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

In the matter of an Application for a mandate in the nature of a Writ of Certiorari under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (Writ) Application No: 305/2013

Ceylon Electricity Board,
No. 50, Sir Chittampalam A Gardiner Mawatha,
Colombo 2.

PETITIONER

Vs.

1. Dehiwela–Mt. Lavinia Municipal Council,
   Dehiwela.

2. Municipal Commissioner,
   Dehiwela–Mt. Lavinia Municipal Council,
   Dehiwela.

RESPONDENTS

Before: **Mahinda Samayawardhena, J**
Arjuna Obeyesekere, J

Counsel: Uditha Egalahewa, P.C., with Ranga Dayananda for the Petitioner

Rohan Sahabandu, P.C., with Ms. Chathurika Elvitigala for the Respondents

Argued on: 25th June 2020

Written Submissions: Tendered on behalf of the Petitioner on 13th July 2020

Tendered on behalf of the Respondents on 13th July 2020

Decided on: 31st July 2020

Arjuna Obeyesekere, J

In terms of Section 247B(1) of the Municipal Councils Ordinance, as amended, (the Ordinance), "*a Municipal Council may impose and levy a tax on **any trade** carried on within the administrative limits of that Council*."[1] Section 247B(2) specifies that the said tax shall be paid annually and shall be determined according to the annual value of the premises at which that trade is carried on.

By a notice marked '**P2**' issued by the 2nd Respondent, the Municipal Commissioner, Dehiwela - Mount Lavinia Municipal Council , the Petitioner had been directed to pay a sum of Rs. 5000 per annum for the years 2011 – 2013 as a tax in terms of Section 247B of the Ordinance, for carrying out a '**කාර්යාලය**' at premises No. 608, Galle Road, Ratmalana.

Aggrieved by the said notice '**P2**', the Petitioner filed this application seeking a Writ of Certiorari to quash the decision to issue the said notice '**P2**'.

The issue that arises for the determination of this Court in this application therefore is whether the 2nd Respondent acted *ultra vires* the provisions of Section 247B of the Ordinance when he issued the notice marked '**P2**' to the Petitioner.

[1] The Sinhala text of Section 247B(1) reads as follows: "**යම් මහ නගර සභාවක පාලන සීමා තුල කරගෙන යන යම් කර්මාන්තයක් වෙනුවෙන් බද්දක් නියමකොට අය කිරීම ඒ මහ නගර සභාව විසින් කල හැකිය.**"

The learned President's Counsel for the Petitioner has challenged the imposition of the said tax on the following three grounds:

a) The Petitioner is not carrying out a trade at the said premises and therefore Section 247B has no application to the said premises;

b) The Sinhala text of Section 247B uses the word, '**කර්මාන්ත**', which the Petitioner argues means 'industry' as opposed to 'trade', and that the Petitioner is not carrying out an industry at the said premises;

c) The notification by the 1st Respondent marked '**P1**' declaring the various '**කර්මාන්ත**' which would be liable to pay the said tax is *ultra vires* the provisions of Section 247B.

As the issue to be determined relates to the imposition of a tax, it would be useful to set out at the outset the law that would be applicable when considering a taxing statute.

Maxwell on The Interpretation of Statutes[2] states that:

> "*Statutes which impose pecuniary burdens are subject to the same rule of strict construction. It is a well-settled rule of law that all charges upon the subject must be imposed by clear and unambiguous language, because in some degree they operate as penalties: the subject is not to be taxed unless the language of the statute clearly imposes the obligation*[3]*, and language must not be strained in order to tax a transaction which, had the legislature thought of it, would have been covered by appropriate words*.

[2] P. St. J. Langan, Maxwell on The Interpretation of Statutes (12th Edition), page 256.
[3] Russell v. Scott [1948] A.C. 422, per Lord Simonds.

