

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

SC Appeal No. 39/2023

SC/SPL/LA/151/2022

CA/ Tax/ 0012/2017

TAC/IT/042/2013

In the matter of an Appeal under and in terms of Article 128 (2) of the Constitution read with the Section 11A (9) of the Tax Appeals Commission Act. No. 23 of 2011 (as amended), from the Judgment of the Court of Appeal, dated 31st March 2022, in CA/Tax/0012/2017.

Lanka Marine Services (Private) Limited,
No.130, Glennie Street, Colombo 02.

And also of

No.117, Sir Chittampalam A. Gardiner
Mawatha,
Colombo 02.

APPELLANT-APPELLANT

Vs.

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

RESPONDENT-RESPONDENT

AND

SC Appeal No. 40/2023

SC/SPL/LA/152/2022

CA/ Tax/ 04/2009

BRA 558

SCA - 216

In the matter of an Application for Special Leave to Appeal, under and in terms of Article 128(2) of the Constitution, read with Section 11A (9) of the Tax Appeals Commission Act, No. 23 of 2011 (as amended), and Section 141 (8) of the Inland Revenue Act, No 38 of 2000 (as amended), from the Judgment of the Court of Appeal dated 31 March 2022, in CA/TAX/0004/2009.

Lanka Marine Services (Private) Limited,
130, Glennie Street, Colombo - 02.

And also of

No. 117, Sir Chittampalam A. Gardiner
Mawatha, Colombo 02.

APPELLANT-APPELLANT

-Vs-

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

RESPONDENT- RESPONDENT

AND

SC Appeal No. 41/2023

SC/SPL/LA/153/2022

CA/Tax/0020/2013

TAC/IT/014/2011

In the matter of an Application for Special Leave to Appeal, under and in terms of Article 128 (2) of the Constitution read with the Section 11A (9) of the Tax Appeals Commission Act. No. 23 of 2011 (as amended), from Judgment of the Court of Appeal, dated 31 March 2022, in CA/Tax/0020/2013.

Lanka Marine Services (Private) Limited,
No.130, Glennie Street, Colombo 02.

And also of

No.117, Sir Chittampalam A. Gardiner
Mawatha,
Colombo 02.

APPELLANT- APPELLANT

-Vs-

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

RESPONDENT- RESPONDENT

AND

SC Appeal No. 42/2023

SC/SPL/LA/154/2022

CA/Tax/ 0013/2015

In the matter of an Application for Special Leave to Appeal, under and in terms of Article 128(2) of the Constitution, read with Section 11A (9) of the Tax Appeals Commission Act, No. 23 of 2011 (as amended) from the Judgment of the Court of Appeal dated 31st March 2022.

Lanka Marine Services (Private) Limited,
130, Glennie Street, Colombo - 02.

And also of

No. 117, Sir Chittampalam A.
Gardiner Mawatha, Colombo 02.

APPELLANT-APPELLANT

-Vs-

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

RESPONDENT- RESPONDENT

AND

SC Appeal No. 43/2023

SC/SPL/LA/155/2022

CA/TAX/08/2007

BRA/VAT/01

SCA-216

In the matter of an application for Special Leave to Appeal, under and in terms of Article 128(2) of the Constitution read with section 11A (9) of the Tax Appeals Commission Act No. 23 of 2011 (as amended), and section 36 (2) of the Value Added Tax Act, No. 36 of 2002 (as amended), from the Judgment of the Court of Appeal, dated 31st March 2022, in CA/Tax/ 0008/2007.

Lanka Marine Services (Private) Limited,
130, Glennie Street, Colombo - 02.

And also of

No. 117,
Sir Chittampalam A.
Gardiner Mawatha, Colombo 02.

APPELLANT- APPELLANT

-Vs-

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

RESPONDENT- RESPONDENT

AND

SC Appeal No. 44/2023

SC/SPL/LA/160/2022

CA/TAX/53/2019

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 Section 11A (9) of the Tax Appeals Commission Act No. 23 of 2011, as amended, read together with the Article 127(2) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

McLarens Lubricants Ltd,
No. 284,
Vauxhall Street,
Colombo - 02.

APPELLANT-APPELLANT

-Vs-

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

RESPONDENT- RESPONDENT

AND

SC Appeal No. 45/2023

SC/SPL/LA/161/2022

CA/ TAX/38/2014

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 Section 11A(9) of the Tax Appeals Commission Act No. 23 of 2011, as amended, read together with Article 127(2) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

McLarens Lubricants Ltd,
No. 284,
Vauxhall Street,
Colombo - 02.

APPELLANT-APPELLANT

-Vs-

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

RESPONDENT- RESPONDENT

AND

SC Appeal No. 46/2023

SC/SPL/LA/163/2022

CA/ Tax/ 0021/2017

In the matter of an Application for Special Leave to Appeal, under and in terms of Article 128(2) of the Constitution, read with Section 11A (9) of the Tax Appeals Commission Act, No. 23 of 2011 (as amended), from the Judgment of the Court of Appeal dated 07th April 2022.

Lanka Marine Services (Private) Limited,
130, Glennie Street, Colombo - 02.

And also of

No. 117,
Sir Chittampalam A.
Gardiner Mawatha, Colombo 02.

APPELLANT-APPELLANT

-Vs-

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

RESPONDENT- RESPONDENT

BEFORE: **S. THURAIRAJA, PC, J.**
A.H.M.D. NAWAZ, J. AND
SHIRAN GOONERATNE, J

COUNSEL: Dr. Shivaji Felix, PC, with Nivantha Satharasinghe and Sajith Nawarathna instructed by Tharindu N. Bandara for the Appellant - Petitioners in SC. Appeal Nos. 39/23 and 46/23.

Dr. Romesh De Silva, PC with Harsha Amarasekara, PC, Dr. Shivaji Felix, PC, Niran Anketell, Nivantha Satharasinghe, Sajith Nawarathna and Sahan Ginige instructed by Tharindu N. Bandara for the Appellant - Petitioners in SC. Appeal Nos. 40/23, 41/23, 42/23 and 43/23.

F.N. Goonewardena with Aparna Kulathunga and Prashanthi Vignananthan instructed by Nalin Samarakoon for the Appellant - Petitioners in SC / Appeal Nos. 44/2023 and 45/2023.

Nirmalan Wigneswaran, DSG with Chaya Sri Nammuni, DSG with Sabrina Ahmed, SSC instructed by Rizni Firdous for the - Respondent - Respondent.

WRITTEN

SUBMISSIONS:

Respondents on 21st September 2023 & 04th September 2025

Appellant-Appellant in SC Appeal 39/23 in 26th May 2023 and 07th August 2025

Appellant-Appellant in SC Appeal 40/23 in 26th May 2023

Appellant-Appellant in SC Appeal 41/23 in 30th May 2023 and

07th August 2025

Appellant-Appellant in SC Appeal 43/23 in 30th May 2023 and 11th August 2025

Appellant-Appellant in SC Appeal 44/23 in 28th April 2023

ARGUED ON: 26th June 2025

DECIDED ON: 13th March 2026

S. THURAIRAJA, PC, J.

1. The matters before this Court comprise a series of appeals, namely SC Appeal Nos. 39/2023, 40/2023, 41/2023, 42/2023, 43/2023, 44/2023, 45/2023, 46/2023, arising from judgments of the Court of Appeal. These appeals turn on a single and determinative question of law, namely whether the supply of bunker fuel and lubricants to foreign-bound vessels within the territorial waters of Sri Lanka constitutes an “export” within the meaning of the *Inland Revenue Act, No. 38 of 2000*, the *Inland Revenue Act, No. 10 of 2006*, and the *Value Added Tax Act, No. 14 of 2002*, as amended.
2. The total taxes in dispute in each of these cases are tabulated hereinbelow:

Case No.	Tax Payer/ Appellant	Tax in Dispute	Relevant Statute	Taxable Period
SC/Appeal/39/2023 SC/SPL/LA/151/2022 CA/TAX/12/2017	Lanka Marine Services	21,829,439 Penalty of 10,495,465	Inland Revenue Act. No. 10 of	2008/2009

		Total 32,324,904	2006	
SC/Appeal/40/2023 SC/SPL/LA/152/2022 CA/TAX/04/2009	Lanka Marine Services	Income tax 68,888,087 Surcharge 13,777,617	Inland Revenue Act, No. 38 of 2000	Year of Assessment 2001/2002
SC/Appeal/41/2023 SC/SPL/LA/153/2022 CA/TAX/20/2013	Lanka Marine Services	533,686,997	Inland Revenue Act, No. 10 of 2006	Year of Assessment 2007/2008
SC/Appeal/42/2023 SC/SPL/LA/154/2022 CA/TAX/13/2015	Lanka Marine Services	26,796,352	VAT Act, No. 14 of 2002	41 taxable periods from 31 August 2003 to 31 May 2007
SC/Appeal/43/2023 SC/SPL/LA/155/2022 CA/TAX/08/2007	Lanka Marine Services	1,112,896,992	VAT Act, No. 14 of 2002	October 2002 to March 2003 (Excluding Feb 2003)
SC/Appeal/44/2023	McLarens	3,153,135	Inland	Year of

SC/SPL/LA/160/2022 CA/TAX/53/2019	Lubricants		Revenue Act, No. 10 of 2006	Assessment 2011/2012
SC/Appeal/45/2023 SC/SPL/LA/161/2022 CA/TAX/38/2014	McLarens Lubricants	7,844,747	Inland Revenue Act, No. 10 of 2006	Year of Assessment 2008/2009
SC/Appeal/46/2023 SC/SPL/LA/163/2022 CA/TAX/21/2017	Lanka Marine Services	203,518,840 Penalty 70,728,415 Total 274,247,255	Inland Revenue Act, No. 10 of 2006	Year of Assessment 2008/2009

FACTUAL MATRIX

3. The Appellant-Appellants are limited liability companies incorporated in Sri Lanka. Lanka Marine Services (Pvt) Ltd carries on the business of supplying marine bunker fuel and furnace oil to ocean-going vessels, while McLarens Lubricants Ltd is engaged in the importation, manufacture, and distribution of lubricants, including marine lubricants supplied to ships engaged in international navigation.
4. The transactions giving rise to the present dispute followed a consistent commercial pattern. Foreign shipping principals or charterers placed orders with the Appellants for bunker fuel or lubricants required for the operation of their vessels. The Appellants imported the relevant products and stored them in bonded warehouses under customs control, from which the goods were released for delivery upon request.

5. Delivery was effected while the vessels, flying foreign flags, were berthed at Sri Lankan ports or situated within Sri Lanka's territorial waters. The fuel and lubricants were pumped directly into the vessels' storage tanks for use in propulsion and on-board operations during their voyages. The products were not transported as cargo for delivery to a third-party consignee at a foreign port but constituted ships' stores intended for consumption by the vessels themselves. The Appellants issued invoices in foreign currency, predominantly in United States Dollars, and payments were received in foreign exchange through recognised banking channels.
6. The present dispute arose when the Commissioner General of Inland Revenue declined to accept the income tax returns and Value Added Tax filings submitted by the Appellants for several years of assessment spanning approximately 2001/2002 to 2011/2012. The Respondent determined that the supplies in question did not qualify as exports and that the Appellants were therefore not entitled to concessionary income tax treatment or zero-rated VAT status.
7. These determinations were founded principally on the view that the physical delivery and transfer of ownership occurred within the territory of Sri Lanka, that the goods lacked a foreign destination at which they could be said to be imported by a third party, and that there existed no contract of carriage in respect of the goods, inasmuch as the bunker fuel and lubricants were supplied for the vessels' own consumption rather than for transportation as cargo.
8. Being aggrieved by these assessments, the Appellants appealed to the Tax Appeals Commission, which affirmed the Respondent's determinations in a series of decisions. The Commission placed considerable emphasis on what it described as the "destination test", concluding that bunker fuel and lubricants consumed during a voyage could not be regarded as exports in the absence of delivery to, or importation by, an entity in

another country. In the Commission's view, the essential notion of sending goods from one country to another was not satisfied.

