

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

In the matter of an application of a Case Stated under section 10 (1C) (b) of the Customs Ordinance read with section 8(1) (b) and section 11A of the Tax Appeals Commission Act No. 23 of 2011 as amended by Act No.20 of 2013.

Director General of Customs
Customs House, No. 4
Main Street,
Colombo 11.

APPELLANT

CA CASE NO: CA/ TAX/ 85/ 2025

Vs.

CIC Holdings PLC,
No 199,
Kew Road,
Colombo 2.

RESPONDENT

Before: **B. Sasi Mahendran, J**
 Adithya Patabendige, J

Counsel: Chaya Sri Nammuni, DSG for the Appellant.

Riad Ameen and Varana Wijenayake with Charindi Kumarasinghe for the Respondent.

Written 25.09.2026 (by the Appellant)
Submissions: 10.09.2025 (by the Respondent)
On

Supported On: 02.09.2026

Order On: 05.10.2026

B. Sasi Mahendran,

This is a Case Stated submitted for the opinion of this Court by the Tax Appeals Commission (hereinafter referred to as “TAC”) under Section 11A of Act No.23 of 2011 (as amended) (hereinafter referred to as the ‘Act’). CIC Holdings PLC is a company incorporated in Sri Lanka and engaged in the agri-business, healthcare and consumer goods sector.

The Case Stated consists of thirteen questions of law, formulated by the TAC, and forwarded to the Court of Appeal for its opinion.

When the matter was taken up for argument, the Respondent raised a preliminary objection that there is no provision under the said Act enabling the TAC to refer this matter to the Court of Appeal, as the Appellant is the Director General of Customs.

The main contention of the Respondent is that, pursuant to Section 11A of the said Act, as amended, only matters falling within the scope of Section 7(1) (a) of the said Act confer jurisdiction on the TAC to refer a matter to the Court of Appeal for its opinion on questions of law.

The facts about the appeal in this case are, in brief, as follows:

The Respondent appealed to the TAC against the decision of the Appellant, whereby the Customs authorities had classified the products under HS Heading 18.06. The TAC set aside the decision of the Appellant and allowed the appeal preferred by the Respondent. Thereafter, upon the application of the Appellant, the matter was referred to the Court of Appeal.

It should be noted that TAC, in its Case Stated, has indicated that the Director General of Customs had no jurisdiction to request a Case Stated to the Court of Appeal. This position is reflected in paragraph 5 on page 4 of the Case Stated.

Our courts have held that an appeal is a statutory right and must be expressly created and granted by statute. This dictum was considered by Jameel, J in **Martin v Wijewardene** [1989] 2 SLR 409 at page 419, where he held that,

“In the light of these authoritative statements it is not possible to accept the contention that there is implied in Article 138 an unfettered "RIGHT OF APPEAL" to the Court of Appeal. Nor, is it possible to accept the contention that this alleged "RIGHT OF APPEAL" under this Article 138 is only fettered to the extent provided for in the Constitution or other Law. An Appeal is a Statutory Right and must be expressly created and granted by statute. It cannot be implied. Article 138 is only an enabling Article and it confers the jurisdiction to hear and determine appeals to the Court of Appeal. The right to avail of or take advantage of that jurisdiction is governed by the several statutory provisions in various Legislative Enactments. That is to say, for appeals from the regular courts in the Judicature Act, and the Procedural Laws pertaining to those courts.”

The question that arises for determination is whether the Appellant has a right of appeal under the said Act.

What is a **right of appeal**,

Bryan A. Garner, *Black's Law Dictionary* (11th ed.), defines “right of appeal” as: at page 1585,

“(16c) the legal entitlement to request that an appellate court review a lower court's decision with the possibility of changing it.”

In terms of Section 7(1) (b) of the said Act, a determination made by the Director-General of Customs may be appealed against to the TAC. The said section also contains a provision enabling any person aggrieved by a decision of the Commissioner-General of Inland Revenue to appeal against such decision to the TAC.

For ease of reference, I reproduce below Section 7(1) (b) of the said Act, as amended by Section 4 of Act No. 20 of 2013.

“**Section 4:** Section 7 of the principal enactment as last amended by the Tax Appeals Commission (Amendment) Act, No.4 of 2012 is hereby further amended as follows: -

(1) by the repeal of subsection (1) thereof and the substitution therefor of the following: -

"(1) A person who is aggrieved by the determination –

(a) of the Commissioner-General of Inland Revenue appointed in terms of the Inland Revenue Act, (hereinafter referred to as the "Commissioner-General") given in respect of any matter relating to imposition of any tax, levy, charge, duty or penalty under the provisions of any of the enactments specified in Column I of Schedule I, or Schedule II to this Act; or

(b) of the Director-General of Customs (hereinafter referred to as the "Director-General") given in respect of any matter specified in subsection (1A) of section 10 of the Customs Ordinance (Chapter 235),

may appeal to the Commission in accordance with the provisions hereinafter set out:”

According to the above section, the TAC is empowered to hear and determine appeals against determinations made by:

(a) the Commissioner-General of Inland Revenue; and

(b) the Director-General of Customs

Section 8 of the said Act provides for the procedure to be followed in referring an appeal to the TAC. In terms of subsection 8(2), where the Director-General fails to make a determination within the period specified under the Customs Ordinance, the person aggrieved by such failure is also entitled to make an appeal to the TAC.

