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

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In the matter of 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 by Act No. 20 of 2013 of the Democratic Socialist Republic of Sri Lanka.

**THE COMMISSIONER GENERAL  
OF INLAND REVENUE**

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

**APPELLANT**

**C . A. Tax No.24/2018  
TAC. Appeal No.TAC/ESC/002/2015**

**-Vs-**

**CARGILLS AGRIFOODS LIMITED,**  
No.40, York Street,  
Colombo 01.

**RESPONDENT**

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**Before :**           **JUSTICE M.CHAMATH.B.S. MORAIS**  
**JUSTICE ANNALINGAM PREMASHANKER**

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**Counsel:**       **Deputy Solicitor General, Manohara Jayasinghe,**  
for the Appellant.

**Dr. Romesh De Silva, President Counsel** with **N.**  
**R. Sivendran, Attorney at Law, Fihama Haniffa,**  
**Attorney at Law** for the Respondent.

Written Submissions of the Appellant       :-25.11.2025  
Written Submissions of the Respondent   :-27.09.2019, 12.11.2025  
Argument                                       :-16.10.2025  
Decided on                                       :-19.03.2026

## **JUDGEMENT**

**ANNALINGAM PREMASHANKER, J.**

**A. INTRODUCTION**

**A1. APPEAL**

This is an appeal by **the Commissioner General of Inland Revenue (Hereinafter sometimes referred to as The Appellant/CGIR)** from the determination of the Tax Appeals Commission dated 21.05.2018 made in TAC appeal no.

TAC/ESC/002/2015. The Respondent is **Cargills Agrifoods Ltd (Hereinafter sometimes referred to as The Respondent/Tax Payer)**.

**A2. REQUEST**

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 19.06.2018.

**A3. QUESTIONS OF LAW**

In the case stated dated 04.12.2018 following questions were raised for the opinion of the Court of Appeal:-

**Q.N.1. *Whether the Tax Appeals Commission has acted beyond its jurisdiction in determining the validity and legality of an assessment whereas the proper forum is the Court of Appeal (A.M. Ismail v. CIR – SLTC Vol. 14 – Page 182)***

**Q.N.2. *Whether the TAC has erred in not distinguishing between the differences of ‘Assessment’ and the***

***“Notice of Assessment”/ As the time bar limit is applicable for making the “assessment” under Section 163 (5), whereas the notice of assessment is sent under Section 164 of the Inland Revenue Act, No. 10 of 2006, as amended?***

**Q.N.3. *Mandatory v. Directory: Without prejudice to above and on the assumption that the time bar is applicable to the n Notice of Assessment, whether TAC has erred in determining such requirement as Mandatory whereas there was no any substantial prejudice or injustice caused to the Tax Payer by such delay in sending the notice of assessment.***

**B. ADJUSTMENT**

**B1. ACCEPTANCE 1**

The Appellant concedes that the notice of assessment is sent 145 days after due date of the assessment that is 30.09.2012. Therefore the assessment is time barred – out of time.

***Fonterra Brands Lanka (Private) Limited vs. The Commissioner General of Inland Revenue & another | S.C.Appeal No.187/2014.***

Further it is submitted by the Appellant that they are not proceeding with the questions of law no. 3 that was raised by the case stated. Therefore the rest of the questions are in respect of the jurisdiction of the TAC (Question No.1), differences of assessment and the notice of assessment (part of Question No. 2).

**B2. ACCEPTANCE 2**

The Appellant concedes that the assessment is time barred. The Appellant further concedes that-

- a) The assessment in dispute is for the year 2010/2011;
- b) The notice of assessment should have been made on or before 30<sup>th</sup> September, 2012;
- c) The notice of assessment has been sent only on 18<sup>th</sup> February, 2013.

**C. ANALYSIS**

**C1. CHALLENGES**

Appellant allege that the Tax Appeals Commission had no jurisdiction to determine whether the Notice of Assessment had been sent after the due date, and the application if at all should have been by way of a Writ challenging the Notice of Assessment being issued after the due date. Court of Appeal cannot and has no

power to look into this question of the Case Stated with regard to whether the Notice of Assessment has been sent after the due date.

**C2. SECTION 7 OF TAC ACT**

**Section 7(1)(a)** of the Tax Appeals Commission Act No. 23 of 2011 (as amended) which reads as follows:-

*"7. (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) .....  
may appeal to the Commission in accordance with the provisions hereinafter set out:.."*

Thus, as per Section 7(1)(a) of the Tax Appeals Commission Act No. 23 of 2011 (as amended) if a person is aggrieved with the determination of the Commissioner-General **in respect to any matter** that person will be entitled to appeal to the Tax Appeals

Commission and thus, the Tax Appeals Commission is empowered to look into any matter determined by the Commissioner-General which the taxpayer is aggrieved with.

