IN THE SUPREME COURT OF THE

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

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

Stafford Motor Company (Private) Limited,
718/7, Maradana Road,
Colombo 10.

APPELLANT

SC APPEAL NO. 55/2024

SC SPL LA 174/2023

CA Case No. CA (TAX) 21/2018

Tax Appeals Commission No. TAC/IT/028/2016

Vs.

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

RESPONDENT

AND NOW BETWEEN

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

RESPONDENT-APPELLANT

Vs.

Stafford Motor Company (Private) Limited,
718/7, Maradana Road,
Colombo 10.

APPELLANT-RESPONDENT

BEFORE : **P. PADMAN SURASENA, J.**
KUMUDINI WICKREMASINGHE, J.
K. PRIYANTHA FERNANDO, J.

COUNSEL : Nirmalan Wigneswaran DSG with R. Gooneratne SC and Ms. A. Gajadeera, SC for the Respondent-Appellant.

Dr. Shivaji Felix PC with Shanaka Amarasinghe and Nivantha Satharasinghe instructed by Julius & Creasy for the Appellant-Respondent.

ARGUED ON : 06-05-2024

DECIDED ON : 07-07-2025

P. PADMAN SURASENA, J.

The Appellant-Respondent (hereinafter sometimes referred to as the Respondent Company) is a company incorporated in Sri Lanka. Its business is importing and distributing products under the brand of "Honda" and "Hero Honda".

The Respondent Company has submitted its Return of Income for the year 2010/2011 on 30-11-2011. The Assessor has rejected the said Return on the basis that the Respondent Company is not entitled to deduct the amount of the Nation Building Tax (hereinafter sometimes referred to as NBT) it had paid at the point of importation of the relevant products. The Respondent Company has made the said deduction in its Return of Income having treated the said paid amount of NBT as an allowable deduction when calculating the profit and income of the Respondent Company for the relevant assessable year. Having rejected the Return of Income submitted by the Respondent Company, the Assessor has issued an assessment on

29-11-2013 in terms of Section 163 of the Inland Revenue Act No. 10 of 2006 (hereinafter sometimes referred to as IRA).

Being aggrieved by the decision of the Assessor to issue the Assessment in terms of Section 163 of the IRA, the Respondent Company then appealed to the Commissioner General of Inland Revenue who stands as the Respondent-Appellant in this case. (The Respondent-Appellant in this case would hereinafter sometimes be referred to as the CGIR). The CGIR having heard the appeal, for the reasons set out in his Determination dated 16-12-2015, confirmed the Assessment issued by the Assessor.

Being aggrieved by the aforesaid Determination of the CGIR, the Respondent Company has then appealed to the Tax Appeals Commission.

The Tax Appeals Commission, after considering the said Appeal, by its Determination dated 12-06-2018, affirmed the Determination made by the CGIR and dismissed the appeal of the Respondent Company.

Being dissatisfied with the Determination of the Tax Appeals Commission, the Respondent Company then appealed to the Court of Appeal by stating a case for the opinion of the Court of Appeal. The questions of law formulated for the opinion of the Court of Appeal by the Tax Appeals Commission are as follows:

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

2. *Did the Tax Appeals Commission err in law when it came to the conclusion that the assessment was not time barred?*

3. *Did the Tax Appeals Commission err in law when it came to the conclusion that the determination of the Commissioner General of Inland Revenue was not time barred?*

4. *Did the Tax Appeals Commission err in law when it came to the conclusion that the Nation Building Tax paid at the point of importation of articles to Sri Lanka is a disallowable expense under section 26(1)(l)(iii) of the 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?*

The Court of Appeal by its judgment dated 19-05-2023, for the reasons set out therein, concluded that the Assessment made on 09-09-2013 for the Year of Assessment 2010/2011 was time barred as it was not made on or before 31-03-2013 in terms of Section 163(5) of the Inland Revenue Act as amended.