"*In a taxing Act," said Rowlatt J., "one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used*."[4]

The above quotation as contained in **Maxwell on The Interpretation of Statutes**[5] was cited with approval by the Supreme Court in **The Manager, Bank of Ceylon, Hatton v. The Secretary, Hatton Dickoya Urban Council**.[6]

The following paragraph from **N.S. Bindra's Interpretation of Statues**[7] explains the approach that should be adopted when interpreting a taxing statute:

"*It is well-settled that words in a taxing statute should be construed in the same way in which they are understood in ordinary parlance in the area in which the law is in force. It is no doubt true that in construing fiscal statutes and in determining the liability of a subject to tax, one must have regard to the strict letter of the law*."[8]

In construing tax statutes, if there is any ambiguity of language, the benefit of that ambiguity must be given to the assessee. Statutes which impose pecuniary burden or penalties have to be construed strictly and if on a certain point such a statute is silent or its language is ambiguous, the doubt is to be resolved by adopting the construction which is beneficial to the tax-payer and which avoids inconsistency and repugnance among its

[4] Cape Brandy Syndicate v. I.R.C. [1921] 1 KB 64 at 71, approved by Viscount Simon LC in Canadian Eagle Oil Co. Ltd. v. R [1946] AC 119.
[5] Roy Wilson and Brian Galpin, *Maxwell on The Interpretation of Statutes* (11th Edition 1962), Sweet and Maxwell Limited, page 278.
[6] [2005] 3 Sri LR 1.
[7] Amita Dhanda, *N.S. Bindra's Interpretation of Statutes* (12th Edition, 2017), Lexis Nexis.
[8] Leelabai v. State of Maharashtra (1979) Mah LJ 69; Binayak Sabatho& Sons v. Municipal Council, Behrampur AIR 1985 Ori 263, as cited in Interpretation of Statutes (ibid) at page 865.

various provisions or to any constitutional provision.[9]*A construction which would have the effect of making a person liable to pay the same tax twice in respect of the same subject-matter would not be adopted unless the words were very clear and precise to the effect*.[10]*The principle is that in a taxing statute, wherever there is ambiguity of language, the ambiguity must be resolved in favour of the person to be taxed rather than the taxing authority*."[11]

In **Sohli Eduljee Captain (Secco Brushes Corporation) v. Commissioner General of Inland Revenue**,[12] the Supreme Court, having cited several local and foreign judgments, held as follows:

"*Express and unambiguous language is absolutely indispensable in Statutes passed for the purpose of imposing a tax for such a statute is always strictly construed. In a Taxing Statute, therefore if two 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*."

In **Perera & Silva Ltd. v. Commissioner General of Inland Revenue**,[13] the Supreme Court reiterated the above position when it referred to the following paragraph from C. N. Beatie - Elements of the Law of Income and Capital Gains Taxation at page 2;

"*It has frequently been said that, there is no equity in a taxing statute. This means that tax being the creature of statute, liability cannot be implied under any principle of equity but must be found in the express language of*

[9]Chandra Industries v. State of Punjab [1972] 29 STC 558, p 563.
[10]Daulat Ram v. Municipal Committee, Lahore AIR 1941 Lah 40, p43.
[11]Interpretation of Statutes, 12th Edition (supra), page 883.
[12] (1974) 77 NLR 350, page 352.
[13] (1978) 79(2) NLR 164 at 167-168.

some statutory provision. The ordinary canons of construction apply in ascertaining the meaning of a taxing statute: "the only safe rule is to look at the words of the enactments and see what is the intention expressed by these words." If in so construing the statute the language is found to be so ambiguous that it is in doubt whether tax is attracted or not, the doubt must be resolved in favour of the taxpayer, because it is not possible to fall back on any principle of common law or equity to fill a gap in a taxing statute. "The subject is not to be taxed unless the words of the taxing statute unambiguously impose the tax upon him." However, this does not prevent the court from construing a taxing statute against the subject, where that appears to be the correct interpretation of a provision the meaning of which it may be difficult to understand. Difficulty does not absolve the court from the duty of construing a statute; it is only when ambiguity remains after the statute has been properly construed that the court is entitled to decide in favour of the taxpayer."

I shall now consider each of the arguments presented by the learned President's Counsel for the Petitioner.

The first argument of the learned President's Counsel for the Petitioner is that the Petitioner is a service oriented Statutory Corporation functioning on the basis of zero profit, and that the Petitioner does not carry out any '*trade*' at the said premises. The Petitioner has been established by the Ceylon Electricity Board Act No. 17 of 1969, and has been entrusted with the duty to develop and maintain an efficient, coordinated and economical system of electricity supply for the whole of Sri Lanka. In terms of Section 11 of the said Act, it shall be the duty of the Petitioner *inter alia* to generate or acquire supplies of electricity and to distribute and sell electricity in bulk or otherwise. Section 12 provides

inter alia that the Petitioner has the power to purchase electrical energy in bulk, and to do all other things which, in the opinion of the Board, are necessary to facilitate the proper carrying on of its business.

