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

S.C. (SD) No. 12/2026, S.C. (SD) No. 13/2026, S.C. (SD) No. 14/2026, S.C. (SD) No. 15/2026 and S.C. (SD) No. 16/2026

"INLAND REVENUE (AMENDMENT)" BILL

S.C. (SD) No. 12/2026

Petitioner	:	Dasanayaka Lekamge Sanjeewa Prasad, No. 508/8, Galle Road, Panadura.
Respondent	:	Hon. Attorney General, Attorney General's Department, Colombo 12.
Counsel	:	Laknath Jayawickrama with Dhanushka Dissanayake

S.C. (SD) No. 13/2026

Petitioner	:	1. The Insurance Association of Sri Lanka, No. 1, Bethesda Place, Colombo 5. 2. Pawla Hewage Lasitha Niroshan Wimalaratne, President of The Insurance Association of Sri Lanka, No. 11/2, 1st Lane, Pagoda Road, Nugegoda.

3. Ceylinco Life Insurance Limited,
No. 106, Havelock Road,
Colombo 05.

4. Union Assurance PLC,
No. 20, St. Michael's Road,
Colombo 03.

Respondent : Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Counsel : Dr. Romesh de Silva, P.C. with Sugath Caldera, Niran Anketell, Pasindu Parakrama and Sahan Ginige

S.C. (SD) No. 14/2026

Petitioner : 1. HNB Assurance PLC,
30, Sri Uttarananda Mawatha,
Colombo 0300.

2. Witharanage Priyadarshana Rodrigo,
Chief Financial Officer,
HNB Assurance PLC,
30, Sri Uttarananda Mawatha,
Colombo 0300.

Respondent : Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Counsel	:	Nihal Fernando, P.C. with Rajindra Jayasinghe, Harshula Seneviratne and Sanjit Dias

S.C. (SD) No. 15/2026

Petitioner	:	1. Kekulukotuwage Don Sampath Thushara, No. 658/77 A, Baseline Road, Colombo 09. 2. Thushara Sunimal Ranasinghe, No. 153, Temple Road, Maharagama.
Respondent	:	1. Hon. Dr Harini Amarasuriya, Prime Minister and Minister of Education, Higher Education and Vocational Education, Ministry of Education, Higher Education and Vocational Education, Prime Minister's office, No. 58, Sir Ernest De Silva Mawatha, Colombo 07. 2. Hon. Attorney General, Attorney General's Department, Colombo 12.
Counsel	:	Dr. Shivaji Felix, P.C. with Nilshantha Sirimanne, Rakitha Jayatunge, Nivantha Satharasinghe, Sajith Nawaratne and Asoka Obeyesekere

S.C. (SD) No. 16/2026

Petitioner	:	Pathberiya Appuhamillage Nadeeka Suranjana, No. 19/55/D, Bulathgamgoda, Yakkala.
Respondent	:	Hon. Attorney General, Attorney General's Department, Colombo 12.
Counsel	:	K. Kanag-Isvaran, P.C. with N.R. Sivendran with Lakshmanan Jeyakumar
Counsel for the State in all cases	:	Nirmalan Wigneswaran, DSG with Dr. Avanti Perera, DSG, Abigali Sooriyakumar Jayakody, SC and Jemiah Sourjah, SC

BEFORE:

Hon. Janak De Silva, J.	**-**	**Judge of the Supreme Court**
Hon. Arjuna Obeyesekere, J.	**-**	**Judge of the Supreme Court**
Hon. Sampath K. B. Wijeratne, J.	**-**	**Judge of the Supreme Court**

The Court assembled for hearing at 9.00 a.m. on 2nd April 2026.

A bill in its short title referred to as "Inland Revenue (Amendment) Bill" [Bill] was published in the Government Gazette of 20th February, 2026 issued on 24th February 2026 and placed on the Order Paper of Parliament on 17th March 2026.

The Bill seeks to amend several provisions in the Inland Revenue Act No. 24 of 2017 [Act].

Five (5) petitions bearing Nos. S.C.S.D. No. 12/2026, S.C.S.D. No. 13/2026, S.C.S.D. No. 14/2026, S.C.S.D. No. 15/2026 and S.C.S.D. No. 16/2024 were filed, challenging the constitutionality of the Bill.

Upon receipt of the these petitions, the Registrar of this Court issued notice on the Hon. Attorney General as required by Article 134(1) of the Constitution. The Petitioners and the Hon. Attorney General were heard.

Withdrawal

At the commencement of the hearing, we invited the learned DSG to give a brief explanation of the amendments proposed to be made by the Bill to the Act. In the course of his submissions, it was submitted that subsequent to stakeholder consultations and current economic considerations, the Government has decided to, *inter alia*, remove Clauses 4, 9 and 28 of the Bill. The relevant Cabinet Memorandum dated 27.03.2026 has been filed of record and served on all the Petitioners. Learned DSG submitted that the Cabinet had approved this Memorandum on 30.03.2026 and decided to consider it as a ratified decision and directed further steps to be taken accordingly.

The Legal Draftsman had in fact already sent letter dated 20.03.2026 to the Director General of the Department of Fiscal Policy enclosing Committee Stage amendments to be moved which includes the deletion of Clauses 4, 9 and 28 of the Bill.

