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

In the matter of an appeal by way of a Case Stated on a question of law for the opinion of the Court of Appeal under and in terms of Section 11A of the Tax Appeals Commission Act, No. 23 of 2011 (as amended).

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

APPELLANT

CA No. CA/TAX/33/2019
Tax Appeals Commission
No. TAC/VAT/014/2015

v.

Ranweli Holiday Village Ltd.,
No. 50, Hyde Park Corner,
Colombo 02.

RESPONDENT

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

COUNSEL : Vikum de Abrew, ASG with
Dr. Charuka Ekanayake, SC for the Appellant.

Lakshmanan Jayakumar with
N.S. Nishendiran for the Respondent.

WRITTEN SUBMISSIONS	:	09.07.2021 & 11.08.2021 (by the Appellant) 06.08.2021 (by the Respondent)
ARGUED ON	:	14.07.2021
DECIDED ON	:	02.11.2021

M. Sampath K. B. Wijeratne J.

The principal activity of the Respondent company is carrying on the business of a tourist hotel named Ranweli Holiday Village. According to its Articles of Association, the main object of the Respondent company, Ranweli Holiday Village Ltd, is to undertake and carry on the business of Hotels, Resorts, Clubs, Motels, Guest Houses and Rest Houses in Sri Lanka. Its objects include the running and maintenance of Ayurvedic Centres as well. Furthermore, it intends to engage in any other trade or business which is not prohibited by any existing or future laws in Sri Lanka.

There had been an 'Ayurvedic Medical Centre' within the Respondent's hotel premises. Parties are not at variance that the said centre provided healthcare services to the guests at the hotel.

The Respondent tendered its Value Added Tax (hereinafter referred to as 'VAT') returns for the taxable period from 1st April 2009 to 31st March 2012 (09061-12030). The Assessor rejected the returns on the ground that the income from the 'Ayurvedic Centre' for the above taxable periods has not been declared for the purpose of collecting VAT (*vide* letter dated 20th November 2012 at page 87 of the brief).

The Respondent claimed VAT exemption for the income generated by the 'Ranweli Ayurvedic Centre' (hereinafter referred to as 'the Ayurvedic Centre'),[1] in terms of item (xii) of paragraph (b) of Part II of the First Schedule, read along with Section 8 of the Value Added Tax Act No. 14 of 2002, as amended (hereinafter referred to as 'the VAT Act').

[1] This institution had also been registered under the name of 'Aruna Ranweli Ayurvedic Medical Centre'.

The Assessor was of the view that the Respondent company had not fulfilled the requirements of the aforementioned Section and therefore, the income from the Ayurvedic Centre was taxable. The Assessor then proceeded to make assessments for the relevant period under the provisions of the VAT Act.

Thereafter, the Respondent appealed to the Commissioner General of Inland Revenue (hereinafter referred to as 'the CGIR') against the Assessments, in terms of Section 34 of the VAT Act (*vide* letter at page 115 of the brief). An attempt was then made to settle the matter at the Large Taxpayers Appeal Unit, which was unsuccessful.

The CGIR proceeded to hear the appeal and made his determination on 12th May 2015, affirming the decision of the Assessor that the Respondent company was not eligible to claim the VAT exemption. However, the CGIR reduced the amount of tax payable by considering the value of supplies made to be VAT-inclusive, since the Respondent had not collected VAT on the supplies made by the Ayurvedic Centre. Being aggrieved by the said determination, the Respondent appealed to the Tax Appeals Commission (hereinafter referred to as 'the TAC') on 24th July 2015, in accordance with Section 7 of the TAC Act No. 23 of 2011, as amended.

The TAC, on 20th June 2019 overturned the decision of the CGIR and determined that the Respondent is entitled to the tax exemption claimed. The Appellant then moved the TAC to state a case on the following question of law for the opinion of this Court in accordance with Section 11A of the TAC Act:

Whether the TAC has erred in interpreting paragraph (b) (xii) of Part II of the First Schedule of the Value Added Tax Act No.14 of 2002.

