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

In the matter of an appeal by way of Stated Case on a question of law for the opinion of the Court of Appeal under and in terms of section 11A of the Tax Appeals Commission Act No. 23 of 2011 (as amended)

Stafford Motor Company (Private) Limited,

718/7 Maradana Road,

Colombo 10.

APPELLANT

Case No. CA(TAX) 17/2017

Vs.

Tax Appeals Commission

No. TAC/IT/012/2014

The Commissioner General of Inland Revenue,

Department of Inland Revenue,

Sir Chittampalam A. Gardiner Mawatha,

Colombo 02.

RESPONDENT

Before: Janak De Silva J.

Achala Wengappuli J.

Counsel:

Dr. Shivaji Felix for the Appellant

Shaheeda Barrie Senior State Counsel for the Respondent

Written Submissions tendered on:

Appellant on 18.05.2018

Respondent on 18.05.2018

Argued on: 24.05.2018, 08.06.2018, 29.08.2018,05.07.2018,17.09.2018 and 25.09.2018

Decided on: 15.03.2019

Janak De Silva J.

The Appellant is a limited liability company incorporated under the provisions of the Companies Act No. 17 of 1982. The principal activity of the Appellant is importing and distributing "Honda" and "Hero Honda" branded products.

The Appellant filed its return of income for the year of assessment 2009/2010 on 29.11.2010. The assessor rejected the return and made his own assessment on the basis that the Appellant had not made adjustments in respect of Nation Building Tax (NBT) paid on imports in ascertaining the profit and income for the year. The Appellant appealed to the Respondent who confirmed the assessment of the assessor.

The Appellant then appealed to the Tax Appeals Commission (TAC) which confirmed the assessment made by the Respondent and dismissed the appeal. The Appellant then moved the TAC to refer the following questions of law for the opinion of Court in terms of section 170 of the Inland Revenue Act No. 10 of 2006 (2006 Act):

(1) Is the determination of the Tax Appeals Commission time barred?

(2) Did the Tax Appeals Commission err in law when it came to the conclusion that the assessment was not time barred?

(3) Did the Tax Appeals Commission err in law when it came to the conclusion that the Nation Building Tax paid at the point of importation of articles to Sri Lanka is a disallowable expense under section 26(1)(l)(iii) of the Act No. 10 of 2006 as amended?

(4) In view of the facts and circumstances of the case, did the Tax Appeals Commission err in law when it came to the conclusion that it did?

Time Bar – Determination of TAC

The learned counsel for the Appellant submitted that the first oral hearing before the TAC took place on 02.12.2014. Relying on *Mohideen vs. Commissioner General of Inland Revenue* [(2015) Vol. XXI BALJ 171] he submitted that this is the date from which time runs in determining whether the determination of the TAC is time barred. He further submitted that upon a consideration of the several amendments made to the TAC Act No. 23 of 2011 (TAC Act), the time limit granted to the TAC to make a determination is mandatory which requires strict compliance. It was submitted that in the instant case the determination was made after the 270 days contemplated by section 10 of the TAC Act and hence it is time barred.

In addressing this question, the fundamental issue to be determined is whether the time limit given in section 10 of the TAC Act is directory or mandatory. The question whether a provision in a statute is mandatory or directory is not capable of generalization but when the legislature has not said which is which, one of the basic tests for deciding whether a statutory direction is mandatory or directory is to consider whether violation thereof is penal or not. It has been the traditional view that where disobedience of a provision is expressly made penal it has to be concluded that the provision is mandatory whereas if no penalty is prescribed non-compliance with the provisions, of a statute may held to be directory.

The TAC Act does not specify any penal consequences for the failure of the TAC to make its determination within the time limit specified in section 10 of the TAC Act.