In view of this intimation, the Petitioners in S.C.S.D. No. 13/2026, S.C.S.D. No. 14/2026, and S.C.S.D. No. 15/2026 sought to withdraw their applications. We allowed the application for withdrawal and *pro forma* dismissed them.

Remaining Challenges

The Petitioners in S.C.S.D. No. 12/2026 and S.C.S.D. No. 16/2026 intimated their intention to proceed with their applications assailing the constitutionality of Clauses 31(4) and 34 of the Bill.

Rationale for Bill

The learned DSG provided a useful explanation of the rationale for the Bill.

The Bill deals with numerous issues that have been pending for several years.

The importance of introducing expedient and effective mechanisms for collection of taxes and recovery of taxes in default is highlighted by the data from the Annual Performance Report of the Inland Revenue Department (IRD) for the year 2024.

A key term to understand in the context of revenue collection is "Tax Effort". Tax effort is defined as an index of the ratio between the share of the actual tax collection in GDP and the taxable capacity[1].

Research[2] reveals that "Sri Lanka was seen to have the third lowest tax effort under Kumbhakar, Lien and Hardker's (2014) model, only ranking higher than Nigeria and the Republic of the Congo. Under Battese and Coelli's (1995) model, Sri Lanka has the fourth lowest tax effort, only ranking above the Republic of the Congo, Guatemala, and Nigeria" and that "Sri Lanka is among the worst performers in terms of tax effort within Low- and Middle-Income Countries".

An independent estimation of personal income tax for the years 2009 and 2012, using HIES data, reiterated the decreasing tax effort levels, whereby the actual tax collected was only around 50% of the estimated potential personal income tax payable.

The Sri Lanka Development Update (SLDU) 2023[3] has identified that even the most efficient or equitable tax policies may fail if the tax administration is unable to effectively implement these policies. The report identifies two primary objectives of tax administration as: (1) to apply the tax laws uniformly to achieve maximum collection at minimum costs; and (2) to promote voluntary compliance by taxpayers.

It is reported in the SLDU that Sri Lanka's revenue underperformance can be attributed to weaknesses in both its tax policy and administration, stating "For long periods, the tax

[1] Moreno-Dodson, Blanca; Le, Tuan Minh; Bayraktar, Nihal. 2012. Tax Capacity and Tax Effort : Extended Cross-Country Analysis from 1994 to 2009. Policy Research Working Paper; No. 6252. © World Bank.

[2] Journal of Tax Administration Vol 6:1 2020 Tax Effort in Developing Countries: Where is Sri Lanka? - Harsha Konara Mudiyanselage , Anu Rammohan , Shawn Xiaoguang Chen

[3] World Bank. 2023. Sri Lanka Development Update, October 2023: Mobilizing Tax Revenue for a Brighter Future.© World Bank. http://hdl.handle.net/10986/40420 License: CC BY-NC 3.0 IGO.

system has been characterized by low, multiple, and frequently changing rates, a narrow and shrinking base, a high tax burden on labor rather than capital incomes, and a weak administration with poor compliance outcomes. These features have made the system complex, inefficient and inequitable."

It is also reported that Sri Lanka's tax administration performs poorly across many of the standard dimensions of efficiency and effectiveness and recommends that additional efforts are needed to improve registration and compliance, such that higher rates and broadened bases lead to higher tax collection.

Research[4] reveals that in Sri Lanka the estimated potential amount of personal income tax payable for the year 2009 was 62.6 billion Sri Lankan Rupees while actual amount collected was 28.2 billion Sri Lankan Rupees, showing that only 45% of the potential personal income tax payable was collected. For 2012, the estimated amount of potential personal income tax payable was 43 billion Sri Lankan Rupees while the actual amount collected was 21.4 billion Sri Lankan Rupees, representing a performance level of 50%. This estimation again emphasizes the observation that Sri Lanka's tax effort is low.

The IRD states in its Annual Performance Report 2024, at page 39, that "higher tax to-GDP ratio reflects a government's capacity to mobilize domestic resources effectively, reducing dependence on external borrowing and enabling greater investment in public services and infrastructure. To attain this goal, the IRD is focusing on strengthening revenue administration, expanding the tax base, improving compliance, and leveraging technology to enhance efficiency and transparency in tax collection. Achieving the targeted tax-to-GDP ratio is essential for ensuring macroeconomic stability and meeting the country's development priorities."

[4] Journal of Tax Administration Vol 6:1 2020 Tax Effort in Developing Countries: Where is Sri Lanka? - Harsha Konara Mudiyanselage , Anu Rammohan , Shawn Xiaoguang Chen

In its Annual Performance Report 2024, the IRD highlights enhancing tax compliance as a significant future goal and identifies that one such method of achieving this goal is streamlining the tax administration process and strengthening enforcement measures.

Jurisdiction of Court

Dr. Kanag-Isvaran P.C., submitted that the test of constitutionality of the Bill or any part thereof is not to be tested only on the anvil of the Fundamental Rights Chapter of the Constitution. We have no hesitation in accepting this position.

This Court is exercising the jurisdiction vested in it in terms of Article 120 of the Constitution which reads:

> **"***The Supreme Court shall have sole and exclusive jurisdiction to determine any question as to* ***whether any Bill or any provision thereof is inconsistent with the Constitution…"*** (emphasis added)

Therefore, our constitutional jurisdiction extends to determining whether the *Bill or any provision thereof is inconsistent with the Constitution* and not only with the Fundamental Rights Chapter.

