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

In the matter of an application for mandates in the nature of Writs of Certiorari, Mandamus and Prohibition in terms of Article 140 of the Constitution.

CA Writ Application: 62/2024

1. Cosmos Security Services & Investigations (Pvt) Ltd.
   No. 227, Standard Credit Building,
   Union Place,
   Colombo 02.

2. Gunawardana Arachchige Sudath Abeysinghe
   No. 5/B, Railway Avenue,
   Nugegoda.

PETITIONERS

Vs.

1. The Commissioner General of Inland Revenue
   Department of Inland Revenue,
   Sir Chiththampalam A. Gardiner Mawatha,
   Colombo 02.

2. O.W. Nihal Gunasekara
   Commissioner, Unit 14,

Corporate Tax Department of Inland Revenue,
Colombo 02.

3. Hon. Minister of Justice
   Ministry of Justice,
   Colombo 12.

4. Tiyana Dayanthie Anthonisz
   No. 12/6, Hill Lane, Pelawatte,
   Battaramulla.

5. Hon. Additional District Judge,
   District Court No. 9,
   District Court of Colombo,
   Colombo.

RESPONDENTS

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   Colombo.

RESPONDENTS

Before	**:**	**Hon. Rohantha Abeysuriya PC, J.(P/CA)**
	:	**Hon. K. Priyantha Fernando, J. (CA)**
Counsel	:	Kamra Aziz with Ryan de Vas Gunasekara instructed by Amila Kumara for the Petitioner.
		Chaya Sri Nammuni, D.S.G. with Dr. Peshan Gunarathne for the State.
Written Submissions on	:	02.10.2025 for the Petitioner.
		26.01.2026 for the 1st to 3rd and 5th Respondents.
Argued on	:	25.08.2025
Decided on	:	29.04.2026

K. Priyantha Fernando, J. (CA)

INTRODUCTION:

1. The Petitioners of the cases bearing numbers CA/WRT/62/2024 and CA/WRT/63/2024 have invoked the jurisdiction of this court seeking Writs of *Certiorari* to quash the impugned order made by the 5th Respondent (Additional District Judge of Colombo), and the Certificate

of Tax in Default issued by the 1st and 2nd Respondent due to its purported illegality and Writs of *Prohibition* preventing the 1stRespondent from instituting any proceedings in respect of the taxable periods specified in the impugned Certificate.

2. Both cases instituted by the Petitioner Company and its Director concern the same prima facie issue but differ in that they concern two different types of tax. The case bearing number CA/WRT/62/2024 deals with Nation Building Tax (NBT), and the case bearing number CA/WRT/63/2024 deals with Value Added Tax (VAT).

3. This matter was supported for Notice and Interim relief on 29th January 2024, and this court granted the Interim Orders marked (k), (l), (n), (q) and (r). The Interim Orders granted have been reproduced below:

> (k) Make order in terms of Article 140 of the Constitution and call for from the 1st Respondent and examined the records of the 1stPetitioner-Company's tax files (file no. 114371114) in respect of the taxable periods between 2009 and March 2014, including the following:
>
> > i) The NBT returns submitted by the petitioner company for the taxable period covering the years 2009 - 2014;
> >
> > ii) Records of payments made by the 1st Petitioner company from 2008 for NBT.
> >
> > iii) The decision of the 1st Respondent or his duly authorized officer if any, to reject the NBT Returns submitted by the Petitioner-Company for the taxable periods between the years 2009 – 2014;
> >
> > iv) The notification if any, sent to the 1st Petitioner-Company, and the reasons if any that had been sent by the 1st Respondent to the Petitioner, communicating the rejection of his NBT Returns for the taxable periods between the years 2009 – 2014;

v) Notices of Assessments and Assessments, if any, issued to the Petitioner-Company by the Inland Revenue Department, with regard to NBT in respect of the said taxable periods;

vi) Notice of the particulars of taxes in default in relation to NBT and that action is being contemplated to recover such taxes, given to the Petitioner-Company by the Inland Revenue Department;

vii) The purported decision of the 1st Respondent and or his agents/delegates to institute recovery proceedings against the Petitioner in respect of the taxable periods between the years 2009 – 2014,

(l) Make order directing the 1st and 3rd Respondents to produce the impugned Gazettes Extraordinary bearing numbers 43/4 dated 2nd July 1979 and 1380/7 dated 16th February 2005,

(n) Make order directing the 1st and 3rd Respondents to strictly maintain the *status quo* that prevailed immediately prior to the decision of the 1st Respondent to commence recovery proceedings by issuing a Certificate of Tax in default in the District Court of Colombo in TAX 36/17.

