

**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** the Petitioner abovenamed filed this Application on 29<sup>th</sup> September 2003 and Your Lordships' Court made Order on 27<sup>th</sup> October 2003 to issue Notice on the 12<sup>th</sup> Respondent, and further made Order on 12<sup>th</sup> January 2004 to issue Notice on the 1<sup>st</sup> Respondent, refusing Notices to be issued on the 2<sup>nd</sup> to 11<sup>th</sup> Respondents

**AND WHEREAS** the 11<sup>th</sup> Respondent abovenamed, Secretary to His Excellency the President, acting in terms of Rule (7) of the Court of Appeal [Appellate Procedure] Rules 1990, had, however, previously on 15<sup>th</sup> December 2003 already filed a Statement of Objections, concurring with the Petitioner and agreeing to the grant of the reliefs sought for by the Petitioner

**AND WHEREAS** the Supreme Court subsequently by its Order dated 15<sup>th</sup> June 2004 in SC Appeal No. 47/2004 having directed that Notices be issued on the 2<sup>nd</sup> to 11<sup>th</sup> Respondents as well, Your Lordships' Court on 24<sup>th</sup> June 2004 made Order to issue Notices on the said Respondents for 26<sup>th</sup> July 2004, whereby all Respondents stood and stand noticed by Your Lordships' Court

**AND WHEREAS** during the pendency of this Application, Her Excellency the President made Reference No. 1/2004 invoking the consultative jurisdiction of the Supreme Court, under and in terms of Article 129 (1) of the Constitution, *vis-à-vis*, the impugned Inland Revenue (Special Provisions) Act No. 10 of 2003 and the Inland Revenue (Special Provisions) (Amendment) Act No. 31 of 2003, in respect of which a public hearing was held on 17<sup>th</sup> March 2004 by a 5-Member Bench of the Supreme Court, and the Petitioner too intervened and made submissions at the said hearing

*A true copy of the Opinion pronounced by Their Lordships of the Supreme Court is annexed hereto marked "XI"*

**AND WHEREAS** said Opinion pronounced by the Supreme Court, *inter-alia*, held thus:

“It is to be borne in mind that public revenue is held in trust for the People of Sri Lanka who cannot be denied its benefit. Any exemption that is granted should be strictly in compliance with Article 12 (1) of the Constitution”

“The right to equality is statutorily enshrined in terms of Article 12 of our Constitution and is a component of the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights (Article 2). It provides for all persons to be equal before the law and to be entitled to equal protection of the law. This guarantee of equal protection of the law is an injunction issued by the Constitution to the Legislature against enacting discriminatory laws”

“It is our opinion, based upon the preceding analysis that, the provisions contained in the Inland Revenue (Special Provisions) Act, No. 10 of 2003, as amended, are inconsistent with Article 12(1) of the Constitution which guarantees to every person equal protection of the law; in that it grants; immunities and indemnities to persons who have contravened the laws that have been referred to and thereby defrauded public revenue causing extensive loss to the State”

“The schedule to Act No. 10 of 2003, lists different statutes as referred to earlier, such as Turnover Tax, Goods and Services Tax, National Security Levy Tax and the like. Revenue has been collected from the general public by various companies and persons under these statutes as agents of the State; hence kept in trust for the benefit of the People. The revenue thus collected should be remitted to the State. However, Act No. 10 of 2003 has permitted those companies and persons to retain money collected from the public on behalf of the State and thereby condoned misappropriation of public funds”

**AND WHEREAS** subsequently Their Lordships of the Supreme Court made a Determination SC (SD) No. 26/2004 upon hearing on 23<sup>rd</sup> August 2004, on the reference made by the Cabinet of Ministers in terms of Article 122 (1) of the Constitution, of a Bill titled ‘Inland Revenue (Regulation of Amnesty)’, to repeal the Inland Revenue (Special Provisions) Act No. 10 of 2003, as amended by Act No. 31 of 2003

