

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

In the matter of an Appeal from an Order dated 21.10.1993 made by the Provincial High Court of the Western province holden in Colombo exercising its jurisdiction under Article 154(3) (b) of the constitution of the Democratic Socialist Republic of Sri Lanka.

A.T.B.N. Keerthiratne,
Revenue Inspector,
Colombo Municipal Council,
Town Hall,
Colombo 07.

CA (PHC) 16/2000

COMPLAINANT

Vs.

Crest Gems Limited,
No: 142, Kollupitiya Road,
Colombo 03.

DEFAULTER

AND

Crest Gems Limited,
No: 142, Kollupitiya Road,
Colombo 03.

DEFAULTER – PETITIONER

Vs.

1. Colombo Municipal Council,
Town Hall,
Colombo 07.
2. A.T.B.N. Keerthiratne,
Revenue Inspector,
Colombo Municipal Council,
Town Hall,
Colombo 07.

**COMPLAINANT –
RESPONDENT**

AND PRESENTLY BETWEEN

Crest Gems Limited,
No: 142, Kollupitiya Road,
Colombo 03.

**DEFAULTER – PETITIONER –
APPELLANT**

Vs.

1. Colombo Municipal Council,
Town Hall,
Colombo 07.
2. N.P.G.Wimalasena,
Revenue Inspector,
Colombo Municipal Council,
Colombo 07.
3. A.T.B.N. Keerthiratne,
Revenue Inspector,
Colombo Municipal Council,
Town Hall,
Colombo 07.

**COMPLAINANT – RESPONDENT –
RESPONDENT**

Before : W.M.M.Malinie Gunarathne, J
: P.R.Walgama, J

Counsel : Shantha Perera instructed by Wijesinghe Associates for
the Defaulter – Petitioner – Appellant.
: L. Samarasooriya with Jayasooriya for the
Complainant Respondent.

Argued on : 17.07.2015

Decided on: 14.01.2016

CASE- NO- CA-(PHC)-16/2000 - JUDGMENT -14.01.2016

P.R.Walgama, J

The instant appeal is directed against the order of the Learned Magistrate, dated 24.11.1998, and the order of the Learned High Court Judge dated 21.10.1999.

The facts of the case need mention in brief to appreciate the issue are as follows;

The Complainant – Respondent – Respondent (in short the Respondent) by document marked P1, has informed the Defaulter - Petitioner – Appellant (in short the Appellant) to pay a sum of Rs. 5000/ to the Respondent(Colombo Municipal Council) as the tax payable for the year 1995 for the trading activities carrying on by the Appellant, in terms of Section 247 B of the Municipal Council Ordinance.

As the Appellant defaulted the payment of the said amount as tax the Respondent instituted action in the Magistrate Court Maligakanda, in case No. 57020, in terms of Section 247 of the said Municipal Council Ordinance.

Pursuant to the afore said the Magistrate issued summons to the accused (appellant) to appear and show cause as to why he should not pay the said amount to the Respondent.

At the very inception of the proceedings the Appellant raised a preliminary issue as to the maintainability of the Respondent's action as the same was barred by prescription.

In that it is said that Respondent has not made the alleged complaint within six months after the date that the payment was due, and that it is obnoxious to Section 308 of the Municipal Council Ordinance. Further it is also alleged by the Appellant that in terms of Section 247 B the Respondent can levy an annual tax only on an industry, and not on a trade or business of maintaining a showroom.

The Learned Magistrate has dealt with the issues as stated above in the following manner, to wit that the question of prescription has been already decided in the case of NAOTTUNNA .VS. REVENUE OFFICER to the effect that the said Section 308 has no bearing in a matter of this nature. Hence the Learned

Magistrate has over ruled the objection raised by the Appellant.

The gravamen of the Appellant is that he is not carrying on a trade or karmantaya in the said premises which comes within the limits of Colombo Municipal Council, but he is carrying on a business of selling jewellery at the afore said business premises.

The Learned Magistrate has approached the contentious issue, by having recourse to the judicial pronouncements in similar matters. The cumulative effect of those decisions were that the Magistrate is not empowered to look in to the propriety of the Claimant's application but to recover the amount stated therein as a fine and credit the money to the Respondent's account. Therefore the Learned Magistrate has held that he is bound by the said judgments and had dismissed the application of the Respondent- Petitioner-Appellant on merits.

Being aggrieved by the said order the Petitioner-Appellant went in revision to the High Court to have the said order set aside.

The Learned High Court Judge in dealing with the pivotal issue has adverted to the Memorandum of Association of Crest Gems Ltd, (Petitioner) and has held that the Respondent -Petitioner is engaged in the business as manufacture and exporters of articles

of jewellery. Manufacturing of articles of jewellery falls within the terms 'Karmanthaya'. In the above setting it was held that the manufacturing of articles of jewellery falls within the term of 'karmanthaya.'

Being aggrieved by the said order the Petitioner-Appellant has appealed to this Court to have the said orders of the Learned Magistrate and the Learned High Court Judge set aside /vacate.

It is the contention of the Appellant that as per Section 247 B of the Municipal Council Ordinance can only impose a tax in respect of an 'industry' and not on a 'trade'

But it is contended by the Respondent that the interpretation of 'karmanthaya', includes mining, agriculture, trade, (velandama) etc.

It is intensely relevant to note that the interpretation of the above Section vary in the English version.

For better appreciation of the above Section 247 B is reproduce here under;

- (1) A Municipal Council may impose and levy a tax on any trade carried on within the administrative limits of that Council,
- (2)The tax levied under subsection (1) shall be annual tax determined by the Council according

to the annual value of the premises on which that trade is carried on

It is asserted by the Appellant that the Respondent can impose a tax only in respect of a 'Karmanthaya' as stated in the Sinhala text. It is pertinent to note that the Municipal Council Ordinance does not give an interpretation to the word 'Karmanthaya'. Therefore the Respondent adverted to the dictionary meaning of the said word 'Karmanthaya'

It is contended by the Respondent that in the case cited by the Appellant to vit. CREST GEMS LIMITED .VS. THE COLOMBO MUNICIPAL COUNCIL- 2003 1 SLR-370- Her Ladyship has not considered the dictionary meaning of Karmanthaya, and hence this Court is not bound to follow the same. Moreover it is stated that the judgments marked as X2,X4,X5 cannot be given any weight as there is no dicta for this Court to follow.

Therefore the Respondent has adverted Court to the dictionary meaning of 'INDUSTRY'. Industry means Velandama, viyaparaya, Karmanthaya. Hence it is crystal clear the word TRADE means KARMANTHAYA, which also means velandama (business) or sale.

In the said assertion it is the categorical position of the Respondent that the word Karmanthaya is synonymous with trade, business.

It is common ground that the Appellant is dealing in manufacture and export of gems. It is for the said purpose the Respondent-Appellant is carrying on the said business in the said premises within the limits of Colombo Municipality limits.

Therefore in the above exposition of facts and law relating to the said issue this Court is of the view that same has rendered this appeal infructuous.

Hence in the wake of the determination made herein above, we are of the unhesitant opinion that the challenge laid in the instant appeal lacks in merits, and thus should stand dismissed.

Appeal is dismissed subject to a cost of Rs. 10,000/.

JUDGE OF THE COURT OF APPEAL

W.M.M.Malinie Gunarathne, J

I agree,

JUDGE OF THE COURT OF APPEAL