

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

In the matter of an application for a case stated 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).

**CA Case No: CA/TAX/30/2021**

**Tax Appeals Commission No.**

**TAC/VAT/024/2015**

Commissioner General of Inland Revenue,  
Department of Inland Revenue,  
Inland Revenue Building,  
Sir Chittampalam A. Gardiner Mawatha,  
Colombo 02.

**Appellant**

**Vs.**

Rank Entertainment Holdings (Private) Limited,  
No. 9, 15<sup>th</sup> Lane,  
Galle Road,  
Colombo 03.

**Respondent**

**Before:**

**M.C.B.S. Morais J.**

**&**

**Annalingam Premashanker J.**

**Counsel:** Manohara Jayasinghe, DSG for the Appellant.  
Dr. Shivaji Felix, PC with Nivantha Satharasinghe, Sajith Nawaratne and Asoka Obeysekara instructed by Mallawarachchi Associates for the Respondent.

**Written Submissions:** By the Appellant – on 18.03.2024, 19.01.2026  
By the Respondent – on 18.03.2024, 26.08.2025

**Argued on:** By way of written submissions

**Decided On:** **07.05.2026**

### **ORDER**

**M.C.B.S. Morais J.**

This is an appeal by way of case stated against the determination of the Tax Appeals Commission dated 17<sup>th</sup> of February 2021 in the case of TAC/VAT/024/2015.

This appeal is filed under and in terms of section 11A of the Tax Appeals Commission Act No. 23 of 2011 (as amended). The matter is primarily under the provisions of section 36 of the Value Added Tax Act No.14 of 2002 as amended (hereinafter will be referred to as the VAT Act).

The tax in dispute is related to the taxable period 10060, 10090, 10120, and 11030 and the taxable amount in issue is Rs. 15,071,000.

## **FACTUAL BACKGROUND**

The Rank Enterprise Holdings (Pvt) Limited (hereinafter sometimes will be referred to as the Respondent) is a private limited company incorporated under the Companies Act of 2007, and domiciled in Sri Lanka. The Respondent is operating in the field of hotels, tourism as well as casinos. The Respondent has submitted the assessment for above taxable periods, which were rejected by the Assessor.

Being aggrieved by the said assessment, the Respondent has appealed to the Commissioner General of Inland Revenue (hereinafter will be referred as the Appellant), and by the determination dated 3<sup>rd</sup> of September 2015, the Appellant has confirmed the said assessments. Being dissatisfied with the said determination, the Respondent has appealed to the Tax Appeals Commission (TAC), which after considering both parties annulled the assessments issued by the Appellant by the determination dated 17<sup>th</sup> of February 2021. The Appellant being aggrieved by the said determination has requested the TAC to cause a case stated for the opinion of the Honorable Court of Appeal. Accordingly, the following questions of law have been raised by the Appellant.

*“1. Whether the Tax Appeals Commission acted in excess of its limited jurisdiction as it cannot assume jurisdiction it does not possess to decide on questions of law.*

*2. Whether the Tax Appeals Commission was empowered by the Hon. Minister of Finance who appointed it to hear and determine the appeal preferred by the Appellant, to give its determination without hearing the matters raised in the appeal.*

*3. Whether the tax appeals Commission has erred in law, in determining a question of law and failed to give due consideration to the judgement of the case. A.M. Ismail Vs CIR (SLTC Vol. VI, page 156) that question of law have to be decided by courts and the Tax Appeals Commission can decide on Questions of fact.”*

The TAC determination has been made on 17<sup>th</sup> of February 2021 and the case stated dated 26<sup>th</sup> of November 2021 was filed in the court of appeal on 7<sup>th</sup> of December 2021. However,

the case has been only supported on 12<sup>th</sup> of February 2024, which is well after a lapse of 2 years.

In light of the above, the Respondent has taken up a preliminary objection that the Appellant has not taken adequate steps to support the case until now, which is after two years' time period from which the case has been stated. On this basis, the Respondent states that the Appellant has abated their case under section 402 of the Civil Procedure Code. Accordingly, the Respondent has taken up the following preliminary objection.

