

**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 mandates in the nature of a Writ of Mandamus of the Democratic Socialist Republic of Sri Lanka.

Mohamed Saukath Jaffer,  
No. 43/C, Allen Avenue, Dehiwela  
and carrying on business as a sole proprietor under the name and style of “*Jaffer Sons Garments*” at No. 549 1/1, Kandy Road, Kelaniya.

**Petitioner**

**C.A. (Writ) Application**

**No: 0101/2014**

**Vs.**

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

**Respondent**

AND THEREAFTER

Mohamed Saukath Jaffer,  
No. 43/C, Allen Avenue, Dehiwela  
and carrying on business as a sole proprietor under the name and style of “*Jaffer Sons Garments*” at No. 549 1/1, Kandy Road, Kelaniya.

**Petitioner**

**Vs.**

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

**Respondent**

AND THEREAFTER

Mohamed Saukath Jaffer,  
No. 43/C, Allen Avenue, Dehiwela  
and carrying on business as a sole proprietor  
under the name and style of “*Jaffer Sons  
Garments*” at No. 549 1/1, Kandy Road,  
Kelaniya.

**Petitioner**

**Vs.**

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

**Respondent**

AND THEREAFTER

Mohamed Saukath Jaffer,  
No. 43/C, Allen Avenue, Dehiwela  
and carrying on business as a sole proprietor  
under the name and style of “*Jaffer Sons  
Garments*” at No. 549 1/1, Kandy Road,  
Kelaniya.

**Petitioner**

**Vs.**

Nadun Guruge,

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

**Respondent**

AND THEREAFTER

Mohamed Saukath Jaffer,  
No. 43/C, Allen Avenue, Dehiwela  
and carrying on business as a sole proprietor  
under the name and style of “*Jaffer Sons  
Garments*” at No. 549 1/1, Kandy Road,  
Kelaniya.

**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 Saukath Jaffer,  
No. 43/C, Allen Avenue, Dehiwela  
and carrying on business as a sole proprietor  
under the name and style of “*Jaffer Sons  
Garments*” at No. 549 1/1, Kandy Road,  
Kelaniya.

**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 July, August, and September 2001 and April, May, June, and July 2002 in a total sum of Rs. 65,768,389.15.
- 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 July, August, September 2001 and April, May, June, July

2002 in a sum of Rs. 16,442,029/- together with interest due and computed thereon from the respective due dates of the said refunds in 2001 and 2002 up to 31.12.2013 subject to any appropriate terms/conditions.

Facts in brief as stated by the Petitioner.

The petitioner carries on garments manufacturing business for export under the name and style of “Jaffer Sons Garments”. Jaffer Sons Garments has been registered under the Goods and Services Tax Act No. 34 of 1996. (hereinafter referred to as the GST Act) and has been assigned the GST Registration No. 700520803-5000.

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>Return Marked as</u>	<u>Amount claimed as Refund</u>
01 July 2001 to 30 July 2001	P 6a	1,845,750.00
01 August 2001 to 31 August 2001	P 6b	1,041,791.00
01 September 2001 To 30 September 2001	P 6c	605,454.00
01 April 2002 to 30 April 2002	P 6d	3,985,873.00
01 May to 31 May 2002	P 6e	4,902,306.00
01 June 2002 to 30 June 2002	P 6f	3,769,590.00

<u>Period</u>	<u>Return Marked as</u>	<u>Amount claimed as Refund</u>
01 July 2002 to 31 July 2002	P 6g	689,123.00

The respondent objected to this application.

The respondent submitted that the notice dated 24.10.2002 marked P7 was issued to the petitioner by the respondent with regard to the taxable period 2002/6 seeking the following documents.

- i. Copies of the Returns furnished.
- ii. Original "cusdecs" in respect of the input tax claimed for the period.
- iii. A schedule of GST paid on other purchases.

Further, it was submitted that similar notices would have been sent to the petitioner for the remaining periods. However, considering the significant time that has passed since 2001, the Department of Inland Revenue no longer possesses the above-mentioned notices.) The respondent stated that notice dated 29.07.2002, was issued to the petitioner regarding the taxable period 2002/07 seeking the following documents.

- i. Copies of the Returns furnished.
- ii. Original "Cusdecs" in respect of the input tax claimed for the period.
- iii. A schedule of GST paid on other purchases.

A copy of the notice dated 29.07.2003 marked R1 was produced.

