IN THE COURT OF APPEAL OF THE

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of a case stated for the opinion of the Court of Appeal Under section 11 A of the Tax Appeals Commission Act No. 23 of 2011 as amended by Act No. 20 of 2013.

C A (Tax) Appeal No. 10 / 2013

Commissioner General

of Inland Revenue.

Department of Inland Revenue,

Sir Chittampalam A. Gardiner Mawatha,

Colombo 02.

APPELLANT

-Vs-

Janashakthi Insurance Co Ltd.

No. 47,

Muttaih Road,

Colombo 02.

RESPONDENT

Before: P. Padman Surasena J (P C/A)

K K Wickremasinghe J

Counsel: Dilrukshi Dias Wickremasinghe PC SASG with Chaya Sri Nammuni SC for the Appellant.

Dr. Shivaji Felix for the Respondent.

Argued on: 2017-09-29

Decided on: 2018 - 06 - 08

JUDGMENT

P Padman Surasena J

1. BACKGROUND

When the Value Added Tax (hereinafter sometimes referred to as 'VAT') returns were submitted by the Respondent for certain taxable periods[1], those returns were rejected by the Assessor. The Assessor had then issued a new VAT assessment in terms of section 28 of the Value Added Tax Act No. 14 of 2002 as amended (hereinafter sometimes referred to as the 'VAT Act').

The Respondent had then appealed against the said decision of the Assessor, to the Commissioner General of Inland Revenue (hereinafter sometimes referred to as 'Commissioner General'). The Commissioner General, in the

[1] Periods ending on 2004-03-31 and 2005-02-28.

said appeal, by his determination dated 2008-06-16, confirmed the decision of the Assessor.

The Respondent being dissatisfied with the said determination by the Commissioner General, thereafter appealed to the Board of Review[2]. As the said appeal was not concluded by the Board of Review, it was transferred to the Tax Appeals Commission (hereinafter sometimes referred to as 'Commission') by virtue of section 10 of the Tax Appeals Commission Act No. 23 of 2011 as amended.

In the said appeal before the Tax Appeals Commission, the Respondent had raised two preliminary objections.

First Objection

The first preliminary objection raised by the Respondent is that the relevant assessment is not valid as it has not been signed and/or do not bear the name and the designation of the person making the assessment.

Second Objection.

[2] By appeal dated 2008-08-12.

The second preliminary objection was that the said appeal to the Tax Appeals Commission is time barred.

The Tax Appeals Commission had upheld the first of the above two preliminary objections raised by the Respondent and overruled the second. The said determination by the Tax Appeals Commission has been annexed to the case stated as **X 3**.

Being dissatisfied with the determination dated 2013-02-26 by the Tax Appeals Commission; the Commissioner General of Inland Revenue has taken steps to initiate the appeal proceedings in this court.

2. QUESTIONS OF LAW

The questions of law formulated for the opinion of this Court by the Appellant who is the Commissioner General of Inland Revenue in terms of section 11 A of the Tax Appeals Commission Act as amended by Act No. 20 of 2013 and Act No. 23 of 2011, are as follows.

1. Whether Tax Appeals Commission has the jurisdiction to annul an Assessment due to service of unsigned notice of assessment, even all

other mandatory requirements have been fulfilled in order to make the assessment.

2. Whether duly served notice of Assessment with omission of signature affect the validity of assessment.
3. Whether duly served notice of Assessment, which was printed and issued by the computer, without signature of issuing officer, is an error covered by section 61 of Value Added Tax Act, No 14 of 2002.
4. Whether Assessee can challenge the validity of assessment at the hearing of Appeal at the Appeals Commission.
5. Whether Assessee can raise an issue as a preliminary objection at the hearing of Appeal at the Appeals Commission, which has not been raised at the time of Appeal.
6. Whether issuing a notice of assessment by an Assessor, which is generated through computer under the provision of section 28 of Value Added Tax Act, No. 14 of 2002, is exercising of discretionary power or ministerial act.
7. Whether the name of the Commissioner General, Deputy Commissioner or Assessor duly printed or signed on the assessment

notice under section 60 of Value Added Tax Act No. 14 of 2002 is a mandatory requirement.