Being dissatisfied with the opinion of the Court of Appeal, the CGIR sought Special Leave to Appeal from this Court. This Court, upon hearing the learned Counsel for both parties, by its order dated 06-05-2024, has granted Special Leave to Appeal on the following question of law:

1) *Did the Court of Appeal err in law in holding that the assessment was time-barred? [This is the Question of Law referred to in Paragraph 22 (l) of the Petition dated 28/06/2023]*

At that stage, the Court upon the application of the learned President's Counsel for the Respondent Company also proceeded to grant Special Leave to Appeal in respect of the following incidental question:

2) *Did the Court of Appeal err in law when it came to the conclusion that the Nation Building Tax paid at the point of importation of articles to Sri Lanka is a disallowable expense under Section 26 (1) (l) (iii) of the Inland Revenue Act, No. 10 of 2006, as amended?*

Let me first consider the afore-mentioned question of law No. 01. That is the question whether the Court of Appeal has erred in law in holding that the Assessment was time-barred.

Let me at the outset, consider briefly as to how Section 163(5) came into existence in its present form.

S. 163(5) of Inland Revenue Act No. 10 of 2006, as originally enacted was as follows:

(5) Subject to the provisions of section 72, no assessment of the income tax payable under this Act by any person or partnership -

> *(a) who or which has made a return of his or its income on or before* ***the thirtieth day of September*** *of the year of assessment immediately succeeding that year of assessment, shall be made* ***after the expiry of eighteen months from the end of that year of assessment****; and*
>
> *(b) who has failed to make a return on or before such date as referred to in paragraph (a), shall be made after the expiry of a period of three years from the end of that year of assessment:*
>
> *Provided that nothing in this subsection shall apply to the assessment of income tax payable by any person in respect of any year of assessment, consequent to the receipt by such person of any arrears relating to the profits from employment of that person for that year of assessment:*
>
> *Provided further that, where in the opinion of the Assessor, any fraud, evasion or willful default has been committed by or on behalf of, any person in relation to any income tax payable by such person for any year of assessment, it shall be lawful for the assessor or Assistant Commissioner to make an assessment or an additional assessment on such person at anytime after the end of that year of assessment.*

The Inland Revenue (Amendment) Act No. 19 of 2009 then amended the two portions highlighted above by me in Section 163(5): i.e., firstly, the phrase **the thirtieth day of September** was replaced by the Amendment Act No. 19 of 2009 with the phrase **the thirtieth day of November** and secondly, the phrase **after the expiry of eighteen months from the end of that year of assessment** was replaced by the Amendment Act No. 19 of 2009 with the phrase **after the expiry of two years from the end of that year of assessment**. Thus, one could read Section 163(5) of Inland Revenue Act No. 10 of 2006, after its amendment by the Inland Revenue (Amendment) Act No. 19 of 2009 in the following way:

> (*5) Subject to the provisions of section 72, no assessment of the income tax payable under this Act by any person or partnership -*
>
> *(a) who or which has made a return of his or its income on or before* ***the thirtieth day of November*** *of the year of assessment immediately*

succeeding that year of assessment, shall be made ***after the expiry of two years from the end of that year of assessment****; and*

(b) who has failed to make a return on or before such date as referred to in paragraph (a), shall be made after the expiry of a period of three years from the end of that year of assessment:

Thereafter in 2011, Inland Revenue (Amendment) Act No. 22 of 2011 further amended Section 163(5) to read as follows:

Section 163(5) as amended by the Inland Revenue (Amendment) Act No. 22 of 2011.

(5) Subject to the provisions of section 72, no assessment of the income tax payable under this Act by any person or partnership -

(a) who or which has made a return of his or its income on or before the thirtieth day of November of the year of assessment immediately succeeding that year of assessment,

(i) where such year of assessment is any year of assessment commencing prior to April 1, 2013, shall be made ***after the expiry of a period of two years from the thirtieth day of November of the immediately succeeding year of assessment****; and*

(ii) where such year of assessment is any year of assessment commencing on or after April 1, 2013, shall be made after the expiry of a period of eighteen months from the thirtieth day of November of the immediately succeeding year of assessment:

(b) who has failed to make a return on or before such date as referred to in paragraph (a), shall be made after the expiry of a period of four years from the thirtieth day of November of the immediately succeeding year of assessment:

[…]

The Respondent Company's position is that the process of making the Assessment is completed only when the Notice in that regard is served on the tax payer. The argument

advanced by the learned President's Counsel for the Respondent Company is that the Notice of Assessment was posted on 03rd December 2013 and therefore was received by the Respondent Company on a date later than the date it was posted. It is the position of the Respondent Company that both the making of the Assessment and giving notice of such Assessment must be done before the expiry of two years.

