

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

*In the matter of an Application for Writs in the nature of  
Certiorari, Prohibition and Mandamus in terms of Article  
140 of the Constitution of the Democratic Socialist  
Republic of Sri Lanka*

Nihal Sri Ameresekere  
167/4, Sri Vipulasena Mawatha  
Colombo 10.

**PETITIONER**

**Case No. 1661/2003**

**Vs.**

1. Commissioner General of Inland Revenue  
Sir Chittampalam A Gardiner Mawatha,  
Colombo 2.
2. Director General of Customs  
Customs House, Bristol Street,  
Colombo 1.
3. Director General of Excise  
28, Staples Street,  
Colombo 2.
4. Controller of Imports & Exports  
75 1/3, 1<sup>st</sup> Floor, Hemas Building  
York Street,  
Colombo 1.
5. Controller of Exchange,  
Central Bank of Sri Lanka  
5<sup>th</sup> Tower, Level 7, Janadhipathi Mawatha,  
Colombo 1.
6. Governor, Central Bank of Sri Lanka  
Chairman, Monetary Board of Sri Lanka  
1<sup>st</sup> Tower, Level 15,  
30, Janadhipathi Mawatha,  
Colombo 1.
7. Chairman, Commission to Investigate Allegations  
of Bribery or Corruption  
36, Malalasekera Mawatha,  
Colombo 7.
8. Secretary, Ministry of Finance  
& Secretary to the Treasury  
Secretariat,  
Colombo 1.

9. Minister of Finance  
Secretariat,  
Colombo 1.
10. Hon. Speaker of Parliament of Sri Lanka  
Parliament of Sri Lanka  
Sri Jayawardenepura  
Kotte.
11. Secretary to His Excellency the President  
Presidential Secretariat  
Colombo 1.
12. Hon. Attorney General  
Attorneys General's Department,  
Colombo 12.

## **RESPONDENTS**

**TO: HIS LORDSHIP THE HONOURABLE PRESIDENT AND THEIR LORDSHIPS THE OTHER HONOURABLE JUDGES OF THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

**WHEREAS** this Application was filed on 29.9.2003 in the circumstances of the Petitioner *crusading* against the *perverse* Inland Revenue (Special Provisions) Acts Nos. 10 and 31 of 2003, referred to as the '*infamous amnesty*'.

**AND WHEREAS** the 11<sup>th</sup> Respondent, Secretary to the President by Affidavit dated 15.12.2003, supported the Petitioner's Application and *concurred* therewith, including the reliefs prayed for therein; and the successor in Office of the Secretary to the President had not *retracted* on such position, *but on the contrary*, both the 8<sup>th</sup> Respondent, Secretary, Ministry of Finance and 11<sup>th</sup> Respondent, Secretary to the President, had intimated that they concurred with the stance of the Petitioner.

**AND WHEREAS** as a consequence of the Petitioner's endeavours, a Reference having been made under Article 129 of the Constitution by the President of Republic to His Lordship Chief Justice, the Supreme Court in SC Reference No. 1/2004 *denounced* the aforesaid perverse Statutes, *inter-alia*, *castigating* them;

- '*as inimical to the rule of law*'
- '*to be violative of the 'Universal Declaration of Human Rights and International Covenant on Civil & Political Rights*'
- '*as having defrauded public revenue, causing extensive loss to the State*'

**AND WHEREAS** in the face of the *public outcry* against such perverse Statutes, *and the aforesaid Opinion of the Supreme Court*, the Legislature by Inland Revenue (Regulation of Amnesty) Act No. 10 of 2004 *repealed* all the *obnoxious* provisions of the aforesaid Statutes, and retained only the *pure* Income Tax Amnesty, consequent to SC Determination No. 26/2004 on the corresponding Bill, *reiterating* the foregoing *castigations* of the aforesaid Statutes.

