

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

C.A.Tax No.19/2013

ACL Metals and Alloys (Pvt) Ltd,
60, Rodney Street,
Colombo 08.

Appellant

Vs.

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

Respondent

C.A.Tax No.19/2013

BEFORE : K.T.CHITRASIRI, J. &
L.T.B. DEHIDENIYA, J.

COUNSEL : Nihal Fernando P.C. with Johann Corera for the
Appellant.
Arjuna Obeysekera DSG with Nayomi Kahavita
SC for the respondent.

DATE : 02nd October, 2015.

K. T. CHITRASIRI, J.

This Court made order to have this matter referred back to the Tax Appeals Commission in order to mention the amount of tax in dispute as required by Section 11(A)(2) of the Tax Appeals Commission(Amendment) Act No. 20 of 2013. Thereafter, by the letter dated 28.08.2015, the Secretary to the Tax Appeals Commission has stated that the tax in dispute in this case is Rs.30,839,506/=. At this stage learned Counsel for the appellant makes his submissions in respect of the said letter sent by the Secretary to the Tax appeals Commission.

Learned State Counsel submits that she associates with the submissions made by learned Counsel for the appellant.

Accordingly, both Counsel move that this matter be referred back to the Tax Appeals Commission requesting the said Commission to mention the amount of tax that is in dispute as required by

Section 11A(2) of the Tax Appeals Commission Act and to disregard the letter sent by the Secretary to the Tax Appeals Commission.

Order

We have carefully considered the submission made by the learned Counsel for the appellant.

Section 11(A)(2) of the Tax Appeals Commission (Amendment) Act No. 20 of 2013 mandates the Tax Appeals Commission to set out the facts, the decision and the amount of the tax in dispute where such amount exceed Rs.5000/=...

In Section 2 of the Tax Appeals Commission Act No.23 of 2011 stipulates that there shall be a commission known as the Tax Appeals Commission which shall charge with the responsibility of hearing all appeals in respect of matters relating to imposition of any tax, levy or duty. Therefore, it is mandatory on the Tax Appeals Commission to comply with the aforesaid requirement referred to in Section 11(A)(2) of the Act No.20 of 2013.

This proposition is supported by the decision in ***R.M. Fernando Vs Commissioner of Income Tax (Volume I Ceylon Tax Cases page 571)***. In that decision, it was held thus:

“the responsibility for stating a case is vested by the statute in the Board of Review and although the statute provides for the appointment of a clerk and a legal adviser to the Board it cannot delegate its functions to either of them. Though in the

performance of its statutory duty it may make use of its ministerial officers the ultimate responsibility for the due and proper performance of its duty rests with the Board and the Board alone. If it is the practice to leave the preparation of the case entirely to one of its ministerial officers and for the Board merely to sign the case as stated by such officer that practice is not warranted by law and must cease forthwith”.

In view of the position of law referred to above, this Court is not inclined to act upon the matters referred to in the letter dated 28.08.2015 since it is a letter signed by the Secretary, Tax Appeals Commission and not by the member of the Commission. Nothing is found therein to show that it is a part of the case stated prepared by the Tax Appeals Commission. Therefore, we direct the Registrar of this Court to send a copy of this order enabling the Tax Appeals Commission to comply with Section 11(A)(2) of the Act No. 20 of 2013. This Court will not act upon the contents in the letter dated 28.08.2015 signed by the Secretary, Tax Appeals Commission.

Mention on 18.01.2016 to fix the matter for argument.

JUDGE OF THE COURT OF APPEAL

L.T.B. DEHIDENIYA, J.

I agree.

JUDGE OF THE COURT OF APPEAL

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