**C3. SECTION 8 OF TAC ACT**

**Section 8(1)** of the Tax Appeals Commission Act No. 23 of 2011 (as amended) which reads as follows:-

***"8. (1) Any person aggrieved by the determination of –***  
***a) The Commissioner-General, in respect of any matter relating to the imposition of any tax, levy, charge, duty or penalty; or***  
***b) The Director-General under subsection (1B) of section 10 of the Customs Ordinance (Chapter 235), may if he is dissatisfied with the reasons stated by the Commissioner-General or the Director- General, as the case may be, prefer the appeal there from to the Commission within thirty days from the date of receipt of such reasons; or..."***

Similarly, as per Section 8(1) of the Tax Appeals Commission Act No. 23 of 2011 (as amended), if a person is aggrieved with the determination of the Commissioner-General in respect of any

matter in relation to the imposition of any tax, that person may if he is dissatisfied with the reason stated by the Commissioner-General prefer an appeal to the Tax Appeals Commission.

**C4. SECTION 9 OF TAC ACT**

Section 9(10) of the Tax Appeals Commission Act No. 23 of 2011 (as amended) which reads as –

***9.(10) “After hearing the evidence, the Commission shall on appeal either confirm, reduce, increase or annul, as the case may be, the assessment as determined by the Commissioner-General or may remit the case to the Commissioner-General with the decision of the Commission on such appeal. Where a case is so remitted by the Commission, the Commissioner-General shall revise the assessment in order that it is in conformity with such amount as stated in the decision of the Commission.”***

**C5. SECTION 11 OF TAC ACT**

Section 11A (1) of the Tax Appeals Commission Act No. 23 of 2011 (as amended) which reads as:-

***"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.*"**

Thus, the Tax Appeals Commission is statutorily empowered to and it is obliged to state a case on any question of law for the opinion of the Court of Appeal if the taxpayer or the Commissioner-General of Inland Revenue makes such a request.

Thus, any question of law pertaining to the legality of the Assessment can be raised before the Tax Appeals Commission and the Tax Appeals Commission is empowered and is obliged to state a case on any question of law pertaining to the legality of the Assessment.

**C6. POWER OF TAC**

Thus, the Tax Appeals Commission according to Section 9(10) of the Tax Appeals Commission Act No. 23 of 2011 (as amended) **has the power to annul, nullify, abolish and cancel the Assessment** and in order to do so the Tax Appeals Commission is empowered to look into the questions of law pertaining to the validity and legality of the Assessment since without looking into the questions of law the Assessment cannot be annulled.

Thus, it is clearly evident that the legislature has intended to empower the Tax Appeals Commission to determine matters on the questions of law raised without going into the merits of the matter.

The Appellant urge the Court to determine the Question of Law one that the Tax Appeals Commission in an Appeal process has no power to determine the validity and the legality of the assessment. This contention is also erroneous as the Tax Appeals Commission

in determining on the Assessment, Notice of Assessment, determination of the Assessor and the determination of the Commissioner General is clothed with Jurisdiction and entitled to determine all matters that have been referred to the Tax Appeals Commission in relation to the Assessment.

**C7. FONTERRA JUDGMENT 1**

In view of the acceptance that the Assessment has been made 140 days after it was due.

***Fonterra Brands Lanka (Private) Limited vs. The Commissioner General & another*** | S.C.Appeal No.187/2014.  
His Lordship Justice S.Thurairajah held;

***“These authorities read together, I hold that an “assessment” is not complete until it is communicated to the taxpayer by a notice of assessment served within the time limit. The statutory time bar applies to the assessment as a whole, including notice. A letter of intimation is not an assessment, nor is it an internal departmental calculation.”***

***“The Department's shifting positions, sometimes treating 'P4' as an intimation, sometimes as an assessment, sometimes asserting an internal making, only reveal the absence of a lawful assessment within time. To permit such evasions would be to drain Section 134(5) of meaning and to expose taxpayers to uncertainty and unfairness. Parliament has not given the Department an indefinite license to assess at leisure. It has given three years, no more. The Department must act, and must notify, within that time.”***

As per the above judgment, making an assessment and send a notice of assessment and receiving the notice, are all one process. Therefore, distinguishing the assessment and the notices do not arise.