Dr. Kanag-Isvaran P.C., then sought to make a quantum leap in his argument by submitting that Proportionality is a necessary test upon which the constitutionality of the Bill must be assessed.

Fiscal Legislation

Before testing the relevance of Proportionality in examining the constitutionality of the Bill, it is important to examine the approach adopted by Court to fiscal legislation.

The principle that, in tax matters, the legislator is the best judge and must benefit from greater freedom of classification has universal application.

In ***San Antonio School District v. Rodrigues*** **[(1973) 411 US I]** (quoted with approval in ***G.K. Krishnan v. State of Tamil Nadu*** **[A.I.R. 1975 SC 583 at page 592**]) it was held:

> *"Thus, we stand on familiar ground when we continue to acknowledge that t**he Justices of this court lack both the expertise and the familiarity with local problems so necessary to the making of wise decisions with respect to the raising and disposition of public revenues**. Yet, we are urged to direct the States either to alter drastically the present system or to throw out the property tax altogether in favour of some other form of taxation. **No scheme of taxation, whether the tax is imposed on property, income, or purchases of goods and services, has yet been devised which is free of all discriminatory impact. In such a complex arena in which no perfect alternatives exist, the Court does well not to impose too rigorous standard of scrutiny lest all local fiscal schemes become subjects of criticism under the Equal Protection Clause**."*(emphasis added)

In ***Income Tax Officer, Shillong and Another v. N. Takim Roy Rymbai*** **[A.I.R. 1976 SC 670 at page 674]** it was held:

> *"While it is true that a taxation law cannot claim immunity from the equality clause in Article 14 of the Constitution, and has to pass, like any other law, the equality test of that Article, it must be remembered that the State has, in view of the intrinsic complexity of fiscal adjustments of diverse elements, a considerably wide discretion in the matter of classification for taxation purposes. Given legislative competence, the legislature has ample freedom to select and classify persons, districts, goods, properties, incomes and objects it would not tax. So long as the classification is made within this wide flexible range by a taxing statute does not transgress the fundamental principles underlying the doctrine of equality, it is not vulnerable on the ground of discrimination merely because it taxes or exempts from tax some incomes or objects and not others. **Nor the mere fact that a tax falls more heavily***

on some in the same category, is by itself a ground to render law invalid." (emphasis added)

In ***Hoechst Pharmaceuticals Ltd. and Another v. State of Bihar and Others*** **[(1983) AIR 1019]** it was held by the Supreme Court of India that:

"When the power to tax exists, the extent of the burden is a matter for the discretion of the lawmakers. ***It is not the function of the Court to consider the propriety or justness of a tax or enter upon the realm of legislative policy. If the evident intent and general operation of the tax legislation is to adjust the burden with a fair and reasonable degree of equality, the constitutional requirement is satisfied.*** *The equality clause in Art. 14 does not take away from the State the power to classify a class of persons who must bear the heavier burden of tax. The classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequalities."* (emphasis added)

In ***P.M. Ashwathanarayana Setty v. State of Karnataka*** **[A.I.R. 1989 SC 100 at page 118]** it was held:

"Though other legislative measures dealing with economic regulation are not outside Art. 14, it is well recognised that the State enjoys the widest latitude where measures of economic regulations are concerned. These measures for fiscal and economic regulations involve an evaluation of diverse and quite often conflicting economic criteria and adjustment and balancing of various conflicting social and economic values and interests. ***It is for the State to decide what economic and social policy it should pursue and what discriminations advance those special and economic policies.*** *In view of the inherent complexity of these fiscal adjustments, Courts give a larger discretion to the Legislature in the matter of its preferences of*

economic and social policies and effectuate the chosen system in all possible and reasonable ways."(emphasis added)

In ***The Secretary to the Government of Madras & Anr. v. P.R. Sriramulu & Anr.*** **[A.I.R. 1996 SC 676, para. 15]** it was held:

> **"[…]** ***It is also well settled that lack of perfection in a legislative measure does not necessarily imply its constitutionality as no economic measure has so far been discovered which is free from all discriminatory impact and that in such a complex area in which no fool proof device exists, the Court should be slow in imposing strict and rigorous standard of scrutiny by reason of which all local fiscal schemes may be subjected to criticism under the Equal Protection clause."*** (emphasis added)

In **Inland Revenue (Amendment) Bill [S.C.S.D. 64-71/2022]** Court reviewed the previous jurisprudence and expounded the following principles as guidance for considering the constitutionality of fiscal legislation:

(1) In terms of Article 148 of the Constitution, Parliament has full control over public finance and one of the vital components of such control is the control of the sources of finance i.e. imposition of taxes, levies and rates.

[**Appropriation Bill** (Decisions of the Supreme Court on Parliamentary Bills (2007-2009), Vol. IX, 44 at page 45, **Appropriation Bill** (Decisions of the Supreme Court on Parliamentary Bills (2010-2012), Vol. X, 109 at pages 110, 113), **Betting and Gaming Levy (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 23 at pages 26-27), **Strategic Development Projects (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 33 at page 34), **Notaries (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 41 at page 42), **Powers of Attorney (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 49 at page 50), **Registration of Documents**

(Amendment) Bill (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 57 at page 58), **Nation Building Tax (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 73 at page 75), **Appropriation Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 101 at page 109), **Fiscal Management (Responsibility) (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2016-2017), Vol. XIII, 53 at page 55)].

