

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

In the matter of a Case Stated under Section  
170 of the Inland Revenue Act, No. 10 of  
2006 as amended.

**Asia Pacific Institute of Information  
Technology Lanka (Pvt) Ltd,**  
No. 388, Union Place,  
Colombo 02.

**Appellant**

**Case No. CA/TAX/0004/2014**  
Tax Appeals Commission  
No. TAC/VAT/002/2013

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:** : Dr. Romesh de Silva, PC with Harsha  
Amarasekera, PC and Kanchana Pieris  
for the Appellant.

Milinda Gunatilleke, A.S.G. for the  
Respondent.

**Argued on** : 06.12.2022 & 12.01.2023

**Written Submissions filed on** :  
: 17.03.2023 & 02.07.2018 by the  
Appellant)  
16.03.2023 & 29.06.2018 (by the  
Respondent)  
**Decided on** : 31.03.2023

**Dr. Ruwan Fernando, J.**

### **Introduction**

[1] This is an appeal by way of a case stated against the determination of the Tax Appeals Commission dated 23.01.2014 confirming the determination made by the Commissioner General of Inland Revenue on 11.03.2013. The Value Added Tax (VAT) appeal relates to the monthly taxable periods, September 2006, and from 01.04.2008 to 31 March 2009 made under section 34 of the Value Added Tax Act, No. 14 of 2002.

### **Factual Background**

[2] The Appellant is a limited liability company incorporated in Sri Lanka and the Appellant is engaged in the provision of educational services. The Appellant entered into an agreement with the Board of Investment of Sri Lanka in terms of section 17 of the Board of Investment Law, No. 4 of 1978 (hereinafter referred to as the BOI Law) to conduct and operate a business and set up an Information Technology Training Institute for the offering of degrees, diplomas and certificates duly affiliated to Asia Pacific Institute of Information Technology (APIIT) of Malaysia, and Staffordshire University of the United Kingdom.

[3] The Appellant furnished returns under and in terms of the provisions of the Value Added Tax Act, No. 14 of 2002, as amended (hereinafter referred to as the VAT Act) for the taxable periods relevant to the assessments under appeal, and claimed an exemption from Value Added Tax (hereinafter referred to as the VAT) under section 8 of the VAT Act in respect of the educational services provided by the Appellant as an "Educational Establishment" within the meaning of section 83 of the VAT Act. By letter dated 15.11.2010, the assessor

rejected the claim of the Appellant for the VAT exemption and assessments were made for the following reasons:

1. The Asia Pacific Institute of Information Technology Lanka (Pvt.) Ltd has not provided vocational Training or practical training in the areas of Information Technology, vocational training, management training, skills development or training for foreign employment, textile and clothing, nursing, food processing, agriculture, plantation or industrial;
2. According to the agreements and information were collected by the department, the Asia Pacific Institute of Information Technology Lanka (Pvt.) Ltd had conducted, without obtaining any prior approval from the Board of Investment, the following business activities and therefore, the APIIT has violated the terms and conditions of the Agreement and Supplementary Agreements which were entered into with the BOI:
  - (i) APIIT has entered into agreements with
    - (a) Virtusa (Pvt.) Ltd;
    - (b) Celltel Lanka (Pvt.) Ltd;
    - (c) Mobitel Lanka (Pvt.) Ltd.to lease the part of the premises.
  - (ii) APIIT has provided information technology consultancy services to Expo Lanka Freight in Dubai.
  - (iii) APIIT has entered into an agreement with the Ministry of Education in Sri Lanka.

### **Appeal to the Commissioner-General of Inland Revenue**

[4] Being dissatisfied with the said assessments, the Appellant appealed against the assessments to the Commissioner-General of Inland Revenue (hereinafter referred to as the Respondent). The Respondent by its determination dated 11.03.2013 confirmed the assessments on the basis that the Appellant is in the business of providing educational services and not conducting tertiary and vocational education within the meaning of the VAT Act, and therefore the Appellant is not entitled to the VAT exemption under section 8 of the VAT Act.

### **Appeal to the Tax Appeals Commission**

[5] Being dissatisfied with the said assessments, the Appellant appealed against the assessments to the Tax Appeals Commission (hereinafter referred to as the TAC), and the TAC by its determination dated 23.01.2014 confirmed the determination made by the Respondent and dismissed the appeal.

### **Questions of Law for the Opinion of the Court of Appeal**

[6] Being dissatisfied with the said determination of the TAC, the Appellant appealed to the Court of Appeal, and formulated the following questions of law in the case stated for the opinion of the Court of Appeal:

1. Did the Commission err in law by allowing itself to be influenced/guided by the provisions in the Tertiary and Vocational Education Act, No. 20 of 1990 when the provisions in the Value Added Tax Act, No. 14 of 2002 relating to the exemption claimed by the appellant namely, Paragraph (b) (i) of part II of the first schedule to the Act read with Paragraph (d) of the definition of "Educational Establishment" did not require reference to any other enactment?
2. Did the Commission err in law in allowing itself to be influenced/guided by the provisions in the Tertiary and Vocational Education Act, No. 20 of 1990 for the determination of whether the appellant was an "educational establishment", referred to in paragraph (d) of the definition of "educational establishment", especially when the definition of "educational establishment", has two paragraphs, namely, Paragraphs (c) requiring reference to the said Act and the other, namely, Paragraph (d) not requiring such reference?
3. Did the Commission err in law in its failure to appreciate that, in relation to the subject of Value Added Tax liability of a person, the Value Added Tax Act, No. 14 of 2002 is a special Act, the provisions of which supersede the provisions in any other Act on the basis of the principle of interpretation *specialia generalibus derogant*?
4. Did the Commission err in law when it rejected the claim of the appellant for exemption for the reason that the appellant had not provided, *inter alia*, tertiary education as well when the said provisions of the Value Added Tax Act did not require provision of tertiary education?

5. Did the Commission err in law when it failed to determine the issue of exemption claimed by the appellant solely by reference to the intrinsic terms of the relevant provisions of the Value Added Tax Act referred to earlier?
6. a). Did the Commission err in failing to appreciate that there is a difference between 'Vocational Education' in the Tertiary and Vocational Education Act and 'Vocational Training' in the Value Added Tax Act?  
  
b). If so did the Commission err in incorrectly applying and/or relying on the provisions in the Tertiary and Vocational Education Act in arriving at its determination?
7. Did the Commission err in law when it rejected the claim for exemption on the basis of the following inferences which are totally unsupported by any evidence,
  - a) That the reason why the appellant did not register itself under the Tertiary and Vocational Education Act is that it did not provide tertiary education and vocational education.
  - b) Under the setting provided by the Tertiary and Vocational Education Act it is doubtful whether the appellant would be willing to subject itself to the supervision and control created by that Act.
8. Having acknowledged at page 7 of the determination that material was produced on behalf of the appellant in order to show that the appellant provided practical training and skills development etc. did the Commission err in law in its failure to decide the issue of exemption on the basis of, inter alia, the material so produced?
9. Did the Commission err in law when in the determination of the issue of exemption it has taken into account irrelevant and extraneous considerations namely, that,
  - a) The appellant has violated the provisions of the agreement it had with the Board of Investment of Sri Lanka.
  - b) That it failed to reduce the fees charged from the students even after the receiving of a ruling from the Deputy Commissioner General of

Inland Revenue (VAT) to the effect that the appellant is exempt from VAT; and

- c) That the appellant failed to provide a certificate from the Board of Investment.
10. With regard to the plea of estoppel raised on behalf of the appellant on the basis of the ruling given by the Deputy Commissioner General of Inland Revenue (VAT) to the effect that the appellant is exempt from VAT, did the Commission err in law in rejecting the plea on the basis of the inference that it is not a ruling issued after examining all the matters relating to the exemption, when such inference is not supported by any evidence at all?
11. a) Did the Commission err in law in its conclusion that the appellant cannot legally conduct tertiary and vocational education without complying with the provisions of the Tertiary and Vocational Education Act when legality is not a requirement under the provisions of the Value Added Tax Act or under any revenue legislation at all?
- b) In any event was such a finding not relevant to the determination of the matters before the Commission?
12. Instead of considering the material produced on behalf of the appellant to show that the appellant has provided vocational training or practical training in the area of information technology etc. did the Commission err in law in concluding that no vocational or practical training is provided by the appellant on the basis of the erroneous belief that the appellant is only a Graduate School providing Masters Programmes, which belief is contrary to the material produced on behalf of the appellant?
13. Did the Commission err in failing to appreciate that vocational training does not cease to be vocational training merely by reason of the fact that a degree or other qualification may ultimately be granted by the Appellant?
14. In any event, even on the face of the provisions in the Tertiary and Vocational Education Act, was the Appellant not in violation of the said Act?

