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

In the matter of a Case Stated under Reference No. TAC/IT/026/2015 by the Tax Appeals Commission under Section 170 of the Inland Revenue Act No. 10 of 2006 (as amended) read together with Section 11A of the Tax Appeals Commission Act No. 23 of 2011 (as amended).

Richard Pieris Rubber Compounds Ltd.
No. 310, High Level Road,
Nawinna, Maharagama.

APPELLANT

CA No. TAX – 0015-17
TAC/VAT/026/2015

Vs.

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

RESPONDENT

BEFORE : Dr. Ruwan Fernando J. &
M. Sampath K. B. Wijeratne J.

COUNSEL : F.N. Goonewardena with Savini Tissera for the Appellant.
Manohara Jayasinghe, SSC for the Respondent.

WRITTEN SUBMISSIONS: 05.09.2018 (by the Appellant)
24.09.2018 (by the Respondent)

ARGUED ON : 24.02.2021

DECIDED ON : 01.04.2021

M. Sampath K. B. Wijeratne J.

Introduction

The Appellant is a limited liability company incorporated in Sri Lanka whose principal activity is the import and sale of chemicals.

In the ordinary course of its business, the Appellant being a company registered in terms of the Value Added Tax Act No. 14 of 2002 (as amended) [hereinafter called and referred to as the 'VAT Act'] sells chemicals to related companies. These transactions are carried out between two registered persons, according to the VAT law.

Under the terms of the VAT Act, the Appellant submitted its VAT returns for the period between April 2010 and March 2012. By letter dated 5th July 2013, the Assessor intimated to the Appellant that in terms of Section 29 of the VAT Act, additional assessments would be issued on the basis that the sales made by the Appellant to related parties were at a price less than the market price.

Thereafter, on the 29th August 2013, the Commissioner General of Inland Revenue (hereinafter called and referred to as the 'CGIR') issued

assessments for the period of April 2010 to March 2012, which were said to have been received by the Appellant on the 5th September 2013.

The Appellant appealed to the CGIR against the said Assessments on the 30th September 2013 (*vide* page 44 of the appeal brief). On appeal, the Commissioner, Audit - VAT Audit branch, made a determination on the 8th October 2015 (*vide* page 01 of the appeal brief). According to the Appellant, the reasons for the decision were communicated to the Appellant on December 14, 2015, at the request of the Appellant. The Commissioner has determined that the assessments for the taxable periods of April 2010 and June 2010 are prescribed and the rest of the assessments are valid in law.

The Appellant appealed that decision to the Tax Appeal Commission (hereinafter called and referred to as the "TAC").

The TAC dismissed the appeal and confirmed the determination of the Commissioner by its determination made on the 16th February 2017.

The Appellant requested the TAC to state a case for the opinion of this Court on the following questions of law:

1. *Is the assessment No: 7070597 for the month ending 31st July 2010 time barred in terms of Section 33 (1) of the Value Added Tax Act, No. 14 of 2002 ('VAT Act')?*

2. *Has the Tax Appeals Commission erred in disregarding the specific provisions of Section 5 (2) of the VAT Act where the open market value of the supply is not applicable where there is a supply by one registered person to another registered person?*

3. *Has the Tax Appeals Commission completely disregarded the rationale of Section 5 (2) of the VAT Act where a supply is made by a registered person to another registered person at less than the open market value since it results in no loss of revenue to the state?*

4. *Notwithstanding the above, the Tax Appeals Commission erred by not considering the circumstances of the transaction between the Appellant and related parties in deciding that the supplies which were made by the appellant to related parties was not the open market value of such supplies?*

1. ***Is the assessment No: 7070597 for the month ending 31st July 2010 time barred in terms of Section 33 (1) of the Value Added Tax Act, No. 14 of 2002 ('VAT Act')?***

The parties are not at variance that the Appellant filed the VAT returns for the period ending on 31 July 2010, on the 19th August 2010. Section 21 (1) of the VAT Act provides that every registered person is required to furnish a return not later than the 20th day of the month after the expiry of the taxable period.

As stated above, the Assessor did not accept the return submitted by the Appellant and issued an assessment for the said period.

The Learned Counsel for the Appellant argued that the said assessment is time barred on the face of it.

