

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

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

**CA Case No: WRT 211-2025**

H.I. Prasanna Kumara Kithalagama,  
No. 83/9 B, 3<sup>rd</sup> Lane,  
St. Katarin Waththa,  
Hokandara East.

**Petitioner**

**Vs.**

1. Commissioner General of Inland Revenue,  
No. 81, Sir Chittampalam A. Gardiner Mawatha,  
Colombo 02.
2. Hon. Additional Magistrate,  
Magistrates Court of Colombo 09,  
Colombo 12.
3. XTEN PRODUCTIONS (Pvt) Ltd,  
PV 1155,  
188/2, Cotta Road,  
Colombo 08.
4. M.D. Sujeewa Chandana,  
No. 4,  
'Siri Nivasa', Iridapola,

Thummodara.

5. Chart Business Systems (Pvt) Ltd,  
No. 141/3,  
Vauxhall Street,  
Colombo 02.
6. The Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**Respondents**

**Before:** **M.C.B.S. Morais J.**  
**&**  
**Annalingam Premashanker J.**

**Counsel:** Chathuranga Bandara AAL for the Petitioner.  
R. Aluwihare, SC for the 1<sup>st</sup> & 6<sup>th</sup> Respondents.

**Written Submissions:** By the Petitioner – on 20.02.2026  
By the 1<sup>st</sup> Respondent – on 19.02.2026

**Supported on:** 20.06.2025, 04.07.2025, 11.11.2025

**Decided On:** **12.03.2026**

## ORDER

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

This is an application for writs of certiorari and prohibition under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

The Petitioner is a previous employee of Xten Productions (Pvt) Ltd, who acted within the capacity of the Alternate Director.

The 1<sup>st</sup> Respondent is the Commissioner General of Inland Revenue (CGIR), who has initiated proceedings in the Magistrate's Court of Colombo in Case No. MC 90582/9/23 against the company named "Xten Productions (Pvt) Ltd" (hereinafter referred to as the 3<sup>rd</sup> Respondent).

The 4<sup>th</sup> Respondent is the Director and sole shareholder of the 3<sup>rd</sup> Respondent company.

The Petitioner seeks a writ of certiorari to quash the proceedings against the Petitioner in the Magistrate Court of Colombo, together with the Certificates of Tax Default dated 20<sup>th</sup> of March 2023 and 29<sup>th</sup> of October 2024 issued by the 1<sup>st</sup> Respondent, and a writ of prohibition to show cause. Accordingly, the Petitioner prays for prayer 'a' to issue notice on the Respondents and the following specific reliefs:

- "a) To issue notice on the 1<sup>st</sup>, 2<sup>nd</sup> 3<sup>rd</sup> 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents above named,*
- b) Grant an interim order directing the 2<sup>nd</sup> Respondent to stay proceedings against the Petitioner in the Magistrate Court Colombo MC-90582/9/23 until the determination of this application,*
- c) To issue a Writ of Prohibition restraining the 2<sup>nd</sup> Respondent from ordering the Petitioner to show cause at this stage of the case,*
- d) To issue a Writ of Certiorari to quash the Proceedings against the Petitioner before the Magistrate Court of Colombo in case No. MC-90582/9/23,*
- e) To issue a Writ of Certiorari to Quash the Certificates of Tax in Default dated 2023.03.20 and 2024.10.29 issued by the 1st Respondent,*
- f) To grant cost and,*
- g) To grant such other and further relief as to your Lordships court shall seem meet. "*

## **FACTS**

The 1<sup>st</sup> Respondent issued a certificate dated 20<sup>th</sup> of March 2023 against the 3<sup>rd</sup> Respondent company under section 43(1) of the Value Added Tax Act No. 14 of 2002 (hereinafter referred to as the "VAT Act"), and filed the said certificate in the Magistrate's Court of Colombo in Case No. MC 90582/9/23 for recovery of tax default. According to a further certificate dated 29<sup>th</sup> of October 2024 filed by the CGIR, the 3<sup>rd</sup> Respondent Company has defaulted a sum of Rs.168,030,499.12/- in VAT for the taxing period of '1620' and '1630' (P12).

