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

Dialog Axiata PLC.,

No. 475, Union Place,

Colombo 02.

Appellant

CA. Case No. CA/TAX/12/2016

Tax Appeals Commission No.: TAC/WHT/001/2014

Vs

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

Respondent

Before: Hon. D.N. Samarakoon, J.

Hon. Sasi Mahendran, J.

Counsel: Dr. Siwaji Felix with Mr. Niwantha Satharasinghe for the Appellant.

Mr. Milinda Gunatilake PC., ASG. With Suranga Wimalasena SSC. for Respondent.

Written submission Tendered on: Appellant on 16.01.2019, 11.05.2020 & 23.11.2021

Respondent on 20.11.2019 & 23.11.2021

Argued On: 13.10.2021 & 14.10.2021

Decided On: 17.12.2021

D.N. Samarakoon, J.

Judgment

The Assessor, Commissioner General of Inland Revenue and the Tax Appeals Commission holding against the Appellant, Dialog Axiata PLC, the Appellant has come to this court by way of a case stated incorporating the following 4 questions.

1. Did the Tax Appeals Commission err in law when it came to the conclusion that the assessment of income tax (withholding tax) and penalty, as determined by the Commissioner General of Inland Revenue was not excessive, arbitrary and unreasonable?

2. Did the Tax Appeals Commission err in law when it concluded that "The Lord of the Reload Prize Competition" conducted by the Appellant, which is duly registered as the prize competition by the Western Provincial Council, is lottery?

3. Did the Tax Appeals Commission err in law when it concluded that the Appellant was obliged to deduct withholding tax under and in terms of section 157 of the Inland Revenue Act, No. 10 of 2006 (as amended), on the basis that it was conducting a lottery?

4. In view of the facts and circumstances of the case did the Tax Appeals Commission err in law in arriving at the conclusion that it did?

It is stated in paragraph 5 of the further written submissions of the Commissioner General of Inland Revenue, the respondent, dated November 2021 that,

> "The abovementioned all four questions of law are based on the issue, whether the said "Lord of the Reload" conducted by the Appellant is a lottery or a prize competition. If the said "Lord of the Reload" is a lottery, it necessarily attracts the provisions of the section 157 of the Inland Revenue Act, No 10 of 2006 (as amended)."

Tax Appeals Commission too has also identified by the following words at page 04 of its determination that the main question is whether the Appellant conducted a lottery or a prize competition.

> *We now turn to what we think is the most important question in this appeal: whether the Appellant has conducted a prize competition or a lottery. Section*

24 of the Prize Competition Act, No. 37 of 1957 defines the term 'prize competition' as follows:

"Prize competition means any competition in which prizes in kind, cash or services are awarded but does not include a lottery"

Section 28 of the Lotteries Ordinance No. 08 of 1844 defines the term 'lottery' as follows:

"lottery includes any [under] taking in the nature of a lottery."

The Appellant is a company, which among other things provides telecommunication facilities to the customers. Under the scheme of "The Lord of the Reload" prize competition". The Appellant established a draw by which every person reloading his or her mobile telephone by Rs. 50/= becomes entitled to participate in the draw. If a person pays Rs.500/= he or she gets ten chances of participating. There is no dispute that the Appellant has obtained lawful permission from the Western Provincial Council to conduct a prize competition and the Appellant has paid 20% tax under the Prize Competitions Act No. 37 of 1957.

The argument of the respondent is that this is a lottery. Respondent relies on section 157 (b) of the Inland Revenue Act No.10 of 2006 which reads as below,

157. *notwithstanding anything to the contrary in any other law where, ... any person or partnership pays a lottery prize, winnings from gambling or winnings from betting to any person, such institutions, person or partnership, as the case may be, shall deduct at the time of the payment of such reward, share of fine, a lottery prize, winning from gambling or winning from betting, as the case may be, income tax at the rate of ten per centum on such gross payment:*

On the basis of this provision, it is argued for the respondent, that Tax paid by the Appellant to the Provincial Council of the Western province has no application and/ or relevance to the taxing issue in this appeal (paragraph 11 of the final written submissions of the respondent)

In this regard it is pertinent to note the following passage from page 04 of the determination of the Tax Appeals Commission.

