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

In the matter of an Appeal in terms of Article 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

SC Appeal 139/2022

SC (SPL) LA/ 49/2022

CA/TAX/06/2017

TAC/VAT/011/2014

Malwatte Valley Plantations PLC
No. 280, Dam Street,
Colombo 12.

APPELLANT

Vs.

The Commissioner General of Inland Revenue
14th Floor, Secretarial Branch,
Department of Inland Revenue,
Sir Chittampalam A. Gardiner Mawatha,
Colombo 02.

RESPONDENT

AND NOW BETWEEN

Malwatte Valley Plantations PLC
No. 280, Dam Street,
Colombo 12.

APPELLANT- APPELLANT

Vs.

The Commissioner General of Inland Revenue
14th Floor, Secretarial Branch,

Department of Inland Revenue,
Sir Chittampalam A. Gardiner Mawatha,
Colombo 02.

RESPONDENT-RESPONDENT

Before: Achala Wengappuli, J

Dr. Sobhitha Rajakaruna, J

Menaka Wijesundera, J

Counsel: Dr. K. Kanag-Isvaran, PC, with N.R. Sivendran and N.S. Nishendran and Ms. Fihama Hanifa for the Appellant-Appellant

Chaya Sri Nammuni, DSG, for the Respondent-Respondent

Argued on: 04.09.2025

Written Submissions: Appellant-Appellant : 01.02.2023

Respondent-Respondent : 30.06.2023

Decided on: 03.02.2026

Dr. Sobhitha Rajakaruna, J.

The Court granted Leave to Appeal from the judgement dated 17.12.2021 of the Court of Appeal, upon the following Questions of Law:

a. "Have their Lordships of the Court of Appeal grievously misdirected themselves in law when they failed to hold that the sale of trees in terms of the Sale Agreements are sales of unprocessed agricultural product and consequently fall outside the scope of the Value Added Tax Act and not liable for the Payment of Value Added Tax?".

m. "Did Their Lordships of the Court of Appeal err in law when they failed to appreciate that old rubber trees cannot come under the provision of agricultural

'products' within the meaning of item (b) (xxiii) of Part II of the First Schedule of the Value Added Tax Act"

The Appellant-Appellant ("Appellant") entered into two agreements dated 02.07.2008 ('X1') and 21.05.2009 ('X2'). The Appellant identifies the agreement marked 'X1' as an agreement for the sale of standing live Rubber trees, while the second agreement ('X') is an agreement for the sale of standing live Eucalyptus trees, on its plantation. The Appellant claims exemption from Value Added Tax ('VAT') obligations for the timeframe spanning 01.01.2009, through 31.12.2010, encompassing 24 monthly taxable periods pursuant to Section 8 of the Value Added Tax Act No. 14 of 2002 ('Act').

In terms of Section 8 of the said Act, no tax is imposed on the supply of goods or services, or on the importation of goods outlined in the First Schedule to the Act, since these transactions are exempted from taxation except where they qualify as zero-rated under Section 7. In particular, Part II (b) (xxiii) of the First Schedule provides an exemption from VAT for unprocessed agricultural, horticultural, or fishing products produced in Sri Lanka. This exemption extends to local supplies of such unprocessed products for which no VAT has been levied or remitted to the Department of Inland Revenue on or after 01.07.2007.

The primary argument of the Appellant is that the sale of standing live Rubber and Eucalyptus trees intended for cutting, uprooting and removal by the buyer, in terms of the referenced Agreements, qualifies for VAT exemption, classifying it as a local supply of 'unprocessed agricultural product'. For a person to be liable to VAT, there should be a taxable supply in respect of a taxable activity of that person in Sri Lanka. The taxable supply[1] and the taxable activity[2] are defined in Section 83 of the Act. Referring to Clause

[1] 'taxable supply' means any supply of goods or services made or deemed to be made in Sri Lanka which is chargeable with tax under this Act and includes a supply charged at the rate of zero percent other than an exempt supply.