As has already been stated above, the Respondent claimed VAT exemption under item (xii) of paragraph (b) of Part II of the First Schedule, read along with Section 8 of the VAT Act.

The relevant part of Section 8 reads as follows:

> ***8.*** *No tax shall be charged on the supply of goods or services and the importation of goods specified in the First Schedule to this Act as such supplies and imports are not taxable unless zero rated under Section 7: (…)*

Part II (b) (xii) of the First Schedule reads as follows;

(b) The supply of -

(xii) all healthcare services provided by medical institutions or professionally qualified persons providing such care (effective from 1/07/2007);

Accordingly, the exemption is available to:

i. medical institutions and

ii. professionally qualified persons

who provide '*healthcare services'.*

The terms 'medical institution', 'professionally qualified persons' and 'healthcare services' are not defined in the VAT Act. Therefore, these terms have to be given their ordinary and natural meaning, unless they are controlled by some other existing law. The Ayurveda Act No. 31 of 1961, as amended (hereinafter referred to as 'the Ayurveda Act') sets out the necessary qualifications for registration as an ayurvedic practitioner and provides for the registration of practitioners who possess the necessary qualifications (Section 55 of the Act). Practicing ayurvedic medicine or surgery for gain, without registration, has been made a punishable offence under Section 69 (3). Hence it is obvious that any institution which provides *ayurvedic healthcare services* has to obtain the services of a registered ayurvedic practitioner or, in the alternative, the proprietor of such institution, being a registered ayurvedic practitioner himself, has to carry out the services on his own.

The TAC has taken into consideration the Rulings issued by the Department of Inland Revenue by VAT Notice No. 1 of 6th September 2002. There, the meanings of certain terms used in the provisions of the VAT Act, including the three terms mentioned above, are elaborated. In my view, those definitions are mere guidelines issued to the Department of Inland Revenue and are not binding on any tribunal or court.[2] Nevertheless,

[2] Section 74 of the VAT Act enacts that: "*The Commissioner-General may from time to time specify the forms to be used for all or any of the purposes of this Act, and any form so specified may from time to time be amended or varied by the Commissioner-General or some other form may be substituted by the Commissioner-General in place of any form so specified.*". However, the CGIR's interpretation of the meaning of terms found in the VAT Act (for the internal purposes of the Department of Inland Revenue) cannot be given statutory force through Section 74.

since the Assessors make their assessments based on these guidelines, a tribunal or court may consider them in arriving at its own conclusion.

The TAC has also considered the letter written by the CGIR to the Director General of the Board of Investment of Sri Lanka (at page 189 of the brief) regarding the tax implications of ayurvedic treatments provided by hotels. This letter refers to the same Rulings as above, and it is stated therein that if the conditions set out in the said Rulings are satisfied, *ayurvedic treatment provided by hotels* will be exempted from VAT liability. It is also stated that a General Ruling cannot be issued on this matter.

Hence, it is clear that a decision on VAT liability has to be made on a case by case basis, considering facts and circumstances of each case.

Item No. 8 of the case stated to this Court by the TAC states that the TAC made its determination to the effect that Ranweli Ayurvedic Centre, owned by Ranweli Holiday Village Ltd., is a 'medical institution' within the meaning of the VAT Act and therefore, it is entitled to VAT exemption under the Act. Hence, it is obvious that in deciding the case stated to this Court, the Court has to consider the facts relevant to the said finding.