3. FINDING ANSWERS

Since this Court has been called upon to find answers to the above questions of law, it would be a good idea to reproduce at the outset, for convenience, the provision of law contained in section 60 (1) of the VAT Act. It is as follows:

Sections 60 (1)

" *Every notice to be given by the Commissioner General, a Deputy Commissioner or an Assessor under this Act shall bear the name of the Commissioner General or Deputy Commissioner or Assessor, as the case may be, and every such notice shall be valid if the name of the Commissioner General, Deputy Commissioner, or Assessor is duly printed or signed thereon.*"

It is common ground that the notice of assessment has neither been signed by the person making the assessment nor bears duly printed name of the person making it.

The tax appeals commission, for the reasons set out in its determination has held:

i. that the compliance of section 60 (1) is a mandatory requirement,
ii. that the noncompliance of that section gives rise to a patent lack of jurisdiction,
iii. that such objection to a patent lack of jurisdiction could be raised at any stage of the proceedings,
iv. that the question of estoppel does not arise at such a situation.

Thus, there are at least two fundamental questions waiting in the forefront starving for answers from this Court. They are the two following questions:

i. Is compliance of section 60 (1) mandatory?
ii. Does the noncompliance of section 60 (1) give rise to a situation of patent lack of jurisdiction?

It would be judicious at this stage to dissect section 60(1) broadly into two parts, to help this Court understand the true nature of it.

<u>First part</u>

" Every notice to be given by the Commissioner General, a Deputy Commissioner or an Assessor under this Act shall bear the name of the Commissioner General or Deputy Commissioner or the Assessor, as the case may be,

and

Second part

every such notice shall be valid if the name of the Commissioner General Deputy Commissioner or Assessor is duly printed or signed thereon."

It is to be noted that the first part of the section mentioned above, has required the notices (referred to therein) to bear the name of the Commissioner General or Deputy Commissioner or the Assessor. The word used by the legislature in the section is "shall". Thus, the first observation this Court makes from the contents of the first part is that the legislature has required that the name and the signature of the relevant official be included in the notice. It is therefore clear that the relevant official is not called upon to exercise any discretion to decide whether he or she should insert the name and signature. This is because it is the procedure established by law and

therefore the official concerned is required to follow the said instructions without having to exercise any individual judgment.

Therefore, the actions by the relevant official under the first part of the section are ministerial acts rather than acts involving the exercise of any discretion.

The second part of the above section categorically state that such notice would derive its validity from the presence of the duly printed name of the Commissioner General, Deputy Commissioner or Assessor or their signature thereon. This is indicated from the phrase ".... *and every such notice shall be valid if ...* ". In the second part also the word used is "shall". Since the second part of the section stipulates the requirement for the validity of such notice, the question this Court has to consider here, is the question whether the non-compliance of the said stipulated requirement would be fatal to the validity of such notice.

It would be appropriate for this Court at this juncture, to refer to the judgment[3] of the Supreme Court in the case of Elgitread Lanka (Private)

[3] Cited in the written submission by the Appellant.

Limited Vs Bino Tyres (Private) Limited[4] has taken the view that in ascertaining the legislative intent, it is permissible to look at the purpose of the legislation in which the particular provision sought to be interpreted occurs. In that case, the Supreme Court had to decide whether the word 'may' in section 4 of the Arbitration Act, makes it mandatory for any dispute which the parties have agreed to refer for arbitration, has necessarily to be determined through arbitration, if the matter is not contrary to public policy and is capable of being resolved by arbitration. In the endeavor of this Court to come to the correct conclusion regarding the interpretation of the relevant provisions in the VAT Act in the instant case, it would be helpful to reproduce here at this stage, the paragraph[5] quoted in that judgment by His Lordship Justice Marsoof. It is reproduced below.

".... The use of expression "may" or "shall" in a statute is not decisive, and other relevant provisions that can throw light have to be looked into in order to find out whether the character of the provision is mandatory or directory. In such a case legislative intent has to be determined. The words "may", "shall", "must" and the like, as employed in statutes, will in cases of doubt,

[4] S C (Appeal) No. 106/08, decided on 2010-10-27.
[5] N S Bindra, Interpretation of Statutes, (10th Edition, Butterworths, 2007) at page 999.

require examination in their particular context in order to ascertain their real meaning. .... "

This Court finds that section 61 of the VAT Act has provided situations in which such notices shall not be quashed or deemed invalid on account of certain defects in them.