(2) The Legislature enjoys a wide discretion in formulating policy on economic matters of the country. The Supreme Court has always confined the scrutiny of any Bill strictly in accordance with the jurisdiction conferred by Articles 121 and 123 of the Constitution. The policy making power is left to the authorities on whom it is vested by law. The Supreme Court has been reluctant to intervene in matters of policy unless such policy is found to be manifestly unreasonable.

[**Foreign Exchange Bill** (Decisions of the Supreme Court on Parliamentary Bills (2016-2017), Vol. XIII, 88 at page 95)].

(3) In fiscal legislation, it is a matter for the Legislature to decide what considerations relating to the amelioration of hardship or to the interests of the economic progress of the people should be given effect to. In taxation matters, the Legislature has the greatest freedom of classification to determine which category or class of persons who should be granted concessions or not.

[**Finance (Amendment) Act of 1978** (Decisions of the Constitutional Court of Sri Lanka (Volume VI) 1978), **Inland Revenue (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (1978-1983), Vol. I, 99 at page 100), **Inland Revenue (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (1991-2003), Vol. VII, 105 at pages 106-107), **Finance Bill** (Decisions of the Supreme Court on Parliamentary Bills (2004-2006), Vol. VIII, 32 at page 33), **Value Added Tax (Amendment) Bill**, (Decisions of the Supreme Court on Parliamentary Bills (2004-2006), Vol. VIII, 47 at page 50), **Default Taxes (Special Provisions) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2007-

2009), Vol. IX, 63 at page 64), **Betting and Gaming Levy (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 23 at page 29), **Strategic Development Projects (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 33 at page 37,38), **Notaries (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 41 at page 46), **Powers of Attorney (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 49 at page 53, 54), **Inland Revenue (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 69 at page 70), **Nation Building Tax (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 73 at page 79), **Fiscal Management (Responsibility) (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2016-2017), Vol. XIII, 53 at page 54), **Nation Building Tax (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2016-2017), Vol. XIII, 65, 66), **Value Added Tax (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2016-2017), Vol. XIII, 76 at page 76), **Foreign Exchange Bill** (Decisions of the Supreme Court on Parliamentary Bills (2016-2017), Vol. XIII, 88 at page 95), **Inland Revenue Bill** (Decisions of the Supreme Court on Parliamentary Bills (2016-2017), Vol. XIII, 105 at page 107), **Inland Revenue (Amendment) Bill** (S.C.S.D. Nos. 1-3/2021), **Surcharge Tax Bill** (S.C. (SD) 19-21/2022 and 2329/2022)].

(4) Decisions based on economic considerations must largely be left to the Legislature in view of the inherent complexity of fiscal adjustment of diverse elements that requires to be made.

[**Inland Revenue (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (1978-1983), Vol. I, 99 at page 100), **Default Taxes (Special Provisions) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2007-2009), Vol. IX, 63 at page 64), **Inland Revenue Bill** (Decisions of the Supreme Court on Parliamentary Bills (2016-2017), Vol. XIII, 105 at page 107), **Inland Revenue Bill** (Decisions of the Supreme Court on Parliamentary Bills (2016-2017), Vol. XIII, 105 at page 107)].

(5) In deciding whether the taxation law is discriminatory or not, it is necessary to bear in mind that the State has a wide discretion in selecting persons or objects it will tax, and that a statute is not open to attack on the ground that it taxes persons or objects and not others. It is only when within the range of its selection, the law operates unequally, and that cannot be justified on the basis of any valid classification, that it would violate the right to equality.

[**Finance (Amendment) Act 1978** (The Constitutional Court of Sri Lanka, Vol. VI, 1978), **Inland Revenue (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (1991-2003), Vol. VII, 105 at page 106), **Finance (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2004-2006), Vol. VIII, 89, 90), **Inland Revenue (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2004-2006), Vol. VIII, 91, 92), **Finance Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 12 at page 19), **Fiscal Management (Responsibility) (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2016-2017), Vol. XIII, 53 at page 54), **Nation Building Tax (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2016-2017), Vol. XIII, 65 at page 66), **Value Added Tax (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2016-2017), Vol. XIII, 76 at page 77), **Inland Revenue Bill** (Decisions of the Supreme Court on Parliamentary Bills (2016-2017), Vol. XIII, 105 at page 107)].

(6) Revenue measures sought to be introduced by any bill would not generally be considered as inconsistent with Article 12 of the Constitution unless they are manifestly unreasonable or manifestly discriminatory.

[**Inland Revenue (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2004-2006), Vol. VIII, 29 at page 31] **Value Added Tax (Amendment) Bill**, (Decisions of the Supreme Court on Parliamentary Bills (2004-2006), Vol. VIII, 79), **Finance Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 12 at page 20), **Value Added Tax (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary

Bills 2017), Vol. XIII, 76 at page 79), **Surcharge Tax Bill** (S.C. (SD) 1921/2022 and 23-29/2022)].

