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

In the matter of an Appeal in terms of Article 128(2) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

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

Appellant

Vs

SC/Appeal /145/2023
SC/SPL/LA/254/2022
CA/Tax/16/2017
Tax Appeal Commission No
TAC/IT/028/2015

Lignocell (Pvt) Ltd.,
No. 400, Deans Road,
Colombo 10.

Respondent

And then Between

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

Appellant-Petitioner

Vs.

Lignocell (Pvt) Ltd,
No. 400, Deans Road,
Colombo 10.

Respondent-Respondent

Chas. P. Hayley and Company (Private) Limited,
No. 400, Deans Road,
Colombo 10.

Substituted Respondent-Respondent

AND NOW BETWEEN

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

Appellant - Appellant

Vs.

Lignocell (Pvt) Ltd.,
No. 400, Deans Road,
Colombo 10.

Respondent- Respondent

Chas. P. Hayley and Company (Private) Limited,
No. 400, Deans Road,
Colombo 10.

Substituted Respondent- Respondent

Before: **Jayantha Jayasuriya PC, CJ.,**
Murdu N.B. Fernando, PC. J., and
S. Thurairaja, PC. J.

Counsel: Nirmalan Wigneswaran, DSG, with Rajin Gooneratne, SC for the Appellant

Dr. Shivaji Felix, PC with Niwantha Satharusinghe for the Substituted Respondent-Respondent

Argued on: 27/03/2024

Decided on: 26/11/2024

Murdu N.B. Fernando, PC. J.,

This is a Tax Appeal filed by the Commissioner General of Inland Revenue challenging the Judgement of the Court of Appeal dated 10th August, 2022.

The Court of Appeal by the aforesaid Judgement, in a 'Case Stated' affirmed the Determination of the Tax Appeals Commission ("the Commission"), dated 27th April, 2017 whereby it was determined by the Commission that the Respondent-Respondent, Lignocell (Pvt) Ltd., was entitled to the tax exemptions claimed and dismissed the appeal filed by the Commissioner General of Inland Revenue. The said Respondent Lignocell (Pvt) Ltd, is now substituted by Chas. P. Hayley and Company (Private) Limited ("the Substituted Respondent").

Initially, the Commissioner General of Inland Revenue ("CGIR/the Appellant"), in terms of Section **16** of the Inland Revenue Act No. 10 of 2006 as amended, rejected the claim for tax exemptions made by the Respondent, Lignocell (Pvt) Ltd., for the taxable periods 2009/2010 and 2010/2011.

Being aggrieved by the said decision of the CGIR (which upheld the Assessor's findings, in appeal) the Respondent Lignocell (Pvt) Ltd., went before the Tax Appeals Commission. The Commission allowed the Respondent's appeal.

The Appellant CGIR thereafter, invoked the jurisdiction of the Court of Appeal. The Court of Appeal too determined, that the Respondent is entitled to the tax exemptions claimed in terms of Section **16** of the Inland Revenue Act No. 10 of 2006. Being aggrieved by the Judgement of the Court of Appeal, the Appellant CGIR has come before this Court, after obtaining Special Leave to Appeal, on three Questions of Law.

The said Questions of Law are as follows:

1. Did the Court of Appeal err in law in shifting the burden of proof from the tax payer to the revenue in respect of matters that are within the specific knowledge of the taxpayer and/or relating to a tax exemption?
2. Did the Court of Appeal err in law in departing from the principle that in a case of an ambiguity or doubt regarding an exemption in a fiscal statute, such ambiguity or doubt should be resolved in favour of the revenue and not the assessee?
3. Did the Court of Appeal err in law in reading into Section **16(2)(b)** the existence of a product, when the said section only refers to the same produce that is the subject of the activities set out in the said section?

The Factual Background

1. The Respondent Lignocell (Pvt) Ltd., a company engaged in the business of exporting 'coir fibre pith' tendered its income tax returns to the Department of Inland Revenue for the taxable periods 2009/2010 and 2010/2011, in terms of the Inland Revenue Act No. 10 of 2006 as amended by Act No. 19 of 2009 ("the Act").

2. In the tax returns submitted, the Respondent claimed tax exemptions in terms of Section **16** of the Act, wherein exemptions from income tax of 'profits and income' from 'agricultural undertaking' were permitted for five years, commencing from the year 2006. The Respondent claimed the exemption for its 'coir fibre pith' upon the basis that it was prepared for the market as an 'agricultural produce'.
3. An Assessor of the Department of Inland Revenue determined that the Respondent Lignocell, did not qualify to claim the tax exemptions, and by letter dated 30th May, 2012 communicated as follows:

> *"that the manufacture of coir fibre pith is manufacturing of an article out of agricultural produce and such manufacturing is a conversion of another product from agricultural produce and such profit is not a primary process."*

4. The Respondent Lignocell (Pvt) Ltd., appealed against the said findings to the CGIR and the CGIR by letter dated 20th October, 2014 informed the Respondent, that the appeal is rejected and the initial assessment is confirmed. The rationale of the CGIR was that the business of the Respondent is not an 'agricultural undertaking' and thus, not qualified for tax exemptions.

   In the said determination, CGIR having drawn the Respondent's reference to Section **16(2)(b)** of the Act, stated as follows:

> *"In this case the* ***agricultural produce based is coconut****, a produce referred to in Section 16(2)(a). Therefore, the primary process undertaken by the company should be aimed towards in* ***preparation those coconuts into a marketable state*** *to become an agricultural undertaking. But in reality the company brings to the market (inspite of an agricultural product)* ***a completely different product, that is coir fibre pith extracted from the agricultural produce*** *and that has been processed and shaped to give a marketable appearance to it."* (emphasis added)

5. Being aggrieved by this decision, the Respondent went before the Tax Appeals Commission.

   The Tax Appeals Commission, after hearing both parties, annulled the two assessments made by the CGIR and allowed the appeal, holding that the Respondent is entitled to the tax exemptions claimed.