Thus, it would be prudent for this Court to consider next, the question whether the provision in section 61 of the Act applies to cure any noncompliance of the provisions in section 60 (1) of the VAT Act on the part of the Respondents. Reproduction of section 61 of the Act would be necessary to consider that question.

Section 61

" No notice, assessment, certificate or other proceeding purporting to be in accordance with the provisions of this Act shall be quashed, or deemed to be void or voidable, for want of form, or be affected by reason of a mistake, defect or omission therein, if the same is in substance and effect in conformity with, or according to, the intent and meaning of this Act, and if the person assessed or intended to be assessed or affected thereby is designated therein according to common intent and understanding."

To enable this Court to understand the extent of the applicability of the above provision, it would be prudent to present the above section in three separate parts in the following manner.

First Part

" *No notice, assessment, certificate or other proceeding purporting to be in accordance with the provisions of this Act shall be quashed, or deemed to be void or voidable, ...* "

Thus, the first part stipulates that no notice etc. shall be declared invalid under certain circumstances. The said circumstances are set out in the second part. It is as follows:

Second Part

i. for want of form, or

ii. be affected by reason of a mistake,

iii. defect or omission therein,

However, for these circumstances (set out in the second part) to qualify for the application along with the legal provision stipulated in the first part, such

circumstances must have fulfilled the conditions described in the third part which is mentioned below.

Third Part.

a) if the same is in substance and effect in conformity with, or according to, the intent and meaning of this Act, and

b) if the person assessed or intended to be assessed or affected thereby is designated therein according to common intent and understanding.

With the dissection of section 61 into three parts in place, this Court would have to consider next whether the impugned notices of assessment in the instant case qualifies for protection from being invalidated by virtue of the said section. It is to that question that this Court will now turn.

The words 'notice' and 'assessment' are found in the list of items included in the first part of the section. The impugned documents in the instant case are two notices of assessment. Therefore, the first part encompasses both of the impugned documents of the instant case.

This Court has to consider next, the question whether the defects complained in the impugned documents of the instant case fall under the second part of section 61.

In the circumstances relevant to the case at hand, what is relevant to consider is the question whether the provision of law in section 60 (1) is a provision regarding the 'form' of the notice of assessment.

As has been described before in this judgment, this Court has already taken the view;

a. that the relevant official is not called upon to exercise any discretion to decide whether or not he or she should insert the name and signature on such notice of assessment and therefore the relevant official concerned is merely required to follow the said instructions provided in section 60 (1) without having to exercise any individual judgment,
b. that therefore, the actions by the relevant official under the first part of the section are ministerial acts rather than any act exercising any discretionary power.

Therefore, the compliance of requirements set out in the first part of section 60 (1) relate to the 'form' of such notice of assessment. Further, in the circumstances of this case, this Court is of the view that the non-compliance pertaining to this case, has occurred by reason of a mistake or by a mere

unintended omission on the part of the Appellant. Hence, it stands to reason that the second part of section 61 applies in its full force to the impugned notices of assessment in the instant case.

The last question to be considered by this Court is whether the impugned notices of assessment relevant to the instant case have fulfilled the conditions set out in the third part of section 61.

In doing so this Court has to consider whether the notices of assessment relevant to the instant case have fulfilled the conditions in limb (a) and limb (b) of the third part of section 61 as set out above.

There is no complaint by the Respondent that the Commissioner General has not complied with any other requirement of the Act in the instant case. The only error that is complained of, by the Respondent, is the absence of the name or the signature in the relevant assessment.

It is to be observed that the Respondent had not complained about the absence of the name or the signature when it had challenged the relevant notices of assessment at the previous occasions. It is in the course of the hearing in the Tax Appeals Commission that the Respondent had raised this issue for the first time. This shows that the Respondent has had no doubt

that the notices impugned in this case are notices of assessment issued according to the intent and meaning of the VAT Act.

The view taken by the Tax Appeals Commission is that the requirement of having the name duly printed or signed by the person authorized to issue the notice is a mandatory requirement because the identity of the person issuing the notice under section 60 (1) is material to the tax payer. It is on that basis that the Tax Appeals Commission has held that the complained defects in the notices impugned in the instant case would give rise to a situation where there is a patent lack of jurisdiction.