9. The Appellants thereafter invoked the jurisdiction of the Court of Appeal by way of Stated Cases under Section 11A of the *Tax Appeals Commission Act No. 23 of 2011*. By judgments dated 31 March 2022 and 7 April 2022, the Court of Appeal dismissed the appeals. The Court accepted that, in the context of bunker fuel, the existence of a specific foreign consignee or importer might not be an indispensable requirement.
10. Nevertheless, it held that the Appellants bore a legal burden to demonstrate that the vessels concerned were proceeding from Sri Lanka to foreign destinations. The Court concluded that the Appellants had failed to produce sufficient documentary material, including Customs Declaration Forms (CUSDECs), Marine Delivery Notes, and commercial documentation, to establish such foreign destinations, and observed in certain instances that the CUSDECs produced described Sri Lanka itself as the country of destination.
11. The Appellants sought and obtained Special Leave to Appeal against the judgments of the Court of Appeal. Before this Court, it is contended on behalf of the Appellants that the Court of Appeal erred in determining what is said to be a question of fact, namely the destination of the vessels, in proceedings on a Case Stated where such factual matters had not been placed in issue. It was further contended that, upon a contextual and economic interpretation of the relevant revenue statutes, goods taken out of Sri Lanka in the course of international navigation, in respect of which foreign exchange is earned, ought to be regarded as exports.
12. The Respondent maintains that the supply of bunker fuel and lubricants does not constitute an "export" as the transactions occur entirely within Sri Lankan territory, with ownership and physical possession transferring to the buyer within local waters. They

find distinction between "cargo" and "stores," wherein these supplies are intended for the vessel's own consumption during navigation rather than for delivery to a specific foreign recipient or importer in another country.

13. The Respondent further argues that the act of taking the goods out of the country is performed by the ship's master or owner, making them the only potential "exporter" in the transaction, not the local supplier. Moreover, the Respondent highlights that the Value Added Tax Act specifically classifies bunkering services as "exempt" supplies rather than "zero-rated" exports, reinforcing the legislative intent to exclude these activities from the fiscal concessions reserved for traditional international trade.
14. At the stage of supporting Special Leave to Appeal, parties were ad idem as to the legal issue requiring determination. Accordingly, by Order dated 17 March 2023, Special Leave to Appeal was granted on the following substantial question of law:

"Whether the supply of bunker fuel and lubricants to foreign vessels constitutes 'exports' under the Inland Revenue Act No. 38 of 2000, the Inland Revenue Act No. 10 of 2006, and the Value Added Tax Act No. 14 of 2002, as amended."

ANALYSIS

The Principal Question of Law

15. The determination of these appeals requires an examination of the jurisprudential meaning of the term "export," evaluated both in its ordinary common law sense and within the specific statutory framework governing Sri Lankan revenue law. The starting point for this inquiry must necessarily be the foundational English authorities which articulated the ordinary maritime meaning of exportation, long before the complexities of modern sales tax and value-added tax systems were introduced.

16. In **Muller v. Baldwin [1874]**,¹ the Court was tasked with interpreting the *Tyne Coal Dues Act*, specifically in relation to coal taken on board a steam vessel for its own propulsion rather than as cargo for resale. The Court held that,

*"coals carried away from the port, not on a temporary excursion, as in a tug or pleasure boat.... but taken away for the purpose of being wholly consumed beyond the limits of the port, are coals 'exported' within the meaning of the Act."*²

17. The significance of **Muller v. Baldwin** lies in its categorical rejection of any distinction based on the end-use of the goods. Whether the coal was cargo destined for a foreign consignee or fuel for the vessel's own internal consumption was deemed irrelevant to its juridical character as an export once it was physically removed from the jurisdiction. Lush J. further held that:

*"There is nothing in the language of the Act to show that the word 'exported' was used in any other than its ordinary sense, namely, 'carried out of the port'."*³

18. This approach was further fortified by the House of Lords in **Stockton Ry v. Barrett [1844]**,⁴ where the phrase "shipped for exportation" in a Railway Act was interpreted. The Court held that *"The words 'shipped for exportation' are not necessarily restricted to an exportation to foreign countries, but may mean exportation in its widest sense; that is,*

¹ [1874] LR 9 QB 457

² *ibid* at p. 461

³ *ibid.* The statute in question was the Tyne Coal Dues Act, 1872 (Imp.) 35 Vict. ch. 13, which authorized the levying of dues on coals "exported from the port" of Newcastle.)

⁴[1844] 11 Cl. & F. 590

a carrying out of port."⁵ Thus, the decisive legal criterion was the act of taking out, not the identification of a foreign sovereign terminus.

19. This domestic understanding of the act of exportation was adopted in our own jurisprudence in **Attorney General v. Nagamany [1949]**,⁶ where Gratiaen, J held that goods are exported the moment they are taken in a vessel outside the limits of the port. His Lordship observed:

*"With regard to the second submission made by Mr. Thiagalingam, I would hold that the paddy was 'exported' (as the term must be understood in the context of the Customs Ordinance) as soon as it was taken in the vessel outside the limits of the port of Muthur. **It makes no difference whether the intention was to transport it for consumption on board or in some other part of the Island or in a neighbouring country or merely to gratify a sinister impulse to dump it into the sea.** The Customs official is concerned on such occasions only with the fact of exportation, and he need not seek to probe the dark and mysterious workings of the smuggler's mind."*⁷

20. Such authorities have established that once goods are taken out of the port, they legally qualify as exports, and it is this act that the revenue authorities are entitled to recognise and act upon, without inquiry into the subjective intentions of the exporter.
21. The act of removal constitutes the decisive juridical moment. This principle was further clarified in **R v. Smith (Donald) (1973)**,⁸ where cannabis was held to be "exported" the

⁵ *ibid* at para 590

⁶ [1949] 51 NLR 149

⁷ *ibid* at p. 152

⁸ (1973) QB 924

moment it was placed on board an aircraft bound for a destination outside the jurisdiction, even though it had not yet crossed the customs boundary. The legal act of commitment to departure was sufficient.

22. This “export stream” concept finds parallel articulation in the United States Supreme Court decision in ***Empresa Siderurgica, S.A. v. County of Merced (1949)***,⁹ which held that exportation commences when goods are committed to the export stream with certainty that they are headed for a foreign destination and will not be diverted to domestic use.
23. In the present appeals, bunker fuel stored in bonded warehouses is legally prohibited from domestic circulation. Once pumped into a foreign-going vessel, it is irreversibly committed to removal from the territory. It therefore enters the export stream in the juridical sense recognised in comparative jurisdictions.
24. Consideration of the economic purpose of fiscal provisions further reinforces this conclusion. In ***Commissioner of Inland Revenue v. International Importing Limited (1972)***,¹⁰ the New Zealand Court of Appeal emphasised that legislation designed to encourage foreign exchange inflows should be interpreted purposively. Turner, J. stated that:

“The section contains no definition of ‘export’ nor can it be contended that this word is a term of art. It must therefore be given its ordinary meaning, or perhaps I should say one of its ordinary meanings, to be selected according to context. Clearly, if it is given one of its ordinary meanings the travellers may be said to have ‘exported’ the goods themselves, for they carried them (if small enough) onto the

⁹ (1949) 337 U.S. 154

¹⁰ (1972) NZLR 1095

plane personally, keeping them in their possession while the plane flew out of New Zealand. And no different result follows in the case of the larger packages which were put into the plane's hold, of which the passenger-purchasers doubtless must be deemed to have had possession at the time when they were taken out of the country. But should the word 'export' so be read, as referring to what these people did, if proper regard is had to the context in which that word is found in s 129B, and if the acknowledged purpose of that section is remembered? The legislation is plainly addressed to those persons, and to those alone, who increase the foreign exchange reserves of New Zealand, by sending goods abroad, or causing them to be sent abroad, receiving in return foreign exchange for which they are bound to account, and do account, to the Reserve Bank. It is clear that even if the travellers may be regarded as themselves 'exporting' the goods, the word 'export' where used in the section must also clearly be applicable to those, such as respondent company, who send the goods abroad, or cause them to be sent, with this result. Surely a dairy company 'exports' butter, and a fruit cannery 'exports' its manufactures, whether it ships the goods to its own order in another country, or sells here f.o.b. to a foreign person or corporation, provided simply that the transaction is one in which it causes goods to be sent abroad in exchange for foreign currency which it receives and for which it accounts. This to be observed however that s. 129B is solely concerned with the actions of vendors. In our opinion a vendor may export either by taking or by sending. There will be many cases where it can be said that the buyer exports by taking, as for example in the case of an ordinary contract."¹¹

25. With the greatest regard to the learned Judges of the Court of Appeal, I find that they have failed to appreciate the *ratio decidendi* of this New Zealand authority in their attempt to distinguish the same on factual technicalities, such as the specific boarding

¹¹ *ibid* at p. 1097

pass requirements or the Customs stamping of passengers. The Court of Appeal reasoned that bunkering is “completely different” from a duty-free shop operation because the latter involves boarding passes, customs lounges, and a statutory requirement for ownership at the time of sale. Such reasoning, in my view, is pedantic and fails to grasp the underlying legal principle. Bunker fuel in Sri Lanka is legally restricted to bonded warehouses, a condition analogous in legal effect to the “clear area” of an airport. In both instances, the goods are sequestered from the domestic economy for the sole purpose of removal from the territory.

26. Furthermore, the Court of Appeal’s reliance on the New Zealand Act’s specific ownership wording is a distinction without legal consequence. The *ratio decidendi* of ***International Importing Limited Case*** is not tied to the minutiae of New Zealand ownership law, but to the purposive identification of the “exporter” as the entity causing the removal of goods to earn foreign exchange. By rejecting this authority, the Court of Appeal favoured a rigid, literal approach over the modern economic reality that Section 42 of the *Inland Revenue Act* is explicitly designed to subsidise through tax concessions the kind of foreign exchange-earning activity undertaken by the Appellants. In this context, the Appellants are correctly recognised as the “exporters” for the purposes of Sri Lankan revenue law.
27. The Respondent places heavy reliance upon ***Burmah Shell Oil Storage & Distributing Co. v. Commercial Tax Officer [1961]***.¹² Given the exhaustive reliance placed upon that authority by the Revenue authorities and the lower tribunals, I find it necessary to examine it closely. In the ***Burmah Shell Case***, the Indian Supreme Court held that aviation spirit loaded onto aircraft for consumption was not “exported” because it lacked a foreign destination where it could be said to be imported. The Court stated:

¹² AIR 1961 SC 315 [hereinafter “*Burmah Shell Case*”]

"The test is that the goods must have a foreign destination where they can be said to be imported. It matters not that there is no valuable consideration from the receiver at the destination end. If the goods are exported and there is sale or purchase in the course of that export and the sale or purchase occasions the export to a foreign destination, the exemption is earned. Purchases made by philanthropists of goods in the course of export to foreign countries to alleviate distress there, may still be exempted, even though the sending of the goods was not a commercial venture but a charitable one. The crucial fact is the sending of the goods to a foreign destination where they would be received as imports. The two notions of export and import, thus, go in pairs.

