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

In the matter of an application of the Case Stated under section 11A of the Tax Appeals Commission Act No.23 of 2011 as amended by Act No. 20 of 2013.

CA Application No: CA/TAX/13/2021
Case stated: TAC/VAT/013/2016

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

Appellant

Vs.

Commercial Leasing Finance Ltd,
No. 68,
Bauddhaloka Mawatha,
Colombo 04.

Respondent

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

&

Annalingam Premashanker J.

Counsel: Manohara Jayasinghe, DSG for the Appellant.

Maithri Wickremesinghe, PC with Rakitha Jayathunga instructed by Sithumini Wijayarathne for the Respondent.

Written Submissions: By the Appellant on – 09.01.2024.

By the Respondent on – 17.11.2025, 02.02.2024

Argued on: 16.09.2025

Decided on: **26.02.2026**

JUDGMENT

M.C.B.S. Morais J.

This is an appeal by way of Stated Case against the determination of the Tax Appeals Commission (hereinafter will be referred as TAC) under section 11A of the Tax Appeals Commission Act No. 23 of 2011 as amended by Act No. 20 of 2013.

The Commissioner General of Inland Revenue (hereinafter will be referred to as the Appellant) has appealed against the determination of the TAC dated 7th of December 2020.

The Commercial Leasing and Finance PLC (hereinafter will be referred to as the Respondent) is a public limited liability company engaged in the business of supplying leasing facilities and financial services to its customers.

The appeal before this court arises from proceedings under the Value Added Tax Act No.14 of 2002 (hereinafter will be referred to as the VAT ACT), in respect of an assessment of Value Added Tax (VAT) for the taxable period ending on 31st of March 2011, which was subsequently annulled by the determination dated 7th of December 2020, issued by TAC.

The Respondent has submitted the VAT returns for the taxable period ending on 31st of March 2011, which was rejected by the assessor and an assessment was issued on the ground that the Respondent is liable to pay VAT on financial services. The Respondent has appealed to the Appellant against the assessment by the assessor, which was confirmed by the Appellant in the determination dated 6th of June 2016. Being dissatisfied by the said determination, the Respondent has appealed to the TAC in terms of section 7 of the Tax Appeals Commission Act No. 23 of 2011 (as amended). The TAC upon considering the submissions made by both parties, annulled the assessment and the determination of the Appellant and allowed the appeal of the Respondent in the determination dated 7th of December 2020. Accordingly, the TAC held;

"From the material referred to above, it is very clear that the notice of assessment issued, cannot be treated as a valid notice of assessment due to the long delay. Therefore, the said notice of assessment has to be treated as invalid and bad in law as it is time-barred. In view of our finding that the notice of assessment issued to the Appellant is invalid and bad in law, it is unnecessary to consider the substantive issues raised in this case."

Being aggrieved by the decision of the Tax Appeals Commission (TAC), the Appellant applied to the TAC for a case stated pursuant to section 11A of the Tax Appeals Commission Act No.23 of 2011 (as amended), seeking the opinion of the Court of Appeal on the following question of law.

"1. Has the TAC erred in determining the assessment is time barred?

Date of notice of assessment had been delayed 55 days from the date of time bar. When scrutinizing the Section 31 of the VAT Act, No. 14 of 2002, there is a distinction in making an assessment and serving the notice of assessment. Accordingly, serving the notice of assessment is independent of the making of a valid and effective assessment. Therefore, as per the Section 33 of the VAT Act, No. 14 of 2002, time bar period is applicable for making an assessment. As per the decision given by the Court of Appeal for similar matter of VAT in case No.CA/Tax/05/2017, it was mentioned that the assessment was not time barred."

The Appellant contends that the assessment was not time barred, in terms of section 33(1) of the Value Added Tax Act No. 14 of 2002, as the assessment was issued within the time limit stipulated under the said provision. The foregoing position on the question of law was advanced before the Tax Appeals Commission (TAC) and repeated in the case stated for this Court's opinion; it is therefore reproduced verbatim above.