Furthermore, *Maxwell on Interpretation of Statutes*, 11th Edition, at page 369 states:

> *"Where the prescription of a statute related to performance of a public duty and where invalidation of acts done, in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty yet not promote the essential aims of the legislature, such prescriptions seem to be generally understood as mere instructions for the guidance and government of those on whom the duty is imposed, or, in other words, as directory only. Neglect of them may be penal, indeed, but it does not affect the validity of the acts done in disregard of them. It has*

often-been held, for instance, ***when an Act ordered a thing to be done by a public body or public officers and pointed out the specific time when it was to be done, then the Act is directory only and might be complied with after the prescribed time.***" (emphasis added)

In *Nagalingam vs. Lakshman de Mel* (78 NLR 231 at 237) in respect of a similar situation where the Commissioner of Labour had not made his order within the time prescribed under the Termination of Employment of Workmen (Special Provisions) Act No. 45 of 1971 Sharvananda J. (as he was then) held:

> "The delay should not render null and void the proceedings and affect the parties, as the parties have no control over the proceedings. It could not have been intended that the delay should cause a loss of jurisdiction, that the Commission had to give an effective order of approval or refusal. In my view, a failure to comply literally with the aforesaid provisions does not affect the efficacy or finality of the Commissioner's order made thereon. **Had it been the intention of the Parliament to avoid such order nothing would be simpler than to have so stipulated**. " (emphasis added)

Furthermore, in *Visuvalingam vs. Liyanage* [(1985) 1 Sri LR 203] a Bench of nine Judges of the Supreme Court considered whether Article 126 (5) of the Constitution is mandatory or directory. Article 126 (5) of the Constitution provides that when an application to the Supreme Court for relief against violation of fundamental rights guaranteed by the Constitution has been made "the Supreme Court shall hear and finally dispose of any petition or reference under this Article within two months of the filing of such petition. . .". The Supreme Court by majority judgment held that the provisions of Article 126 (5) of the Constitution are directory and not mandatory. Dealing with the argument that Article 126 (5) is mandatory and that even a fault of the court is no excuse, Samarakoon, C.J. said (at page 226) that:

> "If that right was intended to be lost because the court fails in its duty the Constitution would have so provided. It has provided no sanction of any kind in case of such failure. To my mind it was only an injunction to be respected and obeyed but fell short of punishment

if disobeyed. I am of opinion that the provisions of Article 126 (5) are directory and not mandatory. Any other construction would deprive a citizen of his fundamental right for no fault of his. While I can read into the Constitution a duty on the Supreme Court to act in a particular way I cannot read into it any deprivation of a citizen's guaranteed right due to circumstances beyond his control".

Although the above case was one involving a violation of a fundamental right, the logic of the reasoning of Samarakoon, C.J. is compelling and applicable to the present case as well. In terms of section 8(1) of the TAC Act, it is only a person who is aggrieved by the determination of the Commissioner General of Inland Revenue in relation to the imposition of any tax, levy, charge, duty or penalty or the Director General of Customs under subsection (1B) of section 10 of the Customs Ordinance who can prefer an appeal to the TAC. Section 9(10) of the TAC Act allows the TAC on appeal to confirm, reduce, increase or annul, as the case may be, the assessment determined by the Commissioner General of Inland Revenue or to remit the case to the Director General of Customs.

The TAC Act does not spell out any sanction for the failure on the part of the TAC to comply with the time limit set out in section 10 of the TAC Act. If the Appellant is correct in submitting that the time bar on the TAC is mandatory, it will result in the validity of the impugned determination made by the Commissioner General of Inland Revenue been maintained for no fault of the aggrieved party where the TAC fails to adhere to the time limit. Such deprivation of rights of the aggrieved party cannot be implied in the absence of clear and unambiguous statutory provisions.

On the other hand, if the failure on the part of the TAC to adhere to the time limit should result in the aggrieved party obtaining the relief claimed, the legislature would have specifically stated so. For example, the second proviso to section 34(8) of the VAT Act specifically provides that "the appeal shall be deemed to have been allowed and the tax charged accordingly" where the appeal to the Commissioner-General against an assessment made by the Assessor is not determined within the stipulated time of two years.

The learned counsel for the Appellant upon Court pointing this out responded by submitting that Court should then declare that the appeal made to the TAC is deemed to be allowed where the TAC fails to adhere to the time limit specified ins section 10 of the TAC Act. We do not agree as that would be in the words of Lord Simonds in *Magor & St. Mellons vs. Newport Corporation* [(1951) 2 All.E.R. 839 at 841] "a naked usurpation of the legislative function under the thin guise of interpretation...If a gap is disclosed, the remedy lies in an amending Act."

In *Mohideen's* case (supra), this Court concluded that the determination of the Board of Review was not time barred in terms of section 140(10) of Act No. 38 of 2000 as amended by section 52 of Act No. 37 of 2003. However, Court went on to state that "It would be different or invalid if the time period exceeded 2 years from the date of the oral hearing. If that be so it is time barred."