It is trite law that the consideration of whether the available facts are sufficient to arrive at a conclusion, constitutes a question of law.[3]

In the volume titled *Income Tax In Sri Lanka*, Gooneratne states that:[4]

'The principle is well established that where a tribunal arrives at a finding which is not supported by evidence the finding though stated in the form of a finding of fact is a finding which involves a question of law. The question of law is whether there was evidence to support the finding, apart from the adequacy of the evidence. The Court will interfere if the finding has been reached without any evidence or upon a view of facts which could not be reasonably entertained. The evidence can be examined to see whether the Board [being the Board of Review; the predecessor of the TAC] *being properly appraised of what they had to do could reasonably have arrived at the conclusion they did.'*

[3] *D. S. Mahawithana v. Commissioner of Inland Revenue*, 64 N.L.R. 217

[4] M. Weerasooriya and E. Gooneratne, *Income Tax In Sri Lanka*, Second Edition, 2009. at p.452 [citing *Stanley v. Gramophone & Typewriter Co. Ltd.* 5 TC 358; *CIR v. Samson* 8 TC 20; *Cape Brandy Syndicate v. CIR* 12 TC 358; *Mills v. John* 14 TC 769; *Cooper v. Stubbs* 10 TC 29; *J. G. Ingram and Son Ltd. v. Callaghan* 45 TC 151]

Hence, if anyone is to say that this Court cannot look into the facts of a case in order to reach its decision on a stated case, it would be a fallacy.

Section 10 (1) of the Ayurveda Act provides that any Ayurvedic hospital, pharmacy, dispensary or store has to be registered with the Commissioner of Ayurveda *and* that the person carrying on such an institution has to be registered by the Commissioner as the proprietor thereof.

The Appellant has produced two Certificates of Registration of their Ayurvedic Centre as a 'Private Ayurvedic Services Institution', said to have been issued in accordance with the provisions of the Ayurveda Act. These two certificates are issued in the name of the Managing Director of Ranweli Holiday Village Ltd. (from 8th October 2008 to 7th October 2009) and in the name of Dr. (Mrs.) Deepani Amarasinghe (from 21st December 2011 to 20th December 2012 in the Sinhalese Copy). According to the English Copy of the latter certificate, the validity period is from 22nd December 2011 to 21st December 2012, thus showing a day's difference. The Sinhalese copy has been issued on 1st November 2012, whereas the English copy mentions two dates, namely 1st November 2012 and 22nd December 2011 (at pages 186 and 187 of the brief).

Further, the Department of Ayurveda has issued a letter dated 3rd November 2012, addressed to Dr. (Mrs.) Deepani Amarasinghe, confirming that 'Aruna Ranweli Ayurvedic Medical Centre' had been providing 'Panchakarma' treatment on an agreement with 'Ranweli Holiday Village Ltd', from 24th September 2010 and that an application for the registration of the former had been made on 8th November 2010. However, the Department of Ayurveda had failed to conduct an inspection until 22nd December 2011, and following said inspection has issued the registration for both the years 2011 and 2012.

I observe that the TAC in dealing with the certificates has erroneously considered the period covering the certificate issued in the name of Dr. (Mrs.) Deepani Amarasinghe as being from 21st December 2009 to 20th December 2011, whereas it was in fact from 21st December 2011 to 20th December 2012.

According to the aforesaid letter of the Department of Ayurveda (dated 3rd November 2012), centres providing ayurvedic treatment are registered in terms of Section 10 (1) of the Ayurveda Act. In the same letter it is also

stated that the Regulations under Section 10 (4) of the 1961 Act were still under promulgation at the time of writing.

It is important to note that the provisions of Section 10 (1) shall only become effective upon such Regulations being published in the Gazette. Neither party has submitted to the TAC or to this Court that such Regulations have been published after the date of the aforementioned letter of the Department of Ayurveda.

In view of the facts pertaining to the two certificates analysed above: the discrepancy of dates, issuing of a backdated letter of validity on an inspection done many months into the period of validity, and the issuing of certificates of registration without promulgation of Regulations, there is significant doubt on the validity and authenticity of the said certificates.