**AND WHEREAS** in the said Determination, Their Lordships of the Supreme Court reiterated excerpts from the aforesaid Opinion of the Supreme Court, specifically reiterating the last paragraph quoted above

*A true copy of the said Determination of the Supreme Court is annexed hereto marked “X2”*

**AND WHEREAS** consequently the Parliament of Sri Lanka enacted Inland Revenue (Regulation of Amnesty) Act No. 10 of 2004, which was certified into law by the Hon. Speaker on 20<sup>th</sup> October 2004, to repeal the Inland Revenue (Special Provisions) Act No. 10 of 2003 and Inland Revenue (Amendment) Act No. 31 of 2003, and to afford only an Income Tax Amnesty upto 31<sup>st</sup> March 2002 under the Inland Revenue Act No. 38 of 2000, in respect of the persons who had made Declarations under the said repealed laws, and further empowering the respective State Authorities to enforce the relevant laws to assess and collect all revenues legitimately due to the State, which had been defrauded to the State by the aforesaid repealed laws

**AND WHEREAS** the Petitioner instituted several actions in the national and public interest agitating against the aforesaid Inland Revenue (Special Provisions) Act No. 10 of 2003 and Inland Revenue (Amendment) Act No. 31 of 2003, which led to the final repeal of the said statutes and the enactment of Inland Revenue (Regulation of Amnesty) Act No. 10 of 2004, which was certified in law on 20<sup>th</sup> October 2004

**AND WHEREAS** the Petitioner's such stance having been fully vindicated by the foregoing, and most of the reliefs sought for by the Petitioner having already been satisfied and fulfilled, the Petitioner in June 2005 required to ensure that the provisions of the Inland Revenue (Regulation of Amnesty) Act No. 10 of 2004 are fully and effectually complied with, and duly observed and performed, and that the 1<sup>st</sup> Respondent affords all informations lawfully called for, in terms of the Exchange Control Act by the 5<sup>th</sup> Respondent, and to the other relevant Respondents, the Petitioner by Motion dated 20<sup>th</sup> July 2005, with notice to the State Attorney, who is the Registered Attorney for the 1<sup>st</sup> to 10<sup>th</sup> and the 12<sup>th</sup> Respondents and the Registered Attorney for the 11<sup>th</sup> Respondent sought the permission of Your Lordships' Court to suitably amend the prayers, taking cognizance of the foregoing dicta pronounced by Their Lordships of the Supreme Court and the provisions of the Inland Revenue (Regulation of Amnesty) Act No. 10 of 2004

**AND WHEREAS** upon Their Lordships of the Supreme Court opining and determining as aforesaid that the said repeal Acts, namely Inland Revenue (Special Provisions) Act No. 10 of 2003, as amended by Act No. 31 of 2003 had been a fraud perpetrated on the State, defrauding public revenue, no legitimacy or legitimate entitlement, right or expectation or any legal protection, whatsoever, would flow to anyone, whomsoever, who had partaken in such fraud defrauding the State

**AND WHEREAS** Section 178 (4) (b) of Inland Revenue Act No. 38 of 2000 and Section 209 (iv) (b) of Inland Revenue Act No. 10 of 2006 mandated the Commissioner General of Inland Revenue to communicate to the Commissioner of Revenue of any Provincial Council, matters relating to turnover of any wholesale or retail trade or business, carried on by any person or partnership coming under the purview of such Provincial Council, to enable such Commissioner of Revenue to ascertain such turnover.

