

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

In the matter of Appeal under and in terms of 154P of the Constitution read with provision of High Court of Provinces (Special Provisions) Act No. 19 of 1990, and the Article 140 of the Constitution of Democratic Republic of Sri Lanka

N.O.H. Hotel (Private) Limited,
"Amangalla",
No. 10, Church Road,
Galle Fort.

PETITIONER

Vs.

Court of Appeal Case No:
CA (PHC) 14/2021

PHC of Southern Province holden
in Galle: Writ 50/2019

1. The Galle Municipal Council,
Town Hall, Galle.
2. The Mayor,
The Galle Municipal Council,
Town Hall, Galle.
3. The Deputy Mayor,
The Galle Municipal Council,
Town Hall, Galle.
4. The Commissioner,
The Galle Municipal Council,
Town Hall, Galle.
5. The Sri Lanka Tourism Development
Authority,
No. 80, Galle Road,
Colombo.
6. Hon. Attorney General,
The Attorney General's Department,
Colombo 12.

RESPONDENTS

AND NOW BETWEEN

N.O.H. Hotel (Private) Limited,
"Amangalla",
No. 10, Church Road,
Galle Fort.

PETITIONER-APPELLANT

Vs.

1. The Galle Municipal Council,
Town Hall, Galle.
2. The Mayor,
The Galle Municipal Council,
Town Hall. Galle.
3. The Deputy Mayor,
The Galle Municipal Council,
Town Hall, Galle.
4. The Commissioner,
The Galle Municipal Council,
Town Hall, Galle.
5. The Sri Lanka Tourism Development
Authority,
No. 80, Galle Road,
Colombo.
6. Hon. Attorney General,
The Attorney General's Department,
Colombo 12.

RESPONDENT-RESPONDENTS

Before: **Prasantha De Silva, J.**
K.K.A.V. Swarnadhipathi, J.

Counsel: Anuja Premaratne, PC with Naushala Rajapakse AAL and Dimitra Abeysekera AAL instructed by Simon & Associated for the Petitioner-Appellant.

Chandana Wijesooriya AAL with Wathsala Dulanjanie AAL for the 1st-4th Respondents

Written Submissions: Written submissions filed on 06/07/2023 by 1st to 4th Respondent-
filed on Respondents

Written submissions filed on 20/06/2023 by 1st Respondent-
Respondent-Respondent

Delivered on: 02.08.2023

Prasantha De Silva J.

Judgment

This is an appeal from the Judgement of the Provincial High Court of the Southern Province holden in Galle exercising writ jurisdiction in respect of the application bearing no Writ 50/2019 made by the Petitioner-Appellant. The said application was made seeking to quash the decision of the 1st Respondent-Respondent namely the Galle Municipal Council to impose a trade license fee of 1% of the total takings of the preceding year in order to issue trade license with regard to the business of the Petitioner-Appellant by way of a writ of certiorari.

Further, the Petitioner-Appellant had prayed for granting a mandate in the nature of a writ of mandamus compelling payment based on the annual value of the premises as contemplated in section 247A (1) of the Municipal Council Ordinance No 29 of 1947 (as amended).

The Petitioner-Appellant is a company involved in the trade of Tourism, conducting a business running a Boutique Hotel under the name and style of 'Amangalla'.

The said Company is duly incorporated under the Companies Act No. 17 of 1982 and duly re-registered under the provisions of Companies Act No 17 of 2007.

The said certificate of incorporation and license to carry a Boutique hotel was marked as P2 and P4 respectively and produced in the High Court Writ application bearing Writ 50/2019).

It was the contention of the Petitioner-Appellant [herein after sometimes referred to as the Appellant] that the hotel operated by the Appellant company is registered as a Boutique Hotel under the Sri Lanka Tourism Development Authority, which was formed under the Tourism Act No. 38 of 2005.

It was submitted on behalf of the Appellant that although the said hotel operates with a registration under the Tourism Act No 38 of 2005, the 1st Respondent Municipal Council and the 4th Respondent-Respondent Commissioner of the Galle Municipal Council have been maliciously and illegally insisting the Appellant Company to pay 1% of the total earnings of the previous year to obtain a Trade license as required by the Municipal Council Ordinance No 29 of 1947 (as amended).