Applying these several tests to the cases on hand, it is quite plain that aviation spirit loaded on board an aircraft for consumption, though taken out of the country, is not exported since it has no destination where it can be said to be imported, and so long as it does not satisfy this test, it cannot be said that the sale was in the course of export. Further, as has already been pointed out, the sales can hardly be said to 'occasion' the export. The seller sells aviation spirit for the use of the aircraft, and the sale is not integrally connected with the taking out of aviation spirit. The sale is not even for the purpose of export, as explained above. It does not come within the course of export, which requires an even deeper relation. The sales, thus, do not come within Article 286(1)(b)."¹³

28. The Appellants contend that **Burmah Shell Case** is fundamentally distinguishable and should not have been used as a limiting precedent by the Tax Appeals Commission or the Court of Appeal. They submit that the Indian Supreme Court was interpreting Article 286(1)(b) of the Constitution of India, which prohibits States from taxing sales "in the

¹³ *ibid* at p. 923

course of export," whereas the Sri Lankan *Inland Revenue Act* and *VAT Act* use the term "export" to describe a business activity or a profit-generating event.

29. They further contend that the said judgment concerned a Sales Tax, where the physical movement of goods was the taxable event, while the present cases involve Income Tax on qualified export profits and VAT zero-rating for exporters, where the focus is on whether the undertaking engages in export activity that earns foreign exchange for Sri Lanka. Appellants distinguish the said case on the ground that aviation fuel was consumed by the aircraft itself, whereas bunker fuel in Sri Lanka is stored in bonded warehouses, is legally prohibited from entering domestic circulation, and is contractually designated for consumption only outside territorial waters.
30. The Respondent-Respondent maintains the ***Burmah Shell Case*** to be the "classic case" which provides the only legally sound definition of export in a maritime context. They contend that an "export" is not merely a taking out of the country but a movement toward a foreign destination where the goods are received as imports, relying on the so-called "Destination Principle." They further adopt the reasoning that "import and export go in pairs," and assert that because no foreign entity imports the bunker fuel as cargo, the chain of exportation is never completed. They argue, by analogy, that pumping fuel into a vehicle at a national border does not transform the local seller into an "exporter." They further assert that the foreign-flagged status of the vessel is irrelevant if the goods do not reach a foreign jurisdictional terminus.
31. A careful reading of the ***Burmah Shell*** judgment shows that the Indian Supreme Court was interpreting the specific phrase "in the course of export" under Article 286(1)(b) of the Constitution of India. Article 286 (1) reads as follows;

"No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place.-"

(a) *outside the State; or*

(b) ***in the course of the import*** of the goods into, or export of the goods out of, the territory of India.”

32. That language required a commercial nexus between two termini within a federal structure and was aimed at preventing multiple States from asserting overlapping taxing powers. As Hidayatullah, J. observed;

“Prior to the Constitution, multiple taxation of a single transaction of sale was possible, and provincial legislation then existing clearly demonstrates that States having some connection with the sale because one or more elements took place within those States, treated this as sufficient nexus between the taxing power and the States, authorising them to tax sales even where property passed in another State. The Constituent Assembly desired to achieve certain objects in the matter of taxation, particularly in relation to sales tax. Article 286 achieves, among other objects, the avoidance of this multiple taxation.”¹⁴

33. It is necessary to emphasise that Sri Lanka, being a unitary State, is not confronted with analogous federal conflicts. The *Inland Revenue Act* and the *Value Added Tax Act* employ the term “export” simpliciter and do not incorporate the restrictive language “in the course of export.” Hidayatullah, J. acknowledged that in its ordinary sense, “export” may simply mean “taking out of the country.”¹⁵ The so-called “Destination Principle” is a product of the constitutional context and the necessity to delimit the taxing powers of multiple States; it does not reflect the inherent meaning of the word “export”.

¹⁴ *ibid* at p. 914

¹⁵ *ibid* at p. 922

34. Having examined the said judgment of the Indian Supreme Court in detail, I am of the view that while the reasoning of the Indian Supreme Court confines within the federal constitutional framework of India, it is inapplicable to the present appeals. The Indian Supreme Court addressed the scope of State taxing powers within a federation, whereas Sri Lanka's statutory scheme concerns the construction of fiscal incentives enacted by Parliament to promote the inflow of foreign exchange. The pertinent question is whether goods that are legally prohibited from domestic circulation and are committed to foreign-bound vessels constitute exports for the purposes of income tax and VAT. The constitutional rationale underpinning the ***Burmah Shell Case*** does not govern the interpretation of Sri Lankan legislation and must, therefore, be carefully distinguished.
35. A similar constitutional context underpinned ***State of Travancore-Cochin v. Shanmugha Vilas Cashew-nut Factory [1953]***,¹⁶ in which the Indian Supreme Court articulated what became known as the "Two Termini" rule. That doctrine arose because the phrase "in the course of export" necessitated movement between two identifiable points. As Patanjali Sastri, C.J. explained, the word "course" denotes movement from one point to another. Sri Lankan statutes, by contrast, contain no such language. To import a "Two Termini" requirement into a statute employing only the term "export" would constitute a judicial interpolation.
36. Furthermore, both ***Burmah Shell*** and ***Shanmugha Vilas*** were Sales Tax cases, concerned with the situs of a transaction. Income Tax and VAT zero-rating provisions, by contrast, focus on the character of the undertaking and the derivation of foreign exchange. Section 42 of the Inland Revenue framework specifically targets foreign exchange-earning activity. The relevant taxable event is the earning of profits from exportation, not the allocation of taxing powers between federal units.

¹⁶ AIR 1953 SC 333

37. There exists an additional material distinction. In the Indian cases, the goods had entered the general mass of property within the State prior to export. In the present appeals, the bunker fuel is held in bonded warehouses and is legally prohibited from entering domestic circulation.
38. From the moment of importation, the fuel is segregated from the domestic economy and dedicated to removal. When pumped into a foreign-going vessel, it is irrevocably committed to the export stream in the sense recognized in ***Empresa Siderurgica, S.A. v. County of Merced [1949]***.¹⁷ Accordingly, I am unable to agree with the Respondent's submission that the "Destination Principle" constitutes an immutable rule of universal application; it is rather a contextual, constitutionally rooted doctrine.
39. The Respondent further contends that bunker fuel, classified as "stores" under Section 61 of the *Customs Ordinance*, is conceptually distinct from "cargo" and therefore incapable of constituting an export. The distinction between "cargo" and "stores" is a recognized feature of maritime and customs administration, yet it is a distinction of function, not of jurisdictional status. As observed by Evans, P. in ***The Nicolay Belozwetow P.1***,¹⁸ while "stores" [goods intended for the vessel's own use or propulsion] and "cargo" [goods carried for freight] serve different purposes on a voyage, they remain property that is physically transported beyond the national boundary.
40. In the realm of revenue law, the decisive criterion for exportation is the physical removal of goods from the territory, coupled with the accrual of foreign exchange. Whether the goods are stowed in the hold as cargo or pumped into the tanks as fuel is an operational detail that does not alter the juridical fact of their departure from the Sri Lankan economy.

¹⁷ [1949] 337 U.S. 154

¹⁸ The "Nicolay Belozwetow" [1913] P. 1

41. Furthermore, the purpose of Section 61 of the *Customs Ordinance* is essentially protective and regulatory; it provides a framework to ensure that goods intended for use on a foreign voyage are not diverted into domestic circulation without the payment of duty. This administrative safeguard is intended to prevent leakage into the local market; it is not, and cannot be, a negative definition of "export" in the context of the Inland Revenue or Value Added Tax Acts. To hold that "stores" are incapable of being "exported" would be to allow a procedural label within a customs management framework to defeat the substantive economic objectives of the legislature, which seeks to incentivize any activity—be it the supply of cargo or the provision of bunkers—that results in a net outflow of goods and a corresponding inflow of foreign currency.
42. In the present appeals, it is noteworthy that neither the *Inland Revenue Act* nor the *Value Added Tax Act* contains an explicit definition of "export." In such circumstances, the proper judicial approach is to seek coherence with related legislation to ascertain the standard legal meaning of the term. This methodology is endorsed in ***Attorney General v. Kumarasinghe [1995]***,¹⁹ where it was held that, when a primary statute is silent on a term of such fundamental character, recourse may be had to definitions provided in the *Imports and Exports (Control) Act, No. 1 of 1969*.
43. Section 22 of *Imports and Exports (Control) Act, No. 1 of 1969* defines exportation as:
- "Exportation shall mean the carrying and taking out of Sri Lanka or causing to be carried or taken out of Sri Lanka, when used in relation to any goods whether by sea or by air of such goods as mentioned in section 22 of the Imports and Exports (Control) Act, 1 of 1969."*

¹⁹ [1995] 2 Sri L.R. 1

44. This definition emphasizes the physical act of removal rather than any specific destination. This construction is further reinforced by Section 16 of the *Customs Ordinance*, which prescribes the precise moment at which an export is deemed complete as:

"...such time, in respect of exportation, shall be deemed to be the time at which the goods had been shipped on board the ship in which they had been exported..."

45. Beyond the assistance of these extrinsic definitions, the canons of statutory construction dictate that an enactment must be read as a cohesive and unified whole. As observed in **Maxwell on the Interpretation of Statutes (12th ed)**²⁰ and in **Canada Sugar Refining Co. Ltd. v. R [1898]**,²¹ every clause must be construed with reference to the context and other clauses of the same Act. This Court has consistently applied this principle. In **Puttalam Cement Company Ltd. v. Mutukumarana [2006]**,²² it was categorically held that words cannot be interpreted in isolation but must be given meaning in harmony with the other provisions of the statute in which they occur.

46. Hence, it is my opinion that the term "export" must be understood in light of the overall legislative scheme of the Revenue Acts. These statutes are constructed to provide specific fiscal reliefs, such as "qualified export profits" and zero-rated status—designed primarily to incentivize the accrual of foreign exchange. When read in its entirety, it is manifest that the "spirit of the law," as emphasized in **Distilleries Company Ltd v. Kariyawasam [2001]**,²³ is to reward the economic act of bringing foreign currency into the domestic economy through international trade.

²⁰ P St J Langan, *Maxwell on the Interpretation of Statutes* (12th edn, Sweet & Maxwell 1969) at p. 47

²¹ [1898] AC 735 (PC)

²² [2006] 1 Sri L.R. 54

²³ [2001] 3 Sri L.R. 119

47. To interpolate a “destination principle” or a requirement of “foreign landing” that is not found within the statutory text would create a fundamental conflict with the broader provisions intended to promote foreign-exchange-earning activities.
48. As observed in ***Sampanthan et al v. Attorney General et al [2018]***,²⁴ the rule of harmonious interpretation requires that all provisions operate cohesively to achieve the legislative purpose. Within the context of fiscal statutes aimed at national economic promotion, the supply of bunker fuel to foreign-going vessels plainly satisfies the central object of the enactment. When read together, the *Inland Revenue Act*, the *VAT Act*, the *Customs Ordinance*, and the *Imports and Exports (Control) Act* manifest a consistent legislative policy: the State rewards the removal of goods from the domestic economy in exchange for foreign currency.
49. Accordingly, the act of shipping the fuel on board a vessel for removal beyond territorial waters constitutes the decisive moment that satisfies the harmonious interpretation of the law.
50. Having considered the statutory framework, the purposive intent of the *Inland Revenue Act* and the *Value Added Tax Act*, and the principles articulated in both domestic and comparative jurisprudence, I am of the view that the supply of bunker fuel and lubricants to foreign-going vessels constitutes an “export” for the purposes of the said Acts.
51. I wish to affirm, for the most part, the analysis and conclusions reached by the Court of Appeal, in recognizing that exemptions prescribed by the said acts apply to bunker fuel. The question of law is accordingly answered in the affirmative.

²⁴ SC/FR/351/2018, SC Minutes of 13th December 2018, at p. 61.

