

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

Commissioner General of Inland
Revenue,
Department of Inland Revenue,
Sir Chittampalam A. Gardiner
Mawatha, Colombo 2.
Respondent-Appellant

SC/APPEAL/45/2025

CA/TAX/14/2020

Vs.

Reckitt Benckiser (Lanka) Limited,
No. 41, Lauries Road, Colombo 4.
Appellant-Respondent

Before: Hon. Justice Mahinda Samayawardhena
 Hon. Justice Menaka Wijesundera
 Hon. Justice Sampath Abayakoon

Counsel: Nirmalan Wigneshwaran, D.S.G., with Chaya Sri Nammuni,
 D.S.G., for the Respondent-Appellant.

Dr. Shivaji Felix, P.C., with Shanaka Amarasinghe,
Nivantha Satharasinghe and Sajith Nawaratne for the
Appellant-Respondent.

Argued on: 29.04.2026

Written submissions:

by the Appellant on 23.06.2026

by the Respondent 17.06.2026

Decided on: 14.09.2026

Samayawardhena, J.**Introduction**

This appeal arises from a Value Added Tax (VAT) assessment made on Reckitt Benckiser (Lanka) Limited, the Respondent, for the taxable period ended 31 March 2011. The Respondent is a company incorporated in Sri Lanka and owns, *inter alia*, the products marketed under the brand names *Mortein* and *Harpic*. The dispute principally concerns whether, for the purposes of the Value Added Tax Act, No. 14 of 2002, as amended, the Respondent is to be regarded as the “manufacturer” of those products, notwithstanding that the physical manufacture of the products was carried out by MOS Lanka Manufacturing (Pvt) Ltd and Lalan CM (Pvt) Ltd under contract manufacturing arrangements.

The Respondent maintained that MOS Lanka Manufacturing (Pvt) Ltd and Lalan CM (Pvt) Ltd were the manufacturers and that the Respondent merely purchased the finished products from them and thereafter sold them under its brand names. On that basis, the Respondent contended that it was not a “manufacturer” within the meaning of the VAT Act and that its supplies were not liable to VAT in the manner asserted by the Commissioner General of Inland Revenue. The Commissioner General took a different view and treated the Respondent as the manufacturer for VAT purposes.

The Respondent’s VAT returns were rejected by a letter of intimation dated 28 March 2014, following which a Notice of Assessment was issued. The Respondent appealed against the assessment on 24 April 2014. The appeal was acknowledged by the Assessor on 16 May 2014, and the Commissioner General, by determination dated 10 May 2016, confirmed the assessment. The Respondent thereafter appealed to the Tax Appeals Commission, which, by its determination dated 17 June 2020, upheld the decision of the Commissioner General, holding that the Respondent was a manufacturer for the purposes of VAT.

Aggrieved by that determination, the Respondent sought a Case Stated for the opinion of the Court of Appeal. Apart from challenging the finding that it was the manufacturer, the Respondent contended that the determination of the Tax Appeals Commission had been made outside the period of 270 days stipulated by section 10 of the Tax Appeals Commission Act. The validity of the determination made by the Commissioner General and whether it had been made within the prescribed time also became issues.

By judgment dated 12 February 2024, the Court of Appeal allowed the Respondent's appeal and answered the questions of law before it in its favour. The Court held, *inter alia*, that the determination of the Tax Appeals Commission was time-barred, that the determination of the Commissioner General was also time-barred, and that the Respondent could not be treated as the "manufacturer" for VAT purposes. Accordingly, the determination of the Tax Appeals Commission was set aside.

The Commissioner General of Inland Revenue, being aggrieved by the judgment of the Court of Appeal, sought special leave to appeal to this Court. On 1 April 2025, this Court granted special leave to appeal on the following questions of law:

1. Did the Court of Appeal err in law in holding that the 270-day period stipulated in section 10 of the Tax Appeals Commission Act is mandatory?
2. Did the Court of Appeal err in law in holding that the determination of the Commissioner General of Inland Revenue was time-barred on the basis that the acknowledgment issued under section 34(8) of the Value Added Tax Act was invalid?
3. Did the Court of Appeal err in law in failing to hold that the Respondent was the manufacturer and was therefore not entitled

to exemption from the payment of VAT on the value of the supplies made?

Is the 270-day period stipulated in section 10 of the Tax Appeals Commission Act mandatory?