The 1<sup>st</sup> Respondent thereupon furnished particulars of the 3<sup>rd</sup> Respondent company's board of directors, nominating the 4<sup>th</sup> Respondent and the Petitioner as directors, on the basis of which summons were issued. On 28<sup>th</sup> of November 2023, the Attorney-at-Law appearing for the 4<sup>th</sup> Respondent has informed court that his client was then resident abroad, Accordingly, the Magistrate has directed production of a power of attorney holder at the next adjourned date.

Upon service of summons, the Petitioner appeared before the Magistrate on 2<sup>nd</sup> of April 2024 and was called upon to show cause why the defaulted tax should not be recovered from him personally. On 25<sup>th</sup> of June 2024, counsel for the 4<sup>th</sup> Respondent represented to court that his client was residing in New Zealand and anticipated returning to Sri Lanka within three months.

Thereafter, according to the Petitioner, the 1<sup>st</sup> Respondent filed an amended Certificate of Tax Default dated 29<sup>th</sup> of October 2024 and the Magistrate proceeded to direct both the 4<sup>th</sup> Respondent and the Petitioner to file further submissions specifically addressing the amended certificate.

The Petitioner contends that the entire process from the issuance of the certificate by the 1<sup>st</sup> Respondent to the repeated directions requiring the Petitioner to show cause is illegal, arbitrary, unreasonable, and ultra vires for the following grounds:

1. *“ Wrongful identification of the Tax Defaulter*
2. *Wrongfully Naming the Petitioner as a Director of the Company*
3. *The Petitioner has no Locus Standi to show cause at this stage on behalf of the defaulter, who is 'XTEN PRODUCTION PVT LTD'.*
4. *The court has failed to take essential steps to locate the 4<sup>th</sup> Respondent.*

5. *Illegality of filling an amended Tax Default Certificate.*
6. *Misapprehension of the fact that the Petitioner was only an Alternate Director.*
7. *Arbitrary rejection of the preliminary legal objection by the Magistrate.”*

Accordingly, both parties were heard in support of, and in opposition to, the specific matters that arose before this court.

## **ANALYSIS**

The impugned proceedings before the Magistrate in Case No. MC-90582/9/23 were instituted under section 43(1) of the Value Added Tax Act No. 14 of 2002 for the recovery of defaulted tax from the 3<sup>rd</sup> Respondent company. The company having failed to appear in the Magistrate’s Court, and its incumbent director being resided overseas, the learned Magistrate issued summons on the Petitioner requiring him to show cause. The core issue for determination is, whether the Petitioner may properly be regarded as the defaulting party for the purposes of recovery under section 43(1) of the VAT Act, in the absence of the 4<sup>th</sup> Respondent. Therefore, this court shall confine its reasoning to the said issue only.

The section 43(1) of the VAT Act reads as follows;

**“43. Proceedings for recovery before a Magistrate.**

*(1) Where the Commissioner-General is of opinion in any case that recovery of tax in default by seizure and sale is impracticable, or inexpedient or where the full amount of the tax in default has not been recovered, he may issue a certificate containing particulars of such tax and the name and last known place of business or residence of the defaulter, to a Magistrate having jurisdiction in the division in which such place of business or residence of the defaulter is situate. The Magistrate shall thereupon summon such defaulter before him to show cause why further proceedings for the recovery of the tax should not be taken against him, and in default or sufficient cause being shown, the tax in default shall be deemed to be a fine imposed by a sentence of, the Magistrate on such defaulter for an offence punishable with fine only or not punishable with imprisonment and the provisions of subsection (1) of*

*section 291 (except paragraphs (a), (d) and (i) therefore of the Code of Criminal Procedure No 15 of 1979, relating to default of payment of a fine imposed for such an offence shall thereupon apply, and the Magistrate may make any direction which, by the provisions of that subsection, he could have made at the time of imposing such sentence:*

*Provided that nothing in this section shall authorize or require the Magistrate in any proceeding thereunder to consider, examine or decide the correctness of any statement in the certificate of the Commissioner- General.”*

Section 43(1) of the VAT Act empowers the Commissioner General of Inland Revenue to institute proceedings before a Magistrate’s Court where recovery of defaulted tax by seizure or sale of property is impracticable, or where any portion of the tax due remains unpaid. In such cases, the CGIR shall furnish particulars of the defaulter’s place of business or residence, whereupon the Magistrate is required to issue summons on the defaulter to show cause why the tax should not be recovered from him. This constitutes the procedure prescribed by the legislature.