> *The Provincial Revenue Department of the Western Provincial Council has issued a prize competition license to the Appellant to conduct the prize competition. There is no doubt that the official acts were performed.* ***The Appellant in its submissions states that the same activity cannot be a lottery as well as a prize competition. We agree with the Appellant's position which is stated in its submission.*** *But we disagree with the fact that a licensed prize competition cannot constitute a lottery. A lottery can be disguised as a prize competition. "in deciding whether the competition conducted by the appellant is a prize competition or a lottery, a realistic view should be taken and regard should be had to the way in which competition is actually conducted" (Singette Ltd V Martin [1971] A.C. 407, 423, per Pearson LJ). It is important to structure such competitions and draws so that they do not inadvertently fall within the definition of a lottery.*

It is to be noted that the Tax Appeals Commission Says,

> ***"The Appellant in its submissions states that the same activity cannot be a lottery as well as a prize competition. We agree with the Appellant's position which is stated in its submission."***

In the same breath at the following sentence the Tax Appeals Commission says

"But we disagree with the fact that a licensed prize competition cannot constitute a lottery. A lottery can be disguised as a prize competition."

It appears that the aforesaid two statements are contradictory to each other.

On the one hand, the Tax Appeals Commission agrees with the Appellant that if it is prize competition, it cannot also be a lottery. But on the other hand, the Tax Appeals Commission says that a prize competition can also be a lottery.

It appears that this confusion has been created or at least one reason for the creation of that confusion is the absence of a definition of a lottery. For example, section 28 of the Lotteries Ordinance No.08 of 1844 "defines the term lottery" as,

"Lottery includes any undertaking in the nature of a lottery."

This is to simply say that a lottery is a "lottery". The respondent has submitted that this definition is 165 years old. Both the appellant and the respondent has resorted to define the term "lottery" by way of dictionaries.

The Appellant at paragraph 47 of its final consolidated written submissions dated November 2021 has stated,

The Concise Oxford English Dictionary [Oxford: Oxford University Press, 11 edn., 2004], at p.844, defines the term "lottery" as follows:

***Lottery** (pl **lotteries**) a means of raising money by selling numbered tickets and giving prizes to the holders of numbers drawn at random – something whose success is governed by chance.*

The respondent at paragraph 35 of its final written submission aforesaid states,

> ***Lottery*** (pl ***lotteries***) *a means of raising money by selling numbered tickets and giving prizes to the holders of numbers drawn at random something whose success is governed by chance.*

The respondent at paragraph 36 of the aforesaid final written submission has quoted another definition for a lottery which is, the term "lottery" is defined by J.E. Penner (ed) in Mozley & Whiteley's Law Dictionary [London: Butterworths, 12th edn., 2001], as follows;

> *"Lottery. A game of chance, or a distribution of money in prizes by chance, without the application of choice or skill. Illegal unless falling within the provisions of the Betting, Gaming and Lotteries Act 1963 and the Lotteries Act 1975."*

It appears that in the concise Oxford English Dictionary cited by both parties **"selling numbered tickets"** is included.

Therefore, to constitute a lottery there must be a selling of numbered tickets.

"The Lord of the Reload prize competition" as it appears to this court does not include the selling of numbered tickets. The customer simply pays his or her bill and for every Rs. 50/= he or she gets qualified for a chance in the Super Draw.

In other words, according to the definition given for a lottery in the concise Oxford English Dictionary (which has been accepted by both parties) the requirement of "selling numbered tickets" is included. There is no selling of numbered tickets when a customer of the appellant pays his or her bill.

The customer pays the bill for the entire amount of which he or she can obtain telecommunication facilities. He or she does not pay for a numbered ticket.

In this regard, it is pertinent to note that the respondent has cited a part of the judgment of Viscount Dilhorne J in Imperial Tobacco Ltd V Attorney General (1980) 2 W.L.R. 466 in which it was said

> "***Where a person buys two things for one prize it is impossible to say that he had paid only for one of them and not for the other.*** The fact that he could have bought one of the things at the same price as he paid for both is in my view immaterial".

If so, is the customer of the Appellant also placed in the same position because he also buys two things for one prize? However, it appears that the facts in the case of **Imperial Tobacco Ltd V Attorney General** are different.