(q) Until the final determination of this application, grant an interim Order staying the proceedings in Case No. TAX 36/17 in the District Court of Colombo.

BACKGROUND:

4. The Petitioners' position is that the Nation Building Tax payable by the 1st Petitioner Company for the period between 2008 and 2013 had been duly fulfilled and settled. However, on or around 5th December 2016, the 1st Respondent instituted recovery proceedings in the District Court of Colombo against the 1st Petitioner Company under section 179 of the Inland Revenue Act No. 10 of 2009 and bearing case number TAX/36/17, seeking to recover a sum of Rs. 5,931,316.02/- as NBT in default for the quarters detailed in paragraph 12 of the

Petition. The Petitioners submitted that this application was filed by way of an allegedly illegal Certificate of Tax in Default. They were also made aware that Mr. Prasad Dimuthu Kumara, the former Chief Accountant of the first petitioner company, filed an affidavit dated 16th January 2020 and obtained a court order discharging himself from the District Court proceedings. The Petitioners claimed that in doing so, the Respondents have wrongfully and unlawfully implicated the 2nd Petitioner, 4th Respondent and one Mr. Wijayawardena, a former director of the first petitioner company.

POSTION OF THE PETITIONERS (CA/WRT/62/2024):

5. The Petitioners allege that their right to a fair hearing was hindered due to non-possession of documentation pertaining to the NBT payments of the Company. This issue arose when the 1st Petitioner Company was subject to a series of criminal investigations following the Presidential election in January 2015 and as such, a Magistrate Court Order dated 18.05.2016 seized numerous documents held by the 1st Petitioner Company.

6. It was made known to them that purportedly the seized documents of the 1st Petitioner Company had been returned to the former chief accountant of the company, one Mr. Prasad Dimuthu Kumara. However, since the said Prasad Dimuthu Kumara had resigned, he did not make available the documents to the 1st Petitioner Company.

7. In the District court case filed against the Company, the Petitioners sought to obtain the relevant documents from the 1st Respondent by way of several letters, to which the 1st Respondent failed to provide a response. The letters sought to be obtained by the Petitioner are as follows; copies of documents in respect of NBT for the taxable period between 2008 and 2013; Records of NBT payments made from 2008 onwards; Rejection of NBT returns from 2008 onwards; Assessments and Notices of Assessment issued to the 1stPetitioner Company for NBT; Notices of particulars of taxes in default of NBT and notice of default given to the 1st Petitioner Company. However, during District court case proceedings, the Petitioner Company was informed that the purported documents were not available to be obtained from the Inland Revenue Department. This, the Petitioner stated, has resulted in his

inability to show cause in the instant case and has resulted in a violation of the rules of natural justice.

8. The Petitioners further advanced the argument that the Certificate of Tax in Default filed by the 1st Respondent in the District Court is illegal and void *ab initio* as it is their view that the Minister of Justice is not empowered to designate the District Court as the competent court to determine revenue matters when Section 19 of the Judicature Act read with Section 179 of the Inland Revenue Act No. 10 of 2006 and Section 8 of the NBT Act No. 9 of 2009 provides that it is the Magistrate's Court that is the default forum for matters of such nature. Furthermore, the Petitioners submitted that a Gazette is not able to supersede the provisions of an Act of Parliament (Section 5[1] and 61 of the Judicature Act) and extend the jurisdiction of the District Court. The Respondents instituted such action by relying on the Gazettes Extraordinary 43/4 and 1380/7 dated 02.07.1979 and 16.02.2005 respectively.