In the instant case, however, proceedings were initiated not only against the 3<sup>rd</sup> Respondent company but also against the Petitioner and the 4<sup>th</sup> Respondent, who were identified as directors of the company, and notices were accordingly issued.

The Petitioner avers that he was appointed as an Alternate Director to the 4<sup>th</sup> Respondent with effect from 25<sup>th</sup> of September 2015, but resigned from that position on 28<sup>th</sup> of September 2022. He accordingly maintains that he presently holds no office, employment or connection with either the 3<sup>rd</sup> Respondent company or the 4<sup>th</sup> Respondent. However, it is uncontested that the Petitioner has held the office of the 3<sup>rd</sup> Respondent company for the period when the company has failed to pay the VAT. By reason of section 43(1), the Petitioner submits, the defaulter in the present proceedings is the 3<sup>rd</sup> Respondent company and its sole director, the 4<sup>th</sup> Respondent.

The learned Magistrate of Colombo, noting that the 3<sup>rd</sup> Respondent company is no longer operational and that the 4<sup>th</sup> Respondent resides abroad (P4), issued summons and thereafter warrants against the 4<sup>th</sup> Respondent, together with an order requiring the production of a power

of attorney, which directions were not complied with. The Petitioner was thereby called upon to show cause in the Magistrate's Court proceedings.

The Petitioner contends that section 43(1) applies exclusively to the defaulter, namely the 3<sup>rd</sup> Respondent company, and that he cannot properly be joined as a party thereto. The 1<sup>st</sup> Respondent counters that the Petitioner's position is untenable in light of section 52(2) of the VAT Act, which permits recovery of defaulted tax from any person who was a principal officer of the company at the time of the default.

The section 52(2) of the VAT Act reads as follows;

*“52. Principal officer to act on behalf of a company or body of persons.*

*(2)Where an offence under this Act is committed by a company or body of persons, every person who at the time of the commission of the offence was the secretary, manager, director or other principal officer of the company or body of persons shall be deemed to be guilty of that offence unless he proves that the offence was committed without his knowledge and that he exercised all such diligence to prevent the commission of that offence as he ought to have exercised having regard to the nature of his functions in such capacity.”*

Section 52(2) of the VAT Act, appearing in Chapter IX dealing with special cases, provides that where an offence is committed by a company, every person who, at the time the offence was committed, was a secretary, manager, director or other principal officer of the company shall be deemed guilty of that offence.

The plain language of section 52(2) expressly captures, *“every person who at the time of the commission of the offence was the secretary, manager, director or other principal officer”* of the company. The phrase *“other principal officer”* follows an enumerated list of specific senior offices, thereby invoking the canon of construction *ejusdem generis* (“of the same kind”). Under this principle, the general term is confined to persons or roles sharing the essential characteristics of the preceding specifics here, secretary (statutory compliance), manager (operational control) and director (governance and fiduciary responsibility). The unifying class comprises officers

vested with substantive authority to bind the company and secure statutory compliance, including tax obligations.

An alternate director appointed under the Companies Act No. 7 of 2007 exemplifies this class precisely. During the appointer's absence, the alternate director is statutorily mandated to "perform all the duties and functions" of the director, with full voting rights and board-level powers, and is deemed a director for all relevant purposes. Functionally identical to a substantive director at the material time, the alternate director falls squarely within the scope of "*other principal officer*" under section 52(2)'s deeming provision. Further, the Petitioner has regarded himself as 'Managing Director' in previous tax returns submitted, while he was employed at the 3<sup>rd</sup> Respondent company (R2).