The Respondent asserts that the Value Added Tax (VAT) return for the specific taxable period was furnished on 20th of April 2011 and in compliance with the statutory provision the last date to issue a valid assessment was on 31st of March 2014. The letter of intimation was dated 5th of March 2014, however the notice of assessment has been issued on 28th of May 2014, which was received by the Respondent on 3rd of June 2014. Thereby the Respondent contends that the assessment is not valid under the VAT Act.

The VAT Act provides the statutory framework governing the submission of VAT returns including making assessments and the limitation period within which the assessment may be made lawfully. Section 31(1) of the Value Added Tax Act No.14 of 2002 reads as follows;

> *"31. (1) Where it appears to an Assessor that a person chargeable with tax has for any taxable period paid as tax an amount less than the proper amount of the tax payable by him for that taxable period, or chargeable from him for that taxable period, the Assessor may, at any time, assess such person at the additional amount at which, according to the judgement of such Assessor, tax ought to have been paid by such person.* ***The Assessor shall give such person notice of the assessment.*** *"*

section 33(1) further provides for the mandatory limitation,

> *"33. (1) Where any registered person has furnished return under subsection (1) of section 21 in respect of a taxable period or has been assessed for tax in respect of any period,* ***it shall not bė lawful for the Assessor****, where an assessment—*
>
> *(a) has not been made, to make an assessment; or*
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> *(b) has been made, to make an additional assessment.* ***after the expiration of three years from the end of the taxable period in respect of which the return is furnished****, or the assessment was made, as the case may be."*

Under the section 31(1) of the VAT Act, an Assessor is vested with the authority to levy an additional tax assessment at any time upon determining that a person liable to tax has remitted an amount inferior to the requisite quantum for a given taxable period. Further, the Assessor required to give such person the notice of the assessment, thereby mandating formal notification to the assesse.

Section 33(1) of the Value Added Tax Act No. 14 of 2002 imposes a statutory time bar on the making of assessments by the Assessor. It provides that where a registered person has furnished a return under section 21(1) in respect of a taxable period, or has been assessed for tax in respect of such period, it shall not be lawful for the Assessor; (a) where no assessment has been made, to make an assessment; or (b) where an assessment has been made, to make an additional assessment after the expiration of three years from the end of the taxable period in respect of which the return was furnished or the assessment was made.

The Appellant contends that this statutory time bar applies solely to the internal "making" of an assessment by the Assessor and does not extend to the subsequent service of the notice of assessment on the taxpayer. The Respondent asserts that the Appellant's proposed distinction is artificial, as an assessment remains incomplete until properly notified to the taxpayer.

This Court holds that the Appellant's contention lacks merit. The plain language of section 33(1) imposes a mandatory prohibition by declaring it "shall not be lawful" for the Assessor to act beyond the three-year period, thereby curtailing the entirety of the assessment authority, inclusive of notification. Had the legislature intended to limit the time bar to the act of making an assessment while permitting unlimited delay in notification, it would have expressly so provided. Without such express provision, the time bar governs the entire assessment process, confining the Assessor's authority strictly within the prescribed three-year limit.

This reasoning accords with the judgment of His Lordship Justice Thurairaja, PC in the case of ***Fonterra Brands Lanka (Private) Limited V. Commissioner General of Inland Revenue and others, SC Appeal 187/2014,*** decided on 26.09.2025.