   The Tax Appeals Commission in the Determination, referring to the finding of the CGIR enumerated in the aforequoted passage that primary process undertaken by the Respondent should be aimed towards preparation of 'coconuts' into marketable state to become an 'agricultural undertaking', held that the reasoning of the CGIR with regard to 'coconuts' and application of the provisions in Section **16(2)** of the Act is wrong and unacceptable.

The Commission went onto state as follows:

> *"[…] even coir fibre pith is collected from the coconut husk and therefore it is an agricultural product obtained from the coconut tree, like shell or husks or ekel. The important thing to be noted is that, in the coir fibre pith obtained from the coconut husks, it's character has not changed. Coir fibre pith obtained from the coconut husks remain as coir fibre pith. Therefore, coir fibre pith falls under agricultural produce within the meaning of Section 16(2)(a) and what the appellant has done in this case is to make the coir fibre pith, a marketable item, in terms of Section 16(2)(b). Coir fibre pith is collected in large quantity to be exported, nothing is added and its character has not been changed except that coir fibre pith is pressed into block form, to make it easily marketable to earn foreign exchange."*

Impugned determination of the Court of Appeal

The Appellant CGIR, went before the Court of Appeal against the determination of the Tax Appeals Commission, in a 'Case Stated', and the determination of the Court of Appeal is what is impugned in these appeal proceedings.

I wish to refer to the 1st and 2nd questions upon which the case was stated to the Court of Appeal, as it has a direct bearing upon this Appeal that is for determination before this Court.

(i) Whether the Commission misdirected itself in law in deciding coconut fibre pith is an agricultural produce in terms of Section **16(2)(b)** of the Act?

(ii) Whether the Commission has unreasonably come to the conclusion having misconceiving legal provisions of the Act?

The learned Judges of the Court of Appeal after analyzing the legal provisions in detail with reference to case law, concluded their judgement as follows:

> *"In my view, agricultural, horticultural or dairy produce referred to in Section 16(2)(a) is the primary produce. If such produce is subjected only to the processing specified in Section 16(2)(b), such product falls within the income tax exemption under Section 16(2)(b). If produce referred to in Section 16(2)(a) is converted to any product specified under Section 16 (2)(c), such product also falls within the exemption. If any agricultural, horticultural or dairy produce is utilized to manufacture any product other than a product specified in Section 16(2)(c) and the same falls within Section 16(3), the exemption is applicable to such an undertaking as well".*

> *"From the above overall analysis, it is my considered view that the process adopted by the Respondent is cleaning, sorting and dehydration for the purpose of changing the form and or physical appearance of coconut fibre pith. Therefore, the Respondent's business falls within the definition of an agricultural undertaking under Section 16(2)(b) of the IR Act."*

The Court of Appeal thereafter, went onto answere the above referred questions preferred to the Court of Appeal in the negative, and came to the finding that the Tax Appeals Commission had not erred in arriving at its determination and thus, affirmed the Determination of the Commission and dismissed the appeal of the State.

The Appeal before the Supreme Court

Having referred to the background to this Appeal, I wish to examine the three Questions of Law raised before this Court. I wish to begin by reverse order, first the 3rd Question of Law.

> **Q3. Did the Court of Appeal err in law in reading into Section 16(2)(b) the existence of a product when the said section only refers to the same produce that is the subject of the activities set out in the said Section?**

The said question revolves around Section **16(2)(b)** of the Act. However, I wish to look at Section **16** in its entirety *i.e.*, Sub-sections (1), (2)(a), (2)(b), 2(c) and (3), for better understanding of the matter before us for determination.

The said Section **16** of the Inland Revenue Act No. 10 of 2006 as amended by Act No. 19 of 2009 [in sub-sections 2(b) and 2(c)] reads as follows:

> (1) The profits and income within the meaning of paragraph (*a*) of section 3, other than any profits and income from the disposal of any capital asset, of any person or partnership from **any agricultural undertaking** carried on in Sri Lanka, shall be exempt from income tax for each year of assessment within the period of five years, commencing on April 1, 2006.
>
> (2) In this section **"agricultural undertaking"** means-
>
> (a) an undertaking for the purpose of the **production of any agricultural, horticultural or any dairy produce**;
>
> (b) an undertaking for the cleaning, sizing, sorting, grading, chilling, dehydrating, packaging, cutting, canning for the purpose of changing the form, contour or physical appearance of any produce referred to in paragraph (*a*), in preparation of such produce for the market; or
>
> (c) any undertaking for the conversion of any produce referred to in paragraph (*a*) into such product as may be specified by the Commissioner-General, by Order published in the Gazette.
>
> (3) In relation to an undertaking which consists of the production of any agricultural, horticultural or dairy produce and utilizing such produce to manufacture any product (other than any product specified under paragraph (*c*) of subsection 2(2)), such produce shall be deemed to have been sold for the manufacturer of such product at the open market price prevailing at the time of such deemed sale, and the exemption granted

under subsection (1) shall be applicable to that undertaking, on the profits and income computed on the basis of such deemed sale. (emphasis added)

Prior to examining the said Section **16**, I wish to refer to a few Sections of the Inland Revenue Act, which are material. Section **2** refers to the imposition of income tax in respect of 'profits and income', and Section **3** refers to 'income chargeable with tax'.

Sections **7** to **24**, in Chapter III of the Act lays down the many exemptions that could be resorted to by a tax payer to compute the income tax. One such exemption is enumerated in Section **16**.

Having identified the lay-out and the Chapter pertaining to exemptions, let me now move onto consider Section **16** and its sub-sections.

Section **16(1)** of the Act, speaks of the profits and income of any person or partnership from any **'agricultural undertaking'** carried on in Sri Lanka, to be exempted from income tax, for each year of assessment, within the period of five years commencing from April 2006, *i.e.,* from 2006 to 2011.

The instant appeal is in respect of the last two years of exemption *i.e.,* 2009/2010 and 2010/2011.

The term **'agricultural undertaking'** referred to in the abovequoted Section **16(1)** is defined in Section **16(2),** under three sub-headings, bearing numbers (a),(b) and (c).

