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

In the matter of an application for the grant of Writs of Certiorari and Prohibition under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (Writ) Application No: 320/2023

Southern Salt Company (Pvt) Ltd
23, Walukarama Road,
Colombo 03.

PETITIONER

V.

1. K.L. Ranjith Surasena
Commissioner of Provincial Revenue
Southern Province,
Department of Provincial Revenue
Southern Provincial Council
No. 30, Wackwella Road,
Galle.

1A Tilishiya D.A. Gunasekara
Commissioner of Provincial Revenue
Southern Province,
Department of Provincial Revenue
Southern Provincial Council
No. 30, Wackwella Road,
Galle.

1A SUBSTITUTED RESPONDENT

2. Geological Survey and Mines Bureau
No. 569, Epitamulla Road,
Pitakotte.

RESPONDENTS

Before	**:**	**Hon. Rohantha Abeysuriya PC, J.(P/CA)**
	:	**Hon. K. Priyantha Fernando, J. (CA)**
Counsel	:	Dilrukshi Dias Wickremasinghe, PC with Dilumi de Alwis for the Petitioner instructed by Amila Kumara.
		M. Fernando, S.C. for the Respondents.
Written Submissions on	:	16.03.2026 for the Petitioner.
		17.04.2026 for the Respondents.
Decided on	:	30.07.2026

K. Priyantha Fernando, J. (CA)

1. The Petitioner namely Southern Salt Company (Pvt.) Ltd is a company engaged in the business of manufacturing edible salt in Sri Lanka and has prayed inter alia for writs of certiorari to quash the "order made by the first Respondent" to institute action against the Petitioner before the Magistrate Court of Tangalle and for writs of Prohibition to prevent the Respondent (Commissioner of Provincial Revenue, Southern Province and Geological Survey and Mines Bureau) from taking any further measures to prosecute the matter before the Magistrates' Court.

2. The Petitioner has received summons issued by the Magistrate's Court of Tangalle (Case No. 39700) on a Certificate of Tax in Default filed by the 1st Respondent (Commissioner of Provincial Revenue - Southern Province) alleging offences under Sections 9 and 12 of the Finance (Supplementary Provisions) Statute No. 2 of 1994 read with Section 89 of the Finance Statute of the Southern Provincial Council No. 07 of 1990.

<u>THE POSITION OF THE PETITIONER</u>:

3. The Petitioner contended that the impugned criminal proceedings and the Notices of Assessment dated 5 December 2018 (P16(a)–(f)) are unlawful and ultra vires because the statutory preconditions for imposing a mineral tax are absent; the Petitioner's solar evaporation manufacture of edible sea salt does not constitute "mining" or "processing" within the Mines and Minerals Act, and the statutory procedure for assessment, hearing and determination under the Finance Statute was not complied with before recovery proceedings were instituted.

4. It was submitted that the statutory scheme demonstrates that mineral tax is a tax on the right to mine and therefore arises only where a lawful right to mine has been conferred by a licence issued under the Mines and Minerals Act; reliance was placed on Section 9 of the Finance (Supplementary Provisions) Statute No. 2 of 1994, Section 67 of the Mines and Minerals Act and Item 36:18 of the Ninth Schedule to the Constitution. The Petitioner further submitted that the Mines and Minerals Act's definitions require excavation or extraction from the earth for an activity to constitute "mining" and that "processing" as defined in the Act expressly excludes refining; accordingly, the Petitioner's diversion of sea water into man-made salterns, crystallisation by solar evaporation and subsequent mechanical refining do not fall within the Act's definitions. The Petitioner relied on the written communication from the statutory regulator (P12(b)) which, it was submitted, expressly confirmed that salt is excluded from items requiring a licence and that licences are not necessary for processing salt; on that basis the Petitioner argued that no licence exists and the precondition for imposing mineral tax is therefore absent.

5. It was further submitted that, in any event, the Respondents failed to follow the mandatory statutory procedure for assessment and recovery. The Petitioner stated that it lodged appeals

and participated in an inquiry before the Senior Assessor, submitted completed returns showing nil liability and that no written determination was issued by the Commissioner under Section 79(11) nor was a formal hearing by the Commissioner fixed under Sections 79(5)–(6); the Petitioner therefore contended that it was deprived of the statutory right to a hearing and of the right to pursue further remedies (including appeal to the Review Board under Section 80), and that the institution of proceedings before the Magistrate was premature and procedurally defective. The Petitioner also submitted that the Magistrate failed to apply judicial mind to whether there were sufficient grounds to issue summons and that the Certificate of Tax in Default and the manner of instituting criminal proceedings were improper.

