල්, සංචාරක යනාදී වෙනත් පෞද්ගලික සේවාවන්ට අදාළ කටයුතු ද <u>තෘතීයික අංශයෙහි ලා ගැනේ</u>. මෙම අංශයෙන් ඉටුවන අවශ්‍යතා ඉටුවන ආකාරය දැකිය නොහැකි බැවින් මේවා අදෘශ්‍ය හා අස්පෘශ්‍ය කටයුතු වශයෙන් සැලකේ.*" [Emphasis Added]

In terms of the aforesaid definition, all economic activities are included in the word "කර්මාන්තය". Further, it lists three types of "කර්මාන්ත": primary, secondary and tertiary. Accordingly, primary industries collect raw materials, secondary industries use the said raw materials to manufacture goods and tertiary industries provide services to assist and enable the primary and secondary industries to conduct their activities. In the instant appeal, the appellant provides 'Electricity' which is a service listed as one of the several examples of tertiary industries in the aforesaid definition.

When an Act or a Statute is interpreted by court, an interpretation shall not facilitate the flouting of the intention of the legislation. On the contrary, an Act or a Statute should be interpreted to give effect to the legislation. Further, an interpretation shall not be contrary to common sense and justice.

Maxwell *(supra)* at page 28 states:

> *"In dealing with matters relating to the general public, statutes are presumed to use words in their popular, rather than their narrowly legal or technical sense: "loquitur ut vulgus, that is, according to the common understanding and acceptation of the terms."*

Hence, the meaning of the Sinhala word "කර්මාන්තය" according to the common understanding of the word "කර්මාන්තය" is wide and inclusive of distribution services such as electricity.

Application of the principles of Purposive Interpretation to interpret the word "කර්මාන්තය"

When a word has several meanings, the most appropriate meaning should be used to interpret a word in a Statute by applying purposive interpretation in order to achieve the intention of the legislator. Thus, it is necessary to consider how the word "කර්මාන්තය" has been used in the Municipal Councils Ordinance to determine the intention of the legislator in using the said word.

According to the principles of purposive interpretation, the intention of the legislator in using a particular word can be determined by examining the same or similar words used in an Ordinance or Act as it would have the same or a similar meaning throughout the Ordinance or Act.

A similar view was expressed in Maxwell (*supra)* at page 282, where he states: "*From the general presumption that the same expression is presumed to be used in the same sense throughout an Act or a series of cognate Acts, there follows the further presumption that a change of wording denotes a change in meaning"* [Emphasis Added].

Further, it states at page 286:

> *"In a leading modern case on the subject, Lord Reid said: "There is undoubtedly a presumption that Parliament (or the draftsman) will use the same or similar language throughout an Act when meaning the same thing .... [But] this presumption is only a presumption and one must always remember that the object in construing any statutory provision is to discover the intention of Parliament and that there is an even stronger presumption that Parliament does not intend an unreasonable or irrational result."* [Emphasis Added]

As stated earlier, the Municipal Councils Ordinance has not defined the word "කර්මාන්තය" in the said Ordinance. However, the Sinhala text of section 247C of the said Ordinance states:

"මේ වගන්තියෙහි කාර්ය සඳහා,

"වෙළඳ ව්‍යාපාරය" යන්නට, යම් කර්මාන්තයක් හෝ යම් නිෂ්පාදකයකුගේ හෝ තමා කරන යම් ගනුදෙනුවක්වක් නැතහොත් සේවා සම්බන්ධයෙන් කොමිස් මුදලක් නැතහොත් ගාස්තුවක් අයකරන යම් තැනැත්තකුගේ හෝ යම් වෙළඳ ව්‍යාපාරයක් ද ස්වාධීන කොන්ත්‍රාත්කරුවකුගේ ව්‍යාපාරයක්ද ඇතුළත් වන නමුත්, පෞද්ගලික පොළකදී භාණ්ඩ, බඩු ද්‍රව්‍ය විකිණීමේ රක්ෂාව හෝ රජයෙන් ආධාර දීමනා ගෙවනු ලබන්නා වූ නැතහොත් කලින් එවැනි ආධාර දීමනා ගෙවනු ලැබුවා වූ ද දැනට එවැනි ආධාර දීමනා ගෙවනු නොලබන්නා වූ ද යම් අධ්‍යාපන ආයතනයක් හෝ පාඨශාලාවක් හෝ පවත්වාගෙන යෑමේ රක්ෂාවක් ඊට ඇතුළත් නොවේ" [Emphasis Added]

In view of the above, even though the interpretation given to *"වෙළඳ ව්‍යාපාරය"* is only applicable to the said section, the word "*යම් කර්මාන්තයක්*" used in the aforesaid interpretation can be used to interpret the word "*යම් කර්මාන්තයක්*" in section 247B(1) of the said Ordinance as having the same meaning since the word "*යම් කර්මාන්තයක්*" used in the Act should be given the same meaning.