Section **16** sub-section 2(a) refers to an agricultural undertaking, as an undertaking **for the purpose of the production of any agricultural, horticultural or any dairy produce**.

In my view, the said sub-section encompasses a vast area of productions relating to agricultural, horticultural and dairy produce. The Act does not define these words. However, in order to understand the matter before us, I wish to look at the use of the said words in common parlance. 'Agricultural' refers to cultivating land, raising crops and livestock; 'Horticultural' means, garden cultivation of plants, fruits, vegetables and flowers; and 'dairy produce' refers to items made from milk of cows, buffaloes and goats etc. Undoubtedly, Tea, Rubber, Coconut being the three major export crops of Sri Lanka, 'Coconut cultivation and/or production' falls within the scope of sub-section (a) of Section **16(2)**.

Sub-section (b) of Section **16 (2)**, refers to an **undertaking changing the form, contour or physical appearance of any 'produce'** referred to in paragraph (a), **in preparation of such 'produce' for the market by cleaning, sizing, sorting, grading, chilling, dehydrating, packaging, cutting and canning of such 'produce'.**

In the instant Appeal, the Respondent sought exemption under this particular sub-section, for its 'coir fibre pith'.

Sub-section (c) of Section **16(2)** refers to an undertaking for the conversion of any produce in sub-section(a) into *products as specified in an Order published in the Gazette.*

The said sub-section has no relevance to this Appeal, since our attention was not drawn to any Order published in the *Gazette* in the instant Appeal.

Section **16(3)** relates to an undertaking which consists of the production of any agricultural, horticultural or dairy produce and *utilizing such produce to manufacture any product* and costing of such product for tax purposes. This sub-section too, was not referred to in this Appeal.

Having referred to the sub-sections of Section **16**, I wish to dissect Section **16(2)(b)** in greater detail, as it is this sub-section which is pivotal in this Appeal. The case of the Respondent is that its business falls within this sub-section, as it is an undertaking in which the **'coconut husk is cleaned, sorted, dehydrated into coir fibre pith'**. The Respondent further contends, that coir fibre pith is not a change of character of the produce referred to in sub-section (a), but only a change in the form, contour and physical appearance, in preparation or processing of such produce *i.e.*, coir fibre pith, for the market, compressed into bricks and blocks. Coir fibre pith is extensively used as a substitute for peat in horticultural and agricultural purposes, because of its mulch like nature, high in porosity and absorbency and water holding capacity and it is an ideal growing medium for plants.

Thus, the Respondent contends, that the process, 'clean, sort and dehydration' is covered under sub-section **16(2)(b)** and the Respondent is lawfully entitled to the relevant tax exemptions provided by the Statute.

I see merit in this submission. However, prior to arriving at a conclusion, I wish to consider the initial findings of the Department of Inland Revenue, the Determination of the Tax Appeals Commission, the Judgement of the Court of Appeal, the submissions of the learned President's Counsel and the learned Deputy Solicitor General before this Court, and the written submissions filed in this Appeal.

The initial finding of the Assessor, as referred to in the letter dated 30th May, 2012 was that *manufacture of 'coir fibre pith', is a manufacturing of an article out of agricultural produce and such manufacturing is a conversion of another product from agricultural produce and such profit is not a primary process.*

Upon appeal, the Appellant CGIR, by its Order dated 20th October, 2014 determined that the *agricultural produce is 'coconut' and therefore the primary process undertaken by the Respondent should be aimed in preparation of those 'coconuts' into a marketable state, but the Respondent had brought out a completely different product, that is 'coir fibre pith' extracted from the 'coconut', and therefore the exemption sought cannot be granted*.

From the foregoing it is very clear, that the Appellant CGIR, has restricted and narrowed down the agricultural produce of the coconut tree, *i.e., cocos nucifera*, to only 'coconuts', the fruit borne out of the tree, when in fact, there is no doubt that a tree or plant can produce more than one agricultural produce and the coconut tree produces coconut water, nuts, kernels, shells, husks, leaves and ekels, inflorescences and sap which can be cleaned, sized, sorted, graded, chilled, dehydrated, packaged, cut and canned, a repertoire of actions indeed, in preparation of such produce of the *cocos nucifera* plant for the market.

Being aggrieved by the aforesaid Determination of the CGIR, the Respondent went before the Tax Appeals Commission.

The Tax Appeals Commission overruled the CGIR's ruling and determined that 'coir fibre pith' is also an agricultural produce collected from the coconut tree, like the shells, husks and ekels and that its character has not changed, except it is compressed into blocks.

In coming to such finding, the Tax Appeals Commission referred to the illustration [referred to by the Appellant] of Strawberries, collected from cultivators and then cleaned and packed into boxes vis-â-vis Strawberry jam made out of the very same Strawberries. The analysis of the Commission was in the first instance, the character does not change but the in the second instance *i.e.*, when jam is made, the character of the Strawberry changes. Moreover, the Commission held, when Strawberries are cleaned and packed into boxes, Section **16(2)(b)** comes into effect and the undertaking can claim the exemption from Income Tax, but when jam is made such undertaking will not fall within Section **16(2)(b),** as the character of the Strawberries has changed and thus, is not entitled to claim the exemption.

The Tax Appeals Commission also referred to two Indian cases, **Commissioner of Income Tax v. Stanes Amalgamated Estates Ltd (1998) 232 ITR 443 (Mad)** and **Seth Banarsi Das Gupta v. Commissioner of Income Tax, Delhi (Central) (1977) 106 ITR 804 (All).**

In **Stanes Amalgamated case**, Eucalyptus oil was extracted from the leaves of the plant and in **Seth Banarsi Case**, gur or jaggery was made out of Sugar Cane. The Commission referred to the said cases as instances, in which the character has changed from the initial agricultural produce to some other product, to distinguish that in 'coir fibre pith' such a change has not taken place.

The Tax Appeals Commission also held that 'coir fibre pith' is a produce of the coconut plant and is found in the coconut husk in its original form. Since the character and the identity of 'coir fibre pith' does not change when it is compressed into bricks and blocks in preparation of such produce for the market, and only the form, contours and the physical appearance changes, the Commission took the view, that the Respondent can claim the exemption under Section **16(2)(b)** of the Act.