15. Having regard, in the absence of a definition of “vocational training” or “practical training” in the Value Added Tax Act, to the ordinary meaning of vocational training (which is not different from the meaning of the words as given in the Tertiary and Vocational Education Act) and practical training, is not the appellant an educational establishment providing, inter alia vocational or practical training in the areas of information technology?
16. Did the Appellant in any event provide practical training?
17. Even if it is assumed for the sake of argument that the appellant did not provide vocational training, is not the appellant still entitled to the exemption granted by the Value Added Tax Act for the reason that the definition of “educational establishment” in the VAT Act requires the presence of vocational training OR practical training and that the appellant provided such practical training?
18. In the circumstances of this matter, is the Appellant not liable to pay VAT?
19. Did the Commission fail to properly examine and/or apply and/or appreciate the facts relevant to this matter?

[7] The TAC dismissed the Appellant’s appeal on the following grounds:

1. The Appellant is a graduate School offering Post-Graduate Degrees, Diplomas and Masters Degrees in Information Technology, but not providing vocational education or practical training as it is evident from the Website of the Appellant;
2. The registration by the Appellant under the Tertiary and Vocational Education Act is mandatory for the exemption but the Appellant was not registered under the said Act, and therefore, the Appellant cannot be regarded as an “Educational Establishment” providing vocational or practical training under paragraph (d) of section 83 of the definition of “Educational Establishment” of the VAT Act;
3. The Gazette Extraordinary No. 887/8 of 07.09.1995 issued in terms of the Tertiary and Vocational Education Act highlights the importance that has been accorded to tertiary and vocational education in the country, and the VAT exemption has been given to promote more institutions registered under the Vocational Education Act to engage in tertiary and vocational education;

4. The Appellant has failed to submit the "Review Certificate" from the BOI to the Inland Revenue Department, to the effect that it has fulfilled all the conditions laid down in paragraph "d" of the definition, for the purpose of being considered as an "Educational Establishment".
5. The Appellant has not reduced its fees after receipt of the exemption from VAT, and while claiming exemption from VAT, retained the VAT collected from the students, on behalf of the Government.

[8] On 09.07.2018, it was agreed and recorded that the three connected cases, CATax/05/2014, CA/Tax/04/2014 and CA/Tax/24/2014 would be taken up for argument together and the parties would be bound by such judgment in respect of the other two matters CA/Tax/04/2014 and CA/Tax/24/2014).

[9] At the hearing of the appeal, Dr. Romesh de Silva, the learned President's Counsel for the Appellant and Mr. Milinda Gunatilleke, Additional Solicitor General for the Respondent made extensive oral submissions on the questions of law submitted for the opinion of the Court and filed further written submissions. Dr. Romesh de Silva submitted that the TAC erred in holding that the Appellant was only offering Post-Graduate Degrees, Diplomas and Masters Degrees in Information Technology but was not providing vocational training or practical training, when it was clearly demonstrated by the documents marked A1-A2 that the Appellant conducted practical training as a part of the courses offered by the Appellant during the relevant periods. He further submitted that the TAC erred in holding that the Appellant could not have conducted vocational or practical training in the area of information technology without registering under the Vocational Education Act, No. 20 of 1990, when it is crystal clear that the definition of "Educational Establishment" in the VAT Act does not require registration under the Tertiary and Vocational Education Act.

[10] He strenuously contended that the Appellant has presented material before the TAC as referred to at page 8 of the TAC determination to demonstrate that practical training and skills development were provided in the training programs conducted by the Appellant. He further submitted that the Appellant had given details of the theoretical lecture hours as well as the practical hours and therefore the Appellant falls within paragraph (d) of the definition of "Educational Establishment" in section 83 of the VAT Act. He further submitted



that the TAC has totally ignored the syllabi and mistakenly decided that registration by the Appellant under the Tertiary and Vocational Education Act, No. 20 of 1990 is a mandatory requirement for the eligibility of the VAT exemption when it is clear that the VAT Act makes no reference to the Tertiary and Vocational Education Act.

[11] Dr. de Silva strenuously argued that all what the Appellant had to establish was that the Appellant is providing either vocational training or practical training, and if the Appellant established that it provided practical training in the areas of information technology, it is eligible for the exemption in terms of the definition of "Educational Establishment" in section 83 of the VAT Act. He further submitted that practical training is a part of the Appellant's Information Technology Institute, and no program in the information technology can be conducted without practical training being given to the students who follow such courses in information technology.

[12] On the other hand, Mr. Gunatilleke submitted that since the terms "vocational training" and "practical training" are not defined in the VAT Act, the TAC was correct in relying on the criteria that should be satisfied by any educational institution under the Tertiary and Vocational Education Act, No. 20 of 1990 (hereinafter referred to as the Tertiary and Vocational Education Act). He submitted that in terms of the provisions of sections 14, 15 and 16 of the Tertiary and Vocational Education Act, the registration of any institute for the provision of tertiary and vocational education or conducting any tertiary and vocational education course or conducting any examination for conferring or granting any tertiary education award or vocational education award is mandatory.

[13] He submitted that the Appellant is not registered under the Tertiary and Vocational Education Act and, therefore, the Appellant could not have established, managed, conducted any tertiary or vocational education course under the provisions of the said Act. He argued therefore, that the ordinary meaning of "vocational training" or "practical training" in the VAT Act is not different from the meaning of the words as given in the Tertiary and Vocational Education Act, and therefore, the two Acts are in pari materia. He argued that the meaning of vocational and practical training in the VAT Act must be interpreted by reference to the Tertiary and Vocational Education Act. On that basis, he argued that the Appellant who failed to register as an educational institution providing vocational educational or practical training

under the provisions of the Tertiary and Vocational Education Act cannot be regarded as an "Educational Establishment" referred to in paragraph (d) of the definition of "Educational Establishment" of the VAT Act.

## **Analysis**

### **Statutory provisions**

[14] Before embarking upon the rival contentions of the parties, I may proceed to consider the relevant statutory provisions which have a bearing on the issue. The scope for the imposition of VAT is provided for in section 2 of the VAT Act. Section 2 of the VAT Act provides that-

"subject to the provisions of the VAT Act, the VAT 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, or carrying out, of a **taxable activity** by such person in Sri Lanka;*

(b) *on the importation of goods into Sri Lanka, by any person,*

*and on the value of such goods or services supplied or the goods imported, as the case may be subject to the provision of section 2A, at the following rates-.."*

[15] In terms of section 2 of the VAT Act, in order to render the relevant supply of goods and services liable to VAT, the said supply has to be a taxable supply of goods or services made by a registered person and made in the course of carrying out a taxable activity.

### **Exemption of Educational Establishment**

[16] Section 8 of the VAT Act as amended reads as follows:

*"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:"*

[17] Section 83 of the VAT Act defines the "Educational Services" as follows:

*"Educational services" means the provision of services by any person or partnership in relation to education, vocational training or retraining.*

[18] The supply of educational services by an educational establishment is a supply of services within the meaning of the First Schedule, Part I paragraph (vi) of the Inland Revenue Act. It reads:

*“(vi) The supply of educational services by an educational establishment or government schools or schools funded by the government”*

[19] The Appellant is claiming the exemption from VAT under section 17 of the Value Added Tax (Amendment) Act, No. 8 of 2006, which amended section 83 of the VAT Act, by expanding the definition of an “Educational Establishment” which exempted an “Educational Establishment” from the imposition of VAT. The definition of “Educational Establishment” in section 83 of the VAT Act was amended by the Value Added (Amendment) Act, No. 13 of 2004 and the Value Added (Amendment) Act, No. 8 of 2006. The definition of “Educational Establishment” in section 83 of the VAT Act as amended by the Value Added (Amendment) Act, No. 13 of 2004 and the Value Added (Amendment) Act, No. 8 of 2006 provides:

“Educational Establishment” means-

- (a) A higher educational institution established under the University Act, No. 16 of 1978 or the Buddhist and Pali Universities Act, No. 74 of 1981;*
- (b) any recognized institution providing vocational training or training for persons engaged in any trade, profession or employment and includes an incorporated examination body;*
- (c) any institution providing vocational training or practical training and-*
  - (i) provided with funds or other assistance by the Government and approved by the Minister in charge of the subject of Tertiary Education and Training in consultation with the Minister, as an institution providing such training;and*
  - (ii) where the surplus funds of such institution are reinvested in the maintenance of such institution.*