The first question of law concerns the effect of the 270-day period stipulated in section 10 of the Tax Appeals Commission Act, No. 23 of 2011, as amended. The Respondent contends that the Tax Appeals Commission was required to determine the appeal within that period and that, upon its expiry, the Commission became *functus officio* and ceased to have jurisdiction to determine the appeal. The Appellant, on the other hand, contends that the time limit is directory and that non-compliance with it does not invalidate a determination subsequently made by the Commission.

There is no dispute that the determination in the present case was not made within 270 days. The real question is therefore not whether the statutory period was exceeded, but what legal consequence Parliament intended to attach to such non-compliance.

Section 10 of the Tax Appeals Commission Act, as amended by Act No. 20 of 2013, provides, in the relevant part:

The Commission shall hear all appeals received by it and make its determination in respect thereof, within two hundred and seventy days from the date of the commencement of its sittings for the hearing of each such appeal.

The use of the word “shall” is undoubtedly an important consideration in construing the provision. It does not, however, conclude the inquiry. Whether a statutory requirement is mandatory or directory cannot be determined merely by the presence of the word “shall”. The provision shall be construed in its statutory setting, having regard to its purpose,

the consequences of non-compliance and, above all, the intention of Parliament gathered from the enactment as a whole.

A matter of particular significance is that section 10 is silent as to the legal consequence of non-compliance with the 270-day period. It does not state that, upon the expiry of that period, the appeal shall be deemed to have been allowed. Nor does it state that the Commission shall cease to have jurisdiction and, as a consequence, that the determination under appeal shall stand.

The purpose of the provision is nevertheless clear. Section 10 is intended to secure the expeditious disposal of tax appeals and to prevent them from remaining indefinitely before the Commission. The Commission is therefore under a statutory duty to comply with the prescribed period. But an intention that appeals be decided promptly is not necessarily the same as an intention that failure by the Commission to comply with that period should deprive it of jurisdiction and determine the substantive rights of the parties by default.

That distinction assumes particular importance because compliance with the statutory time limit lies principally in the hands of the Commission and not in those of the parties. Once an appeal has been duly lodged, neither the taxpayer nor the Commissioner General can compel the Commission to deliver its determination within 270 days. A construction which causes either party to lose substantive rights solely because of delay attributable to the adjudicative body, over which neither party has effective control, would require clear statutory language.

The parties referred to decisions of the Court of Appeal concerning the time limit stipulated in section 10. In *Mohideen v. Commissioner General of Inland Revenue* (CA/Tax/2/2007, CA Minutes of 16 January 2014), observations were made regarding the effect of failure to comply with the statutory time limit. Those observations shall, however, be understood in the context of the issue which actually arose for determination in that case. An observation that a statutory authority is required to comply with

a prescribed time limit does not necessarily answer the distinct question whether non-compliance deprives that authority of jurisdiction.

The issue was subsequently considered in *Kegalle Plantations PLC v. Commissioner General of Inland Revenue* (CA/Tax/9/2017, CA Minutes of 4 September 2018), where the Court of Appeal adverted, *inter alia*, to the absence of a consequence prescribed by the Tax Appeals Commission Act for failure to comply with the stipulated period. The absence of an express statutory consequence is significant, although not by itself conclusive, in determining whether Parliament intended non-compliance to invalidate a determination made thereafter.

More importantly, the precise question which arises in the present appeal has now been considered by this Court in *Commissioner General of Inland Revenue v. Stafford Motor Company (Private) Limited* (SC/APPEAL/120/2021, SC Minutes of 7 July 2025). This Court considered whether the requirement that the Tax Appeals Commission make its determination within 270 days under section 10 is mandatory or directory. In doing so, the Court considered the absence in the Tax Appeals Commission Act of any provision prescribing the consequence of failure to comply with that period and referred to *Jayanetti v. Land Reform Commission* [1984] 2 Sri LR 172 and *Ramalingam v. Thangaraja* [1982] 2 Sri LR 693. Having considered the language and scheme of the Act, this Court expressly held that “the requirement for the Tax Appeals Commission to make a determination within 270 days is only directory”.

The statutory provisions considered in *Stafford Motor Company* further support that conclusion. The Court contrasted section 10 of the Tax Appeals Commission Act with section 165(14) of the Inland Revenue Act, No. 10 of 2006, which expressly provided that, where an appeal was not agreed to or determined by the Commissioner-General within two years from the date on which the petition of appeal was received, the appeal shall be deemed to have been allowed and the tax charged accordingly.

The same legislative technique is evident in the second proviso to section 34(8) of the Value Added Tax Act, which expressly provides that, where an appeal is not agreed to or determined within the stipulated period, the appeal shall be deemed to have been allowed and the tax charged accordingly.