The Petitioner submits that he cannot be impleaded as a party to the recovery proceedings under section 43(1) of the VAT Act focusing on the 3<sup>rd</sup> Respondent company as the primary defaulter, and his argument is meritorious in that regard. Nevertheless, considering the special circumstance of this case, he remains amenable to liability as a "principal officer" under section 52(2). This follows from his formal appointment and active tenure as an alternate director of the 3<sup>rd</sup> Respondent company precisely during the period of the VAT return defaults in question. The legislative recovery process under section 52(2) is thus engaged, rendering the Petitioner jointly and severally liable for the company's defaults at the material time. Further, should the Petitioner believe that he is not accountable for the said default, as he has no knowledge of the actions or that he has taken all due diligence from his end, he has the opportunity to establish this defense during the Magistrate's proceedings.

In the case of *JMC Jayasekara Management Centre (Pvt) Ltd V. CGIR (SC Appeal 5/2021)* decided by a Divisional Bench presided over by Her Ladyship the Chief Justice, the Honourable Murdu N. B. Fernando, PC, establishes the interpretation of the machinery provisions in taxing statutes and it reads as follows;

*"In the interpretation of taxing statutes, when the issue pertains to charging provisions that impose tax liability, as opposed to machinery provisions that outline the procedure for quantification and enforcement of such liability, the Court must adhere strictly to the letter of the law rather than its spirit. If the language of a charging provision is clear and*

*unambiguous, the Court is bound to give effect to it and cannot interpret the words differently on the basis that the literal interpretation does not reflect the real intention of Parliament. If the wording of a charging provision is ambiguous, permitting one interpretation favourable to the taxpayer and another to the tax collector, the Court should adopt the interpretation that favours the taxpayer until such ambiguity is resolved by legislative amendment. Conversely, when interpreting machinery provisions, a more liberal approach is warranted to give effect to the legislative intent. Machinery provisions are not subject to strict construction where such interpretation would defeat the purpose of the statute. **If the language of a machinery provision is ambiguous, permitting one interpretation favouring the taxpayer and another favouring the tax collector, the Court should adopt the interpretation favouring the tax collector until the legislature resolves the ambiguity through an amendment.**”*

**N.S. Bindra, *Interpretation of Statutes*, 13th Edition (2023) LexisNexis, page 861** supports this view:

*“The rule of strict construction of taxing statutes is 'often misunderstood. It is not the same thing as saying that a taxing law should not receive reasonable construction. It is true that a taxing provision must receive a strict construction at the hands of the courts and if there is any ambiguity, the benefit of that ambiguity must go to the assessee. But that is not the same thing as saying that a taxing provision should not receive a reasonable construction. The tendency of modern decisions upon the whole is to narrow down materially the difference between what is called a strict and a beneficial construction. The principle of strict construction is applicable only to charging provisions or a provision imposing penalty, and is not applicable to parts of the taxing statute which contain machinery provisions.”*

In consideration of the foregoing authorities it is apparent that the section 43(1) and 52(2) of the VAT Act relates to machinery provisions and therefore, it needed to be interpreted in a manner which give effect to the intention of the legislature.

## **CONCLUSION**

Upon due consideration of the facts, together with the principles of natural justice and equity, it is manifest that recovery proceedings may properly be pursued against the Petitioner under any provisions of the VAT Act by the 1<sup>st</sup> Respondent including section 52(2) of the VAT Act in circumstances where the primary defaulter and its principal officers are unavailable or untraceable. The evidence discloses that the Petitioner served as an alternate director of the 3<sup>rd</sup> Respondent company during the period of the VAT default in question, even though currently he is not an employee. This Court further observes that the Petitioner has taken no steps to locate the 3<sup>rd</sup> Respondent company or identify its assets, contacting the 4<sup>th</sup> Respondent nor has he co-operated with the court in facilitating recovery.

Thereby, this Court finds that the actions taken by the Respondents are not ultra vires in nature and therefore would not fall within the purview of writ jurisdiction of this court. Further, the Respondents have acted strictly within the scope of exercising their statutory authority under the relevant provisions of the VAT Act, to recover the defaulted amount. Accordingly, the Petitioner fails to establish a prima facie case against the Respondents.

For the foregoing reasons, this court finds that the notice as requested by the petitioner under prayer (a) and the interim order prayed for in prayer (b) should not be issued.

Therefore, this application is dismissed in *limine*.

No cost ordered.

**Judge of the Court of Appeal**

**Annalingam Premashanker J.**

**I agree**

**Judge of the Court of Appeal**