**AND WHEREAS** consequently the Petitioner, as then Chairman of the Public Enterprises Reform Commission, having been directed by the President of Republic, to inquire into the foregoing, the Petitioner discovered that even as late as June 2005, the 1<sup>st</sup> Respondent, Commissioner General of Inland Revenue and/or the statutory authorities had not given effect to the provisions of the said Inland Revenue (Regulation of Amnesty) Act No. 10 of 2004 enacted by the Legislature, and further that no action had been taken on the colossal VAT fraud, which had been discovered and queried by the Auditor General at that time in June 2005.

**AND WHEREAS** in the context of the said *repealing* of the *obnoxious* provisions of the aforesaid impugned Statutes, the Petitioner by Motion dated 20.7.2005 moved to amend the prayers in this Application.

**AND WHEREAS** in the given circumstances, discussions having been had with late Attorney General K.C. Kamalabayson P.C., the Attorney General appearing for the Respondents having consented to the amendment of prayers, intimated to Your Lordship's Court on 11.10.2005 that Terms of Settlement are to be filed in this matter.

**AND WHEREAS** thereafter this matter came up before Your Lordships' Court from the said date, 11.10.2005 up to 29.3.2012 on **43 days**, *as per the Schedule attached marked "A"*, essentially for the purpose of concluding the said Terms of Settlement, which had been drafted.

**AND WHEREAS** in conformity with what is stated herein, a draft of the Terms of Settlement, *after several revisions*, was finalized in March 2009, and set out in a Consent Motion submitted to the Attorney General, *which is attached marked "B"*

**AND WHEREAS** *intriguingly* the said Terms of Settlement were not entered into, notwithstanding, we on behalf of the Petitioner, having addressed the following Letters to succeeding Attorney Generals, with copies thereof to the Respondents, attaching drafts of the Terms of Settlement, which was in the process of formulation.

- To Attorney General C.R. de Silva P.C. – Letters dated 11.9.2007, 30.1.2008, 2.4.2008 and 24.7.2008 (*attached compendiously marked "C"*)
- To Attorney General Mohan Peiris P.C. – Letters dated 19.3.2009 and 11.2.2011 (*attached compendiously marked "D"*)
- To Attorney General E. Wanasundara, P.C. – Letter dated 15.3.2012 (*attached marked "E"*)

**AND WHEREAS** we on behalf of the Petitioner filed Motion dated 17.11.2008 in Your Lordships' Court to have this matter referred to the Supreme Court in terms of Article 126(3) of the Constitution, *vis-à-vis*, the violation of fundamental rights, whereupon assurances was given by the Attorney General, that the Terms of Settlement would be finalized, which however did not happen.

**AND WHEREAS** consequently the Petitioner having been given the 'Observations' of the 1<sup>st</sup> Respondent, Commissioner General of Inland Revenue, on the said draft of Terms of Settlement, we on behalf of the Petitioner by the aforesaid Letter dated 19.3.2009 tendered the Petitioner's 'Responses' thereto.

**AND WHEREAS** among the issues, which *intriguingly-stalled* such Terms of Settlement, arose from the failure and neglect on the part of the 1<sup>st</sup> Respondent, Commissioner General of Inland Revenue, *to give effect* to the following material provisions of Inland Revenue Statutes, which had been enacted by the Legislature, *namely*:

- i) “in terms of Inland Revenue Act No. 28 of 1979 Section 158 (10) / Inland Revenue Act No. 38 of 2000 Section 178 (10) / Inland Revenue Act No. 10 of 2006 Section 209 (10), to the 5<sup>th</sup> Respondent, as had been already called for by the 5<sup>th</sup> Respondent, Controller of Exchange information disclosed in Declarations which contain disclosure of foreign income and/or foreign borrowings and/or foreign debts and/or foreign assets, to be investigated and dealt with by the 5<sup>th</sup> Respondent in terms of respective laws administered and enforced by him”
- ii) “in terms of Inland Revenue Act No. 28 of 1979 Section 158 (10) / Inland Revenue Act No. 38 of 2000 Section 178 (10) / Inland Revenue Act No. 10 of 2006 Section 209 (10) to the 2<sup>nd</sup> Respondent, Director General of Customs, where it appears that any person has committed an offence under the Customs Ordinance”
- iii) “to report by himself and/or his agents and/or assigns, in terms of Inland Revenue Act No. 28 of 1979 Section 158 (5) (iv) / Inland Revenue Act No. 38 of 2000 Section 178 (5) (d) / Inland Revenue Act No. 10 of 2006 Section 209 (5) (d) to the Attorney General to be forwarded to the 7<sup>th</sup> Respondent , Chairman, Commission to Investigate Allegations of Bribery or Corruption for investigation, any case where the 1<sup>st</sup> Respondent and/or his agents and/or assigns suspect/s from information available to him and/or them, that any person is guilty of bribery, as per the Declarations made to the 1<sup>st</sup> Respondent under Inland Revenue (Special Provisions) Act No. 10 of 2003 and Inland Revenue (Special Provisions) (Amendment) Act No. 31 of 2003, and now deemed to be Declarations made under and in terms of the Inland Revenue (Regulation of Amnesty) Act No. 10 of 2004 or otherwise.” (*i.e. the Inland Revenue Statutes enacted after 1994 had not replaced the Attorney General, with the Commission to Investigate Allegations of Bribery or Corruption, who replaced the Bribery Commission*)

**AND WHEREAS** *appallingly*, the 1<sup>st</sup> Respondent, Commissioner General of Inland Revenue, in his aforesaid ‘Observations’ had stated that the Officials of the Inland Revenue Department ‘*did not have competency to ascertain*’, as required, such facts and to refer ‘*suspected*’ transactions, as statutorily mandated, as aforesaid, by the Inland Revenue Statutes, to the relevant law enforcement authorities, namely, the Director General of Customs, the Controller of Exchange and the Hon. Attorney General for transmission to the Commission to Investigate Allegations of Bribery or Corruption, *for investigations therinto*.

**AND WHEREAS** the 1<sup>st</sup> Respondent, Commissioner General of Inland Revenue’s ‘Observation’ also *appallingly* included, that the matters referred to VAT collection should be excluded, since VAT did not come under the aforesaid perverse Statutes, whereas colossal VAT frauds had taken place *defrauding* public revenue, as had been reported in terms of Article 154(6) of the Constitution to the Legislature in a Special Investigative Report in July 2006 by the Auditor General.

**AND WHEREAS** it is *abundantly clear* to the Petitioner, that the provisions of revenue administration Statutes, enacted from as far back as 1979, are not being enforced and the 1<sup>st</sup> Respondent, Commissioner General of Inland Revenue, *is steadfastly unwilling to force the same*, and furthermore that succeeding Attorney Generals have admittedly been unable to have the said statutory provisions, which had been enacted by the Legislature, enforced.

**AND WHEREAS** organizations and individuals are required to report ‘suspicious transactions’ and/or not to aid or abet therewith in any manner, whatsoever, in terms of the provisions of the following Statutes, and the 1<sup>st</sup> Respondent, Commissioner General of Inland Revenue, being a statutory authority, carries a *greater onus* of responsibility in such regard

- Prevention of Money Laundering Act No. 5 of 2006
- Financial Transactions Reporting Act No. 6 of 2006
- Convention on the Suppression of Terrorist Financing Act No. 25 of 2005

**AND WHEREAS** the '*stalling*' of this matter since **11.10.2005** in the manner aforesaid, ***over a period of over 6 years***, makes it amply clear to the Petitioner, that it is *futile* for him to waste his valuable professional time and efforts in the public interest, to have the aforesaid revenue administration Statutes enforced to uphold the rule of law, in the face of the aforesaid *unwillingness* on the part of the statutory authorities and the *indifference* of the part of the succeeding Attorney Generals; with the Treasury *unconcerned* of this pathetic plight, and the *citizenry being burdened with additional adhoc taxes and levies*.

**NOW THEREFORE** in such circumstances, the Petitioner respectively moves to withdraw this Application.

Copies of this Motion and the attachments referred to herein having been sent by Registered Post to the Hon. Attorney General and the Respondents, for them to be notified thereof, the Registered Postal Article Receipts are attached hereto.

On this 19<sup>th</sup> day of June 2012

*Abdeen Associates*

Attorneys-at-Law for the Petitioner