In **Stroud's Judicial Dictionary of Words and Phrases,**[14] the following has been set out under the word, 'Trade':

> *"Trade" is not only etymologically but in legal usage a term of the widest scope. It is connected originally with the word "tread" and indicates a way of life or an occupation. In ordinary usage, it may mean the occupation of a small shopkeeper equally with that of a commercial magnate. It may mean a skilled craft. Although it is often used in contrast with a profession, the word "trade" is used in the widest application in the appellation "trade unions".*
>
> *Formerly, "trade" was used in the sense of an "art or mystery", e.g. that of a brewer, or a tailor, but now "trade" has the technical meaning of buying and selling.*
>
> *But "trade" may have a larger meaning so as to include manufacturers. So, the business of a telegraph company is a "trade" as regards house duty.*
>
> ***It is not essential to a "trade" that the persons carrying it on should make, or desire to make, a profit.**"*

The scope of the word '*trade*' has been considered in '**Income Tax in Sri Lanka**' by E. Gooneratne as follows:[15]

[14] 6th Edition, Volume 3, at page 2691.
[15] E. Gooneratne, *Income Tax in Sri Lanka*, page 53.

Trade has a wide meaning. The meaning has been extended further by definition. The statutory definition is wider and includes every trade and manufacture and every adventure and concern in the nature of a trade."

It is true that the Petitioner is providing a service to the Public. While it may also be true that the Petitioner is not making profits by the re-sale of the electricity either generated or purchased by the Petitioner, the fact of the matter is that, that alone does not entitle the Petitioner to exemptions from taxing statutes, unless an exemption is specifically granted. It is clear from the provisions of the Act itself that a core function of the Petitioner's business is buying and selling electricity and that the Petitioner therefore *trades* in electricity. For that reason, there cannot be any doubt that the Petitioner is engaged in a trade.

However, in my view, the general nature of the Petitioner's activities alone does not make the Petitioner liable to the tax in terms of Section 247B in respect of the premises described in '**P2**'. I am of the view that the Petitioner would become liable to the said tax only if there is *trade* being carried out at the premises referred to in '**P2**'. Such a distinction is important especially in view of the fact that there may be premises occupied by the Petitioner on which only a generation plant is situated, and where there is no *trade* being carried out.

I shall now consider if there is any trade being carried out at the premises referred to in '**P2**'. The Petitioner states that the said premises number 608, Galle Road, Ratmalana, situated within the administrative limits of the 1st

Respondent Council is used as the Office of the Deputy General Manager (Western Province – South 1) of the Petitioner. According to the Petitioner, the scope of work carried out at the said office covers planning, rehabilitation, maintenance, and protection in respect of the supply of electricity to consumers.

In their Statement of Objections, the Respondents had disputed the fact that only the above activity is carried out at the said premises and had submitted marked '**1R2**' and '**1R3**', electricity bills issued by the Petitioner for which payment had been made at the said Office, thus demonstrating that commercial activity, i.e. acceptance of money for the services provided by the Petitioner, takes place at the said Office. In the written submissions filed on its behalf, the Petitioner has stated that the said Office also serves as *a dedicated place where consumers can pay their electricity bills* and that *one of the particular activity carried out at the premises is collection of payments from consumers for the electricity that one had consumed.* The fact that the Petitioner is engaged in the collection of revenue due to it, is proof that the said premises are used for a *trade*. In these circumstances, it cannot be stated that the Petitioner does not carry out a trade from the said premises. I must however add a word of caution – i.e. the above conclusion reached by me is peculiar to the facts and circumstances of this application, and that whether a trade is being carried on at any particular premises would depend on the facts of each case.

Taking into consideration the totality of the material that has been placed before this Court, I am of the view that the Petitioner is in fact carrying out a *trade* at the premises in respect of which '**P2**' has been issued.

The second argument of the learned President's Counsel for the Petitioner is that even though Section 247B, which was introduced by the Municipal Councils (Amendment) Act No. 42 of 1979 uses the word '*trade*' in the English text of the Amendment Act, the Sinhala text uses the word '**කර්මාන්තය**', which the Petitioner argues, means '*industry',* and that, as the Petitioner is not carrying out an *industry* at the said premises, the Petitioner is not liable to pay the aforementioned tax. He therefore submitted that the decision contained in '**P2**' is in any event *ultra vires* the provisions of the Act.