Section 33 (1) of the VAT Act reads thus:

33(1) Where any registered person has furnished a return under subsection (1) of section 21 in respect of a taxable period or has assessed for tax in respect of any period, it shall not be lawful for the Assessor, where an assessment-

a) Has not been made, to an assessment; or

b) Has been made, to make an additional assessment, after the expiration of three years from end of the taxable period in respect of which the return is furnished, or

the assessment was made, as the case may be.

The Appellant argued that in terms of the above Section, the time bar for the taxable period ending on 31st July 2010 would commence on the 1st August 2013. It was contended that since the assessment had been issued on the 29th August 2013, it is time barred on the face of it (*vide* the assessment notice marked 'A1' tendered along with the respondent's written submissions; Assessment No:7070597, for the month ending on the 31st July 2010-10091).

The Learned Counsel for the Appellant strenuously argued that the assessment is therefore unlawful and invalid.

The Respondent filed a series of amended assessments along with the motion dated 18 September 2019. The Appellant, by motion dated 22nd January 2020 objected to the receipt of amended assessment for the taxable period from 1st July 2010 to 31st July 2010 (10091), the period relevant to the Appellant's objection in this Court on time bar. However, in argument, the Learned Counsel for the Appellant withdrew his objection to the receipt of the said document. The Respondent relied on the aforementioned amended assessment dated July 15, 2013 and submitted that the assessment falls within the prescribed time frame.

Nevertheless, the Learned Counsel for the Appellant submitted that the purported amended assessment is not valid in law. He relied on the Extra Ordinary Gazette Notification No.1760/4 dated 28th May 2012 and submitted that an assessment should contain the assessment number, amount of tax payable by the taxpayer and the penalty, if any. Since the amended assessment relied upon by the Respondent does not contain these particulars, it was submitted that it is void in law and therefore, the notice of assessment dated 29th August 2013 'A1' should be considered as the assessment.

"A1" is a notice of assessment issued in the Form No. VAT 24, the format prescribed by the IRD for the VAT notice of assessment.

Section 163 of the Inland Revenue Act No:10 of 2006 (as amended) allows the Assessor to conduct evaluations and issue assessment and additional assessments. Section 164 stipulates the obligation to give notice of assessment to the person who has been assessed, indicating the amount of income tax.

Therefore, there is a clear distinction between an assessment and a notice of assessment.

Commissioner of Income Tax Vs. Chettinad Corporation Ltd[1] is a case where a clear distinction between an 'assessment' and a 'notice of assessment' was made; the former, is the departmental computation of the amount of tax with which a particular assessee is considered to be chargeable, and the latter is the formal intimation to him of the fact that such an assessment has been made.

In the case of *Stafford Motor Company (Private) Limited Vs. the Commissioner General Inland Revenue*,[2] Janak de Silva J. cited the English case of *Honig and others Vs. Sarsfield*,[3] where a distinction was made between the making of an assessment and sending of the notice of assessment; and held them to be different. The assessment is in no way dependent upon the service of notice of assessment.

For the reasons set out above, this Court rejects the proposition that the document marked 'A1' is the assessment and determines that the date of making the assessment as 15th July 2013, on which date the amended assessment had been made.

It is my considered view that the TAC has correctly held that the assessment for the month ending on 31st July 2010 is not time barred.

Accordingly, I hold that the assessment for the month ending on 31st July 2010 (10091), bearing assessment No. 7070597, issued on the 15th July 2013, is not time barred.

[1] Reports of Ceylon Tax Cases, Vol. 1, p. 453.
[2] CA (TAX) 17/2017
[3] Tax Cases Vol. 30 p. 337, (1986) BTC 205.

Next, I will consider the 2nd, 3rd and 4th questions of law, simultaneously.

2. ***Has the Tax Appeals Commission erred in disregarding the specific provisions of Section 5 (2) of the VAT Act where the open market value of the supply is not applicable where there is a supply by one registered person to another registered person?***

3. ***Has the Tax Appeals Commission completely disregarded the rationale of Section 5 (2) of the VAT Act where a supply is made by a registered person to another registered person at less than the open market value since it results in no loss of revenue to the state?***

4. ***Notwithstanding the above, the Tax Appeals Commission erred by not considering the circumstances of the transaction between the Appellant and related parties in deciding that the supplies which were made by the appellant to related parties was not the open market value of such supplies?***

The substantial issue raised by the Appellant in the instant case is whether the Assessor erred in considering the open market value in making an assessment for the transactions between related companies, which are registered for VAT.