6. It was further submitted that taxing statutes must be strictly construed in favour of the taxpayer and that the Court cannot extend the scope of a taxing statute by implication; the Petitioner relied on authorities establishing that fiscal and penal statutes are to be given a narrow construction and that any ambiguity must be resolved in favour of the individual. The Petitioner therefore urged that, because the Mines and Minerals Act conditions mineral tax on the existence of a licence and because the regulator had confirmed that no licence was required for the Petitioner's salt operations, the imposition and recovery of mineral tax in the present circumstances is arbitrary, unlawful and should be set aside.

THE POSITION OF THE RESPONDENTS:

7. **The Respondents submitted that**,

   1) The Southern Provincial Council lawfully imposed a mineral tax in accordance with the constitutional and statutory framework and that the assessments and the Magistrate's order are valid; "The Southern Provincial Council has imposed a 'Mineral Tax in terms of Section 9(1) of the Finance (Supplementary Provisions) Statute No. 02 of 1994 of the Southern Provincial Council."

   2) The Provincial councils have power under Article 154G and Item 36:18 of the Ninth Schedule to make statutes in respect of taxes on mineral rights subject to limits prescribed by Parliament, and that Section 67 of the Mines and Minerals Act limits such

provincial taxes to 0.5% of gross turnover, a limit which the Southern Provincial Council's statute respects.

3) The Respondents relied on the express inclusion of salt within the Mines and Minerals Act's definition of "mineral" and on the legislative history by which the Mines and Minerals Act replaced the Salt Ordinance; and salt produced by solar evaporation falls within the Act's regulatory ambit notwithstanding the Petitioner's method of manufacture.

4) The definitions of "mining" and "mine" in the Act must be given an expansive meaning and that the solar evaporation process adopted by the Petitioner results in naturally formed salt layers on the surface which are recovered by digging or excavation and which involve salterns prepared by excavation; accordingly, the Respondents argued that the Petitioner's activities come within the Act's concept of mining.

5) The liability to pay mineral tax arises where the mineral is licensable under the statutory scheme (i.e., falls within the licensing/regulatory regime), and not only where a specific licence has been issued; reliance was placed on constitutional and statutory text and on prior judicial interpretation to that effect. The Respondents acknowledged that certain exemptions and regulatory practices exist (including documents pleaded to show exemptions from royalty for edible salt used for national consumption and amendments to registration fee regulations) but submitted that such policy exemptions do not negate the provincial council's statutory power to impose mineral tax.

6) On the procedural point, the Respondents relied on the record of the inquiry (R7) to show that the Petitioner was afforded a hearing under Sections 79(5) and 79(6) and that the Petitioner's representative was informed that the notices of assessment would be confirmed; the Respondents equated that communication and the presence of the Petitioner's representative with a determination under Section 79(11) and contended that the statutory procedure was therefore followed and that the institution of proceedings was lawful.

7) The Respondents also relied on prior authority (including a Court of Appeal decision involving similar contentions) to support the proposition that salt falls within the Mines and Minerals Act and that the provincial tax was lawfully imposed.

THE QUESTIONS OF LAW:

8. It can be identified that the following questions of law arise for determination:

   i. whether the Mines and Minerals Act and the provincial Finance Statute require an issued licence as a precondition for mineral tax;

   ii. whether solar evaporated sea salt and the Petitioner's refining activity fall within the Act's definitions of "mineral", "mining" and "processing";

   iii. the legal effect of the regulator's letter (P12(b));

   iv. whether the Commissioner complied with Sections 79(5), 79(6) and 79(11); and whether the Magistrate properly exercised judicial discretion before issuing summons.

9. The Petitioner has prayed for writs of *Certiorari* and Prohibition and related relief to quash the Notices of Assessment and the Magistrate's order and to prevent further prosecution, while the Respondents prayed that the Petition be dismissed and that the reliefs sought in their Statement of Objections be granted.

EVALUATION OF FACTS AND LAW:

10. The Southern Province has been established by Article 154A of the Constitution contained in the 13^{th} Amendment to the Constitution. Item 36:18 of the Ninth Schedule to the Constitution or the Provincial Council List has stipulated that the provincial councils have statute making powers in respect of "Taxes on mineral rights within such limits and subject to such exemptions as may be prescribed by law made by Parliament".