***(d) An institution which has entered into an agreement with the Board of Investment of Sri Lanka under section 17 of the Board of Investment of Sri Lanka Law, No. 4 of 1978, with a minimum investment of not less than rupees fifteen million providing vocational training or practical training in the areas of information technology, vocational training, management training, skills development or training for foreign employment, textile and***

***clothing, nursing, food processing, agricultural plantation or industrial”.***

[20] In terms of paragraph (d) of the definition of “Educational Establishment” in section 83 of the Value Added Tax (Amendment) Act, No. 8 of 2006, the Appellant must fulfill the following requirements to be eligible for the VAT exemption:

1. The Appellant has entered into an agreement with the Board of Investment of Sri Lanka under section 17 of the Board of Investment of Sri Lanka Law, No. 4 of 1978;
2. The Appellant has made a minimum investment of not less than rupees fifteen million;
3. The Appellant was engaged in providing-
  - (i) Vocational training **or** practical training in the areas of information technology;
  - (ii) Vocational training, management training, skills development; or
  - (iii) Training for foreign employment, textile and clothing, nursing, food processing, agricultural plantation or industrial.

[21] In terms of the third requirement, it would be sufficient for the Appellant to establish that it was engaged in providing either vocational training or practical training in the areas of information technology. It is not in dispute that the Appellant had entered into an Agreement with the Board of Investment of Sri Lanka under section 17 of the Board of Investment of Sri Lanka Law, No. 4 of 1978 (BOI Law). It is also not in dispute that the Appellant has invested a minimum of Rs. 15 million.

### **Issue**

[22] The main issue for the decision is whether the Appellant provided vocational training or practical training in the areas of information technology to be eligible for the exemption within the definition of “Educational Establishment” in paragraph “d” of section 83 of the VAT Act (as amended).

**Whether APIIT provides vocational training or practical training in the areas of Information Technology**

[23] The term "vocation" is defined in the Compact Oxford Dictionary Thesaurus, Indian Edition, 2006 as follows:

*"a person's employment, esp. regarded as requiring dedication/ a trade or profession".*

(ii) *Black's Law Dictionary (7<sup>th</sup> Edition) defines "Vocation" as follows:*

*"Vocation. A person's regular calling or business; one's occupation or profession".*

[24] Stroud's Judicial Dictionary (8<sup>th</sup> Edition) defines "Vocational Training" as follows:

*"VOCATIONAL TRAINING. Those years of an educational course which, taken in isolation, could not be regarded as 'vocational training' within the meaning of the EEC Treaty were, none the less, to be so regarded if the whole course, of which they formed part, constituted a preparation for a qualification for a particular profession, trade or employment, or which provided the necessary skills for such profession, trade or employment (Gravier v City of Liege (1985) E.C.R. 593; Belgium State v. Humbel, 263/86 (1988) E.C.R.5365). University education in veterinary medicine is 'vocational training' (Blaizol v University of Liege (No. 24/86) (1989) 1 C.M.L.R. 57).*

[25] The term "practical" is also defined in the Compact Oxford Dictionary Thesaurus, Indian Edition, 2006 as follows:

*"of or concerned with practice or use rather than theory"/"suited to use of action".*

[26] A perusal of the BOI Agreement No. 006 dated 10.06.2006 reveals that by application dated 17.06.1999, the Appellant sought approval of the BOI "**to conduct and operate a business to set up an Information Technology Training Institute** for offering of degrees, diplomas and certificates duly affiliated to Asia Pacific Institute of Information Technology (APIIT) of Malaysia and Staffordshire University of U.K. The BOI granted approval to the Appellant to conduct and operate a **business to set up an Information Technology Training Institute** subject to the terms and conditions referred to in the Board's letter dated 08.07.1999, and subject to the terms and conditions set out in the BOI. In terms of the approval granted to the Appellant, the Appellant shall have the following rights:

- (a) setup/conduct and/or operate the said business at the said premises after obtaining clearance and approval from the Board in respect of Environmental and Engineering aspects including the site and also be subject to the prior approval from the relevant authorities.....;
- (b) commence commercial operations within a period of six (06) months from the date hereof;

**(c) train not less than three hundred (300) persons annually;**

- (d) offer degrees only on its being duly affiliated to the Asia Pacific Institute of Information Technology (APIIT) of Malaysia and the University of Staffordshire of the United Kingdom;and
- (e) ....

[27] Clause 10 (vi) of the Agreement provides that the Appellant shall be entitled to the tax concession for a period of 5 years on the following specific undertakings of the Enterprise-

**(a) That it shall provide training for not less than Three Hundred (300) persons per annum;**

- (b) That it shall offer degrees only on its being duly affiliated to the Asia Pacific Institute of Information Technology (APIIT) of Malaysia and the University of Staffordshire of the U.K.

[28] The TAC however, solely relied on the Appellant's Web Site that refers to the Appellant as a **Graduate School** offering two distinctive MSC Programmes.... i.e.. Master of Science in computing (MSC. In computing) and Master of Science in Technology (MSC in Technology Management), and concluded that the Appellant is only a **Graduate School** providing Post Graduate Degrees, Diplomas and Master's degrees in Information Technology (pp. 12-13 of the TAC determination. The findings of the TAC are as follows:

*"With regard to this matter, the Representative for the Respondent has referred us to the Web Site of the Appellant which states that, it is a graduate School offering two distinctive MSC Programmes.... i.e.. Master of Science in computing (MSC. In computing) and Master of Science in technology (MSC in Technology management). Even in the Web Site of Asia Pacific Institute of Information Technology, Malaysia, the mother company of the Appellant, there is no mention or reference that it is conducting Tertiary and Vocational*

*Education courses, whereas it is also very clear that, it is a Graduate School providing Post-graduate Degrees, Diplomas and Masters Degrees in Information Technology”.*

[29] The TAC has not considered whether in terms of the BOI Agreement, the Appellant’s **Information Technology Training Institute** has in fact provided practical training, not less than three hundred (300) persons annually in the areas of information technology by reference to the curriculum submitted by the Appellant to the TAC.

[30] The Appellant’s position as per written submissions filed before the TAC (A3) dated 24.06.2011 before the TAC was that:

A- During the period for which assessments have been raised, APIIT conducted the following training Programmes:

- a. Diploma in Information and Communication Technology;
- b. Diploma in Business Administration;
- c. BSc (Hons) Computing;
- d. BSc (Hons) Computing (Software Engineering)
- e. BSc (Hons) Business Information Technology
- f. BA (Hons) Business Administration

B- All these programmes are highly job-oriented programmes that provide practical training and skills development to prepare students for employment immediately upon completion of the training. Trainees in Information Technology are given extensive practical training in a host of IT skills so that they can be readily employed in technical/vocational jobs in areas such as network administration, software engineering, software development, quality assurance, web development, database administration and business analysis;

C- Trainees in Business Administration are provided with management training to impart managerial and business skills to enable them to secure managerial jobs such as management trainee, executive and manager;

D-curriculum of the programmes provides evidence for practical training and skills development in Information Technology in the context of Computing/Information, Technology training programmes and management training and relevant skills development in the context of Business Administration training programmes.

[31] A Copy of the Appellant's Web Site (R4a) relied on by the TAC clearly refers to three educational components of the Appellant:

1. School of Computing;
2. Business School; and
3. Graduate School.

[32] The web site contains several features-Home, About us, Careers, Contact use, Site map etc. The Respondent has only produced the page relating to the **Graduate School** offering two Masters Programmes:

- (a) Master of Science in Computing (MSC in Computing);
- (b) Master of Science in Technology Management (MSC in Technology Management).

[33] The page relating to the School of Computing and Business School has not been provided to the TAC. The TAC only relied on the web page relating to **Graduate School** and held that the Appellant is only a Graduate School offering Post-Graduate Degrees, Diplomas and Masters Degrees in Information Technology. The TAC failed to examine the courses offered by the **School of Computing** and **Business School** and the relevant syllabus to ascertain whether the School of Computing or Business School provided practical training in the areas of information technology.