These provisions demonstrate that, where Parliament intends the expiry of a statutory period for determining an appeal to produce a particular legal consequence, it does so expressly. Section 10 of the Tax Appeals Commission Act contains no such corresponding provision.

I am in respectful agreement with the conclusion reached in *Stafford Motor Company* that the 270-day period stipulated in section 10 is directory. The Commission nevertheless remains under a statutory duty to hear and determine appeals within the prescribed period. Failure to comply with that period does not, by reason of section 10, deprive the Commission of jurisdiction or render a determination made thereafter invalid.

The Court of Appeal therefore erred in law in holding that the determination of the Tax Appeals Commission was invalid by reason of its failure to make the determination within 270 days. The first question of law is accordingly answered in the affirmative.

Was the acknowledgement issued under section 34(8) of the VAT Act invalid?

The second question of law is whether the Court of Appeal erred in law in holding that the determination of the Commissioner General of Inland Revenue was time-barred on the basis that the acknowledgement issued under section 34(8) of the VAT Act was invalid.

The second proviso to section 34(8), as it stood at the relevant time, provides, *inter alia*, that every petition of appeal under that Chapter shall be agreed to or determined by the Commissioner General within two

years from the date on which such petition of appeal is received by him. Where the appeal is not agreed to or determined within that period, the appeal is deemed to have been allowed and the tax charged accordingly. The proviso further provides that the receipt of every appeal shall be acknowledged within thirty days of its receipt and that, where no acknowledgement is made within that period, the appeal is deemed to have been received by the Commissioner General on the day on which it is delivered to him.

The dispute between the parties concerns not so much the existence of the two-year period but the date from which that period commenced to run. The Respondent taxpayer contends that the acknowledgement relied upon by the Commissioner General was not a valid acknowledgement within the meaning of section 34(8), since it had been issued by an Assessor and not by the Commissioner General personally or by a person shown to have been specifically authorised by him. On that footing, the Respondent submits that the appeal must be regarded as having been received on the date on which it was handed over to the Department of Inland Revenue, namely 24 April 2014. If time is computed from that date, the determination made on 10 May 2016 would fall outside the statutory period of two years.

The Commissioner General, on the other hand, contends that section 34(8) does not require the acknowledgement to be personally signed by him. Reliance is placed upon the acknowledgement issued by the Assessor and upon section 60(1) of the Act, which recognises the validity of notices where the name of the Commissioner General, a Commissioner, Assistant Commissioner or Assessor is duly printed or signed thereon. It is further submitted that the acknowledgement of the receipt of an appeal is essentially an administrative or ministerial act and does not involve the exercise of the quasi-judicial power vested in the Commissioner General to determine the appeal.

In my view, the latter submission is to be preferred.

There is an important distinction between the determination of an appeal and the acknowledgement of its receipt. The former involves the exercise of the statutory power entrusted to the Commissioner General under section 34. The latter merely records an administrative fact, namely the receipt of the appeal. Section 34(8) requires that “the receipt of every appeal shall be acknowledged within thirty days of its receipt”. Significantly, it does not state that such acknowledgement shall be made or signed personally by the Commissioner General.

The practical setting in which the provision operates cannot be ignored. The Commissioner General is the head of a large Department exercising numerous statutory functions. Parliament could not reasonably have intended that every routine acknowledgement of every appeal received by the Department should bear the personal signature of the Commissioner General. Had Parliament intended to impose such an unusual requirement, it could readily have said so in express terms.

This approach is consistent with the principle explained in *Carltona Ltd v. Commissioners of Works* [1943] 2 All ER 560. The functions conferred by statute upon the head of a government department are, subject to the language and purpose of the particular enactment, ordinarily capable of being performed through responsible officials of that department. The principle is founded not merely upon delegation in the strict sense but upon the practical necessities of governmental administration.

The *Carltona* principle has also been recognised in our law. In *Kuruppu v. Keerthi Rajapaksa, Conservator of Forests* [1982] 1 Sri LR 163 and *Perera v. Forest Department and Another* [1982] 1 Sri LR 187, the Court recognised, in the context of administrative functions, that statutory responsibilities entrusted to the head of a department or to a Minister need not invariably be performed by that person personally.