Rupert Cross in *Precedents in the English Law* (3rd Ed., 1977) offers the following formulations for *ratio decidendi* and *obiter dictum*:

> "The *ratio decidendi* of a case is any rule of law expressly or impliedly treated by the judge as a necessary step in reaching his conclusion, having regard to the line of reasoning adopted by him, or a necessary part of his direction to the jury" (page 76)
>
> "*Obiter dictum* is a proposition of law which does not form part of the ratio decidendi" (page 79)

We are of the view that the statement in *Mohideen's* case (supra) that the determination of the Board of Review is invalid if not made within the statutory time period is *obiter dicta*. Accordingly, we are of the view that the determination of the TAC in the instant case is not time barred. In *Kegalle Plantations PLC vs. Commissioner General of Inland Revenue* [CA(TAX) 09/2017, C.A.M. 04.09.2018] we arrived at a similar conclusion.

Time Bar – Assessment

The learned counsel submitted that no lawfully valid assessment can be made without serving a valid notice of assessment. He submitted that serving a notice of assessment is a necessary precondition that must be satisfied to confer validity on the assessment and that the notice of assessment must be served on the tax payer prior to the expiry of the time bar.

The learned counsel for the Appellant relied on the decisions in *Ismail vs. Commissioner of Inland Revenue* [(1981) 2 Sri.L.R. 78], which is the Court of Appeal decision, and *D.M.S. Fernando and another vs. Ismail* [(1982) 1 Sri.L.R. 222], which is the Supreme Court decision, to advance the proposition that the relevant date for the time bar is the date on which the notice of assessment was posted and not the date on which the assessment was made. He further submitted that no lawfully valid assessment can be made without serving a valid notice of assessment and serving a notice of assessment is a necessary precondition that must be satisfied to confer validity on the assessment.

Therefore, before dealing with the specific dates relevant to the issue in the instant case, it is important to examine what is an *assessment* and a *notice of assessment*.

The distinction between the "Assessment" and "Notice of Assessment" has been clearly recognized in *Commissioner of Income Tax vs. Chettinad Corporation Ltd.* (55 N.L.R. 553 at 556) where Gratiaen J. held:

> "The distinction between an assessment " and a "notice of assessment" is thus made clear: the former is the departmental computation of the amount of tax with which a particular assessee is considered to be chargeable, and the latter is the formal intimation to him of the fact that such an assessment has been made."

This was quoted with approval by the present Court of Appeal in *Ismail vs. Commissioner of Inland Revenue* (supra) a case relied on by the Appellant to which Court will advert to later.

In the English case of *Honig and Others v. Sarsfiled* [(Tax Cases Vol. 30 page 337), (1986) BTC 205] Fox LJ drew a distinction in the making of an assessment and the notice of assessment and held them to be different, the assessment being in no way dependent upon the service of notice. He held that giving of the notice was independent of the making of a valid and effective assessment.

Although *Commissioner of Income Tax v. Chettinad Corporation Ltd.* (supra) was decided upon a consideration of the relevant provisions of the Income Tax Ordinance No. 2 of 1932 as amended the distinction made therein between "assessment" and "notice of assessment" has been maintained in the 2006 Act.

Sections 163(1) and (2) of the 2006 Act provide for making of assessments of any person while section 164 therein requires a notice of assessment to be given to a person who has been so assessed. Therefore, Court rejects the submission made by the learned counsel for the Appellant that no lawfully valid assessment can be made without first serving a valid notice of assessment. There is no requirement to give notice of assessment before making an assessment. Practically it cannot be done as the assessment must first be made followed by a notice of assessment.

In fact, Samarakoon C.J. in *D.M.S. Fernando and another v. Ismail* (Supra at 228) held:

> "The assessment so made in terms of section 93(2) must be followed by a Notice of Assessment in terms of section 95. That is the first time that the Assessee is apprised of the estimated income and taxable wealth and he must then know the reasons for non-acceptance of his return. It appears to me therefore that the duty to communicate reasons can be discharged by sending the reasons simultaneously with the Notice of Assessment."