9. As such, the Petitioners submitted that the Orders made in those cases by the 5th Respondent, the Learned District Judge are *ultra vires* and void *ab initio*. Moreover, in relation to the Gazettes Extraordinary 43/4 and 1380/7 dated 02.07.1979 and 16.02.2005 respectively, the Petitioner stated that although interim order (l) was granted requesting the Respondents to have the said gazettes be produced before this court, to this day they have not done so.

10. The Petitioners relied on the precedent set out in *JMC Jayasekara Management Centre (Private) Limited Vs. Commissioner General of Inland Revenue* [SC/Appeal/05/2021] delivered on 05.03.2025. where it was held as follows:

> *"There is a difference between territorial jurisdiction and subject matter jurisdiction. Apart from expanding the territorial jurisdiction, the Minister did not, and could not, confer new subject matter jurisdiction on the District Court of Colombo by this Gazette. To be more specific, the Minister did not, and could not, confer jurisdiction over matters falling within the jurisdiction of the Magistrate's Court to the District Court and vice versa. This is the function of the legislature, of which the Minister is a member, but not the sole decision maker…*

...In accordance with the foregoing analysis, the correct legal position is that the District Court cannot recover the tax in default as a fine under section 43 of the VAT Act as that jurisdiction is exclusively vested in the Magistrate's court. If such an Order is made by the District Court, it is ultra vires. If a decision is ultra vires, it is a nullity for all intents and purposes; it is void, not voidable"

11. The Petitioners argued that the 1st and 2nd Respondents are not entitled to recover taxes payable for the period between 2009 and 2011 via the instituted proceedings as Section 193 of the Inland Revenue Act No. 10 of 2006 states that an assessment and tax charged becomes final and conclusive once a period of five years has lapsed from the quarter of the assessment. The same is reiterated further in Section 171 of the Inland Revenue Act No. 10 of 2006, where it sets out that in the absence of an appeal, the assessment made will be final and conclusive, which is 30 days from the notice of assessment as clarified in Section 165 of the Inland Revenue Act No. 10 of 2006. As such, the Petitioners submitted that the Certificate of Tax in Default for the period from June 2009 to March 2012 is illegal and liable to be quashed.

12. Additionally, they contended that the 1st Respondent failed to comply with a mandatory condition precedent as set out in Section 177 of the Inland Revenue Act No. 10 of 2006 to institute these recovery proceedings. A notice in writing to the 1st Petitioner Company was never issued by the Commissioner General detailing the particulars of the tax defaulted and that action might be taken against the defaulter.

POSITION OF THE RESPONDENTS (CA/WRT/62/2024):

13. The Respondents submitted that the Tax in Default Certificate was issued *intra vires* under Section 179 of the Inland Revenue Act No. 10 of 2006 read with Section 8 of the Nation Building Tax Act No. 9 of 2009. They admitted that an application was filed against the 1st Petitioner Company in the District Court of Colombo bearing case No. TAX/38/2017 and that the Tax in Default Certificate was issued on 5th December 2016. It is their position that the proceedings filed in the District Court are legal and valid under the Value Added Tax Act No. 14 of 2002 and the Extraordinary Gazette Notification No. 1380/17.

14. Regarding whether the application is time barred, the Respondents submitted that the relevant assessments were processed on or about 2012/2013 and 2014 and that having not been subject to any appeals by the Petitioner, recovery proceeding were subsequently commenced and had been done within the 5-year period. They submitted that it was the Petitioner who should have preferred an appeal in relation to the Notice of Assessment in order to have been given a hearing.

15. The Respondents relied on the cases of *Oru Mix Asphalt Pvt Ltd v W. A. Sepalika Chandrasekara and others* CA/WRIT/820/2024 decided on 30.04.2025, *Handapangoda Mudalige Mahendra Gunasekara v Ms. W.A.S. Chandrasekara, Commissioner General of Inland Revenue* CA/WRT/313/2024 decided on 29.08.2024 and *Victoria v The Deputy Commissioner of Inland Revenue* (2003) 2 SLR 404. In these cases, it has been held that where a Certificate of Tax in Default has not been challenged results in its contents being accepted. Thus, as those notices have not been challenged, its contents have been accepted and the Petitioners are prevented from challenging its validity now.

16. With regard to the Section 48A of the Act, the view of the Respondents is that they have taken preliminary steps such as the issuance of Tax in Default certificates and sending of notices of assessment in seeking to collect the tax.

17. The Respondents submitted that the issue of whether steps were taken or not is disputed, and hence is not suitable to be determined in this court, and ought to be resolved by an appeal. The Respondents cited the case of *Mohammed Kamil Kuthubdeen v Hon. Attorney General* SC/SPL/LA/24/2024 decided on 11.07.2025 in support of this argument.

18. The Respondents argued that relief sought by the Petitioners in prayer (d) relates to quashing the Orders made by the Honourable District Judge, the 5th Respondent. These Orders include a warrant which was issued against the 4th Respondent in this case. The Respondents were of the view and submitted that in the event that it was necessary to obtain such an Order from this court, the 4th Respondent ought to have been made a Petitioner. Thus, it was pleaded that the Petition is misconceived in fact and law.

19. It was further contended that the Petitioner's application is fatal as documents have not been produced. In support of the same the Respondents cited the foreign authorities *Jesraj Jiwanramv Commissioner of Income Tax* decided on 03.02.1953 and *Harmas and another v Hinksons*AIR 1946 P C 156. Both cases set out that onus of proof is on the one who would suffer in the instance that no evidence is provided.

20. The Respondents have drawn the court's attention to *Jayaweera v Assistant Commissioner of Agrarian Services, Ratnapura and another* (1996) 2 SLR 70, where it was observed that when a matter is decided there should be a presumption that all official acts are done according to law. The burden is on the Petitioner to rebut this presumption. Furthermore, the Respondents submitted that a commercial entity such as the Petitioner should be able to obtain its own documents, especially from its own accountant. The Respondents thus considered it an impossibility that this action exists despite these documents having not been provided to or presented before this court.

21. The Respondents further argued that Writ will not lie where alternative remedies are available. The case of *Kurukulusuriya Icinth Fernando (aka) Himali Fernando v C. D. Wickramaratne, Inspector General of Police (Acting)* CA/WRIT/435/2020 decided on 13.01.2021 was cited by the Respondents in support of the same. The Respondents submitted that this principle has been followed repeatedly by this court as it was in *Wickremasinghage Francis Kulassoriya v Officer-In-Charge, Police station, Kirindiwela* CA/WRIT/338/2011 decided on 22.10.2018 and more recently in *Pinnaduwage Baby Mallika Chandrasena v C. W. Abeysuriya*, CA/WRIT/457/2019 decided on 16.06.2022.

22. The Respondents submitted that an alternative statutory remedy, specifically created to tax matters was available to the Petitioner. The Respondents argued that a "multi-tiered process" has been statutorily created to ensure that the grievances of the tax payer are addressed by the authorities.

23. The Respondents are of the view that the Petitioner seeks to challenge the correctness of the Tax in default certificates and not whether they were made *ultra vires.* The Respondents relied upon the decision made in the case of *De Zoysa v Dyson* 46 NLR 351, in which it was

held that "*The writ of certiorari never runs to give relief from the wrong decisions. It is confined to decisions given or things done judicially or quasi judicially and in excess of jurisdiction*".

24. The Respondents argued that in the event the Respondent sought relief based on the merits of the case they ought to have furthered an appeal against the Respondents. The case of *Mahaweli Authority v Minister of Labour and others*CA/WRT/0533/2019 decided on 25.20.2024 was cited wherein Laffar J. reaffirms that judicial review is not an appeal and the application of the Petitioner was dismissed on the grounds that the complaints were based on grounds of correctness.

25. Moreover, while a "specifically designed multi-tiered process" exists to ensure that the tax payer is not aggrieved, it is a misuse of the judicial process for the Petitioner to circumvent that multi tired facility and instead seek to obtain relief by way of a court which has not been "especially designed to hear and determine issues pertaining to tax matters". The special machinery of the income tax ordinance was considered in the judgment of *L. C. H. Pieris v Commissioner of Inland Revenue* SC 596/63 65 NLR 457.

26. In response to the case relied upon by the Petitioners namely *JMC Jayasekara Management Centre (Private) Limited Vs. Commissioner General of Inland Revenue* [SC/Appeal/05/2021] SC Minutes dated 05.03.2025, the Respondents contended that the judgment made it clear that the District Court would have authority to look into matters such as these if a suitable application has been made. Thus, the Respondents stated that the argument that the Petitioners' objection that the District Court has no jurisdiction is misconceived.

POSTION OF THE PETITIONERS (CA/WRT/63/2024):

27. The issue faced by the Petitioners in this case mirrors that of the issue faced in the case bearing no. CA/WRT/62/2024 while the sole difference is the type of tax being recovered. While the former case concerned Nation Building Tax, the instant case deals with Value Added Tax.

28. The 1st Respondent had instituted recovery proceedings against the 1st Petitioner Company seeking to recover a purported sum of Rs. 25,183,611.38/- in defaulted VAT. However, the Petitioner having been subjected to criminal investigations, by an Order of the Magistrate's Court dated 18.05.2016, the CID seized all documents, records, books etc.… which belonged to the 1st Petitioner Company. The Petitioner tried to obtain the copies of the necessary documents relating to its own VAT returns in order to aid the case filed against the 1st Petitioner Company in the District Court of Colombo bearing case No. TAX/38/17. However, these attempts were not successful as the letters by which such documents were requested from the 1stRespondent were not responded to.

29. The main contention of the Petitioners is that in accordance with the Value Added Tax Act No. 14 of 2002 as the District Court of Colombo has no jurisdiction to summon a defaulter and accept a Certificate of Tax in Default and as such the said proceedings and orders issued by the 5th Respondent are *ex facie* void *ab initio*. Furthermore, the Petitioners submitted that as per Section 43 of the Value Added Tax Act, it is the Magistrate who has exclusive jurisdiction to summon a defaulter and allow them to show cause.

30. The Petitioner stated that the Respondents instituted such action by relying on the Gazettes Extraordinary 43/4 and 1380/7 dated 02.07.1979 and 16.02.2005 respectively. As such, the Petitioners submitted that the Orders made in those cases by the 5th Respondent, the Learned District Judge are *ultra vires* and void *ab initio*.

31. The Petitioner relied on the precedents of *P.M Dissanayake v Commissioner General of Inland Revenue* [SC/(HCCA)LA/51/2017] SC Minutes dated 27.07.2021 and *JMC Jayasekara Management Centre (Private) Limited Vs. Commissioner General of Inland Revenue* [SC/Appeal/05/2021] SC Minutes dated 05.03.2025. The Petitioner reiterated the arguments on the time barred nature of this application, citing Section 48A and 37 of the VAT Act. The Petitioners further recounted the alleged failure on the part of the Respondents to comply with a mandatory condition precedent required by Section 41 of the VAT Act, prior to the institution of this matter.

POSITION OF THE RESPONDENTS (CA/WRT/63/2024):

32. The Respondents' position was that the proceedings filed in the District Court are legal and valid under the Value Added Tax Act No. 14 of 2002 and the Extraordinary Gazette Notification No. 1380/17. Upon not having been preferred an appeal, a Tax in Default certificate was issued and recovery proceedings subsequently commenced and has been done within the 5-year period.

ANALYSIS:

WHETHER THE APPLICATION IS TIME BARRED?

33. The Petitioners contended that section 48A prevents the Respondents from "commencing **any action** under sections 42, 43, 44 or 48 for the recovery of tax in default within a period of 5 years" and since the tax defaults are from 2008 and the tax certificate was filed in 2017, the proceedings are time barred.

34. Whereas, it was contended by the Respondents that the phrase is "commence any action to recover tax in default" and not "initiate any action" which would mean a court action. The respondents have sent Assessments, Notices of Assessments and taken preliminary steps for the collection of the taxes. The objection of the Respondents is that whether or not action has been commenced is a disputed fact which is based on evidence. Thus, I am of the view that since none of those documents are before this Court, this cannot be decided in a writ application.

WHETHER THE DISTRICT COURT HAS JURISDICTION?

35. In light of the judgment in *JMC Jayasekara Management Centre (Pvt) Limited v Commissioner General of Inland Revenue* SC Appeal 5/2021 decided on 05.03.2025 it was held that even if these cases were filed in the District Court, an appropriate application can be made for seizure and sale as provided for in the Civil Procedure Code and the District Judge shall entertain the same and therefore the application will not become void or a nullity. It was held that,

"*However, for the reasons stated above, the Additional District judge is directed to take appropriate steps to recover the tax in default filed in the District Court dated 30.06.2016, although the seizure and sale of the appellant's property in terms of Section 42(6) of the VAT Act. The Commissioner General is also directed to make appropriate applications to the District Court for the Court to make*".

It is further stated as follows:

"E*minent writers share the same view. Halsbury's Laws of England, 4th Edition (1978) Butterworths, Vol 23, para 86 states: It is important to distinguish between charging provisions, which impose the charge to tax, and machinery provisions, which provide the machinery for the quantification of the charge and the levying and collection of the tax in respect of the charge so imposed. Machinery provisions do not impose a charge or extend or restrict a charge elsewhere clearly imposed. (….) Although not of less moment or authority than other sections, machinery sections are not subject to a rigorous construction, so the court will seek not so to construe a machinery section as to defeat a charge to tax*."

"In the instant case, the appellant's grievance, based on sections 42 and 43 of the VAT Act, relates to machinery provisions, and therefore the Court cannot lean towards the appellant but must interpret the provisions in a manner that gives effect to the intention of the legislature.

The questions of law on which leave to appeal was granted and the answers thereto are as follows:

(a) Has the High Court erred in rejecting the appellant's jurisdictional objection by holding that all District Judges appointed to a particular judicial zone are also Additional Magistrates for that area, and vice versa, that all Magistrates are Additional District Judges by virtue of their appointment? Yes.

(b) Has the High Court erred in failing to consider that the learned Additional District Judge has no jurisdiction to impose a term of imprisonment of six months? Yes.

(c) Has the High Court erred in Law by holding that the District Court has jurisdiction to entertain a certificate filed under section 43(1) of the VAT Act, No. 14 of 2002, as amended? Yes.

For the foregoing reasons, the order of the learned Additional District Judge of Colombo dated 06.09.2018 and the judgment of the High Court of Civil Appeal of Colombo dated 16.07.2020 are set aside and the appeal is allowed. The District Court has ***no jurisdiction to recover the tax in default as a fine*** *under section 43(1) of the VAT Act.*

However, for the reasons stated above, the Additional District Judge is ***directed to take appropriate steps to recover the tax in default, as set out in the certificate of tax in default filed in the District*** *Court dated 30.06.2016****, through the seizure and sale of the appellant's property*** *in terms of Section 42(6) of the VAT Act. The Commissioner General of Inland Revenue is also directed to make appropriate applications to the District Court for the Court to make suitable orders in that regard."* (emphasis added)

36. Furthermore, Section 43 of the Value Added Tax Act No. 14 of 2002 reads as follows,

"43. Proceeding 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 of 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)), thereof of the Code of Criminal Procedure Act, 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 or to postpone or defer such proceeding for a period exceeding thirty days, by reason only of the fact that an appeal is pending against the assessment in respect of which the tax in default is charged.
[S 43(1) proviso am by s 14 of Act 9 of 2011.]

(2) Nothing in subsections (2) to (5) of section 291 of the Code of Criminal Procedure Act, No. 15 of 1979, shall apply in any case referred to in subsection (1).

(3) In any case referred to in subsection (1) in which the defaulter is sentenced to imprisonment in default of payment of the fine deemed by that section to have been imposed on him, the Magistrate may allow time for the payment of the amount of the said fine or direct payment of that amount to be made in installments.

(4) The court may be required bail to be given as a condition precedent to allowing time under subsection (1) for showing cause as therein provided or under subsection (3) for the payment of the fine; and the provisions of Chapter XXXIV of the Code of Criminal Procedure Act, No. 15 of 1979, shall apply where the defaulter is so required to be given bail.

(5) Where payment in installments is directed under subsection (3) and default is made in the payment of any one installment, the same proceedings may be taken as if default had been made in payment of all the installments, then remaining unpaid."

37. As such it is clear that although Section 43 provides that proceedings for recovery are to take place before a Magistrate, Section 42(6) of the VAT Act and sections 226 to 297 of the Civil Procedure Code provides that an appropriate application can be made for seizure and sale and the District Judge shall entertain the same.

DO THE PETITIONERS HAVE AN ALTERNATIVE REMEDY?

38. The tax regime and tax laws provide a separate statutory mechanism of appeal for any person who is not satisfied with the Assessment issued by the Commissioner General of Inland Revenue and thereby to challenge such assessment.

39. A specifically designed multi-tiered process is statutorily created to ensure that any grievance of a tax payer is looked into by authorities. The Respondents relayed this process in their written submissions and the same has been reproduced below for ease of reference:

a) The tax payer tenders his tax returns.

b) If the Assessor is of the view, in exercising his judgment in analyzing the returns filed, the Assessor then proceeds to reject such Return and make an assessment on the estimated income of the tax Payer and then, the Assessor shall give reasons for rejecting such Return. Thereafter, by separate notice, a Notice of Assessment containing a charge number and a demand to pay will be issued, in line with the assessment that had already been made.

c) If the tax payer is not satisfied with the assessment made or the quantum assessed or reasons tendered by the assessor, the tax payer can prefer an appeal to the Commissioner General of Inland Revenue.

d) The Commissioner General of Inland Revenue shall hear the appeal and shall make an Order pertaining to the Notice of Assessment by giving reasons.

e) If the tax payer is still not satisfied with such Order of the Commissioner General of Inland Revenue, the tax payer can prefer an appeal to the Tax Appeals Commission, which is the special statutory body created only for the purpose of hearing appeals against the decisions of the Commissioner General of Inland Revenue.

f) If the tax payer intends to challenge such determination of the Tax Appeals Commission it could be done by way of a case stated for the opinion of the Court of Appeal.

g) Such judgment by the Court of Appeal could be appealed to the Supreme Court by the tax payer if he so wishes to, which shall be final.

Thus, it is clear that the Petitioners have failed to exhaust the alternative remedies available to them.

40. In the case of *Gee Vee Enterprises v Additional Commissioner of Income Tax* (1975) 99 ITR 375 (Delhi), it was held that,

> "*…ordinarily a party aggrieved by the order of the statutory authority under the Income Tax Act (which principle also applies to the orders under other Acts) must avail himself of the hierarchy of statutory remedies under the said Act such as an appeal or a revision or a reference to this Court through the Income Tax Appellate Tribunal. This vertical judicial review given to him by the statute is a matter of right of the assessee. If he wishes to abandon this right and seek a collateral review of an impugned order in this Court under Articles 226 or 227, he must make out a strong case why this Court should entertain his writ petition and make an exception to the general rule."*

41. Thus, the Tax statutes must be followed first and that hierarchy of appeals needs to be followed as held in referring to Article 226 of the Indian Constitution which vests the Indian

Court with Writ jurisdiction. The Supreme Court of India in *Assistant Collector of Central Excise v. Dunlop India Ltd* (1985) 154 ITR 172 stated as follows:

> *"Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance, where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to by-pass the alternative remedy provided by statute. Surely, matters involving the revenue where statutory remedies are available, are not such matters. The court can also take judicial notice of the fact that the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged."*

42. It is apparent that all the questions of law as well as facts can be canvassed at the very first appeal before the Commissioner General and if aggrieved, the Petitioners have three more chances of appeal. Thus, it is the view of this Court that there are alternative remedies and no prejudice will be caused to the Petitioners by disallowing these applications.

43. It is trite law that when a satisfactory alternative remedy is available, a party should exhaust such alternative remedies, and if he has failed to do so, writ would not lie.

44. In *Kurukulasuriya Icinth Fernando (AKA) Himali Fernando v. C.D. Wickramaratne, Inspector General of Police (Acting)* CA/WRT/435/2020 C.A. Minutes dated 13.01.2021, the Court examining the legal position of availability of alternative remedies held as follows:

> *"The petitioner seeks to quash the orders of the Hon. Magistrate of Moratuwa dated 28th August 2020 and 18th October 2020 refusing the application by the petitioner to leave the island. In these circumstances, there is a clear alternative remedy for the petitioner. That is to make an application to get the order of the learned Magistrate revised by the High Court of the province. The petitioner has not sought that remedy available in the High Court. Application for writ is a discretionary remedy, where an*

alternative and equally efficacious remedy is available to a litigant, they should pursue that remedy and may not invoke special jurisdiction to issue a prerogative writ, unless there are good grounds to do so".

45. The Petitioners have not satisfied this Court as to why they could not pursue with alternative remedies. Hence, writ will not lie for the Petitioners.

HAVE THE COMMISSIONER GENERAL OF INLAND REVENUE AND HIS OFFICERS ACTED *ULTRAVIRES*?

46. The Petitioners have failed to show any provision that either prohibits the Respondents from issuing P6 or that they have no power to do so.

47. In the case of *H.P. Mineral and Ind. Development Corporation vs. CIT*(2008) 217 CTR (HP) 388 it was held that taxability is attracted not only when income is actually received but also when it accrues. Income accrues when it falls due, that is to say when it becomes legally recoverable, irrespective of whether it is actually received or not and accrued income is income which the assesse has a legal right to receive.

48. In the case of *Tuticorin Alkali Chemicals and Fertilizers Ltd vs CIT* (1997) 227 ITR 172, 186, 182 (SC), it was held that,

"it is well settled law that income attracts taxes as soon as it accrues. The application or destination of the income has nothing to do with its accrual or taxability." In other words, income tax is attracted when the income is earned. Taxability of income is not dependent upon its destination or the manner of its utilization. It has to be seen whether at the point of accrual, the amount is of revenue nature. If so, the amount will have to be taxed.

49. Therefore, it is clear that the taxability is to be decided based on facts and evidence but not only on the legal principles or interpretations. In fact, whether a tax exemption is due or not; can be given or not is also something that needs to be looked at. These are factual issues and it would be dangerous to issue a writ which will bind the Inland Revenue Department without an examination of facts and without even an assessment being issued.

CONCLUSION:

50. In the instant case, the Petitioners have not shown that any of their rights were violated because the tax certificates and the orders of the learned District Judge were issued.

51. In *Seneviratne and Others vs. Urban Council and Others* (2001) 3 SLR 105, it has been held that, "*If the Appellant has not been prejudiced by the matters on which he relies on the Court may refuse relief even though he has succeeded in establishing some defect. The literal or technical breach of an apparently mandatory provision in a statute may be so insignificant as not in effect to matter. In those circumstances, the Court may in its discretion refuse relief*."

52. The Petitioners' main objection that the District Court has no jurisdiction to look into the matter has been decided by the Supreme Court and held that it can proceed upon a suitable application being made. The Petitioners of that matter did not appeal to the Supreme Court. There is no provision to give a hearing before a tax in default is issued. Furthermore, the Petitioners have not rebutted the presumption of the validity of the tax certificate and that all official acts are done correctly. The Petitioners have not produced any evidence to rebut the presumption or to show any unreasonableness or *ultra vires* of the Respondents.

53. For the foregoing reasons, both applications are dismissed without costs.

Judge of the Court of Appeal

Hon. RohanthaAbeysuriya PC, J.(P/CA)

I agree.

President of the Court of Appeal