[34] Apart from the evidence contained in the Agreement which provides that the Appellant's Information Technology Training Institute shall provide training for not less than 300 persons per annum, the Appellant filed written submissions dated 24.06.2011 (A1) and annexed *inter alia*, the following documents (A1(i)-A1(iv) and A2):

**Annexure 1- Practical training & skills development in Information Technology Training Programmes conducted at APIIT (A1(i));**

**Annexure 2- Management Training and skills development in the Business Administration Training Programs conducted at APIIT (A1(ii))**

Annexure 3- Vocational nature of APIIT Training Programmes, comparison of University of Vocational Technology Awards with APIIT in Information Technology (A1(iii)).

[35] Dr. de Silva, referring to the written submissions and the annexures [A1(1)-A1(iv)] filed by the Appellant before the TAC submitted that the Appellant



conducted and provided practical training program in the Information Technology leading to the grant of diplomas and degrees. Annexure 1 (A 1)(i) sets out the Computing/Information Technology programmes highlighting the practical training and skills development in Information Technology. The said material that has been submitted to the TAC by the Appellant and it was also annexed to the Respondent's written submissions marked "R04" (p. 42-13 of the TAC brief).

[36] The TAC in its determination accepts that in order to show that the Appellant is an Educational Establishment providing vocational and practical training in the areas of Information Technology, the Appellant provided material giving details of theoretical lecture hours and practical lecture hours. The TAC states at 54 of the determination (paragraph 2):

*"In order to show that the Appellant's educational establishment" is providing vocational and practical training in the area of information technology, the Representative referred in detail, to the course of studies provided by the Appellant. The Representative also provided material to show that practical training and skill development are also provided in the training programmes conducted by the Appellant, giving details of theoretical lecture hours and practical lecture hours. In addition, the Representative referred to the dictionary meanings given to certain words that are given in the definition such as "training", "vocational education", "information technology", "management", "training, "skills" to show that the Appellant is providing vocational and practical training in the area of information technology and providing management training and skills development".*

[37] The TAC has, however, totally disregarded the detailed material submitted by the Appellant in regard to the practical training and skill development conducted by the Appellant, the theoretical lecture hours and practical lecture hours in the area of information technology referred to in the Appellant's document marked A1 and A2. They deal with the following practical training and skills development in information technology conducted by the Appellant's **School of Computing** in Information Technology:

1. Computing/Software Engineering Programmes are designed to impart students with practical/technical skills in the areas of programming, databases, networking and software development. Each module is delivered through a series of lectures, laboratory practical sessions and tutorial sessions. Students are taught concepts and principles through

lectures and the application of this knowledge is tested in tutorial classes and laboratory sessions (A1(i));

2. Business Information Technology Award is geared for/ towards the role of the Information Technologist and the IT specialist in business functional areas. It focuses on common business IT packages such as spreadsheets, databases and project management packages to solve business problems (A1(i)).

3. The programme structure and curriculum of the three awards are as follows:

1. BSc (Hons) Computing Award-
2. BSc (Hons) Software Engineering Award
3. BSc (Hons) Business Information technology Award (A1(i));

4. Level 1 Diploma Modules (common to all IT Degree Programmes)- consists of:

- a. Problem solving and program design using programming- **mandatory laboratory sessions where students are required to write the programmes;**
- b. System analysis and design-
- c. Operating systems- **installing a lecturer approved operating system and experiment** and the functionality in detail;
- d. Numerical methods and logic;
- e. Computer systems architecture;
- f. Visual basic Net-mandatory lab sessions where students get the opportunity to have hands **on experience on experience in analysis, design, coding and documentation of software applications.**
- g. Multimedia applications- **28 hours of mandatory lab sessions and spend a significant amount of time in the multimedia laboratory in order to complete individual assignment**
- h. Database and Data structures- **14 mandatory lab sessions on experience in programming algorithms**
- i. Java Programming- **14 hours of mandatory laboratory sessions**
- j. Networks and Networking-
- k. Telecommunications-
- l. Software Development project (A1(i) pp. 15-23).

5. Level 2-Computing Modules consist of

- (a) Further Programming Concepts I C++
  - (b) Hardware and Software System and networks
  - (c) Professional and Enterprise development
  - (d) Database and Web Database Systems
  - (e) Web Programming-24 hours of mandatory supervised laboratory sessions.
  - (f) Principles and practices of Software Production-
  - (g) Object Oriented Methods
  - (h) Mathematics and Algorithmics (A1(i) pp. 20-23).
6. Level 3-Computing Modules consist of
- (a) Advanced programming language concepts
  - (b) Enterprise web applications
  - (c) Project management;
  - (d) Ubiquitous computing
  - (e) Advanced database systems (A(i) pp 24-28).
7. Level 3 Software Engineering Modules consist of
- (a) Algorithmics
  - (b) Design Patterns
  - (c) Computing and Concurrent Systems design- consists of 12 hours of mandatory supervised lab sessions where **students are required to gain practical experience** (A(i) pp. 26-27).
8. Level 2-Business Information Technology Modules
- (a) Network computer systems-A limited amount of network configuration practice during the practical and workshop sessions. At the end of modules, students are expected to **demonstrate the ability to undertake PC and LAN troubleshooting and perform** critical analysis of protocols using LAN and WAN standards. Students are exposed to material related to CCNA and are taken through a series of practices and tutorials in order to develop these skills (A(i) pp28-29).
  - (c) ECommerce module consists *inter alia*, of 12 hours of lectures and 36 hours of tutorials and workshops, providing students with the required exposure to new trends and skills to evaluate suitable technologies (A(i) p 29-30);
  - (d) Information Systems Organisations and Management- same A(i) p 29-30);

9. Appendix A2- at p. 20 describes the physical resources available to support practical training and skills development including, lecture rooms, tutorial rooms, 17 computer laboratories with a seating capacity of 170, syndicate rooms, study rooms and libraries.

#### 10. Computer laboratories

[38] The Appellant A2 (p.20) has 5 computer laboratories with 171 personal computers for student use, and all computers are equipped with the latest PC configuration and are provided with high speed internet access and a wide range of software. All labs are assisted by trained technical staff (see Table 4 which details list of computer laboratory resources and technical infrastructure available to support practical training and skills development).

[39] The document marked A2 (Addendum) depicts the percentage of contact hours and independent learning hours across the above mentioned three levels of the computing programmes. Table 2, in particular depicts the allocation of contact hours amongst lectures, laboratory sessions and tutorial classes for the computing degree as follows:

Level	Lectures	<b>Laboratory Sessions</b>	Tutorials	Total Contact Hours
Level 1	406 (60%)	<b>112 (17%)</b>	154 (23%)	672
Level 2	168 (56%)	<b>60 (20%)</b>	72 (24%)	300
Level 3	112 (57%)	<b>72 (37%)</b>	12 (6%)	196

[40] According to Table 2, the students are required to use the computer laboratories to develop their practical experience by applying the knowledge acquired through lectures and tutorial classes. Table 3 further illustrates the independent learning hours spent by the students on different learning activities, which clearly demonstrates that the Appellant is providing practical training at different levels of the programmes.

[41] The Respondent did not challenge the contents of the document marked A1 and A2 submitted to the TAC and the TAC also did not question the genuineness of those documents. It is crystal clear that the Appellant provides practical training in the areas of information technology and modern computer facilities are available to support practical training and skills development.

[42] The TAC appears to have relies on page 3 of the determination of the Deputy Commissioner which states that:

*"While considering instructional hours and practical hours conducted by the APIIT for the courses conducted, I was made to understand that approximately 90% of the courses hours are instructional hours as per the information provided by the Institute on 19.06.2009. This is also one of the facts to determine that these courses are academic oriented courses rather than practical and vocational" (p. 6 of the TAC brief).*

[43] The VAT Act, however, does not lay down the degree of practical training, whether it is 100%, 75%, 50%, 25% or 10% and what is required is that any educational institution shall conduct vocational **or** practical training in the areas of information technology. One cannot understand as to how the Appellant's **School of Computing** could have conducted the computer Degree Programmes/Computing/Software Engineering programme or ICT related Business Information Technology Programmes solely on 100% practical training without providing both theoretical-based ICT-related principles/concepts and practical training in computer laboratories listed in A1 and A2.

[44] On the strength of the material presented by the Appellant, it is inconceivable for any educational course in the area of information technology to be conducted by any School of Computing at any level leading to either Post-Graduate Degrees or Diplomas solely on theory disregarding any computer laboratory based practical training. No explanation has been given by the TAC for the justification of the conclusion that the Appellant's courses are only academically oriented but no practical training was provided disregarding very clear and comprehensive material provided by the Appellant before the TAC.