Furthermore, the Tax Appeals Commission held, that the CGIR's rationale that only 'coconut' or the 'nut' or fruit, could be the produce from a coconut tree was manifestly irrational, unacceptable and erroneous. Hence, the Commission determined that not only the 'coconut', but all other marketable items produced by the coconut plant, including the husks, ekels and the coir fibre pith, should be considered as 'coconut produce'.

The Commission also considered the exemptions given by the Statute for five years as the policy of the Government to encourage persons to be innovative and optimize the use of agricultural produce to enhance the economy and thus, a restrictive application of Section **16(2)(b)** would curtail the desired result of the concession contemplated by the policy makers.

In my view, the Tax Appeals Commission has correctly considered the provisions of the Act and the issue pertaining to exemptions, and has come to a legal and logical finding in granting the exemption claimed by the Respondent.

Being aggrieved by the findings of the Tax Appeals Commission, the CGIR appealed to the Court of Appeal by way of a Case Stated.

Having considered the Case Stated, the facts and the law, the Court of Appeal also determined that agricultural, horticultural or dairy produce referred to in Section **16(2)(a)** is the primary produce and when such primary produce is subjected to the processing specified in Section **16(2)(b)**, then such produce would fall within the exemption granted under Section **16(2)(b)** of the Act.

Further, the Court of Appeal held, if such produce referred to in Section **16(2)(a)** is *converted to any product* specified in an Order published in the *Gazette* referred to in Section **16(2)(c),** that product too, will fall within the exemption granted under the Act. Likewise, if any agricultural, horticultural or dairy produce is *utilized to manufacture any product* other than a product specified in Section **16(2)(c)**, the same falls within Section **16(3)**, and the exemption provided for in Section **16(1)** is applicable to such product too.

Based on the above analysis, the finding of the Court of Appeal was that the process adopted by the Respondent in 'cleaning, sorting and dehydration' for the purpose of changing the form or physical appearance of 'coir fibre pith', falls within the definition of an agricultural undertaking under Section **16(2)(b)** of the Act.

In my view, the learned judges of the Court of Appeal have correctly analysed Section **16(2)** and applied the provisions therein.

I wish to note, that in the Petition filed before the Court of Appeal, the CGIR uses the word 'coconut fibre pith', interchangeably with 'coir fibre pith'. However, for ease of reading, I will continue to use the term 'coir fibre pith' in this Judgement.

Now, I wish to look at Section **16** of the Act from another perspective. The Section clearly and unambiguously states, that the primary produce specified in sub-section (a) of Section **16(2)** can undergo three processes. The said three processes are as follows:

> -by cleaning, sizing, sorting, grading, chilling, dehydrating, packaging, cutting and canning for the purpose of changing the form, contour or physical appearance of any primary produce, in preparation of such produce for the market- vide Section **16(2)(b)**
>
> -by conversion of any primary produce into a product, that may be specified in the Order published by the CGIR in the *Gazette*- vide Section **16(2)(c)**
>
> -by utilizing such primary produce to manufacture any product (other than a product under Section **16(2)(c))**. In this instance costing also has been encapsulated – vide Section **16(3)**

Hence, any 'agricultural undertaking' which provides for such processes, whether it be change of form or physical appearance of produce *viz*- Section 16(2)(b) or conversion to a product i.e., Section 16(2)(c) or manufacture of a product as per Section 16(3), is entitled to claim the exemption permitted by the Statute.

Undoubtedly, the coconut cultivation falls within the term 'agricultural undertaking'. Thus, all marketable items produced by the coconut plant, can be classified

as primary produce. 'Coir fibre pith' which is the spongy material that binds the hairy fibre in the husk of a coconut, is part and parcel of the coconut palm, similar to the coconut water and kernel and therefore is a primary produce.

Thus, an undertaking which is in the agri business utilizes the primary produce, whether it be coconut water or kernel or coir fibre pith, and take steps to 'clean, sort and dehydrate the said primary produce,' in preparation of such produce for the market, then the said undertaking in my view, would fall within Section **16(2)(b)** of the Act. Therefore, the said undertaking will be statutorily entitled to claim the exemptions given in terms of the Inland Revenue Act. What is material is that the character of the primary produce, 'coir fibre pith' in this instance, should not change. The form, contour and physical appearance may change. When such primary produce becomes a marketable product or 'in preparation for the market', to use the words in the sub-section itself.

The learned Deputy Solicitor General, appearing for the Appellant CGIR, challenged the contention of the Respondent that the 'coir fibre pith', a composite part of the coconut husk, continues to remain in its original form, and that the character or the identity of the 'coir fibre pith' will not change even when made into bricks and blocks in preparation of such produce for the market.

The learned Deputy Solicitor General, further contended that the Respondent failed to set out the details of its manufacturing process and the Tax Appeals Commission and the Court of Appeal relied upon their own knowledge in relation to the process of manufacturing 'coir fibre pith', to come to a finding that it fell within the four corners of Section **16(2)(b)** of the Act. The learned Deputy Solicitor General, drew our attention to certain material before Court, *viz*, the certificate of the accountants to the Respondent to contend that it indicates or that it could be fathomed that the process of manufacturing would entail a complex process, as reference is made to raw material, direct material, finished goods, sums expended for renewing of patents and trade marks, factory, plant and machinery, tools and labs, and consumables.

In the written submissions filed before Court, the Appellant has gone into great detail to differentiate between 'produce and product' and also to contend that a complex manufacturing processes is followed in 'manufacturing' bricks and blocks of coir fiber pith used for horticultural purposes. With reference to Research Articles published by third parties, the Appellant also contends, 'What the coir industry is' and examines the process of retting, defibering and finishing in the 'Industry of coir fibre' and also, its chemical composition, physical properties and micro-organisms. Its observed in the material to which the Courts attention was drawn by the learned DSG, the end product is carpets, doormats, and mattresses. Sofas, toys, brushes and cosmetics are also referred to as industries in which coir fibre is used.