It is on that basis that the Respondent Company seeks to argue that the Assessment is time barred even when the Assessment is taken to have been issued on 29th November 2013. This is on the basis that the Respondent Company has received the Notice of Assessment only on a date after 03rd December 2013 (date it was posted).

I observe that the Court of Appeal in its judgment, having cited Section 164 of the IRA which deals with the requirement of giving notice of Assessment, has taken the view that 'the making of Assessment is different from sending the notice of assessment as there can be no notice without an assessment which precedes the notice'.[1] For the reasons set out in its judgment, the Court of Appeal has held that the time bar in Section 163(5) of the IRA only applies to the making of Assessment and not to the serving of the notice of Assessment and the serving of the Notice of Assessment is not a pre-condition to the validity of the making of the Assessment.[2] I agree.

If the provision of law set out in Section 163(5) of the Inland Revenue Act No.10 of 2006 as amended by the Inland Revenue (Amendment) Act No. 22 of 2011 is clear and unambiguous in its meaning, then that meaning must be given effect to as it is a taxing statute. Courts cannot read into sections when interpreting provisions of law in such statutes. I have dealt with this aspect of law in more detail in the course of the discourse I have had with regard to the question of law No. 02 in the pages ahead. Therefore, it would suffice for me to state here that I will apply the same theory when interpreting Section 163(5) of the IRA at this stage of the judgment as well.

Section 163(3) of IRA is as follows:

---

[1] Paragraph 88, 89, 106 at page 33 of the judgment of the Court of Appeal dated 19-05-2023.
[2] Paragraph 131, 133 at page 47, 48 of the judgment of the Court of Appeal dated 19-05-2023.

> *Where a person has furnished a return of income, the Assessor may, in making an assessment on such person under subsection (1) or under subsection (2), either-*
>
> *a) accept the return made by such person; or*
>
> *b) if he does not accept the return made by that person, estimate the amount of the assessable income of such person and assess him accordingly:*
>
> *Provided that where an Assessor does not accept a return made by any person for any year of assessment and makes an assessment or additional assessment on such person for that year of assessment,* ***he shall communicate to such person in writing his reasons for not accepting the return****.*[3]

The Assessor acting in terms of the above Section [Section 163(3)] has communicated to the Respondent Company by letter dated 09th September 2013, the reasons in writing for not accepting its Return of Income for the Year of Assessment 2010/2011. The Court of Appeal has concluded that the Assessment shall be deemed to have been made by the Assessor on this date i.e., on 09th September 2013. The Court of Appeal has also concluded that the time bar set out in Section 163(5) will start running from that date i.e., on 09th September 2013.[4] As has been mentioned at paragraph 103 of the judgment of the Court of Appeal, the Assessor at the end of the letter dated 09th September 2013 has stated "Please treat this letter as an intimation made under section 163(3) of the Inland Revenue Act No. 10 of 2006".

I have already reproduced above, Section 163(3) of the IRA. The obligation on the Assessor under that Section is to estimate the amount of the assessable income of the person whose Return he did not accept and assess him accordingly. While this is the obligation placed on the Assessor by this Section, the statutory obligation to communicate in writing to the tax payer under this Section is only his reasons for not accepting the Return of Income submitted by the Tax Payer. The Assessor has fulfilled this statutory obligation by the letter dated 09th September 2013. However, it was on 29th November 2013 that the Assessment has been

---

[3] Emphasis is added by me.
[4] Paragraph 103, 105, 134 at pages 39, 48 of the judgment of the Court of Appeal dated 19-05-2023.

issued. That is an act which is different to the act of communicating the reasons for not accepting the Return of Income. Section 163(3) of the IRA is amply clear on this. Therefore, I am unable to subscribe to the view taken by the Court of Appeal that that the Assessment shall be deemed to have been made by the Assessor on 09th September 2013 which is the date of the communication in writing to the tax payer under Section 163(3) of the IRA, the Assessor's reasons for not accepting the Return of Income submitted by the Respondent Company. I hold that it is the date the Assessment is issued by the Assessor (i.e., 29th November 2013) which must be taken for the calculation of the time bar set out in Section 163(5).