Be that as it may, in the case of *Herbal Holiday Resorts (Private) Limited v. Commissioner General of Inland Revenue* (hereinafter referred to as *'Herbal Holidays'*),[5] His Lordship A.H.M.D. Nawaz J., Presiding over the Court of Appeal, with S. Rajakaruna J., concurring, held that a requirement of registration under the Ayurveda Act could not be read into the same exempting provision in the First Schedule to the VAT Act.

In following His Lordship's *ratio* in the above case, it becomes apparent that the two registration certificates discussed above, whatever their validity may be, do not have a bearing on the decision of this case. It must also be noted that the determination of the TAC in the present appeal preceded the decision in *Herbal Holidays*, and the TAC would therefore not have had the benefit of precedent.

It was further observed by His Lordship in *Herbal Holidays* that even a prospective prosecution for non-registration under the Ayurveda Act would not deprive a medical institution from claiming the tax exemption, so long as it satisfied the threshold of "*a medical institution which provides healthcare services.*"[6]

Having answered the question of law stated for the opinion of the Court, His Lordship then observed in passing that Section 10 (1) of the Ayurveda Act required only ayurvedic hospitals, pharmacies, dispensaries and stores

[5] CA (TAX) 07/2017, decided on 24.11.2020

[6] *Ibid.* at p. 9

to be registered as such under the Act, and that since the Appellant in that case was classified as an "*Institute of Private Ayurvedic Services*", it was not liable for prosecution in any event.[7]

The TAC (at page 9 of its determination) has come to the conclusion that the Ayurvedic Centre operated by the Respondent in the present appeal is a 'dispensary' within the meaning of Section 10 (1) of the Ayurveda Act, in spite of the fact that this Centre too had been issued with certificates of registration identifying it as an 'Institute of Private Ayurvedic Service'. The term 'dispensary' is interpreted in Section 89, the interpretation section of the said Act. Accordingly, 'dispensary' means:

> *any premises **(howsoever described)** used or intended to be used for the **outdoor treatment** of persons **suffering from illness**, but does not include a pharmacy* (emphasis added)

Therefore, it appears that the TAC has relied on the phrase 'howsoever described', in deeming the Appellant's Ayurvedic Centre to fall within the category of 'dispensary', though it has not explicitly been identified as such by the Department of Ayurveda. I find that there is some merit in this conclusion of the TAC, even though the phrases 'outdoor treatment' and 'suffering from illness' are open to interpretation. Certainly, it would be absurd to hold that every person who desires an ayurvedic massage, which in its natural meaning would indeed constitute a 'healthcare service', 'suffers from illness'. It is also unclear whether the phrase 'outdoor treatment' was meant to encompass all treatments that do not involve inpatients.

Nevertheless, it is immaterial whether or not the Ayurvedic Centre located within the Respondent's premises falls within the meaning of 'dispensary' for the purposes of registration under Section 10 (1) of the Ayurveda Act. As adverted to previously, this Court has already held in *Herbal Holidays* that a requirement of registration cannot be read into item (xii) of paragraph (b) of Part II of the First Schedule to the VAT Act.

However, it must be observed that the meaning of 'medical institution' may thus be extended too far, where there is no objective basis to determine what does and does not qualify as a medical institution. Fortunately, in the context of the present appeal, Section 69 (3) of the Ayurveda Act makes it

[7] *Ibid*. at pp. 8-9

a punishable offence to practice ayurvedic medicine without registration. Therefore, it is obvious that where an institution desires to offer ayurvedic healthcare services, and be recognised as a 'medical institution' for tax purposes, it must engage the services of a registered medical practitioner. This restores some objectivity to the determination of what is and is not a 'medical institution'.

However, item (xii) of paragraph (b) of Part II of the First Schedule to the VAT Act clearly distinguishes between 'medical institutions' and 'professionally qualified persons'. In fact, the Respondent has claimed in its written submissions that it could qualify for tax exemption through either of these two categories, even though Counsel for the Respondent focussed only on the 'medical institution' category in argument.