11. Item 36:18 of the Ninth Schedule to the Constitution imposes a limitation that a Provincial Council's power of taxation must be subject to limits prescribed by Parliament by law. Such limitation is found in Section 67 of the Mines and Minerals Act (as amended) which reads as follows:

> "*The taxes on the right to mine for minerals within a province that may be imposed by the Provincial Council established for that province shall not exceed 0.5 per centum of the gross turnover value of the minerals mined in the exercise of that right*".

12. The Southern Provincial Council has imposed a "Mineral Tax" in terms of Section 9(1) of the Finance (Supplementary Provisions) Statute No. 02 of 1994 of the Southern Provincial Council. The provision reads as follows:

> "9(1) පතල් ඛනිජ ද්‍රව්‍ය පනත යටතේ නිකුත් කරන ලද බලපත්‍රයක හෝ අවසර පත්‍රයක බලය යටතේ පළාත ඇතුලත පිහිටි ඉඩමකින් යම් ද්‍රව්‍ය කැණීමේ, සෙවීමේ, ලබාගැනීමේ හෝ ඉව කරගෙන යාමේ අයිතිවාසිකම ලබා දී අමාත්‍යවරයා විසින් ගැසට් පත්‍රයේ පළකරන ලබන නියමයකින් නියම කරනු ලබන අනුප්‍රමාණයට හෝ අනුප්‍රමාණයන්ට අනුව වූ, (මෙකි මින් මතු " ඛනිජ බද්ද" යනුවෙන් හඳුන්වනු ලබන) බද්දක් එවැනි තැනැත්තන්ට ලබා දී ඇති අයිතිය මත පළාත් සභාවේ යෝජනා සම්මතයක් මගින් පනවා අයකරගත හැකිය"

13. The documents P16(a) to P16(f) show that a mineral tax of 0.5 % on the gross turnover value of the minerals mined has been imposed on the Petitioner in line with the above legal provisions. The said percentages were imposed by the Chief Minister and Finance Minister of the Southern Province in Gazette No. 1240 dated 07.06.2002.

IS THE PETITIONER LIABLE TO PAY MINERAL TAX?

14. The main argument of the Petitioner is that "salt" is not a mineral which falls within the ambit of the definition of a 'mineral' within the Mines and Minerals Act and that the process adopted by the Petitioner to manufacture salt does not fall within the ambit of the definition of 'mining' within the Act.

15. Prior to the Mines and Minerals Act coming into effect, the collection of naturally occurring salt and the manufacturing of salt by any process whatsoever has been a licensable activity under Section 3 of the Salt Ordinance: "*It shall not be lawful for any person to collect or attempt to collect salt naturally formed or to manufacture or attempt to manufacture salt by any process whatsoever, except on account of Government and under the authority of a license granted by the Commissioner*".

16. The long title of the Mines and Minerals Act (as amended) states that one of the Act's objectives was to provide: "FOR THE REPEAL OF THE SALT ORDINANCE (CHAPTER 211) THE RADIO ACTIVE MINERALS ACT NO. 46 OF 1968, AND THE MINES AND MINERALS LAW NO. 4 OF 1973; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO".

17. Therefore, it is seen that the Mines and Minerals Act has been brought in a regular structure which was not inter alia supposed to replace the regulatory structure governing salt manufacturing in the Salt Ordinance.

18. The Petitioner has contended that salt is not a 'naturally occurring substance'. However, this argument fails in the face of the definition of 'mineral' in the Mines and Minerals Act, which reads as follows:

> "*"mineral" means a naturally occurring substance that can be mined, whether in solid, liquid or gaseous form, in or below the surface of the soil, any ores containing such minerals and any product of such minerals derived by processing and include peat and salt but does not include hydro-carbones*"

19. The Mines and Minerals Act has taken special measures to bring 'salt' within its regulatory regime through this definition, especially since the Mines and Minerals Act replaced the regulatory regime governing salt as contained in the Salt Ordinance. The Petitioner's argument is that 'salt' cannot be a naturally occurring substance since it is manufactured using the process described in paragraph 14 of the Petition and photograph 6(e) of the counter objections.

20. Nevertheless, in *Lanka Salt Limited v Indrani Seneviratne, Provincial Commissioner of Revenue* CA/PHC/161/2009 decided on 29.01.2016, when the Petitioner there raised the same argument, the Court has rejected such argument in the following manner:

> "*The Court is mindful at this juncture that no scientific pronouncement should be made regarding how SALT comes to being. It is to be noted that the Southern Provincial Council has decided that the substance of salt is a mineral. Therefore, this Court cannot give any other interpretation contrary to the aforesaid interpretation*"

21. Thus, there is no basis to hold that salt is not a mineral which falls within the ambit of the Mines and Minerals Act.