It is clear from the letter dated 30th December 2005 and the letter dated 16th January 2006 that the Assessor who assessed the return of the Respondent is Mr. A A Dayaratne. He has taken the responsibility for issuing the said notice. He has clearly mentioned in his letter dated 16th January 2006 that the impugned notices of assessment will be issued under TIN NO. 134003642, on the basis of the reasons given in the letter dated 30th December 2005 signed by him. Thus, the Respondent knew very well that the impugned notice of assessment, which has its identification, (TIN NO.

134003642) printed on its top left hand corner, is the notice of assessment referred to by Mr. A A Dayaratne in his previous letters dated 30th December 2005 and 16th January 2006. One must not lose sight of the fact that both the said letters are letters signed by Mr. A A Dayaratne who is the Assessor who had issued the impugned notices of assessment. In addition, both the said letters did have the name of the Assessor (A A Dayaratne) printed on them. Therefore, it is not a situation in which the Respondent became flabbergasted after seeing the said notice.

In these circumstances, this Court is able to conclude without any hesitation that the Respondent was fully aware that the notices impugned in this case, in their substance and effect, are notices of assessment issued in conformity with, or according to, the intent and meaning of the VAT Act.

Moreover, this Court notes that the Commissioner General has indeed defended the said notices of assessment in previous proceedings as notices issued under the authority and provisions of the VAT Act. At no time, the Respondent has even attempted to indicate that the relevant notices have been issued without any authority or their substance and effect are not in

conformity with the Act or they are not notices issued according to, the intent and meaning of the VAT Act.

This Court also notes that the said notices of assessment carry all the other details relevant to the assessment. They also sufficiently explain the circumstances under which the Respondent came to be assessed for payment of tax. There is no complaint by the Respondent that the said notices of assessment lack any details or explanations in connection with the act of taxing the Respondent.

Therefore, this Court takes the view that the said notices of assessment relevant to the instant case, in substance and effect have been issued in conformity with, or according to, the intent and meaning of this Act as required by limb (a) of third part of section 61 set out above. That brings this Court to the last lap of the instant exercise.

Thus, the last question to be considered by this Court is whether the impugned notices satisfy the condition in limb No. (b) of the third part above.

There is no complaint by the Respondent that the Appellant has not complied with limb (b) of third part of section 61. It is not disputed that the person

assessed or intended to be assessed has sufficiently been designated in the impugned notices of assessment.

Therefore, this Court concludes that the person assessed or intended to be assessed has sufficiently been designated as per the requirement in limb (b) above.

The facts and circumstances of the instant case, does not in any manner show this Court that the absence of the signature of the assessor or his duly printed name on the impugned notices has caused any prejudice to the Respondent.

In the above circumstances, this Court concludes that the impugned notices of assessment relevant to the instant case qualifies in terms of section 61, for the protection against invalidation on account of absence of the duly printed name of the Commissioner General, Deputy Commissioner, or Assessor or their signature thereon.

For the foregoing reasons, this Court holds that the impugned notices of assessment relevant to the instant case shall not be quashed, or deemed to be void or voidable due to the above defect.

This Court is mindful that the above reasoning is sufficient for this Court to dispose the matter at its hands. However, this Court in its wider obligation towards encouraging the smooth functioning of the legal system of this country thinks it should set out here, some relevant aspects about the application of some of the provisions of Electronic Transactions Act No. 19 of 2006 to the questions of law to be decided in the instant case. Therefore, this Court takes this opportunity to set out its views about this aspect of the case as well.

Objectives of Electronic Transactions Act No. 19 of 2006.

First and foremost, it would be a good starting point for this Court to refer to the objectives, which the Electronic Transactions Act No. 19 of 2006 has attempted to achieve. Section 2 thereof has listed out the said objectives. They are reproduced below;

(a) to facilitate domestic and international electronic commerce by eliminating legal barriers and establishing legal certainty;

(b) to encourage the use of reliable forms of electronic commerce;

(c) to facilitate electronic filing of documents with Government and to promote efficient delivery of Government services by means of reliable forms of electronic communications ; and

(d) to promote public confidence in the authenticity, integrity and reliability of data messages, electronic documents, electronic records or other communications.

These objectives indicate in no uncertain terms that the facilitating and promoting the use of more and more electronic records and documents,[6] is the definite target, the legislature aims to achieve by enacting the said Act. Thus, that is the clear intention of the legislature, which should be taken as a guide to interpret the provisions of this Act.

