

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

In the matter of an application under and in terms of Article 140 of the Constitution for a mandate in the nature of a Writ of Mandamus of the Democratic Socialist Republic of Sri Lanka.

Mohamed Jaffer Mohamed Yoosuf alias
Mohamed Yoosuf Mohamed Jaffer,
No. 43/C, Allen Avenue, Dehiwela
and carrying on business as a sole proprietor
under the name and style of “*Nisha Garments*”
at No. 12 ½, Biyagama Road, Peliyagoda.

Petitioner

C.A. (Writ) Application

No: 0102/2014

Vs.

Mallika Samarasekera,
Commissioner-General of Inland Revenue,
Department of Inland Revenue,
Sir Chittampalam A. Gardiner Mawatha,
Colombo 2.

Respondent

AND THEREAFTER

Mohamed Jaffer Mohamed Yoosuf alias
Mohamed Yoosuf Mohamed Jaffer,
No. 43/C, Allen Avenue, Dehiwela
and carrying on business as a sole proprietor
under the name and style of “*Nisha Garments*”
at No. 12 ½, Biyagama Road, Peliyagoda.

Petitioner

Vs.

Kalyani Dahanayake,
Commissioner-General of Inland Revenue,
Department of Inland Revenue,
Sir Chittampalam A. Gardiner Mawatha,
Colombo 2.

Respondent

AND THEREAFTER

Mohamed Jaffer Mohamed Yoosuf alias
Mohamed Yoosuf Mohamed Jaffer,
No. 43/C, Allen Avenue, Dehiwela
and carrying on business as a sole proprietor
under the name and style of “*Nisha Garments*”
at No. 12 ½, Biyagama Road, Peliyagoda.

Petitioner

Vs.

Ivan Dissanayake,
Commissioner-General of Inland Revenue,
Department of Inland Revenue,
Sir Chittampalam A. Gardiner Mawatha,
Colombo 2.

Respondent

AND THEREAFTER

Mohamed Jaffer Mohamed Yoosuf alias
Mohamed Yoosuf Mohamed Jaffer,
No. 43/C, Allen Avenue, Dehiwela
and carrying on business as a sole proprietor
under the name and style of “*Nisha Garments*”
at No. 12 ½, Biyagama Road, Peliyagoda.

Petitioner

Vs.

Nadun Guruge,
Commissioner-General of Inland Revenue,

Department of Inland Revenue,
 Sir Chittampalam A. Gardiner Mawatha,
 Colombo 2.

Respondent

AND THEREAFTER

Mohamed Jaffer Mohamed Yoosuf alias
 Mohamed Yoosuf Mohamed Jaffer,
 No. 43/C, Allen Avenue, Dehiwela
 and carrying on business as a sole proprietor
 under the name and style of “*Nisha Garments*”
 at No. 12 ½, Biyagama Road, Peliyagoda.

Petitioner

Vs.

H M W C Bandara,
 Commissioner-General of Inland Revenue,
 Department of Inland Revenue,
 Sir Chittampalam A. Gardiner Mawatha,
 Colombo 2.

Respondent

AND NOW

**Mohamed Jaffer Mohamed Yoosuf alias
 Mohamed Yoosuf Mohamed Jaffer,**
 No. 43/C, Allen Avenue, Dehiwela
 and carrying on business as a sole proprietor
 under the name and style of “*Nisha Garments*”
 at No. 12 ½, Biyagama Road, Peliyagoda.

Petitioner

Vs.

Ranjith Happuarachchi,
 Commissioner-General of Inland Revenue,
 Department of Inland Revenue,
 Sir Chittampalam A. Gardiner Mawatha,

Colombo 2

Respondent

Before : P. Kirtisinghe J
&
R. Gurusinghe J

Counsel : Dr Shivaji Felix with Nivantha Satharasinghe
For the Petitioner
N. Wigneswaran, DSG, with Suranga Wimalasena, DSG,
For the Respondent.