22. The Second argument of the Petitioner is that even if salt is a mineral, the process by which salt is obtained in this matter (i.e. by solar evaporation) does not constitute 'mining' within the meaning of the Mines and Minerals Act. If this argument is accepted, salt which is manufactured using solar evaporation method would be rendered unregulated and un-licensed under the Mines and Minerals Act. This does not seem to be the legislative intention behind introducing the Mines and Minerals Act (as amended). The legislative intent has been to enable manufacturing of salt by any process to be regulated by the Mines and Minerals Act.

23. The Petitioner argued that the issuance of a mining license to engage in the manufacture of salt is a prerequisite for the Petitioner to be imposed liability under the statute to pay the Mineral Tax. The same argument was raised in *Lanka Salt Ltd v Indrani Seneviratne* (supra) where the Court has stated as follows: "*Therefore, it is abundantly clear that the substance of SALT is categorized as a mineral and the Petitioner Appellant will be liable to pay the purported tax.*"

24. It appears that this Court has taken the view that liability to pay the mineral tax would arise if the mining of a mineral was licensable, as opposed to specifically licensed. It is the licensability of the mineral which makes it liable for the payment of Mineral Tax. This is borne out by Item 36:18 of the Ninth Schedule of the Provincial Council List to the Constitution which says "taxes can be imposed on mineral rights".

25. In the instant case, the Respondents have pleaded the document R2, R3 and R4 to show that an exemption has been granted from the payment of royalty in respect of 'edible salt used for national consumption'. Thus, no license is required for the mining of edible salt. This is also reflected in the amendment made to regulation 34(2) which states that 'registration fees shall not apply to applications in respect of edible salt used in national consumption'. It is apparent that it is for this reason that the Petitioner has not been issued a license to engage in the mining activity; however, such policy exemption granted by the 2nd respondent (Geological Survey and Mines Bureau) should not be used as a legal tool to state that the 1st respondent cannot impose mineral tax on the Petitioner in terms of Section 9 of the Act.

26. I will now consider the dicta of a recent judgment delivered by Justice M. Sampath K. B. Wijeratne bearing case number <u>SC/APPEAL/147/2018 decided on 11.06.2026</u>. The Supreme Court affirmed the judgments delivered in both the High Court and Court of Appeal on the issue of whether or not salt falls under the definition of 'mineral' owing to the fact that it is not 'mined' in the typical sense of the word. The facts and arguments of the Petitioners, both in the case referred to above and in the instant case are almost identical. Additionally, both cases considered the same questions of law,

- Whether an issued licence a precondition for the levying of mineral tax according to the Mines and Minerals Act and the provincial Finance Statute
- Whether salt falls under the definition of 'mineral' according to the Mines and Minerals Act No. 33 of 1992.

27. <u>**On the first issue**</u>, His Lordship Justice M. Sampath K. B. Wijeratne held as follows:

> *"Nevertheless, both the Court of Appeal and the High Court have arrived at the finding that* ***'salt' is a mineral upon a careful consideration of the provisions of the Mines***

and Minerals Act No. 33 of 1992. *It is a general practice of legislative bodies to define terms used in statutes and to place such definitions in the interpretation section. As stated by Bindra in Interpretation of Statutes (8th edn., p. 40),* ***where a word or phrase is defined in an enactment, that meaning, and that meaning alone, must be given effect to unless it is repugnant to the context of the statute****.*

The Court cannot indulge in speculation as to the probable or possible qualifications which might or should have been in the mind of the legislature; rather, the statute must be given effect according to its plain and ordinary meaning. In such circumstances, the erroneous observation made by the learned Judges of the Court of Appeal has not, in any event, caused prejudice to the Petitioner as the learned Judges of the Court of Appeal have interpreted the word 'mineral' correctly."

As it is already established that the Petitioner's business of producing edible salt falls within the purview of "minerals within a province," the levy of Mineral Tax on the Petitioner's salt production was within the powers of the Southern Provincial Council." (the emphasis was added)

28. Furthermore, in relation to the second question of law, the judgment reads as follows:

"At this juncture, I do not wish to examine whether the Petitioner's enterprise is lawful or unlawful; I shall confine myself to the question of whether the Petitioner is liable to be taxed or not.