[2] taxable activity' means-

(a) any activity carried on as a business, trade, profession or vocation other than in the course of employment or every adventure or concern in the nature of a trade

(b) the provision of facilities to its members or others for a consideration and the payment of subscription in the case of a club, association or organisation;

(c) anything done in connection with the commencement or cessation of any activity or provision of facility referred to in (a) or (b);

10.5.1 of the classification for exemptions in the Guide to Value Added Tax issued by the Department of Inland Revenue on 06.09.2002, the Appellant asserts that the local supply of the standing live Rubber and Eucalyptus Trees under those agreements unequivocally constitutes a supply of 'unprocessed agricultural products', thereby rendering it exempt from VAT.

The said Clause 10.5.1 reads:

> *"10.5 Following clarifications may be noted with regard to exemptions provided in the first schedule.*
>
> *10.5.1 Unprocessed Agricultural Produce – item (i)(a)*
>
> • *Live trees, and other plants, roots, branches, leaves, flowers, tubes, seeds, fruits and nuts of trees and other plants in natural form not otherwise processed.*
>
> • *Coconut shells and pairings can be considered as unprocessed for the purpose of exemption but charcoal is not.*
>
> • *Vegetables, lac, gums, resins and other vegetable saps and extracts.*
>
> • *Straws, husks, shells, skins of trees and other plants in raw form not chemically treated or otherwise processed; other than plants in natural form.*
>
> • *Any kind of semi processed rubber."*

The Respondent-Respondent who is the Commissioner General of Inland Revenue ('Respondent'), affirmed the decision of the Assessor who rejected the claim for exemption from VAT. The appeal lodged by the Appellant to the Tax Appeals Commission ('TAC') was also dismissed. As a result of an application made by the Appellant, the TAC submitted 17 questions for determination by the Court of Appeal, which delivered its judgement on 17.12.2021. The Court of Appeal held, inter alia, that "while the TAC overlooked the fact that the items sold were live trees, these trees nevertheless did not

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(d) the hiring or leasing of any movable property or the renting or leasing of immovable property or the administration of any property;
(e) the exploitation of any intangible property such as patents, copyrights or other similar assets where such asset is registered in Sri Lanka or the owner of such asset is domiciled in Sri Lanka.

qualify as 'unprocessed agricultural products'; consequently, though the TAC erred in fact, it did not err in law in determining eligibility for the exemption."

The Respondent relies on the judgement of the Court of Appeal in ***Kegalle Plantations PLC v. Commissioner General of Inland Revenue*** **CA/TAX/09/2017 decided on 04.09.2018**, in which the substance test[3] was used to determine the true nature of the contracts, particularly whether a contract is a 'contract for the sale of goods' or 'contract for the supply of services'. The contention of the Respondent is that the 'processing' referred to in the Act and the Guide to VAT entails rendering items suitable for retail. In this view, the transaction concerns the sale of felled trees, which constitute the end product received by the buyer. Accordingly, the Respondent asserts that the Appellant's Rubber and Eucalyptus Trees qualify as "processed," thereby disqualifying them from VAT exemption.

The appellants in the said ***Kegalle Plantations PLC*** case had executed multiple contracts for uprooting and removal of rubber trees. They had claimed exemption from VAT on the basis that such contracts effectively amounted to sales of live Rubber trees in a natural form. His Lordship Justice Janak De Silva, in the Court of Appeal (as His Lordship was then), took the view that, the trees sold have ceased to be productive in their natural form, as the Appellant had called for tenders to uproot and remove non-harvesting rubber trees. The Court of Appeal, examining Section 4(1) of the Act as a deeming provision to determine the time of supply for the purposes of Section 2(1), observed that VAT is charged at the time of supply, thereby necessitating a clear identification of when the taxable supply of goods or services takes place. Ultimately, the court held that the deeming effect therein is restricted to ascertaining the time of supply for the purpose of charging VAT.

The court in the said ***Kegalle Plantations PLC*** case concluding that there has been a "taxable supply of goods" by the Appellant in terms of the VAT Act in relation to rubber trees under the aforesaid agreements, decided inter alia:

[3] per Greer L.J. in *Robinson v. Graves* [(1935) 1 KB 579 at 587; Atiyah, Adams and Macqueen, *The Sale of Goods* (11th Ed.; page 27)

"It cannot be used to establish that the supply of goods did in fact take place at that point of time. In terms of section 83 of the VAT Act "supply of goods" means the passing of exclusive ownership of goods to another as the owner of such goods. Hence for there to be a "supply of goods" there must be a passing of "exclusive ownership of goods". That in our view must be ascertained upon a consideration of the provisions in the Sale of Goods Ordinance dealing with the passing of property."