Argued on : 03.08.2023

Decided on : 12.09.2023

R. Gurusinghe J

The Petitioner in this application is seeking the following reliefs among other reliefs;

- a. Writ of Mandamus directing the respondent to make payment to the petitioner in the form of a GST refund, lawfully due to the petitioner for the months of April, May, June, and July 2002 in a total sum of Rs. 47,267,963.30.
- b. A writ of Mandamus directing the respondent to make payment to the petitioner in the form of GST refund, lawfully due to him for the months of April, May, June and July 2002, in a sum of Rs. 12,054,948.00 together with the interest due and computed thereon

from the respective due dates of the said refund in 2002 up to 31.12.2003 subject to any appropriate terms/conditions.

Facts in brief

The petitioner carries on business of manufacturing garments for export under the name and style of “Nisha Garments”. Nisha Garments has been registered under the Goods and Services Tax at No. 34 of 1996 (hereinafter referred to as the GST Act) and has been assigned the GST registration No. 643182165-5000.

The petitioner has submitted GST returns to the respondent for the following periods and the claimed refunds are set out below:

<u>Period</u>	<u>GST Refund (Amount)</u>
01/04/2002 to 30/04/2002	Rs. 3,723,401/=
01/05/2002 to 31/05/2002	Rs. 3,773,651/=
01/06/2002 to 31/06/2002	Rs. 3,862,625/=
01/07/2002 to 31/07/2002	Rs. 1,058,197/=

The respondent objected to the petitioner’s application on the following grounds:

The respondent issued notices dated 24.10.2002, 28.11.2002, 24.02.2003 and 29.07.2003, marked as P6, instructing the petitioner to produce original invoices and other relevant documents to substantiate his refund claims. However, due to the petitioner’s failure to provide the required documents, the respondent was not able to proceed with the refund claims. The abovementioned notices were marked by the petitioner as P6.

The respondent sought the following documents from the petitioner to confirm the petitioner’s refund claim.

1. Copies of the return furnished,
2. A schedule of GST paid on other purchases,

3. Custom acknowledgement receipt,
4. Original cusdec's in respect of the input tax claimed for the period,
5. Original invoices and payment vouchers from Kabool Lanka Pvt Ltd.,
Kuruwita Merchants Textiles Mills and Jubilee Agencies Ltd.,

The respondent further stated that the petitioner failed to submit the documents as requested by the above notices, which were required to process the refund claims.

The respondent stated as follows in the objections to this application.

- a. The petitioner has not taken steps in accordance with the rules and procedure for the refund of GST as claimed by him.
- b. The petitioner has failed to hand over the original invoices and the required documents to substantiate his claim for the GST refund.
- c. The petitioner had thus failed to substantiate his claims for GST refunds.
- d. The petitioner has failed to comply with the provisions of GST Act No.34 of 1996, as amended.
- e. The petitioner is not entitled in law to any GST refunds for the period set out in the petition.
- f. In the above circumstances, the petitioner is not entitled to the payment of any interest.

In addition to the above objections, the respondent has taken up the following objections to the petitioner's application.

- a. The petitioner's application is vexatious and misconceived in law.
- b. The petitioner's application is an abuse of the process of court.
- c. The petitioner is guilty of laches.
- d. The petitioner has suppressed and misrepresented material facts.

The respondent denies the receipt of the documents marked P11(b), P12, P14, P7 (a), P7 (b), P9 and P10. The respondent further submitted that if the

petitioner had submitted the original documents to the Inland Revenue Department, it would have issued a receipt of acknowledgement.

The respondent's position is that the respondent cannot entertain and process the refund claims in terms of law since the petitioner has failed to submit the originals of the invoices and the other required documents to substantiate the claims.

The petitioner argues that the respondent did not dispute the petitioner's claims for GST refunds when he sent the request for the refund. The petitioner further contends that the respondent had conceded the petitioner's claims for such GST refunds.

Section 22 (1), 22 (2), and 22 (3) of the GST Act provides as follows:

"22.

(1) A registered person shall, in respect of taxable supplies made by him, account for and pay the tax by reference to such taxable periods at such time and in such manner as may be specified in the Act.

(2) Subject to the provisions of the Act, a registered person is entitled at the end of each such period to credit for so much of his input tax as is allowable under this Act. And then to deduct such amount from any output tax that is due from him.