The time bar to making of an assessment is set out in section 163(5) of the 2006 Act. The section clearly states that "no assessment" shall be made after the time specified therein. Given that the 2006 Act recognizes a distinction between an "assessment "and a "notice of assessment", it would have been convenient for the legislature to refer to the "notice of assessment" rather than "assessment" in section 163(5) of the 2006 Act. On the contrary it has been made effective for the making of an "assessment". Therefore, Court rejects the submission that the date of posting of the "notice of assessment" is the relevant date for the purpose of determining the time bar

for making an assessment. Court determines that the date of making the assessment is the relevant date for the purpose of determining the time bar.

Rupert Cross in *Precedents in the English Law* (Oxford University Press, 1961 at p. 75) states that in order to discover what the *ratio decidendi* of a particular case is one must have regard to the facts of that case, the issues raised by the pleadings and arguments and subsequent cases that have considered the case under review.

The question that arose for determination in *Ismail v. Commissioner of Inland Revenue* (supra) and *D.M.S. Fernando and another v. Ismail* (supra) is whether the duty imposed on the assessor in terms of section 93(2) of the Inland Revenue Act No. 4 of 1963 as amended is mandatory and whether that duty has been complied with. The relevant provision is similar to section 163(3) of the 2006 Act which requires an assessor to give reasons in writing to a person whose return was not accepted by him. Both courts held that it was mandatory. The Supreme Court (by majority) held that the reasons must be communicated at or about the time the assessor sends his assessment on the estimated income.

The question of whether the time bar for making an assessment applies to the making of assessment or the notice of assessment did not arise for determination in those cases.

Rupert Cross in *Precedents in the English Law* (3rd Ed., 1977) states:

> "The *ratio decidendi* of a case is any rule of law expressly or impliedly treated by the judge as a necessary step in reaching his conclusion, having regard to the line of reasoning adopted by him, or a necessary part of his direction to the jury" (page 76)
>
> "*Obiter dictum* is a proposition of law which does not form part of the ratio decidendi" (page 79)

Thamotheram J. in *Walker Sons and Co. (UK) Ltd. v. Gunatilake* [(1978-79-80) 1 Sri. L. R. 231 at 232] explicitly held that the ratio decidendi of a Superior Court is binding for all inferior Courts:

> "The ratio decidendi of cases decided by the Court becomes a rule for the future binding all courts which the courts of last resort are not whether it be under the same system or under a different system."

Accordingly, Court is of the view that there is no binding precedent established by the Supreme Court in *D.M.S. Fernando and another v. Ismail* (supra) on the issue before Court.

The learned counsel for the Appellant cited the following extract from the judgment of Victor Perera J, in *Ismail v. Commissioner of Inland Revenue* [(1981) 2 Sri.L.R. 78 at 110]:

> "It is necessary that the respondents should realise the specific duties imposed on them as these provisions have been repeated in the Inland Revenue Act, No. 28 of 1979, which is the Law now in operation for the year commencing 1st April, 1978, so that the Inland Revenue Department could recover the tax found to be due from tax payers with expedition as provided in this law without jeopardising the rights of the State to collect the revenue due to it. The law gives an Assessor a period of 3 years to examine and investigate a return while an assessee keeps on paying the tax instalments on the specified dates.
>
> **In regard to the date of the notice of assessment, it was conceded that the relevant date is the date of posting** as a notice sent by post shall be deemed to have been served on the day succeeding the day on which it would have been received in the ordinary course of business. In this case the notice was admittedly posted on 21st April, 1979, long after the effective date referred to in section 96 (C) (3), namely 31st March 1979. In this case it cannot be considered a valid notice under section 96 (C) (3) or even a valid notice under section 95 **as there has been an absolute non-compliance with the mandatory provisions of section 93 (2) even if the assessment was made on 30.3.79.**" (emphasis added)

Clearly this is based on a concession made and is not therefore binding on this Court. In any event, this does not deal with the issue before Court.

Having concluded that the date of making of assessment is the relevant date to determine the time bar, Court will now apply the facts of the case to the said conclusion to determine whether the assessment in the instant case is time barred.

The learned counsel for the Appellant submits that the Appellant filed its return for the year of assessment 2009/2010 by 30 November 2010 and that accordingly the time bar for making an assessment would be engaged after the expiry of a period of two years from 30th November 2010 and that the time bar is engaged on 29 November 2012. The learned Senior State Counsel on the other hand submits that two years from 30th November 2010 would be 30th November 2012.