Application of Electronic Transactions Act No. 19 of 2006 to the instant case.

As has been pointed out by the learned counsel for the Respondent,[7] it is true that the said Act came into operation on 19th May 2006 and the notice of Assessment relevant to this case was issued on 26th April 2006. However, it is a fact that the provisions of this Act was in operation at the time the Tax

[6] This is manifest from the provisions in sections, 2 (c) and 2 (d) of Electronic Transactions Act No. 19 of 2006.
[7] In his written submissions, paragraphs 33, 34, 35 and 36.

Appeals Commission made the impugned determination, which is dated 2013-02-26.

This Court notes that section 3 of the Electronic Transactions Act has provided that 'no data message, electronic document, electronic record or other communication shall be denied legal recognition, effect, validity or enforceability on the ground that it is in electronic form.'

There cannot be any room to doubt that the above provision has been put in place by the legislature to facilitate the admission of the category of evidence referred to in the said section. Therefore, this Court has no hesitation to conclude that the provisions of law brought in by the Electronic Transactions Act No. 19 of 2006, are procedural law provisions relating to evidence rather than any substantive law provisions relating to the regime of fiscal legislation.

The general elementary principle adopted and applied for the interpretation of statutes is that the provisions of a statute must be taken to be prospective unless the retrospective effect is clearly indicated by the legislature. However, this principle is subject to exceptions. One such exception is that this principle does not apply to the procedural laws. The following passage

from 'Maxwell on The Interpretation of Statutes'[8] describes the above principle.

" .... The presumption against retrospective construction has no application to enactments, which affect only the procedure and practice of the Courts. No person has vested right in any course of procedure,[9] but only the right of prosecution or defence in the manner prescribed for the time being, by or for the court in which he sues, and if an Act of Parliament alters that mode of procedure, he can only proceed according to the altered mode.[10] "Alterations in the form of procedure are always retrospective, unless there is some good reason or other why they should not be." [11] .... "

Further, it would be relevant to reproduce the following paragraph from the same book,[12] which would show clearly that any provision pertaining to admissibility of evidence is regarded as a procedural provision.

" ... Section 50 of the Companies Act 1967 provides that an answer given by a person in reply to a question put to him during an inspection of the affairs

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[8] Twelfth Edition, 2006, Lexis Nexis Butterworths at page 222.

[9] Republic of Costa Rica V Erlanger (1874) 3 Ch. D. 62, per Mellish J.
[10] Wright V Hale (1860) 39 L J Ex 40, per Wilde B.
[11] Gardner V Lucas (1878) 3 App. Cas. 582, per Lord Blackburn at P. 603.
[12] Ibid, at page 223.

of a company under section 167 of the 1948 Companies Act may be used in evidence against him. This "is a procedural provision providing for the admissibility of evidence before a court when it comes to hear a case and deal with the evidence. It applies to future hearings after the Act of 1967 comes into operation; but it then applies even though the hearing be in respect of matters which arose before that Act was passed." [13] .... "

It is not difficult for this Court to find occasions where this rule has been repeatedly stated in the judgments of our Courts as well. Indeed, our Courts have been consistent in following this rule in the past. Cases of Appuhamy vs Brumpy[14](a case decided in the year 1913) and in re F J C De Mel and Thelma De Mel[15](a case decided in the year 1975) are good examples of such consistency.

Thus, this Court takes the view that the provisions of Electronic Transactions Act No. 19 of 2006 is relevant to the case in hand. Its' provisions are applicable to the instant case. This Court therefore rejects the argument

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[13] Selangor United Rubber Estates, Ltd. Vs Cradock (No. 2) [1968] 1 W L R 319, per Ungoed-Thomas J at p. 321.
[14] 16 NLR 59.
[15] 78 NLR 67

advanced by the learned counsel for the Respondent stating that the said provisions have no application to the instant case.

Moreover, the fact that there is a clear reference to TIN No. 134003642, and its presence, taken in the light of the other circumstances of the case convince this Court that the impugned document is a computer generated version of something that exists in electronic form.

Further, there is no basis for this Court to infer that the absence of the signature of the Assessor has caused any prejudice to the Respondent, as the Respondents knew very well that it was Mr. Dayaratne who had issued the said assessment.