The Appeal before us is from a 'Case Stated'. In my view, this is not the forum to analyse the production process of 'coir fibre' or what the 'Coir Industry is' or to examine the manufacturing complexities of the retting process in preparation for production and manufacturing of coir fibre, as contended by the Appellant.

The matter in issue is simply 'coir fibre pith' and not 'coir fibre'. I emphasise it is the 'pith', the spongy material that binds the fibre in the coconut husk. The only relevant

issue is, whether such 'coir fibre pith', not the 'coir fibre', can be considered a primary produce or not.

The Commissioner General of Inland Revenue by its order dated 20th October, 2014 determined that only the 'coconut' is the primary produce in relation to coconut cultivation. He categorically stated *"In this case the agricultural produce based is coconut […] the primary process undertaken by the company should be aimed towards in preparation those coconuts into a marketable state to become an agricultural undertaking"*.

According to the CGIR, the agricultural undertaking to which the exemption stated in Section **16(2)(b)** applies i.e., the repertoire of actions referred to therein, clean, size, sort, grade, chill, dehydrate, package, cut and canned in so far as coconut production or cultivation is concerned, is only for the coconut!

Is it only the whole 'coconut', with the husk intact or is it the husked coconut itself? Could it be the kernel, or the water inside the coconut? If so, can you separate or differentiate a 'husk' from a 'husked coconut' or the 'pith' or the 'dust' or the 'peat' of a husk from the coconut husk?'

What about the sap of the coconut inflorescence or flower, or the ekels of the coconut leaves? Are they not produce of a coconut palm?

Should only the 'nut', if I may use the said word, of the coconut palm, and its components i.e., the kernel, the water and the shell be classified as the primary produce? Cannot the other components of a coconut and the coconut palm, be it may the coconut husk, the fibre, the pith or the sap and the coconut inflorescence, or the coconut leaves and the ekels, fall within the provisions of Section **16(2)(a)** of the Act, and be a primary produce in order for it to be cleaned, sized, sorted, graded, chilled, dehydrated, packaged, cut and canned as an agricultural produce to be prepared for the market and be entitled to the exemption provided for in Section **16(1)** of the Act?

What was the intention of the Legislature? Was the produce be limited to the 'nut' or could other produce, be also encompassed in the word 'produce' and go thorough the activities referred to in Section **16(2)(b)**, for the said produce to be prepared for the market?

In order to achieve the intention of the Legislature in my view, a harmonious interpretation should be given to Section **16(2)(a)** and **16(2)(b)** of the Act.

The cardinal rule in interpreting a Statute is that the Rules of Interpretation should be followed, foremost, to preserve the intention of the Legislature. If the words are plain and unambiguous, and only indicate one meaning, then the literal meaning should be given. If not, a harmonious meaning should be given, for the section to be construed, so that there may be no repugnancy or inconsistency. The duty of the court is to implement the provisions, without departing from the policy underlined in the law.

Bindra on Interpretation of Statutes [12th ed 2021] at page 355 states as follows:

> "It is one of the cardinal principles of the interpretation of statutes that, where the language is plain and unambiguous, and admits of but one meaning, the courts must give effect to it according to its plain meaning. Courts are not justified in departing from such text even though serious

anomalies result or what the court conceives to have been the intention of the legislature, is not carried out."

Our courts have constantly accepted the principle of harmonious interpretation to ensure that provisions in sections and sub-sections would operate together cohesively, while honoring the legislative intent.

Bindra in Interpretation of Statutes at page 355 further goes onto state:

> "It is, however, equally well-settled that the meaning of the words used in any portion of the statute must depend upon the context in which they are placed. Moreover, in interpreting an enactment, all its parts must be construed together as forming one whole and it is not in accordance with sound principles of construction to consider one section, or group of sections, divorced from the rest of the statute. Further, so far as possible, that construction must be placed upon words used in any part of the statute which makes them consistent with remaining provisions and with the intention of the legislature to be derived from a consideration of the enactment. The words may be given a wider or more restricted meaning than they ordinarily bear, if the context requires it. **In construing a particular section of an Act, one must look at the whole Act, and it is necessary to consider the context in which such section occurs.** When words in different sections of the same statute, enacted for similar purpose, are susceptible of a possibly different construction, one which is approved by considerations derived from the policy of the law has to be adopted." (emphasis added)

If I may summarize, in interpreting a Statute, if the language is plain and unambiguous, a strict and a literal meaning should be given. It should be contextual in nature without departing from the intention of the Legislature and the Statute should be considered as a wholesome instrument.

However, in order to avoid a conflict between two provisions of a Statute and for a proper construction thereof, it is the duty of the Court to construe them in harmony, to work together cohesively to achieve its purpose, giving consideration to the spirit of the law.

Thus, in **Sampanthan et al v. Attorney General et al SC/FR 351/2018 to 356/2018 and 358/2018 to 361/2018 - S.C.M. 13.12.2018** at page 61, this Court observed as follows:

> "[the courts] must seek to interpret and apply the several provisions harmoniously and read the Statute as a whole. That rule of harmonious interpretation crystallises the sense that all the provisions of a Statute must be taken into account and be made to work together and cohesively to enable the Statute to achieve its purpose."

This Court, in **Puttalam Cement Company Ltd. V. Mutukumarana and another [2006] 1 SLR 54**, categorically held that the words in a section of a Statute cannot be interpreted in isolation; they must be given an interpretation to read in harmony with other provisions of the Statute.

This in my view, is to avoid conflict between the two provisions of an enactment, to arrive at a proper construction of the enactment.

The Court of Appeal too, in the case of **Distilleries Company Ltd v. Kariyawasam and others [2001] 3 SLR 119** observed that the provisions of law, has to be interpreted contextually, giving consideration to the spirit of the law.

Similarly, as held in **Vellupillai v. The Chairman, Urban District Council 39 NLR 464,** the object of a court of law is to approach the task of interpretation of a provision of law without extensive formalism and technicality, since it is not an academy of law.