It is my considered opinion that the distinction between the two categories is based on a fact of who runs the business. If the doctor herself ran the Ayurvedic Centre, she would qualify for tax exemption as a 'professionally qualified person', and the share of the profits the Respondent would receive would also be exempted. If the Ayurvedic Centre existed independently and engaged the doctor's services, then it would qualify as a 'medical institution' and qualify for the tax exemption. Crucially, if the Respondent itself ran the Ayurvedic Centre, then it would not be eligible for the tax exemption. This is because the Respondent itself cannot claim to *be* a medical institution, but would merely *run* a medical institution. Consequently, healthcare services would not be provided *by* a medical institution as they would in fact be provided by the Respondent.

This Court cannot ignore the use of the word 'by' in item (xii) of paragraph (b) of Part II of the First Schedule to the VAT Act. On the presumptions a Court must have regard to in the interpretation of statutes, Bindra states that:[8]

'*It is a well-settled principle of construction that words in a statute are designedly used, and an interpretation must be avoided, which would render the provision either nugatory or part thereof otiose.*'

Item (xii) of paragraph (b) of Part II of the First Schedule to the VAT Act cannot be interpreted in such a way that the VAT exemption is available to *anyone* who provides a supply of healthcare services, as the Legislature has

[8] N. S. Bindra, *Interpretation of Statutes*, Twelfth Edition, 2017. at p.209

specifically exempted only those supplies that have been provided *by* either medical institutions or professionally qualified persons.

In other words, had the Ayurvedic Centre itself applied for this VAT exemption, it would obviously receive it, so long as it had engaged the services of a doctor or been run by the doctor herself. The TAC itself has held this to be the case (at pages 8-9 of its determination), in mentioning that the Ayurvedic Centre was VAT exempt. However, in its appeal before the TAC, it was the Respondent who claimed the tax exemption for its share of the profits from the Ayurvedic Centre. The learned Assistant Solicitor General did not challenge the fact that the Ayurvedic Centre is a *medical institution* that provides *healthcare services*. Therefore, the key issue to be decided by this Court is whether the Ayurvedic Centre is run by the doctor herself (a professionally qualified person), whether it exists independently and engages the services of the doctor (a medical institution) or whether it is run by the Respondent itself.

The TAC has initially held that the "*...**Ayurvedic Doctor runs a business in the hotel premises** and the hotel receives an income merely for providing facilities to run the Ayurvedic Centre in the hotel premises* (emphasis added)." (at page 5 of the TAC determination). However, in the same determination, the TAC has arrived at what appears to be a contrary finding that the Respondent had intended to "*...engage in a business of running a health care centre with the collaboration of professionally qualified Ayurvedic Doctors...*" (at page 8 of the TAC determination). As I have elaborated above, if the former is indeed the case, then the Respondent would be eligible for exemption on their share of the profits. If the latter is the case, then the Respondent would be liable for tax on their share of the profits.

In deciding this matter, I am of the view that this Court has to consider the four agreements between the Respondent and the two doctors (at pages 47 to 57 of the brief). Although the above question of law stated for the opinion of this Court is regarding interpretation of a Section in the VAT Act, the Section has to be interpreted with reference to the facts of the case. The TAC has considered the above agreements in arriving at its determination. Therefore, this Court has to consider the same documents in arriving at its conclusion as to whether the TAC erred in interpreting item (xii) of paragraph (b) of Part II of the First Schedule to the VAT Act.

The Respondent has produced four agreements entered into between itself and the two doctors namely, Dr. (Mrs.) Herath and Dr. (Mrs) Amarasinghe. The first agreement is with Dr. (Mrs.) Herath from 1st June 2008 to 31st May 2009. This agreement covers the first two months of the taxable period relevant to this appeal. The second agreement is also with Dr. (Mrs.) Herath for the seven months from 1st June 2009 until 31st December 2009. The third agreement, also with the same doctor, is for the three months from 1st January 2010 to 31st March 2010. The fourth agreement is with Dr. (Mrs.) Amarasinghe for the 3 years from 24th September 2010 until 24th September 2013.