The attention of Court was drawn to section 247A of the Municipal Council Ordinance (as amended).

Section 247 A (1) A Municipal Council may impose and levy a duty in respect of licenses **issued by the Council.**

(2) The duty levied under subsection (1) in respect of any license issued by the Council authorizing the use of any premises for any of the purposes described in this Ordinance or in any by-law made thereunder shall be determined by the Council according to the annual value of the premises so licensed, and, where such license authorizes the use of such premises for the purposes of any trade, having regard to

- (a) the annual value of such premises;
- (b) the turnover of business of such trade;
- (c) the profit that is likely to be earned in such trade; and
- (d) the essential nature of the goods or services supplied in the course of such trade:

Provided that where the annual value of such premises falls within the limits of any item in Column I set out below, the maximum duty shall not exceed the sum set out in the corresponding entry in Column II-

Column 1	Column II
Where the annual value- does not exceed Rs. 1,500	Rs. 2,000
exceeds Rs, 1,500 but does not exceed Rs. 2.500	Rs. 3,000
exceeds Rs. 2,500	Rs. 5,000

Provided further, that where any such premises are used for the purposes of a hotel, restaurant or lodging house, and such hotel, restaurant, or lodging house is registered with or approved or recognized by the **Ceylon Tourist Board for the purposes of the Tourist Development Act**, the duty so levied shall be according to the takings of the **hotel, restaurant or lodging house for the year preceding the year in which the license duty is levied, and shall not exceed one per centum of such takings.** Where such hotel, restaurant, or lodging house is in its first year of operation, the license duty shall be determined and levied according to the annual value of such premises.

For the purposes of this section, " takings " in relation to a hotel, restaurant or lodging house means the total amount received or receivable from transactions entered into

in respect of that hotel, restaurant or lodging house or for services performed in carrying on that hotel, restaurant or lodging house.

However, it was contended by the Appellant that the hotel managed by the Appellants company, namely 'Amangalla' was not registered under the Tourism Development Act No 14 of 1968, thus the Appellant has no obligation to pay 1% of the total earnings of 'Amangalla' to obtain a trade license for the next year.

It was brought to the notice of the Court by the Appellant that sections 77 to 82 of the Tourist Development Act No 14 of 1968 were repealed by the Tourism Act No 38 of 2005 and all regulations made thereunder are repealed and/or annulled by law and there exists no provisions to register a hotel under the Provisions of the Tourist Development Act No 14 of 1968 at present.

Furthermore, it was submitted that Tourist Enterprise or Tourist Service cannot carry business unless such Enterprise or service is registered with the said Tourism Development Authority, created under Tourism Act No 38 of 2005.

As such, any business engaged in Tourist Enterprise or Tourist service is required to obtain a license subject to a license fee in accordance with the recommendation of the Minister as per the provisions. The Appellant has complied with subsequent registration under the Tourism Act No. 38 of 2005 as established by the License to carry on Business on a Boutique Hotel was marked and produced in the Provincial High Court as P4.

It was submitted on behalf of the Respondent-Respondents [hereinafter sometimes referred to as the Respondents] that Section 247A of the Municipal Council Ordinance has not been amended regarding the Trade license levy upon a maximum of 1% of the total takings of the preceding year of a Tourist Hotel, which is registered with the Sri Lanka Tourism Development Authority.

Section 68 of the Tourism Act No 38 of 2005 provides as follows,

Section 68: The Tourist Development Act, No. 14 of 1968 is hereby amended as follows:

(1) by the insertion immediately after section 1 of that Act of the following new section which shall have effect as section 1A of that Act:

"Tourism Act,
No. 38 of
2005" and "Sri
Lanka Tourism 1A. Wherever the expressions "principal Act" and
Development "Board" appear in this Act, such expressions shall be
Authority " to read and construed as being a reference to the "Tourism
be substituted Act, No. 38 of 2005" and the "Sri Lanka Tourism
for the Development Authority" established by section 2 of the
expressions "Tourism Act, No. 38 of 2005", respectively."
"principal Act"
and "Board",
respectively.