(3) Where goods or services supplied to a registered person, or goods imported by him, are used or to be used partly for the purposes of a taxable activity carried on or carried out by him and partly for other purposes, the tax on supplies and importations shall be apportioned so that only so much of the tax on such supply or importation as is referable to his taxable activity shall be counted as his input tax."

In order to claim a GST refund, a registered person must satisfy the fact that he is entitled to recover the excessive input tax in terms of the GST Act.

Sections 58 and 59 of the GST Act are as follows:

“58

*(1) Where a registered person makes an application for a refund of any tax or any penalty paid by him in excess during the taxable period **within three years immediately after the end of the taxable period and satisfies the Commissioner-General that such person has paid any tax or any penalty in excess of the amount which he was liable to pay for that period, such person shall be entitled to a refund of the amount paid in excess, subject to provisions of subsection (3):***

(2) Where through death, incapacity, bankruptcy, liquidation or other cause a registered person who would but for such cause have been entitled to make a claim under subsection (1) is unable to do so, his executor, trustee or receiver as the case may be, shall be entitled to a refund of any tax or penalty paid in excess within the meaning of subsection (1) by such person for the benefit of such person or his estate.

(3) Notwithstanding anything in subsection (1)-

(a) Where any registered person has failed to pay the Commissioner-General in whole or in part, any tax in respect of any taxable period, or a month in a taxable period, any amount of tax payable before the due date may be set off after due notice to such person against that unpaid tax, any amount or any part of any amount otherwise refundable to that person or any amount or part of any amount of interest payable to that person under section 59, and shall treat any amount so set off as a payment received from such registered person.

(b) Where any registered person, in respect of, any taxable period or in a month in a taxable period has not furnished a return for any taxable period or a month in a taxable period, the Commissioner-General may withhold payment of any amount otherwise refundable or any amount of interest payable under section 59 of this Act, until such registered person has furnished such return”.

“59.

- (1) *Where any amount refundable under this Act to refunds a registered person has not been refunded within a period of thirty days from the due date of such refund there shall be paid by the Commissioner-General to such person interest on such amount for the period commencing on the Thirtieth day from the due date up to the date of refund of the amount as is required to be refunded by the Commissioner-General to such person under this Act, at the rate prescribed by the Minister from time to time*
- (2) *For the purposes of this section “due date” means the period ending ninety days –*
- (i) *From the date of any agreement with an Assessor or from the date of determination of an appeal in respect of the assessment appealed against or ;*
 - (ii) *From the date on which a claim , other than a claim for a refund made in writing under subsection (4) of section 22 was received from such person by the Commissioner-General”*

In terms of the provisions of Section 58, the petitioner must prove that he is entitled to a refund and it should include showing that he has overpaid tax or penalty by providing relevant documents.

If the petitioner fails to satisfactorily prove his entitlement to a refund in terms of law by producing tax invoices and other relevant documents, such refund claims by the petitioner cannot be granted by the respondent.

After the abovementioned notices were issued to the petitioner in the year 2002 to produce the necessary documents, there was no correspondence between the petitioner and the respondent until 27.10.2009 by letter marked P7 (a) and P7 (b) dated 20.01.2010. The respondent has denied the receipt of P7(a) and P7(b). By letter dated 27.09.2011 sent to the respondent, the petitioner has taken up the position that he had handed over the original

invoices to the respondents in regard to GST refund claims for the year 2002. However, the petitioner has not taken up this position in any correspondence before P 11(a) dated 27.09.2011.

In this application, the respondent seriously disputes the fact that the petitioner has submitted relevant documents to substantiate the GST refund claims made by the petitioner.

It is quite clear that the petitioner is required to establish his eligibility for GST refund by submitting necessary documents. In this application, there is no evidence to show that the petitioner submitted all the relevant documents to the respondent. The respondent contends that if the respondent had accepted the documents, a receipt of acknowledgement would have been issued to the petitioner. However, the petitioner has not produced such a receipt. The facts necessary to support the petitioner's entitlement are in dispute. Despite the petitioner's claim that the respondent did not contest their refund request when it was initially submitted, the respondent issued notices to the petitioner requesting the originals of tax invoices and other relevant documents to substantiate the claims. There is no evidence to prove that the petitioner had supplied these documents to the respondent. Furthermore, the petitioner has not produced any receipt of acknowledgement issued by the Inland Revenue Department.