The Evidentiary Ground Adopted by the Court of Appeal

52. Having addressed the substantive question of law, it becomes necessary to consider the juridical basis upon which the Court of Appeal nevertheless dismissed the appeals. The dismissal did not rest upon a rejection of the legal interpretation adopted by the Tax Appeals Commission, but upon the view that the Appellants had failed to adduce sufficient documentary material to establish that the bunker fuel supplied was destined for removal beyond the territorial waters of Sri Lanka.
53. This evidentiary basis, however, was not formulated as a question of law in the Case Stated, nor was the sufficiency of proof a matter identified in the Commission's determination as being in dispute between the parties.
54. The issue therefore arises whether the Court of Appeal, in a reference confined by statute to questions of law arising on the stated facts, was entitled to dispose of the appeals upon a ground that effectively re-opened the factual foundation of the case. It is to that jurisdictional and procedural question that I now turn.
55. This issue concerns the limits of the Court of Appeal's jurisdiction when seized of a Case Stated under Section 11A of the *Tax Appeals Commission Act, No. 23 of 2011* (as amended). The question is whether, within that consultative jurisdiction, the Court of Appeal was entitled to dismiss the appeals on the basis of an alleged evidentiary deficiency which did not form part of the Stated Case and which, throughout the proceedings before the Commissioner General of Inland Revenue and the Tax Appeals Commission, had been treated as undisputed.
56. Section 11A(1) provides that either party may require the Commission to "state a case on a question of law for the opinion of the Court of Appeal", as follows;

"Either the person who preferred an appeal to the commission under paragraph (a)

of the subsection (1) of section 7 of this Act or the Commissioner General may make an application requiring the Commission to state a case on a question of law for the opinion of the Court of Appeal. Such application shall not be entertained unless it is made in writing and delivered to the secretary to the Commission, together with a fee of one thousand and five hundred rupees, within one month from the date on which the decision of the commission was notified in writing to the Commissioner General or the Appellant, as the case may be."

57. Section 11A(2) of the TAC Act provides the acceptance of the case stated by the TAC and transmitting to the Court of Appeal as follows;

"The case stated by the commission shall set out the facts, the decision of the commission, and the amount of the tax in dispute where such amount exceeds five thousand rupees, and the party requiring the commission to state such case shall transmit such case, when stated and signed to the Court of Appeal, within fourteen days after receiving the same."

58. The structure of the provision makes clear that this is not an ordinary appeal. It is a restricted and consultative jurisdiction. The Tax Appeals Commission is the primary fact-finding tribunal. The Court of Appeal is confined to determining questions of law upon the factual matrix as settled by the Commission. This Court in ***Janashakthi Insurance Company Limited v. Commissioner General of Inland Revenue [2020]***²⁵ recognised that in a Case Stated procedure, the appellate court must resolve the legal questions on the basis of the record as framed by the Commission. Vijith K. Malalgoda, PC, J. addressing the scope of such jurisdiction, observed:

"In these circumstances, it is clear that once a case stated is fixed for hearing it only

²⁵ SC Appeal 114/2019, SC Minutes of 26th June 2020

contain the questions that are to be considered by court and/or nothing else.

However, this does not restrict the Court of Appeal considering an additional question of law if the court is of the view that the said question or questions may result in the confirmation, reduction, increasing or annulling the assessment determined by the Commission. Similarly the Court of Appeal is free to decline to answer any of the question or questions, that is included in the case stated, if the court is of the view that it may not result in the confirmation, reduction, increasing or annulling the assessment determined by the commission, but in any other instance, the Court of Appeal is required to answer all the questions before them.”²⁶

59. This observation by Malalgoda, PC, J. establishes three propositions. First, the Court of Appeal may, where necessary, consider an additional question of law, provided that the answer to such question may affect the confirmation, reduction, increase or annulment of the assessment. Second, the Court may decline to answer a question framed in the Case Stated if it is of no consequence to that statutory outcome. Third, and fundamentally, the jurisdiction remains confined to questions of law arising on the stated case. The discretion recognized by Justice Malalgoda is therefore a power of legal refinement, not a warrant to reopen primary facts or to reconstruct the evidentiary foundation of the dispute.
60. The course adopted in the present matter does not fall within that permissible flexibility. The Court of Appeal did not identify or determine a new question of law. Instead, it introduced fresh evidentiary criteria and resolved the appeals on the asserted absence of documentary proof. That exercise was factual, not legal, and lies outside the jurisdictional boundaries delineated in Section 11A.

²⁶ *ibid* at p. 11

61. I must make an observation of the record before the Tax Appeals Commission at this juncture. In the "Reasons for the Determination," the Commission recorded:

*"As stated in my determination, **the only matter in dispute** at the appeal hearing stage was whether the sale of bunker fuel/lubricants to foreign vessels can be treated as exports?"*

"Whether the sale of bunker fuel/lubricants to foreign vessels call at Port of Colombo, can be treated as exports?"

62. The proceedings were thus conducted on the footing that bunker fuel had in fact been supplied to foreign-going vessels. The dispute was legal: whether such supplies fell within the statutory meaning of "export" or qualified for concessionary treatment.

63. A perusal of the questions of law framed for the opinion of the Court of Appeal reveals no issue concerning sufficiency of proof. The questions of law, with reference to the *Inland Revenue Act, No. 10 of 2006*, raised for the Stated Case are reproduced as follows;

"1. Is the determination of Tax Appeals Commission time barred?"

2. Did the Tax Appeals Commission err in law when it came to the conclusion that the determination made by the Commissioner General of Inland Revenue was not time barred under and in terms of Section 165 (14) of the Inland Revenue Act, No. 10 of 2006 (as amended)?"

3. Did the Tax Appeals Commission err in law when it came to the conclusion that the Appellant was not entitled to the concessionary tax rate conferred by Section 42 of the Inland Revenue Act, No. 10 of 2006 (as amended)?"

4. In the alternative, did the Tax Appeals Commission err in law when it came to the conclusion that the Appellant was not entitled to the concessionary tax rate conferred by Section 52 of the Inland Revenue Act, No. 10 of 2006 (as amended)?"

5. In view of the facts and circumstances of the case did the Tax Appeals Commission err in law when it came to the conclusion that it did?"

64. The above formulation of questions in the Case Stated does not authorise a re-examination of evidence or the introduction of new factual criteria.
65. Notwithstanding that framework, the Court of Appeal, in CA TAX 08/200²⁷ [which is the judgment impugned in SC Appeal 43/2023], reasoned as follows:

"[99] I hold that the zero-rated status under Section 7 (1) (a) of the VAT Act in the present case applies to the bunker fuel directly supplied to the operator or owner of the foreign going vessel to be used for navigation on the high seas (out of the territorial waters of Sri Lanka) and intended to a destination point of another country. This finding is limited to this case and it shall not in any way be construed as an application to other goods in respect of which zero rated supply is claimed under the provisions of the VAT Act, No. 14 of 2002.

*[100] How can the Appellant satisfy that that the ship carrying bunker fuel for navigation was taken out of the Sri Lankan territorial waters? It must be shown that the supply of bunker fuel was delivered to the foreign going ship's tanks by the Appellant to be used for navigation on the high seas with a foreign destination point of another country."*²⁸

66. The Court then proceeded to prescribe documentary requirements:

"[101] To support the zero rating of the supply of bunker fuel to foreign going

²⁷ CA/Tax/08/2007, CA Minutes 31 March 2022.

²⁸ *ibid* at p.33, Quoted verbatim from the impugned judgment of the Court of Appeal in CA TAX 08/2007. The Court of Appeal has reasoned similarly in other judgments concerning the Petitioners as well

vessels under Section 7 (1) (a) of the VAT Act, the Appellant is required to satisfy the following documents:

1. Purchase orders for the receiver (customer) of the bunker fuel indicating the name of the vessel, date of departure and next destination from Sri Lanka;
2. Purchase order indicating written instructions for the receiver (customer) to deliver the bunker fuel to the vessel;
3. Sales invoice to the receiver of bunker fuel;
4. Bunker delivery note endorsed by the Master/Chief Engineer/ such responsible officer of the vessel; and
5. Evidence of payment from the receiver (customer).²⁹

67. The Court of Appeal further concluded:

"[103] Accordingly, the bunker delivery note does not indicate whatsoever, that the bunker fuel that was supplied by the Appellant to ships will be taken out of the Sri Lankan territorial waters and used for navigation on the high seas when travelling to a foreign destination point of another port. Such a destination is conspicuously absent in the present case. The argument of the Appellant that the moment the bunker fuel was taken out of the Sri Lankan territory, the export was complete cannot be presumed and accepted in the absence of documentary evidence indicating the next foreign destination.

*[104] For those reasons enumerated in this judgment, I hold that the supply of bunker fuel by the Appellant in the present case, does not constitute an export and therefore, the Appellant is not entitled to claim the zero rated status..."*³⁰

²⁹ *ibid* at p.34

³⁰ *ibid* at p.34-35

68. The difficulty with this reasoning lies not in its articulation of evidentiary standards, but in its jurisdictional foundation. Those documentary requirements were not framed as issues before the Tax Appeals Commission. The Respondent's own consolidated submissions before this Court acknowledge that "before the Tax Appeals Commission there was no dispute on the factual matters." The case proceeded below on the basis that bunker fuel was supplied to foreign-going vessels navigating international waters. The legal controversy concerned classification, not proof of physical delivery.
69. By dismissing the appeals for want of specific documentary proof relating to destination, the Court of Appeal in substance introduced new factual criteria and evaluated evidentiary sufficiency on matters not placed in dispute. That course is inconsistent with the nature of a Case Stated jurisdiction. As observed in ***Mayer v. Ho Kwok Keung [2011]***,³¹ an appellate body must not engage in "beating about the evidential undergrowth" in disregard of settled findings of primary fact.

*"The questions 'should be stated clearly and concisely and care should be taken to ensure that the questions were not wider than was warranted by the facts'. An applicant for a case stated might not rely on a question of law which was imprecise or ambiguous. It was wholly impermissible to go beating about the evidential undergrowth in the hope of flushing out some useful pieces of evidence that supported an applicant's view, in total disregard of settled law that the Board's findings of primary fact, in so far as there was any evidence to support them, were sacrosanct. **Commissioner of Inland Revenue v Inland Revenue Board of Review and another [1989] 2 HKLR 40 considered**"*³²

³¹ [2011-12] 26 Inland Revenue Board of Review Decision 569

³² *ibid*, para 3

70. The principle also engages procedural fairness. The Appellants were not afforded an opportunity before the Commission to address the newly articulated documentary prerequisites because those matters were never raised as determinative issues. To introduce such requirements at the appellate stage is to alter the basis of the dispute without notice. The rule *audi alteram partem* does not permit such a shift.
71. As recognised in ***Union Strand v. Commissioner of Inland Revenue [2020]***,³³ the State is not a privileged litigant entitled to redefine the controversy at its terminal stage. Nor can the approach be justified as an aspect of statutory interpretation. In ***Magor and St Mellons RDC v. Newport Corporation [1952]***,³⁴ Lord Simonds cautioned against supplementing legislation under the guise of interpretation.
72. While ***Sun Export Corporation, Bombay v. Collector of Customs, Bombay [1997]***³⁵ states a tax exemption will be allowed only if the taxpayer can prove that the exemption falls within the parameters enumerated in the section and that he has satisfied all of the conditions precedent. That principle does not authorise the creation of non-statutory documentary prerequisites, particularly in a reference confined to questions of law.
73. In the present matters, the Court of Appeal was bound to apply the relevant statutory provisions to the facts as stated by the Commission. Its departure from that factual foundation in search of evidentiary insufficiency constituted an encroachment upon the fact-finding domain assigned by Parliament to the Tax Appeals Commission. The dismissal of the appeals for “lack of evidence” on matters not placed in issue below therefore amounts to an error of law going to jurisdiction.

³³ CA/TAX/02/2006, CA Minutes of 10th December 2020.