In the judgment of **Imperial Tobacco Limited and Another (Respondents) and Her Majesty's Attorney General (Appellant)** heard by Viscount Dilhorne, Lord Edmund-Davies, Lord Fraser of Tullybelton, Lord Scarman and Lord Lane, [1980] UKHL J0306-3 House of Lords, Viscount Dilhorne said,

> "The start of this litigation was the taking out by the respondents on the 13th December 1978 of an originating summons in the Commercial Court to secure a declaration that schemes they had operated on and after the 9th October 1978 were lawful and did not contravene the Lotteries and Amusements Act 1976, in other words, a declaration that they were not guilty of criminal offences. Those schemes were called "Spot Cash, Trade Spot Cash, Special Trade Spot Cash and Wholesalers Spot Cash".
>
> "For the year 1978/79 the respondents had allocated £19,800,000 for advertising and promoting the sale of Players cigarettes. For their Spot

Cash promotion 262,250,000 cards were printed, 260 million of those cards were to be inserted in packets of Players King Size cigarettes. **The packets which contained a card had on their outsides a strip bearing the words "Spot Cash closes 31.3.79" and so could be distinguished from the packets of King Size cigarettes which did not contain a card. The purchaser of a packet so marked, would, if the card contained had the same amount of money, it might be £5,000, £1,000, £100 or £10 or £1 or the words "Free Packet" printed on it three times, win a prize of the amount so printed or a free packet of King Size cigarettes as the case might be".**

"The purchaser of such a packet paid no more for it than he would have had to pay for a packet which did not contain a card. The Spot Cash Scheme was widely advertised as free and as a game not involving any skill".

"The remaining 2,250,000 cards were distributed without anything having to be purchased to obtain a card. Members of the public could obtain them from retailers or on application to the respondents. Cards were also allocated to wholesalers and sales representatives to encourage the promotion of the Spot Cash scheme".

Therefore, the distinction between the **Imperial Tobacco Ltd. V. Attorney General** case and the present case is that in that case, a customer could identify observing the outside of the packet that he is entering into the draw because the packets which contain a card had on their outsides a stripe bearing the words "spot cash closes 31.03.79." **Although a customer paid the same amount of money for a packet which does not contain a card and for a packet which does contain a card; a customer intentionally chose to participate in the draw by selecting a packet which has the relevant information printed.**

Thus, it was similar to buying a numbered ticket; the customer knew that he gets involved in the draw. It was in such circumstances Viscount Dilhornes's observation that "where a person buys two things for one prize it is impossible to say that he had paid only for one of them and not for the other" becomes material.

As already said the customer who buys a packet of Players King Size cigarettes, when the words "Spot Cash Closes 31.03.79" knew that he chooses to participate in the draw and his position was similar to a person who buys a numbered ticket.

But there were no such similarities when a mobile telephone customer of the Appellant company paid his bill. Actually, there can be some customers who even does not know the very existence of the "Lord of the Reload Prize Competition". Therefore, in the present case there is no selling of numbered tickets which is a basic requirement of a lottery.

The respondent has attempted to argue that the Appellants arguments that the consideration is for telecommunication service but not for entering the Super Draw is untenable.

In this regard, the respondent has cited the case of **Reader's Digest Association Ltd v Williams (1976) 1 W.L.R. 1109** in which it was said "A lottery is the distribution of prizes by chance where the person taking part in the operation, or a substantial number of them, make a payment or consideration in return for obtaining their chance of a prize. There are really three points one must look for in deciding whether a lottery has been established: first of all, the distribution of prizes secondly, the fact this was to be done by means of a chance and thirdly, that there must be some actual contribution made by the participants in return for their obtaining a chance to take part in the lottery. The above laid down

principle shows that there should be three elements to establish a lottery such as; prize, chance and consideration.

It may be noted that in the aforesaid case too the passage reproduced below is included.

> A lottery is the distribution of prizes by chance where the person taking part in the operation, or a substantial number of them, **make a payment or consideration in return for obtaining their chance of a prize.**

Therefore, that case also shows that there is something similar to a buying of a numbered ticket.

The respondent has also contended that a 'competition' requires and the term presupposes some skill and a mere contest on chance will not be qualified as a competition. This is to say that although the Appellant had registered its super draw under the Prize Competitions Act of 1957, it is actually a lottery.