Further, in view of the aforesaid definition in section 247C, it is apparent that the legislator has also made a distinction between the words "*යම් කර්මාන්තයක්*" and "*යම් නිෂ්පාදකයකු*". It is pertinent to note that the Municipal Councils Ordinance uses the word "*නිෂ්පාදනය*" and its variants like "*නිෂ්පාදකයකු*" and "*නිෂ්පාදිත*" to refer to businesses, organizations and/or individuals engaged in the manufacturing of products.

Thus, within the Sinhala text, the legislator in its wisdom has used different Sinhala words, i.e. *"කර්මාන්තය"* and "*නිෂ්පාදනය*", to change the meaning by using different words when and where it is necessary. In view of the above, the meaning of the word *"කර්මාන්තය"* cannot be restricted only to mean the manufacturing of goods when interpreting the provisions of the Municipal Councils Ordinance.

Is there an inconsistency in the Sinhala and English texts of section 247B?

The English text of section 247B (1) of the Municipal Councils Ordinance reads as follows:

> "A Municipal Council may impose and levy a tax on any trade carried on within the administrative limits of that Council." [Emphasis added]

Accordingly, the English text of the said section 247B (1) states that a Municipal Council has the power to impose a tax on any "trade".

As stated earlier, the *"Buddhadasa Hewage Sinhala-English Dictionary",* at page 234, states that the word "කර්මාන්තය" means, *inter alia,* "trade" in the English language. Further, the *'Malalasekera English-Sinhala Dictionary'*, at page 1065, states that the word "trade" means "වෙළඳාම" and "කර්මාන්තය" in the Sinhala language.

Accordingly, when a literal interpretation is applied, the word "trade" means "කර්මාන්තය" in ordinary usage. Thus, I am of the view that the word "trade" is a translation of the word "කර්මාන්තය".

Moreover, the English text of section 247C of the Municipal Councils Ordinance states:

> *"For the purposes of this section,*
> "*business" includes <u>any trade</u> or profession <u>or</u> calling or <u>the business of a manufacturer</u>, or of any person taking commission or fees in respect of any transaction or <u>services rendered</u> or the business of an independent contractor, but does not include the occupation of selling articles, goods or materials at a private fair or the occupation of maintain any educational establishment or school to which grants from State funds are paid or to which such grants were earlier paid but at present are not paid*". [Emphasis Added]

For the reasons stated above, the word "any trade" in the aforesaid definition in section 247C can be applied to have the same meaning as the word "any trade" in section 247B(1) of the said Ordinance. Thus, it is apparent from the above definition in section 247C that the legislator has consistently used the word "trade" to mean "කර්මාන්තය" throughout the said Ordinance.

Moreover, the aforesaid section 247C of the Municipal Councils Ordinance defines a "business" to include, *inter alia,* "any trade" or "the business of a manufacturer". However, the appellant submitted that the word "කර්මාන්තය" in the Municipal Councils Ordinance means "industry" and not "trade". In support of his submission, the Counsel for the appellant cited the Court of Appeal case of *Crest Gems Ltd v The Colombo Municipal Council (supra)* at page 372 which held:

> *It has been submitted that the notices of the respondent seeking to recover from the petitioner the tax under section 247B of the Municipal Councils Ordinance for*

carrying on activities of maintaining an office for trading is ultra vires for the reasons that the petitioner maintains an office only for buying and selling of gems and jewellery. <u>This activity is a trade or "velandama" in Sinhala and does not fall within the meaning of the word "karmanthaya" since the petitioner does not manufacture in the said place</u>. [Emphasis Added]

In view of the above, the appellant contended that the word "කර්මාන්තය" in the Municipal Councils Ordinance means an "industry" where goods are manufactured. If the said contention is accepted, then the aforesaid word "business" as defined in section 247C would mean to include "industry" <u>or</u> "business of a manufacturer". Thus, I am of the view that the disjunction 'or' that has been intentionally used by the legislator in between "any trade" or "the business of a manufacturer" in the aforesaid section 247C would be rendered redundant.