[45] The TAC has decided that the Appellant is not providing vocational educational courses and practical training without examining the practical training and skills development provided by the Appellant at different levels of the programmes in terms of student learning hours and the physical resources (computer equipment and facilities with technical staff) referred to in Addendum-A2. No reference has been made to the physical resources and 5 computer laboratories with 171 trained technicians for student's use and support such practical training and skills development.

[46] The detailed information provided in A1 and A2 is further supported by the audited accounts of the Appellant during the years ended 31.03.2008-31.03.2010, which specifically refer to the computers & related assets under

plant, machinery and fixtures, which indicates that the Appellant had Rs. 45,580,424/-, Rs. 36,631,802/- and Rs. Rs. 52,931,351/- respectively ( X2 and X3 filed of the docket in CA/Tax/0004/2014).

[47] The Appellant has presented sufficient material and established that it conducted laboratory-based practical training in the areas of information technology, such as laboratory-based training on programming, computer systems, databases, networking and software developments and skills development (A1 and A2).

[48] I hold that the Appellant has clearly established that the Appellant provided practical training to students at different levels of the programmes conducted by the Appellant in the areas of information. I hold that the TAC erred in holding that the Appellant was only a Graduate School provides Post-graduate Degrees, Diplomas and Masters degrees in Information technology not providing practical training in the area of information technology. For those reasons, I hold that the Appellant is an "Educational Establishment" within the meaning of the paragraph (d) of the definition of "Educational Establishment" in section 83 of the VAT Act and, therefore, the Appellant is entitled to the exemption from VAT granted by the VAT Act.

**Applicability of the Tertiary and Vocational Education Act, No. 20 of 1990 and the Registration of the Appellant under the Tertiary and Vocational Education Act, No. 20 of 1990 to the VAT Exemption**

[49] The next question is whether the TAC was correct in holding that the registration by the Appellant under the Tertiary and Vocational Education Act is a mandatory requirement for the VAT exemption in terms of the provisions of the VAT Act.

[50] The TAC in its determination held that in terms of the provisions of sections 14(1), 15(1) and 16 (1) of the Tertiary and Vocational Education Act the registration is mandatory for establishing, managing, running or controlling any institute providing tertiary and vocational education, and since the Appellant has not registered under the provisions of the said Act, the Appellant is not eligible for the exemption under the VAT Act. The findings of the TAC at p. 11 of the TAC determination are as follows:

*"It is very clear from the three sections referred to above i.e. sections 14(1), 15(1) and 16(1) that the use of the word "shall" requires the mandatory registration of any institute providing tertiary education and vocational education, conducting such courses and conducting examinations for*

*conferring awards. It is not directory. It is also important to note the criteria for registration provided in the Education Act, Section 14(4) which states as follows:.....*

*Further, in the Gazette referred above, under criteria for registration, states that "The underlying principle, therefore, is the ability of the applicant institute to adequately provide training in conformity with the criteria set out in the Development Plan.*

*In addition, the Education Act has empowered the Director-General to apply to Court, in terms of section 29 of the Education Act, to prevent any violations and to punish the offenders in terms of section 91 of the said Act.*

*In view of these mandatory provisions in the Education Act, including the penal provisions, the relevant question to be asked from the Appellant is why their Education Institution was not registered, as required by law. Further, it is very unlikely that an educational institution such as the Appellant Company where, obedience to the law has to be considered as paramount, not only to the students but also to the institution, would have violated the law of the land. The possible explanation or the reasonable inference that could be drawn from such conduct is that, the Appellant Company did not register it, as it was only a Graduate School providing Masters Programmes and that it did not provide tertiary education and vocational education".*

[51] It is not in dispute that the Tertiary and Vocational Education Act was passed by Parliament to provide for the establishment of a tertiary and vocational education commission, provide for plans for the development of tertiary education and vocational education and its implementation thereof and for the establishment of a national and industrial training authority. In terms of sections 14(1), 15(1) and 16(1), the registration of any institute for the provision of tertiary education and vocational education is mandatory. The relevant provisions regarding registration under the Tertiary and Vocational Education Act are as follows:

*"14(1) No person shall, establish, manage, run or control any institute for the provision of tertiary education and vocational education, or tertiary education or vocational education without being registered under this Act.*

*15(1) No person or establishment shall conduct any tertiary education and vocational education course or tertiary education course or vocational education course being a specified course without being registered under this Act.*

*16(1) No person or establishment shall conduct any examination for conferring or granting any tertiary education award or vocational*

*education award, without being registered with the Director-General under this Act”.*

[52] The meaning of “Tertiary education” and “Vocational Education” are given in Gazette Extraordinary No. 887/8 of 07.09.1995 issued by the Tertiary & Vocational Education Commission. It reads as follows:

*“Tertiary education is defined as post-secondary education and/or training imparted to persons to prepare and fit for an occupation/profession or for the purpose of further study in a university or similar institution”.*

*“Vocational education is defined as education and or training imparted to persons for the acquisition of knowledge, operative skill, technical or craft skill or of experience needed for the pursuit of an occupation or trade”.*

[53] The TAC has further relied on the Gazette dated 07.09.1995 issued in terms of the Tertiary and Vocational Education Act and disallowed the exemption on the ground that the VAT exemption has been granted to promote more institutions to engage in tertiary and vocational education in Sri Lanka. The said Gazette dated 07.09.1995 issued in terms of the Tertiary and Vocational Education Act details the rationale, and objectives of registration of a tertiary and vocational education institute as follows:

*“In the economic setting, dramatic changes have taken place under open economic policies introduced after 1977. Consequently, attention has been increasingly directed towards the need for the education and training and training system to adapt adequately, responding to the needs of the changing economic environment. The government is well aware of these economic imperatives and the need for rationalization of resources in the system for better organization of training provision in keeping with the changing human resource needs of the economy.*

*The government is ready to introduce new schemes to realise these needs and is equally committed to extract the maximum benefits from the already established institutes providing tertiary and vocational education and training in the country through policy interventions in the areas of planning and co-ordination. The Tertiary and Vocational Education Act, No. 20 of 1990 (hereinafter referred to as “the Act”) provides the policy and institutional framework to ensure that the country gets the best returns from the investments made to establish an institutional training”.*

[54] The said Gazette was issued on 07.09.1995 and the VAT Act was passed thereafter and therefore, there cannot be any reference to the VAT Act. No subsequent Gazette referring to the VAT Act has been produced by the



Respondent in its submissions before us. In terms of clause 2.1 of the said Gazette, to be considered for registration, the applicant should satisfy the Tertiary and Vocational Education Commission the following criteria:

- (a) has an established location and a regular office or place of business;
- (b) has caused the name of the institute and the address painted or affixed in legible characters in the language in which the courses are conducted, in a conspicuous place at or near the entrance to the institute;
- (c) provides classroom accommodation, workshops, library and recreation areas and office rooms commensurate with the student population and nature of the courses conducted;
- (d) provides basic amenities such as drinking water, lighting, fire protection facilities, first-aid-facilities, sanitation etc, commensurate with the student population and the nature of courses conducted;
- (e) uses curricula and syllabi which are valid and adequate and conforming to established standards accepted by the Commission;
- (f) utilizes machinery, equipment, tools, atc. Required to effectively impart the knowledge and skills contents of each course;
- (g) employs appropriate teaching methods and aids in the teaching process;
- (h) employs valid and adequate methods and aids in the teaching process;
- (i) has a sufficient number of management personnel including Principals, Directors of Students, etc. as the case may be, commensurate with the size of the student population and the level of the courses;
- (j) has constantly abided by the provisions of the constitution under which the institute has been established;
- (k) employs effective methods of selection which ensure the recruitment of applicants with correct aptitude for each course;
- (l) adheres to accepted norms and guidelines issued by the Commission in exhibiting notices and advertisements offering courses of studies;
- (m) adheres to accepted norms and guidelines issued by the Commission in exhibiting notices and advertisements offering courses of studies;
- (n) provides counselling and guidance services to students, arranges for on the job/hands on experience with the industry wherever applicable and evaluates the effectiveness of training provided;and

- (o) the institute is properly managed adhering to sound management approaches and maintaining effective academic, financial and administration methods and procedures.

[55] It is not in dispute that the Appellant has not registered in terms of the provisions of the Tertiary and Vocational Education Act and no action has been taken by the Director-General of the Tertiary Education and Vocational Educational Commission against the Appellant for the failure to register the Appellant's institute under the provisions of the Tertiary and Vocational Education Act.

