

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

In the matter of an application mandated in the nature of Writs of Certiorari, Mandamus, and Prohibition under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (Writ) Application No.178/2025

Dikkanda Plantation Ltd,
Dikkanda Estate,
Yakkala Road,
Wathurugama.

Petitioner

Vs.

1. R.T.H. Fernando,
The Acting Commissioner General,
Department of Inland Revenue,
Sir Chittampalam A. Gardiner Mawatha,
Colombo 02.
2. S. I. Asanthi,
The Commissioner Tax Policy and
Legislation,
Secretariat,
Department of Inland Revenue.
Sir Chittampalam A. Gardiner Mawatha,
Colombo 02.
3. Commissioner- Gampaha Regional Branch
(East),
Department of Inland Revenue,
Inland Revenue Gampaha Regional Office,
07th Floor, 'LaksiyenaMandiraya',
Colombo Road,
Gampaha.

Respondents

Before: **M.C.B.S. Morais J.**

&

Annalingam Premashanker J.

Counsel: Shaheeda Barrie with Hiruni De Almeida and PramodPerera for the Petitioner.

Chaya Sri Nammuni, DSG for the Respondents.

Written Submissions: By the Petitioner – on 12.08.2025

By the Respondents – on 02.09.2025

Argued on: 27.08.2025

Decided On: **25.09.2025**

Order

M.C.B.S. Morais J.

This is an application in the nature of writs of Certiorari, Mandamus, and Prohibition, under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka. Dikkanda Plantation Ltd. (hereinafter sometimes referred to as the Petitioner) is challenging the decision conveyed by the letter dated 24th December 2024, issued by the Department of Inland Revenue (hereinafter sometimes referred to as the Respondent). Accordingly, the Petitioner has prayed for the following;

- I. *“Issue notice on the Respondents;*
- II. *Grant and issue a mandate in the nature of a Writ of Certiorari, quashing the decision of the 2nd Respondent, contained in letter, dated 24/12/2024, bearing reference ACT 17/09, produced marked as 'P6,*
- III. *Grant and issue a mandate in the nature of a Writ of Prohibition, preventing any one or more the 1st and/or 2nd and/or 3rd Respondents, and/or their servants, and/or their agents, and/or those working under them, and/or their successors or permanent appointees in office from taking any further or subsequent steps consequential to the decision contained in letter, dated 24/12/2024, bearing reference ACT 17/09, issued by the 2nd Respondent, produced marked as 'P6"*
- IV. *Grant and issue a mandate in the nature of a Writ of Prohibition, preventing any one or more the 1st and/or 2nd and or 3rd Respondents, and/or their servants, and/or their agents, and/or those working under them, and/or their successors or permanent appointees in office from taking any steps whatsoever to impose the Value Added Tax on the supply of eggs produced at the Petitioner's farm, under provisions of the Value Added Tax (Amendment) Act No 32 of 2023,*
- V. *Grant and issue a mandate in the nature of a Writ of Prohibition, preventing any one or more of the 1", and/or 2nd, and/or 3rd Respondent, and/or their servants, and/or their agents, and/or those working under them, and/or their successors or permanent appointees in office from taking any steps whatsoever to impose the Value Added Tax on the supply of eggs produced at the Petitioner's farm, unless specific and unambiguous legislative provision is passed by Parliament*
- VI. *Until the final hearing and determination of this instant Application, grant an interim order, suspending the decision of the 2 Respondent, contained in letter, dated 24/12/2024, bearing reference ACT 17/9, produced marked as "P6*
- VII. *Until the final hearing and determination of this instant Application, grant an interim order, preventing any one or more the 1 and/or 2nd and or 3rd Respondents, and/or their servants, and/or their agents, and/or those working under them, and/or their successors or permanent appointees in office, from taking any further subsequent steps consequential to the decision contained in*

letter, dated 24/12/2024, bearing reference ACT 17/09, issued by the 2nd Respondent, produced marked as "P6",

- VIII. Until final hearing and determination of this instant Application, grant an interim order, preventing the any Respondents and/or their servants, and/or their agents, and/or those working under them, and/or their successors or permanent appointees in office from issuing any VAT Assessments on the Petitioner, with regard to the supply of eggs produced at the farm, under provisions of the Value Added Tax (Amendment) Act No 32 of 2023;*
- IX. Grant costs; and*
- X. Grant the Petitioners such other and further reliefs as to Your Lordships' Court shall seem fit."*

The Petitioner is a limited liability company incorporated under the Companies Act No. 7 of 2007 of Sri Lanka and a VAT registered person under TIN 134006501, primarily engaged in agro-farming and the production of agricultural and poultry produce, such as eggs. The Petitioner supplies agricultural products, including farm eggs, to the domestic market. The Petitioner contends that, in relation to farm eggs, the Petitioner does not undertake any manufacturing process or value addition but collects the produce from poultry cages and sells it retail or wholesale to its customers. Since the enactment of the VAT Act No. 14 of 2002, effective from 1st August 2002, the Petitioner has been eligible for VAT exemption under section 8 of the Act for the supply of farm eggs.