³⁴ [1952] AC 189 (HL)

³⁵ (1997) 6 SCC 564

CONCLUSION

74. Having considered the submissions of the parties, the entirety of the statutory framework under the *Inland Revenue Act, No. 38 of 2000*, the *Inland Revenue Act, No. 10 of 2006*, and the *Value Added Tax Act, No. 14 of 2002*, as amended, and the relevant authorities, this Court is satisfied that the supply of bunker fuel and lubricants to foreign-going vessels constitutes an "export" for the purposes of the said statutes.
75. It is the removal of goods from the territory of Sri Lanka and their delivery to foreign-bound vessels, in exchange for foreign currency, that determines the character of an export. The statutory provisions are designed to encourage and reward such foreign-exchange-earning activities. Neither the classification of the goods as "ships' stores" under Section 61 of the *Customs Ordinance* nor the absence of a specific foreign consignee diminishes the entitlement to the fiscal concessions contemplated under the *Inland Revenue Acts* and the *Value Added Tax Act*.
76. The Court further finds that the Court of Appeal, in dismissing the appeals on the ground of documentary insufficiency regarding the next foreign destination of the vessels, overstepped its jurisdiction under Section 11A of the *Tax Appeals Commission Act, No. 23 of 2011*.
77. The questions of law framed in the Case Stated concerned the legal classification of bunker fuel and lubricants as exports, and not the adequacy of documentary evidence. To impose additional factual requirements at the appellate stage constituted an error of law and an encroachment upon the fact-finding role assigned to the Tax Appeals Commission by Parliament.

78. In arriving at its conclusion, the Court of Appeal appears to have embarked upon a voyage of its own—one that travelled beyond the charted course of the questions of law set out in the Case Stated.
79. In the circumstances, all of the Appellants' appeals, namely SC Appeal Nos. 39/2023, 40/2023, 41/2023, 42/2023, 43/2023, 44/2023, 45/2023, 46/2023, are allowed. The Appellants are accordingly entitled to:
- (a) the concessionary income tax rates under Sections 15(j) and Section 47 of the *Inland Revenue Act, No. 38 of 2000*, as amended;
 - (b) Sections 42 and 52 of the *Inland Revenue Act, No. 10 of 2006*, as amended; and
 - (c) zero-rated treatment under Section 7(1)(a) of the *Value Added Tax Act, No. 14 of 2002*, as amended, in respect of supplies of bunker fuel and lubricants to foreign-going vessels.
80. The assessments made by the Commissioner General of Inland Revenue in respect of the periods in question are hereby set aside to the extent inconsistent with this judgment, and the Appellants' entitlement to the said fiscal concessions shall be given effect.
81. The reasoning of the Court of Appeal, insofar as it affirms that the supply of bunker fuel may constitute an export under the statutory provisions, is affirmed. However, the additional evidentiary assessment by the Court of Appeal is hereby overruled and the conclusion which followed is set aside.

82. As agreed upon, all parties in SC Appeal Nos. 39/2023, 40/2023, 41/2023, 42/2023, 43/2023, 44/2023, 45/2023 and 46/2023 shall be bound by this judgment, and the parties shall bear their own costs.

Appeals Allowed.

JUDGE OF THE SUPREME COURT

A.H.M.D. NAWAZ, J.

1. These eight consolidated appeals arise from the judgment of the Court of Appeal dated 31 March 2022. The appeals have been preferred by the Appellants, who are companies engaged in the business of supplying bunker fuel and lubricants to vessels calling at Sri Lankan ports. The Court of Appeal affirmed the decisions of the Board of Review, which had upheld the assessments of income tax and value added tax raised against the Appellants by the Commissioner General of Inland Revenue (the "Respondent"). The Appellants seek to have those assessments set aside on the ground that their supply of bunker fuel and lubricants to foreign vessels constituted "exports" entitling them to concessionary or zero-rated tax treatment.
2. The identical question of law that arises in all eight appeals is:

Whether the supply of bunker fuel/lubricants to foreign vessels constitutes "exports" under the Inland Revenue Act, No. 38 of 2000, the Inland Revenue Act, No. 10 of 2006, and the Value Added Tax Act, No. 14 of 2002 (as amended).

3. None of the foregoing statutes defines the term "export". The resolution of this question accordingly requires this Court to determine the juridical meaning of that word in the context of the relevant taxing statutes, drawing upon the ordinary and established legal meaning of the term, the internal structure of the statutes themselves, and the body of case law that bears upon the matter.
4. Having considered the written and oral submissions of learned President's Counsel Dr. Romesh de Silva for the Appellant-Appellants and the learned Deputy Solicitor General Mr. Nirmalan Wigneswaran for the Respondent-Respondent, and having examined the relevant statutory provisions and the authorities cited, I am of the opinion, in agreement with my learned brother Justice Shiran Gooneratne that the supply of bunker fuel and lubricants to foreign vessels does not constitute an "export" within the meaning of the said statutes. The appeals must accordingly be dismissed. I set out below the reasons for my conclusion.
5. I am conscious that my learned brother Justice Thurairaja has arrived at a contrary conclusion, to the effect that such supply does constitute an export. I shall note the principal grounds of that contrary view and explain why, with respect, I am unable to agree with it.

THE RELEVANT STATUTORY PROVISIONS

6. The concessionary tax treatment sought by the Appellants rests upon the following provisions. Section 15(j) of the Inland Revenue Act No. 38 of 2000 and Section 42(1) of the Inland Revenue Act No. 10 of 2006 provide an exemption or concessionary rate of income tax in respect of profits arising from the export of, *inter alia*, petroleum and petroleum products that have been brought to Sri Lanka on a consignment basis and re-exported without being subjected to any process of manufacture. Section 7(1)(a) of the Value Added Tax Act No. 14 of 2002 (as amended) provides a zero-rated status for

the supply of goods that are exported. The Appellants contend that the supply of bunker fuel to foreign vessels falls within these provisions because it constitutes an "export".

7. The VAT Act is of particular structural significance. Its First Schedule, which specifies goods and services that are merely exempt from VAT (as distinct from zero-rated), explicitly includes the supply of bunker fuel and oil for ships. This legislative placement is not accidental. Under the VAT Act, zero-rated supply and exempt supply are distinct categories with materially different fiscal consequences. A supplier of zero-rated goods may recover input VAT paid on its own purchases; a supplier of exempt goods may not. Parliament's deliberate choice to place the supply of bunker fuel in the exempt category rather than the zero-rated category is itself a powerful indication that Parliament did not regard the supply of bunker fuel as an export. If such supply were an export, there would be no purpose in placing it in the exempt schedule. The Appellants seek to extract a benefit that Parliament has consciously and deliberately withheld.

THE QUESTION OF EVIDENCE AND THE CORRECT LEGAL ISSUE

8. Before addressing the substantive question, I must note one aspect of the Court of Appeal's reasoning with which I respectfully disagree, and which all parties before this Court have accepted requires correction. The Court of Appeal, in dismissing the appeals, placed reliance on what it characterised as an evidential deficiency: there was, it said, no evidence before it to establish that the individual vessels to which bunker fuel was supplied had in fact sailed to foreign destinations. Both learned counsel, Dr. Romesh de Silva for the Appellants and Mr. Nirmalan Wigneswaran for the Respondent were in agreement before this Court that this framing of the issue was erroneous. The question whether ships sailed abroad after being bunkered is not, and was never, determinative of the legal dispute.

9. The true question is one of pure law: *does the act of supplying bunker fuel within the territorial waters of Sri Lanka to a vessel, whether that vessel subsequently proceeds abroad or not, constitute an "export" by the supplier?* This is the question before the Board of Review, the Court of Appeal, and now this Court. It is the question I shall answer.

THE MEANING OF "EXPORT": THE TWO-TERMINI DOCTRINE

10. Because the term "export" is not defined in the relevant statutes, Parliament is presumed to have intended the word to bear its established legal meaning. In determining this meaning, I draw my attention to a corpus of authority, Indian, comparative, and international that converges upon a single and coherent principle.
11. Export, as a legal concept, is not synonymous with the mere physical movement of goods beyond the territorial limits of a country. The word carries a richer and more demanding connotation. An export, properly understood, is a transaction whereby goods are dispatched from one country to another country as their destination, for the purpose of being received there as imports. Export and import are complementary concepts; they are, in the language of the authorities, the two termini between which the goods are intended to move. Where goods leave a country but have no foreign destination at which they will be received as imports, there is no export in the legal sense.
12. This principle was authoritatively established in the Indian Supreme Court's decision in ***Burmah Shell Oil Storage and Distributing Co. of India Ltd. and Another v. Commercial Tax Officer and Others***³⁶ delivered on 27 September 1960, by Hidayatullah J. (as he then was) for a Bench of five judges. The central question before

³⁶ [(1960) 11 STC 764 : 1960 SCC OnLine SC 154]

that Court was whether the supply of aviation spirit to aircraft departing India at Dum Dum Airport, Calcutta, bound for foreign countries, constituted a sale "in the course of export out of the territory of India" within the meaning of Article 286(1)(b) of the Indian Constitution. Hidayatullah J. held that it did not.

13. The reasoning of Hidayatullah J. is of the primeval importance. He distinguished between two senses in which the word "export" may be used. In the first and narrower sense, "export" means merely sending or taking goods out of a country. In the second and more precise sense, "export" means sending goods from one country to another, a commercial transaction in which the country of receipt imports them. It is this second sense that governs in legal contexts. As Hidayatullah J. stated, at page 324 of the report;

"The word 'export' may conceivably be used in more senses than one. In one sense, 'export' may mean sending or taking out of the country, but in another sense, it may mean sending goods from one country to another. Often, the latter involves a commercial transaction but not necessarily. The country to which the goods are thus sent is said to import them, and the words 'export' and 'import' in this sense are complementary."

14. Hidayatullah J. then articulated the **decisive test**: goods must have a foreign destination where they can be said to be imported. Where no such destination exists, there is no export. He illustrated the principle thus: goods ordered by health authorities to be dumped in the open sea have no foreign destination and are not exported; but goods placed aboard a steamer bound for a foreign country and jettisoned in mid-ocean are exported, even though they never reach the destination, because they were dispatched with a foreign destination in mind. In both cases the goods physically left India. The difference lies in whether there was a foreign destination at which the goods were to be received as imports.

15. Applying this test to the facts before him, Hidayatullah J. held that aviation spirit supplied to aircraft for consumption as fuel had no foreign destination. The aircraft could consume the fuel in Indian airspace or beyond; there was no foreign port waiting to receive the fuel as an import. The spirit was not exported: it was simply consumed. The sale therefore could not be said to take place "in the course of export".
16. The companion case, decided the same day, of **The State of Kerala and Others v. The Cochin Coal Company Ltd.**³⁷, reinforced these principles in terms directly applicable to the present case. There, the Cochin Coal Company supplied bunker coal to steamers arriving at the port of Cochin. The coal was stocked at Candle Island, in the State of Madras, and was delivered by barge to ships berthed in Travancore-Cochin waters. Rajagopala Ayyangar J., speaking for the same Bench, applied the reasoning of *Burmah Shell* and held that the coal was not sold in the course of export. The crucial passage is this;

"...the concept of export in Article 286 postulates just as the word import, the existence of two termini as those between which the goods are intended to move or between which they are intended to be transported, and not a mere movement of goods out of the country without any intention of their being landed in specie in some foreign port."

17. On the facts of *Cochin Coal*, the court held that the coal was delivered to the ultimate consumer the ship, for its own use. The ship could consume the coal in Travancore-Cochin waters or beyond, entirely at its own election. There was no foreign port waiting to receive the coal as an import. The delivery was therefore for consumption, not for export. The court applied the Explanation to Article 286(1)(a) and held that the sale fell within the taxing power of the State. The appeal was dismissed. The **Cochin Coal case** is,

³⁷ [(1961) 12 STC 1 :1960 SCC OnLine SC 175]

of all the Indian authorities serendipitously stumbled upon by me, the closest in its facts to the present case, and its conclusion applies with equal force here.