(7) The power to tax retrospectively is an incident of sovereignty and is coextensive with the subjects to which the sovereignty extends. It is unlimited in its range acknowledging in its very nature no limits so that security against its abuse, if any, is to be found only in the responsibility of the legislature which imposes the tax on the people who are to pay it.

[**Nation Building Tax (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2016-2017), Vol. XIII, 65 at page 66)].

(8) Retrospective taxation cannot be regarded as unreasonable unless it is clearly prohibitive.

[**Finance Bill** (Decisions of the Supreme Court on Parliamentary Bills (20042006), Vol. VIII, 32 at page 34), **Value Added Tax (Amendment) Bill**, (Decisions of the Supreme Court on Parliamentary Bills (2004-2006), Vol. VIII, 47 at pages 49-50), **Finance Bill** ((Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 12 at page 18), **Betting and Gaming Levy (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 23 at pages 25-26), **Powers of Attorney (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 49 at page 52), **Registration of Documents (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 57 at page 60), **Nation Building Tax (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 73 at page 77), **Value Added Tax (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills 2017), Vol. XIII, 76 at page 78)].

(9) Where retrospective effect is given only to the application of a revenue measure and not the imposition of a penalty for an offence, the bar against retrospectivity contained in Article 13(6) of the Constitution would not apply.

[**Protection of Government Revenue (Special Provisions) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2004-2006), Vol. VIII, 106 at page 107), **Finance Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 12 at page 18), **Betting and Gaming Levy (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 23 at page 25), **Strategic Development Projects (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 33 at page 36), **Notaries (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 41 at page 44), **Powers of Attorney (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 49 at page 52),), **Registration of Documents (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 57 at page 59), **Nation Building Tax (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 73 at page 76)].

(10) The laws fixing taxes cannot be questioned on the ground that the tax is heavy and oppressive.

[**Ananthakrishnan v. Madras** AIR (1952) 395 at 408 quoted with approval in **Nation Building Tax (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2016-2017), Vol. XIII, 65 at page 66)].

Accordingly, in exercising the constitutional jurisdiction over fiscal statues, Court is mindful of the full control Parliament exercises over public finance in terms of the Constitution including the imposition of taxes and levies. Diverse budgetary, economic and monetary policies have to be taken into account. As a result, the Court acknowledges that the State needs greater flexibility in classification for fiscal legislation purposes. The State has the right to decide who should or should not be taxed. It is only when the law operates unequally within the range of its selection, and when that cannot be justified on the basis of any valid classification, that it would violate the right to equality. Fiscal policy will not be in conflict with Article 12 of the Constitution unless it is found to be manifestly unreasonable or manifestly discriminatory.

Proportionality

This is the context in which we must examine whether the constitutionality of the Bill or any of its provisions must be examined on Proportionality.

Dr. Kanag-Isvaran P.C., expound that legislation that is disproportionate is undoubtedly an impingement and abridgement of the sovereignty of the People inasmuch as it will be violative of the Rule of Law for the simple reason that any restriction on the rights of the People must be suitable, necessary, and appropriately balanced as a means of pursuing legitimate public objectives.

It was further submitted that Proportionality is intrinsic to the inalienable Sovereignty of the People enshrined in Article 3 *inter alia* inasmuch as constitutionalism recognizes that there is no absolute power and demands that any restriction on the rights of the People must be suitable, necessary and appropriately balanced as a means of pursuing legitimate public objectives.

Dr. Kanag-Isvaran, P.C., further submitted that where there are several possible alternative measures available to the legislature to achieve its policy goals, the legislature must adopt the least disproportionate option.

He relied on the judgment of Dickson, C.J., in ***R. v. Oakes*** **[(1986) 1 SCR 103 (Can SC)]**, and the following excerpt (at p. 138):

> "*To establish that a limit is reasonable and demonstrably justified in a free and democratic society, two central criteria must be satisfied. First, the objective, which the measures, responsible for a limit on a Charter right or freedom are designed to serve, must be "of" sufficient importance to warrant overriding a constitutional protected right or freedom …*
>
> *Second … the party invoking Section 1 must show that the means chosen are reasonable and demonstrably justified. This involves "a form of proportionality*

test…" Although the nature of the proportionality test will vary depending on the circumstances, in each case courts will be required to balance the interests of society with those of individuals and groups. There are, in my view, three important components of a proportionality test. First, the measures adopted must be … rationally connected to the objective. Second, the means … should impair "as little as possible" the right or freedom in question … Third, there must be a proportionality between the effects of the measures which are responsible for limiting the Charter right or freedom, and the objective which has been identified as of 'sufficient importance'. The more severe the deleterious effects of a measure, the more important the objective must be if the measure is to be reasonable and demonstrably justified in a free and democratic society."

However, these observations were made in examining whether a limitation on any Charter right is reasonable and demonstrably justified. Proportionality becomes relevant where a legislative provision seeks to restrict a Charter right.

To that extent, it is non-contentious in a Sri Lankan context. Our Courts have held that proportionality is a test that can be applied in considering whether a restriction of a fundamental right is permissible.