The learned counsel for the Appellant submits that "two years" referred to in section 163(5) of the 2006 Act should be calculated by accounting for 365 days whereas the learned Senior State Counsel submits that "year" means a calendar year.

The word "year" is not defined in the 2006 Act nor in the Interpretation Ordinance. Court is of the view that "year" in section 163(5) of the 2006 Act should have its natural meaning which is a calendar year.

The parties agree that the assessment in the instant case was made on 30th November 2012. According to the learned Senior State Counsel the two calendar years end on 30th November 2012. We do not agree. The two calendar years end on 29th November 2012.

Accordingly, Court is of the view that the assessment in the instant case is time barred in terms of section 163(5) of the 2006 Act.

Prescribed Tax or Levy

In ascertaining profits or income for the purposes of the 2006 Act, the Appellant is entitled to deduct all outgoings and expenses. However, section 26 of the 2006 Act identifies certain non-deductibles in ascertaining profits or income. The question for determination is whether NBT paid at the time of importation of goods is not a "prescribed tax or levy" for the purpose of section 26(1)(l)(iii) of the 2006 Act.

Section 2(1) of the Nation Building Tax Act No. 9 of 2009 as amended (NBT Act) states that the provisions of the Act apply to every person who:

(a) imports of any article, other than any article comprised in the personal baggage of the passenger, into Sri Lanka, ["baggage" shall have the same meaning as in section 107A of the Customs Ordinance (Chapter 235)]; or

(b) carries on the business of manufacture of any article; or

(c) carries on the business of providing a service of any description: or

(d) carries on the business of wholesale or retail sale of any article other than such sale by the manufacturer of that article being a manufacturer to whom the provisions of paragraph (b) applies.

NBT is not specifically identified in section 26 of the 2006 Act as a non-deductible. In the absence of any other provision, the Appellant is then entitled to deduct the NBT paid by it at the time of importation. However, section 26(1)(l)(iii) of the 2006 Act states that for the purposes of ascertaining the profits or income of any person from any sources no deduction shall be allowed in respect of "any prescribed tax or levy".

The prohibition in section 26(1)(l)(iii) of the 2006 Act in effect acts as an exemption when a person is not caught up within it as then the person can deduct all the expenses and outgoings of his business before calculating the taxable income. Exemption notifications must be interpreted strictly and, in its entirety, and not in parts [*Grasim Industries Ltd. & Anvor v. State of Madhya Pradesh & Anvor and Gwalior Sugar Co. Ltd. v. Madhya Pradesh Electricity Board & Ors* (1999) 8 SCC 547].

In *Zebra Technologies Corporation v. Judy Baar Topinka, as Treasurer of the State of Illinois, and The Department of Revenue* [799 N.E.2d 725 (2003), 344 Ill. App.3d 474, 278 Ill.Dec. 860] the Appellate Court of Illinois, First District, First Division held:

> "We are mindful that taxation is the rule and tax exemption is the exception. *Chicago Bar Ass'n v. Department of Revenue,* 163 Ill.2d 290, 301, 206 Ill.Dec. 113, 644 N.E.2d 1166 (1994). Here, taxpayer is claiming an exemption from tax on income that would otherwise be assessed but for the 80/20 rule. Thus, taxpayer has the burden of proving clearly that it comes within the statutory exemption. *United Air Lines, Inc. v. Johnson,* 84 Ill.2d 446, 455-56, 50 Ill.Dec. 631, 419 N.E.2d 899 (1981). Such exemptions are to be strictly construed, and doubts concerning the applicability of the exemptions will be resolved in favor of taxation. *United Air Lines,* 84 Ill.2d at 455, 50 Ill.Dec. 631, 419 N.E.2d 899."

Regulations made by the Minister under section 212 of the 2006 Act read with section 26 therein and published in Gazette Notification No. 1606/31 dated 19.06.2009 (Regulation) reads:

> *"Two thirds of the Nation Building Tax charged by the Nation Building Tax Act, No. 9 of 2009 payable for the period commencing on May 1, 2009 and ending on June 30, 2009, and for every quarter commencing on or after July 1, 2009, shall for the purposes of sub-paragraph (iii) of paragraph (l) of sub-section (1) of section 26 of the Inland Revenue Act No. 10 of 2006 be a prescribed levy".*

Hence, a portion of the NBT has been made a prescribed levy for the purposes of section 26(1)(l)(iii) of the 2006 Act. However, the Appellant contends that it has been made a prescribed levy only for the persons who pay NBT quarterly whereas the Appellant pays NBT at the point of importation on each article and therefore is not caught within the prohibition on deduction.

