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 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

SC/Appeal /34/2023
SC/SPL/LA/202/2019
CA (PHC) 45/2009
HCRA 80/2007
MC Colombo No 72700/5

SC/Appeal /35/2023
SC/SPL/LA/203/2019
CA (PHC) 74/2009
HCRA 05/2008
MC Colombo No 2280/5

SC/Appeal /36/2023
SC/SPL/LA/204/2019
CA (PHC) 75/2009
HCRA 06/2008
MC Colombo No 2281/5

Chandana Ukwatte
No. 28, Ward Place,
Colombo 07.

Presently at 1280 Fifth Avenue,
Apartment 9E;
New York, NY 10029,
United States of America.

Appearing by his duly appointed lawful Attorney
Jennifer Leena Mary Devotta Fernandez
No. 244, 3A5, Ranawairu Dharmasiri Mawatha,
Pahala Karagahamuna,
Ragama Road,
Kadawatha.

PETITIONER-APPELLANT-APPELLANT

Vs.

1. Deputy Provincial Commissioner of Revenue
   Department of Inland Revenue (Western Province)
   No. 171B/ 1/1, Chandrasiri Building,
   Old Road, Nawinna,
   Maharagama.

COMPLAINANT-RESPONDENT RESPONDENT-RESPONDENT

2. Provincial Commissioner of Revenue
   Department of Inland Revenue (Western Province),
   No. 761/1, Duminda Building,
   Bambalapitiya,

Colombo 04.

<u>RESPONDENT-RESPONDENT-RESPONDENT</u>

3. The Three Coins Company (Pvt) Limited,
Black Pearl Estate,
Old Road,
Meegoda.

<u>RESPONDENT-RESPONDENT-RESPONDENT- RESPONDENT COMPANY</u>

Chandana Ukwatte v Deputy Provincial Commissioner of Revenue Department of Inland Revenue (Western Province) and Others

Case No. SC/Appeal/34/2023 together with SC/Appeals 35/2023 & 36/2023

Before: A.L. Shiran Gooneratne, J.
Dr Sobhitha Rajakaruna, J.
Menaka Wijesundera, J.

Counsel: Faisz Musthapha, PC with Riad Ameen and Bishran Iqbal and Varana Wijenayake for the Petitioner-Appellant-Appellant.
Viveka Siriwardena, PC, ASG with Ganga Wakishta Arachchi, DSG for the Complainant-Respondent-Respondent-Respondent and Respondent-Respondent-Respondent.

Written Submissions: Complainant-Respondent-Respondent-Respondent & Respondent-Respondent-Respondent - 07 April 2026

Argued on: 10 February 2026

Decided on: 09 September 2026

Judgement

Dr Sobhitha Rajakaruna, J.

This matter arises from proceedings instituted for the recovery of turnover taxes allegedly due from the Respondent-Respondent-Respondent-Respondent Company ('3rd Respondent') under the Financial Statute of the Western Province No. 6 of 1990 ('Statute'). The Complainant-Respondent- Respondent- Respondent ('Complainant') filed a certificate, marked as 'X', in terms of section 89(1) of the Statute in the Magistrate's Court of Colombo ('Magistrate's Court') against the 3rd Respondent in respect of the alleged default in the payment of turnover taxes. Upon being noticed by the learned Magistrate to show cause against the certificate, the 3rd Respondent proceeded to do so. The Petitioner- Appellant- Appellant ('Appellant'), who was the Chairman of the 3rd Respondent company, submitted an affidavit on behalf of the 3rd Respondent for that purpose.

Following an inquiry, the learned Magistrate made an order dated 27 June 2006 in Case No. 72700/5. By that order, the learned Magistrate held, inter alia, that the 3rd Respondent was responsible for the default and directed the 3rd Respondent to deposit in Court the sum specified in the certificate. The learned Magistrate further ordered that, in the event of the 3rd Respondent failing to make such payment, the said sum be recovered as a fine from the Appellant and imposed a suspended sentence of twelve months' rigorous imprisonment in lieu of the payment of the fine.