In the case of Thajudeen vs Sri Lanka Tea Board [1981] 1SriLR 471, Ranasinghe J (as he was then) quoted the following passage

“CHOUDRI in his book on the *Law of Writs and Fundamental Rights (2nd Ed.)*, Vol.2, states at page 381: "The rule has been stated that mandamus will not lie to compel a public officer to perform a duty dependent upon disputed and doubtful facts, or where the legal result of the facts is subject to controversy. If the right is in serious doubt the discretionary power rests with the officer to decide whether or not he will enforce it, till the right shall have been established in some proper action, and discretion fairly exercised in such circumstances

cannot be controlled by mandamus;" and, at page 449: "Where facts are in dispute and in order to get at the truth it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining their witnesses and the Court would be better able to judge which version is correct, a writ will not issue."

Further, it says as follows:

"When, however, such questions of fact are in dispute they can and must only be settled by a regular action between the disputants before the appropriate Court of First Instance. Such questions, the decision of which calls for the leading of evidence, both oral and documentary and the cross-examination of witnesses are all questions which can be best decided by way of regular procedure falling within the ordinary jurisdiction of the Courts of First Instance."

Without establishing necessary facts, no public right will arise for the petitioner to seek for a Writ of Mandamus. Since the petitioner has failed to substantiate the GST refund claims by producing necessary documents, no public duty casts upon the respondent to make payments in the form of GST refunds.

The petitioner is guilty of laches.

The petitioner filed this application in 2014 seeking a Writ of Mandamus directing the respondent to make payments for the GST refund claims for the year 2002, after a delay of 12 years. When the petitioner was notified to produce the relevant documents in 2002 and 2003, there was no response from the petitioner. Correspondence between parties began approximately seven years later, in 2009, and that was initiated by the petitioner. The petitioner has not provided any explanation for the prolonged lack of communication. This application before this court was filed 12 years after the submission of those claims. The petitioner has not provided any explanation for the 12-year delay in making this application. In the written

submission on behalf of the petitioner, it was argued that there is a provision in the Act to pay interest, thereby making the delay irrelevant.

The provisions to pay interest for the money due have been provided for the benefit of the applicants if the payments are delayed. The petitioner cannot rely on that provision to excuse the 12-year delay and laches. Furthermore, the Act provides to pay interest after 90 days. When comparing 90 days to 12 years, the delay on the part of the petitioner is excessive and unreasonable. The submission in this regard is not tenable given the circumstances of the case.

In the case of Ramasamy vs Ceylon State Mortgage Bank 78NLR 510 Wanasundera J, quoting from a Privy Council case of Lindsay Petroleum Company vs Hurd, stated as follows:

“The doctrine of laches in Court of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise should be unjust, is founded upon mere delay, that delay of course not amounting to a bar by any Statute of Limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.”

In the case of Athula Ratnayake vs Jayasinge 78NLR 35, the Supreme Court held that the delay of one year and three months, which had not been

satisfactorily explained by the petitioner, barred the remedy. The Court has a discretion which it could exercise to refuse the application on the ground that there had been undue delay in bringing the proceedings.

In the case of Rev. Seruwila Sarankithi and others v The Attorney General and others [2004]1Sri LR 356 Wijayaratne J has quoted the case of Abdul Rahuman v The Mayor of Colombo 69NLR 211 with regard to the unexplained delay, where it was held as follows:

“it is sufficient for us to say that in view of this delay and the consequences of such delay, an application for a writ of mandamus must fail.”

The petitioner has failed to substantiate the GST refund claims by producing necessary documents. This application was filed 12 years after the refund claims were submitted, indicating an inordinate delay. For the reasons set out in this judgment application of the petitioner is dismissed without costs.

Judge of the Court of Appeal

Pradeep Kirtisinghe J.

I agree.

Judge of the Court of Appeal.