For clarity I will reproduce Section 5 of the VAT Act which reads thus (emphasis added);

> 5. *(1) The value of a taxable supply of goods or services, shall be such amount where the supply is-*
>
> *a) for a consideration in money, be such consideration less any tax chargeable under this Act which amount shall not be less than the* ***open market value****;*
>
> *b) not for a consideration in money or not wholly in consideration of*

*money, be the **open market value** of such supply.*

2) *Subject to the provisions of subsection (3), where a supply of goods or services is made by a registered person for an amount which is less than the **open market value** to a person for an amount which is less than the **open market value** to a person not being a registered person the value of such supply, shall be the **open market value** of the supply.*

3) *Where a supply of goods or services is made by an employer, to his employee as a benefit from employment, the consideration in money for the supply shall be the **open market value** of such supply or where the **open market value** of such supply cannot be ascertained, the consideration in money of such supply shall be the cost of a similar benefit enjoyed by any other employee, as may be determined by the Assessor.*

4) *Where a supply of services is made under any lottery, or any taxable activity of entering into or negotiating a wagering contract or any business of like nature, the value of such supply shall be the total amount of money receivable in respect of such supply less the consideration of the prizes or winnings awarded in such lottery wagering contract, or any business of like nature as the case may be.*

Provided however, in the case of a supply of services made under any

lottery, any commission including the Value Added Tax charged on such commission, paid to any agent on the sale of a lottery, if any, shall be deducted in addition to the deductions referred to in this subsection.

5) *Where a supply of goods or services –*

i. *is made by a person at the time of cancellation of the registration under Section 16; or*

ii. *is made to any person who makes a supply which is exempted under Section 8; or*

iii. *made by any person, not being a registered person or being a registered person who had not opted to charge tax under the proviso to Section 3, who carries on or carries not any wholesale or trade; or*

iv. *is appropriated by the supplier for his personal use or any other purpose other than the making of a taxable supply,*

6) *The value of the supply of goods under a hire purchase agreement shall be the cash price determined in accordance with the provisions of the Consumer Credit Act, No. 29 of 1982, and shall not be less than the* ***open market value****:*

Provided however in the case of a hire purchase agreement –

a) where the cash price of any goods supplied under a hire purchase agreement includes the tax charged, by the supplies on the seller of such goods to be supplied under such agreement for which the seller cannot claim input tax credit being a person who is not registered under this Act, the cash price and the market value of such goods shall be adjusted for the purpose of charging the tax by deducting the tax so charged on the seller,

b) under which second hand goods, which have been in circulation for a period over one year, are supplied, the cash price and the market value of such goods for the purposes of charging the tax shall be the value specified in the hire purchase agreement less any charge made for such hire purchase facility included in such agreement.

*7) The value of supply of land and improvements thereon, shall be the value of such supply less the value of land at the time of supply and the value of any improvements on the land as at March 31, 1998 which shall not be less than the **open market value** of such supply excluding the value of such land at the time of supply and the value of any improvements on such land as at March 31, 1998.*

8) Where goods or services are supplied either on the issue of a ticket or by the deposit of money the value of such supply shall be the amount paid for

such ticket less the tax payable under this Act or the amount deposited less the tax payable under this Act, not being any amount, which is refundable as the case may be.

9) *The value of a supply, under any non-reviewable agreement not being a hire purchase agreement entered into prior to April 1, 1998, shall be the total amount payable or paid under such agreement for any taxable period and shall be considered as a tax inclusive consideration.*

10) *Where any goods supplied under a lease agreement is subsequently transferred to the lessee at the termination of such agreement for a consideration not exceeding ten per centum of the total consideration of the lease agreement, such consideration shall be deemed to be a lease rental recovered under such agreement.*

Further, where such consideration is more than ten per centum of the total consideration of the lease agreement such supply shall be deemed to be a separate supply.