More directly, in *Lanka Ashok Leyland PLC v. Commissioner General of Inland Revenue* (CA/TAX/14/2017, CA Minutes of 14 December 2018), Janak De Silva J. considered the identical question whether an

acknowledgement of an appeal had to be signed by the Commissioner General himself. The Court rejected that contention, observing that the functions of the Department of Inland Revenue are so multifarious that the Commissioner General could not personally attend to all of them. It held that, although the appeal was required to be submitted to the Commissioner General, the Act did not require the acknowledgement also to be made by him personally. That approach was subsequently referred to in *Polycrome Electrical Industries (Pvt) Ltd v. Commissioner General of Inland Revenue* [2021] 3 Sri LR 476.

That conclusion receives further support from sections 60 and 61 of the Act. Section 60, under the marginal note “Signature and service of notice”, provides:

(1) Every notice to be given by the Commissioner General or a Commissioner or an Assessor or Assistant Commissioner under this Act shall bear the name of the Commissioner General or Commissioner or Assessor or Assistant Commissioner as the case may be and every such notice shall be valid if the name of the Commissioner General, Commissioner or Assessor or Assistant Commissioner is duly printed or signed thereon.

(2) Every notice given by virtue of this Act may be served on a person either personally or by being delivered at or sent by post to his last known place of abode or any place at which he is, or during the period to which the notice relates, was carrying on or carrying out a taxable activity.

(3) Any notice sent by post shall be deemed to have been served on the day on which it could have been received in the ordinary course of post.

(4) In proving service by post it shall be sufficient to prove that the letter containing the notice was duly addressed and posted.

(5) Every name printed or signed on any notice or signed on any certificate given or issued for the purposes of this Act, which

purports to be the name of the person authorised to give or issue the same, shall be judicially noticed.

Section 60(1) is significant. Parliament itself has contemplated that notices under the Act may be given by officers at different levels of the Department, including an Assessor, and declares such a notice to be valid if the name of the relevant officer is duly printed or signed thereon. Section 60(5) further provides that the name printed or signed on a notice or certificate, purporting to be the name of the person authorised to give or issue it, shall be judicially noticed.

Section 61 reinforces that legislative approach. Although its marginal note reads “Validity of assessments”, the operative language of subsection (1) is not confined to assessments. Section 61 provides:

(1) No notice, assessment, certificate or other proceeding purporting to be in accordance with the provisions of this Act shall be quashed, or deemed to be void or voidable, for want of form, or be affected by reason of a mistake, defect or omission therein, if the same is in substance and effect in conformity with, or according to, the intent and meaning of this Act, and if the person assessed or intended to be assessed or affected thereby is designated therein according to common intent and understanding.

(2) Without prejudice to the generality of subsection (1) an assessment shall not be affected or impugned by reason of—

(a) a mistake therein as to the name or surname of person chargeable, the amount of the value of taxable supplies or the amount of tax charged; or

(b) any variance between the assessment and the notice therefor, if notice of such assessment is duly served on the person intended to be charged and contains in substance and effect the particulars set out in paragraph (a) of this subsection.

The opening words of subsection (2), “Without prejudice to the generality of subsection (1)”, are significant. Section 61(1) lays down a general rule applicable to a “notice, assessment, certificate or other proceeding”, while subsection (2) makes specific provision concerning assessments. There is therefore no warrant for confining subsection (1) to assessments merely because the marginal note to section 61 refers to the “Validity of assessments”.

Read together, sections 60 and 61 disclose a legislative approach which does not support an unduly technical view of the validity of notices issued in the administration of the Act. The Act recognises that notices may be issued through officers of the Department, including Assessors, and provides that notices and proceedings which are in substance and effect in conformity with the Act are not to be invalidated merely for want of form or by reason of a mistake, defect or omission.

The Respondent nevertheless contends that the acknowledgement function could not validly have been performed by the Assessor in the absence of a specific delegation by the Commissioner General. As a general proposition, a distinction may properly be drawn between a statutory function which shall be exercised by the person upon whom Parliament has conferred it and an administrative function which may be performed through departmental officers. Whether a particular function falls into one category or the other depends upon the language, nature and purpose of the enactment.

That distinction does not assist the Respondent in the present case. The acknowledgement contemplated by section 34(8) neither determines the appeal nor involves the exercise of any adjudicative discretion. It merely records and communicates the fact that the appeal has been received. More importantly, the factual premise upon which the Respondent’s delegation argument rests does not arise here. The Assessor did not purport to act independently of the Commissioner General. The acknowledgement expressly states:

The Commissioner General of Inland Revenue has in terms of Section 34(6) of the Value Added Tax Act, directed me to make further inquiry into your appeal.