[56] The Appellant has been granted approval by the BOI to conduct and operate an Information Technology Training Institute for offering degrees, diplomas and certificates duly affiliated to APIIT, Malaysia under section 17 of the BOI Act, and the Appellant has invested a minimum sum of Rs. 1.5 Million in respect of its business. If these conditions are satisfied, the Appellant would be entitled to income tax exemption for a period of time as determined by the BOI.

[57] It is relevant to note that the words "tertiary" and "education" are found only in the Tertiary and Vocational Education Act, but such words are not found in the definition of "Educational Establishment" in paragraph (d) of section 83 of the VAT Act. The only common word in both Acts is the word "vocational". The VAT exemption is applicable if the Appellant has provided "vocational or practical training" in the fields referred to in the definition of "Educational Establishment" in paragraph (d) of section 83 of the VAT Act. There is no requirement to prove that the Appellant provides both the "vocational **and** practical training" to qualify for the VAT exemption under the VAT Act. Accordingly, in the present case, the requirement of "vocational **or** practical training" in the field of information technology is the basis of the VAT exemption. On the other hand, the requirement of "tertiary or vocational education" is the basis of the Tertiary and Vocational Education Act.

[58] There is nothing to indicate in the VAT Act that the VAT exemption is inapplicable to any BOI approved undertaking unless such undertaking has registered under the provisions of the Tertiary and Vocational Education Act or provided "tertiary or vocational education" within the meaning of the Tertiary and Vocational Education Act.

[59] If it was the intention of the legislature that the VAT exemption is subject to the registration of the educational institution under the provisions of the Tertiary and Vocational Education Act, it could have easily referred to the Tertiary and Vocational Education Act. It is not in dispute that the VAT Act or its subsequent amendments make no reference to the Tertiary and Vocational Education Act. Despite the fact that the Appellant had placed sufficient evidence before the TAC that it provides practical training in the field of information technology at all levels of its computer-related degrees, Diplomas and Certificates, the TAC erroneously proceeded to consider the registration by the Appellant under the Tertiary and Vocational Education Act is a mandatory requirement for the VAT exemption.

[60] If it was the intention of the legislature that the VAT exemption is subject to the registration of the educational institution under the provisions of the Tertiary and Vocational Education Act, it could have easily referred to the Tertiary and Vocational Education Act. It is not in dispute that the VAT Act or its subsequent amendments make no reference to the Tertiary and Vocational Education Act. Despite the fact that the Appellant had placed sufficient evidence before the TAC that it provides practical training in the information technology at all levels of its computer-related degrees, Diplomas and Certificates, the TAC erroneously proceeded to consider the registration requirement under the Tertiary and Vocational Education Act in disallowing the exemption under the VAT Act.

[61] The Appellant has taken up the position that the VAT Act is a special Act and thus, its provisions supersede the provisions of the Tertiary and Vocational Education Act on the basis of the principle of interpretation *specialia generalibus derogant* (Question of Law, No. 3). On the other hand, Mr. Gunatilleke's submission was that VAT Act does not need to make a specific reference to the Tertiary and Vocational Education Act, as it is implicit that for any institution to legally carry out tertiary or vocational training education, they need to be registered under the provisions of that Act. His contention was that the principle of *in pari materia* applies when the definition of the term "vocational training" or "practical training" is not found in the VAT Act, and therefore, the TAC was correct in allowing itself to be guided by the provisions of the Tertiary and Vocational Education Act in disallowing the exemption.

**Maxim specialia generalibus derogant**

[62] I will first consider the Maxim *specialia generalibus derogant*. The maxim "*generalia specialibus non derogant*" means that when there is a conflict between a general and a special provision, the latter shall prevail. For the purposes of interpretation of two statutes in apparent conflict, the provisions of a general statute must yield to those of a special one. The said principle has been defined in Craies on Statute Law, Fifth Ed. P. 205 thus:

*"The rule is, that whenever, there is a particular enactment and general enactment in the same statute, and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply".*

[63] This rule of construction is, however, subject to the condition that there is nothing in the general provision, expressed or implied, indicating an intention to the contrary (Maxwell on Interpretation of Statutes. 11<sup>th</sup> Ed. pp. 166-169). This rule has also been applied as between different provisions of the same statute or two separate statutes in numerous cases to resolve a conflict between a specific provision and a general provision (*J. K. Cotton Spinning and Weaving Mills Co. Ltd v. State of Uttar Pradesh*, AIR 1961 1170 at p. 1174).

[64] I do not consider that this is at all a clear case for the application of the maxim *generalia specialibus non derogant*, when there is no inconsistency or conflict between the two Acts. In my view, the two statutes have been enacted for different objects, purposes, and the scheme of the two statutes is distinct with each other and thus, the maxim *generalia specialibus non derogant* has no application.

[65] The VAT Act as amended, however, defines the term "educational establishment" in four different subparagraphs. It is relevant to note that the definition of "Educational Establishment" was limited in the original VAT Act, No. 14 of 2002 to (a) a higher educational institution established under the University Act, No. 16 of 1978 or the Buddhist and Pali Universities Act, No. 74 of 1981; (b) any recognised institution providing vocational training or training for persons engaged in any trade, profession or employment and includes an incorporated examination body.

[66] This definition was expanded by the VAT (Amendment) Act, No. 13 of 2004 as follows:

*(c) any institution providing vocational training or practical training, and*

*(i) provided with funds or other assistance by the Government and approved by the Minister in charge of the subject of Tertiary Education and Training in consultation with the Minister, as an institution providing such training; and*

*(ii) where the surplus funds of such institution are reinvested in the maintenance of such institution .*

[67] This definition was further expanded by the VAT (Amendment) Act, No. 8 of 2006 as follows:

*(d) an institution which has entered into an agreement with the Board of Investment of Sri Lanka under section 17 of the Board of Investment of [s 20 of 7 of 2003]2 [s 13 of 7 of 2014] [s 18 (2) of 13 of 2004]3 [s 17(1) of 8 of 2006]4 Value Added Tax Act - Consolidation 2014 88 Sri Lanka Law No. 4 of 1978, with a minimum investment of not less than rupees fifteen million providing vocational training or practical training in the areas of information technology, vocational training, management training, skills development or training for foreign employment, textile and clothing, nursing, food processing, agricultural plantation or industrial”.*

[68] The Gazette issued under the Tertiary and Vocational Education Act defines the term “vocational education” as “education and or training imparted to persons for the acquisition of knowledge, operative skill, technical or craft skill or of experience needed for the pursuit of an occupation or trade”. It is relevant to note that paragraph (a) of the definition of “Educational Establishment” applies to a higher educational institute. Any institution recognized as a BOI undertaking is not covered by paragraph (a) of that definition. Paragraph (b) applies to any recognized institution providing vocational training or any training for persons engaged in any trade, profession or employment and includes an incorporated examination body. Any institution which has entered into an agreement with the BOI is not covered by that paragraph. Paragraph (c) applies to any institution providing funds or other assistance by the Government and approved by the Minister in charge of the subject of Tertiary Education and Training and thus, any institution entered into an agreement with the BOI is not covered by that paragraph.

[69] It is paragraph (d) that applies to any institution which has entered into an agreement with the BOI and invested a minimum of rupees 15 million in providing vocational or practical training in specialized fields. The intention of

the Legislature is to encourage people to enter into an agreement with the BOI, invest a minimum sum of Rs. 15 million and provides vocational or practical training in the specified fields to be eligible for VAT exemption. The Legislature has thus, regarded that any such institution that has entered into an agreement with the BOI, made such investment and provided any vocational or practical training as a separate category of "Educational Establishment" to be eligible for VAT exemption. The VAT Act does not include the words "tertiary education" or "vocational education" in section 83 of the VAT Act and the VAT Act only refers to the words "vocational or practical training" in paragraph (d) of the definition "Educational Establishment". Had the legislature intended to provide the exemption only to any institution that has registered under the Tertiary and Vocational Education Act, it could have easily referred to the Tertiary and Vocational Education Act in paragraph (d) of the definition "Educational Establishment".

[70] The Legislature has not made any reference in the VAT Act to the Tertiary and Vocational Education Act, and thus, the argument of the Respondent that the absence of such specific reference is not necessary to be guided by the requirement of registration under the Tertiary and Vocational Education Act as a condition for the VAT exemption has no merit.