It appears to me that, out of the taxable period relevant to the instant case, 5 months and 23 days from 1st April 2010 to 23rd September 2010 are not covered by these four agreements. However, there is a stated income from the Ayurvedic Centre for the months of April, July, August and September 2010 (at page 85 of the brief). Whatever penal consequences may arise from this anomaly are not for this Court to consider for the purposes of the present appeal.

The Respondent has acknowledged this gap in the agreements in its submissions to the TAC. Be that as it may, this was not an issue before either the CGIR or the TAC. Hence, the CGIR and the TAC appear to have proceeded on the basis that the Ayurvedic Centre has continued to operate during the said period as well. However, should this Court find that the Respondent is indeed eligible for the tax exemption claimed, this period of 5 months and 23 days would have to be excluded from the said exemption, as there does not appear to be a professionally qualified person either running the Ayurvedic Centre or engaged by the Centre to provide healthcare services.

According to the agreements, in summary, the Respondent has agreed to provide the premises consisting of different units of the Ayurvedic Centre, along with electricity, water, furniture, cleaning and maintenance (housekeeping) services. Furthermore, the Respondent has undertaken to provide accounting services with the preparation of bills, collecting income and banking services.

The doctors have agreed to provide professional ayurvedic consultancy services by themselves or through a professionally qualified government registered person. The Ayurvedic therapists were also to be employed by

the doctors and they were solely responsible for their appointment, management, disciplinary control and dismissal. The doctors have undertaken to pay their wages, allowances and other emoluments and the Respondent has borne no liability whatsoever in respect thereof. The doctors have undertaken sole responsibility for the provision of all professional services at the Ayurvedic Centre and the Respondent is not liable for any consequent loss or damage, cost or expense of any kind whatsoever and has to be indemnified from and against any third-party claims.

In the agreements, parties have agreed on unequivocal terms that the relationship between the Respondent and the doctors (along with the other persons employed in the Ayurvedic Centre) is that of independent contractors. *Massey v. Crown Life Insurance Co. Ltd* is a case where, at the request of the employee, the employer had agreed to treat him as self-employed.[9] When the former's services were dispensed with by the latter, he claimed that he had been an employee. The Court rejected his claim and Lord Denning, MR stated that if the person had made his bed as being self-employed, he must then lie on it. Hence, it appears that parties are bound by their own status as agreed in the agreement.

However, in the Sri Lankan case of *Free Lanka Trading Co. Ltd. v. De Mel, Commissioner of Labour and Others*,[10] the Supreme Court held that the description of a relationship in a written agreement between parties was not determinative of the status of parties as either workmen or independent contractors, and that the nature of actual work done and the extent of control exercised by the employer were decisive factors. It was also observed in the South African case of *Rumbles v. Kwa BAT Marketing (Pty) Ltd* that contractual terms were not definitive of the nature of any legal relationship that may exist.[11] The Court will have regard to the realities of the relationship between the parties in order to determine the true nature of the relationship between them.

Therefore, I will now examine the status of parties as reflected in the terms and conditions of the agreement. I am not unmindful of the fact that, in deciding whether the TAC erred in arriving at its conclusion, the important

[9] [1978] 2 All ER 576

[10] 79 (II) N.L.R. 158

[11] (D1055/2001) [2003] ZALC 57 (21st May 2003)

issue is not whether the doctors are on a contract *of* employment or a contract *for* employment, but who in effect ran the Ayurvedic Centre, or in other words, whose business it was. However, the status of parties will help this Court discern whether it was the doctors who ran the Centre, or the Respondent itself.