The Petitioner has referred to the judgment of this Court in the case of **Crest Gems Ltd v. The Colombo Municipal Council**[16] where a similar argument was made in respect of taxes charged by the respondent under Section 247B of the Municipal Councils Ordinance from the petitioner who was engaged in the business of buying and exporting gems, and other export related activities in the premises in question. It was held in that case that there was an inconsistency between the English and Sinhala provisions of Section 247B of the Municipal Councils Ordinance, and that where there is such an inconsistency between the two languages, the Sinhala language text prevails. This Court held further that the activity of buying and exporting gems is:

> "*a trade or 'වෙළඳාම' in Sinhala and does not fall within the meaning of the word 'කර්මාන්තය' since the petitioner does not manufacture in the said place*."

The learned President's Counsel for the Respondents submitted that even though the Sinhala text of the Amendment Act has used the word '**කර්මාන්තය**', the said word has not been used in the context of an '*industry*', but in the

[16][2003] 1 Sri LR 370.

context of a '*trade*', and therefore submitted that there is no inconsistency between the Sinhala and English texts of the said Section. This position is supported by the following definition of the word, '*trade'* in the **Malalasekera English Sinhala Dictionary**:

> "වෙළඳාම, වෙළඟෙළඳාම, ව්‍යාපාරය, (අත්කම්) ශිල්පය, කිසියම් ව්‍යාපාරයක යෙදුන අය (සමස්තයක් වශයෙන්) (t's) වෙළඳ, සුළං, **කර්මාන්තය** වෙළඳාමෙහි යෙදෙ, වෙළඳාම් ක, ගුට් බැට ඇනුම් බැණුම් හුවමාරු කරන t in ගෙවීමක කොටසක් වශයෙන් හුවමාරුව"

Thus, '**කර්මාන්තය**' can be described as a *trade* in the ordinary sense, a fact which has not been considered by this Court in **Crest Gems Ltd v. The Colombo Municipal Council**.[17] Therefore, I am unable to agree with the restrictive position taken by this Court in **Crest Gems Ltd v. The Colombo Municipal Council**[18], that taxes under Section 247B of the Municipal Councils Ordinance cannot be imposed on a 'trade' where no manufacturing is being carried out in the premises in question.

In a subsequent case involving the same parties, **Crest Gems Ltd v. The Colombo Municipal Council and others**,[19]two judges of this Court held as follows:

> "*It is asserted by the Appellant that the Respondent can impose a tax only In respect of a 'Karmanthaya' as stated In the Sinhala text. It is pertinent to note that the Municipal Council Ordinance does not give an interpretation to the word 'Karmanthaya'. Therefore the Respondent adverted to the dictionary meaning of the said word 'Karmanthaya'.*

[17] Ibid.
[18] Ibid.
[19] CA (PHC)16/2000; CA Minutes of 14th January 2016.

It is contended by the Respondent that in the case cited by the Appellant to vit. Crest Gems Ltd v. The Colombo Municipal Council, Her Ladyship has not considered the dictionary meaning of Karmanthaya, and hence this Court is not bound to follow the same.

Therefore the Respondent has adverted Court to the dictionary meaning of 'Industry'. Industry means Velandama, viyaparaya, Karmanthaya. Hence it is crystal clear the word TRADE means KARMANTHAYA, which also means velandama (business) or sale."

Whilst one must not strain the language in a statute to impose a tax liability, one must equally be mindful not to strain in favour of the taxpayer when the wording is clear. In view of the material referred to above, I am satisfied that the word '**කර්මාන්තය**' is one of the words to which the word *trade* can be translated into, and that the said word '**කර්මාන්තය**' in Section 247B does not, and should not be restricted to an *industry.* In the said circumstances, I am of the view that there is no inconsistency or contradiction between the Sinhala and English texts of the said Section, and that the liability of the Petitioner remains unaffected.

I shall now consider the final argument of the learned President's Counsel for the Petitioner, which is that the notification issued by the 1st Respondent marked '**P1**' declaring the various '**කර්මාන්ත**' which would be liable to pay the said tax is *ultra vires* the provisions of Section 247B, as the Petitioner is not engaged in an *industry* at the said premises and to classify its office as an *industry* is illegal.