In ***Wickramanayake v. The State*** **[(1978-79-80) 1 Sri.L.R. 299]** it was held that the piling of punishment on punishment indiscriminately, as in that case, whether they be old forms of punishment or new, amounts to excessive punishment and savours of cruelty. Physical force is unnecessary for it to amount to inhuman treatment and punishment and accordingly clause 4(2) of the bill was held to be inconsistent with Article 11 of the Constitution.

In ***Sunila Abeysekera v. Ariya Rubasinghe, Competent Authority and Others*** **[(2000) 1 Sri.L.R. 374]** it was held that the restriction imposed by the impugned regulations were not disproportionate to the legitimate aim of the regulation. This test is certainly

applicable in examining any bill which seeks to restrict any of the fundamental rights guaranteed by the Constitution.

Nevertheless, Dr. Kanag-Isvaran P.C., submitted that where there are several possible alternative measures available to the legislature to achieve its policy goals, the legislature must adopt the least disproportionate measure notwithstanding that each of the alternative measures taken individually is not inconsistent with any provision of the Constitution. We have no hesitation in rejecting this approach.

In the **Fiscal Management (Responsibility) (Amendment) Bill** [Decisions of the Supreme Court on Parliamentary Bills (2016-2017), Vol. XIII, 53] Court observed as follows:

> *"In deciding whether a fiscal legislation is discriminatory or not, it is necessary to bear in mind that the State has a wide discretion in selecting the persons or objects it will tax and that a statute is not open to attack on the ground it taxes some persons or objects and not others. It is only when within the range of its selection, the law operates unequally that it cannot be justified on the basis of any valid classification.'… The Court cannot strike down a policy decision taken by the Government merely because it feels that another policy decision would be wiser or logical.* ***The Court is not expected to express its opinion as to whether in a particular situation any such policy should have been adopted or not. It is best left to the Government to decide on such matters which affects the interests of the economic progress and fiscal management of the country****."* (emphasis added)

Nevertheless, as was held in **Special Goods and Service Tax Bill** [S.C.S.D. Nos. 01-09/2022, page 10], when a particular provision of a bill which comes under scrutiny is found to contain policy which when converted into legislation would become inconsistent with the Constitution, it is then the bounden duty of this Court to point out such inconsistency.

However, any move by Court to recognize the relevance of Proportionality as a test in examining the constitutionality of any provision of a bill which is not inconsistent with any

provision in the Constitution leads the Court into the realm of legislation directed at supplanting its view on the appropriate legislative measures leading to what has been described by South African judge and jurist Albie Sachs as kritarchy or krytocracy. This will lead to democracy being replaced by the rule of unelected judges. Any attempt to do so will be for the judiciary to bite the poisoned apple and perhaps never to be restored to its pristine constitutional role.

We hold that Proportionality is irrelevant in examining any provision in a bill which is not inconsistent with the Constitution.

Criminalization

Clause 31(4) of the Bill seeks to introduce new sections 163(4A) to (4H) the Act. They read as follows:

> *"(4A) (a) With effect from the year of assessment commencing on April 1, 2026, where a person fails to pay tax when it is due, the Commissioner-General may submit a certificate containing particulars of the defaulter, as specified in subsection (4B) to the Magistrate of the Magistrate's Court within the local limits of whose jurisdiction the defaulter resides or the place of business of the defaulter is situated.*
>
> *(b) Upon receipt of the certificate referred to in paragraph (a), the Magistrate shall summon the defaulter before him to show cause as to why further proceedings shall not be taken against such defaulter for the recovery of the tax in default.*
>
> *(c) Where the defaulter fails to show sufficient cause to the satisfaction of the Magistrate, the tax in default shall be deemed to be a fine imposed by a sentence of the Magistrate on such defaulter for an offence punishable with fine only and not punishable with imprisonment.*
>
> *(d) The provisions of subsection (1) of section 291, except the provisions of paragraphs (a), (d) and (i) of that subsection, of the Code of*

Criminal Procedure Act, No. 15 of 1979 relating to default of payment of a fine imposed for such an offence shall thereupon apply, and the Magistrate may make any direction which, by the provisions of that subsection, the Magistrate could have made at the time of imposing such sentence.

(4B) The certificate referred to in subsection (4A) shall contain particulars of tax, interest, penalty or any other amount payable under this Act including any tax, interest, penalty or other amount payable prior to the date on which this subsection comes into operation, the name and the last known address of the place of business or residence of the defaulter.

(4C) Unless the Commissioner-General has granted an extension of the time for payment of tax under section 151, the correctness of any statement in a certificate submitted by the Commissioner-General for the purpose of subsection (4A), shall not be called in question or examined by the Magistrate in any proceedings under this section and accordingly, nothing in that subsection shall be read and construed as authorising a Magistrate to consider or decide the correctness of any statement in such certificate or to postpone or defer such proceedings for a period exceeding thirty days by reasons only of the fact that an appeal is pending against the assessment in respect of which the tax in default is charged.

(4D) Nothing in subsections (2) to (5) of section 291 of the Code of Criminal Procedure Act, No. 15 of 1979, shall apply in any case referred to in subsection (4A).

(4E) In any case referred to in subsection (4A) in which the defaulter is sentenced to imprisonment in default of payment of the fine deemed by that subsection to have been imposed on him, subject to subsection (6), the Magistrate may allow time for the payment of the amount of that fine or direct payment of that amount to be made in instalments.