### **In pari materia principle-on the same matter and on the same subject**

[71] I will now turn to the in pari materia principle relied on by Mr. Gunatilleke. The principle of in pari materia means in connection with the same matter on the same subject and thus, a subsequent legislation can be looked at to ascertain proper interpretation to be put upon earlier Act when there is obscurity or ambiguity (*State of Bihar Versus S.K. Roy* 1966 (4) TMI 72 S.C). The principle of part material is explained in "Maxwell on Interpretation of Statutes" 12<sup>th</sup> Edition at page 66 in the following manner:

*"Statutes are said to be in pari materia when they deal with the same person or thing or class: it is not enough that they deal with a similar subject matter."*

[72] Craies on Statute Law. 6th Edition at pages 133-34 states on the principle of in pari materia as follows:

*"Where Acts of Parliament are in pari materia that is to say, are so far related as to form a system or code of legislature, the rule as laid down by the twelve*

*judges in Palmer's case. (1785-1 Leach 352) is that such Acts are to be taken together as forming one system and as interpreting and enforcing each other. This was on the principle that the Court should lean in favor of a construction which sub-served and effectuated the dominant purpose of the legislature”.*

[73] Bennion on Statutory Interpretation (7<sup>th</sup> Edition, 2017) S. 21.5 at pp. 519-520 defines the principle of in pari materia as follows:

*“Two or more Acts may be describes as in pari materia (from the Latin parts or paris, meaning equal) if:*

- 1. They have been given a collective title;*
- 2. They are required to be construed as one;*
- 3. They have identified short titles (apart from the year); or*
- 4. They otherwise deal with the same subject matter on similar lines”.*

[74] In *Raees-Uz-Zama and Another v. State Nct of Delhi*, (Delhi High Court), Case No. 166/2011, decided on on 03.05.2013 followed the Bennion’s four part conditions and held that the two Acts, are pari materia dealing with the single or common subject matter and are part of the same code. If the Acts are in pari materia, it is assumed that the elements of uniformity of language and meaning are intended attracting the same considerations that arise from the language canons of construction and thus, the Acts must be taken together as forming one system and enforcing each other.(Legal Maxum, In pari materia, <https://bnblegal.com>).

[75] Accordingly, statutes are considered to be in pari materia when they relate to the same subject-matter and the same person or things or to the same class of persons or things or have the same purpose or object. In the construction of statutes, all Acts in pari materia are to be taken together as if they were one law having one object, purpose and context. Thus, words employed in one such Act can be used in identical sense to be consistent and harmonise in the construction of such other Act having one object, purpose, spirit and context.

[76] In the American case of *United Society v. Eagle Bank* (1829-7 Conn. 457) Hosmer J. said:

*"Statutes are in pari materia which relate to the same person or thing or to the same class of person or things. The word par must not be confounded*

*with the word similis. It is used in opposition to it. as in the expression magis pares sunt quam similes intimating not likeness merely but identity. It is a phrase applicable to the public statutes or general laws made at different times and in reference to the same subject."*

[77] In *Powell v. Cleland* (1948) 1 KB 262, at 273 Evershed L. J. said, "It is a rule of interpretation of statutes that it is permissible to call in aid for the construction of words or phrases used in one Act, meanings given to them in an earlier Act in pari materia". Evershed LJ however, refused to regard the Rent Restriction Acts as in pari materia with the real property legislation of 1925 and held that the Rent Restriction Act could not be regarded as pari materia with the real property legislation. At 273, Evershed L. J. said:

*"In this Act of Parliament dealing with restrictions on the rights of landlords and mortgagees, expressed generally in simple and non-technical language, it had been desired to incorporate by reference the precise definition contained in the Law of Property Act, 1925, it would have been an easy result to achieve. It would have been simple - and proper - to use such a formula as we have indicated above and to provide that for the purposes of the paragraph the word "purchaser" should have the meaning assigned to it by the Law of Property Act, 1925. This was indeed the method adopted in the Landlord and Tenant Act, 1927, in reference to the phrase "term of years absolute" (see s. 25, sub-s. 1, of that Act). It is a rule of interpretation of statutes that it is permissible to call in aid for the construction of words or phrases used in one Act, meanings given to them in an earlier Act in pari materia (see Maxwell on the Interpretation of Statutes (9th ed., at p. 314). In our judgment, the Rent Restriction Acts cannot be regarded as in pari materia with the real property legislation of 1925, and counsel was unable to cite any instance where a word or phrase in one Act of Parliament - having either technical or non-technical import - was held to have the technical meaning supplied by a definition in another Act, not in pari materia with the first, without any cross-reference to the latter Act. On the other hand, the case of Commissioners of Inland Revenue v. Gribble<sup>21</sup>, and that of Ex parte Hillman. In Re Pumfrey<sup>22</sup>, under s. 91 of the Bankruptcy Act, 1869, support the view that such cross-reference will not be readily implied".*

[78] However, the definition of a term in one statute cannot be used as a guide for construction of a same term in another statute particularly in a case where statutes have been enacted for different purposes (*Hotel & Restaurant Association v. Star India Pvt Ltd* 2006 (11) TMI 540 S.C.). It is settled principle in Excise classifications that the definition of one statute having a different object, purpose and scheme cannot be applied mechanically to another



statute, and that the conditions or restrictions contemplated by one statute having an object, and purpose should not be lightly and mechanically imported and applied to a fiscal statute (*Commissioner of Central Excise New Delhi v M/S. Connaught Plaza Restaurant (P) Ltd. New Delhi* 2012 (12) TMI 149-SC). Thus, it is not a sound principle of construction to interpret an expression used in one Act with reference to its use in another Act since the meaning of words and expressions used in an Act must take their colour from the context in which they appear (*Eagles Chicory (Firm) v. Collector of C. Ex. & Cus. Madurai* 1986 (7) TMI 358 -CEGAT New Delhi).

[79] Now the question is whether the VAT Act and the Tertiary and Vocational Education Act are in pari materia and the two Acts form part of one system having object, purpose and context as forming one system and enforcing each other. I will now turn to the object, purpose and scheme of the two Acts. The VAT Act deals with taxation and it is a consumption tax on goods and services that is levied at each stage of the supply chain where value is added, from initial production to the point of sale (Value-Added Tax (VAT) ([investopedia.com](http://investopedia.com))).

[80] The VAT Act is an Act for the imposition and collection of a VAT on goods and services supplied in Sri Lanka or imported into Sri Lanka. VAT is charged and collected by a taxable person (who is registered for VAT under the VAT Act) on every supply of goods or services made in the course of any taxable activity in Sri Lanka, and on the importation of goods into Sri Lanka. Only a person registered for VAT can charge and collect VAT. (Balaratnam, Value Added Tax in Sri Lanka, 2nd Ed. P. 9). The tax is borne by the final or the ultimate consumer of Goods or services, and it is an indirect tax and the Government will receive at the end, through all the intermediary suppliers in the chain of production and distribution, an amount equal to the amount paid by the final consumer (see- [www.ird.gov.lk](http://www.ird.gov.lk)).

[81] On the other hand, the Tertiary and Vocational Education Act, No. 20 of 1990 deals with the registration of educational services, the establishment of a tertiary and vocational education commission and provision for the plans for the development of tertiary education and vocational education. Under the VAT Act, only person registered for VAT can charge and collect VAT and VAT shall be charged at the time of supply on every 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.

[82] The VAT exemption is available to any institution that entered into an agreement with the BOI and invested a sum of Rs. 1.5 million providing vocational or practical training in the field of information technology. On the other hand, Under the Tertiary and Vocational Education Act, the registration is required for establishing, managing, running or controlling any institute or conducting any tertiary and vocational education course or any examination for conferring, granting and tertiary education award.

[83] The two statutes have been enacted for different purposes and they are not cognate legislations dealing with cognate subject. In the absence of any definition in the VAT Act itself dealing with any cognate subject, or unless the two statutes are dealing with any cognate subject, the words in the VAT Act must be given the same meaning which it receives in ordinary parlance or understood in the sense in which people conversant with the subject matter of the statute understand it (see- P/M/ Bakshi on Interpretation of Statutes, First Edition, Reprint 2011, p. 498). It is thus, hazardous to interpret a word in accordance with its definition in another or statutory instrument and more so when such statute or statutory instrument is not dealing with any cognate subject (*MSCO Pvt. Ltd. (M/s) v. Union of India*, AIR 1985 SC 76 at p. 78).