There is no dispute that if the Assessment can be taken to have been made on 29-11-2013 then it has been made within the time prescribed by Section 163(5) of the Inland Revenue Act No.10 of 2006 as amended by the Inland Revenue (Amendment) Act No. 22 of 2011. However, let me for the sake of completeness, further elaborate on this aspect.

Section 106(1) of the Inland Revenue Act No. 10 of 2006 has mandated that a taxpayer shall furnish a return of his income for any year of assessment commencing on the 1st day of April of a given year and ending on the 31st day of March of the immediately succeeding year. Under this section, such taxpayers must submit their returns of income before the 30th day of September of the said immediately succeeding year. Thus, the term 'year of assessment' under this Act is a year commencing from 1st April of a given year and ending on the 31st of March of the following year.

The Respondent Company has submitted its return of income for the Year of Assessment 2010/2011 on 30-11-2011. The Year of Assessment which is denoted as 2010/2011 is the year commencing from 1st April 2010 and ending on 31st of March 2011. Therefore, the Year of Assessment 2010/2011 is a year of assessment which commences prior to April 1, 2013 for the purpose of Section 163(5) (a)(i) of the IRA.

Section 163(5) (a)(i) of the IRA has stated that the two-year period referred therein commences to run from the thirtieth day of November of the immediately succeeding year of assessment. As the relevant year of assessment is 2010/2011, the immediately succeeding year of assessment thereto, is the year of assessment 2011/2012. This is the year of assessment commencing from 1st April 2011 and ending on 31st of March 2012. Therefore, the thirtieth day of November of the immediately succeeding year of assessment referred to in Section 163(5) (a)(i) of the IRA for the purpose of the instant case would be 30-11-2011.

The Respondent Company has submitted its Return of Income for the year 2010/2011 on 29-11-2011. Hence, it is Section 163(5)(a)(i) of the IRA which applies in respect of the return of income submitted by the Respondent Company in the instant situation. This means that the time period allowed by Section 163(5)(a)(i) of the IRA for making an assessment is a period of two years from the thirtieth day of November 2011. In other words, the afore-said two-year period commences to run from 30-11-2011.

The next question is whether the afore-said two-year period should be calculated from 30-11-2011 or else from 01-12-2011. Section 14(a) and 14(b) of the Interpretation Ordinance resolves this question. The said Section is as follows:

Section 14(a) of the Interpretation Ordinance

In all enactments-

a) For the purpose of excluding the first in a series of days or any period of time, it shall be deemed to have been and to be sufficient to use the word "from";

b) For the purpose of including the last in a series of days or any period of time, it shall be deemed to have been and to be sufficient to use the word "to";

As Section 14(a) of the Interpretation Ordinance commences with the phrase "In all enactments" it must apply to the Inland Revenue Act No. 10 of 2006 also. Since Section 163(5)(a)(i) of the IRA has stated "… shall be made after the expiry of a period of two years **from** the thirtieth day of November…", it is clear that the Court must apply Section 14(a) of the Interpretation Ordinance when calculating the period of time stated therein. Thus, upon application of the above rule of interpretation set out in Section 14(a) of the Interpretation Ordinance, the first day of the period i.e., 30-11-2011 must be excluded when calculating the period of time, i.e., the period of two years for the purposes of Section 163(5)(a)(i) of the Inland Revenue Act No. 10 of 2006. Therefore, the two-year period set out in Section 163(5)(a)(i) of the Inland Revenue Act must begin to run on 01-12-2011. On that calculation, the two-year period set out in Section 163(5)(a)(i) of the Inland Revenue Act No. 10 of 2006 must end on 01-12-2013. The impugned Assessment has been issued on 29-11-2013 and therefore the said Assessment has been issued within the period of two years for the purposes

of Section 163(5)(a)(i) of the Inland Revenue Act No. 10 of 2006. Therefore, I hold that the said Assessment is not time barred.

