

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

In the matter of a “case stated”
transmitted by the Board of Review

Butani Exports Limited
No.276, Rajagiriya Road,
Rajagiriya

Appellant

Vs.

**CA INCOME TAX No. 04/2010
BOARD OF REVIEW No. BRA/VAT/10**

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

Respondent

BEFORE : **K.T. CHITRASIRI, J. &
L.T.B. DEHIDENIYA, J.**

COUNSEL : **V.Arulananthan PC with M.A.Sumanthiran for the Petitioner
Priyantha Nawana DSG for the Respondent**

WRITTEN : 24.08.2015 by the Petitioner
SUBMISSIONS
FILED ON : 01.09.2015 by the Respondent

DECIDED ON : **29th SEPTEMBER 2015**

ORDER

When this matter was taken up for argument on the 17th of July 2015, learned Counsel for the Appellant submitted that the questions of law formulated by the Board of Review which are mentioned in the case stated, do not reflect the exact picture of the questions that was raised by the Appellant to the Board of review. Accordingly, learned Counsel for the Appellant moved that this Court may formulate the questions of law that are to be determined in this case exercising the power given to this Court under Section 170(6) of the Inland Revenue Act No. 10 of 2006.

The aforesaid Section 170 (6) stipulates thus:

“any two or more judges of the Court of Appeal may hear and determine **any questions of law** arising on the stated cases ...”

(emphasis added)

Accordingly, it is the duty of this Court to determine the questions of law arising on the case stated. The questions of law submitted by the Appellant to the Board of Review were as follows:-

- i. *Has the Board of Review erred in law by failing to give due recognition to the removal and unlawful withholding of original documents pertaining to imports, exports and bank statement, of the Appellant Company?*
- ii. *Has the Board of Review erred in law by failing to properly evaluate the evidence submitted by the Appellant Company?*

- iii. *Has the Board of Review erred in law by failing to inquire into the substantive question of law in interpreting Section 2(3) (b) of the Value Added Tax Act No. 14 of 2002?*
- iv. *Has the Board of Review misdirected itself in failing to drawing and adverse inference on the conduct of the Department in failing to produce the original documents pertaining to the Appellant Company, which were admittedly in the custody of the Department?*
- v. *Has the Board of Review erred in directing the Appellant to produce documents pertaining to the matter in issue when admittedly the said documents are in the custody of the Department?*

When formulating the questions of law by the Board of Review, it is a requirement to have given due consideration to the matters contained in the questions raised on behalf of the appellant. Hence, it is necessary to ascertain whether the Board of Review has duly considered the matters contained in the questions raised by the appellant when formulating the questions of law that are to be answered by this Court.

Questions of law formulated by the Board of Review read thus:

- i. *In the totality of the circumstances of this case, did the Appellant Company, having transferred fabric to its fully owned subsidiaries, ensure that the fabrics transferred were, in fact, manufactured into garments, exported and foreign exchange realized?*
- ii. *Did the Appellant Company misconstrue and/or misapply and/or violate the provisions of Section 7(2)b of the VAT Act in the matter of transfer of fabrics to its fully owned subsidiaries particularly when ex facie they were not arms length transactions?*

- iii. *Was it not the onus placed on the Appellant Company to satisfy the Revenue regarding the absence of any intention to avoid tax liability by tendering any other evidence, if the original documents were not available and reconcile the export figures with the fabrics being transferred to its fully owned subsidiaries?*

Contention of the learned Counsel for the appellant was that the Board of Review has completely disregarded the last two questions raised by the appellant when formulating the questions of law to be determined by this Court. He had no complaint as to the matters contained in the first three questions raised by the appellant. Therefore, it is necessary to look at the matters contained in those two sets of questions of law to ascertain whether the Board of Review has given due consideration to the questions of law raised by the Appellant when it formulated the questions of law that are to be considered by this Court.

Matters contained in the last two questions raised by the appellant relate to the admissibility of evidence contained in the documents that were in the custody of the Commissioner General of Inland Revenue in relation to the VAT liability of the appellant. In this case, the Commissioner General of Inland Revenue by his decision marked Z 1, which is dated 8th June 2007, determined that the Appellant was liable to pay Value Added Tax (VAT) for the months of; October and December 2002, January 2003, April to December 2003 and January to March 2004.

Accordingly, VAT liability of the appellant that had been determined by the Commissioner General was for a period of 16 months. The Assesee [Appellant] being aggrieved by the aforesaid determination of the Commissioner General appealed to the Board of Review on 23rd July 2007 seeking a cancellation of the

above determination and sought for a refund of the alleged VAT liability that the Appellant has paid for the aforesaid period of 16 months. Application for the refund had been made on the basis of the terms and conditions of the agreement that it had entered into with the Board of Investment. [BOI]

The Appellant had been engaged in the business of manufacturing garments, having entered into an agreement with the Board of Investments under the Board of Investments Law. It had two associate companies namely, P.M.K. Garments Limited and INATUB Garments Limited. The appellant Company had supplied imported fabric to the aforesaid subsidiary companies for the manufacture of garments. The Board of Review having considered the facts before it held that the supply of imported fabrics to the aforesaid two subsidiary companies by the appellant company should be treated as its local or overseas supplies for the purpose of deciding the VAT liability of the Appellant. It is the reason for the Board of Review to conclude that the appellant is liable to pay VAT for the aforesaid period of 16 months.

I will now turn to consider the matters in respect of the issue raised in this instance. Last two questions raised by the appellant are in relation to the non-availability of the documents pertaining to the VAT liability of the appellant that were in the custody of the Commissioner General of Income Tax. The Board of Review has come to the conclusion that it is the duty of the Appellant to produce all the relevant documents including the documents that were in the custody of the Commissioner General of Inland Revenue at the inquiry held before the Board. I am of the view that such an issue amounts to a matter that should be considered by this Court since it involves an issue as to the material that the Board of Review should have considered when it decided on the appeal filed against the decision of

the Commissioner General of Inland Revenue. Indeed, it is a matter which deals with an issue as to the admissibility of evidence before the Board of Review. Therefore, it would become an issue of law that should be looked into by this Court.

Therefore, it is my opinion that this Court should consider the last two questions raised by the Appellant along with the three questions formulated by the Board of Review. Accordingly, this Court is to answer the last two questions raised by the appellant and the three questions formulated by the Board of Review. Then it would come to a total of five questions of law to be answered by this Court. Thereafter, this Court is to transmit its opinion on those five questions to the Board of Review.

Accordingly, this Appeal is to be taken up for hearing on the aforesaid five questions of law.

Mention this matter on another date to fix the same for argument.

JUDGE OF THE COURT OF APPEAL

L.T.B.DEHIDENIYA, J

I agree.

JUDGE OF THE COURT OF APPEAL