**C8. FONTERRA JUDGMENT 2**

***There is a wider principle at stake, as I noted earlier. Taxation is a compulsory exaction backed by the coercive power of the State. It is therefore imperative that the power to tax be exercised strictly in accordance with law, and within the boundaries the legislature has drawn. Time bars in tax law are not technical traps for the***

***Department; they are jurisdictional limits imposed in the interests of certainty, fairness, and discipline.***

***To erode them by accepting secret assessments or delayed notices would be to unsettle commercial life and to undermine confidence in the rule of law. The letter dated 25" March 2008 was not an assessment. The notice dated 11" June 2008 was issued without jurisdiction. The power to assess expired on the 31% March 2008 and could not be revived thereafter.***

**C9. FONTERRA JUDGMENT 3**

***An assessment is not validly "made" unless it is notified to the taxpayer within the statutory time limit, and that a letter of intimation does not amount to such notification.***

***The assessment in this case, served only in June 2008, was issued after the expiry of the three-year period prescribed by section 134(5), and is therefore a nullity.***

***Thus, it is a well-established principle of law that it is mandatory that the Notice of Assessment should be***

*served within the time limit. Thus, in view of the admission that the assessment had been issued 140 days after the due date the assessment is bad in law and is a nullity.*

**C10. POWER OF COURT OF APPEAL**

It is well settled principle of law that the Court of Appeal has jurisdiction and power to determine the questions of law submitted and all questions of law arising out of the case stated.

**C11. CASE REFERENCE 1**

*Commissioner General of Inland Revenue Vs Cargills Quality Dairies (Pvt) Ltd* SC/SPL LA/No. 82/2022 His Lordship Justice Janak De Silva, held;

**"Section 11A(6) of the Tax Appeals Commission Act as amended empowers two or more Judges of the Court of Appeal to hear and determine any question of law arising on the Case Stated. Accordingly, it is clear that the questions of law that can be argued before the Court of Appeal is not limited to the questions of law sent by the Tax Appeals Commission but can include questions of law**

*arising from the Case Stated which the Court may frame before the argument is taken up ex mero motu or on the application of any one of the parties."*

**C12. CASE REFERENCE 2**

*Commissioner General of Inland Revenue Vs United Motors Lanka PLC CA Tax No. 25/2018 His Lordship Justice Dr. Ruwan Fernando, held;*

*"The Respondent's argument that the jurisdiction of the Court of Appeal is exclusively laid down in section 11A(6) is based on the words in section 11A(6) "...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...". The Respondent argues that those words show that the question of law shall pertain to the substantive matters of the assessment. The Respondent's argument is that the words "confirm, reduce, increase or annul the assessment determined by the commission" necessarily restricts the jurisdiction of the Court of Appeal to the determination of*

**substantive matters of the assessment. I am not inclined to agree with this argument of the Respondent.**

***First, the words in the first part of section 11A(6) "Any two or more Judges of the Court of Appeal may hear and determine any question of law arising on the stated case", is consistent with position in section 11A(1) that the questions of law arise on a case stated, and the Court of Appeal can answer any question of law arising on the case stated. !! the jurisdiction of the Court of Appeal is restricted to the substantive matters of the assessment as contended by the Respondent, there was no need for the legislature to use the words that the Court of Appeal "may hear and determine any question of law arising on the stated case", and it could have easily used the words "arising on the assessment determined by the Commission."***

**C13. CASE REFERENCE 3**

**Commissioner General of Inland Revenue Vs Cargills Food Services (Prt) Ltd CA Tax No.15/2015 His Lordship Justice Dr.Ruwan Fernando, held;**

***“There is nothing to indicate in section 11A(1) either expressly or impliedly that the remedy by way of case stated is limited to the determination made by the TAC on the tax issue. The Respondent has failed to convince us that the right of an Appellant to make an application requiring the Commission to state a case on a question of law for the opinion of this Court is limited to the substantive matters of the assessment.”***

***“The Respondent relies on the above passage of the SC judgment referring to the passage “the Court of Appeal must answer all the questions of law, if answering the said questions may result in confirmation, reduction, increasing or annulling the assessment determined by the commission.” The Respondent, however, disregards the Supreme Court's own reliance on the judgment in Commissioner of Income Tax v. Saverimuttu Reddy (supra), which held that the Court is not precluded from considering any point upon which the actual decision of the Board might be upheld. It is a clear statement by the judges in Commissioner of Income Tax v. Saverimuttu Reddy (supra) that the Court of Appeal has jurisdiction to***

***hear and determine any question of law, not even raised before the TAC, upon which the actual decision of the TAC might be either upheld, no matter what might have been their reasons for arriving at that decision."***

In the Case Stated Question of Law No.1 the Appellant has sought to challenge the jurisdiction of the Tax Appeals Commission to hear and determine the appeal in determining the validity and legality of an assessment.