**AND WHEREAS** furthermore the Inland Revenue Act No. 28 of 1979 at Section 158 (10), Inland Revenue Act No. 38 of 2000 at Section 178 (10) and Inland Revenue Act No. 10 of 2006 at Section 209 (10) **consistently mandated the Commissioner General of Inland Revenue, where it appears that any person has committed an offence under the Exchange Control Act or the Customs Ordinance, to communicate or deliver to the Controller of Exchange or Director General of Customs, any information relating to the commission of the offence or any articles, books of accounts or other documents necessary or useful for the purpose of proving the commission of such offence**

**AND WHEREAS** furthermore Section 158 (5) (iv) of the Inland Revenue Act No. 28 of 1979, Section 178 (5) (d) of the Inland Revenue Act No. 38 of 2000 and Section 209 (5) (d) of the Inland Revenue Act No. 10 of 2006, **consistently mandated the Commission General of Inland Revenue to report to the Attorney General for investigation any case where he suspects from information available, that any person is guilty of bribery**, whilst by Act No. 19 of 1994 the then Bribery Department, was converted into the Commission to Investigate Allegations of Bribery or Corruption

**AND WHEREAS** furthermore the Government had subsequently enacted the Convention on the Suppression of Terrorist Financing Act No. 25 of 2005, Prevention of Money Laundering Act No. 5 of 2006 and Financial Transaction Reporting Act No. 6 of 2006

**AND WHEREFORE** in such circumstances, to ensure the due, perfect and effectual implementation of the provisions Inland Revenue (Regulation of Amnesty) Act No. 10 of 2004, a settlement has now been reached as set out hereinbelow by and between the Petitioner and the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents, who are statutorily bound to give effect to the provisions of the said Inland Revenue (Regulation of Amnesty) Act No. 10 of 2004

**AND NOW THEREFORE** in the foregoing circumstances, the Petitioner and the Respondents have of consent agreed to the following terms and conditions being entered into in these proceedings before Your Lordships' Court;

- a) the 1<sup>st</sup> Respondent doth hereby agree and undertake by himself and/or his agents and/or assigns to deal with the Declarations (approximately 51,805 Declarations), which had been made under the 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, and accordingly
  - i) to open new Income Tax Files in respect of approximately 13,482 Declarents, who have submitted Declarations, without having Income Tax Files, and to grant the said Declarents Income Tax Amnesty, after verification of the correctness of the Declarations, in terms of the law up to 31<sup>st</sup> March 2002, and to thereafter enforce the correct assessment and collection of Income Taxes for the subsequent Years of Assessment commencing from the Year of Assessment 2002/03 under and in terms of the Inland Revenue Act No. 38 of 2000, as amended,
  - ii) to grant an Income Tax Amnesty, wherever it is due, in terms of the law up to 31<sup>st</sup> March 2002 to approximately 38,303 Declarents, who already had Income Tax Files, after verification of the correctness of the Declarations, and to thereafter enforce the correct assessment and collection of Income Taxes for the subsequent Years of Assessment commencing from the Year of Assessment 2002/03, under and in terms of the Inland Revenue Act No. 38 of 2000, as amended,
  - iii) to enforce and/or cause the enforcement of the collection all other indirect taxes, such as GST, VAT and Turnover Tax, in respect of all the aforesaid Declarents as may be applicable under the respective laws, and where necessary causing action to be taken under and in terms of the Offences Against Public Property Act No. 12 of 1982, as amended, inasmuch as the Supreme Court had pronounced that such revenue had been collected on behalf of the State from the general public by companies and persons under the said Statutes and thus tantamount to the misappropriation of public funds,
  - iv) the 1<sup>st</sup> Respondent and his agents and/or assigns to communicate, in terms of Inland Revenue Act No. 38 of 2000 Section 178 (4) (b) / Inland Revenue Act No. 10 of 2006 Section 209 (4) (b) to the Commissioners of Revenue of the respective Provincial Councils of matters which relate to turnover of any wholesale or retail trade or business carried on by any person or partnership within such respective Provincial Councils to enable such Commissioners of the respective Provincial Councils to ascertain such turnovers for purpose of collecting the correct turnover tax, in respect of the Declarents, who carried on wholesale or retail trading activities.
  - v) to tender to Your Lordships' Court, quarterly reports, with copies thereof to the Petitioner, on the progress made on the foregoing, and any other in terms of the aforesaid statutory provisions, as at the end of each quarter, until all the said Declarations (approximately 51,805 Declarations) are completely dealt with as aforesaid, and the first of such reports is to be tendered upto 31.3.2009 by 30.4.2009 and before the expiry of one month from the end of each and every quarter, until conclusion.