The Respondent on the other hand submits that the prohibition on deduction in terms of section 26(1)(l)(iii) of the 2006 Act covers all three persons referred to in section 2 therein including the Appellant and therefore the Appellant is not entitled to deduct the NBT paid by it on its imports.

In order to have a better understanding of the competing positions, it is important to examine certain other provisions in the NBT Act. Section 3(1) of the NBT Act reads:

> 3. (1) A tax to be called the "Nation Building Tax" (hereinafter referred to as "the Tax") shall, subject to the provisions of this Act, be charged from every person to whom this Act applies calculated at the appropriate rate specified in the Second Schedule to this Act, in the following manner: -
>
> (i) in the case of a person referred to in paragraph (a) of subsection (1) of section 2, who imports any article into Sri Lanka on or after January 1, 2009 the tax shall be chargeable in respect of the liable turnover of such person arising from the importation into Sri Lanka of such article; and
>
> (ii) in the case of a person referred to in paragraph (b) (c) or (d) of subsection (1) of section 2, for every quarter commencing on or after January 1, 2009 (hereinafter referred to as "relevant quarter", the tax shall be chargeable in respect of the liable turnover of such person for such relevant quarter.

Section 3(1) of the NBT Act deals with two separate and distinct incidents of the taxing regime. The first part is the charging section by which NBT is charged on every person to whom the Act applies, namely the persons referred to in section 2 of the NBT Act. The second part deals with the calculation of the NBT. Accordingly, NBT is calculated at the appropriate rate specified in the Second Schedule thereto in the case of importers of any article on the liable turnover of such person arising from the importation into Sri Lanka of such article and in the case of a person referred to in paragraph (b) (c) or (d) of subsection (1) of section 2, the NBT is calculated on the liable turnover of such person for such relevant quarter.

The Respondent has based its argument on the reference to quarter in the Regulation and submits that as an importer it does not pay NBT quarterly but only in respect of the liable turnover of such person arising from the importation into Sri Lanka of such article and as such the NBT it pays on every import is not a prescribed tax or levy.

Court is unable to accept this submission. The Regulation covers both the charging section as well as the calculation part referred to above. That is why the Regulation reads " ***Two thirds of the Nation Building Tax charged by the Nation Building Tax Act, No. 9 of 2009*** *payable for the period commencing on May 1, 2009 and ending on June 30, 2009, and for every quarter commencing on or after July 1, 2009...".* If one were to accept the submission of the Appellant it would amount to excluding part of the Regulation in its interpretation.

Furthermore, if the Minister actually intended to exclude importers from the application of the Regulation, he could easily have done so by referring to only the categories of enterprises referred to in paragraphs b), c) and d) of Section 2(1) of the NBT Act.

In United Motors Lanka PLC. *vs. Commissioner General of Inland Revenue* [CA(TAX) 02/2016, C.A.M. 14.12.2018] we arrived at a similar conclusion.

Accordingly, Court answers the questions of law arising in the Case Stated as follows:

(1) Is the determination of the Tax Appeals Commission time barred? **No.**

(2) Did the Tax Appeals Commission err in law when it came to the conclusion that the assessment was not time barred? **Yes.**

(3) Did the Tax Appeals Commission err in law when it came to the conclusion that the Nation Building Tax paid at the point of importation of articles to Sri Lanka is a disallowable expense under section 26(1)(l)(iii) of the Act No. 10 of 2006 as amended? **No.**

(4) In view of the facts and circumstances of the case, did the Tax Appeals Commission err in law when it came to the conclusion that it did? **Yes, in view of the answer to Question (2) above.**

Accordingly, acting in terms of section 11A (6) of the TAC Act, we annul the assessment determined by the TAC.

The Registrar is directed to send a certified copy of this judgment to the TAC.

Judge of the Court of Appeal

Achala Wengappuli J.

I agree.

Judge of the Court of Appeal