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

In the matter of an application in terms of Article 126 read with Article 17 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

SC (FR) Application No. 115/2016

1. Somasundaram Ariharan
   No. 13A, Badulupitiya Road, Badulla.

   Operating in the name and style of
   Ambewela Wine Store,
   No. 01, Pattipola Road, Ambewela.

2. Shanmugam Wathsan
   No. 48/3, Dickman's Road, Colombo 05.

PETITIONERS

Vs.

1. Hon. Ravi Karunanayake

1A. Hon. Mangala Samaraweera

1AA. Hon. Mahinda Rajapakse

1st, 1A and 1AA Respondents are
Minister of Finance,
Ministry of Finance, Colombo 01.

2. Dr. R.H.S. Samaratunga

2A. S.R. Attygalle

2nd and 2A Respondents are
Secretary,
Ministry of Finance, Colombo 01.

3. Mr. L.K.G. Gunawardena

3A. K. H. A. Meegasmulla

3AA. R. Semasinghe

3AAA. H.G. Sumanasinghe

3AAAA. M.J. Gunasiri

3rd, 3A – 3AAAA Respondents are Commissioner General of Excise,
No. 34, W.A.D. Ramanayake Mawatha,
Colombo 02.

4. Hon. Attorney General
Attorney General's Department,
Colombo 12.

RESPONDENTS

Before: **Janak De Silva, J**
Arjuna Obeyesekere, J
Dr. Sobhitha Rajakaruna, J

Counsel: Saliya Peiris, PC with Varuna De Saram and Sarinda Jayawardena for the Petitioners

Nirmalan Wigneswaran, Senior Deputy Solicitor General with Rajin Gooneratne for the Respondents

Argued on: 25th May 2026

Written Submissions: Tendered on behalf of the Petitioners on 20th May 2015 and 4th June 2026

Tendered on behalf of the Respondents on 26th July 2021 and 2nd June 2026

Decided on: 17th July 2026

Obeyesekere, J

(1) The Petitioners filed this application on 31st March 2016 complaining that the decision of the 3rd Respondent, the Commissioner General of Excise directing the 2nd Petitioner to pay a fee of Rs. 15,000,000 in terms of the Rules contained in Excise Notification No. 983 is arbitrary and violative of his fundamental rights guaranteed by Article 12(1) of the Constitution since the said Rules were yet to be confirmed by Parliament and therefore not in force on that date. Leave to proceed was granted on 8th January 2019 for the alleged violation of Article 12(1).

Facts in brief

(2) The 1st Petitioner is carrying on the business of the retail sale of foreign liquor, arrack and bottled toddy since 2006 under the name and style of Ambewela Wine Stores at Ambewela. It is admitted that the 1st Petitioner had been issued the relevant licenses by the Excise Department to engage in the said business at the said premises.

(3) The 1st Petitioner states that due to ill health and old age, he requested his nephew, the 2nd Petitioner to join him in his business as a co-licensee. Having obtained an application on 20th January 2016, the 1st Petitioner had handed over the duly completed application [P25] to the Excise Department on 3rd February 2016 seeking approval to name the 2nd Petitioner as a co-licensee. The Petitioners state that the Excise Notification containing the rules applicable to the issuance of licenses to engage in the business of retail sale of liquor allows the transfer of licenses. The said rules have also set out the fee that must be paid in order to transfer a license. The Petitioners state however that the said rules do not contain any provisions with regard to the naming of a co-licensee but that there is no prohibition for doing so, either. Thus, the Petitioners state that when a request is made to add another person as co-licensee, the applicable fee would be the fee that is applicable to the transfer of a license. The Respondents do not deny this position.

(4) Having considered the application submitted by the 1st Petitioner, the Deputy Commissioner of Excise had informed the 2nd Petitioner by letter dated 2nd March 2016 [P26] that the application seeking to name him as a co-licensee has been

approved by the 3rd Respondent and for the 2nd Petitioner to pay the fee applicable for the transfer of a license in terms of Excise Notification No. 983 issued under Section 25 read with Section 32 of the Excise Ordinance and published in the Gazette of 15th December 2015 [P27]. The Petitioners state that the applicable fee in terms of P27 is Rs. 15,000,000, which is a thirty fold increase from the fee that was applicable in terms of Excise Notification No. 902 [P4] which was in existence until P27 was published.

Excise Ordinance

(5) Chapter 5 of the Excise Ordinance consisting of Sections 22 to 24 is titled, '*Duties on excisable articles*'. In terms of Section 22(1), the Minister, with the concurrence of the Minister in charge of the subject of Finance may, by **Order** published in the Gazette, from time to time impose a duty at such rate or rates, either generally or for any specified local area, on any excisable article that is permitted to be imported, exported, transported or manufactured.

(6) Section 22(3) provides that, "*Every Order under subsection (1) shall come into force on the date of its publication in the Gazette or on such later date as may be specified in the Order, and shall be brought before Parliament within a period of four months from the date of the publication of the Order in the Gazette*, …."

(7) Section 32 of the Excise Ordinance empowers the Minister to make **Rules** in relation to "**excise revenue**", and reads as follows:

> *"The Minister may make rules for the purpose of carrying out the provisions of this Ordinance or other law for the time being in force* ***relating to excise revenue****; and*
>
> *all such rules shall be laid as soon as conveniently may be before Parliament, and*
>
> *upon being confirmed, with or without modification, by a resolution of Parliament, and*
>
> *upon such confirmation being notified in the Gazette,*

shall have the force of law from the date of such notification, or upon such date as may be therein fixed:

Provided that in any case of urgency the Minister may by notification declare any such rules to be in force from a date named therein, and such rules shall thereupon come into force on such date; but if within forty days of the date upon which such rules are laid before Parliament a resolution be passed by Parliament praying that all or any of such rules be modified or annulled, such rules or rule shall thenceforth be modified or annulled accordingly, but without prejudice to anything done there under."