For ease of reference, I reproduce below Section 8(2) of the said Act,

“(2) Where the Director-General fails to give such determination within the time period specified in subsection (1B) of section 10 of the said Ordinance, such person also may appeal to the Commission at the expiration of the time period specified in subsection (1B) of section 10 of the said Ordinance”

Once the TAC has made its determination, a right of appeal against such determination is available under Section 11A of the said Act.

It is pertinent to refer to the said Section 11A of the said Act (as amended)

“8. The following new section is hereby inserted immediately after section 11 of the principal enactment and shall have effect as section 11A of that enactment: -

11A. (1) Either the person who preferred an appeal to the Commission under paragraph (a) of subsection (1) of section 7 of this Act (hereinafter in this Act referred to as the “appellant”) or the Commissioner-General may make an application requiring the Commission to state a case on a question of law for the opinion of the Court of Appeal. Such application shall not be entertained unless it is made in writing and delivered to the secretary to the Commission, together with a fee of one thousand and five hundred

rupees, within one month from the date on which the decision of the Commission was notified in writing to the Commissioner-General or the appellant, as the case may be.”

In the said section, the appeal is available only to the following persons.

- a. A person who preferred an appeal to the Commission under paragraph 7(1)(a) of the Act
- b. A Commissioner general

Only these two persons can require the Commission to state a case on a question of law for the opinion of the Court of Appeal. Especially Section 7(1)(b) of the said Act and the Director-General of Customs are omitted.

I also note that, when a Case Stated is taken up by the Court of Appeal under Section 11A (6), the Court is empowered to hear and determine any question arising from the case stated and, in accordance with its determination, may:

- (a) confirm, reduce, increase, or annul the assessment determined by the Commission;
- (b) remit the case to the Commission together with the opinion of the Court; and
- (c) where the case is remitted by the Court, direct the Commission to revise the assessment

Furthermore, the said Act empowers the Court of Appeal to make an interim determination in respect of the amount of tax recorded by the Commissioner-General.

For ease of reference, I reproduce below subsections (6) and (7) of the said Act.

“(6) Any two or more Judges of the Court of Appeal may hear and determine any question of law arising on the stated case and may in accordance with the decision of Court upon such question, confirm, reduce, increase or annul the assessment determined by the Commission, or may remit the case to the Commission with the opinion of the Court thereon. Where a case is so remitted by the Court, the Commission shall revise the assessment in accordance with the opinion of the Court.

(7) The Court of Appeal may, pending the determination of the case stated to such Court, make an interim determination as regards the amount of tax recoverable by the Commissioner-General in respect of the amount of tax in dispute, on the basis of a report furnished by the Commissioner-General.”

Having considered the above provisions together, it is apparent that the Act confers jurisdiction on the Court of Appeal to determine questions arising from an assessment determined by the TAC. My understanding is that Section 11A (6) of the said Act empowers the Court to hear and determine questions of law arising from the assessment determined by the Commission.

I am also mindful that Section 11A (9) of the said Act confers a right of appeal to the Supreme Court on the Commissioner-General or any other party. However, it is noteworthy that the Director-General of Customs is omitted.

I am mindful that in the original Act No. 23 of 2011, Section 7(1) of the said Act permits an appeal by a person aggrieved by the determination of the Commissioner-General of Inland Revenue. Thereafter, the amended Act No. 20 of 2013 amended the said section, including a new subsection (b) allowing a person who is aggrieved by the determination of the Director-General of Customs in respect of any matter specified in subsection (1A) of Section 10 of the Customs Ordinance.

However, it is unlikely that the legislature intended to omit the right of appeal against a determination made by the TAC in respect of a decision of the Director-General of Customs, including the right to state a case on a question of law for the opinion of the Court of Appeal.

At this juncture, it is pertinent to refer to the N.S. Bindra's Interpretation of Statutes, 9th edition at pages 424 and 425,

“13. COURTS NOT TO MODIFY LANGUAGE OF EXPEDIENCY, JUSTICE AND REASONABLENESS

In **Abel v. Lee**, Willes J said ‘I utterly repudiate the notion that it is competent to a judge to modify the language of an Act of Parliament to bring it into accordance with his views as to what is right and reasonable.

“It is not open to add to the words of the statute or to read more in the words than is meant, for that would be legislating and not interpreting a legislation. If the language of a statutory provision is plain, the court is not entitled to read something in it which is not there, or to add any word or to subtract anything from it.”

In **Abley v. Dale**, Jervis CJ observed:

“We assume the functions of legislators when we depart from the ordinary meaning of the precise words used, merely because we see, or fancy we see, an absurdity or manifest injustice from an adherence to their literal meaning. If the language of a statute is clear and unambiguous, the court cannot alter a statute on the ground that its effect will be harmful.”

In **Miller v. Salomons**, Pollock CB said:

“If the meaning of the language be plain and clear we have nothing to do but to obey it—to administer it as we find it, and I think, to take a different course is to abandon the office of judge, and to assume the province of legislation.”

When the language of the statute is clear, unambiguous and in express terms, then all that is required is to expound those words in their natural and ordinary sense, unless in doing so, some absurdity or some repugnance or inconsistency with the rest of the provisions or statute would result, in which case, it will be permissible to modify the construction for avoiding that absurdity and nothing more.”

I am also mindful that our Courts have held that the questions of law set out in a Case Stated must relate to the assessment in question. In this regard, my understanding is that customs duty and an assessment are distinct concepts and should not necessarily be treated as the same.

For the said reasons, I uphold the preliminary objections raised by the Respondent and dismiss the appeal.

JUDGE OF THE COURT OF APPEAL

Adithya Patabendige, J.

I AGREE

JUDGE OF THE COURT OF APPEAL