(2) by the repeal of sections 77, 78, 79, 80, 81 and 82 of Chapter I of Part
IV of that Act;

(3) in section 103 of that Act- (a) by the repeal of the definition of the
expression "Board"; (b) by the repeal of the definition of the expression
"Competent Authority"; and (c) by the repeal of the definition of the
expression "principal Act"; and

(4) by the repeal of the Fourth, Fifth, Sixth and Seventh Schedules to that
Act.

In view of Section 16 of the Interpretation Ordinance,

*Section 16 (1): Where in any written law or document reference is made to any
written law which is subsequently repealed, such reference shall be deemed to be
made to the written law by which the repeal is effected or to the corresponding
portion thereof.*

*(2) This section shall apply to written laws and documents made as well before as
after the commencement of this Ordinance.*

As such, it was argued on behalf of the Respondents that when interpreting sections of the
Tourist Development Act, No. 14 of 1968 read with section 247A (1) of the Municipal
Council Ordinance, it's clear that Appellants' hotel is a duly registered tourist hotel with the
Tourism Development Authority (established by section 02 of the Tourism Act No 38 of 2005
as referred to in section 68(2) thereof) for the purposes of section 247A of the Municipal

Council Ordinance. Hence, the Respondent's have submitted that the Appellant's contention is untenable in law.

In contrast, it is worth noting that license document 'P4' was issued to NOH HOTEL PRIVATE LTD registered proprietor of 'AMANGALLE' registered as a Boutique hotel in the register of Boutique Hotel maintained by the Director/standard quality assurance under Registration No SLTDA/SQA/BH/002 to carry on the business of the above-mentioned Boutique Hotel under the Tourism Act No 38 of 2005.

In terms of section 48(5) of the Tourism Act No 38 of 2005, on 20th April 2006 – Extraordinary Gazette No. 1962/28 was published promulgating regulations, wherein the Tourist Hotels were classified, the applicable standards are laid down and the fees payable for licensing and registration for a Tourist Enterprise was determined.

The said gazette notification was marked as P3 and produced to the Provincial High Court. The said gazette notification was published under section 48(5) of the Tourism Act no 38 of 2005.

It is noteworthy that there are four different Acts which deal with the Tourism Industry (as given below).

1. Ceylon Tourist Board Act No 10 of 1966
2. Tourism Development Act No 14 of 1968
3. The Tourism Act No. 38 of 2005
4. Finance Act No 25 of 2003.

Therefore, I will briefly analyse the scope of such Acts before considering under which Act a hotel can be registered in order to charge the above-mentioned levy.

Ceylon Tourist Board Act no 10 of 1966

The Ceylon Tourist Board Act no 10 of 1966 has for the first time established the Ceylon Tourist Board, an Authority in charge of tourism promotion and related activities. The powers of the Board appointed under the Ceylon Tourist Board Act No. 10 of 1966 is limited inter alia to the powers to establishment, regulate, supervise, develop and control:

- Tourist resorts;
- Tourist services; and
- The employment of persons in or about the business of tourist services; and

- To formulate for the guidance of the Minister and tourist, travel and other agencies, a national plan or policy setting out in outline general proposals for the regulation, supervision, development, and control of tourism.

(Section 28 of the Tourism Act of 2005)

Tourism Development Act No 1968

It seems that the Tourism Development Act No 1968 was enacted while the Ceylon Tourist Board Act was in force and provision of the Ceylon Tourist Board Act No 10 of 1966 was not amended or repealed by Tourism Board Act No 14 of 1968 it has merely expanded the powers given to the Ceylon Tourist Board.

The said Act was enacted for a special purpose as clearly stated in the preamble thereto to provide for the promotion and carrying out of Tourist Development Projects and the Ceylon Tourist Board Act was enacted to establish the Ceylon Tourist Board. It is evident from the provision of the Tourism Development Act No 1968 that the Ceylon Tourist Board Act remains to be in operation as the Tourism Development Act No 1968 merely provides specific powers to the Board established by the Ceylon Tourist Board Act. I have given below examples of such references to emphasize this point,

Section 11 of the Act No 14 of 1968: **Without prejudice to the generality of the powers conferred on the Board by the Ceylon Tourist Board Act**, the Board may, with the approval of the Minister, alienate, for the purpose of any tourist development project, any land held by the Board, subject to"

Section 58(3): Without prejudice to the generality of the powers conferred on the Board by the Ceylon Tourist Board Act, the Board may, with the approval of the Minister, alienate, for the purpose of any tourist development project, any land held by the Board, subject to"

Section 103 (interpretation section: "Board" means the Ceylon Tourist Board established or constituted under the **Ceylon Tourist Board Act**;

The provisions of the said Act No 14 of 1968 envisage the powers given for the promotion and carrying out of Tourist Development Projects.