Being aggrieved by the said order, the Appellant invoked the revisionary jurisdiction of the Provincial High Court of the Western Province holden in Colombo ('High Court'). In the meantime, two other proceedings had also been instituted by the Complainant under section 89(1) of the Statute in respect of the recovery of taxes, resulting in orders of the Magistrate's Court and corresponding revision applications before the High Court. Thus, three revision applications, bearing Nos. 80/2007, 05/2008 and 06/2008, were pending before the High Court and were heard together. By a single order dated 2 February 2009, the High Court dismissed all three revision applications.

In relation to the present matter, the High Court accepted that the Appellant was not the "defaulter" and that no vicarious liability had been imposed upon him. Nevertheless, the learned High Court Judge concluded that no order had been made against the Appellant by the Magistrate's Court and, on that basis, dismissed the revision application.

The Appellant thereafter appealed to the Court of Appeal. The Court of Appeal, by its judgment dated 3 May 2019 (in Case No. CA/PHC/45/2009), dismissed the appeal. In its judgment, the Court of Appeal observed that no vicarious liability had been imposed upon the Appellant and noted that the Magistrate's Court had held the 3rd Respondent liable to pay the amount specified in the certificate. The Court of Appeal nevertheless concluded that the Appellant was a defaulter within the meaning of section 89(1), read with section 21(1), of the Statute and held that, in terms of the order of the Magistrate's Court, the Appellant became liable to pay the fine and to undergo the sentence imposed in default thereof if the 3rd Respondent failed to deposit the required sum in Court.

Aggrieved by the judgment of the Court of Appeal, the Appellant has invoked the jurisdiction of this Court seeking Special Leave to Appeal.

The principal contention advanced on behalf of the Appellant was that he had not been cited as a defaulter in the certificate filed under section 89(1) of the Statute; that he had merely submitted an affidavit on behalf of the 3rd Respondent; and that he had never been summoned or called upon to show cause in his personal capacity as a defaulter. It was accordingly contended that he could not lawfully be subjected to a fine or a sentence in default of payment of the tax due from the 3rd Respondent. In support of these contentions, reliance was placed, inter alia, on the decisions in ***M. E. De Silva v Commissioner of Income Tax***, 51 NLR 280, ***Ranjan Phillip v Commissioner of Inland Revenue***, Srikantha's Law Reports Vol. 1, 133, ***Ranjith Wijemanne v Commissioner of Income Tax***, [1951] Vol. I Ceylon Tax Cases 496, ***Hamza v Commissioner of Inland Revenue***, [1991] Vol. IV Reports of Sri Lanka Tax Cases 301, and *Dias* ***v Commissioner General of Inland Revenue*** [2011] 2 Sri LR 15.

On the other hand, the Complainant and the Respondent- Respondent-Respondent ('2nd Respondent') contended that, although the Appellant had not been cited as a defaulter in the certificate, a fine could nevertheless be imposed upon a person other than the defaulter where the principal officer of the defaulting company had failed to make the requisite payment. It was further contended that the Appellant had voluntarily submitted an affidavit representing the 3rd Respondent and was therefore not entitled to rely upon the fact that he had not been separately summoned. They maintained that the liability imposed upon the Appellant arose by reason of his position as the principal officer of the 3rd Respondent and the duty allegedly imposed upon him by section 21(1) of the Statute.

The Appellant has further challenged the interpretation placed by the Court of Appeal upon sections 21(1), 85(3) and 89 of the Statute and contends that the said provisions do not render a director of a company personally liable for taxes due from the company in the circumstances of the present case. The Appellant has also challenged the reliance placed upon several judicial authorities by the Court of Appeal and has raised, among other matters, the question whether section 89 of the Statute is ultra vires the legislative power of the Western Provincial Council.