Thus, in my view the provisions in Section **16(2)(a)** and **(b)** should be construed, so that there may be no repugnancy or inconsistency between the said two sub-sections.

As discussed earlier, Section **16(2)(a)** refers to 'an undertaking for the purpose of the production of any agricultural, horticultural or any dairy produce' and Section **16(2)(b)** refers to 'such produce being prepared for the market, by cleaning, sizing, sorting, grading, chilling, dehydrating, packaging, cutting or canning by changing the form, contour or physical appearance'.

Hence, any agricultural produce, I emphasise the word 'any', in preparation for the market in the manner described by sub-section **16(2)(b),** irrespective of a change in the form, contours and physical appearance, provided the character is not changed, will be entitled to the exemption granted by the Statute.

'Coir fibre pith', as narrated by the Respondent is 'cleaned, sorted and dehydrated' into marketable state by compressing into bricks and blocks. Thus, even if the form, contour and physical appearance of 'coir fibre pith' may have changed, since its character has not changed, in my view it should fall within the provisions of Section **16(2)(b)** of the Act and the undertaking which carries on such functions should be entitled to the exemption granted by the Statute. This exemption in any event is only granted for a limited period of five years and as observed by the Tax Appeals Commission is to encourage persons to be innovative and optimize the use of agricultural produce.

Another point strenuously put forward by the learned DSG as of vital importance in deciding the 3rd Question of Law was the distinction between the 'produce' and the 'product'. The learned DSG's submission with reference to Blacks Law Dictionary, was that a 'produce' comes into existence as a result of natural growth, whereas 'product' is the outcome of any manufacturing process, whereby the 'produce' has been converted to a distinct 'end product'. To substantiate, this proposition, *vis-â-vis,* the coir fibre pith, the learned DSG falls back on the financial statements of the Respondent, with regard to raw materials and consumables and surmise coir fibre pith to be a product and not a produce. He also highlights the significance of the word 'manufacture' to submit, that a 'product' can be manufactured, but not a 'produce'.

Countering the said submissions of the learned DSG, the learned President's Counsel for the Respondent takes up the position, that the production process adopted by the Respondent was never a point of contention before the CGIR and the Tax Appeals Commission. The learned President's Counsel further submitted that the consistent position

of the CGIR was that 'coir fibre pith' did not constitute agricultural produce, within the contemplation of Section **16** of the Act, and the Order of the CGIR dated 20th October, 2014 clearly showcases, the thinking of the CGIR. If I may repeat, it goes as follows:

> "*In this case the agricultural produce based is 'coconut', a product referred to in Section **16(2)(a)**. Therefore, the primary process undertaken by the company should be aimed towards in preparation those 'coconuts' into a marketable state to become an agricultural undertaking […]*"

Hence, the learned President's Counsel argued, that the CGIR erred in assuming that the 'coconut' was the only agricultural produce that could be derived from a coconut palm or tree.

Further, he drew our attention to three other cases that came up before the Court of Appeal involving 'coir fibre pith', wherein the CGIR made similar orders, *i.e.,* it does not come within Section **16(2)(b),** which position was rejected by the Tax Appeals Commission. Against the said determinations too, the CGIR has gone before the Court of Appeal in three Appeals or cases stated. However, the said three cases were subsequently withdrawn by the CGIR. Thus, the determination of the Tax Appeals Commission in relation to 'coir fibre pith' remains unchallenged as far as the said cases are concerned, was the contention of the Respondent.

I have considered the submissions made by the Appellant and the Respondent. For reasons morefully discussed in this judgement wherein I have taken up the view that not only 'coconuts' but other parts of the coconut palm fall within the term 'agricultural produce', I see no reason to delve into the differences of 'produce' and 'product' or consider the manufacturing process of 'coir fibre pith'. The matter in issue is whether 'coir fibre pith' be considered a primary produce, in order for it to obtain the exemption granted under Section **16(2)(b)** of the Act.

If I may digress, Section **16(2)(b)** activities include chilling and canning too. Canning of strawberries for example, requires machinery and a factory. However, the primary produce *i.e.,* strawberries will not undergo a change of character. Hence, merely because the financial statement of such an undertaking refers to factory and machinery, can such an undertaking be deprived of the tax exemption granted in the Statute? Hence, on the said basis too, I see no reason to rely upon financial statements to decide on exemptions granted to an undertaking.

The *Cocos nucifera* or the coconut tree is an iconic symbol of our country and is commonly known as the 'tree of life' or the 'tree with thousand users'. Its produce clearly falls within the definition of Section **16(2)(a)** of the Act, for the purpose of the production of any agricultural produce and is deemed to be the primary produce. When such primary produce goes through the process or the preparation or the actions referred to in Section **16(2)(b)**, it is ready for the market. An undertaking coming within these provisions will be entitled to the exemption as provided for in Section **16(1)** of the Act.

If such primary produce is converted to a product as specified in Section **16(2)(c)** or if such primary produce is utilized to produce any product in terms of Section **16(3)**, then an undertaking concerned with such process would also be exempted under the Act.

If I go back to the illustration referred to earlier, strawberry jam or strawberry ice cream goes through a manufacturing process and becomes a 'product'. Similarly, coconut milk powder and coconut oil also goes through a manufacturing process and becomes a product, wherein the primary produce is the coconut kernel. Corollary, 'coir fibre pith' does not go though a manufacturing process. Its only cleaned, sorted, dehydrated and packaged.

Hence, for reasons adumbrated herein, I am of the view that 'coir fibre pith' falls well within the parameters of Section **16(2)(b)** of the Act.

In the said circumstances, I hold that the Court of Appeal has not erred in its findings pertaining to 'coir fibre pith'. Thus, I answer the **3rd Question of Law** in the negative and in favour of the Respondent.

In view of the aforesaid answer, which determines this Appeal to a finality, I do not think it is necessary to consider the other two questions of law raised before this Court. Nevertheless, since leave has been granted on the said two questions, I wish to briefly look at the said two questions raised before this Court now and I wish to consider the said two questions together.