The respondent further stated that they had not received the original invoices and other documents as requested, and accordingly, the respondent was unable to process the refund claims of the petitioner. The respondent stated that if the petitioner had submitted the original invoices to the Department of Inland Revenue, an acknowledgement of receipt would have been issued. In light of these circumstances, the respondent contends that the petitioner is not entitled to the GST refund as claimed.

The respondent denies the receipt of the letters marked P8 dated 7.6.2010 and P11 dated 14.2.2011 while acknowledging receipt of P12.

The respondent denies the fact that original invoices and other supporting documents were submitted to the respondent in the years 2001 and 2002. Since the petitioner has failed to produce relevant documents to substantiate his GST refund claims, the respondent was not in a position to proceed with the claims.

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. Petitioner is guilty of *laches*.
- d. The petitioner has suppressed and misrepresented material facts.

The petitioner argues that the respondent did not dispute the petitioner's claim for a GST refund when he submitted requests for the refund. Furthermore, the petitioner contends that the respondent acknowledged and accepted these claims for the GST refund.

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 GST refund, a registered person must satisfy 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 satisfy the Commissioner-General that he has paid an excess amount of tax or penalty for that specific period and is entitled to a refund. The petitioner is required to prove this by presenting relevant documents.

The petitioner had submitted photocopies of certain invoices, but the respondent denied the claim that the originals of those invoices were received by them.

After P7 dated 24.10.2002 and R1 reminder dated 29.07.2003 was issued to the petitioner by the respondent, no further correspondence had taken place between the parties until P8 dated 7.6.2010. The respondent denies the receipt of P8. Even if we assume that P8 was, in fact, sent to the respondent, yet there remains a silence gap of seven years.

The respondent admits the receipt of P9 dated 27.10.2010, and P10 affidavit dated 23.12.2010. By letter P13 dated 6.9.2011, the respondent informed the petitioner to provide tax invoices relevant to the GST claim. In response to P13, the petitioner had sent letter P14 dated 13.12.2011, stating that the petitioner had submitted all relevant documents to an officer in the Inland Revenue Department 10 years earlier. Prior to the letter marked P14, there was no letter sent by the petitioner to the respondent stating that he had handed over the relevant documents to an officer of the Inland Revenue Department.

It is evident that the petitioner is required to establish his entitlement for GST refund by producing relevant documents. In this application, there is no proof that the petitioner had submitted all relevant documents to the respondent. The respondent states that if the respondent had accepted the documents, a receipt of acknowledgement would have been issued to the petitioner. However, no such receipt was produced by the petitioner. The facts that are necessary to ascertain the entitlement of the petitioner are in

dispute. Even though the petitioner claimed that the respondent had not disputed and conceded the petitioner's claim for refund at the time such claims were submitted to the respondent, the respondent had issued notices to the petitioner requesting the originals of tax invoices, *cusdec*s and other relevant documents to substantiate the claims. There is no evidence to prove that the petitioner had supplied the relevant documents to the respondent. The respondent denies the photocopies of the invoices produced by the petitioner in this court. Further, the respondent states that the total value indicated in the invoices(photocopies) is higher than the total income reported by Gulistan Textiles (Pvt) Ltd, for the entire year, as indicated in the documents submitted by it for income tax purposes. In response, the petitioner states that such matters should be resolved by the respondent in consultation with Gulistan Textiles (Pvt) Ltd.

There had been no correspondence between the petitioner and the respondent from 2003 until 2010. The petitioner claimed that he had submitted relevant tax invoices and other documents to the respondent during that period. However, the petitioner had not provided even a photocopy of a *cusdec* in this court.

The respondent in this application seriously disputes the position of the petitioner that he had submitted the original invoices and other relevant documents to the Inland Revenue Department. The respondent is not in a position to proceed with the petitioner's GST refund claims without the required documents to prove the fact that the petitioner paid GST in excess.

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 proving necessary facts no public right will arise for the petitioner to seek for a Writ of Mandamus. As the petitioner has not provided the required documents to support the GST refund claims, there is no obligation on the part of 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 claims for GST refunds in respect of 2001 and 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 started about seven years later, in 2010, 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

that claim. The petitioner has not explained the 12-year delay when making this application. In the written submission on behalf of the petitioner, it was submitted that there is a provision in the Act to pay interest for the delayed period, 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 make use of that provision to excuse 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 initially submitted. The petitioner is guilty of laches. For the reasons set out in this judgment, the 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.