This statement is of considerable significance. Section 34(6) expressly empowers the Commissioner General, upon receipt of a valid petition of appeal, to cause a further inquiry to be made by an Assessor other than the Assessor who made the assessment. The acknowledgement itself therefore demonstrates that the Commissioner General had received and acted upon the appeal and had exercised his statutory power under section 34(6) by directing the Assessor to conduct the further inquiry.

The Assessor was consequently not purporting to exercise the Commissioner General's adjudicative power. He was the very officer whom the Commissioner General had directed, pursuant to section 34(6), to make the further inquiry into the appeal. In the course of carrying out that function, he communicated to the taxpayer the receipt of the appeal and the relevant dates under section 34(8). What occurred was therefore not a delegation of the Commissioner General's power to hear and determine the appeal. That power remained with the Commissioner General.

The contents of the acknowledgement further demonstrate its substantial conformity with the Act. It is expressly headed "Acknowledgement of the Appeal (in terms of section 34(8) of the Value Added Tax Act, No. 14 of 2002)". It acknowledges receipt of the Respondent's appeal, identifies the date of receipt, specifies the period within which the appeal is required to be agreed to or determined and records the Commissioner General's direction under section 34(6). The taxpayer was therefore left in no uncertainty as to the receipt of the appeal, the date attributed to its receipt, the statutory period applicable to its determination or the authority under which the further inquiry was being conducted.

In my view, the acknowledgement was valid under the statutory scheme. Section 34(8) does not require the Commissioner General personally to acknowledge receipt of an appeal. Section 60 expressly contemplates notices issued by an Assessor, while section 61 manifests the legislative intention that a notice or proceeding which is in substance and effect in conformity with the Act should not be invalidated for want of form or by reason of a mistake, defect or omission. The principles governing the performance of administrative functions through departmental officers, including the *Carltona* principle, provide further support for that conclusion.

Section 61 cannot, of course, cure the absence of a substantive statutory condition or validate the exercise of a power by a person upon whom the Act has not conferred that power. It is not a general dispensing provision. But that is not what occurred here. The substantive statutory power under section 34(6) was exercised by the Commissioner General himself. The Assessor acted pursuant to that direction, and the acknowledgement issued by him was an administrative act which, in substance and effect, conformed to the statutory scheme. Even if the Assessor's signing of the acknowledgement were regarded as an irregularity, which I do not accept, it would at most constitute a defect of form of the kind contemplated by section 61(1) and would not render the acknowledgement invalid.

I am therefore unable to agree with the conclusion of the Court of Appeal that the acknowledgement was invalid merely because it had been signed by an Assessor. The acknowledgement was valid for the purposes of section 34(8).

Once that conclusion is reached, the premise upon which the Court of Appeal held that the determination was made outside the statutory period necessarily falls away. The two-year period must therefore be computed by reference to the date of receipt recognised by the valid acknowledgement. On that basis, the determination of the Commissioner

General was made within the period prescribed by section 34(8) and was not time-barred.

I therefore answer Question of Law No. 2 in the affirmative and in favour of the Appellant Commissioner General of Inland Revenue.

Was the Respondent the manufacturer for the purposes of the VAT Act?

The third question of law concerns whether the Respondent was the manufacturer of the *Mortein* Mosquito Coils and *Harpic* products supplied by it and was therefore disentitled to the exemption from VAT claimed in respect of those supplies.

The Respondent does not physically manufacture those products at its own manufacturing facility. The physical process of manufacture is undertaken by MOS Lanka Manufacturing (Private) Limited (“MOS Lanka”) in respect of *Mortein* Mosquito Coils and Lalan CM (Private) Limited (“Lalan”) in respect of *Harpic* products. The position of the Respondent is that MOS Lanka and Lalan are the manufacturers, while the Respondent merely purchases the finished products from them and thereafter sells those products in the course of its wholesale and retail business. The Commissioner General, on the other hand, contends that MOS Lanka and Lalan manufacture the products under contractual arrangements entered into with the Respondent and that, having regard to the true nature of those arrangements, the Respondent is itself the manufacturer for the purposes of the VAT Act.

Section 2(1) of the VAT Act imposes VAT on every taxable supply of goods or services made in a taxable period by a registered person in the course of carrying on, or carrying out, a taxable activity in Sri Lanka.

Section 3(1)(a), however, excludes certain wholesale or retail supplies from the charge to VAT. It provides:

Notwithstanding the provisions of section 2, tax shall not be charged on the wholesale or retail supply of goods, other than on the wholesale or retail supply of goods made by—

(a) a manufacturer of such goods...