It is pertinent in this regard to consider the Indian Supreme Court case of **R. M. D. Chamarbaugwalla vs The Union Of India**(With Connected ... on 9 April, 1957 Equivalent citations: 1957 AIR 628, 1957 SCR 930 which was based on the Indian Prize Competitions Act 42 of 1955. The summary of the judgment says,

> "The petitioners, who were promoting 'and conducting prize competitions in the different States of India, challenged the constitutionality Of ss. 4 and 5 Of the Prize Competitions Act (42 of 955) and rr. xi and 12 framed under S. 20 Of the Act. Their contention was that 'prize competition' as defined in S. 2(d) of the Act included not merely competitions that were of a gambling nature but also those in which success depended to a

substantial degree on skill and the sections and the rules violated their fundamental right to carry on business, and were unsupportable under Art. 19(6) of the Constitution, that they constituted a single inseverable enactment and, consequently, must fail entirely. On behalf of the Union of India this was controverted and it was contended that the definition, properly construed, meant and included only such competitions as were of a gambling nature, and even if that was not so, the impugned provisions, being severable in their application, were valid as regards gambling competitions.

Held, that the validity of the restrictions imposed by SS. 4 and 5 and rr. ii and 12 of the Act as regards gambling competitions was no longer open to challenge under Art. 19(6) of the Constitution in view of the, decision of this Court that gambling did not fall within the purview of Art. 19(i) (g) of the Constitution.

The State of Bombay v. R. M. D. Chamarbaugwala, (1957) S.C.R. 874, followed.

On a proper construction there could be no doubt that the Prize Competitions Act (42 Of 1955), in defining the word 'prize competition' as it did in S. 2(d), had in view only such competitions as were of a gambling nature and no others.

In interpreting an enactment the Court should ascertain the intention of the legislature not merely from a literal meaning of the words used but also from such matters as the history of the legislation, its purpose and the mischief it seeks to suppress.

The Bengal Immunity Company Limited v. The State of Bihar and others, (1955) 2 S.C.R. 603, referred to.

The Bench comprised of AIYYAR, T.L. VENKATARAMA DAS, SUDHI RANJAN (CJ) SINHA, BHUVNESHWAR P. DAS, S.K. GAJENDRAGADKAR, P.B.

T.L. VENKATARAMA AIYYAR J., writing the judgment of the court said

> "If the question whether the Act applies also to prize competitions in which success depends to a sub stantial degree on skill is to be answered solely on a literal construction of s. 2(d), it will be difficult to resist the contention of the petitioners that it does. The definition of 'prize competition' in s. 2(d) is wide and unqualified in its terms. There is nothing in the wording, of it, which limits it to competitions in which success does not depend to any substantial extent on skill but on chance. It is argued by Mr. Palkhiwala that the language of the enactment being clear and unambiguous, it is not open to us to read into it a limitation which is not there, by reference to other and extraneous considerations. Now, when a question arises as to the interpretation to be put on an enactment, what the court has to do is to ascertain " the intent of them that make it", and that must of course be gathered from the words actually used in the statute. That, however, does not mean that the decision should rest on a literal interpretation of the words used in disregard of all other materials. " The literal construction then", says Maxwell on Interpretation of Statutes, 10th Edn., p. 19, "has, in general, but prima facie preference. To arrive at the real meaning, it is always necessary to get an exact conception of the aim, scope and object of the whole Act; to consider, according to Lord Coke: (1). What was the law before the Act was passed; (2) What was the mischief or defect for which the law had not provided; (3) What remedy Parliament has appointed; and (4). The reason of the remedy." The reference here is to Heydon's case (1). (1) (1584) 3 W. Rep. 16; 76 E.R. 637. These are principles well settled, and were applied by this Court in The Bengal Immunity Company Limited v. The State of Bihar and others (2) (2) (1955)

2 S.C.R. 603, 633. To decide the true scope of the present Act, therefore, we must have regard to all such factors as can legitimately be taken into account in ascertaining the intention of the legislature, such as the history of the legislation and the purposes thereof, the mischief which it intended to suppress and the other provisions of the statute, and construe the language of s. 2(d) in the light of the indications furnished by them".

.....

"Having regard to the circumstances under which the resolutions came to be passed, there cannot be any reasonable doubt that the law which the State legislatures moved Parliament to enact under Art. 252(1) was one to control and -regulate prize competitions of a gambling character. Competitions in which success depended substantially on skill could not have been in the minds of the legislatures which passed those resolutions. Those competitions had not been the subject of any controversy in court".

