

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA.**

CA (TAX) 14/2013

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

Appellant

Vs.

Janashakthi General Insurance Co.Ltd
46, Mutiah Road, Colombo 2.

Respondent.

Before : K.T. Chitrasiri J.
: L.T.B. Dehideniya J.

Counsel : Anusha Samaranayake S.S.C. for the Appellant.
: Dr. Shivaji Felix for the Respondent.

Argued on : 14.07.2015

Written Submissions of the Respondent on : 16.07.2015

Written Submissions of the Appellant on : 14.08.2015

Decided on : 30.09.2015

L.T.B. Dehideniya J.

This is a case stated by the Tax Appeal Commission (TAC) seeking the opinion of the Court of Appeal on questions of law stated therein. At the hearing, the Respondent raised a preliminary objection on maintainability of this action. The preliminary objection is;

“It is the Respondent’s objection that no lawfully valid transmission of the stated case within the statutorily contemplated time period has been effected by the Appellant as required by Section 11A(2) of the Tax appeal Commission Act No.23 of 2011 as amended. It is the Respond’s further objection that it has not received a lawfully valid notice as mandated by Section 11 A(4) of the Tax Appeal Commission Act No.23 of 2011(as amended)”

Basically the objection is on the caption. In the motion filed by the Appellant with the case stated dated 4th June 2013, Janashakthi General Insurance Co. Ltd is referred to as the Appellant and the Commissioner General of Inland Revenue Department is referred to as the Respondent. The TAC has stated case on the request of the Commissioner General of Inland Revenue. Therefore, the Appellant of this application is the Commissioner General of Inland Revenue. Janashakthi General Insurance Co. Ltd should be the Respondent. (Hereinafter in this judgment, the Commissioner General of Inland Revenue is referred to as the Appellant and the Janashakthi General Insurance Co. Ltd is referred to as the Respondent.) Respondent’s argument that there is no proper transmission of the case stated to this Court is on this basis.

The section 11A of the Tax Appeal Commission Act (as amended) refers to the transmission of the case stated to the Court of Appeal. The section 11A (1) of the Act says how to initiate an appeal. It reads;

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

In the present case, the Commissioner General has made the application to state a case for the opinion of Court of Appeal on 22.03.2013. The determination was on 26. 02.2013. Therefore, the application was made in time.

Sub section 1 and 2 of section 11A of the Act specifies the procedure of transmitting a case stated to the Court of Appeal. Sub section 2 reads thus;

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

The first part of this section has to be complied by the TAC. That is to say that *“set out the facts, the decision of the Commission, and the amount of the tax in dispute where such amount exceeds five thousand*

rupees". The Appellant has no control over the TAC. Therefore the Appellant is not liable for any error, omission or mistake in the case stated. The Appellant has to comply only the second part of it. That is to say that "*shall transmit such case, when stated and signed to the Court of Appeal, within fourteen days after receiving the same*".

In this case the TAC has sent the case stated to the Commissioner General on 27.05.2013 and he has transmitted the case stated to this Court within the stipulated fourteen days period. The letter addressed to the Registrar of this Court by the Commissioner General of Inland Revenue is dated 04.06.2013. The motion filed by the Commissioner General of Inland Revenue is also dated 04.06.2013. In this case the Appellant has fulfilled the requirement of presenting the case stated within fourteen days.

The section does not specify the way of transmission of the case stated. Whether it is with a petition alone or with a petition and affidavit or with a motion is not specified in the Act. Even in the Inland Revenue Act it is silent. Section 170 sub sections 1 and 2 of the Inland Revenue Act NO.10 of 2006 are almost the same as the sub sections 1 and 2 of Tax Appeal Commission Act as amended.

Presenting the case stated with a motion is the procedure adopted in this Court. Acting under the said procedure, the Commissioner General has presented the case stated to this Court with a motion. As I pointed out earlier, the parties were named incorrectly. The Appellant was named as Respondent and the Respondent was named as Appellant. Because of this mistake the Respondent argues that there is no proper transmission of the case stated. The Act does not require a motion to be filed with the case stated. It is only a rule of practice. Therefore, the mistake in the motion does not invalidate the transmission of the case stated. What is necessary

is to transmit the case stated within the time period stipulated by law. In this case, as I have pointed out earlier, the case stated had been transmitted to this Court within fourteen days after receiving the same.