The exemption available to a wholesale or retail supplier is therefore expressly unavailable where the supplier is the manufacturer of the goods in question. Accordingly, the Respondent can claim the exemption only if it is not the manufacturer of the *Mortein* and *Harpic* products supplied by it.

The word “manufacturer” is not defined in the VAT Act, but the word “manufacture” is. Section 83 defines “manufacture” in the following terms:

‘manufacture’ means the making of an article, the assembling or joining of an article by whatever process, adapting for sale any article, packaging, bottling, putting into boxes, cutting, cleaning, polishing, wrapping, labelling or in any other way preparing an article for sale other than in a wholesale or retail activity.

It is significant that the legislature has used the word “means”, rather than “includes”, in defining “manufacture”. Ordinarily, a definition employing the word “means” is exhaustive. The activities which constitute manufacture for the purposes of the Act shall therefore be ascertained from the definition itself.

The Respondent contends that, although “manufacturer” is not separately defined, it must be understood in the light of the definition of “manufacture” in section 83. I agree with that proposition to the extent that the meaning of “manufacturer” cannot be divorced from the statutory meaning assigned to “manufacture”. A person cannot be regarded as a manufacturer unless the activity in question falls within the definition of “manufacture” in section 83. It does not, however,

necessarily follow that only the person who physically performs those acts can be regarded as the manufacturer.

The definition identifies the activities which constitute manufacture for the purposes of the Act. It does not prescribe the manner in which those activities shall be carried out by the person who is to be regarded as the manufacturer. In particular, it does not state that the manufacturer shall own the factory, employ the workforce or personally perform, through its own employees and machinery, the physical processes falling within the definition. Section 83 therefore answers the question what activity constitutes manufacture. It does not conclusively answer the further question who is to be regarded as the manufacturer when those activities are carried out pursuant to a contractual manufacturing arrangement involving more than one person.

The concluding words of the definition, “or in any other way preparing an article for sale”, shall be read in the context of the words which precede them. Those words encompass a wide range of activities, commencing with “the making of an article” and extending to assembling or joining an article “by whatever process”, adapting an article for sale, packaging, bottling, putting into boxes, cutting, cleaning, polishing, wrapping and labelling. The concluding expression serves to embrace other forms of preparing an article for sale falling within the scope of the definition.

The final words, “other than in a wholesale or retail activity”, are also significant. Some of the activities enumerated in the definition, such as packaging, bottling, cutting, wrapping and labelling, may also be undertaken in the ordinary course of wholesale or retail trade. By the concluding exclusion, Parliament has made it clear that the performance of such activities merely as part of a wholesale or retail activity does not, without more, constitute manufacture. The definition thus recognises a distinction between activities forming part of the manufacture or

preparation of an article for sale and similar activities undertaken merely as incidents of wholesale or retail trade.

The inquiry required by section 3(1)(a) cannot therefore be concluded merely by identifying who owns the factory, employs the workforce or physically operates the machinery. Modern commercial manufacturing may be organised through a variety of business structures. Where goods are produced under a contractual manufacturing arrangement, the Court shall ascertain the true legal and commercial character of that arrangement. Relevant considerations may include for whom the goods were manufactured, whether they were manufactured exclusively for that person, whose specifications and technical requirements governed their production, the degree of control exercised over the manufacturing process and the finished product, and whether the entity physically producing the goods was independently manufacturing and marketing its own goods or was undertaking the manufacturing process pursuant to an arrangement with another. The contractual descriptions adopted by the parties are not determinative, nor is any single factor necessarily decisive. The agreements shall be considered in their entirety.

A contrary construction would make the application of section 3(1)(a) depend substantially upon the manner in which a business chooses to organise the physical production of its goods. A person who undertakes all stages of manufacture in its own factory would fall within the provision, whereas a person who causes the same goods to be manufactured exclusively for it under a contractual arrangement could claim to be merely a wholesale or retail supplier solely because the physical processes are performed by another entity. There is nothing in the language of section 3(1)(a) or section 83 which supports such a distinction.

This does not require the Court to formulate a free-standing “control test” or substitute such a test for the statutory definition. Control, exclusivity, specifications, intellectual property rights and other features of the

contractual relationship do not themselves constitute “manufacture”. Their relevance is evidential. They assist in determining the true character of the relationship under which the acts constituting manufacture were performed. An ordinary purchaser does not become a manufacturer merely because it prescribes quality standards or specifications for goods purchased from an independent manufacturer. Similarly, ownership of a trademark or formula does not, by itself, make its owner the manufacturer of every article bearing that trademark or produced according to that formula. It is the cumulative effect of the contractual arrangements which matters.