It is to be noted that the powers given under the said Act are,

Section 2: Compulsory Acquisition of Land

Section 4: To vest state lands for Tourism Development Projects

Section 7: The power of administration, control, custody, and management of any Part of foreshore for Tourism Development projects and other powers that are exclusively granted under the Tourism Development Act No 14 of 1968.

Section 73A: Declaration of areas as Tourist Development areas.

Section 86(e): The Power to summon and examine witnesses or informants, to administer oaths, to require the production, or to impound documents and search and inspect premises.

It is observable that the aforesaid powers are vested only under the Tourism Development Act No 16 of 1968 and no such powers have been vested in any other body created under any other Acts, particularly the Ceylon Tourist Board Act no 10 of 1966 or the Tourism Act No. 38 of 2005.

It is therefore abundantly clear that the Ceylon Tourist Board Act was not repealed by the said Tourism Development Act No 14 of 1968.

Tourism Act No. 38 of 2005

The attention of the Court was drawn to the provisions of Section 66 of the Tourism Act of 2005, and specifically to Section 67 thereof.

Section 67 effectively repeals The Ceylon Tourist Board Act, No. 10 of 1966. According to section 67,

(1) The Ceylon Tourist Board Act, No. 10 of 1966 is hereby repealed. The Minister shall by Order published in the Gazette appoint the date on which such repeal shall take effect.

(2) From and after the repeal of the Ceylon Tourist Board Act, No.10 of 1966,-

(a) all movable and immovable property vested in the Ceylon Tourist Board on the day preceding the date of repeal, shall with effect from the date appointed for the repeal, vest in the Authority;

(b) all contracts, and agreements entered into by or with the Ceylon Tourist Board and subsisting on the day preceding the date of repeal, shall, with effect from the date appointed for the repeal, be deemed to be contracts and agreements entered into by or with the Authority;

(c) all actions and proceedings instituted by or against the Ceylon Tourist Board and pending on the day preceding the date of repeal, shall, with effect from the date appointed for the repeal, be deemed to be actions and proceedings instituted by or against the Authority as the case may be, and may be continued and completed accordingly ;

(d) all persons who were members, officers and servants of the Ceylon Tourist Board on the day preceding the date of repeal, shall, with effect from the date appointed for the repeal, be deemed to be members, officers and servants of the Authority ; and

(e) all judgments and orders made in favour or against the Ceylon Tourist Board and remaining unsatisfied on the date preceding the date of repeal, shall, with effect from date appointed for the repeal, be deemed to be judgments and orders made in favour of, or against, the Authority, as the case may be, and may be enforced accordingly ;

(f) all training schools and institutes being controlled and managed by the Ceylon Tourist Board on the date preceding the date of repeal, shall, with effect from date appointed for the repeal, be deemed to vest in the Sri Lanka Institute of Tourism and Hotel Management established by section 33.

(3) All permits and license issued in terms of the provisions to the Ceylon Tourist Board Act, No. 10 of 1966 prior to the repeal of the aforesaid Act, shall continue to be valid and effectual as if issued under the provisions of this Act unless and until permits and license are issued in terms of this Act.

It was submitted by the Appellant that this is the clearest indication that if there was a registration of a Hotel, Restaurant or Lodging House registered for the purposes of the Tourism Development Act that such licenses are kept valid and alive even after the Ceylon Tourist Board Act No. 10 of 1966 was repealed.

It is noteworthy that under section 67 (3) of the Act, it specifically states that all property, contracts, and related articles which lay with the Tourist Board Act will vest with the Tourism Authority created under the Tourism Act of 2005.