This Court granted Special Leave to Appeal on the following Questions of Law set out in Paragraphs 19(b) and 19(c) of the Petition:

> (b) Did the Court of Appeal err in law in failing to appreciate that proceedings in terms of Section 89 of the Financial Statute of Western Province No. 6 of 1990 can only be taken against the person cited as a defaulter in the certificate?
>
> (c) Did the Court of Appeal err in law in failing to appreciate that the Petitioner was never cited as a defaulter in the certificate filed by the Commissioner in terms of Section 89 of the Financial Statute of Western Province No. 6 of 1990 and therefore could not have been treated as a defaulter in those proceedings?

Consideration and Determination

Having considered the submissions of learned Counsel for the Appellant, the Complainant and the 2nd Respondent, as well as the judgment of the Court of Appeal and the orders made by the High Court and the Magistrate's Court, I shall first consider the two questions of law upon which this Court granted Special Leave to Appeal.

The central contention of the Appellant is that proceedings under section 89 of the Statute can only be maintained against the person named as the "defaulter" in the certificate issued under section 89(1), and that since the Appellant was not named in the certificate, the Magistrate had no jurisdiction to make an order directing that the tax in default be recovered from him as a fine in the event of the failure of the 3rd Respondent Company to pay the amount specified in the certificate. The Appellant further contends that he was never cited as a defaulter nor summoned to show cause in that capacity.

Section 89 is contained in the Chapter dealing with the recovery of tax. It provides a mechanism for the recovery of tax which has already become due and remains unpaid. The certificate is issued by the Commissioner when recovery by seizure and sale is considered impracticable or inexpedient, or where the full amount of tax has not been recovered by such means. The certificate identifies the tax in default and the person who is the defaulter for the purposes of that recovery process.

It is important, however, to read section 89 together with sections 85(3) and 21(1). Section 85(3) provides that where tax payable by a person remains unpaid, such tax is deemed to be in default and "the person liable to pay the tax shall be deemed to be the defaulter". Section 21(1), in turn, imposes a statutory obligation upon the Secretary, Manager, Director or other principal officer of a company to do all such acts, matters or things as are required to be done under the Statute by that company. The provision therefore does not merely identify the company as the taxpayer; it expressly places a statutory responsibility upon the principal officer in relation to the performance of the company's obligations under the Statute.

The significance of these provisions becomes particularly apparent in the circumstances of the present case. The certificate dated 18 January 2005 was issued against the 3rd Respondent Company for the recovery of turnover tax. The Company was represented in the Magistrate's Court. The Appellant thereafter entered the proceedings and, by affidavit, expressly admitted that he was the Chairman and Principal Officer of the Company and that he was acting upon the instructions of its Board of Directors.

The order of the learned Magistrate must also be examined with some care. It contains two distinct components. First, the learned Magistrate accepted the certificate, held the 3rd Respondent responsible for the default and directed the Company to deposit the amount specified in the certificate in Court. Secondly, and consequentially, the learned Magistrate directed that, if the Company failed to comply with that order, the amount should be recovered as a fine from the Appellant, who had appeared before Court as the Chairman of the Company, and imposed a sentence of twelve months' rigorous imprisonment in default of payment of that fine.

Thus, the learned Magistrate did not substitute the Appellant for the 3rd Respondent as the person against whom the tax assessment had been made. Nor did the Magistrate impose upon the Appellant a personal tax assessment independent of the Company's liability. The primary liability remained that of the 3rd Respondent. The liability imposed upon the Appellant arose only upon the Company's failure to comply with the order requiring payment and was connected with the statutory obligation imposed upon the principal officer by section 21(1).