According to the VAT (Amendment) Act No. 13 of 2004, the First Schedule was amended to introduce Part I and Part II. Part I was applicable retrospectively for the period from 1st August 2002 to 1st January 2004, and Part II has been applicable from 1st January 2004 onwards. Under Part II, the blanket clause relating to unprocessed agricultural products was removed and replaced with a prescribed list of both processed and unprocessed agricultural products, such as paddy, seed paddy, eggs, and processed agricultural products such as rice, desiccated coconut, latex, etc.

Subsequent amendments have not impacted on the VAT exemption applicable to eggs and related products. However, the First Schedule of the principal VAT Act was amended by Section 4(2) of the VAT (Amendment) Act No. 32 of 2023, with the inclusion of Part III, effective from

1st January 2024. According to Amendment No. 32 of 2023, the VAT exemptions have been extended to the supply of “unprocessed agricultural, horticultural, or fishing products produced in Sri Lanka”. However, the Petitioner states that officers of the Respondents have verbally informed the Petitioner that the production and supply of farm eggs are not exempted under the VAT Act, effective from 1st January 2024, as amended, because the term “egg” is not referred to in Part III of the First Schedule. On this basis, the Petitioner has commenced paying VAT on the production and supply of eggs from January 2024 to September 2024.

Understanding that many egg farmers were refraining from making VAT payments in respect of eggs supplied in their unprocessed form, the Petitioner has sought expert opinion. Accordingly, the Petitioner’s tax consultant indicated the applicability of the VAT exemption to the production of eggs under Part III of the First Schedule, following the VAT (Amendment) Act No. 32 of 2023.

Thereafter, the Petitioner communicated the expert opinion to the Respondent through the letter dated 12th of November 2024 and requested clarification. However, by a letter dated 24th December 2024, bearing reference No. ACT 17/9, the Respondent refused to acknowledge that VAT was not payable on eggs produced at the farm and replied that there is no policy intention to extend the exemption granted to unprocessed agricultural produce to eggs.

In these circumstances, the Petitioner is challenging the refusal of the Respondent, by the letter dated 24th December 2024 bearing reference ACT 17/9, to extend the VAT (Amendment) Act No. 32 of 2023 to farm eggs. It is the contention of the Petitioner, that the said Amendment applies to the supply of unprocessed agricultural products produced in Sri Lanka, including farm eggs. Therefore, the Petitioner contends that the actions of the Respondent are ultra vires, arbitrary, and contradict the provisions of the VAT (Amendment) Act No. 32 of 2023.

When this matter was taken up before us on the 30th of April 2025, the Respondent raised a preliminary objection stating as follows,

“what is being challenged by the Petitioner in this application is the interpretation of the definition of 'unprocessed agricultural produce' which they claim as an illegality. The Respondent's position is that the basis of this application is if at all that the interpretation given by the Respondent by the letter marked P6 is correct or incorrect which will not be

the basis for the issuance of a writ. My objection is that what is correct or incorrect cannot be determined by way of Writ Application but by way of an appeal.”

Therefore, the Respondent contends that any alleged illegality regarding the decision contained in the letter dated 12th December 2024 (hereinafter will be referred to as ‘P6’) can only be determined through the appropriate appellate process and not by way of a writ. The Respondent argues that this issue is essentially a matter of legal interpretation, which falls within the jurisdiction of appellate bodies rather than writ jurisdiction. Thus, the Petitioner’s application is premature and unsuitable for adjudication through writ proceedings.

Preliminary Objection

When analyzing the objection raised, the main question that needs to be addressed is whether a writ of certiorari can be used to determine the correctness of an opinion provided by a public body.

The writ of certiorari is not intended to serve as an appeal or a means to re-examine the merits or correctness of a decision made by a public authority. Its jurisdiction is limited to reviewing whether the decision was made lawfully, within jurisdiction, and in accordance with the principles of natural justice. In other words, the court examines whether there has been an abuse of power, illegality, irrationality, or procedural unfairness in the decision-making process, rather than substituting its own judgment for that of the public body. This aspect is clearly established as follows,

In the case of ***Public Interest Law Foundation V. Central Environmental Authority and Another (2001) 3 Sri L.R. 331***, U. De Z. Gunawardena. J. states that,

*“The Court of Appeal, if it is persuaded by the merits of the case (appeal), may allow the appeal and thereby substitute its view for that of that of the Court or tribunal of first instance. Under judicial review procedure, **the Court of Appeal is not concerned with the merits of the case, that is, whether the decision was right or wrong, but whether the decision is lawful or not.** In the words of Lord Brightman: "Judicial review is concerned, not with the decision but with the decision making process" (Chief Constable of North*

Wales Police v. Evans) It is worth observing that the review procedure is not well suited to determination of disputed facts ...”