The 1st and 2nd questions of law are as follows:

Q1. Did the Court of Appeal err in law in shifting the burden of proof from the tax payer to the revenue in respect of matters that are within the specific knowledge of the taxpayer and/or relating to a tax exemption?

Q2. Did the Court of Appeal err in law in departing from the principle that in a case of an ambiguity or doubt regarding an exemption in a fiscal statute, such ambiguity or doubt should be resolved in favour of the revenue and not the assessee?

In my view, the aforesaid two questions are hypothetical in nature. It speaks of burden of proof in general in respect of matters within the knowledge of the tax payer relating to a tax exemption and in the case of ambiguity or doubt in a fiscal statute, whether such doubt should be resolved in favour of the revenue or the assesse.

Though a cursory reference is made to the Court of Appeal and may be the questions were framed pre-supposing that the Court of Appeal shifted the burden of proof and an ambiguity or doubt existed in interpreting the relevant prevision, no specific instance or instances have been referred to in the question of law, as to when and where the Court of Appeal erred in coming to its findings.

Notwithstanding the above, I proceed to examine the said questions.

In respect of the 1st question of law, the Appellant contends, the Respondent bears the burden of proof under the principles of the law of evidence as well as the law of taxation. The learned DSG drew our attention to Sections 101,103 and 106 of the Evidence

Ordinance to justify his contention. He also drew a parallel between our case law, English law and the following authorities.

R. Turner (1816) 5 M & S 206; Dickinson v. Minister of Pensions (1953) 1QB 228; Sumati Dayal v. Commissioner of Income Tax, Bangalore [1995] SCC Supp (2) 453; and **Commissioner of Customs (Import) Mumbai v. Dilip Kumar and Company and others (2018) 9 SCC 1 30.07.2018 Civil Appeal No. 3327 of 2007**.

In response, the Respondent did not challenge the said position. The contention of the Respondent was that the 'onus' was never an issue and therefore it is immaterial to the substantial question before court.

Undoubtedly, our courts and the courts of other jurisdictions, have consistently held, that if the burden of proving a fact is within the knowledge of any person, then the proof of that fact is upon him. Similarly, in relation to fiscal matters, if an item is not taxable because it falls within the exemptions provided by the Act, then proving of such fact too, lies with the person (assesse) who has personal knowledge of such fact.

Thus, I see no reason to deviate from the said reasoning. If a matter is within the specific knowledge of a person, the burden lies upon such person to prove such fact.

However, in respect of the 1st question of law and the burden of proof, the grievances of the Appellant appears to be the reference of the learned judge, in the impugned Court of Appeal judgement to Sections 214 and 215 of the Act, *viz.*, powers of inspection.

The Appellant contends, the words in the Court of Appeal judgement, that the 'Assessor could have ascertained the true nature of the process by calling for further proof or carrying out an inspection', turns the tax law *'on its head'*, if I be permitted to refer to the learned DSG's words itself.

In my view, such statement appears to be made in *obiter*. *A obiter dictum* statement has no binding effect. In the matter before us, the onus or the burden of proof, was not the issue, and is immaterial in deciding this matter. The point of contention was in relation to 'coir fibre pith' and whether 'coir fibre pith' falls within the provisions of Section **16(2)(b)** of the Act or not. The Court of Appeal, has correctly identified the said issue, and has examined it in the light of decided cases and had come to its findings. Hence, the reference to powers of inspection and calling for further proof, will not have any bearing or difference, as it is *per se* obiter.

Thus, the 1st question of law raised is hypothetical in nature and has no bearing to the matter in issue. Given the circumstances of this Appeal, I am of the view, that the Court of Appeal did not err in arriving at its findings.

In the said circumstances, answering the **1st Question of Law** will not arise.

Let me now consider the 2nd question of law *i.e.,* if there is an ambiguity or doubt regarding an exemption in a fiscal statute then it has to be resolved in favour of the revenue.

Firstly, I am of the view that this question is also hypothetical. As far as this Appeal is concerned, my considered view is that the material provision is Section **16(2)(b)** of the

Act and the said Section is clear and unambiguous. Hence, there is no reason to go on a voyage regarding 'ambiguity and doubt'.

Secondly, this question falls within the scope of the earlier question. Hence, when considering the provisions of the Statute as discussed earlier, the principles governing interpretation, *i.e.*, the rules followed in interpreting a Statute, should be followed. If the provisions are clear and unambiguous, such provisions should be adhered to. If the provisions are ambiguous, a harmonious interpretation could be given. Text book writers also refer to the golden rule of interpretation and liberal interpretation, when the situation demands. Thus, in the case of ambiguity or doubt, a definite, clear cut principle cannot be set down. It varies, and has to be decided on the given facts and circumstances, read together with the intention of the Legislature.

The grievance of the Appellant in this instance appears to be the reference by the Judges of the Court of Appeal, to the case, **Government of Kerala v. Mother Superior Adoration Convent AIR (2021) SC 1217**, where 'beneficial and promotional exemptions' were liberally interpreted by the Indian Supreme Court.

Further, the Appellant vehemently contended that the reference in the impugned judgement, to the Court of Appeal decision in **Nanayakkara v. University of Peradeniya (1991) 1 SLR 97,** where a liberal interpretation was given by our courts is erroneous. In the said case Sarath N. Silva, J., (as His Lordship was then) referred to the strict construction to determine the liability under a taxing statute and to the exemptions being provided for by the Legislature for the purpose of giving a measure of relief to a person, who would otherwise be liable to tax under the general rule. His Lordship interpreted the said provisions liberally and stated that 'no restrictions should be placed to defeat the granting of such exemptions'.

The Appellant also contended, that the reasoning of the aforesaid Indian authority namely, **Mother Superior Adoration Convent case,** where the court considered the charitable nature under which the exemption was granted, cannot be applied in the instant appeal, as the reasoning in the said case is erroneous and goes against the ratio of the divisional bench judgement of **Dilip Kumar Case.**

The DSG also contended that the context and the situation upon which our courts determined the aforesaid **Nanayakkara's case** pertaining to an affidavit was wholly different to the present situation and therefore the learned judges of the Court of Appeal, erred in law, in referring and relying upon the said reasoning to determine, the impugned judgement.