The Petitioner has produced with his petition marked '**P1**', a notice issued by the 1st Respondent and published in Government Gazette No. 1542 dated 19th March 2008, by which the particular '**කර්මාන්ත**' that are liable to pay tax in terms of Section 247B have been specified. In essence, the purpose of '**P1**' is to set out in detail the *trades* that in the view of the Respondents are liable for the tax in terms of Section 247B. In paragraph 6 of its petition, the Petitioner has admitted that the 1st Respondent is empowered to impose and levy a tax on any '**කර්මාන්ත**' carried on within its administrative limits in terms of Section 247B of the said Ordinance.

The learned President's Counsel for the Respondents drew the attention of this Court to item 2 of '**P1**' (page 859) which sets out the various activities that are considered to be '**කර්මාන්ත**' or *trade*, for the purposes of Section 247B. The learned President's Counsel for the Respondents submitted that the activity carried out by the Petitioner at the said premises would come under items 2, 68 and 205 of the activity set out in '**P1**', which are re-produced below:

> "(ii) **කර්මාන්ත විෂයෙහි බදු අයකිරීම - 247ආ වගන්තිය**
>
> **කර්මාන්ත විෂයෙහි බදු අයකරනු ලබන ස්ථාන පහත දැක්වේ.**
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> 02. **කාර්යාල බඩුබාහිරාදිය ගබඩා කිරීම සහ/හෝ විකිණීමේ ස්ථානයක් පවත්වාගෙන යාම**
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> 68. **වාණිජමය කාර්යයන් සඳහා කාර්යාලයක් පවත්වාගෙන**
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> 205. **මහ නගර සභා ආඥා පනතේ 247 අ හෝ 247 ඇ වගන්තිය යටතේ බලපත්‍ර ගාස්තු හෝ වෙළඳ ව්‍යාපාර විෂයයෙහි බදු, නොගෙවන ඉහතින් සඳහන් නොවූ වාණිජ ව්‍යාපාරයක් පවත්වාගෙන යාම**"

It was the contention of the learned President's Counsel for the Respondents that the Petitioner is carrying on a *commercial office* at the aforementioned

premises by virtue of accepting payment of electricity bills, a fact which has now been accepted by the Petitioner. He submitted that the carrying out of a commercial operation at the said Office would attract the tax in terms of Section 247B(1) and therefore that the contention of the Petitioner is misconceived.

Having examined '**P1**' and the documents produced by the Respondents marked '**1R4**' – '**1R6**', I am satisfied that, even though the Petitioner had initially claimed that the said office is being used only as the Office of the Deputy General Manager, commercial activity is in fact being carried out at the said premises, and that by virtue of item 68 of '**P1**', the Respondents are entitled to impose on the Petitioner, the tax in terms of Section 247B.

It is in the above background that the Petitioner has submitted in its written submissions that '**P1**' is *ultra vires* the provisions of Section 247B of the Ordinance, for the reason that the Petitioner is not engaged in an *industry* at the said premises as none of the said activities referred to in '**P1**'can be classified as a '**කර්මාන්ත**'. Quite apart from this not being the case that the Petitioner presented to this Court in its petition, I have already taken the view that a trade can be classified as a '**කර්මාන්තය**', and therefore elaborating in '**P1**' the different types of *trade* that are liable for the said tax, in my view, is not *ultra vires* the power vested in the Respondents by Section 247B of the Ordinance.

Taking into consideration all of the above matters, I am of the view that the Petitioner is liable for the payment of the tax in terms of Section 247B, and

that the issuance of '**P2**' is not *ultra vires* the provisions of the Ordinance and/or the powers of the 2nd Respondent.

There is one final matter that I wish to advert to. The learned President's Counsel for both parties moved that this Court proceed to consider this matter and deliver judgment even though the Supreme Court has granted leave to appeal to the Petitioner in respect of a judgment of the Provincial High Court arising from an issue, said to be identical to the issue that is before this Court. It must however be noted that this Court has not been apprised of the nature of the activity carried out at the premises which is the subject matter of the said appeal. Furthermore, this Court has not been apprised of the questions of law on which leave to appeal has been granted, nor has a copy of the petition of appeal been filed of record. In any event, the conclusion I have reached is specifically with regard to the activity carried out at the particular premises in respect of which '**P2**' had been issued.

In the above circumstances, this Court does not see any legal basis to grant the relief prayed for. This application is accordingly dismissed, without costs.

Judge of the Court of Appeal

Mahinda Samayawardhena, J

I agree

Judge of the Court of Appeal