11) *Where the consideration in respect of a supply of goods or services relates to a taxable supply and a supply which is not taxable, the consideration for such taxable supply shall be deemed to be such part of the consideration as is attributed to such taxable supply and shall not be less than*

*the **open market value** of such taxable supply.*

12) *Where goods are manufactured or produced or a service is provided, by using other goods, whether provided by the supplier or any other person, such other goods shall be deemed to be used in the manufacture or production or the provision of service as the case may be, and the value of the supply of the goods so manufactured or produced and the supply of services in connection with such manufacture or production or the supply of the service shall be the **open market value** or the sum received as consideration for such supply, whichever is higher:*

Provided however, where it is proved to the satisfaction of an Assessor that the supply of goods, and the supply of services are two separate supplies, each such supply shall be treated as a separate supply by such Assessor;

13) *Notwithstanding the provisions of Consumer Affairs Authority Act, No.9 of 2003, the maximum retail price quoted for the goods to be sold in a wholesale or retail business may be adjusted where necessary for the chargeability to tax where liability to tax is specified in paragraph (f) of section 3 of this Act:*

14) *Where, for the period from January 1.2016 to January 13, 2016 a registered person has issued an invoice other than a tax invoice, the value of supply shall be, -*

i. where tax has been collected at a rate other than the rate of eleven per centum –

a) in the case of supply of any goods, the value shall be deemed to be equal to the amount derived by multiplying the total invoiced value by 200/297; and

b) in the case of supply of any services, the value shall be deemed to be equal to the amount derived by multiplying the total invoiced value by 100/99.

ii. Where no tax has been collected, the value shall be deemed to be equal to tax inclusive consideration and excluding the tax at the rate of eleven per centum.

15) The value of supply of healthcare services shall be the value of such supply less the cost of diagnostic tests, dialysis and, services provided by the Out Patient Department but excluding medical consultation services:

Provided that, the Ministry may, from time to time, in consultation with the minister in charge of the subject to Health, prescribe any value of supply which may be excluded for the purposes of his subsection. Any such regulation made by the Minister shall be approved by the Cabinet of Ministers and published

in the Gazette. Such regulations shall be placed before the Parliament for its approval and shall be effective only upon it being approved by the Parliament.

For the purpose of this subsection –

'medical consultation' includes a procedure whereby a medical practitioner registered under the Medical Ordinance reviews the medical history of a patient, examines a patient and makes recommendations as to care and treatment of such patient.

The Learned Counsel for the Appellant submitted that, as specifically provided in Section 5 (2), the Assessor can issue an assessment based on the open market value, only when the goods are supplied by a registered person to another person who is not registered. He argued that since it is not specifically provided for in Section 5, when the supply is made by a registrant to another registrant, the actual value must be taken into account. If this argument is adopted, Section 5 (1) (a) becomes manifestly superfluous.

The aforesaid argument of the Learned Counsel for the Appellant appears to be based on the maxim '*expressio unius est exclusio alterius*': expression of one thing is the exclusion of the other.

Tax laws are well known to require strict interpretation.

Yet N. S. Bindra, in his book "Interpretation of Statutes", has stated:[4]

'The principle that fiscal statutes should be strictly construed does not rule out the application of the

[4] N. S. Bindra, *Interpretation of Statutes*, Eighth Edition, 1997. pp. 674-675; *Annapurna Biscuit Manufacturing Co., Kanpur v. C.I.T., U.P., Lucknow*, 1981 All L J 906 (SC).

principles of reasonable construction to give effect to the purposes of intention of any particular provision as apparent from the scheme of the Act, with the assistance of such external aids as are permissible under the law.'

'We must also, of course, have regard to the subject-matter with which the Legislature is dealing and the first thing to be done is, having regard to that subject-matter, to find out what the Legislature has said as a matter of English, that is, to discover the grammatical construction of the words used, of course giving to words of art their technical meaning.'

Hence, I am inclined to consider the applicability of the above maxim to the matter at issue.

Bindra has expressed the following view regarding the above maxim:[5]

***Expressio unius est exclusio alterius. - 'The** express mention of one thing implies the exclusion of another. This maxim is a product of logic and common sense. No doubt this rule is neither conclusive nor of general application and is to be applied with great caution. It may be applied only when in the natural association of ideas, the contract between what is provided and what is left out leads to an inference that the latter was intended to be excluded. Very often particular words are used by way of abundant caution, and the application of the maxim becomes inadvisable.'*

It has further been stated that:[6]