The Respondent Company advanced another argument. That is the argument that the Inland Revenue (Amendment) Act No. 22 of 2011 does not apply at this instance in view of Section 56 of that Amendment Act. It is therefore the argument of the Respondent Company that it is the Inland Revenue (Amendment) Act No. 19 of 2009 which applies to the case at hand.

Part of Section 56 of the Inland Revenue (Amendment) Act No. 22 of 2011 which is relevant to the discussion here is as follows:

> *The amendments made to the principal enactment by the provisions of this Act, shall be deemed for all purposes to have come into force on April 1, 2011:*
>
> *Provided that:-*
>
> *(a) The amendments made to section 7 of the principal enactment by subsection (2) of section 3 of this Act, shall be deemed for all purposes to have come into force on April 1, 2008;*
>
> *(b) The amendments made to section 20, 21 and 21A of the principal enactment by subsection 10, section 11 and section 12 respectively of this Act, shall be deemed for all purposes to have come into force on April 1, 2009;*

Section 56 does not mention anything regarding the Amendment Act has made to Section 163(5). Therefore, Section 163(5) in its amended form (as amended by Act No. 22 of 2011) must come into force with effect from 31-03-2011 which is the date on which the Act was certified by the Speaker of Parliament.

The Respondent Company has submitted its Return of Income for the year 2010/2011 on 29-11-2011. The Inland Revenue (Amendment) Act No. 22 of 2011 came into force with effect from 31-03-2011. Thus, the law applicable to the case at hand is Section 163(5) as amended by the Inland Revenue (Amendment) Act No. 22 of 2011. Therefore, I reject the argument

advanced by the Respondent Company that it is the Inland Revenue (Amendment) Act No. 19 of 2009 that will apply to the case at hand.[5]

As has been mentioned above, the Court of Appeal has concluded that the Assessment shall be deemed to have been made by the Assessor on 09th September 2013. The Court of Appeal has also concluded that it is the Inland Revenue (Amendment) Act No. 19 of 2009 which applies to the case at hand. It is on that premise that the Court of Appeal in its judgment has held that the Assessment issued by the Assessor is time-barred as it was not made on or before 31-03-2013 in terms of Section 163(5) of the IRA as amended by the Inland Revenue (Amendment) Act No. 19 of 2009. For the foregoing reasons I hold that the Court of Appeal has erred in law in holding that the assessment was time-barred. Therefore, I answer the question of law No. 01 in the affirmative.

Let me now turn to the question of law No. 02 and ascertain whether the Court of Appeal has erred in law by answering the question, "whether the Tax Appeals Commission erred in law when it came to the conclusion that the Nation Buildings Tax (N.B.T) paid at the point of importation of articles to Sri Lanka is a disallowable expense under section 26(1) (l) (iii) of the Inland Revenue Act No. 10/2006 as amended?", in the negative. In doing so, let me first reproduce below, the relevant extracted portion from Section 26 of Inland Revenue Act No. 10 of 2006.

Section 26 of Inland Revenue Act No. 10 of 2006

> (1) For the purpose of ascertaining the profits or income of any person from any source, no deduction shall be allowed in respect of–
>
> > (a) domestic or private expenses, including the cost of traveling between the residence of such person and his place of business or employment;
> >
> > .....
> >
> > .....

[5] Paragraph 45 at page 14 of the written submission filed by the Respondent Company with the Motion dated 05-07-2024.