.....

" It should further be observed that the language of the resolutions is that it is desirable to control com- petitions. If it was intended that Parliament should legislate also on competitions involving skill, the word, ,control' would seem to be not appropriate. While control and regulation would be requisite in the case of gambling, mere regulation would have been sufficient as regards competitions involving skill. The use of the word control' which is to be found not only in the resolution but also in the short title and the preamble to the Act appears to us to clearly indicate that it was only competitions of the character dealt with in the Bombay judgment, that were within the contemplation of the legislature".

Now in the local Prize Competition Act of 1957 too, which has been enacted just two years after the Indian Act, the preamble contains the words, "to control the promotion or conduct of prize competitions in Ceylon and to prohibit persons in Ceylon from participating in prize competitions promoted or conducted outside Ceylon".

As per the principle laid down in the aforesaid Indian case, it is apparent that the word "control" was used to control the prize competitions of gambling nature and not prize competitions involving skill, because if so, as per the Indian judgment only the word "regulate" would have been sufficient.

Therefore, the argument of the Respondent that only prize competitions involving skill can be registered under the Prize Competition Act of 1957 is untenable.

But, if Prize Competitions Act governs games of a gambling character, then is "The Lord of the Reload" game of the appellant is also a game of gambling and hence a "lottery"?

But, it is seen that although "The Lord of the Reload" prize competition is gambling in the character, which depends on chance, "gambling" is wider in scope than "lottery". The support for this proposition, incidentally, comes from a case cited for the **Respondent**.

Therefore, it would be relevant to note case cited by the respondent to define what is a lottery. That is the case of **Poppen V Walker** decided in the Supreme Court of South Dakota. It is stated that the court said in that case,

> *"Under the constitutional mandates and statues prohibiting lotteries as a matter of public policy, the courts developed a broad definition of the term "lottery" in order to dissuade all sorts of indigenous attempts to circumvent the prohibition. Absent any statutory definition, courts generally hold that any enterprise, whether it be a plan, scheme, game or other artifice, is a*

"lottery" if the three elements of ***chance****, prize and consideration are present".*

But the same case in defining what is a lottery says,

"The term "lottery" is not defined in our constitution. To determine whether the term is susceptible to more than one meaning, we turn first to the dictionary definitions. **Webster's New Collegiate Dictionary** (1981) defines lottery as:

"An event or affair whose outcome is or seems to be determined by chance".

Webster's New American College Dictionary (1981) defines it more narrowly as:

"A method of **selling numbered tickets** and awarding prizes to the holders of certain numbers drawn by lot".

The American Heritage College Dictionary (3rd.ed.1993) defines lottery in three senses:

1) "A contest in which **tokens are distributed or sold**, the winning token or tokens being secretly predetermined or ultimately, selected in a random drawing; 2) a selection made by lot from a number of applicants or competitors; 3) an activity or event regarded as having an outcome depending on fate".

Random House Webster's Dictionary (1993) defines lottery as:

1) "A gambling game in which a **large number of tickets are sold** and a drawing is held for prizes; 2) a drawing of lots".

The definition in **Funk and Wagnalls Standard Dictionary** (1991) is

"a drawing for prizes for which **numbered tickets are sold**, the winning tickets being selected by lot".

Therefore, even the said case cited for the respondents shows two things

1) that courts have follow definitions in dictionaries to define what is a lottery and
2) **in almost all definitions selling of tickets or selling of numbered tokens is involved**.

In the same case it is stated,

"When a constitution prohibits both games of chance and lotteries, the question arises as to the distinction between the two terms. When both terms are used, **the term "lottery" has a narrower meaning in that it is a special form of game of chance**. Contact, Inc. v. State, 212 Neb.584, 324 N.W. 2d 804 (1982). It is the term "game of chance" which has a broad generic meaning.[20] (page 08 of the copy of the judgment attached for the respondent marked as X).

Therefor, it appears that while "a game of chance" has a wider meaning "lottery" is having a narrower meaning. This becomes clearer from the very next paragraph of the said judgment which says,

To define "game of chance", we turn to the organic law. A game of chance is one in which the result as to success or failure depends less on the skill and experience of the player than on a purely fortuitous circumstance incidental to the game, or the manner of playing it, or the device or apparatus with which it is played. Beedaro v. *245 Caldwell, 156 Neb. 489, 56 N.W. 2d 706, 709 (1953). It is a contest wherein chance predominates over skill. Bayer v. Johnson, 349 N.W. 2d 447, 449 (S.D.1984). the test is whether chance is the determining element in the outcome of the game.