Accordingly, it must be noted that writ jurisdiction, which traces its origins to English law, serves as a remedy to examine the legal nature of a decision, rather than its correctness in its entirety. In this process, the courts assume a supervisory role rather than an appellate role. Therefore, if the Petitioner wishes to challenge the correctness of the letter ‘P6’, the appropriate procedure is to do so through an appeal, not by invoking the writ jurisdiction.

Furthermore, the Respondent’s primary contention is that the letter issued is an opinion, and, therefore, not amenable to writ jurisdiction. The central issue is whether the term “unprocessed agricultural produce” under the VAT (Amendment) Act No. 32 of 2023 includes “farm eggs.” It is generally accepted that “farm eggs” may fall within the category of “unprocessed agricultural produce”. However, it should be noted that previous amendments to the Act specifically included “eggs” as an exception, which is not the case with Act No. 32 of 2023. Therefore, it remains unclear whether the term “eggs” is encompassed or not within the definition of “unprocessed agricultural produce”.

Another possible interpretation is that it can be understood that “eggs” are included under “unprocessed agricultural produce” since the legislature typically does not specify general terms. On the other hand, because the term “eggs” was specifically included in previous amendments, it suggests that the legislature did not intend to include “eggs” under the current exception. But it could also be argued that if the legislature intended otherwise, it would have specifically mentioned the exclusion of “eggs.”

Nevertheless, we were made aware that the meaning of the phrase “unprocessed agricultural produce” under the VAT (Amendment) Act No. 32 of 2023 is a question of law currently argued before the Honorable Supreme Court. Pending such determination, should this Court intervene, specifically by way of writ jurisdiction, to decide this matter?

In my view, no. The courts should be cautious in exercising writ jurisdiction when questions of law and fact are contested, as disputed facts must be conclusively established¹. Since this question remains unresolved, granting a writ at this stage would be premature and ineffective.

Availability of Alternative Remedy

Writs are exceptional remedies intended to be invoked only where ordinary or statutory remedies are ineffective, unavailable, or inadequate to prevent injustice. When issuing a writ, which is a discretionary remedy granted by courts, the court has the discretion to refuse it if the applicant has an adequate and effective alternative remedy available.

Justice Arjuna Obeyesekere in the case of ***Wickremasinghage Francis Kulasooriya V. Officer-in-Charge, Police Station Kirindiwela, CA (Writ) Application No. 3381-2011*** held that,

*“The question that arises for consideration in this application is what should a Court exercising Writ jurisdiction do when confronted with an argument that an alternative remedy is available to the Petitioner and that such alternative remedy should be resorted to? This Court is of the view that a rigid principle cannot be laid down and that the appropriate decision would depend on the facts and circumstances of each case. **That said, where the statute provides a specific alternative remedy, a person dissatisfied with a decision of a statutory body should pursue that statutory remedy instead of invoking a discretionary remedy of this Court.** That remedy should be equally effective and should be able to prevent an injustice that a Petitioner is seeking to avert. Furthermore, if the Writ jurisdiction is invoked where an equally effective remedy is available, an explanation should be offered as to why that equally effective remedy has not been resorted to.”*

Therefore, when analyzing the current situation, it is evident that the court cannot entertain a writ application if there is an effective alternative remedy available. In the present case, the Petitioner is seeking a writ to quash the letter identified as ‘P6’ and to prevent the Respondent from taking any action based on that letter. However, it is worth noting that the Tax laws in Sri Lanka provide a specific statutory mechanism for appeal to those dissatisfied with assessments made by

¹*Public Interest Law Foundation V. Central Environmental Authority and Another* (2001) 3 Sri L.R. 331

the Commissioner General of Inland Revenue. Therefore, it is clear that the Petitioner has an effective alternative remedy available.

When considering all the matters presented before this court, it is clear that Writs are exercised to test the legality of decisions or actions taken by public authorities, and not to determine the correctness of the substance. Furthermore, the Petitioner has a clear and effective alternative remedy, which has not been exhausted.

For the reasons stated above, the Preliminary Objection raised by the Respondent is upheld.

This application is hereby dismissed.

No cost ordered.

Judge of the Court of Appeal

Annalingam Premashanker J.

I agree

Judge of the Court of Appeal