[5] ibid. at p. 148

[6] ibid. at pp. 575-576; citing the precedent established by *Mulji Tribhovan Sewak v. Dakore Municipality*, AIR 1922 Bom 247: ILR 46 Bom 663 (FB); *Harnam Singh v. State of Punjab*, AIR 1960 Punj 186, 191; *P.V. Naik v. State of Maharashta*, AIR 1967 Bom 482, 491 (K.K. Desai, J.); *State v. Gulab Singh*, AIR 1965 All 300 (Uniyal,

> *'Where, there is in the same statute a specific provision and also a general one which in its most comprehensive sense would include matters embraced in the former, the particular provision must be operative and the general provision must be taken to affect only such cases within its general language as are not within the provisions if the particular provision.'*

It seems to me that other than Section 5 (2), there are several other specific tax provisions in Sections 5 (3) to 5 (15). Quite apart from the aforesaid specific instances, Section 5 (1) is the general provision applicable to the instances other than those are sets out in Section 5 (3) to 5 (15).

Upon a careful scrutinization of Section 5 of the VAT Act, it appears to me that the Legislature has clearly provided for the consideration of an amount which shall not be less than the open market value or at least, the open market value, as the value of the goods or services supplied, in calculation of VAT. Sections 5 (1), (2), (3), (4), (6), (7) and (11) set a good example for the above analysis.

Section 5 (2) sets out a specific situation where a registered person supplies goods or provides services to a person who is not a registered person, for an amount less than the open market value. There the value of such supplies in the open market must be taken into account when calculating VAT.

As I indicated earlier in this order, Section 5(1)(a) is the general provision. VAT is a tax payable, at the time of the supply, by a registered person, on a taxable supply of goods or services, in the course of a taxable activity.

Section 2 (1)(a) of the VAT Act reads thus;

J.); *Uma Shankar v. Bihar State Co-operative Marketing Union Ltd.*, AIR 1985 Pat 46.

1) *Subject to the provisions of this Act, a tax, to be known as the Value Added Tax (hereinafter referred to as "the tax") shall be charged –*

    a. *At the time of supply, on every taxable supply of goods or services made in a taxable period, by a registered person in the course of the carrying on, or carrying out, of a taxable activity by such person in Sri Lanka;*

Therefore, it is clear that Section 5 (1) applies to any registered person who does not fall under any other part of Section 5. Under Section 5 (1), the value of the goods or services provided is the consideration paid, less any tax payable under the VAT Act. However, this amount cannot be lower than the value of the open market. Under Section 5 (1) (a), the Legislature has provided for the calculation of VAT at a value higher than the open market value, and at the least to be not less than the open market value, whereas under Section 5 (2), the value has to be the open market value.

On the above analysis, it is my considered view that the intention of the Legislature is to charge VAT based on the open market value, other than in the instances specifically provided in the Act itself.

In the above analysis, I am of the view that the aforementioned maxim does not apply to Section 5 of the VAT Act, for the purposes of the stated questions of law.

The Learned Counsel for the Appellant stressed that a supply made by a registered person to another registered person at a price less than the open market value results in no loss of revenue to the State. However, I am of the view that this is not a matter that the Court should consider in interpreting the VAT Act; a fiscal statute.

On this point N.S. Bindra has stated as follows;[7]

> *'Neither the language of a taxing statute can be added to, nor is a statute supposed to use the words without a meaning. To reject words as insensible is the ultimate ratio when an absurdity would follow from giving effect to the words of an enactment as they stand. Lord Holt is quoted to have said: 'I think we should be very bold men, when we are entrusted with the interpretation of Acts of Parliament, to reject any words that are sensible in an Act.' Unless and until the language used in a statute makes the meaning entirely insensible, every word must be given its plain meaning. The court cannot undertake, out of its own notions of what is fair, to adapt or rearrange the machinery of the taxing statute. In a fiscal or a taxing Act one has to look merely at what is clearly said for there is no room for any intendment nor for any equity nor for any presumption. The only criterion is whether or not the words of the Act have reached the alleged subject of taxation. There is no question of equity.'*

For the reasons set out above, this Court is of the view that the transactions at issue, between two registered companies, should come under Section 5 (1) (a) of the VAT Act.

Be that as it may, the next matter in issue is whether the Assessor is entitled to make an assessment under Section 30 of the VAT Act as well.