*“The purported appeal was filed by the Appellant (Commissioner General of Inland Revenue) by way of a Stated Case for the opinion of Your Lordships' Court on certain questions of law arising from the determination of the Tax Appeals Commission which was dated 26 November 2021. The Stated Case was transmitted to the Court of Appeal on 3 December 2021. However, steps were taken by the Appellant to support his application only by motion dated 9 February 2024. This is well after two years from the date of transmitting its Stated Case. This results in the appeal being abated by operation of law.”*

## **ANALYSIS**

It is the contention of the Respondent that the tax cases are to be considered as civil matters under section 11A(3) and 11A(9) of the Tax Appeals Commission Act No.23 of 2011 (as amended) and therefore, section 402 of the Civil Procedure Code is applicable.

The section 11A(3) and 11A(9) of the Tax Appeals Commission Act No.23 of 2011 (as amended) is reproduced below;

*“(3) For the purpose of the application of the provisions of the Stamp Duty Act, No. 43 of 1982.*

*(a) all proceedings before the Court of Appeal on any case stated under this section or incidental to the hearing, determination or disposal of any such*

*case, shall be deemed to be civil proceedings before the Court of Appeal of the value of five thousand rupees or of such greater amount as is set out by the Commission in the stated case as the amount of the tax in dispute;*

*(b) every such case stated shall, together with all books, documents and papers annexed thereto by the Commission, be deemed to be a single exhibit in civil proceedings before the Court of Appeal; and*

*(c) the Commissioner-General, if he is the appellant, shall be deemed to be a Government officer suing, or if he is the respondent to the appeal, a Government officer being sued, in a suit virtue officii.*

*(9) For the purposes of enabling the Commissioner-General or any other party to appeal to the Supreme Court against any order of the Court of Appeal under subsection (6), and for the purpose of the application of the provisions of any written law relating to appeals to the Supreme Court from the decisions of the Court of Appeal –*

*(a) an order made by the Court of Appeal under subsection (6) shall, together with any order of that Court under subsection (8), be deemed to be a final judgment of the Court of Appeal in a civil action between the Commissioner-General and such other party;”*

It needs to be noted that the clear language of the above provision mentions that all the proceedings before the court of appeal in the matter of a case stated under the above provision shall be treated as a civil matter. However, at the outset of the section 11A(4), it explains that the purpose of this section is solely for the application of the Stamp Duty Act and not otherwise. Section 11A(9) further states that the order of the court of appeal shall be deemed to be considered as a final judgment in a civil matter between the Appellant and other party. However, the above provision needs to be considered in line with section 402 of the Civil Procedure code for the purpose of the preliminary objection raised by the Respondent.

The section 402 of the Civil Procedure Code allows a court to order an action to abate, if the plaintiff fails to take necessary steps to prosecute the case within a specified period. The section reads as follows;

*“402. When court itself may order action to abate.*

*If a period exceeding twelve months in the case of a District Court or Family Court, or six months in a Primary Court, elapses subsequently to the date of the last entry of an order or proceeding in the record without the plaintiff taking any steps to prosecute the action where any such step is necessary, the court may pass an order that the action shall abate.”*

Section 402 of the Civil Procedure Code mentions that, in a District Court or a Family Court, if a period of more than twelve months has been passed since the last recorded order or proceeding in a case, the court may abate it. In a Primary Court, the same rule shall apply if more than six months have passed. During this time, if the plaintiff has not taken any steps required by the law to continue the case, the court may order that the action shall be terminated. The provision thus allows the court to terminate the case on account of the plaintiff's prolonged inaction, but only where such inaction follows a period exceeding the specified time and only where the steps legally necessary to be taken by the plaintiff were not taken. As the above provision clearly states, this rule applies only to original courts (District Court, Family Court, and Primary Court) where the action is first filed and it does not apply to the Court of Appeal, which is an appellate court. Therefore, abatement order under section 402 cannot be invoked in an appeal heard by the Court of Appeal in the matter of a case stated.

The provisions of the Civil Procedure Code governing appeals made to the Court of Appeal, specifically sections 753 to 777, remain entirely silent on the issue of abatement of proceedings. In the absence of any expressed or implied reference to abatement within these dedicated appellate provisions, this Court deems it neither necessary nor appropriate to incorporate a novel interpretation onto the statutory framework. Such an expansion would improperly extend the doctrine of abatement originally confined to trial court proceedings, to appellate jurisdictions, thereby introducing concepts alien to the clear legislative intent.