In the circumstances, adopting the interpretation suggested by the appellant, that "කර්මාන්තය" means 'industry' and not 'trade', would render the intention of legislator nugatory and thus, the applicability of section 247B of the said Ordinance would be made redundant.

Due to the foregoing reasons, I am of the view that there is no inconsistency between the words "කර්මාන්තය" and "trade" in Sinhala and English texts of section 247B of the Municipal Councils Ordinance.

Thus, I am unable to agree with the judgment in *Crest Gems Ltd v The Colombo Municipal Council (supra)* cited by the appellant.

Therefore, the appellant's submission that the Municipal Council does not have an authority to impose and levy a tax on the premises under reference as it is not used as a "කර්මාන්තය" within the meaning of Section 247B of the Municipal Councils Ordinance is untenable in law.

Are the Regulations published under section 247B *ultra vires*?

The High Court has held that in terms of the Regulations issued under section 247B of the Municipal Councils Ordinance published in the Gazette No. 1542 dated 19th March, 2008 the premises under reference have been used for the collection of money for the services provided by the appellant.

It was contended by the appellant that certain items specified in the said Gazette, including Item No. 2 that was considered by the learned High Court judge, are *ultra vires* section 247B of the Municipal Councils Ordinance as certain services referred to in the said items are not in respect of industries but purely trading activities.

Section 289 (1) of the Municipal Councils Ordinance states:

> (1) The Minister may make generally for the purpose of regulations giving effect to the principles and provisions of this Ordinance and in respect of any matter for which regulations are authorized or required by this Ordinance to be made or required by this Ordinance to be prescribed. [Emphasis Added]

Thus, the Minister is vested with the power to promulgate regulations to give effect to the principles and provisions of the said Ordinance.

The said Gazette No. 1542 dated 19th March, 2008 states that the premises referred to in the said Gazette are subject to Trade Tax in terms of and under section 247B of the Municipal Councils Ordinance.

The abovementioned Regulations are published by the Minister exercising his power vested in terms of the aforementioned section 289 of the Municipal Councils Ordinance and the 'Items' specified in the said gazette are required to give effect to section 247B of the said Ordinance.

Therefore, the said Gazette comes within the scope and ambit of section 247B of the Municipal Councils Ordinance and thus, is *intra vires* and valid in law. Hence, the items referred to in the said Gazette are not *ultra vires* the said section.

Is the appellant liable to pay Trade Tax and Service Charges for the premises under reference?

The material before court shows that the appellant is using the premises under reference not only as the Regional Engineer's Office but also as an office, which generates income to the appellant, where consumers could pay their electricity bills and obtain electricity connections.

The High Court has held that the appellant's premises were liable to be imposed and levied a Trade Tax as it falls under 'Item No. 2', i.e. 'an office used to store office equipment', of the Regulations

issued in respect of section 247B of the Municipal Councils Ordinance by the Gazette No. 1542 dated 19th March, 2008.

The said Regulations published in the said Gazette also specify an office used for commercial purposes under 'Item No. 68' as liable to pay taxes under section 247B of the Municipal Councils Ordinance.

In the circumstances, I am of the view that the appellant's premises are used for a commercial purpose.

Thus, the appellant is liable to pay Trade Tax and Service Charges for the premises under reference under Section 247B of the Municipal Councils Ordinance read with the Regulations published in the Gazette No. 1542 dated 19th March, 2008.

Conclusion

In the foregoing circumstances, I am of the view that the two questions of law on which the court granted leave to appeal should be answered as follows:

(a) Did the Hon. High Court judge misdirect herself in interpreting section 247B of the Municipal Councils Ordinance as applicable to the appellant?

No.

(b) Did the Hon. Provincial High Court judge err in law when she came to the finding that the appellant was carrying on a trading activity at the Regional Engineer's Office, Ratmalana which was liable to pay trade tax in terms of section 247B of the Municipal Councils Ordinance read with the Regulations published in the Government Gazette bearing No. 1542?

No.

The appeal is dismissed for the aforementioned reasons stated above.

I order no costs.

Judge of the Supreme Court

Murdu N. B. Fernando, PC, J

I agree **Judge of the Supreme Court**

S Thurairaja, PC, J

I agree **Judge of the Supreme Court**