Section 30 of the VAT Act reads thus;

> *Where the Assessor is of opinion-*

[7] ibid. at p. 676 quoting P. S. T. Langan, *Maxwell on the Interpretation of Statutes,* Twelfth Edition, at p. 256; *Krishna Dress Manufacturing, etc. Works v. State of Madras,* ILR 1962 Mad 399: 75 MLW 48; *New Delhi Municipal Committee v. Chaman Lal Chopra,* (1979) 81 Punj LR 134. *Commissioner of Income-tax, Patiala v. Sahajanand & Sons,* AIR 1966 SC 1342; *Nasir Ali Mohammad Ali v. Sugarcane Commissioner*, 1969 All LJ 218.

a) that the registered person has made a taxable supply for a value less than the open market value of such supply or for no value;

b) The transaction in respect of which taxable supply has been made, is between two associated persons,

in order to avoid the payment of tax, he shall determine the open market value of such supply on which tax shall be charged, having regard to the circumstances of the transaction and the time of supply.

The TAC, in its determination, held that Section 5 (2) of the VAT Act cannot be considered in isolation and therefore, the Assessor can rely on Section 30 of the Act to determine the value of the supply.

The Learned Counsel for the Appellant argued that Section 30 of the Act applies only in the instances where there is an avoidance of tax, which is lacking in the instant case.

In my view, Section 30 is an ancillary provision where the Assessor is empowered to make an assessment, if he is of the opinion that a registered person has made a taxable supply for a value less than the open market value (…), in order to avoid the payment of tax.

In the case in hand, the Assessor, by his letter dated 5th July 2013 (at page 36 of the appeal brief), has refused to accept the return furnished by the Appellant and intimated his reasons with the intention of issuing an additional assessment, in terms of Section 29 of the VAT Act.

Section 29 of the VAT Act reads as follows;

29) Where the Assessor does not accept a return furnished by any person under section 21 for any taxable period and makes an assessment or an additional assessment on

> *such person for such taxable period under section 28 or under section 31, as the case may be, the Assessor shall communicate to such person by registered letter sent through the post why he is not accepting the return.*

In the aforesaid letter, the Assessor has clearly stated that it was revealed in the VAT Audit conducted by him that the Appellant has invoiced supplies to the related companies at a price less than the market price and has proceeded to calculate additional VAT on the said supplies.

Hence, it is clear that the Assessor has formed the opinion that the Appellant has made a taxable supply for a value less than the open market value in order to avoid tax, before acting under Section 30 of the VAT Act.

The Appellant has submitted that the TAC has erred by not considering the circumstances of the transaction between the Appellant and related parties in arriving at its decision that a supply of goods was made to the said parties at a value less than the open market value. The aforementioned letter of the Assessor, dated 5th July 2013, demonstrates a significant disparity between the average unit price of products sold to related parties and non-related parties. It is my considered view that the reasons advocated by the Appellant for this disparity are generic, and do not explain it. Moreover, the Appellant has failed to submit sufficient material to substantiate their position on this matter before the CGIR and the TAC. Consequently, there is no valid basis to hold that the TAC has failed to consider the circumstances advocated by the Appellant.

I therefore hold that the TAC has not erred when considering the circumstances of the transaction between the Appellant and related parties.

Accordingly, this Court answers the questions of law raised in the Case Stated as follows:

1. Is the assessment No: 7070597 for the month ending 31st July 2010 time barred in terms of Section 33 (1) of the Value Added Tax Act, No. 14 of 2002 ('VAT Act')? **No**

2. Has the Tax Appeals Commission erred in disregarding the specific provisions of Section 5 (2) of the VAT Act where the open market value of the supply is not applicable where there is a supply by one registered person to another registered person? **No**

3. Has the Tax Appeals Commission completely disregarded the rational of Section 5 (2) of the VAT Act where a supply is made by a registered person to another registered person at less than the open market value since it results in no loss of revenue to the state? **No**

4. Notwithstanding the above, the Tax Appeals Commission erred by not considering the circumstances of the transaction between the Appellant and related parties in deciding that the supplies which were made by the appellant to related parties was not the open market value of such supplies? **No**

Acting under Section 11A (6) of the Tax Appeal Commission Act No. 23 of 2011 (as amended), I confirm the assessment determined by the TAC and dismiss this appeal. I make no order as to costs.

The Registrar is directed to send a certified copy of this judgement to the Secretary of the TAC.

JUDGE OF THE COURT OF APPEAL

Dr. Ruwan Fernando J.

I Agree.

JUDGE OF THE COURT OF APPEAL