(4F) The Magistrate may require bail to be given as a condition precedent to allowing time to show cause as provided in subsection (4A) or for

the payment of the fine under subsection (4E), and the provisions of Chapter XXXIV of the Code of Criminal Procedure Act, No. 15 of 1979, shall apply, where the defaulter is so required to give bail.

(4G) Where the Magistrate directs under subsection (4E) that the payment be made in instalments, and default is made in the payment of any one of such instalments, the proceedings may be taken as if default had been made in payment of all the instalments then remaining unpaid.

(4H) In any proceeding under subsection (4A), the Commissioner-General's certificate shall be sufficient evidence that the tax has been duly assessed and is in default, and any plea that the tax is excessive, incorrect, or under appeal, shall not be entertained."

Dr. Kanag-Isvaran P.C., sought to impugn Clause 31(4) on a broad proposition, namely that the Act as presently enacted provides for the recovery of tax that is due as a *"debt due"* only in a civil court of competent jurisdiction whereas the Bill seeks to *criminalize* the recovery process. It was submitted that the legislature has in the Act made its intention very manifest and clearly signaled a departure from the previously extant criminal proceedings for recovery and thus consciously adopted a civil regime for proceedings in recovery of taxes in conformity with the principles of equity and fairness in tax administration.

Learned DSG responded by quoting Edmund Burke who famously said "to tax and to please, no more than to love and to be wise, is not given to men". As Rowlat J. held in ***Cape Brandy Syndicate v. CIR*** **[(1921) 1 K.B. 64]**, there is no equity in tax.

In ***Perera & Silva Ltd., v. Commissioner General of Inland Revenue*** **[79(II) N.L.R. 164 at 167]** Thamotheram J. quoted with approval the following statement in C. N. Beatie-Elements of the Law of Income and Capital Gains Taxation at page 2:

"It has frequently been said that, there is no equity in a taxing statute. This means that tax being the creature of statute, liability cannot be implied under any principle

of equity but must be found in the express language of some statutory provision. The ordinary canons of construction apply in ascertaining the meaning of a taxing statute: "the only safe rule is to look at the words of the enactments and see what is the intention expressed by these words." If in so construing the statute the language is found to be so ambiguous that it is in doubt whether tax is attracted or not, the doubt must be resolved in favour of the taxpayer, because it is not possible to fall back on any principle of common law or equity to fill a gap in a taxing statute."

In **Surcharge Tax Bill** [SC(SD) 19-21/2022, 23-29/2022] Court held that "equity and taxation make for strange bedfellows".

In **Inland Revenue (Amendment) Bill [S.C.S.D. 64-71/2022 at page 27]** it was held that the notion of equitable taxation has no place in the analysis Court must make in determining whether the tax is manifestly unreasonable or discriminatory for purposes of Article 12(1) of the Constitution.

Moreover, the State must have the freedom to adopt as well as amend or change policy depending on the circumstances provided that the policy or the transformation of policy into legislative framework is constitutional. It is best left to the Government to decide on such matters which affects the interests of the economic progress and fiscal management of the country. Merely because the Act did away with the previous policy of providing for criminal process to recover outstanding tax, it does not *ipso facto* make a subsequent reversion to that policy unconstitutional.

Clause 31(4) of the Bill

Clause 31 of the Bill seeks to amend Section 163 of the Act by including new sections 163(4A) to (4H). These provisions are brought under Chapter XVI of the Act titled *Recovery of Tax* which spells out different measures that can be taken to recover tax due.

Section 160 of the Act states that the Commissioner-General may proceed with *any remedy* under Chapter XVI once the *taxpayer is in default pursuant to Section 152*.

Section 152(1) of the Act allows the Commissioner-General to send a notice to a taxpayer demanding payment when a tax is not paid by the date on which it became due and payable. Section 152(3) states that a *taxpayer shall be in default, twenty-one days after service of notice* in respect of any amounts remaining unpaid as of that date.

Thus, the provisions in Chapter XVI of the Act, and in particular Section 163 may be invoked only 21 days after the service of notice in terms of Section 152.

Section 163(1) of the Act states that tax that is due and payable shall be a debt to the Government and shall be payable to the Commissioner-General. The Bill does not seek to amend this provision.

Section 163(2), (3) and (4) of the Act provides for institution of civil proceedings to recover the debt and incidental matters. The only amendment the Bill seeks to make to these provisions is to limit its application to a period prior to April 1, 2026.

Hence, the Act continues to provide for the recovery by civil proceedings of any tax in default which will, if and when the Bill is enacted, apply only for the period prior to April 1, 2026.

Clause 31(4) of the Bill introduces new provisions to recover tax in default after April 1, 2026 by permitting institution of proceedings (which the State refers to as *recovery proceedings* whereas the Petitioners refer to as *criminal proceedings*). It provides for a certificate to be tendered to the Magistrate where a person *fails to pay tax when it is due*. Even this procedure may be resorted only where a *taxpayer will be in default, which is twenty-one days after service of notice* contemplated by Section 152.

The constitutionality of this provision must be examined in the context of the existing statutory framework for administrative review or appeals to the Tax Appeals Commission (TAC).

Section 139 of the Act allows a taxpayer to request the Commissioner-General to review an assessment or other decision. Section 140 allows a person aggrieved by a decision of administrative review under Section 139 to appeal to the TAC.