The Appellant also took umbrage to the submissions made before this Court by the Respondent, pertaining to **Vallibel Lanka (Pvt) Limited v. Director General of Customs and others [2008] 1 SLR 219**. In this case Sripavan, J., (as His Lordship was then) stated, as follows:

> *"It is the established rule in interpretation of Statutes that levying taxes and duties, not to extend the provisions of the Statute by implication, beyond the clear import of the language used or to enlarge their operation in order to embrace matters not specifically pointed out.* ***In case of doubt***

the provisions should be construed most strongly against the State and in favour of the citizen.*"*

"Thus, the intention to impose duties and/or taxes on imported goods must be shown by clean and unambiguous language and cannot be inferred by ambiguous words. The Court cannot give a wider interpretation […] merely because some financial loss may in certain circumstances be caused to the State. Considerations of hardship, injustice, or anomalies do not play any useful role in construing fiscal statutes. One must have regard to the strict letter of the law and cannot import provisions […] so as to supply any assumed deficiency"

The learned DSG strenuously argued, that the reliance by the Court of Appeal on the aforesaid **Vallibel Lanka** judgement, which is in respect of a matter under the Customs Ordinance is erroneous and misplaced.

Moreover, it was also submitted by the learned DSG that the Court of Appeal failed in its judgement to take into cognizance, the case of **Lanka Ashok Leyland PLC v. The Commissioner General of Inland Revenue C.A. Tax/14/2017 C.A.M. 14.12.2018**, where it was unequivocally held, that exemption notifications must be strictly interpreted in its entirety, and not in parts.

Hence, the totality of the Appellants submission was that the Court of Appeal erred in giving a liberal interpretation and holding with the assesse, and thus, departed from the principle that in case of doubt and ambiguity regarding an exemption, that it should always be resolved in favour of the revenue.

The learned President's Counsel for the Respondent, responding to the said submissions of the Appellant contended, that in the instant appeal, the Statute is clear and unambiguous. Thus, there is no need to resort or resolve in favour of the revenue and the statutory provision must be given effect to.

The learned President's Counsel also relied upon the dicta of Lord Thankerton in **Inland Revenue Commissioner v. Ross and Coulter [1948] 1 All ER 616** at page 623, where it was held "on the other hand, if the provision is reasonably capable of two alternative meanings, the courts will prefer the meaning more preferable to the subject", to argue that the contention of the Appellant pertaining to this question has no basis in law.

I tend to agree with the submission of the Respondent. Hence, I do not think it is necessary to examine or distinguish the aforesaid judgements at this juncture, other than to re-iterate, the established rule in interpreting fiscal statutes, *i.e.*, not to extend the provisions of the Statute by implication, beyond the clear language of the Statute.

The Respondent further drew our attention to **Maxwell** on **Interpretation of Statutes** [12th ed-1969] page 256.

It reads as follows:

"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, and language must not be constrained in order to tax a transaction which, had the legislature thought of it, would have been covered by appropriate words." 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.** [vide Cape Brandy Syndicate v. I.R.C. [1921] 1 K.B. 64, at page 71]." (emphasis added)

Our attention was also drawn to **Partington v. Attorney General (1969) LR 4 HL 100, at page 122,** where Lord Cairns stated as follows:

> "If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be**. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be**. In other words, if there be admissible, in any statute, what is called an equitable construction, certainly such a construction is not admissible in a taxing statute, where you can simply adhere to the words of the statute." (emphasis added)

In **Novopan India Ltd., Hyderabad v. Collector of Central Excise and Customs, Hyderabad 1994 Supp (3) SCC 606** the Indian Supreme Court observed as follows:

> "The choice between a strict and a liberal construction arises only in case of doubt in regard to the intention of the legislature manifest on the statutory language. Indeed, the **need to resort to any interpretative process arises only where the meaning is not manifest on the plain words of the Statute**. If the words are plain and clear and directly convey the meaning, there is no need for any interpretation". (emphasis added)

Thus, as **Rowlatt, J.,** in **Cape Brandy Syndicate case** [supra] succinctly held, courts have clearly followed the rule that in taxation, you have to look simply at what is clearly said. You read nothing in; you imply nothing; but you look fairly at what is said and at what is said clearly. That is the tax.

Hence, in fiscal Statutes, the first source is the words of the Statute. Where the meaning is manifest on the plain words of the Statute, there is no need for any interpretation process. Where there is an ambiguity or doubt regarding an exemption, only such ambiguity or doubt should be resolved having regard to the context and the language of the

words of the Statute. In the appeal before this Court for determination, the words of the Statute is clear and precise. There is no ambiguity or doubt whatsoever.

In the said circumstances, I see no merit in the submissions of the Appellant, where there is ambiguity or doubt, that it should always be resolved in favour of the revenue and against the assesse. Such a contention would go against the cannons of interpretation.

Further, I am of the view, that a hard and fast rule cannot be laid down in a situation where there is ambiguity or doubt. Every incident should be looked at and resolved, having regard to the words of the Statute and the intention of the Legislature. Thus, a general presumption or a hypothetical assertion, as contented by the Appellant cannot be laid down.

The Court of Appeal has followed the said reasoning. Thus, I am of the view that the Court of Appeal did not err in arriving at its finding.

In the aforesaid circumstances, answering the **2nd Question of Law** too, will not arise.

Conclusion

For reasons morefully adumbrated in this judgement, and especially in view of the answers given to the Questions of Law, I see no reason to interfere with the impugned judgement.

I uphold the judgement of the Court of Appeal dated 10th August, 2022 and the Determination of the Tax Appeals Commission dated 27th April, 2017.

The Appeal of the Appellant is thus, dismissed. I order no costs.

The Appeal is dismissed.

Judge of the Supreme Court

Jayantha Jayasuriya, PC, CJ.

I agree

Chief Justice

S. Thurairaja, PC. J.

I agree

Judge of the Supreme Court