The legislature by leaving out the Hotels, Restaurants and Lodging Houses registered under the Tourism Development Act has left out the same with reason and it should be interpreted in accordance with the Latin maxim "expressio unius est exclusio alterius".

This is a clear indication that Act No. 14 of 1968 being a different Act which has not been abolished and the registrations obtained thereunder are kept alive and that there need not be a renewal of such registrations if obtained under the Tourism Act No. 14 of 1968

Tourism Development Levy

A Tourism Development Levy was introduced by the Finance Act, No. 25 of 2003. This is a special levy charged on certain Hotels and other Tourist Projects which are specifically registered under the Tourism Act No. 16 of 1968. This Levy is only in respect of Hotels and other institutions registered under the Act of 1968.

Section 11 of the said Act reads as follows;

From and after the date of commencement of this Part of this Act, there shall be levied from every institution licensed under the Tourist Development Act, No.14 of 1968. a levy of one per centum on the turnover of such institutions in any year, to be called the Tourism Development Levy.

The said levy was reintroduced under the Act No. 38 of 2005 in the following manner in terms of section 24 of the Act,

Section 24 (1) There shall be charged, levied and collected by the Director-General, in terms of section 12 of the Finance Act, No. 25 of 2003, a Tourism Development Levy, on the turnover of every institution, licensed under the Tourist Development Act, No. 14 of 1968.

(2) The provisions of Part II of the Finance Act, No. 25 of 2003 shall apply in relation to the imposition of the levy, the method of payment of the levy and the manner of furnishing returns relating to the collection of such levy to the Deputy Secretary to the Treasury.

(3) Rules may be made by the Authority for the management and administration of the levy.

[...]

According to section 24(1) of the Act No. 38 of 2005, the Tourism Development levy is to be collected on the turnover of every institution, licensed under the Act No. 14 of 1968.

Following the literal rule of interpretation, one has to give effect to the plain meaning of the words in the statute, as held by Lord Diplock in the case of *Duport Steel v Stirs* (1980) 1 WLR 142;

"Where the meaning of the statutory words is plain and unambiguous it is not for the judges to invent fancied ambiguities as an excuse to give effect to its plain meaning because they consider the consequences of doing so would be inexpedient, or even unjust or immoral."

This dictum by Lord Diplock has been cited in many Sri Lankan case law including, in the case of *Balasooriya Mudiyansele Soorathunga Balasooriya v Saman Piyasiri and Others* (2012) CA (Writ) No. 342/2012 CAM 29.04.2019 by Justice A.H.M.D. Nawaz,

In *Craies on Statute Law (7th Edition), Universal Law Publishing* it is stated that:

“Strictly speaking there is no place for interpretation or construction except where the words of statute admit two meanings. As Scott LJ said: Where the words of an Act of Parliament are clear, there is not room for applying any of the principles of interpretation which are merely presumptions in cases of ambiguity in the statute... The cardinal rule for the construction of an Act of Parliament is that they should be construed according to the intention expressed in the Act themselves.

If the words of a statute are themselves precise..., there is no more can be necessary than to expand those words in their ordinary natural steps...”

It seems to be that, if the legislature intended the Tourism Development levy to be applicable to hotels registered under the Act No. 38 of 2005, then the legislature would have specified that the levy would be applicable for ‘institutions’ registered under **licensed under ‘this Act’ and Tourist Development Act, No. 14 of 1968**. However, it is evident that such language is missing in section 24 (1) which reintroduces the Tourism Development levy, indicating that the Tourism development levy was to apply differently to institutions registered under the Act No 14 of 1968 than to of institutions registered under the Act No. 38 of 2005. I do not wish to hypothesise the reasons as to why the parliament wished to impose two different levies as that is not the duty of this court and the Parties have not brought any material before this court regarding the same.

It should be noted that, section 28 of the Ceylon Tourist Board Act No 10 of 1996, which provides *inter alia* for passing regulations for registration of resorts, which include within it the meaning ‘hotels’ were repealed by the Act No. 38 of 2005.

Furthermore, the sections 77 to 82 of the Tourism Development Act No. 14 of 1968 were also repealed by section 68 (2) [reproduced below] of the Act No. 38 of 2005,

Section 68 (2) by the repeal of sections 77, 78, 79, 80, 81 and 82 of Chapter I of Part IV of that Act.