Jamis Appuhamy v. Shanmugam is a Sri Lankan case where an owner of a taxi employed a driver on payment of one third of the profits from the earnings.[12] The driver did not receive a salary. The Supreme Court on the issue as to whose business it was, held that the taxi driver was an employee who had a contract of service. The court distinguished certain English cases from the above case on the footing that in those cases, the driver himself had provided a taxi service with a hired vehicle, with the hire being represented by a share of the day's profits. It was held that the driver in those cases was carrying on a business on his own behalf and for his own benefit only. It was further observed that in the above case, the workman had not hired the taxi for his own business but, on the contrary, the owner of the taxi had hired the driver to operate his taxi.

Applying the test used by the Supreme Court in the above case to the facts of this appeal, I observe that it is the Respondent who has provided the premises where the facilities of the Ayurvedic Centre are located, along with furniture, electricity, water, linen, laundry and housekeeping services etc. with meals for the doctors and their subordinates. The marketing, billing an accounting was also done by the Respondent.

As mentioned previously, Section 69 (3) of the Ayurveda Act declares practicing ayurvedic medicine for gain, without being a registered ayurvedic practitioner, an offence. Hence, it is obvious that the Respondent had to obtain the services of a registered ayurvedic practitioner in order to run their Ayurvedic Centre. For this purpose, the Respondent had obtained the services of the two doctors on the agreements, on a contract *for* services.

On the other hand, the doctors had provided the professional ayurvedic consultancy services by themselves or through a professionally qualified registered person assisted by their own therapist. The responsibility for

[12] 80 N.L.R. 278

these employees' salaries and other remuneration had been borne by the doctors and the Respondent had been absolved from responsibility.

The Ayurvedic Centre had been established to provide services exclusively to the resident guests of the Respondent and the doctors had agreed not to engage in private consultation services for these guests outside the Ayurvedic Centre or to provide services to a competitive hotel. Furthermore, should any client have required medicine to be sent to them either within Sri Lanka or abroad, the doctors were barred from doing so at their own discretion, with all such requests being handled by the Respondent itself. All of the above would mean that the Respondent has exercised significant control over the activities of the Centre, as well as over the doctors. In these circumstances, it does not appear that the doctors were running the Ayurvedic Centre.

The four invoices available in the brief (at pages 32 and 33) also seem to indicate that the Ayurvedic Centre is run by the Respondent itself. On the face of those invoices, they are issued by the Respondent's hotel (with the top of the invoice reading 'Ranweli Holiday Village Ltd.') in respect of services provided at the Ayurvedic Centre.

For the reasons enunciated above, it is my considered view that the Ayurvedic Centre is run by the Respondent itself. Therefore, I hold that the TAC has erred in holding that it is the doctors who run the Ayurvedic Centre, (although the TAC seems to hold subsequently that the Respondent runs the Centre in collaboration with the doctors, as mentioned previously in this judgement). Since it is the Respondent that runs the Ayurvedic Centre, and it is neither a professionally qualified person, nor a medical institution, I hold that the Respondent is not eligible for the tax exemption claimed under item (xii) of paragraph (b) of Part II of the First Schedule to the VAT Act, and that the TAC has erred in law in holding it to be so eligible.

On the matter of the correct amount of tax to be charged, since the Respondent itself had issued invoices, and they are a VAT registered person, but the persons to whom the invoices were issued are not VAT registered, the relevant Section of the VAT Act, i.e. Section 20 (6) (a), reads that "*…where a registered person makes a taxable supply and the recipient of such supply is not a registered person such supplier shall issue an invoice giving the total consideration of such supply including the tax*

charged." The CGIR has therefore correctly held that the values of supply in the invoices of the Respondent are VAT-inclusive. This means that no fresh assessments need to be made, and that the adjustments made by the CGIR in arriving at his determination should stand.

Therefore, this Court is of the opinion that the question of law should be answered in the affirmative, and that the determination of the CGIR should be reinstated.

The Registrar is directed to remit the case along with a certified copy of this judgment to the Secretary of the TAC.

JUDGE OF THE COURT OF APPEAL

Dr. Ruwan Fernando J.

I Agree.

JUDGE OF THE COURT OF APPEAL