"However, as long as the trees are *in situ* on land owned by the State property in them cannot be transferred to the contractor. The property in them can be transferred only after uprooting them. In those circumstances, the true nature of the contracts in substance is that they are for the uprooting and removal of trees for the supply of rubber logs. The consideration for these contracts was the timber value of the trees uprooted, removed and taken into the possession of the contractor."

"The subject matter of the contracts between the Appellant and his contractors are not in our view live trees. The true nature of the contracts in substance is that they are for the uprooting and removal of trees for the supply of rubber logs. The consideration for these contracts was the timber value of the trees uprooted, removed and taken into the possession of the contractor. The exemption from VAT given to "unprocessed agricultural product" does not cover the instant case where non-harvesting rubber trees are uprooted and removed. That involves a process which changes the subject from a rubber tree to firewood, logs and chips. The Appellant in the Notes to the Financial Statements for the year ended 31st March 2008 identify the profits of these transactions as "Sales of firewood, logs and chips". Accordingly, the subject matter of the contracts between the Appellant and its contractors are not live trees within the meaning of the Guide to the Value Added Tax in Sri Lanka. It is also not "unprocessed agricultural product" within the meaning of item (b) (xxiii) of Part II of the First Schedule of the VAT Act".

Before the TAC, the Appellant contended that the trees remained unprocessed at the point of supply, which arises upon the making of payment, rendering such supply exempt from VAT liability. Furthermore, the Appellant asserted that the Assessor failed to conduct

assessments for each distinct monthly period as mandated by Section 28 of the Act, thereby invalidating the pertinent assessments. The Appellant additionally emphasized that it disposed of the live trees through a tender process, with the successful bidder remitting the entire purchase price while the trees were still in their live form; consequently, these live trees qualify as unprocessed agricultural products, constituting an exempt supply under the VAT Act.

Nevertheless, the TAC observed that, in the absence of simultaneous conveyance of both 'title' and 'possession,' the contractor (i.e., the 'buyer') would gain no benefit from the upfront payment remitted. It was further highlighted that, owing to the trees' fixed position on Government-owned property, the mere supply of these live trees could not effectuate a transfer of either title or possession to the contractor. Moreover, the TAC determined that:

> "The Contractor has not got anything for the consideration paid by him. He couldn't get anything from live trees. However, it is a fact that the Contractor makes a payment to the Appellant Company under the said Agreement. In view of the substance of the 'Agreement for uprooting and removal of the trees', he makes this payment in expectation of a future supply, i.e. supply of timber logs, but not for the supply of live trees. Live rubber trees on the land of the Appellant Company could be supplied only for tapping them for latex, on a lease, and for nothing else. Such a lease agreement is a supply of service agreement."

In classifying the relevant agreements, the TAC concluded that it constituted a contract for the uprooting and removal of old Rubber trees, rather than for the supply of live Rubber trees. Accordingly, it was ruled that taking possession of 'goods' was a prerequisite for securing absolute ownership of those goods, i.e., timber, to gain the expected advantages therefrom. The TAC further held that the contractor ultimately received, via the supply, rubber logs or timber as movable property, and that the Appellant, in return for the total remuneration obtained, supplied the contractor with such rubber logs or timber pursuant to the Agreements.

Taking into consideration the arguments advanced by both the Appellant and the Respondent, I'm unable to deviate from the rationale articulated in the ***Kegalle Plantations PLC*** case, as I cannot find any cogent statutory underpinning or authoritative precedent to do so. I hold that the reasons given in the said ***Kegalle Plantations PLC*** case, analysing

the true effect of Sections 4(1), 2(1) and 83 of the Act, should be followed in the Case in hand.

Similarly, I must draw my attention to the assertions made on behalf of the Appellant at certain stages of its appeal process, pointing out that the Court's reliance on the Sale of Goods Ordinance was improperly applied. Section 18 of the Sale of Goods Ordinance reads:

> "18(1) Where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.
>
> 18(2) For the purpose of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties, and the circumstances of the case."