> Stubbs v. Dick, 89 N.E. 2d 480, 482 (Ohio, 1949). **The three elements of prize, chance and consideration are present in a game of chance.** Automatic Music and Vending v. Liquor, 426 Mich. 452, 396 N.W. 2d204 (1986). It is an encompassing definition which includes most forms of gaming; cards, dice and craps, [21] pinball machines, [22] blackjack and roulette, [23] and video poker machines [24] have been found to be games of chance.

Therefor, it is clear that the elements of prize, chance and consideration emphasized for the respondent are ingredients of a game of chance whereas a "lottery" includes something more which is the sale of numbered tickets or tokens.

This distinction between a game of chance and a lottery becomes even clearer by the very next paragraph of the said judgment.

> **We conclude that by separately stating the terms "game of chance" and "lottery", the framers of the original provision intended the term "game of chance" to be broad in scope, including most forms of gaming, and then the term "lottery" in the narrower sense contemplating the sale of tokens or tickets to large numbers of people for the chance to share in the distribution of prizes for the purpose of raising public revenue.**

The aforesaid judgment was cited and its copy was attached for the respondent.

In the sense of that judgment too the definition of a lottery is narrower than a game of chance because it involves selling of numbered tickets or tokens. The Appellant's Super Draw did not involve such selling of numbered tickets or tokens. In the case of Imperial Tobacco Ltd v. Attorney General which was

referred to earlier in which the House of Lords decided that the scheme was a lottery there were specially printed words in the packets of Cigarettes which included cards for the draw. That can be considered as the selling of a "token".

Furthermore, the respondent has cited **SingetteLtd v Martin, (1971) A.C 407, 423, per Pearson LT** in which it was held that "in deciding whether the competition conducted by the appellant is a prize competition or a lottery, a realistic view should be taken and regard should be had to the way in which the competition is actually conducted".

If one takes a realistic view of the Lord of the Reload competition one has to appreciate that it is not a "lottery" because there is no sale of numbered tickets or tokens.

Therefore,

(a) "The Lord of the Reload" game or the prize competition is a game in the character of gambling because it involves only chance but not any skill,

(b) The Indian case cited above shows that Indian Prize Competitions Act of 1955 was enacted for the purpose of "controlling" competitions of gambling and not competitions that involved skill, because if it were the latter only the word "regulate" would have been sufficient,

(c) The Prize Competitions Act of Ceylon was enacted in 1957 and as in the Indian Act, in Ceylon Act too the word "control" is found in the preamble of the Act,

(d) It is not necessary that there must be a game which involves skill to be registered under the Prize Competitions Act of Ceylon of 1957 and under that Act a game which is gambling in character could be registered,

(e) "The Lord of the Reload" competition, as aforesaid in (a) is a game in the character of gambling,

(f) But the case Poppen V Walker cited for the Respondent shows that every game in the character of gambling is not a "lottery", or in other words, gambling has a much wider scope and a "lottery" has a narrower scope because the latter involves "selling of numbered tickets or tokens",

(g) There was no such selling of "numbered tickets or tokens" in "The Lord of the Reload" prize competition,

(h) Although it can be argued that in "The Lord of the Reload" competition the customer pays a consideration to be qualified for a prize too, it is clearly different from buying a "numbered ticket or token",

(i) The **Imperial Tobacco Ltd. Vs. Attorney General** case cited for the Respondent to show that the customer of the appellant pays for a "lottery" can be distinguished because in that case the packets of cigarettes containing cards for the draw could be identified from printed words in them and hence was similar to buying a ticket or a token,

(j) There was nothing similar in character in "The Lord of the Reload" prize competition and therefore, it is not a "lottery".

Therefore, this court answers the questions in the case stated as below,

1. Yes
2. Yes
3. Yes
4. Yes

In the circumstances the case stated in the form of an appeal is allowed.

D.N. Samarakoon,

Judge of the Court of Appeal.

I agree.

Sasi Mahendran,

Judge of the Court of Appeal.