In this context, I am unable to accept the proposition that the mere fact that the Appellant was not named in the certificate necessarily deprived the learned Magistrate of jurisdiction to make the consequential order against him. In my view, Appellant's contention proceeds upon an overly narrow construction of section 89 and fails to consider the statutory scheme as a whole. The certificate identified the Company as the person against whom recovery proceedings were initiated. The subsequent order against the Appellant was made in consequence of the Company's failure to satisfy the order of the Court and in the context of the statutory obligation imposed upon its principal officer.

There is another significant circumstance which, in my view, cannot be overlooked. The 3rd Respondent Company itself did not challenge the order of the learned Magistrate by way of appeal or revision. Although the Company was the person named in the certificate and was expressly directed by the learned Magistrate to deposit the amount specified therein, it did not invoke any appellate or revisionary jurisdiction to challenge that order. Instead, it was the Appellant, in his personal capacity, who challenged the second limb of the order. The Company thereafter failed to deposit the amount directed to be deposited in Court.

Equally significant is the fact that the certificate itself was never successfully challenged. The certificate constituted the foundation upon which the recovery proceedings under section 89 were initiated. The learned Magistrate accepted the certificate and directed the 3rd Respondent to make payment. No successful challenge has been made to the validity of that certificate, nor has the tax liability of the Company, as reflected therein, been set aside by any competent Court. The present Appeal therefore cannot properly be regarded as an indirect means of reopening the validity of the certificate or the Company's liability thereunder.

The conduct of the Appellant must also be considered. The Appellant voluntarily entered the proceedings and filed an affidavit in which he identified himself as the Chairman and principal officer of the Company. He thereby placed himself before the Magistrate in his capacity as the person responsible for representing the Company in relation to the proceedings. Having participated in the proceedings in that capacity, and having thereafter challenged the order made by the Magistrate, the Appellant cannot, in my view, rely upon the mere technical circumstance that he was not separately named as the "defaulter" in the certificate, particularly when the Company itself has not challenged the certificate or the primary order directing it to make payment.

This, in my view, amounts to a material element of acquiescence. I do not mean by this that jurisdiction can be conferred upon a Court merely by consent or acquiescence. A statutory jurisdiction cannot ordinarily be created by agreement between parties. However, where the statute imposes a specific obligation upon the principal officer of a company, and the principal officer voluntarily appears before Court in that capacity, participates in the proceedings and thereafter seeks to challenge only the consequential liability arising from the company's failure to comply with the order, it would be relevant to consider his own conduct in determining whether he can subsequently complain that he was a complete stranger to the proceedings.

The authorities relied upon by the Appellant under the earlier Inland Revenue legislation do not, in my view, require a different conclusion. As submitted on behalf of the Complainant and the 2nd Respondent, those decisions concerned statutory provisions and factual circumstances in which attempts had been made to treat directors or principal officers as personally liable for tax assessed against a company. The present case concerns a materially different statutory scheme in which section 21(1) expressly imposes upon the principal officer a duty to perform the acts and things required to be performed by the company under the Statute. The distinction between the statutory language of the earlier revenue legislation and the language employed in section 21(1) is therefore material.

The approach adopted by this Court in relation to analogous recovery provisions also lends support to a purposive construction. The Complainant has referred to the case of ***The Commissioner of Labour v LDM Dharmaratne and Two Others***, CA(PHC) APN 69/2009 decided on 27 January 2011. In the said case, Sisira de Abrew, J. (as he was then in the Court of Appeal), when considering the analogous recovery mechanism under section 38(2) of the Employees' Provident Fund Act, recognised that an interpretation which excluded directors of a corporate employer from the statutory recovery mechanism would defeat the very purpose of the legislation. The Court accordingly held that directors could lawfully be ordered to pay the amount specified in the certificate by way of a fine, with a default sentence. That reasoning was subsequently considered and adopted in ***Stitches Private Limited v Assistant Commissioner of Labour***, [1998] 3 Sri LR 320, while ***Colombo Apothecaries Ltd and Others v Commissioner of Labour,*** [1998] 3 Sri LR 320, similarly recognised the liability of directors in proceedings under section 38(2).