- b) The 1<sup>st</sup> Respondent doth hereby agree and undertake to communicate by himself or his agents and/or assigns;
- 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, 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, where it appears that any person has committed an offence under the Customs Ordinance,
  - iii) to tender to Your Lordships' Court, quarterly reports, with copies thereof to the Petitioner, on the progress made on the foregoing, and any other in terms of the aforesaid statutory provisions, as at the end of each quarter, until all the said Declarations (approximately 51,805 Declarations) are completely dealt with as aforesaid, and the first of such reports is to be tendered upto 31.3.2009 by 30.4.2009 and before the expiry of one month from the end of each and every quarter, until conclusion.
- c) the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents do hereby agree and undertake,
- i) as have been authorized and empowered by the provisions of Inland Revenue (Regulation of Amnesty) Act No. 10 of 2004, to enforce the respective laws administered and enforced by them against any one or more of the Declarents, who had made Declarations under the 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,
  - ii) to tender to Your Lordships' Court, quarterly reports, with copies thereof to the Petitioner, on the progress made on the foregoing, as at the end of each quarter, until all the said Declarations (approximately 51,805 Declaration) are completely dealt with as aforesaid, and the first of such reports is to be tendered upto 31.3.2009 by 30.4.2009 and before the expiry of one month from the end of each and every quarter, until conclusion.
- d) The 1<sup>st</sup> Respondent doth hereby agree and undertake
- i) 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 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.

- x) by those Declarants who had declared themselves to be public servants or those who are disclosed to be public servants, as it appears from the informations in the declarations, who have held such office within the last 10-years prior to the date of coming into effect of Inland Revenue (Special Provisions) Act No. 10 of 2003, coming under the purview of the Bribery Act, amended by Act No. 20 of 1994, and
- y) by those Declarants who had declared themselves to be persons or those who are disclosed to be public servants, as it appears from the informations in the declarations, who have held such office within the last 10-years prior to the date of coming into effect of Inland Revenue (Special Provisions) Act No. 10 of 2003 coming under the purview of the Declaration of Assets and Liabilities Law No. 1 of 1975, amended by Act No. 74 of 1988

inasmuch as the aforesaid persons and/or their said Declarations had been specifically denied any immunity, whatsoever, under the Inland Revenue (Special Provisions) Act No. 10 of 2003, as amended by Inland Revenue (Special Provisions) Act No. 31 of 2003, and no legitimacy or legitimate entitlement, right or expectation or legal protection, whatsoever, could flow from a fraud, and in this instance, the perpetration of a fraud on the State defrauding public revenue as had been held by the Supreme Court.

- ii) to tender to Your Lordships' Court, quarterly reports, with copies thereof to the Petitioner, on the progress made on the foregoing, and any other in terms of the aforesaid statutory provisions, as at the end of each quarter, until all the said Declarations (approximately 51,805 Declarations) are completely dealt with as aforesaid, and the first of such reports is to be tendered upto 31.3.2009 by 30.4.2009 and before the expiry of one month from the end of each and every quarter, until conclusion.
- e) the 7<sup>th</sup> Respondent doth hereby agree and undertake to take warranted action by himself and/or through his agents and/or assigns, in terms of the provision of the Bribery Act, amended by Act No. 20 of 1994, and the Declaration of Assets & Liabilities Law No. 1 of 1975, amended by Act No. 74 of 1988, in respect of persons pertaining to whom informations have been forwarded in compliance with (d) (i) above
- f) the Petitioner doth hereby reserve the right to Move Your Lordships' Court for Writs of Mandamus for the due performance and observance of the foregoing, in the event the aforesaid conditions are violated and/or defaulted for a period of over two months.
- g) the Petitioner and the Respondents do hereby agree and respectfully Move that Your Lordships' Court be pleased to mention this matter each month on a date convenient to Your Lordships' Court to ensure the tendering of the foregoing reports, and this Application would be terminated only upon the due performance of the foregoing conditions, until the aforesaid approximately 51,805 Declarations have been fully and finally dealt with in terms of the foregoing undertakings given by the Respondents..