The Appellant is obliged to issue notice to the Respondent when the case stated is transmitted to the Court of Appeal. Section 11A (4) provides for issuing notice. It reads thus;

(4) At or before the time when he transmits the stated case to the Court of Appeal, the party requiring it shall send to the other party, a notice in writing informing him that a case has been stated on his application and shall supply him with a copy of the stated case.

The next objection raised by the Respondent is that the notice sent to him is also bad in law and invalid because of the incorrect caption. The Counsel of the Appellant brought to the notice of Court in his written submissions that the Respondent has failed to tender a copy of the notice he received in support of the argument. This argument cannot stand unless the notice is tendered to Court. I agree with the Counsel. The Respondent did not give an opportunity for the Court to inspect the notice for the reasons best known to him. Therefore the argument of the Respondent should fail.

Even if the caption of the notice is incorrect, the Respondent cannot be heard to say that he was misled. He does not say that he did not receive the case stated. It is very clearly stated that the Commissioner General of Inland Revenue is the appellant and Janashakthi General Insurance Co. Ltd. is the Respondent. (Paragraph 01 of the case stated) The Respondent knew that he did not appeal against the determination. After receiving notice, he came to Court and filed a proxy on his behalf. The purpose of issuing a notice is to inform him that certain questions of

law on the determination of the TAC have been raised before the Court of Appeal. In the case before us, the Respondent was served with a copy of the case stated. The Registrar of this Court has served a notice indicating the next date of the case. Under these circumstances was not misled.

W. M. Mendis & Co. v. Excise Commissioner [1999]1 Sri L R 351 is a case where the name of a party was incorrectly entered in the caption and an amendment was sought. De Silva J. allowing the amendment, cited with approval, the judgment of the Chief Justice Sharvananda in **Mackinnon Mackenzie & Co., Ltd. v. Grindlays Bank Ltd.** ([1986] 2 Sri L R 272) where it had been held that, "*Provisions of the amendment of pleadings are intended for promoting the ends of justice and not for defeating them. The object of rules, of procedure is to decide the rights of the parties and not to punish them for their mistakes or shortcomings. A party cannot be refused just relief merely because of some mistake negligence or inadvertence*". (Emphasis added)

In the case of **Martin Silva and Another v. Central Engineering Consultancy Bureau and Another** ([2003] 2 Sri L R 228) Weerasuriya, J. (P/CA) referring to Brindra said that the rules of procedure are tolls forged to achieve justice and are not hurdles to obstruct the pathway to justice.

When transmitting the case stated to the Court of Appeal, tendering a motion together with it is rule of procedure. The obvious mistake in the caption has not prejudiced or misled the Respondent. The mistake in the caption does not invalidate the transmission of the case stated to this Court or the notice issued to the Respondent.

The preliminary objection, raised by the Respondent, is overruled.

At this stage I wish to bring to the notice that the material that has to be included in to the case stated as per section 11 A (2) of the Tax Appeal Commission Act. The law requires that the TAC has to include certain data in the case stated. The section says that, "*The case stated by the Commission shall set out the facts, the decision of the Commission, and the amount of the tax in dispute where such amount exceeds five thousand rupees*". The TAC has set out the facts and the decision of the Commission in the case stated, but has not stated the amount of tax in dispute. Under sub section 5 of section 11A of the Act, the Court has the power to remit the case stated to the TAC for necessary amendments. The section reads thus;

(5) Any two or more Judges of the Court of Appeal may cause a stated case to be sent back to the Commission for amendment, and the Commission shall amend the case accordingly

I direct the Registrar of this Court to send the case back to the TAC to do the needful.

Judge of the Court of Appeal

K.T.Chitrasiri J.

I agree.

Judge of the Court of Appeal