I am mindful that the present case concerns turnover tax and not contributions under the Employees' Provident Fund Act. Nevertheless, the underlying principle is of relevance: a recovery provision enacted for the purpose of securing payment of public revenue should not be interpreted in a manner which renders the statutory mechanism ineffective or enables a company to defeat the recovery of a legally established liability merely because the person responsible for ensuring compliance with the company's statutory obligations was not named as the defaulter in the initial certificate.

This is particularly important in the context of State revenue. Taxation statutes are enacted not merely to create abstract liabilities but to provide an effective machinery for the assessment and recovery of public revenue. Once a tax liability has been duly established and a statutory recovery mechanism has been invoked, the Court should be slow to adopt an interpretation which would substantially frustrate the recovery mechanism, unless the language of the statute compels such a result. At the same time, the importance of revenue recovery cannot justify imposing liability upon a person contrary to the statute. The task of the Court is therefore to identify the balance intended by the legislature from the statutory language itself.

In my view, that balance is achieved by recognising a distinction between the person named as the defaulter in the certificate and the person upon whom the Statute imposes the obligation to ensure compliance with the company's statutory duties. The certificate under section 89 identifies the tax liability and the corporate defaulter for the purpose of initiating the recovery proceedings. Section 21(1), read with section 85(3), operates upon the principal officer and imposes upon him a statutory responsibility to perform the acts required of the company. Where the company fails to comply with an order made under section 89, the consequential recovery of the amount as a fine from the responsible principal officer, together with the statutory default consequences, does not necessarily amount to treating that officer as the person originally assessed for the tax.

I accordingly find no error in the conclusion of the Court of Appeal.

Conclusion

For the foregoing reasons, I answer the first Question of Law upon which Special Leave to Appeal was granted, in the negative. I answer the second Question also in the negative, subject to the qualification that the Appellant was not thereby made the person primarily assessed or liable for the tax stated in the certificate. His liability arose from the statutory obligations attaching to him as the principal officer of the 3rd Respondent and from the Company's failure to comply with the order of the learned Magistrate.

The fact that the 3rd Respondent Company did not challenge either the certificate or the order directing it to make payment assumes considerable significance. The certificate establishing the tax liability has not been set aside, and the primary order directing the Company to pay the amount remains unchallenged by the Company itself. The Appellant, who voluntarily entered the proceedings as the Chairman and principal officer of the Company and participated in those proceedings, cannot, in the circumstances, successfully rely upon the absence of his name from the certificate to defeat the consequential recovery mechanism provided by the Statute.

I am therefore of the view that the order of the learned Magistrate dated 27 June 2006, as affirmed by the High Court and the Court of Appeal, is consistent with the statutory scheme governing the recovery of turnover tax. The interpretation urged by the Appellant would, in the circumstances of this case, permit the recovery mechanism to be frustrated notwithstanding the existence of an unchallenged certificate and an unchallenged order against the corporate taxpayer. Such an interpretation would also fail to give proper effect to the statutory responsibility imposed upon the principal officer under section 21(1) of the Statute.

Accordingly, I find that the Appellant has failed to establish any error of law in the judgment of the Court of Appeal dated 3 May 2019. The appeal is therefore dismissed, and the judgment of the Court of Appeal is affirmed.

On 10 February 2026, learned Counsel for both parties requested that SC Appeals Nos. 34/2023, 35/2023 and 36/2023 be taken up for hearing together and disposed of by a single judgment of this Court. Accordingly, this Judgment shall govern and be binding upon all parties to SC Appeals Nos. 34/2023, 35/2023 and 36/2023.

In the circumstances of this case, I make no order for costs.

Judge of the Supreme Court

A.L. Shiran Gooneratne, J.

I agree.

Judge of the Supreme Court

Menaka Wijesundera, J.

I agree.

Judge of the Supreme Court