The provisions, section 77 to 82 which falls within Part IV, Chapter I of the said Act, provides for the establishment of the 'Tourist Hotel Code' which empowers the relevant authorities to make regulations regarding *inter alia* for supervision, classification, inspection and control of the establishment, maintenance and operation of tourist services, consisting of tourist hotels (in this Act referred to as the 'Tourist Hotels Code '). In simple terms registration and issuing licenses for hotels were to be done under the said provisions.

As the above provisions were repealed by the Act No. 38 of 2005, any regulation save for the licenses already issued under the Act (as provided for by section 67(3)) are repealed and have no effect in law. Therefore, no new hotel can be registered pursuant to the Act No. 14 of 1968.

Furthermore, the Appellants submitted that the Registrations under the Act No. 38 of 2005 are made under the regulation briefed to Court marked as 'P 5'. It seems that the Appellants have validly registered the hotel under Act No. 38 of 2005 and not under Act No. 14 of 1968.

This court will now consider the applicability of section 247A of the Municipal Council Ordinance. This Section was amended by the Municipal Councils Amendment Act No. 20 of 1985 (as reproduced above),

Section 247 A (1) A Municipal Council may impose and levy a duty in respect of licenses council issued by the Council. [3,20 of 1985]

(2) The duty levied under subsection (1) in respect of any license issued by the Council authorizing the use of any premises for any of the purposes described in this Ordinance or in any by-law made thereunder shall be determined by the Council according to the annual value of the premises so licensed, and, where such license authorizes the use of such premises for the purposes of any trade, having regard to

(a) the annual value of such premises;

(b) the turnover of business of such trade;

(c) the profit that is likely to be earned in such trade; and

(d) the essential nature of the goods or services supplied in the course of such trade:

Provided that where the annual value of such premises falls within the limits of any item in Column I set out below, the maximum duty shall not exceed the sum set out in the corresponding entry in Column II-

Column I	Column II
Where the annual value- does not exceed Rs. 1,500	Rs. 2,000
exceeds Rs, 1,500 but does not exceed Rs. 2.500	Rs. 3,000
exceeds Rs. 2,500	Rs. 5,000

Provided further, that where any such premises are used for the purposes of a hotel, restaurant or lodging house, and such hotel, restaurant, or lodging house is registered with or approved or recognized by the **Ceylon Tourist Board for the purposes of the Tourist Development Act (Act No. 14 of 1968)**, the duty so levied shall be according to the takings of the **hotel, restaurant or lodging house for the year preceding the year in which the license duty is levied, and shall not exceed one per centum of such takings**. Where such hotel, restaurant, or lodging house is in its first year of operation, **the license duty shall be determined and levied according to the annual value of such premises**.

For the purposes of this section, " takings " in relation to a hotel, restaurant or lodging house means the total amount received or receivable from transactions entered into in respect of that hotel, restaurant or lodging house or for services performed in carrying on that hotel, restaurant or lodging house.

Thus, it is clear that for 1% of the Total Earnings to be charged, the Hotel or Lodging House must be registered with or approved or recognized by the Ceylon Tourist Board for the purposes of the Tourist Development Act. As such, the 1% levy can only be charged if the Hotel is registered under the Tourism Development Act of 1968.

In view of the provisions of the abovementioned Acts, the Finance Act of 2003 and the Proviso to Section 274A of the Municipal Councils Ordinance, make it clear that a levy of 1% of 'takings' can only be charged to issue a trade license if and only if such Hotel or Restaurant is registered under the Tourism Act of 1968.

However, as the Ceylon Tourist Board Act is no longer in operation and as the relevant provisions of the Tourism Development Act of 1968 related to establishment of hotels have

also been repealed, the Appellant's hotel has not been registered under the above-mentioned Acts.

In contrast, the Respondent-Respondent has argued that the section 247A of Municipal Council Ordinance should be interpreted with section 16 of the Interpretation Ordinance (reproduced below), by replacing the reference to the Ceylon Tourist Board Act of 1966 and the Tourism Development Act No. 14 of 1968 in the said section as references to Tourism Act No. 38 of 2005.