Section 9(1) *of the Finance (Supplementary Provisions) Statute No. 2 of 1994 of the Southern Provincial Council reads as follows:*

"පතල් ඛනිජ ද්‍රව්‍ය පනත යටතේ නිකුත් කරන ලද බලපත්‍රයක හෝ අවසර පත්‍රයක බලය යටතේ පළාත ඇතුලත පිහිටි ඉඩමකින් යම් ද්‍රව්‍ය කැණීමේ සෙවීමේ, ලබාගැනීමේ හෝ ඉවත් කරගෙන යාමේ අයිතිවාසිකම් ලබාදී, අමාත්‍යවරයා විසින් ගැසට් පත්‍රයෙහි පළ කරනු ලබන නියමයකින් නියම කරනු ලබන අනුප්‍රමාණයට හෝ අනුප්‍රමාණයන්ට අනුව වූ, [මෙකී මින්මතු 'ඛනිජ බද්ද' යනුවෙන් හඳුන්වනු ලබන]

බද්දක් එවැනි තැනැත්තන්ට ලබාදී ඇති අයිතිය මත පළාත් සභාවේ යෝජනා සම්මතයන් මගින් පනවා අයකර ගත හැකිය."

Upon a plain reading of this section, ***it is clear that a license is not a prerequisite for the imposition of the tax****; rather, it is relevant for determining the applicable tax threshold. Accordingly, the levy of tax is independent of the requirement to obtain a license, as, in tax law, even income derived from unlawful activity may be subject to taxation."* (the emphasis was added)

29. Additionally, in the instant case, the Court drew its attention to the following authorities which were cited by the Petitioner:

(1) *Vallibel Lanka (Pvt) Limited v Director General of Customs and three others* [2008] 1 Sri L. R. 219, K. Sripavan, J. held as follows:

"It is the established rule in the Interpretation of statutes levying taxes and duties, not to extend the provisions of the statute by Implication, beyond the clear import of the language used or to enlarge their operation in order to embrace matters not specifically pointed out. In case of doubt, the provisions are construed most strongly against the state and in favour of the citizen. Thus, the intention to impose duties and/or taxes on imported goods must be shown by clear and unambiguous language and cannot be inferred by ambiguous words. The court cannot give a wider interpretation to section 16 as claimed by the learned DSG merely because some financial loss may in certain circumstances be caused to the state".

(2) *Sohli Eduljee Captain (Secco Brushes Corporation) v Commissioner of Inland Revenue,* 1974) 77 NLR 350 in which it was held that:

"Express and unambiguous language is indispensable in a statute passed for the purpose of imposing a tax In a Taxing Statute, the constructions are possible, one in favour of the assessee and the other in favour of the assessor, the Court must adopt the construction which is favourable to the assessee…."

(3) _N.O.H. Hotel (Private) Limited "Amangalla" v. The Galle Municipal Council and Others,_ CA (PHC) 14/2021 decided on 02.08.2023:

> *"This Court pays its minds to the trite rule of* ***Interpretation that fiscal statutes and statutes Imposing penal or pecuniary liabilities must be strictly Interpreted and any ambiguity must be constructed in favour of the individual.*** *As such, a narrower interpretation of statutes which impose levies is preferable and courts should not construe such statues in a manner that places a heavier burden on the citizenry and such businesses."*

30. In the instant case, this Court applies the following rule of interpretation which was applied in the case of SC/APPEAL/147/2018 decided on 11.06.2026:

> *"As stated by Bindra in Interpretation of Statutes (8th edn., p. 40),* ***where a word or phrase is defined in an enactment, that meaning, and that meaning alone, must be given effect to unless it is repugnant to the context of the statute****."* (the emphasis was added)

CONCLUSION:

31. In the instant case, the Petitioner namely, Southern Salt Company (Pvt.) Ltd argued that statutory provisions relating to mineral extraction and mining operations apply only to salt that is mined, and not to salt that is produced through solar evaporation of seawater. However, by now, the Supreme Court has conclusively decided in SC/Appeal/147/2018 (supra) that the business of producing edible salt falls within the purview of "minerals within a province,". thus, the levy of Mineral Tax on the Petitioner's salt production comes within the powers of the Southern Provincial Council.

32. For the foregoing reasons, I am not inclined to grant any relief to the Petitioner. Accordingly, this application is dismissed without costs.

Judge of the Court of Appeal

Hon. Rohantha Abeysuriya PC, J.(P/CA)

I agree.

President of the Court of Appeal