The approach to the construction of the exemption in section 3 shall also be borne in mind. In the oft-cited case of *Cape Brandy Syndicate v. Inland Revenue Commissioners* [1921] 1 KB 64 at 71, Rowlatt J. stated that in a taxing Act “one has to look merely at what is clearly said” and that “nothing is to be read in, nothing is to be implied”. That remains an important starting point in the interpretation of taxing statutes. The present question, however, concerns not merely the imposition of tax, but the Respondent’s claim to the benefit of a statutory exemption from tax.

The settled principle applicable to an exemption is that the person claiming its benefit shall bring himself within the terms of the provision granting it. The Revenue is not required to establish that the taxpayer falls outside the exemption. The exemption shall neither be enlarged by implication nor restricted by importing into it a requirement not found in the Act. It shall be applied according to the language Parliament has chosen, read in the context of the statutory scheme as a whole. Where there is ambiguity as to whether the taxpayer falls within the scope of the exemption, the ambiguity is resolved in favour of the Revenue rather than the taxpayer.

The Supreme Court of the United States in *Bank of Commerce v. Tennessee and County of Shelby* (1896) 161 US 134 at 145-146, referring to a line of earlier authorities, stated:

These cases show the principle upon which is founded the rule that a claim for exemption from taxation must be clearly made out. Taxes being the sole means by which sovereignties can maintain their existence, any claim on the part of any one to be exempt from the full payment of his share of taxes on any portion of his property must on that account be clearly defined and founded upon plain language. There must be no doubt or ambiguity in the language used upon which the claim to the exemption is founded. It has been said that a well founded doubt is fatal to the claim; no implication will be indulged in for the purpose of construing the language used as giving the claim for exemption, where such claim is not founded upon the plain and clearly expressed intention of the taxing power.

The same question received detailed consideration by a five-Judge Constitution Bench of the Supreme Court of India in *Commissioner of Customs (Import), Mumbai v. Dilip Kumar and Company* (2018) 9 SCC 1. Overruling *Sun Export Corporation, Bombay v. Collector of Customs, Bombay* (1997) 6 SCC 564 and the decisions which had followed it, the Court unanimously held that a person claiming the benefit of a tax exemption shall establish that his case falls within the exemption provision and that, where there is ambiguity as to whether the exemption applies, the benefit of that ambiguity goes to the Revenue and not to the taxpayer.

Applying those principles to section 3(1)(a), the expression “a manufacturer of such goods” shall be given its meaning in the context of the Act as a whole. Nothing in section 3(1)(a) or section 83 confines that expression to a person who personally performs the physical acts of manufacture through its own factory, employees and machinery. To

impose such a limitation would be to introduce into the statutory scheme a requirement which Parliament has not enacted.

There is no real controversy that the processes undertaken by MOS Lanka and Lalan fall within the definition of “manufacture” in section 83. The question is whether the physical performance of those processes by MOS Lanka and Lalan necessarily precludes the Respondent, for whom the goods were manufactured pursuant to the contractual arrangements, from being regarded as “a manufacturer of such goods” for the purposes of section 3(1)(a). In my view, it does not. It is unnecessary for the determination of this appeal to decide whether MOS Lanka and Lalan may themselves be regarded as manufacturers. The issue before the Court is whether, having regard to the true legal and commercial character of the contractual arrangements in their entirety, the Respondent is entitled to the exemption claimed.

I now turn to those contractual arrangements.

The material placed before the Court, including the agreements entered into between the Respondent on the one hand and MOS Lanka and Lalan on the other, establishes that the products were not independently manufactured and marketed by MOS Lanka and Lalan in the ordinary course of their business. Rather, they were manufactured exclusively for the Respondent pursuant to detailed contractual arrangements governing material aspects of the manufacturing process.

The manufacturing facilities were subject to the Respondent’s approval. Manufacture was required to conform to technical requirements and product specifications prescribed or approved by the Respondent. The quantities to be manufactured were determined or approved by the Respondent. The tooling used for manufacture was, under the contractual arrangements, the property of the Respondent. Artwork and labelling were designed or supplied for the Respondent’s products and could not be altered at the discretion of the contract manufacturers. The intellectual property and commercial identity associated with the

products were not those of the contract manufacturers. Certain materials were also supplied by the Respondent for use in the manufacturing process.