This would be the most appropriate instance for this Court to refer to section 7 of Electronic Transactions Act No. 19 of 2006, which recognizes electronic signatures.

Section 7 of Electronic Transactions Act No. 19 of 2006

'Where any Act or enactment provides that any information or communication shall be authenticated by affixing the signature, or that any

document should be signed or bear the signature of any person, then, notwithstanding anything contained in such law, such requirement shall be deemed to be satisfied, if such information or matter is authenticated by means of an electronic signature.'

Section 26 of the Act has defined what an electronic signature is.

Section 26 of Electronic Transactions Act No. 19 of 2006

"electronic signature" means any letters, numbers, symbols, images, characters or any combination thereof in electronic form, applied to, incorporated in or logically associated with an electronic document, with the intention of authenticating and, or approving the same, in order to establish authenticity or integrity, or both.

As has already been referred to above, it is a fact that the impugned notices of assessment have been issued under TIN NO. 134003642, on the basis of the reasons given in the letter dated 30th December 2005. Mr. A A Dayaratne has clearly mentioned in his letter dated 16th January 2006 that the impugned notices of assessment will be issued under TIN NO. 134003642. Indeed the said TIN NO. 134003642 has been mentioned in the letter dated 30th December 2005, the letter dated 16th January 2006 and the impugned

notices of assessment. Thus, when considering these facts it would be in order for this Court to form the view that the said TIN NO. 134003642 has served as an electronic signature.

When that is the case, then, the requirement of the signature of the assessor or his duly printed name on the notice of assessment, shall in the instant case, be deemed to have been satisfied by virtue of section 7 of Electronic Transactions Act No. 19 of 2006.

4. OPINION

It would be the time now to turn to the questions of law formulated for the opinion of this Court by the Tax Appeals Commission. At the outset, this Court observes that the majority of the said questions have been formulated in such a way that any answer provided to them would have general application across the board, rather than answering the specific questions that have arisen in the instant case. Due to this reason, this Court is compelled to take steps to prevent such misapplication of such wide interpretations. In these circumstances, the preference of this Court would be to refrain from providing direct answers in the form of affirmatives and

negatives to the questions of law formulated by the Tax Appeals Commission.

This Court would formulate its opinions relating to the issues cropped up in the instant case having in its mind, the questions of law formulated by the Tax Appeals Commission. This Court is confident that such answers would sufficiently cater to the questions of law in the instant case.

In the background of the foregoing reasoning, this Court answers the questions of law formulated for the opinion of this Court as follows.

Opinion provided by this Court in respect of question No. 06

Issuing the impugned notices of assessment under TIN NO. 134003642 by the Assessor Mr. A A Dayaratne, which has been generated through a computer, is a ministerial act.

Opinion provided by this Court in respect of question No. 03.

Duly served notice of Assessment, which was printed and issued by the computer, without signature of issuing officer, could be an error covered by section 61 of Value Added Tax Act, No 14 of 2002. However, it depends on

the facts of each case. In the light of the facts of the instant case, it is an error covered by section 61 of the Act.

Opinion provided by this Court in respect of questions No. 01, 02, 04 & 05.

It depends on the facts of each case.

Opinion provided by this Court in respect of question No. 07.

Noncompliance of the requirement under section 60 of Value Added Tax Act No. 14 of 2002, for the name of the Commissioner General, Deputy Commissioner or Assessor to be duly printed on such notice or be signed thereon, in the circumstances of this case cannot be held to be fatal to the validity of the said notices of assessment both in terms of the provision of section 61 of the Act and also in terms of provisions of the Electronic Transactions Act No. 19 of 2006.

Further, this Court is of the opinion that the question whether non-compliance of section 60 (1) is fatal to the validity of the notice of assessment would depend on the facts of each case.

Therefore, it is the view of this Court that any mere noncompliance of that section cannot by itself give rise to a patent lack of jurisdiction as has been

erroneously decided by the Tax Appeals Commission. It is the view of this Court that the question whether such non-compliance gives rise to a patent lack of jurisdiction or not, would depend on the other circumstances as well.

For the foregoing reasons, it is the considered view of this court that the Tax Appeals Commission has erred when it decided to annul the notices of assessment relevant to this case on the basis it had set out in its determination.

This Court directs that this case be remitted to the Tax Appeals Commission with the above opinions of this Court.

PRESIDENT OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL