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

In the matter of an appeal by way of Stated Case on a question of law for the opinion of the Court of Appeal under and in terms of Section 11A of the Tax Appeals Commission Act, No. 23 of 2011 (as amended).

WEALTHTRUST SECURITIES LIMITED,
No.102/1, Dr. N.M. Perera Mawatha, Colombo 08.
[formerly No. 32, D.S. Senanayake Mawatha (Castle Street), Colombo 08]

APPELLANT

CA Case No.:
CA/TAX/005/2021
Tax Appeals Commission No:
TAC/VAT/001/2017

-Vs-

THE COMMISSIONER GENERAL OF INLAND REVENUE,
Department of Inland Revenue,
Inland Revenue Building,
Sir Chittampalam A. Gardiner Mawatha,
Colombo 02.

RESPONDENT

Before :	**JUSTICE M.CHAMATH.B.S. MORAIS** **JUSTICE ANNALINGAM PREMASHANKER**
Counsel:	**Dr. Kanag Isvaran, President's Counsel with N.R. Sivendran, Attorney at Law, Achini Ranasinha, Attorney at Law, R. Abilashini, Attorney at Law and Fathima Hanifa, Attorney at Law instructed by Sarravanan Neelakandan Law Associate, Attorneys at Law for the APPELLANT.** **Chaya Sri Nammuni, Deputy Solicitor General, Drusilta Jayanthakumar, State Attorney for the RESPONDENT.**

Written Submissions of the Appellant :- 30.03.2023, 27.04.2026
Written Submissions of the Respondent :- 18.05.2023
Argued on :- 08.10.2025, 24.11.2025
Judgement on :- 11.06.2026

JUDGEMENT

ANNALINGAM PREMASHANKER, J.

A. INTRODUCTION

A1. APPEAL

This is an appeal by **Wealthtrust Securities Ltd** (**Hereinafter sometimes referred to as The Appellant/Tax Payer**) from the determination of the Tax Appeals Commission dated 20.01.2020

made in TAC appeal no. TAC/VAT/001/2017. The Respondent is **the Commissioner General of Inland Revenue** (**Hereinafter sometimes referred to as The Respondent/CGIR**).

A2. CASE STATED

The Appellant being dissatisfied with the determination of Tax Appeals Commission (**Hereinafter sometimes referred to as TAC**) requested for an appeal by a case stated for the opinion of the Court of Appeal by their communication dated 20.02.2020.

B. ARGUMENT

On 24th November 2025, both parties concluded the argument. The Appellant has furnished written submissions on 30.03.2023 and 27.04.2026. The Respondent has furnished the written submissions on 18.05.2023.

C. ANALYSIS

C1. QUESTIONS OF LAW

There were sixteen questions of law presented for the opinion of the Court of Appeal, in the case stated dated 08. 02. 2021. They are:

1. **Did the Tax Appeals Commission err in law when it failed to appreciate that the Company is not chargeable with VAT on Financial Services as the purchase and holding of**

Government securities does not fall within the meaning "supply of financial services" defined in terms of section 25 F of the Value Added Tax Act No 14 of 2002?

2. **Did the Tax Appeals Commission err in law when it failed to give reasons as to how the purchase and holding of Government securities falls within the meaning "supply of financial services" defined in terms of section 25 F of the Value Added Tax Act?**

3. **Did the Tax Appeals Commission err in law when it failed to appreciate that the sale of Government securities does not fall within the meaning "supply of financial services" defined in terms of section 25 F of the Value Added Tax?**

4. **Did the Tax Appeals Commission err in law in failing to appreciate the distinction between an "investment in Government Security" and a "provision of loan"?**

5. **Did the Tax Appeals Commission err in law when it failed to give reasons as to how the sale of Government securities falls within the meaning "supply of financial services" defined in terms of section 25F of the Value Added Tax Act?**

6. **Did the Tax Appeals Commission err in law by failing to determine the question whether the Assistant Commissioner who made the Assessment had failed to comply with section 29 of the Value Added Tax Act by failing to communicate reasons on the assessment of gains arising from sale of securities?**

7. **Did the Tax Appeals Commission misdirect in law when it failed to appreciate that the Appellant as an admitted Primary Dealer in Government Securities is entitled and eligible to be excluded from being charged on the interest income and gains from sale of securities?**

8. **Did the Tax Appeals Commission misdirect itself in law when it failed to appreciate that the Appellant being Primary Dealer cannot engage in business of providing loans and has been strictly prohibited by the Central Bank Regulations from lending money to any party?**

9. **Is it grievous misdirection in law from the Tax Appeals Commission to have adopted Oxford dictionary definition for the meaning of "loan" when the said definition does not fit to the present case scenario for the reason that the Appellant- Company makes this investment not only expecting the interest but also expecting the trading gains**

when the market value of the investment is favorable to the company?

10. **Did the Tax Appeals Commission err in law in having adopted the Definition laid down in "Wikipedia" to interpret a "Primary Dealer" and arrived at the conclusion that "... it is clear that the functions of any loan includes the activities of the Appellant- Company as a primary dealer comes within the activities considered under section 25 F g of the VAT Act?"**

11. **Is the Determination made by the Tax Appeals Commission in breach of the statutory time limit, and thus null and void and of no force or effect in law?**

12. **The appeal having been filed on 23rd March, 2017 and the Commissioner General Of Inland Revenue having failed to sign the acknowledgement did the Tax Appeals Commission not have the power or jurisdiction to make a determination on 20th January in contravention of section 10of the Tax Appeals Commission Act, No 23 of 2000 as amended?**

13. **(a) Has the Assistant Commissioner not made the Notice of Assessment in compliance and or observance with the Section 29 of the Value Added Tax Act?**

(b) Has the Assistant Commissioner failed to communicate reasons as to why the "gains arising from sale of trading Securities" and "marked to market gain on financial assets held for trading are charged with tax?

(c) If so, is the Notice of Assessment issued bad in law and not in accordance with the assessment process as specified in the Value Added Tax?

14. Is the Notice of Assessment of the Assistant Commissioner bad in law and null and void, in that-

(a) Notice of Assessment has not mentioned under which provision of the Value Added Tax Act the Assessment is issued;

(b) The Assistant Commissioner has issued one Assessment for two taxable period in the years 2013 and 2014 under one charge number;

(c) One letter has been issued under Section 29 of the Value Added Tax Act to cover more than one taxable period.

15. Was the Commissioner prejudiced and made an erroneous determination on fundamental issues pertaining to the invalidity of the Assessment and the Notice of Assessment by heavily weighing its determination on substantive issues?

16. Did the Tax Appeals Commission err in law in holding that the activities of the Appellant fall within 25F (G) of the value Added Tax Act. No. 14 of 2002?

C2. QUESTIONS OF LAW IN ISSUE

Questions of Law No. 1, 2, 4, 11, 13 (a), (b), (C) and 14 (a) were the only questions relied on finally argued by the Parties. On that basis the rest of the Questions of Law raised in the case stated will not be urged in appeal and not considered by the court.

C3. TAX RETURN

The tax payer submits its return for the year of 2012/2013 and 2013/2014, claiming an exemption of VAT on Financial Service. This claim was rejected by the Assessor and the return is not accepted and issued an assessment.

C4. FIRST APPEAL

Having aggrieved by the said Assessment, the tax payer made an appeal to the CGIR. The Tax Payer made the same agitation before the CGIR. CGIR by his determination dated 16.01.2017 determined the appeal by confirming the assessment.

C5. SECOND APPEAL

The tax payer being not satisfied with the determination of the CGIR, made an appeal to the TAC. In the appeal before the TAC the tax payer raised the same issues. TAC by its determination dated 20.01.2020, confirmed the determination made by the Respondent and dismissed the appeal.

C6. APPELLANT COMPANY

The Appellant is a primary dealer and the principal activity of the Appellant, "is dealing in Government Securities with approval and appointment by the Central Bank of Sri Lanka".

The contention of the Respondent before the TAC and in the appeal before the Respondent that the purchase and holding of Treasury Bills, Treasury Bonds, Repurchase Agreements and Reverse Repurchase Agreements from the Government of Sri Lanka by the Appellant are not "investments" but "loans" from the Appellant to the Government of Sri Lanka.

The Tax Appeals Commission in its Determination dated 20th January 2020 did not even consider the legal provisions which will be discuss below, and failed to appreciate that the Appellant was debarred from granting loans and thus, erred in determining that the Appellant grants loans to the Government of Sri Lanka when

purchasing and holding Government Securities as a Primary dealers.

The Determination of the Respondent dated 16th January. 2017 is also bad in law and cannot stand, as apparent from the Reasons for the Determination dated 23rd February. 2017 wherein this aspect was not even considered by the Respondent in appeal.

C7. PRIMARY DEALER

A primary dealer's activities are circumscribed by the Central Bank of Sri Lanka and a primary dealer cannot in law and fact grant loans to any person, even to the Government of Sri Lanka.

Regulation11(1)(1) of the Local Treasury Bills (Primary Dealers) Regulations No. 01 of 2009 of Gazette Extraordinary No. 1607/18 dated 24.06.2009

> " 11. (1) The Central Bank may issue directions to a Primary Dealer to ensure compliance by the Primary Dealer with these Regulations. Without prejudice to the generality of the foregoing and to the power of the Central Bank to issue directions under the Ordinance or any other written law, such directions may provide for all any of the following matters:-
>
> (a) .....;
>
> .....

(l) the activities and business which may be carried on by a primary Dealer Company a activities or business connected or incidental to the activities set out in Schedule III;"

Schedule III of the Local Treasury Bills (Primary Dealers) Regulations No. 01 of 2009 specifies the activities that can be carried on by primary dealers as follows:-

"SCHEDULE III

ACTIVITIES OF PRIMARY DEALER COMPANIES

1) Bidding at Primary auctions conducted by the Central Bank of Sri Lanka for Treasury Bills, Treasury Bonds and instruments issued by the Government and the Central Bank and purchasing such securities in such primary market;
2) Engaging in the secondary market in Treasury Bills, Treasury Bonds, Government and Central Bank Securities with the Central Bank and others;
3) Promoting and developing a secondary market in Treasury Bills, Treasury Bonds and other Government and Central Bank Securities;
4) Any activity connected with or incidental to the activities set out in paragraph (1) to(3) above ;

5) To manage and invest in mutual funds up to a maximum percentage/amount determined by the Monetary Board from time to time ;
6) To invest in ordinary shares or debentures of its own group companies either in subsidiaries or associates according to the limits imposed by the Monetary Board, from time to time;

7) To invest in other quoted shares/quoted debentures or bonds and commercial papers according to the fimits imposed by the Monetary Board, from time to time;
8) To act as a broker in quoted corporate bonds/debentures ;
9) To engage in services to earn fee income such as portfolio management, project appraisal, loan, syndication services, merger and acquisition consultancy services, brokering and any other related activities with the prior written approval of the Monetary Board;
10) To borrow through debt instruments in accordance with the directions or guidelines issued by the Monetary Board from time to time; and
11) Any other business activity which the Monetary Board may authorize a Primary Dealer to engage in."

C8. GRANT OF LOAN

It is clear from said **Schedule III** that **primary dealers are not authorized by the Central Bank of Sri Lanka to grant loans in the course of its business**

The **Direction on Diversification of Primary Dealer Activities Ref No:08/24/001/0001/009 dated 20 November, 2009** issued under Section 11 of the Regulations dated 24.06.2009. The activities that primary dealers can engage in were enlarged, but significantly, this does not permit primary dealers to grant loans.
No.8 of the said Direction which reads as follows:-

> "**8. Primary Dealers should restrict their activities to those which are detailed under 1(a) to 1.(d). Primary Dealers should divest/cease to engage in any other investment/activity carried out by them, if any, within a period of six months from the date of this direction."**

The Primary dealers cannot grant loans.

C9. FINANCIAL SERVICES

a) The purchase and holding of Government Securities and investment in government securities are not supply of Financial Services.

Supply of Financial Services is defined in Section 25F of the Value Added Tax Act No. 14 of 2002 (as amended) as follows;

"Supply of Financial Services mean -

(a) The operation of any current, deposit or savings account;
(b) The exchange of currency;
(c) the issue, payment, collection or transfer of ownership of any note, order for payment, cheque or letter of credit;
(d) the issue, allotment, transfer of ownership, drawing, acceptance or endorsement of any debt. security, being any interest in or right to be paid money owing by any person other than the transfer of nonperforming loans of a licensed Commercial Bank to any other person in terms of a re-structuring scheme of such bank as approved by the Central Bank of Sri Lanka with the concurrence of the Minister;
(e) the issue, allotment, transfer of ownership of any equity security or a participatory security;
(f) issue, underwriting, sub-underwriting or subscribing of any equity security, debt security or participatory security;
(g) the provision of any loan, advance or credit; the provision

h) the provision –

(a) of the facility of instalment credit finance in a hire purchase conditional sale or credit sale agreement for

which facility a separate charge is made and disclosed to the person to whom the supply is made;

(b) goods under any hire purchase agreement or conditional sale or hire purchase agreement while have been used in Sri Lanka for a period not less than twelve months as at the date of such agreement"

It is very clear from the above definition that purchasing and holding Government Securities are excluded from the definition of supply of Financial Services.

C10. POSITION

It was contended by the Appellant before the Tax Appeals Commission and in appeal before the Respondent that purchasing and holding Government Securities are not and cannot be defined as supply of Financial Services but are investment activities. However, both the Tax Appeals Commission and the Respondent held that purchasing and holding Government Securities are not investment activities but are provision of loans falling under the definition of supply of Financial Services in Section 25F (g) of the Value Added Tax Act No. 14 of 2002 (as amended).

C11. REAL ACTIVITY

The Appellant did not provide loans to the Government of Sri Lanka when purchasing and holding Government Securities from the Central Bank of Sri Lanka inasmuch as the sale transaction in question is not an activity of borrowing money but an activity of sale of security and the Appellant being a primary dealer is prohibited from engaging in the business of lending.

The Tax Appeals Commission relied on Wikipedia definition, which does not even incorporate granting of loan by buying government securities or does not refer to a loan at all, erred even further in holding that it “is clear that the functions of any loan includes that activities of the Appellant company as a primary dealer”

C12. INVESTMENT

An "investment", an activity must involve an expectation to earn a profit. The purchasing and holding Government Securities by the Appellant is carried out with the objective of earning a profit, namely earning interest and resale in the course of business. Thus, it is clear these activities are investment activities.

The Black's Law Dictionary defines "investment" as follows:-

> "An expenditure to acquire property or other assets in order to produce revenue"

C13. LOAN

The Appellant cited the Oxford Dictionary and Black's Law. Dictionary definitions of "investment" and pointed out the expectation to earn income or profit in "investment" and differentiated it from the definition of a "loan". By contrast, a loan need not involve an expectation to earn profit or income.

The Respondent in his Reasons for the Determination dated 23rd February, 2017 cited the following definition of "a lending" in Black's Law Dictionary:-

> "Delivery by one party to and receipt by another party of sum of money upon agreement, express or implied, to repay it with or without interest."

It is clear on the own submission of the Respondent that, a loan need not be for profit or have as a term payment of interest.

The activities of purchase and holding Government Securities by the Appellant which is carried out with the objective of earning a profit, namely earning interest and resale in the course of business, cannot be construed as a loan.

C14. INVESTMENT AND LOAN

Differences between an "investment" and a "loan" are follows:-

(a) In the case of Government Securities, the Central Bank of Sri Lanka determines the interest rate. However, in the case of a

loan, it is the lender who decides the interest rate. However, the Appellant does not decide the interest rate of Government Securities it purchases and holds, but the rate is decided by the Central Bank of Sri Lanka.

(b) In the case of loans, the level of risk of the borrower results in variation of the rate of interest charged. However, in the case of purchase and holding of Government Securities, the interest rate does not vary but is fixed and will be decided in a particular auction where they are purchased.

(c) In the case of a loan apart from the lending of money there is a provision of collateral as security by the borrower whereas there is no provision of collateral in the case of investment in Government Securities.

(d) Government Securities once purchase are transferable without the approval/consent of the Central Bank of Sri Lanka or the Government of Sri Lanka. Loans are generally not transferable.

(e) Government Securities are purchased through bidding at an auction in the Central Bank of Sri Lanka. However, loans are not provided at an auction.

(f) In the case of a loan repayment installments are on a periodical basis as agreed upon by the parties. In the case of purchase and holding of Government Securities, there is no repayment but there is payment upon maturity of the Government Security and after its surrendered to the issuer.

(g) In the case of a loan, there is negotiation of amount and terms by the parties. In the case of purchase and holding of Government Securities, the Appellant bids at an auction and there is no negotiation.

The definition of "a lending" was expressly cited by the Respondent in the defining a "loan", the Tax Appeals Commission did not give its mind to or even consider the same in construing a loan.

The Tax Appeals Commission erred in law, in not appreciating that **a loan need not involve an expectation of earning interest or income** and failed to appreciate that the activities of purchase and holding Government Securities by the Appellant are not provision of loans, but are investments and therefore, cannot be construed as "supply of Financial Services".

The purchase and holding Government Securities by the Appellant do not come within the definition of supply of Financial Services in Section 25F of the Value Added Tax Act No. 14 of 2002 (as amended) inasmuch as the same is an investment and not a provision of loan.

In ***People's Leasing and Finance PLC v CGIR (CA/TAX/21/2019, C.A.M 20.07.2021)***

> ***The interest income received by the Appellant from fixed deposits and government securities was not an activity of increasing its mere capital or mere***

acquisition and holding of government securities. The Appellant as a finance company is engaged in the business of supplying of financial services for the purpose of generating interest income from bank deposits and government securities. The characteristics identified in Trinity Mirror Plc (formerly Mirror-Group Newspapers Ltd) v. Customs and Excise Commissioners (supra) are met in respect of the said interest income received by the Appellant from bank deposits and government securities as a supply of financial services within the meaning of section 25F of the VAT Act.

C15. GAINS FROM TRADING

The Assessor who issued the impugned Notice of Assessment, did not give reasons for assessing gains arising from trading securities in his letter issued prior to the assessment.

The gains from trading securities were included in the profit before tax in the Audited Accounts of the Appellant for the years 2012/2013 and 2013/2014.

In this connection page 3 of the respective audited accounts which clearly shows that gains from trading securities of Rs.

199.614,339/- and Rs. 196.033,009/- respectively for the years 2012/2013 and 2013/2014.

The Assessor used the aforesaid figure of Profit before Tax in the said Audited Accounts and made adjustments in calculating the value addition relied on to charge VAT on financial services.

The amount of gains from trading securities is included in the said Profit before Tax and thus, inasmuch as the value addition assessed was calculated using the said Profit before Tax accordingly, the purported value addition assessed includes the purported value addition on gains from trading securities.

Perusal of the said letter dated 1/12/2014 shows that the Assessor did not even refer to let alone, give reasons for including value addition on gains from trading securities in assessing VAT on financial services, although gains from trading securities are included in the Profit before Tax in the said Audited Accounts.

C16. REASONS

The Assessor who issued the impugned Notices of Assessment, did not give reasons or communicate said reasons for assessing market gains on financial assets held for trading in his letter issued prior to the assessment.

These are notional gains as per the income statement in the Accounts and essentially unrealized gains. These gains were

recognized in the Accounts due to SLFRS compliance requirements and is not related to any "supply of financial services".

Market gains, on financial assets held for trading were included in the profit before tax in the Audited Accounts of the Appellant for the years 2012/2013 and 2013/2014.

A perusal of the letter dated 1st December, 2014 makes it clear that the Audited Statements of Accounts of the Appellant were rejected by the Assessor.

The Assessor did not even refer to let alone, give reasons for including value addition on market gains on financial assets held for trading in assessing VAT on financial services, although market gains on financial assets held for trading are included in the Profit before Tax in the said Audited Accounts.

Thus, the Notices of Assessments in question are erroneous and bad in law. The Assessor had a duty to give reasons but failed to give any reasons for taxing the gains from trading securities and market gains on financial assets held for trading.

Hapuarachchi and others Vs. Commissioner of Elections and another 2009 1 SLR 1, where the Supreme Court analyzed the change in the law which now recognizes a duty to give reasons as part of procedural fairness and under the rules of natural justice. In that case the impugned decision was held null and void as no reasons were given for the decision. **Dr. Bandaranayake J.**

Ranjith Flavian Wijeratne Vs. Asoka Sarath Amarasinghe and others, S.C. Appeal No. 40/2013, SC (Spl) LA Application No. 23/2012, S.C. Minutes of 12.11.2015. This was an appeal filed against the judgment of the Court - of Appeal quashing the decisions of the Commissioner of National Housing and of the Ceiling on Housing Property Board of Review. The Supreme Court affirmed the judgment of the Court of Appeal. Priyantha Jayawardena PC J. held.

> **There is an accepted rule that reasons should be given for decisions, based on the principle of fairness which permeates administrative law, subject only to specific exceptions to be identified depending on the case.**
>
> **Unless the reasoning behind the decision is given, a person is unable to know whether it is lawful or not, and thus he is deprived of the protection of the law. A right to know the reasons is therefore an indispensable part of the system of judicial review.**
>
> ***The Commissioner did not file objections in the writ application. Hence, the Court of Appeal held " At this point of this judgment I have to observe that the Hon. Attorney-General though appeared and represented 7 and 7A & 94 Respondents (the Commissioner of National Housing and the relevant subject Minister)***

did not file objections on their behalf, may be for good reasons. "

The Commissioner did not furnish any material to defend the allegation made against him for the violation of the principles of natural justice. Thus, it appears that the Commissioner did not have an explanation to offer in this regard."

C17. VALUE ADDITION

The Assessor used the aforesaid figure of Profit before Tax in the said Audited Accounts and made adjustments in calculating the value addition relied on to charge VAT on financial services.

The amount of market gains on financial assets held for trading are included in the said Profit before Tax and thus, inasmuch as the value addition assessed was calculated using the said Profit before Tax accordingly, the purported value addition assessed includes the purported value addition on market gains on financial assets held for trading.

C18. MANDATORY REQUIREMENT

Both Section 93(2) of the Inland Revenue Act No. 4 of 1963 as amended by Law No.17 of 1972 and Law No. 30 of 1978, and Section 29 of the Value Added Tax Act No. 14 of 2002 (as amended),

require the Assessor to give reasons when rejecting a Return and making an Assessment.

Section 93(2) of the Inland Revenue Act No. 4 of 1963 (as amended by Law No.17 of 1972 and Law No. 30 of 1978), reads as follows:-

"93(2) Where a person has furnished a return of income, wealth, or gifts, the Assessor may

(a) either accept the return and make an assessment accordingly; or if he does not accept the return, estimate the amount of the assessable

(b) if he does not accept the return, estimated the amount of the assessable

income, taxable, wealth or. taxable gifts of such person and assess him accordingly and **communicate to such person in writing the reasons for not accepting the return."**

Section 29 of the Value Added Tax Act No. 14 of 2002 (as amended reads as follows:-

29. Where the Assessor does not accept a return furnished by any person under section 21 for any taxable period and makes an assessment or an additional assessment on such person for such taxable period under section 28 or under section 31, as the case may be, **the Assessor shall communicate to such person by registered letter sent through, the post why he is not accepting the return."**

Section 29 of the Value Added Tax Act No. 14 of 2002 (as amended) imposes a mandatory duty on an Assessor to give reasons for rejecting a return when making an assessment.

The Assessor in question did not give reasons for rejecting the returns which did not include the purported value addition on gains from trading securities and marked to market gains on financial assets held for trading.

The Respondent failed to consider the above aspect, when making his Determination in appeal.

The Respondent failed to appreciate that that the impugned Notices of Assessment were not made in compliance with Section 29 of the Value Added Tax Act No. 14 of 2002 (as amended), and were bad in law and nullities.

The Tax Appeals Commission also failed to consider this aspect and particularly that, the impugned Notices of Assessment were not made in compliance with Section 29 of the Value Added Tax Act No. 14 of 2002 (as amended).

The Tax Appeals Commission failed to appreciate that the impugned Notices of Assessment were bad in law as submitted above and of no force or effect and VAT on Financial Services could not be charged on the Appellant.

Thus, the Determination dated 20th January, 2020 of the Tax Appeals Commission is bad in law.

C19. 270 DAYS- DIRECTORY/ MANDATORY

Section 10 of the Tax Appeals Commission Act No.23 of 2011 sets out that the appeals received by the Tax Appeals Commission have to be completed within 180 days from the date of commencement of the hearing of the appeal. This Section 10 of the Tax Appeals Commission Act No.23 of 2011 was amended by Amendment Act No.20 of 2013 to increase the period to 270 days.

When the Tax Appeals Commission Act originally came into effect Section 10 read as follows:-

> *"10 The Commission shall hear all appeals received by it and make its decision in respect thereof, within one hundred and eighty days from the date of the commencement of the hearing of the appeal:*
>
> *Provided that, all appeals pending before the respective Board or Boards of Review in terms of the provisions of the respective enactments specified in the Schedule to this Act, shall with effect from the date of coming into operation of the provision of this Act be deemed to stand transferred to the Commission, and the Commission shall make its decision in respect thereof, within hundred and eighty days from the date such transfer notwithstanding anything contained in any other written law"*

The Commission shall hear all appeals received by it and make its decision in respect thereof, within two hundred and seventy days from the date of the commencement of its sittings for the hearing of each such appeal:

Provided that, all appeals pending before the respective Board or Boards of Review in terms of the provisions of the respective enactments specified in Column I of Schedule I, or Schedule II to this Act, hotwithstanding the fact that such provisions are applicable to different taxable periods as specified therein shall with effect from the date of coming into operation of the provision of this Act be deemed to stand transferred to the Commission, and the Commission shall notwithstanding anything contained in any other written law make its determination in respect thereof, within twenty four months from the date on which the Commission shall commence its sittings for the hearing of each such appeal."

C20. APPELLANT'S SUBMISSIONS

It is submitted by the Appellant that the Tax Appeals Commission's jurisdiction extinguishes upon the period of Two Hundred and Seventy (270) days. In law the Tax Appeals Commission was

mandated and/or had the jurisdiction to decide this Appeal within 270 days.

The Tax Appeals Commission did not make a decision of this Appeal by 15th April, 2019 but purported to make a decision only on 20th January, 2020 more than 9 months after. The intention of the legislature was to confer jurisdiction on the Tax Appeals Commission only for a period of 270 days to decide the said appeal, as is clear from the above cited section.

The Tax Appeals Commission Áct No.23 of 2011 (as amende) brought in very strict, stringent provision regarding the appeal procedure and steps that have to be taken in relation to the appeal procedure and also brought in very stringent provision regarding the time limit within which the appeal should be heard and determined. Section 10 of the Tax Appeals Commission Act No.23 of 2011 (as amended) sets out that the appeals have to be completed within 270 days. The statute has given only a jurisdiction of 270 days to make the determination.

Jurisdictional time conferred for an appeal to be decided by the TAC has been strictly specified as 270 days from the date of commencement. Therefore, the mandate given by the legislature for the determination of the appeal lapses after 270 days after the date of commencement of sittings.

The appeal process being a process to be determined in terms of the statute, the said 270 days has been specified in order to have a finality to the appeal.

The first date of hearing being 19th July, 2018, as the Determination must be made "within two hundred and seventy days of the date of the commencement of the hearing of the appeal", the Appeal should have been concluded within 270 days from the said date, namely by 15th April, 2019. However, the appeal was not concluded by 15th April, 2019 but the Appeal was concluded only on 20h January, 2020 more than 9 months after the mandated time.

However, this has been considered by the Supreme Court in ***Stafford Motor Company (Private) Limited V. The Commissioner General of Inland Revenue SC Appeal No. 120/2021***, His Lordship P.Padman Surasena J. held that;

> ***"In Visuvalingam v. Liyanage (1983) 1 Sri LR 203, a nine judge bench of this Court, having considered a similar issue that arose for determination pertaining to the time limit stipulated in Article 126(5) of the Constitution, proceeded to hold that the adherence of the time limit in Article 126(5) of the Constitution would be directory and not mandatory.***

In Jayanetti v. Land Reform Commission (1984) 2 Sri LR 172, and in Ramalingam v. Thangaraja (1982) 2 Sri LR 693, this Court having considered similar issues, proceeded to hold that in the absence of any consequence stipulated in the Act for the failure to adhere to the time limits relevant to those cases in the relevant statutes, there is no basis to hold that such process is a nullity in those circumstances. "

It is evident that where the specific Act itself fails to prescribe the consequences for non-compliance with the time limits stipulated by the said Act, the courts cannot infer the repercussions of such non-compliance.

Further, if the legislature intended strict compliance with the time limit as a condition precedent to the validity of the act or proceeding, it would have expressly provided for the consequences of non-compliance; such as deemed invalidity, automatic dismissal or the appeal being deemed allowed. Where such express provision is lacking, the time limit is generally construed as directory rather than mandatory.

Accordingly, I am compelled to disagree with the Appellant's submissions.

C21. FINANCIAL SERVICE

The Tax Appeals Commission has erred in law when it failed to appreciate that, the Appellant cannot be charged with VAT on Financial Services.

Similarly the citing of the definition of supply of Financial Services in Section 25F of the Value Added Tax Act No. 14 of 2002 the sale of Government Securities by the Appellant, which is a trading gain, do not come within the definition of supply of Financial Services in terms Section 25F of the Value Added Tax Act No. 14 of 2002 (as amended).

The Tax Appeals Commission erred in law in holding that the activities of the Appellant come within subsection (g) of the definition of supply of Financial Services in Section 25F of the Value Added Tax Act No. 14 of 2002 (as amended).

The Tax Appeals Commission in its Determination dated 20th January, 2020 merely held that the "business of investment of funds by purchasing of treasury bills and bonds" "come within the ambit of" Section 25F of the Value Added Tax Act No.14 of 2002 (as amended).

The TAC in its Determination dated 20" January, 2020 did not give any reasons as to why the purchase and holding Government Securities by the Appellant is a supply of Financial Services within

the meaning of Section 25F of the Value Added Tax Act No. 14 of 2002 (as amended).

A statutory body such as the TAC has a duty to give reasons. - However, the Tax Appeals Commission has failed to do so.

The Tax Appeals Commission erred in law in failing to give reasons as to how the purchase and holding Government Securities by the Appellant falls within the meaning of supply of Financial Services defined in Section 25F of the Value Added Tax Act No. 14 of 2002(as amended)

The TAC in its Determination dated 20th January, 2020 did not give any reasons as to why the sale of Government Securities by the Appellant is a supply of Financial Services within the meaning of Section 25F of the Value Added Tax Act No. 14 of 2002 (as amended).

C22. VAT ON FS

Section 25A(1) of the VAT Act stipulates the circumstances under which VAT on Financial Service ("VAT on FS) would be imposed and the categories of entities that are specifically excluded from the imposition on VAT on FS:

Notwithstanding the provisions of Chapter I, II, Ill and item (xi) of the First Schedule to this Act, a Value Added Tax (hereinafier in this chapter referred to as "the tax") shall be charged in accordance with

the provisions of this Chapter on the supply of financial services in Sri Lanka –

i. by any specified institution during the period commencing January 1 2003 and ending on June 30, 2003; and

ii. by any person on or after July 1,2003 but prior to December 31,2007;

iii. by any person other than a Co-operative Society registered under the Co-operative Societies Law. No 5 of 1972, on or after January 1, 2008; and

iv. by any person other than a Co-operative Society registered under the Co-operative Societies Law No 5 of 1972 or Lady Lochore Loan Fund established under the Act No 38 of 1951, commencing on or after January 1, 2009, or the Central Bank of Sri Lanka established by the Monetary Law Act, (Chapter 422) (with effect from July 1, 2003:

Provided however, the supply of financial services by a Unit Trust or a Mutual Fund shall not be treated as a financial service for the purpose of this section.

C23. LOANS

Treasury bills and treasury bonds are issued by the Government of Sri Lanka to raise loans. This is confirmed by Section 2 of the Registered Stocks and Securities Ordinance and Section 2 of the Local Treasury Bills Ordinance:

Section 2 of the Registered Stocks and Securities Ordinance

> *(1) Whenever by any enactment, whether enacted before or after the date on which this Ordinance comes into operation, authority has been or is hereafter given* ***to raise any sum of money by way of loan for any purpose mentioned in that enactment, or whenever it is necessary to raise any sum of money for the purpose of repaying any loan raised by the Government under this Ordinance*** *or any other enactment, the Minister in charge of the subject of Finance may from time to time raise such sum or any part thereof under the provisions of this Ordinance in any one or more of the following modes:*

(a) by the creation and issue of registered stock;

(b) by the issue of securities in the form of Government promissory notes;

(c) by the issue of securities in the form of bearer bonds;

(d) by the issue of securities in the form of treasury bonds.

Section 2 of the Local Treasury Bills Ordinance

(1) The Minister in charge of the subject of Finance whenever authorized thereto by a resolution of Parliament may direct the Deputy Secretary ***to the Treasury to borrow by the issue in Sri Lanka of Sri Lanka Government Treasury Bills, sums not exceeding*** *She staunch specified in such resolution; and the Deputy Secretary to the Treasury may also, with the approval of the Minister in charge of the subject of Finance,* ***borrow from time to time by the issue of such Treasury Bills, such sums as may be required to pay*** *off at maturity, bills already lawfully issued by him and outstanding.*

(2) *All acts or things necessary for the purpose of, and in connection with, the issue and repayment of Treasury Bills under this Ordinance shall be done on behalf of the Deputy secretary to the Treasury by the central Bank.*

(3) Treasury Bills may be issued either as bills in the form of written certificates or as Scripless Treasury Bills.

(4) Any application or bids for the purchase of Treasury Bills may having regard to the interests of the national economy be restricted to primary dealers and designated non-dealer bidders.

By the above provisions, it can safely be concluded that the issue of Treasury Bills and Bonds are to raise loans to the government, which will not treated as supply of Financial Services.

C24. INTIMATION

The Letter of Intimation, the Department of Inland Revenue clearly communicated its stance to the Appellant stating that the VAT Returns were disputed since the audited financial statements of the Appellant reflected interest income arising from the Appellant engaging in purchase, holding and sale of governmental securities i.e. treasury bills, treasury bonds and resale agreements. The Respondent informed the Appellant that the purchase, holding and sale of governmental securities was a financial service that falls within Section 25F(g) of the VAT Act (as amended).

C25. ANSWERS TO THE QUESTIONS OF LAW

For the reasons adumbrated above, the questions of law are answered as follows:

Q. N. 01. Did the Tax Appeals Commission err in law when it failed to appreciate that the Company is not chargeable with VAT on Financial Services as the purchase and holding of Government securities does not fall within the meaning "supply of financial

services" defined in terms of section 25 F of the Value Added Tax Act No 14 of 2002?

ANS- Yes.

Q. N. 02. Did the Tax Appeals Commission err in law when it failed to give reasons as to how the purchase and holding of Government securities falls within the meaning "supply of financial services" defined in terms of section 25 F of the Value Added Tax Act?

ANS- Yes.

Q. N. 04. Did the Tax Appeals Commission err in law in failing to appreciate the distinction between an "investment in Government Security" and a "provision of loan"?

ANS- Yes.

Q. N. 11. Is the Determination made by the Tax Appeals Commission in breach of the statutory time limit, and thus null and void and of no force or effect in law?

ANS- Though the TAC has exceeded the time limit, the said determination is not null and void and of no force or effect in law.

Q. N. 13 (a) Has the Assistant Commissioner not made the Notice of Assessment in compliance and? or

observance with the Section 29 of the Value Added Tax Act?

ANS- Yes.

(b) Has the Assistant Commissioner failed to communicate reasons as to why the "gains arising from sale of trading Securities" and "marked to market gain on financial assets held for trading are charged with tax?

ANS- Yes.

(c) If so, is the Notice of Assessment issued bad in law and not in accordance with the assessment process as specified in the Value Added Tax?

ANS- Yes.

Q. N. 14. Is the Notice of Assessment of the Assistant Commissioner bad in law and null and void, in that- (a) Notice of Assessment has not mentioned under which provision of the Value Added Tax Act the Assessment is issued;

ANS- Yes.

D. CONCLUSION

As analyzed above and as the questions finally argued in the case are answered as above, the determination of the TAC dated 20.01.2020 and the determination of the CGIR dated 16.01.2017 are set aside, Assessment issued for 2012/2013 and 2013/2014 is annulled. The appeal is allowed. But considering the circumstances of the case no cost is ordered.

The Registrar is directed to forward a copy of the judgment to the Tax appeal commission.

On this 11th day of June 2026

JUDGE OF THE COURT OF APPEAL

M. C. B. S. MORAIS

I agree.

JUDGE OF THE COURT OF APPEAL