(8) Thus, where an Order is made under Section 22(1), such Order shall come into force on the date of its publication. However, in terms of Section 32, and where the proviso has not been invoked, the Rules, even though it relates to excise revenue, shall become effective only once they are confirmed by Parliament and such confirmation is published in the Gazette. It is common ground that even though P27 was published on 15th December 2015, the said Rules were confirmed by Parliament only on 15th March 2016, and that the notification confirming such fact was published in the Extraordinary Gazette No. 1961/7 of 5th April 2016.

Grievance of the Petitioners

(9) The primary contention of the Petitioners is two-fold. The first is that the Rules in P27, which sought to amend certain provisions of P4 including the fee payable for the issuance and transfer of licenses, became effective only on 5th April 2016 and hence, the decision in P26 directing the 2nd Petitioner to pay the fee stipulated therein in terms of Rules which were yet to become effective is not only *ultra vires* the powers of the 3rd Respondent, but is arbitrary and is a denial of the equal protection of the law. The second is that in order to have the 2nd Petitioner's name inserted as a co-licensee they are liable to pay only a sum of Rs. 500,000, which is the fee payable in terms of P4, it being the Rules applicable as at 2nd March 2016 when the 2nd Petitioner received P26.

(10) In support of his argument, the learned President's Counsel for the Petitioners relied on the judgment of this Court in **Rajanayagam v Bandula Wijayratne, Commissioner General of Excise and others** [(1998) 3 Sri LR 129] where Mark Fernando, J held that Section 32 (1) imperatively requires Parliamentary approval for all rules made under the Excise Ordinance.

Position of the Respondents

(11) I must state that on the face of it, the contention of the Petitioners has merit.

(12) However, the learned Senior Deputy Solicitor General submitted that the effective date of P27 must be determined not as provided by Section 32 of the Excise Ordinance but in terms of Section 2 of the Protection of Government Revenue (Special Provisions) Act, No. 1 of 2006 [**the Act**], which reads as follows:

> "*Notwithstanding anything to the contrary in any law specified in Part I of the Schedule hereto, an **Order** made by the appropriate Minister under any such law, shall come into force from the date on which the Minister has affixed his signature on such Order.*"

(13) It is admitted by the Petitioners that the Excise Ordinance is one of the laws referred to in Part 1 of the Schedule to the Act.

(14) It was therefore the position of the learned Senior Deputy Solicitor General that Section 2 of the Act enacted after the Excise Ordinance and which specifically refers to the Excise Ordinance in Part 1 of its Schedule, shall prevail over Section 32 of the Excise Ordinance. He submitted that the principle of *lex posterior derogat priori* meaning if two statutes are inconsistent with each other, the more recently enacted law takes precedence over the older law applies in this instance. It was therefore the argument of the learned Senior Deputy Solicitor General that P27 was published on 15th December 2015 and came into force on the said date, that being the date on which the Minister affixed his signature thereon, and for that reason, the fee stipulated in P27 must apply if the 2nd Petitioner is to be named as a co-licensee. The learned Senior Deputy Solicitor General submitted further that since the Act was not

in existence at the time the judgment in **Rajanayagam** [supra] was pronounced, the reasoning therein will not apply to this application.

(15) On a first reading of the aforementioned provisions of the Excise Ordinance and the Act, it appears that the Act applies only in respect of Orders made under the Excise Ordinance and not to Rules made thereunder, even if rules have been made by way of an order, as is the case with P27.

(16) However, taking into consideration the following matters:

(a) That Section 32 empowers the making of rules relating to excise revenue;

(b) That the specific intention of the legislature in introducing the Act was the protection of Government Revenue, as borne out by the preamble to the Act, which provides that it is necessary in the interest of the national economy to protect public revenue and prevent any loss of revenue to the Government, and that in order to give effect to the said intention, legal provision is being made in the Act to effectively facilitate the collection of public revenue under laws specified in Part 1 of the Schedule, including the Excise Ordinance;

(c) Section 22(3) of the Excise Ordinance which already provides that an Order shall come into force on the date of its publication in the Gazette, notwithstanding the absence of any urgency as contemplated by the proviso to Section 32, and hence, the need to add the Excise Ordinance in Part 1 of the Schedule does not arise unless it was to cater to Rules made under Section 32 relating to excise revenue,

I am of the view that the reference to Orders contained in the Act would have to be given a wider interpretation in the context of the fundamental premise of the Act to mean any decision relating to public revenue, thereby preventing the intention of the legislature being stultified. The resultant position is that Section 2 would apply to Rules made under Section 32 of the Excise Ordinance. To hold otherwise would render Section 2 redundant and lead to an absurdity in the interpretation of the Act.

(17) I am therefore in agreement with the submission of the learned Senior Deputy Solicitor General, and take the view that the fee that is applicable in order to have the 2nd Petitioner named as a co-licensee is the fee set out in P27.

Conclusion

(18) In the above circumstances, I am of the view that P26 is neither *ultra vires* nor arbitrary, and that the Respondents have not violated the fundamental rights of the Petitioners. This application is accordingly dismissed, without costs.

JUDGE OF THE SUPREME COURT

Janak De Silva, J

I agree

JUDGE OF THE SUPREME COURT

Dr. Sobhitha Rajakaruna, J

I agree

JUDGE OF THE SUPREME COURT