Section 142 of the Act states that notwithstanding a request for administrative review or appeal to the TAC, tax payable under an assessment shall remain due and payable, and recovered despite the request for review or appeal, unless the Commissioner-General grants an extension of time under Section 151.

The statutory framework explained above was part of the bill which was challenged for its constitutionality in **Inland Revenue Bill** [Decisions of the Supreme Court on Parliamentary Bills (2016-2017), Vol. XIII, 105]. However, the provisions permitted for recovery proceedings to be instituted notwithstanding a request for administrative review or appeal to the TAC, was not impugned. This is understandable as there is nothing unconstitutional in permitting it to be done as there were no penal consequences.

However, it is different where statutory provision is made permitting institution of proceedings (which the State refers to as *recovery proceedings* whereas the Petitioners refer to as *criminal proceedings*) which can result in the taxpayer being sentenced to imprisonment notwithstanding the pending of a request for administrative review or appeal to the TAC. That is arbitrary and irrational and therefore contrary to Article 12(1) of the Constitution and may only be passed by the special majority required under the provisions of paragraph (2) of Article 84.

The inconsistency will cease if the following amendments are made:

1. Clause 31(4) of the Bill to be amended by adding the following proviso to the proposed Section 163(4A)(a) of the Act:

   "Provided that no such certificate shall be submitted where a taxpayer has requested for an administrative review of the tax payable pursuant to Section 139 or appealed to the Tax Appeals Commission pursuant to Section 140(1) of the Act and such application is pending."

2. Clause 31(4) of the Bill to be amended by the deletion of the words "by reasons only of the fact that an appeal is pending against the assessment in respect of which the tax in default is charged" in the proposed Section 163(4C) of the Act.

Clause 34 of the Bill

Clause 34 introduces a new Chapter XVIIA titled *Prosecution of Offences* and contains a new Section 185A which stipulates that if compliance is not forthcoming in terms of Section 86, 93, 102, 123 and 126 of the Act, the Commissioner General shall serve a notice on such person informing of the institution of legal proceedings against such person within 30 days of serving the notice.

The Petitioners submit that by these provisions' "minor" failures of a taxpayer such as failure to furnish a return etc. are sought to be criminalized which is obnoxious and disproportionate and inconsistent with Articles 3, 4(c), 4(d), 12 and 14(1)(g) of the Constitution. We do not see any inconsistency. Criminal proceedings can be instituted only subsequent to a notice being issued and time granted for compliance.

Summary of the Determination

The Bill can be passed by a simple majority of Parliament EXCEPT Clause 31(4) of the Bill.

Clause 31(4) of the Bill is arbitrary and irrational and therefore contrary to Article 12(1) of the Constitution and may only be passed by the special majority required under the provisions of paragraph (2) of Article 84.

This inconsistency will cease if the following amendments are made:

1. By adding the following proviso to the proposed Section 163(4A)(a) of the Act: "Provided that no such certificate shall be submitted where a taxpayer has requested for an administrative review of the tax payable pursuant to Section 139 or appealed to the Tax Appeals Commission pursuant to Section 140(1) of the Act and such application is pending."
2. By the deletion of the words "by reasons only of the fact that an appeal is pending against the assessment in respect of which the tax in default is charged" in the proposed Section 163(4C) of the Act.

Interpretation of the Act subsequent to Proposed Changes

In order to add clarity to the proposed amendments, we set out below the legal position after these amendments are made:

1. Where a taxpayer has made a self-assessment in terms of which he admits his tax liability, this admitted tax liability must be paid by him in accordance with the provisions of the Act. The failure to do so allows the Commissioner-General to recover the tax in default through any measures specified in the Act including the amendments sought to be made by the Bill.
2. Where a taxpayer has made a self-assessment in terms of which he admits his tax liability, but the return of income is rejected and an assessment is made by the Commissioner-General imposing a higher tax liability, the taxpayer must pay the tax liability declared in his self-assessment, notwithstanding that he has requested for administrative review or appealed to the TAC against the assessment, and such review or appeal is pending. The

failure to do so allows the Commissioner-General to recover the tax in default through any measures specified in the Act including the amendments sought to be made by the Bill.

3. Where a taxpayer has requested for administrative review or appealed to the TAC against an assessment, and such review or appeal is pending, the tax payable under such assessment shall not be sought to be recovered by submitting a certificate to the relevant Magistrates Court as envisaged by the Bill.
4. Where a Stated Case is pending before the Court of Appeal and where the Court, acting in terms of Section 11A(7) of the Tax Appeals Commission Act No. 23 of 2011, makes an interim determination as regards the amount of tax recoverable by the Commissioner General in respect of the amount of tax in dispute, such amount of tax may be recovered through any of the procedures for recovery of tax specified in Chapter XVI of the Act including the new procedures sought to be introduced by the Bill including by filing a certificate before the relevant Magistrates Court.

We place on record our deep appreciation of the assistance given by all learned President's Counsel and Counsel for the Petitioners and the learned DSG.

Janak De Silva

Judge of the Supreme Court

Arjuna Obeyesekere

Judge of the Supreme Court

Sampath K. B. Wijeratne

Judge of the Supreme Court