As per the above provisions, the property in contracts selling specific or ascertained goods transfers to the buyer at the time the parties intend and such intent is ascertained from the contract terms, parties' conduct, and circumstances of the case. In terms of Section 59 of the Sale of Goods Ordinance, the phrase "specific goods" is interpreted as 'goods identified and agreed upon at the time a contract of sale is made'. Anyhow, the term 'ascertained goods' is not specifically defined. Thus, one may argue that under the Agreements relevant to the instant Case, the Rubber trees designated for uprooting were marked with consecutive numbers by the estate (per the tree uprooting schedule), rendering the contract goods as ascertained, thereby the transfer of ownership takes place at the time of executing the Agreement and not at the logs stage of the process.

Anyhow, according to the special circumstances of this Case, I take the view that those Trees, as per the terms of the relevant Agreements, should be considered as unascertained goods at the time of executing the Agreements, merely because the goods to be delivered to the buyer become unequivocally identifiable according to law only at a later stage than the time of execution of the Agreements, upon full uprooting and separation from the remaining trees. In this regard, Sections 4(1) and 83 of the VAT Act should be read together with Section 18 of the Sale of Goods Ordinance. In addition to other relevant

provisions, I particularly note Clause 3.2 of the Agreement[4] (for Rubber Trees) at page 32 of the brief and Clause 3.2 of the Agreement[5] (for Eucalyptus Trees) at page 27. Hence, no property is passed until the portions to be sold are segregated from the remainder of the bulk, which occurs only after the Agreements are concluded. Even the Court in the said ***Kegalle Plantations PLC*** case determined that the goods forming the subject matter of the contracts in the said case were not specific or ascertained goods.

The Supreme Court in ***Perera & Silva Ltd., v Commissioner-General Of Inland Revenue*** **[1978] Vol 79 Part II NLR 164**, referred to *Elements of the Law of Income and Capital Gains Taxation* by C. N. Beatie (at page 2), where it has been stated that there is no equity in a taxing statute and if there is a doubt in the language of the statute whether tax is attracted or not, the doubt must be resolved in favour of the taxpayer. The five judge bench of the Supreme Court of India in ***Commissioner of Customs (import), Mumbai v. M/s Dilip Kumar and Company and others*** **[2018] 9 SCC 1**, decided that where there is an ambiguity in an exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and that it must be interpreted in favour of the revenue.

Notably, the instant case stems from a tax exemption provision. In line with the articulations in the above judicial pronouncements, I take the view that the established principle should be that in cases of ambiguity regarding whether a tax levy applies, the doubt must be resolved in the taxpayer's favour, protecting against unwarranted fiscal impositions, as taxing statutes admit no principles of equity. Likewise, ambiguities in exemption clauses which warrant strict interpretation afford no benefit to the assessee but must instead be resolved in favour of the revenue, ensuring exemptions are not expansively construed in a manner that erodes the state's authority to impose taxation. In any event, if ambiguity arises under either of the above conditions, the interpretation must also be guided by other established principles governing the interpretation of statutes.

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[4] 3.2: Each tree shall be uprooted by exposing the tap root and the lateral roots. The root stump, if any remaining shall also be removed and the field completely cleared of all trees, timber, logs, roots and other debris.

[5] 3.2: The Purchaser shall all times abide by the instructions and or instructions of the Superintendent or his authorized agent in connection with the carrying out of the felling of trees and removal thereof herein contemplated.

In light of the foregoing, I answer the above Questions of Law upon which this Court granted Special Leave to Appeal in the Negative. Anyhow, due to the manner in which the above second Question of Law has been formulated by the Appellant, I need to emphasize that the Rubber trees covered by the Agreement at page 32 of the brief, do not qualify as 'agricultural products' within the ambit of Part II (b) (xxiii) of the First Schedule of the Act, thus are not exempt from VAT. For completeness, I must stress that this Judgement addresses only those two Questions of Law. Therefore, I am compelled to affirm the impugned judgment of the Court of Appeal, regardless of how it resolved the questions of law formulated by the TAC as the Court of Appeal has not erred in law in determining upon the tax exemption under Part II (b) (xxiii) of the First Schedule of the Act, in relation to the goods subjected to the Agreements in the instant Case.

Accordingly, the appeal is dismissed. I order no costs.

Judge of the Supreme Court

Achala Wengappuli, J.

I agree.

Judge of the Supreme Court

Menaka Wijesundera, J.

I agree.

Judge of the Supreme Court