> *"Before proceeding further, I wish to clarify some misconceptions that may arise from the passage quoted from Chettinad[3]. Gratiaen J. observed that the "…latter is the formal intimation to him of the fact that such an assessment has been made." The word "intimation" in that passage was used as a common noun, describing the act of communicating the assessment to the taxpayer. Gratiaen J.'s use of the term was plainly descriptive of that process of communication. In my view, it does not for a moment suggest that a so-called "letter of intimation" or any informal communication could be treated as a "notice of assessment" within the meaning of the Act.* ***In my view, only a notice of assessment issued in the manner prescribed by law can complete the act of assessment.****"(Emphasis added))*

The above authority clearly set forth that the power to assess and collect tax derives entirely from the statute itself. Even though the above case decided with regards to the provisions of the Inland Revenue Act No. 38 of 2000, the wording of the provision, the procedure as well as the intention of the state in relation to tax returns are similar to the Value Added Tax Act No.14 of 2002. Therefore, the Respondent's position that the Assessor may prepare an assessment in secret within time but notify it later outside the time limit contradicts the legislature's aims directly, as it would allow evasion of the time bar. Consequently, the time limit binds the full assessment process as a whole.

E. Gooneratne in his book 'Income Tax in Sri Lanka' (2nd edn 2009 p412) clearly sets out as what constitutes an assessment.

> *"**Making an assessment culminates in a notice on the person assessed. An assessment is made when the notice is sent."***

This principle directly undermines the Appellants' argument that an internal computation alone suffices, allowing the Notice of Assessment to be served at any later date.
The above principle was also established by His Lorship Samarkoon, C.J in the case of ***D.M.S. Fernando and Another V. Mohideen Ismail (1982)*** 1 SLR 233-234. It was clearly established that the notice of assessment shall be communicated to the tax payer within the statutory time frame for the assessment to be complete and valid.

> *"Under the amendment when an Assessor does not accept a return, it must mean that at the relevant point of time he has brought his mind to bear on the return and has come to a decision rejecting the return-.' Consequent to this rejection, the reasons must be communicated to the Assesse. The provision for the giving of reasons and the 'Written communication-of, the reasons, contained in the amendment is to ensure that in fact the new procedure would be followed more particularly the communication of the reason at the relevant time is the indication of its compliance. The new procedure would also have the effect of fixing the Assessor to a definite position and not give him latitude to chop and change thereafter. It was therefore essential that an Assessor who rejects a return should state his reasons and communicate them. His reasons must be communicated at or about the time he sends his assessment on an estimated income.* ***Any later communication would defeat the remedial action intended by the amendment****"*

Accordingly, it must be emphasized that the assessment process is completed only upon communication of the assessment to the specific taxpayer. Mere internal computation or documentation by the Assessor is insufficient and only the delivery of the formal notice fulfills legal requirements of assessment under the VAT Act.

Furthermore, considering the nature of this statute, without the notice of assessment being provided to the taxpayer, the taxpayer will be precluded from exercising their statutory rights

thereafter. Moreover, restricting the time limit under section 33(1) of the VAT Act solely to the "making" of the assessment would grant the Appellant an unreasonable advantage, enabling them to issue the notice of assessment at any time of their choosing. In my view, this contravenes the true purpose of the statutory time limit under section 33(1), which must govern both the making of the assessment and the issuance of notice to the taxpayer.

The Appellant relies on CA/TAX/05/2017 (***Commissioner General of Inland Revenue v. Lanka Rubber & Coconut Development Corporation Ltd.***), where the Court of Appeal held that the time bar under section 33(1) of the VAT Act does not apply due to non-compliance with the VAT return filing deadline in section 21(1). His Lordship Justice Janak de Silva's judgment is on the late VAT return (filed one day after the due date), denying time-bar protection and permitting the assessment. This Court considers that the case cited by the Appellant contains a different *ratio decidendi* applicable to the facts of this case. The judgment of His Lordship Justice Janak de Silva is based on non-compliance with the VAT return required under section 21(1) of the VAT Act, and thereby interprets section 33(1) of the VAT Act differently. However, in the present case, the parties have not contested the timeline for submission of the VAT return. Therefore, this Court is not obliged to adopt the same reasoning.

For the reasons stated above, the question of law raised by the Appellant is answered in the negative. The notice of assessment is time-barred, and the determination of the TAC dated 7th December 2020 is accordingly sustained.

Therefore, this appeal is dismissed. No Cost ordered.

Judge of the Court of Appeal

Annalingam Premashanker J.

I agree

Judge of the Court of Appeal