THE NATURE OF BUNKERING: CONSUMPTION, NOT EXPORT

18. The two-termini doctrine, applied to the supply of bunker fuel, produces a clear and unequivocal result. Bunker fuel is not cargo. It is not merchandise. It is not a commodity being dispatched to a recipient in a foreign country who will receive and use it as an import. It is fuel, taken on board by a vessel for the purpose of propelling that vessel on its voyage. It will be consumed and burned in the engines of the ship. It has no destination of its own. It will not arrive anywhere. It will be used up.
19. Four legally significant characteristics of the bunkering transaction distinguish it absolutely from an export. **First**, the fuel is supplied for consumption, specifically, for combustion in the engines of the receiving vessel and not for delivery to a recipient in a foreign country. **Second**, the fuel has no foreign destination as cargo; there is no address to which it is consigned, no bill of lading, no importer in another country waiting to receive it. **Third**, there is no corresponding import in any foreign jurisdiction: no foreign customs authority will record the arrival of this fuel as an import; no importer in any foreign country will pay duties or taxes upon it. **Fourth**, the transaction is complete within Sri Lanka: the seller supplies, the buyer takes on board, the price is paid, and the transaction is at an end. What the vessel subsequently does with the fuel, whether it burns it in Sri Lankan waters or on the high seas, is entirely at the vessel's discretion and forms no part of the transaction between the supplier and the ship.
20. It follows from these characteristics that the Appellants are not exporters. They supply goods within Sri Lanka to a buyer who is within Sri Lanka at the time of supply. The transaction begins and ends in Sri Lanka. If anyone could be said to "export" in the loose physical sense of carrying goods beyond the national boundary, it is the master of the

ship, and then only in the sense that the fuel is consumed beyond the boundary, not dispatched to a foreign recipient. But the master of the ship is not a party to these proceedings. The question is whether the Appellants, as suppliers, are engaged in the business of exporting. They are not.

THE CHOCOLATE AND THE ANTIQUE: TWO ANALOGIES

21. The conclusion I have reached is powerfully illustrated by two analogies that arose in the course of argument and that I find irresistible. Consider first the traveler who, before boarding a flight from the Bandaranaike International Airport to a foreign destination, purchases a bar of chocolate at the duty-free shop beyond the immigration counter. The chocolate will be consumed by the traveler abroad. The traveler will carry the chocolate out of Sri Lanka. Is the duty-free shopkeeper an exporter? The answer is plainly no. The shopkeeper has made a retail sale within Sri Lanka. It is the traveler, not the shopkeeper, who carries the chocolate out of the country. Moreover, the chocolate will be consumed by the traveler personally; it will not be delivered to a recipient abroad as a commercial import.
22. The VAT Act itself confirms this analysis. The First Schedule to that Act places the supply of food and services by a restaurant situated beyond the immigration counter at the Bandaranaike International Airport in the exempt category, not the zero-rated category. Parliament has thus legislatively confirmed that the supply of goods and food to passengers departing Sri Lanka is not an export. If airport restaurants supplying meals to outbound passengers are not exporters, *a fortiori* the Appellants, supplying fuel to outbound vessels, are not exporters either.
23. The second analogy is equally apt. An Indian traveler, visiting Colombo, enters a department store and purchases a Sri Lankan antique. He carries the antique back to India. Is the department store exporting the antique? By no conceivable stretch of legal

reasoning can this be so. The department store has made a retail sale within Sri Lanka. It is the traveler who carries the goods abroad. The position of the bunker fuel supplier is precisely analogous to that of the department store.

24. The Respondent's written submissions offer a further, equally compelling analogy: a petrol station owner at the Mexican side of the US-Mexico border who fills up an American vehicle with fuel is not exporting petrol to the United States. That proposition is, in the words of the Respondent, one of plain common sense. The same common sense applies to the supply of bunker fuel to ships in Colombo harbour.

THE CUSTOMS ORDINANCE AND THE CUSDEC

25. The Appellants placed considerable reliance on Section 16 of the Customs Ordinance No. 17 of 1869 (as amended), which provides that, for the purpose of determining the precise time at which an exportation shall be deemed to have been completed, that time shall be taken as the moment at which the goods are shipped on board the vessel in which they are exported. The Appellants argue that, since the bunker fuel is "shipped on board" the vessel within Sri Lankan territorial waters, the export is complete at that moment, and the supplier is therefore an exporter.
26. This argument cannot be sustained. Section 16 is a provision concerned with the ascertainment of the time of export for specific purposes related to customs duty liability; it determines when the clock starts for the computation of customs obligations upon the happening of a change in duty rates. It is a deeming provision creating a statutory fiction to resolve a temporal question in the administration of customs law. It does not, and cannot, enlarge the substantive meaning of the word "export" for the purposes of income tax and VAT. A temporal provision for the purposes of customs administration cannot transform a sale of goods within Sri Lanka into an export

transaction for the purposes of quite different tax statutes that employ the word "export" in its established legal sense.

27. Moreover, and this point is made clear with particular force by the Customs Declarations (CUSDECs) submitted by the Appellants in connection with their bunker fuel supplies. These documents reveal the fatal flaw in their own argument. Those CUSDECs specify Sri Lanka as both the country of origin and the country of destination. In other words, when confronted with the formal requirements of customs documentation, the Appellants themselves declared that the transaction was a domestic one, with Sri Lanka as origin and destination. They cannot now, in this Court, take a position diametrically opposed to what they have declared in official government documentation. The principle *quod approbo non reprobo*-that which I approve I may not reprobate applies with full force. The Appellants are estopped from asserting a foreign destination when they have formally declared Sri Lanka to be the destination.
28. The Respondent further draws attention to the distinction drawn in the Customs Ordinance itself between goods that are "exported" and goods that are taken on board as "stores". The Ordinance treats these as distinct categories. Bunker fuel supplied to a vessel for its voyage is ship's stores namely provisions and supplies for the vessel's own use in navigation and not cargo consigned to a foreign destination. A declaration in respect of bunker fuel is made as a specific formality applicable to ship's stores; it does not constitute a declaration of export.

THE CENTRAL BANK REPORT

29. The Appellants rely upon the Central Bank of Sri Lanka's Annual Report for 2011, in which the supply of bunker fuel appears, in certain tables, under the heading of exports. They also note that the Appellants have been awarded "Best Exporter" prizes by State

bodies. These matters, in my view, carry no juridical weight in the determination of the question before this Court.

30. The Central Bank prepares its reports for macroeconomic and balance-of-payments purposes. For those purposes, the relevant criterion may be whether the transaction generates foreign exchange, irrespective of whether it satisfies the legal requirements for an "export" under the tax statutes. It is a familiar principle that the same word may bear different meanings in different statutory and administrative contexts. The International Statistical Standard "System of National Accounts 1993", cited by the Respondent, defines exports for accounting purposes as "sales, barter, or gifts or grants, of goods and services from residents to non-residents". This definition, premised on the residence of the transacting parties rather than on the destination of the goods, is conceptually distinct from the legal meaning of "export" in a taxing statute.
31. The mere fact that the Central Bank, for its own administrative and statistical purposes, classifies bunker fuel supplies as exports does not and cannot determine the meaning of "export" in the Inland Revenue Act or the VAT Act. These are different statutory regimes serving different purposes. Parliamentary intent, the criterion by which the meaning of a taxing statute must be determined, is not ascertained by reference to administrative classifications adopted by executive agencies for wholly different purposes.
32. Similarly, the award of "Best Exporter" status by a promotional body reflects a commercial and economic characterization that has no bearing on legal liability under tax law. Such awards are made for the purpose of encouraging industries that generate foreign exchange, not for the purpose of determining legal rights and obligations under statutes that Parliament has carefully crafted with their own internal logic and structure.

THE APPELLANTS' PRINCIPAL ARGUMENTS ADDRESSED

33. Let me draw my attention to the principal arguments advanced by the Appellants.

The "Taking Out" Argument

34. The Appellants' primary argument is that "export" means simply the act of taking goods out of Sri Lanka, and that, since the bunker fuel is carried out of Sri Lankan territorial waters by the vessel, the goods have been "taken out" of Sri Lanka, thereby constituting an export by the supplier. In support, they cite definitions from the Imports and Exports (Control) Act No. 1 of 1969 and the Excise Ordinance, which define "export" as "the carrying and taking out of Sri Lanka" or "to take out of Sri Lanka to sea or to foreign territory". They also invoke the etymological derivation of "export" from the Latin *exportare* "out of port".

35. This argument fails for several reasons. The first and most fundamental is that the goods are not taken out of Sri Lanka by the Appellants. They are taken out, if they are taken out at all, by the master of the vessel. The Appellants deliver the fuel into the vessel's tanks while the vessel is berthed or anchored in Sri Lankan waters. At that point, the Appellants' contractual obligation is discharged and their involvement in the transaction ends. Whatever happens thereafter, whether the vessel sails to Singapore or Jakarta or remains in Colombo harbour is entirely a matter for the vessel's master and operators. The supplier has no control over, and no responsibility for, the subsequent movement of the vessel.

36. The second reason is that the definitions in the Imports and Exports (Control) Act and the Excise Ordinance cannot be transplanted into the Inland Revenue Act or the VAT Act. Those definitions are specific to the statutes in which they appear, enacted for the particular regulatory purposes of those statutes. The Inland Revenue Act and the VAT

Act use the word "export" without definition, which means, as I have already stated, that Parliament intended the word to bear its established legal meaning. That established legal meaning, as set out in the ***Burmah Shell and Cochin Coal*** authorities, requires a foreign destination at which the goods will be received as imports.

37. The third reason is that the "taking out" test, taken to its logical conclusion, produces results that are plainly absurd. On that test, goods ordered to be dumped in the sea beyond Sri Lanka's territorial waters would constitute an export. Bilge water pumped into the ocean would be an export. Aviation fuel burned in aircraft engines over the Indian Ocean would be an export by every airport fuel supplier. No serious legal system could endorse such results. The requirement of a foreign destination at which the goods are received as imports is not an artificial judicial gloss; it is the essential element that gives the concept of "export" its coherent legal content.

The New Zealand Case

38. The Appellants rely upon the decision of the New Zealand Court of Appeal in ***Commissioner of Inland Revenue v. International Importing Limited***³⁸, in which Turner P held that a duty-free shop operator who supplied goods to departing passengers was an "exporter" for the purposes of New Zealand tax legislation designed to encourage the earning of foreign exchange.
39. This decision is not persuasive authority for the Appellants' position, for the following reasons. First, the New Zealand legislation was specifically designed to encourage the earning of foreign exchange by granting tax concessions to persons who caused goods to be sent abroad in exchange for foreign currency for which they were obliged to account to the Reserve Bank. Turner P explicitly stated that the provision in question was

³⁸ [1972] NZLR 1095

not a fiscal provision in the technical sense but an economic encouragement measure. The New Zealand Court construed the word "export" in that specific economic context and gave it the meaning that best served the legislative purpose of increasing foreign exchange reserves. The Sri Lankan provisions have a different structure and different purposes. Second, the New Zealand case was not concerned with the supply of fuel for consumption; it was concerned with the supply of retail goods to passengers who carried them abroad. The distinction between goods supplied for consumption and goods supplied as merchandise is, as Hidayatullah J. held in *Burmah Shell*, "vital". Third, as noted by the Respondent, the New Zealand position has no application to Sri Lanka's statutory framework, which, as I have explained, places the supply of bunker fuel in the exempt rather than the zero-rated category of the VAT Act.