[84] Craies on Statute Law, Sixth Edn., p. 164 further clarifies this thus:

*"In construing a word in an Act caution is necessary in adopting the meaning ascribed to the word in other Acts, it would be a new tenor in the construction of Acts of Parliament if we were required to limit a word to an unnatural sense because in some Act which is not incorporated or referred to such an interpretation is given to it for the purpose of that Act alone".*

[85] The definition of the word "vocational education" in the Tertiary and Vocational Education Act, ought not to be imported into the VAT Act, which excludes "vocational education" from its definition of "Educational Establishment" in paragraph (d) of section 83 of the VAT Act. The VAT exemption in paragraph (d) of section 83 of the VAT Act applies either to "vocational training" or "practical training" in the areas of information technology. There is no requirement that the Appellant provides both "vocational and practical training" together to fall within the definition of

“Educational Establishment” under paragraph (d) of section 83 of the VAT. The argument of the Respondent that the term “practical training” should not be considered in isolation but in conjunction with the “vocational training” in the Tertiary and Vocational Education Act, and thus, the “practical training” should be read together as “vocational training or practical training” has no substance. In my view, where the Appellant’s courses in the areas of information technology encompass “practical training” in the areas of information technology, the Appellant would qualify for the VAT exemption under the definition of an “Educational Establishment” under paragraph (d) of section 83 of the VAT Act.

[86] In my view, the definitions of the Tertiary and Vocational Education Act having a different object, purpose and scheme including its registration requirement cannot, in these circumstances, be imported into the VAT Act. The conditions or restrictions contemplated by the Tertiary and Vocational Education Act having different objects, and purposes should not be lightly and mechanically imported and applied to a VAT Act and therefore, they are not *in pari materia* with the same matter on the same subject. Accordingly, the Tertiary and Vocational Education Act cannot be used to guide and ascertain the proper interpretation to be put to the words “vocational training or practical training” in the field of information technology when the purpose and object of the two Acts are completely different from each other.

[87] Accordingly, these two Acts enacted with different objects, purposes and schemes cannot be taken together as forming one system and as interpreting and enforcing each other. I hold that it is not permissible to read the provisions of the two Acts together when the same are not complementary to each other and the purpose, object and scheme are different and thus, no common terminology can be used so as to interpret and enforce the other Act as suggested by the Respondent. For those reasons, I hold that the two Acts cannot be considered to be *in pari materia* and therefore, the provisions of the Tertiary and Vocational Education Act cannot throw any light on the interpretation of the words “vocational or practical training” in the definition of “Educational Establishment” in paragraph (d) of section 83 of the VAT Act. For those reasons, I hold that the principle of *in pari materia* will not apply to the present case.

**Letter issued by the Deputy Commissioner of Inland Revenue**

[88] Let me now turn to the letter issued by the Deputy Commissioner of Inland Revenue dated 07.07.2006. The said Letter dated 07.07.2006 of the Deputy Commissioner states that the Appellant's operations were exempt from VAT. It reads:

*"The Director,  
Asia Pacific Institute of Information Technology Lanka (Pvt) Ltd,  
No. 388, Union Place,  
Colombo 02.*

**VAT EXEMPTION APPLICABLE TO EDUCATIONAL INSTITUTIONS ASIA  
PACIFIC INSTITUTE OF INFORMATION TECHNOLOGY LANKA (PVT) LTD**

*I refer to the submissions made by Mr. Denzil A. Rodrigo, Chartered Accountant as your Authorized Representative dated 17<sup>th</sup> June 2006.*

*According to the Section 18 of the VAT Amendment Act. No. 08 of 2004.*

*If the following conditions are satisfied, the supply of education service by an educational establishment will be exempt from VAT.*

- i. Establishment should have entered into an agreement with the BOI under Section 17 of Law No. 04 of 1978;*
- ii. Annually should train not less than 300 persons;*
- iii. Initial investment should not be less than Rs. 15 million.*

*Since the company has fulfilled the above conditions, supply of the said education services is only exempt from Value Added Tax, but any other taxable activity will be liable to VAT.*

*Thanking You,  
Yours faithfully,*

*R.K.H. Kaluarachchi  
Deputy Commissioner General"*

[89] The TAC has disregarded the written confirmation received by the Appellant from the Deputy Commissioner of Inland Revenue in charge of the subject of indirect taxes and Information Technology. The TAC in rejecting this letter (A10) states:

*"the said ruling has been issued to the Appellant, purely based on the facts given in the letter sent to the Deputy Commissioner of Inland Revenue by*

*a Chartered Accountant and thus, it is not a ruling issued after examining all the material relating to the exemption provided under the VAT Act. Besides this letter written by the Chartered Accountant on behalf of the Appellant makes no mention of the legislation passed by the parliament, namely the Tertiary and Vocational Education Act, No. 20 of 1990 and the Gazette Extraordinary No. 887/8 of 07.09.1995..."*

[90] Even if it is assumed that the Deputy Commissioner's letter is not a formal ruling issued during the course of any appeal process, the decision of the Deputy Commissioner that the Appellant's operations were exempt from VAT is supported by the material submitted before the TAC by the Appellant (A1-A2).

[91] The TAC further holds that since the Appellant claimed exemption from VAT from 01.01.2006 onwards, there should be a reduction of the fees charged from the students with effect from that date but there had been no such reduction in the fees charged. The Assessor has, however, not rejected the returns on the ground that the Appellant having claimed VAT exemption failed to reduce the fees of the students during the relevant periods. The Appellant's position is that (i) based on the Deputy Commissioner's letter,; (ii) there has been an increase in student fees from 2005 to 2010 as demonstrated from the schedule produced by the respondent R05-X4a); (ii) The Appellant adjusted the VAT component of student fees which it had previously paid; (iii) the Appellant did not collect the increased fees from 2005-2010 in view of the ruling made by the Deputy Commissioner. The Respondent did not dispute the Appellant's position that the fees were increased from 2005-2010 but the Appellant did not collect the monies from the students during the relevant period on account of the Deputy Commssioner's communication.

[92] The assessor further stated that the Appellant has violated the BOI Agreement by entering into agreements with four companies and the Education Ministry. No material has been placed by the Respondent that the BOI had taken any action in respect of the purported violations of the BOI Agreement, or that the BOI Agreement lapsed due to such violations. Under such circumstances, I see no reason for the TAC to disallow the exemption for the purposed violation of the BOI Agreement when the BOI itself did not take any action and cancel the BOI Agreement and the Appellant has clearly established that it provided practical training in the areas of information

technology at all level of its courses conducted by the School of Computing as set out in the documents marked A1-A2.

[93] For those reasons, I hold that the principle of *in pari materia* will not apply to the present case. I hold that the TAC erred in holding that (i) the registration by the Appellant under the provisions of the Tertiary and Vocational Education Act is a mandatory requirement; and (ii) the failure to register the Appellant under the said Act disentitled the Appellant for the VAT exemption under the VAT Act. I hold that the Appellant has established that it was an "Educational Establishment" referred to in paragraph (d) of the definition of "Educational Establishment" in section 83 of the VAT Act and thus, the Appellant is eligible for the exemption under the VAT Act.

### **Conclusion & Opinion of Court**

[94] For those reasons, I answer questions of law arising in the Case Stated in favour of the Appellant as follows:

1. Yes
2. Yes
3. The maxim *specialia generalibus derogant* has no application. The TAC however, erred in law in its failure to appreciate that the tax exemption is governed only by the provisions of the VAT Act and not by the provisions of the Tertiary and Vocational Education Act, No. 20 of 1990.
4. Yes
5. Yes
6. (a) Yes  
(b)Yes
7. (a) Yes  
(b) Yes
8. Yes
9. (a) Yes  
(b) Yes  
(c) Yes
10. Yes

11. (a) Yes  
(b) Yes
12. Yes. The Appellant has provided practical training in the areas of Information technology through its School of Computing.
13. Yes
14. Does not arise for the determination of the VAT exemption.
15. The Appellant is an Educational Establishment providing practical training in the areas of information technology.
16. Yes
17. The Appellant is entitled to the exemption granted by the Value Added Tax Act for the reason that the definition of "Educational Establishment" in the VAT Act requires the presence of vocational training or practical training in the areas of information technology, and the Appellant has provided practical training in the areas of information technology as required by the definition of "Educational Establishment" in section 83 of the VAT Act.
18. Yes, not liable to pay VAT.
19. Yes.

[95] For those reasons, I annul the determination made by the Tax Appeals Commission dated 23.01.2014. The Registrar is directed to send a certified copy of this judgment to the Tax Appeals Commission.

**JUDGE OF THE COURT OF APPEAL**

**M. Sampath K.B. Wijeratne, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**