The procedural framework for case stated is clearly laid down in section 11A(1), 11A(2) and 11A(4) of the Tax Appeals Commission Act No.23 of 2011 as amended by Act No.20 of 2013, which reads as follows;

*“(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.*

*(2) The case stated by the Commission shall set out the facts, the decision of the Commission, and the amount of the tax in dispute where such amount exceeds five thousand rupees, and the party requiring the Commission to state such case shall transmit such case, when stated and signed to the Court of Appeal, within fourteen days after receiving the same.*

*(4) At or before the time when he transmits the stated case to the Court of Appeal, the party requiring it shall send to the other party, a notice in writing informing him that a case has been stated on his application and shall supply him with a copy of the stated case.”*

According to the procedure laid down under Tax Appeals Commission Act No.23 of 2011 (as amended), the party aggrieved by the decisions of the TAC is required to make an application for case stated within one month, from the date of the determination of the TAC notified to the aggrieved party. There is no timeline provided for TAC to issue the case stated. However, once the case stated is issued, it needs to be transmitted to the court of appeal within 14 days as it was provided by the TAC. Accordingly, under section 11A(4) the aggrieved party is required to send a notice in writing to the other party, that the case has been stated and to supply a copy of the case stated.

Further, the Tax Appeals Commission Act No. 23 of 2011 (as amended) fails to set out any procedure to be followed in relation to the cases from the TAC. The only imperative requirement for the aggrieved party is to transmit the case stated to the Court of Appeal within 14 days, and the other party to be notified.

In the Supreme Court Rules governing the filing of cases in the Court of Appeal, no procedure is prescribed for cases dealing with the so called "transmitted" matters.

Rule 3(1)(a) of the Court of Appeal (Appellate Procedure) Rules of 1990 applies only to applications made to the Court of Appeal under Articles 141 or 142 of the Constitution. Rule 3(1)(b), though applicable to applications under Article 138 of the Constitution, is limited to revisions or *restitutions in integrum*.

When considering the facts and circumstances of this case in their entirety, it is evident that the case stated was duly transmitted to the Court of Appeal on the 3<sup>rd</sup> of December 2021 and formally filed in the registry on the 7<sup>th</sup> of December 2021. Furthermore, the exhibits 'A' and 'B' tendered by the Appellant clearly demonstrate that the notice of the case stated was issued to the Respondents in due course, in accordance with the prescribed procedural requirements.

Thereafter, it is the administrative duty of the Registrar to accept and register the case stated, which is submitted to the court within 14 days of issuance. Once, the case stated is accepted, the applicable section would be Rule 3(3) of the Court of Appeal Appellate Procedure Rules of 1990, which imposes a duty on the registrar to list the case for support in the open court within two weeks of time.

Rule 3(3) Court of Appeal Appellate Procedure Rules of 1990 reads as follows;

*“(3) Every application which is accepted and registered shall be listed for support in open Court within two weeks of registration.”*

It is accordingly the duty of the Registrar to list the case stated for support within the timeline prescribed by the procedural rules. Regrettably, no such listing has been effected for nearly two years. This Court records with grave concern, that the aforementioned internal procedure was not adhered to in this instance, resulting in a prolongation of the matter.

While the procedure governing appeals by way of case stated under the relevant statutory provisions does not prescribe a rigid timeline for supporting the application, it remains best practice in proceedings before court, that the Attorney-at-Law appearing for a party is obliged to take proactive and diligent steps to support the application, to monitor its progress, and to prosecute the appeal with the utmost due diligence. Therefore, the protracted inaction on the part of the Appellant cannot be overlooked.

It should be noted that the State, notwithstanding its position as a public authority, is not a privileged suitor in judicial proceedings. These requisites and obligations must therefore apply equally to the State and the taxpayer.

Nevertheless, the paramount interests of justice imperatively demand fairness and equality to all parties involved, including the court administration and its Registry. It would be manifestly unjust to penalize a litigant unduly and disproportionately solely for an administrative oversight or lapse on the part of the Registry, over which the litigant exercised no control and could not reasonably have remedied. While litigants bear a primary responsibility to prosecute their cases with due diligence, the court system must uphold its own institutional duty to administer justice efficiently and fairly, thus procedural technicalities do not override substantive rights.

### **Conclusion**

After careful consideration of the facts presented before this court, this court finds that the Respondent's preliminary objection lacks sufficient merit. Hence, the case shall proceed to be heard on its substantive merits.

Therefore, the preliminary objection raised by the Respondent is overruled.

**Judge of the Court of Appeal**

**Annalingam Premashanker J.**

**I agree**

**Judge of the Court of Appeal**