The Foreign Exchange and Incoterms Arguments

40. The Appellants argue that the supply of bunker fuel constitutes an "international sale of goods transaction" and is therefore an export, because it is transacted in foreign currency, and because the transactions are executed under e-Terms or f-Terms of Incoterms 2000 (now 2020). They also rely upon the fact that the Central Bank has authorized them to receive payment in foreign currency.
41. These arguments do not withstand scrutiny. As the Respondent correctly observes, numerous transactions in Sri Lanka are lawfully conducted in foreign currency by virtue of Central Bank authorisation, without thereby becoming exports. Section 13(j) of the Inland Revenue Act No. 10 of 2006 expressly provides for the taxation of profits arising from "a sale made in Sri Lanka" for payment in foreign currency, thereby confirming that a sale made in Sri Lanka for foreign currency is a local sale, not an export for income tax purposes. The currency of the transaction does not alter the juridical character of the transaction.

42. The invocation of Incoterms is similarly unavailing. Incoterms are a set of international commercial terms devised by the International Chamber of Commerce to allocate risk and costs in international sale contracts. Their application to a particular transaction does not, by itself, make that transaction an export for tax purposes. Incoterms are contractual devices; they operate within the framework of the law, not outside it. The legal characterization of a transaction for tax purposes is a matter of statutory interpretation, not contractual labelling.

The "Goods Must Leave the Country" Argument and the Bunker Nomination

43. The Appellants place particular reliance on an item in the contractual documentation described as the "Bunker Nomination", which contains a statement to the effect that the marine bunker fuel is for use outside the territorial waters of Sri Lanka and not for use or consumption within the territorial waters of Sri Lanka. They argue that this contractual provision, combined with the technical characteristics of bunker fuel (which requires several days of processing before it can be used), means that the fuel physically could not be consumed within Sri Lanka and must necessarily leave the country before being used.

44. I do not find this argument persuasive. The central vice of the argument is that it confuses the movement of the vessel with the export of goods. The vessel moves outside Sri Lankan waters. The fuel is consumed inside the vessel's engines as the vessel moves. The fuel does not "arrive" anywhere; it is destroyed by combustion. There is no country to which the fuel is exported; there is no importer in a foreign country who receives the fuel. The Bunker Nomination clause goes no further than confirming the technical fact that the fuel will be used outside territorial waters, which is entirely consistent with the conclusion that the fuel is consumed during the voyage and never

reaches a foreign destination as an import. The absence of a foreign destination remains decisive.

The Contextual Purpose Argument

45. The Appellants urged that this Court should, in interpreting the word "export", have regard to the legislative purpose of encouraging the earning of foreign exchange and the policy objective of making Colombo an attractive international bunkering hub. They submitted that an interpretation adverse to the Appellants would cause Sri Lanka to lose competitive advantage to rival ports in India and China.
46. I must firmly decline to resolve the question of statutory interpretation by reference to competitive economics. The constitutional allocation of the power to grant tax exemptions rests with Parliament, not with this Court. Article 148 of the Constitution vests full control over public finance in Parliament. It is Parliament that decides whether to grant tax concessions to the bunkering industry; it is Parliament that decides how to frame those concessions; and it is Parliament, not this Court, that is competent to weigh the economic advantages of zero-rating against the fiscal cost to the public revenue. When Parliament, having considered these matters, chose to place bunker fuel in the exempt category of the VAT Act rather than the zero-rated category, that was a deliberate and binding legislative choice that this Court must respect. It is not for this Court to override that legislative choice on the ground that a different choice might be more economically advantageous.
47. The Appellants have been accorded by Parliament a significant benefit in the form of VAT exemption on their supplies. They seek a further benefit zero-rating that Parliament has not seen fit to grant. This Court cannot supply that benefit in the exercise of judicial

power. As the learned Chief Justice observed in **Commissioner General of Inland Revenue v. Lignocell (Pvt) Ltd. and Another**³⁹ ;

"In fiscal Statutes, the first source is the words of the Statute. Where the meaning is manifest on the plain words of the Statute, there is no need for any interpretation process."

48. The meaning of "export" in the relevant statutes, read in the light of the established legal authorities, is plain. The supply of bunker fuel within Sri Lankan waters to a vessel for consumption on its voyage is not an export.

THE CONTRARY VIEW

49. My learned brother Justice Thurairaja, PC has held that the supply of bunker fuel to foreign-going vessels does constitute an export for the purposes of the relevant statutes. I understand the principal grounds of that conclusion to be: that the export framework should follow the destination of the vessel rather than the absence of a conventional importer; that the goods do, in a physical sense, leave Sri Lanka and are consumed outside its territorial waters; and that the practical object of the legislature in using the word "export" in the context of petroleum products was to confer a benefit upon transactions that generate foreign exchange.

50. I have already addressed each of these points in the course of this judgment. With respect, I am unable to accept the first ground, because the two-termini doctrine, as established by the Indian Supreme Court in *Burmah Shell and Cochin Coal*, focuses not on the destination of the vessel but on the destination of the goods: the fuel has no destination; it is consumed. I am unable to accept the second ground, because the physical movement of goods beyond a national boundary is, as Hidayatullah J. clearly

³⁹ [SC Appeal 145/23, SC Minutes 26.11.2024]

stated, a necessary but not a sufficient condition for an export; the further requirement of a foreign destination for receipt as an import must also be satisfied. And I am unable to accept the third ground for the reasons stated in Part IX(E) above: the determination of legislative purpose in a taxing statute must be made by reference to the text and structure of the statute, not by reference to general economic aspirations, and the text and structure of the VAT Act in particular make it clear that Parliament did not intend the supply of bunker fuel to attract zero-rated status.

COMPARATIVE AND INTERNATIONAL LAW

51. The comparative and international materials I have had the benefit of perusal confirm rather than undermine the conclusion I have reached. Before the International Tribunal for the Law of the Sea (ITLOS), in the case of *M/V "Saiga" (No. 2) (Saint Vincent and the Grenadines v. Guinea) (1999)*, the Tribunal considered the bunkering of fishing vessels in Guinea's Exclusive Economic Zone. The Tribunal and the individual opinions accompanying its judgment consistently characterised bunkering as a supply and provisioning transaction, a use of the sea related to navigation and not as a trading or export transaction. No judge or arbitrator involved in that case suggested that the supply of bunker fuel was an export in any relevant sense.
52. In the European Union, the Court of Justice of the European Union in *Fast Bunkering Klaipeda UAB v. Valstybinė mokesčių inspekcija (Case C-526/13, 3 September 2015)* analysed VAT on bunker fuel supplies within an entirely domestic supply framework. The Court's analysis proceeded on the basis that bunkering is a domestic supply to a qualifying vessel not an export and the VAT zero-rating applicable to such supplies in the EU derives from a specific legislative provision treating supplies to qualifying vessels as exempt or zero-rated in their character as domestic supplies. The EU framework thus corresponds precisely to what this Court holds the proper framework to be: bunkering is

a domestic supply that may attract concessionary treatment by specific legislative provision, but it is not an export.

53. Singapore and the United Kingdom treat bunker fuel in the same way. In Singapore, the supply of bunker fuel delivered on board a foreign-going vessel is zero-rated under the Goods and Services Tax Act as a "supply to a qualifying ship", a distinct domestic supply category, expressly created by specific legislation, and not as an export. In the United Kingdom, the supply of ship's stores, including fuel, is zero-rated by a specific domestic VAT concession, not by virtue of the supplies being classified as exports. In both jurisdictions, the existence of specific legislative provisions to achieve zero-rating confirms that such a result would not be reached on the basis of the word "export" alone.
54. The lesson of this comparative material is instructive. In every jurisdiction in which the supply of bunker fuel attracts concessionary tax treatment, that treatment has been achieved by specific, tailored legislation expressly addressing the matter. Where, as in Sri Lanka, the VAT Act specifically places the supply of bunker fuel in the exempt category rather than treating it as an export, the conclusion is that Parliament has made its deliberate choice and has chosen a specific, lesser benefit rather than zero-rating. The Appellants' recourse in these circumstances lies not with this Court but with Parliament.

THE CONSIGNOR/CONSIGNEE REQUIREMENT

55. A further and independent ground for the conclusion that the supply of bunker fuel does not fall within Sections 42(1) and 15(j) of the Inland Revenue Acts is that those provisions specifically extend their benefit to "the consignor or consignee" in respect of goods "brought to Sri Lanka on a consignment basis, and re-exported". The Appellants bring bunker fuel to Sri Lanka and supply it to vessels. But there is, on the evidence, no consignment arrangement in the relevant sense, and more importantly, there is no "re-

export" of the fuel in the sense contemplated by those provisions. Re-export, as used in those provisions, plainly contemplates the shipment of goods from Sri Lanka to a foreign destination in the course of an international trade transaction. The supply of fuel to a vessel for combustion in its engines is not a re-export; the fuel is not consigned to anyone abroad and will never be received by an importer in a foreign country. These provisions simply do not apply on their terms to the Appellants' activities.

56. For the reasons set out above, I conclude as follows:

(a) *The term "export" in the Inland Revenue Act No. 38 of 2000, the Inland Revenue Act No. 10 of 2006, and the Value Added Tax Act No. 14 of 2002 (as amended) bears its established legal meaning, which requires that goods be dispatched from Sri Lanka to a foreign country as their destination, for receipt there as imports. The mere physical departure of goods from Sri Lankan territory is not sufficient.*

(b) *The supply of bunker fuel and lubricants by the Appellants to foreign vessels within Sri Lankan territorial waters does not constitute an "export". The fuel has no foreign destination; it is supplied for consumption in the engines of the receiving vessels; there is no importer in a foreign country to whom the goods are dispatched; and the entire transaction is completed within Sri Lanka.*

(c) *The structure of the VAT Act, which places the supply of bunker fuel in the exempt category rather than the zero-rated category, independently confirms that Parliament did not intend such supply to be treated as an export.*

(d) *Section 16 of the Customs Ordinance, the Central Bank Annual Report, the Incoterms relied upon by the Appellants, the foreign currency character of the transactions, and the "Bunker Nomination" contractual clause do not, individually or collectively, alter the legal character of the transactions as domestic supplies. None of these matters supplies the necessary element of a foreign destination at which the goods will be received as imports.*

(e) *Considerations of competitive economic policy, including the aspiration for Colombo to become a major international bunkering hub are legitimate matters for Parliament to take into account when crafting legislation. They are not relevant to the interpretation of existing legislation by this Court.*

57. The question of law set out for the opinion of this Court is accordingly answered in favour of the Respondent: the supply of bunker fuel and lubricants to foreign vessels does not constitute "exports" within the meaning of the Inland Revenue Act No. 38 of 2000, the Inland Revenue Act No. 10 of 2006, or the Value Added Tax Act No. 14 of 2002 (as amended). The assessments raised by the Respondent against the Appellants are affirmed.

58. The appeals are accordingly dismissed.

JUDGE OF THE SUPREME COURT

A.L. SHIRAN GOONERATNE, J.

I have had the advantage of reading the draft judgments of my learned brothers, Justice Thurairaja P.C. and Justice A.H.M.D. Nawaz. With respect, I find myself unable to concur with the reasoning and conclusions outlined in the draft judgment of Justice Thurairaja P.C

The principal question for determination by this Court, as identified by the Appellants in the several appeals before us, is whether the supply of bunker fuel and lubricants to foreign vessels for consumption during their voyage in international waters constitutes an "export" within the meaning of section 42(1) and/or section 52 of the Inland Revenue Act No. 10 of 2006, and section 7(1)(a) of the Value Added Tax Act No. 14 of 2002. The Appellant contends that where bunker fuel oil is supplied to foreign-going vessels, the relevant provisions of the Value Added Tax Act are engaged, in particular section 7(1)(a), which provides that goods shall be zero-rated where the supplier of goods has exported such goods.