It was contended by the Appellant that the Tax Appeals Commission did not have jurisdiction to inquire into the question of time bar of the assessment.

The totality of the judgment taken into account recognizes the Court of Appeal looking into any question posed to the Court of Appeal upon tax Case Stated.

**C14. CASE REFERENCE 4**

The power of Tax Appeals Commission to annul the Assessment has been clearly acknowledged in the landmark case of **A.M.Ismail Vs. Commissioner of Inland Revenue IV Tax Cases** in quashing and setting aside the Notice of Assessment his Lordship Justice Abdul Cader, held:-

**"It has power to review or annul an assessment if it is proved that an assessee was not liable to pay the tax charged"**

If the Notice of Assessment is erroneous, invalid and bad in law the taxpayer will not be able to pay the tax charged and in that case, the power in a tax appeal process to annul the Assessment has been recognized in the above case of ***A.M.Ismail Vs. Commissioner of Inland Revenue.***

This case itself shows that the first question of law raised by the Appellant is incorrect in law and ought to be answered in favor of the Respondent.

**C15. CASE REFERENCE 5**

**Commissioner General of Inland Revenue Vs United Motors Lanka PLC CA Tax No. 25/2018** wherein it is specifically held that time bar objections can be taken up in the appeal process:-

**"[93] It is not in dispute that the TAC has got authority to rule on its own jurisdiction, including ruling on any objection with respect to the existence or validity of the assessment, in addition to substantive matters of the assessment. If a jurisdictional question or the extent thereof is disputed before a tribunal, the tribunal must**

**necessarily decide it unless the statute provides otherwise.**

**“[94] Only when a question of law or mixed question of facts and law is decided by the TAC, the Court of Appeal can exercise its power, either of appeal by way of case stated, or in an appropriate case, by way of judicial review. The TAC, having regard to the scheme of the TAC Act, has jurisdiction to rule on the facts and law, including whether reasons were given and communicated to the assessee or whether the assessment is time barred or not, unless the TAC Act provides otherwise.”**

**C16. CASE REFERENCE 6**

**CGIR Vs. Classic Travels (Pvt) Ltd | S.C Appeal 158/2018**

His Lordship Justice **B. P. Aluwihare**, held,

***"If the legislature intended the jurisdiction of the TAC to be limited to only review of the substantive matter of the assessment, why would the Legislature in Section 8(1X(a) allow an appeal to the TAC in respect of 'any matter relating to the imposition of any tax, levy charge, duty,***

*or penalty of the Commissioner - General? The rational conclusion that could be drawn is that the Legislature never intended to limit the jurisdiction of the TAC only to substantive issues.”*

**“Applying the principles above, the interpretation advanced by the Appellant is evidently contrary to a harmonious interpretation, since that interpretation ignores Section 8(1)(a) of the Act, thereby resulting in a conflict of the two provisions, as Section 8(1)(a) explicitly provides an appellant the ability to canvass 'any matter relating to the imposition of any tax, levy, charge, duty or penalty by the Commissioner - General before the TAC. In my view an interpretation stating that the TAC's jurisdiction is limited to substantive tax matters results in an inconsistency between the provisions.”**

**C17. CASE REFERENCE 7**

The *Commissioner of General of Inland Revenue v. Cargills Food Service (Pvt) Ltd* CA/TAX 0013/2016 His Lordship Justice Dr.Ruwan Fernando held,

***"It is relevant to note that a party has no absolute right in a judicial remedy where an inferior tribunal exceeds its jurisdiction, and where the absence or excess of jurisdiction is not apparent on the face of the proceedings. It is only discretionary, and depends on various other circumstances, such as laches, or misconduct, misrepresentation or nondisclosure of facts and acquiescence etc. The grant of a writ is always discretionary and is never demandable of right like in a case stated in terms of section 11A (1)"***

Thus, there is no merit in the contention of the Appellant.

**D. ANSWERS TO THE QUESTIONS OF LAW**

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

Q.N.1. No.

Q.N.2. No.

**E. CONCLUSION**

**As analyzed above and as the two questions raised in the case stated are answered in negative, the determination of the TAC dated 25. 03. 2024 is affirmed and the appeal is dismissed.**

**The Appeal is dismissed. 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 19<sup>th</sup> day of March 2026

**JUDGE OF THE COURT OF APPEAL**

**M. C. B. S. MORAIS**

I agree.

**JUDGE OF THE COURT OF APPEAL**