16. (1) Where in any written law or document reference is made to any written law which is subsequently repealed, such reference shall be deemed to be made to the written law by which the repeal is effected or to the corresponding portion thereof.

(2) This section shall apply to written laws and documents made as well before as after the commencement of this Ordinance.

This position is prima-facie not tenable as the Act No. 38 of 2005, it self has not made any provisions to indicate that levies applicable to Act No. 14 of 1968 is applicable to the said Act. In fact, as I have analysed above, Act No. 38 of 2005 has recognized the existence of the tourism development levy applicable to hotels registered under Act no 14 of 1968 but has not made the same levy applicable to the hotels registered under Act No. 38 of 2005.

In the case of *Sebastian Fernando v Katana MPCs 1900 - 1 Sri LR 342 (SC)* it was held that,

"Statutes which encroach upon the rights of the citizen have to be "strictly" construed: they should be interpreted, if possible, to respect such rights, and if there is any ambiguity, the construction which is in favour of the freedom of the individual should be adopted. Statues which impose pecuniary burdens or penalties are subject to the same rule. If there are two reasonable constructions, one of which will avoid penalty, that construction must be preferred."

It is established law that, a strict interpretation of statutes which imposes taxes/levies on the citizenry is preferred as such statutes place a significant burden on the people.

In the case of *Vallibel Lanka Pvt Ltd Vs. Director General of Customs and others (2008) BLR (at page 220)* Siripavan J. (as he then was) held (with S. N. Silva PC CJ. and Amarathunga J. agreeing),

The Court cannot give a wider interpretation to... merely because some financial loss may in certain circumstances be caused to the State.'

.....

It is the established rule in the interpretation of statutes levying taxes and duties not to extend the provisions of the statute by implication, beyond the clear import of the language used or to enlarge their operation in order to embrace matters not specifically pointed out. In case of doubt, the provisions are construed most strongly against the state and in favour of the citizen.

Thus, the intention to impose duties and/or taxes on imported goods must be shown by clear and unambiguous words.

Considerations of hardships, injustice or anomalies do not play a useful role in construing fiscal statutes. One must have regard to the strict letter of the law and cannot import provisions in the Customs Ordinance so as to supply any assumed deficiency.

This Court pays its minds to the trite rule of interpretation that fiscal statutes and statutes imposing penal or pecuniary liabilities must be strictly interpreted and any ambiguity must be constructed in favour of the individual [*CA. Abraham, Uppoottil, Kottayam v. The Income Tax Officer, Kottayam and Another (1961) AIR 609, Perera & Silva Ltd. v. Commissioner General of Inland Revenue (79) 2 N.L.R. 164.*]

As such, a narrower interpretation of statutes which impose levies is preferable and courts should not construe such statutes in a manner that places a heavier burden on the citizenry and such businesses.

In the circumstances, it is apparent that Section 16 of the Interpretations Ordinance has no bearing on the present manner in interpreting the laws pertaining to the instant case, and the 1% of the Total Earnings of a Hotel or Restaurant can be charged only from a Hotel Registered under the Tourism Act no. 14 of 1968, and therefore, as the Petitioner-Appellant-Hotel was registered under the Act No. 38 of 2005, the Petitioner-Appellant is entitled to the reliefs prayed for in the Petition of Appeal.

Thus, we set aside the Judgment/Order of the learned High Court Judge dated 24.02.2021 in case bearing no Writ 50/2019.

Therefore, we quashed the decision of the 1st Respondent Municipal Council to impose a trade license fee of 1% of the total takings of the presiding year (as informed by letters marked as P5, P6, P7, and P8 produced before the High Court in Writ Application bearing no 50/2019.

And we grant a writ of Mandamus compelling the 1st, 2nd, 3rd and 4th Respondents to issue a trade license after receiving payment based on the annual value of the premises as contemplated in Section 247A (1) of the Municipal Council Ordinance No 29 of 1947 as (amended).

Hence, the appeal of the Petitioner-Appellant is allowed. Parties have to bear the cost of litigation in the Provincial High Court as well as in this Court.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL

K.K.A.V. Swarnadhipathi, J.

I agree.

JUDGE OF THE COURT OF APPEAL