In the absence of a statutory definition of the term "export" in either the Inland Revenue Act or the Value Added Tax Act, the question arises whether it can be assumed that bunker fuel was intended to be treated as an export within the contemplation of those enactments.

In support of its position, the Appellant placed reliance on the procedure governing the import and movement of petroleum products in terms of the Customs Ordinance.

Since no definitive conclusion has been reached in respect of the submissions made under the Customs Ordinance, it becomes necessary to examine the export procedure prescribed therein to ascertain the meaning of the term "export," which, in my view, would resolve the question that arises for determination.

It is submitted that in a transaction to a foreign-going vessel, and in terms of the requirements imposed by Sri Lanka Customs, the Appellant must first obtain approval to re-bond products from the Jaya Terminal to barges, upon completion of delivery, an ex-bond entry is passed with Customs, and the subsequent export ex-bond Customs Declaration (CusDec) is lodged under Customs Procedure Code 3072 (CPC 3072), namely, re-export from private bond in terms of section 61 of the Customs Ordinance. It is the position of the Appellant that a supply of bunker fuel under CPC 3072 pursuant to Section 61 of the Customs Ordinance is a supply of stores for onboard consumption.

Section 61 of the Customs Ordinance deals with "stores". It permits the Collector, on the master's requisition, to allow the stores necessary for the voyage. But it also requires that anything taken on board will not be treated as "stores" unless it is duly shipped as such by a Customs entry or permit.

The Appellant relies on this provision. It says bunker fuel and lubricants supplied to foreign-going vessels are "stores" for the voyage. Therefore, they must be taken on board under Customs supervision and supported by a proper entry. The Appellant states that the fuel is first kept in a private bond. When a supply is made, it is removed ex bond. For supplies to foreign-going vessels, it is contended that the ex-bond CusDec is lodged under CPC 3072, which it describes as "Re export from Private Bond". On that basis, the Appellant argues that this Customs framework supports the conclusion that the supply should be treated as an "export" for VAT and Inland Revenue purposes.

It is not in dispute that, among the bonded facilities presently in operation, re-export facilitation bonds are used to facilitate multi-country consolidation and entrepôt trade. In such cases, the prescribed process requires the filing of a CusDec (to-bond entry) to deposit imported goods into the bond and a CusDec for re-export (ex-bond entry) to remove the goods therefrom. This is, in essence, a transshipment operation, carried out

with specific approval by Customs, involving both an inward and an outward movement of cargo. The Appellant acknowledges this process as one which facilitates the movement of cargo under the supervision of Sri Lanka Customs.

CPC 3072 is a specific code used in the Sri Lanka Customs ASYCUDA World system to denote goods re-exported from a private bonded warehouse, that is, goods that, instead of being released for local consumption, are exported from Sri Lanka to a foreign destination. When an exporter files an export declaration (CusDec) under this Code, it signifies that the goods are being re-exported directly from the private bond to a foreign destination.

Where an export entry is lodged under CPC 3072, the CusDec must necessarily disclose the destination country of the goods. Such disclosure is an integral part of lawful export reporting and clearance, and is not dispensed with merely because the goods are exported under a special regime, including re-export from a private bond.

The Respondent submits that the CusDec produced by the Appellant specifies Sri Lanka as both the country of origin and the country of destination. This clearly demonstrates that the entirety of the transaction occurred within the territory of Sri Lanka and, accordingly, that the transaction cannot, in law, be characterised as an export.

Bunkered fuel supplied to a vessel for use on its voyage cannot be treated as an export merely because it is delivered to the ship. Ship stores may include not only fuel but also spares and other consumables, which are plainly not exported as cargo but are intended for consumption or use on board as and when required. The mere fact that such stores, including spares, may enter or re-enter a foreign port on multiple occasions does not convert them into exports. Entry into, or re-entry from, a foreign port would not, by itself, constitute an export.

This position remains unchanged even where the vessel carries fuel reserves or contingency bunkers (Remaining on Board) in excess of its immediate consumption requirements, such bunkers continue to constitute ship stores intended for onboard use and remain as such.

For a supply of bunker fuel or ship spares to qualify as an export, whether for zero-rating or as a Customs matter, there must be cogent and contemporaneous documentary evidence demonstrating that the goods were intended to be delivered to a foreign destination as cargo. Such proof would ordinarily include transshipment or export manifests and related shipping documentation evidencing the vessel's intended next foreign port, a voyage beyond Sri Lankan jurisdiction. In the absence of such evidence, the supply remains no more than a supply of ship stores for onboard consumption and cannot, on that footing alone, be treated as an export.

Therefore, in my view, the mere delivery of fuel to a vessel within Sri Lankan territorial waters, without such proof of outward movement to a foreign destination, is insufficient in law to constitute an export.

Under CPC 3072, re-export from a private bond, the supply of bunker fuel constitutes an export where it is shown that the fuel is in fact taken out of Sri Lanka on board an outward-bound vessel and that such removal is supported by proper and contemporaneous documentation evidencing a foreign destination. In such circumstances, the transaction, in law and in substance, is treated as an export. Conversely, in the absence of credible documentation evidencing a foreign destination, there isn't sufficient basis to conclude that the goods were taken out of Sri Lanka as part of an export transaction, and the supply cannot, either in law or in fact, qualify as an export.

My brother Justice Thurairaja proceeded on the basis that, once bunker fuel is taken beyond the territorial limits of Sri Lanka, or beyond the limits of the port on board a foreign-going vessel, the export is complete. In support of that conclusion, he has relied on a number of authorities. The Sri Lankan authority principally relied upon is ***Attorney-General v. Nagamany [1949] 51 NLR 149***. In my view, however, that decision must be examined in the statutory context in which it was delivered before being duly treated as determinative of the present revenue question.

In *Nagamany*, the Court treated goods as “exported” once they were taken beyond the limits of the port. That interpretation, however, must be read in the context in which it was stated. The case arose under the Customs Ordinance in relation to a matter arising from the control and removal of goods from customs supervision. It is also material to note that the issue in *Nagamany* concerned goods where export, or taking out of Ceylon, was expressly regulated by section 12 and Schedule B of the Customs Ordinance. In that context, where the intention of the statute was directed towards preventing the unauthorized outward movement of restricted goods, it is unsurprising that the Court adopted a strict and practical approach in defining what constitutes an export. That approach, however, was shaped by the particular statutory concern then before the Court. The present appeals concern the meaning of “export” in a modern fiscal setting, namely claims to fiscal exemption or zero-rating under the Inland Revenue Act and the Value Added Tax Act. Therefore, the question here is not merely whether the goods physically moved beyond the port limits, but whether the taxpayer has strictly established that the transaction answers the statutory description of an export for revenue purposes.

I do not suggest that the term “export” bears a different meaning under the Customs Ordinance and the revenue enactments presently in question. The difficulty, however, is

that the term is undefined. In such circumstances, the authorities must be considered with due regard to the statutory object and the context in which they were decided.

Accordingly, while due regard must be given to **Attorney-General v. Nagamany**, to treat that decision as conclusively determining the present question would, in my respectful view, extend a 1949 decision beyond the legislative purpose with which it was concerned.

The reasoning in Nagamany was supported by reference to **Muller v. Baldwin (1874) LR 9 QB 457**. It concerned a claim to port dues on coal "exported from the port", and the Court held that the phrase extended to bunker coal taken on board for consumption on a foreign voyage. Importantly, however, the Court accepted that it was "reasonable to distinguish" between coal taken away for sale and coal taken for the necessary use of the vessel but concluded that there was nothing in the Act to show that the word "exported" was used otherwise than in its ordinary sense.

"We agree as to the reasonableness of making a distinction between coals taken away for sale and coals taken for the necessary use of the vessel, but we are constrained to differ from the learned judge in his construction of the Act. There is nothing in the language of the Act to shew that the word "exported" was used in any other than its ordinary sense, namely, "carried out of the port;" and considering how easily and how extensively the privilege of storing for use may be abused, and what quantities may be carried away under the name of bunker coals, we think that, if it had been intended to exempt from duty coals taken on board for fuel, some limitation as to quantity would have been imposed."

Muller, therefore, does not deny the application of that distinction in principle. It merely holds that the specific statute under consideration did not accommodate it. That, in turn, explains the practical approach adopted in *Nagamany*, which was likewise decided in a

statutory setting concerned with the outward movement of controlled goods. The present appeals, however, arise in a materially different context.

It is important to note that the Customs Ordinance repeatedly uses the phrase “**exported or taken out of Sri Lanka**” in different contexts. It is used in a manner which, in my view, indicates that the two expressions were not intended to be wholly synonymous. Section 12 for example, provides that goods enumerated in Schedule B shall not be “exported or taken out of Sri Lanka” save in accordance with the prescribed conditions, while subsection (2) refers to the “exportation or taking out of Sri Lanka” of such goods.

Had the legislature intended “exportation or taking out of Sri Lanka” to mean as one and the same, such a cumulative effect would have served little purpose. It is also of some significance that the Ordinance defines neither “export” nor “take out of Sri Lanka,” although it does define “coastwise” as trade by sea from one part of Sri Lanka to another. Movement from one Sri Lankan port to another is therefore already addressed by a separate statutory notion of coastwise trade, and cannot, in my opinion, have been the intention of the legislature by the phrase “taken out of Sri Lanka.”

The Customs Ordinance also distinguishes ship stores and exports. Section 28 requires the master to report what part of the cargo is intended for exportation to parts beyond the seas and what stores or stock remain on board. Section 61 deals separately with stores and permits the Collector, upon the master’s request, to allow such stores as may appear necessary according to the voyage. It also states that no articles taken on board any ship shall be deemed to be stores unless duly shipped as such by entry or by permit of the Collector or other proper officer. The same distinction appears in the warehousing provisions. Section 74 refers to goods taken out of the warehouse **for exportation or for stores**, and section 85 permits warehouse goods to be taken out

upon due entry for exportation or to be shipped as stores. Section 89, in turn, requires a bond where warehoused goods are entered for export, with reference to their due shipment and landing at the place for which they are entered outwards. Therefore, it is clear that these provisions indicate that the Ordinance treats ship stores as a distinct statutory category. Goods shipped as stores may physically leave Sri Lanka on board a vessel, yet that circumstance does not give them the legal character of goods exported as cargo.

Accordingly, while the Customs Ordinance may recognize physical removal beyond Sri Lanka as a matter relevant to customs control, it does not follow that every such removal is necessarily an "export" for all statutory purposes. The Ordinance contemplates situations in which goods are taken out of Sri Lanka, thus extending beyond the strict notion of export. Therefore, I am unable to accept the proposition that the mere taking of bunker fuel beyond Sri Lankan waters is, by itself, sufficient to determine the present revenue question.

In the impugned judgment, their Lordships correctly held that where the taxpayer establishes that bunker fuel has in fact been exported by producing the necessary and contemporaneous documentation indicating the vessel's destination, the supplier may be entitled to claim the relevant exemption under the applicable statutory provisions. It follows that the mere supply of bunker fuel to a vessel within Sri Lankan waters does not constitute an export. The decisive test is whether the fuel is, in fact, taken out of Sri Lanka on board an outward-bound vessel to a foreign destination, as evidenced by proper documentation. The burden of proof lies upon the Appellant to establish that the bunker fuel in question was in fact exported, it does not lie upon the Respondent to prove the negative. Where this is established, the transaction attracts the legal character of an export, and where it does not, the claim to exemption must fail.

For the reasons stated above, SC Appeal Nos. 39/2023, 40/2023, 41/2023, 42/2023, 43/2023, 44/2023,45/2023, and 46/2023 are dismissed. I order no costs.

JUDGE OF THE SUPREME COURT