(l) any amount paid or payable by such person by way of—

(i) income tax, or super tax or surtax or any other tax of a similar character in any country with which an agreement made by the Government of Sri Lanka for the avoidance of double taxation is in force (other than the excess of any such income tax, or super tax or surtax or any other tax of a similar character over such maximum amount of the credit in respect of Sri Lanka income tax as is allowed by paragraph (c) of subsection (1) of section 97,; or

(ii) Sri Lanka income tax; or

(iii) **any prescribed tax or levy;** or

(iv) any Economic Service Charge levied under Economic Service Charge Act, No. 13 of 2006; or

(v) the Value Added Tax Act, No. 14 of 2002 and any Nation Building Tax on Financial Services within the provisions of the Nation Building Tax Act, No. 9 of 2009; or

(vi) any Social Responsibility Levy levied under item 4 of the First Schedule to the Finance Act, No. 5 of 2005; or

(vii) any Crop Insurance Levy levied under section 14 of PART IV of the Finance Act, No. 12 of 2013; or

(viii) supper gain tax, Bars and Taverns Levy, Casino Industry Levy, Mobile Telephone Operator Levy, Satellite Location Levy, Dedicated Sports Channel Levy and Mansion Tax imposed and levied under the provisions of the Finance Act, No. 10 of 2015,

Any regulation prescribing a tax or levy for the purpose of this paragraph may be declared to take effect from a date earlier than the date on which such regulation is made ;

(m) any ground rent or royalty payable

.....

.....

While Section 26(1)(l)(iii) of the Inland Revenue Act No. 10 of 2006 has disallowed the deduction of any amount of **any prescribed tax or levy** paid or payable by any person for the purpose of ascertaining the profits or income of such person from any source, the issue placed before this Court by the learned Counsel for both parties is whether the Respondent Company is entitled in law to deduct the amount of Nation Building Tax it had earlier paid at the point of importation.

In this regard, let me first consider the charging section in the Nation Building Tax Act No. 09 of 2009 (as amended by Section 2 of the Nation Building Tax (Amendment) Act No. 10 of 2011).

Nation Building Tax Act No. 09 of 2009 (as amended by Section 2 of the Nation Building Tax (Amendment) Act No. 10 of 2011)

(1) The provisions of this Act shall apply to every person who –

(a) imports of any article, other than any article comprised in the personal baggage of the passenger, into Sri Lanka, ["baggage" shall have the same meaning as in section 107A of the Customs Ordinance (Chapter 235)]; or

(b) carries on the business of manufacture of any article; or

(c) carries on the business of providing a service of any description: or

(d) carries on the business of wholesale or retail sale of any article other than such sale by the manufacturer of that article being a manufacturer to whom the provisions of paragraph (b) applies.

(2) Every person referred to in subsection (1) shall, hereafter in this Act, be referred to as "person to whom this Act applies".

As I have to henceforth embark on the task of interpreting the relevant sections found in fiscal statutes, I would be mindful of the principles that must be applied when interpreting such

provisions. It is opportune at this stage to commence this discourse with the following excerpt taken from the judgment of Rowlatt J in the case of *Cape Brandy Syndicate* vs. *Inland Revenue Commissioners*.[6]

> "*It is urged by Sir William Finlay that in a taxing Act clear words are necessary in order to tax the subject. Too wide and fanciful a construction is often sought to be given to that maxim, which does not mean that words are to be unduly restricted against the Crown, or that there is to be any discrimination against the Crown in those Acts. It simply means that in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.*"

Thus, it is clear that no taxpayer can escape taxation once a liability to income tax is found in the taxing statute in a clear and unambiguous manner unless such person can find an equally clear section which exempts such person from such liability to pay such tax. It is the same principle that the Court of Appeal has correctly adopted and applied when it said in its judgment that any "*exemption notifications must be interpreted strictly and, in its entirety, and not in parts [Grasim industries Ltd. & Anvor v. State of Madhya Pradesh & Anvor and Gwalior Sugar Co. Ltd. v. Madhya Pradesh Electricity Board & others (1999) 8 SCC 547]*.[7]Thus, on the face of these provisions, there is no specific provision of law under which the Respondent Company can become entitled to deduct the amount of Nation Building Tax it had earlier paid.