Of particular significance is the position of MOS Lanka and Lalan in relation to the finished products. They were not at liberty to manufacture the *Mortein* and *Harpic* products for their own commercial purposes and dispose of them in the market as they chose. The products were manufactured exclusively for the Respondent and, once manufactured, were destined for it. The contract manufacturers had no independent right to market those products as their own.

The manner in which MOS Lanka and Lalan were remunerated is also relevant. The consideration was calculated according to agreed cost models applicable to the products. That feature is consistent with a contractual manufacturing arrangement under which physical production was undertaken pursuant to the Respondent's requirements, rather than an ordinary commercial transaction in which an independent manufacturer produces and markets its own goods and subsequently sells them to a purchaser at an independently determined commercial price.

None of these considerations, viewed in isolation, would necessarily make the Respondent a manufacturer. Their significance lies in their cumulative effect. When the arrangements are considered as a whole, the relationship cannot properly be reduced to that of an ordinary buyer purchasing finished goods from independent manufacturers. Although the physical manufacturing processes were performed by MOS Lanka and Lalan, those processes were undertaken exclusively in respect of products intended for the Respondent, according to specifications and technical requirements prescribed or approved by it, and within a contractual structure regulating material aspects of their production and restricting the contract manufacturers' ability independently to deal with the resulting products.

The Court of Appeal attached considerable significance to the fact that MOS Lanka and Lalan were themselves registered for VAT, issued tax invoices to the Respondent and charged VAT on the goods supplied to it. On that basis, the Court treated the Respondent as having purchased finished goods from those companies and thereafter engaged only in their wholesale or retail distribution. The Respondent strongly relies upon the same circumstances before this Court.

There is no dispute that MOS Lanka and Lalan supplied the finished goods to the Respondent and charged VAT on those transactions. Nor is it necessary for the determination of this appeal to decide whether MOS Lanka and Lalan were themselves manufacturers of those goods for the purposes of the Act. The fact that they physically manufactured the goods and thereafter supplied them to the Respondent as owners or otherwise does not, by itself, determine whether the Respondent also answers the description of “a manufacturer of such goods” for the purposes of section 3(1)(a). That question shall be determined by reference to the statutory provisions and the contractual arrangements under which the goods were manufactured. VAT may operate upon successive supplies, and the tax treatment of one supply does not necessarily determine the tax treatment of the next.

The Respondent also relied upon clause 18.6 of the agreement, by which the parties agreed that nothing therein should constitute a partnership, agency or employer-employee relationship. That clause regulates the private legal relationship between the contracting parties. The absence of such a relationship does not determine whether, having regard to the rights and obligations created by the agreement as a whole, the Respondent answers the description of “a manufacturer of such goods” for the purposes of section 3(1)(a).

The Respondent further submits that the quality-control obligations imposed upon MOS Lanka and Lalan demonstrate that they were independent manufacturers responsible for the manufacture of the

products. Those obligations are relevant, but not decisive. Nor are the descriptions adopted by the parties determinative. Calling an agreement a “sale agreement” does not answer the statutory question. What is material is the substantive rights and obligations created by the agreements.

When the agreements are considered in their entirety, I am unable to accept the Respondent’s characterisation of itself as no more than a purchaser of finished goods subsequently engaged in wholesale or retail trade. Although MOS Lanka and Lalan physically performed the manufacturing processes, the cumulative effect of the contractual arrangements establishes a substantially different relationship from that of an ordinary buyer purchasing finished goods from an independent manufacturer. The fact that the Respondent did not itself own or operate the manufacturing facilities, employ the persons engaged in physical production or directly operate the machinery does not, in these circumstances, prevent it from answering the statutory description of “a manufacturer of such goods” for the purposes of section 3(1)(a).

I therefore hold that the Respondent was a manufacturer of the *Mortein* Mosquito Coils and *Harpic* products for the purposes of section 3(1)(a) of the VAT Act and was consequently not entitled to the exemption from VAT in respect of the supplies in question.

The Court of Appeal therefore erred in law in holding otherwise. I accordingly answer the third question of law in the affirmative and in favour of the Appellant Commissioner General of Inland Revenue.

Conclusion

For the foregoing reasons, I set aside the judgment of the Court of Appeal dated 12.02.2024 and allow the appeal with costs.

Judge of the Supreme Court

Menaka Wijesundera, J.

I agree.

Judge of the Supreme Court

Sampath Abayakoon, J.

I agree.

Judge of the Supreme Court