It is the contention of the Respondent Company that Section 26(1)(l)(iii) of the Inland Revenue Act No. 10 of 2006 does not apply to the Respondent Company as it is not a person who makes quarterly payments of NBT. The Respondent Company also argues that the payment they make is to the Customs at the point of importation of its goods and therefore should not be considered as paying Nation Building Tax. It is the argument advanced on behalf of the Respondent Company that Section 26(1)(l)(iii) of the Inland Revenue Act No. 10 of 2006 cannot be made applicable to the Respondent Company. The Respondent Company also argues that the amount it pays to the Customs as NBT is an ad hoc payment based on each

---

[6] (1921) 1 KB 64, at page 71.
[7] CA (TAX) No. 17/2017, decided on 15-03-2019, at page 12.

transaction which is levied on any person who imports a taxable article. It is the Respondent Company's argument that the liability to pay NBT quarterly is only imposed on persons who are liable to be registered as NBT payers and not on all persons who import/supply such goods.

As pointed out by the learned Deputy Solicitor General, the fact that the subsequent Regulation made by the Minister has allowed one third of the Nation Building Tax charged to be deducted as a prescribed levy in terms of the above-mentioned Section 26(1)(l)(iii) of the Inland Revenue Act No. 10 of 2006, has now confirmed the fact that such deduction was non-existent earlier, in particular, at the time relevant to the impugned Assessment. Let me for the sake of completeness, reproduce below, the said Regulation made by the Minister. The Minister has made this Regulation under Section 212 read with Section 26 of the Inland Revenue Act No. 10 of 2006.

> *"Two third of the Nation Building Tax charged by the Nation Building Tax Act, No. 9 of 2009 payable for the period commencing on May 1, 2009 and ending on June 30, 2009, and for every quarter commencing on or after July 1, 2009, shall for the purposes of Sub-paragraph (iii) of Paragraph (1) of sub-section (1) of section 26 of the Inland Revenue Act No. 10 of 2006 be a prescribed levy".*[8]

In order to counter the above argument also, the learned President's Counsel on behalf of the Respondent Company advanced the same argument. He submitted that the position continues to remain the same even after the afore-mentioned Regulation made by the Minister as the said Regulation has only allowed the said deduction of two-third of the Nation Building Tax charged only for the persons who pay NBT quarterly. It is the submission of the learned President's Counsel that the Respondent Company pays NBT at the point of importation on each article and therefore is not caught up within the afore-said Regulation made by the Minister.

I must state here that I need not embark on resolving the issue whether the Respondent Company is caught up within the afore-said subsequent Regulation made by the Minister in order to address the issue placed before me in the instant case. Such a discourse in my view

---

[8] Published in Gazette Notification No. 1606/31 dated 19-06-2009.

would be a deviation from the task I have in hand and therefore, I would not embark on such an exercise. For me, it would suffice to state here that whoever is caught up within the afore-said subsequent Regulation made by the Minister was not entitled to make such deduction earlier, i.e., before the said subsequent Regulation, such a concession was non-existent and therefore was not available for the taxpayer.

Moreover, there can only be two possibilities for the issue whether the Respondent Company is caught up within the afore-said subsequent Regulation made by the Minister. The first possibility is that the Respondent Company is caught up within the afore-said subsequent Regulation. Then, the Respondent Company is allowed to make a deduction of one third of the Nation Building Tax charged as a 'prescribed tax or levy 'in terms of Section 26(1)(l)(iii) of the Inland Revenue Act No. 10 of 2006. The second possibility is that the Respondent Company is not caught up within the afore-said subsequent Regulation. Then, since that Regulation does not apply to it, the Respondent Company cannot make a deduction of one third of the Nation Building Tax charged as a 'prescribed tax or levy 'in terms of Section 26(1)(l)(iii) of the Inland Revenue Act No. 10 of 2006.

The first scenario (i.e., if the afore-said subsequent Regulation applies to the Respondent Company) necessarily means that Section 26(1)(l)(iii) of the Inland Revenue Act No. 10 of 2006 also applies to the Respondent Company.

The second scenario (i.e., if the afore-said subsequent Regulation does not apply to the Respondent Company; this is the argument advanced by the learned counsel for the Respondent Company) would then necessarily mean that Section 26(1)(l)(iii) of the Inland Revenue Act No. 10 of 2006 must be interpreted without recourse to the afore-said subsequent Regulation made by the Minister. Indeed, I have chosen to take that path in coming to the conclusion I have reached prior to the discussion on the issue of applicability of the afore-said subsequent Regulation made by the Minister to the Respondent Company. The said conclusion is that there is no specific provision of law under which the Respondent Company can become entitled to deduct the amount of Nation Building Tax it had earlier paid. That is why as already adverted to above by me, I have taken the view that I need not embark on resolving the issue whether the Respondent Company is caught up within the afore-said subsequent Regulation made by the Minister in order to address the issue placed before me in the instant case.

Moreover, the Respondent Company does not claim that it is an entity which has not paid NBT at the time of importing its products. It does not seek to argue that NBT is not a prescribed tax or levy. It also does not show any other provision which makes it entitled to have an exemption from Section 26(1)(l)(iii) of the Inland Revenue Act No. 10 of 2006. What then is the result? The result is that the Respondent Company is not entitled to deduct the amount of Nation Building Tax it had earlier paid, in its return of income. This is because the liability of the Respondent Company to income tax without such deduction is found in a clear and unambiguous manner in the taxing statute coupled with the fact that the Respondent Company has failed to show any other provision which makes it entitled to have an exemption from Section 26(1)(l)(iii) of the Inland Revenue Act No. 10 of 2006.

Furthermore, I observe that in Section 5(1) of the NBT Act No. 9 of 2009, the Director General of Customs only functions as a collector of NBT at the point of importation of goods. I also observe that the Act itself in Section 5(2), has stated that any amount so collected by the Director General of Customs, as per the above provision shall be deemed to be the tax chargeable in respect of the tax liability of the turnover arising from the importation of such article. Further, such tax is deemed to have been paid by such a person to the Commissioner General on the day on which such amount was collected by the Director General of Customs. Therefore, I am satisfied that it is the NBT that is collected by the Director General of Customs on behalf of the CGIR at the point of importation of goods.

According to Section 5(3) of the NBT Act, the NBT is collected by the Director General of Customs as if it is a customs duty. This, in my view, is only a mechanism put in place by the Act for the easy recovery of NBT in case of a default. Moreover, the liability of the Respondent company to pay NBT to the Director General of Customs at the time of importation, is imposed, not by Customs Ordinance but by the NBT Act. The charging section for payment of NBT when the Respondent Company pays this tax to the Director General of Customs is the same charging provision of law which is Section 2 and Section 3 of the NBT Act. There is no separate section in the NBT Act which compels the Respondent Company to make such payments to the Director General of Customs. As I stated before, Section 5 only deals with the recovery process to ensure that the NBT is paid at the time of importation. Therefore, in my view, there is no merit in the argument advanced on behalf of the Respondent Company that Section 26(1)(l)(iii) of the Inland Revenue Act No. 10 of 2006 has no application to the Respondent Company. For those reasons, I reject the said argument. I hold that the decision of the Assessor to reject the Return of Income submitted by the Respondent Company and issue the

Assessment in terms of Section 106(1) of the Inland Revenue Act No. 10 of 2006 is justified and lawful.

For the foregoing reasons I answer the question of law No. 02 in the negative.

The Court of Appeal, by its judgment dated 19-05-2023, has annulled the Determination dated 12-06-2018 made by the Tax Appeals Commission. For the reasons set out in this judgment, I have held that the said assessment is not time-barred and the Court of Appeal has erred in law when it held that the said assessment is time barred. On this basis, I set aside the conclusion of the Court of Appeal that the Tax Appeals Commission has erred in law when it came to the conclusion that the assessment is not time-barred. I proceed to set aside the decision of the Court of Appeal to annul the assessment affirmed by the Tax Appeals Commission. The Court of Appeal judgment is set aside to that extent and should stand altered to that extent.

Thus, the assessment issued by the assessor, the determination made by the CGIR, and the determination made by the Tax Appeals Commission affirming the assessment issued by the assessor, are hereby restored and will remain unaltered and affirmed. That would be the resultant position.

JUDGE OF THE SUPREME COURT

KUMUDINI WICKREMASINGHE, J.

I agree.

JUDGE OF THE SUPREME COURT

K. PRIYANTHA FERNANDO, J.

I agree.

JUDGE OF THE SUPREME COURT