On this      day of March 2009

Attorneys-at-Law  
for the Petitioner

State Attorney for  
1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 7<sup>th</sup> Respondents

**C.A. WRIT APPLICATION NO. 1661/2003**

***Minutes in the Court of Appeal from 10.10.2005***

10.10.2005	Respondents' Counsel moving for further time to file Terms of settlement, fixed to be mentioned on 26.10.2005.
26.10.2005	Mentioned for Settlement Respondents' wanting more time to file Terms of Settlement, fixed to be mentioned on 23.11.2005
23.11.2005	Re-fixed to be mentioned on 6.2.2006 to finalise settlement.
6.2.2006	Upon both Counsel informing Court that there is a possibility of a settlement, matter fixed to be mentioned on 24.4.2006.
24.4.2006	State Counsel appearing for the Respondents informing Court that there is possibility of a settlement, re-fixed to be mentioned on 12.6.2006.
12.6.2006	Upon Counsel for the Petitioner & the Respondents informing Court that there is a possibility of a settlement and moving that the application be mentioned in a month's time, order made to mention on 12.7.2006.
12.7.2006	Re-fixed to be mentioned (to finalise terms of Settlement) 2.8.2006.
2.8.2006	Re-fixed to be mentioned (Settlement) 23.8.2006.
23.8.2006	Re-fixed to be mentioned (Settlement) 27.9.2006.
27.9.2006	Re-fixed to be mentioned 1.11.2006
1.11.2006	Re-fixed to be mentioned 20.11.2006
20.11.2006	Re-fixed to be mentioned 22.1.2006
22.1.2007	Re-fixed to be mentioned to finalise terms of settlement on 9.3.2007
9.3.2007	Re-fixed to be mentioned 15.5.2007
15.5.2007	Counsel for the Respondents informing that Attorney General is considering the terms of Settlement, re-fixed to be mentioned 18.7.2007.
18.7.2007	Counsel for the Respondents informing that Attorney General is considering the terms of Settlement. Re-fixed to be mentioned 20.9.2007.
20.9.2007	Terms of Settlement finally on 6.11.2007
6.11.2007	Mention Terms of Settlement finally on 3.12.2007.
3.12.2007	Mention for Settlement 7.1.2008.
7.1.2008	Mention 18.2.2008.
18.2.2008	Mention 28.3.2008.

28.3.2008	Mention 22.7.2008.
22.7.2008	Mention for Settlement 29.8.2008.
29.8.2008	Mention 17.10.2008
17.10.2008	Mention 20.11.2008
20.11.2008	Mention 15.1.2009
15.1.2009	Mention 16.2.2009
16.2.2009	Argument 26.3.2009
26.3.2009	Argument 14.7.2009
14.7.2009	Re-fixed for Hearing 7.10.2009
7.10.2009	Re-fixed for Hearing 21.1.2010
21.1.2010	Re-fixed for Hearing 3.5.2010
3.5.2010	Amendment of Caption 5.7.2010 (Substitution of 1 <sup>st</sup> & 7 <sup>th</sup> Respondents)
5.7.2010	Case postponed 6.7.2010 (Judge Sriskandaraja was absent)
6.7.2010	Re-fixed for Argument 3.9.2010
3.9.2010	Mention 1.11.2010
1.11.2010	Mention 14.2.2011
14.2.2011	Mention 27.6.2011
27.6.2011	Mention 1.8.2011.
1.8.2011	Mention 6.9.2011
6.9.2011	Mention 4.11.2011
4.11.2011	Mention 20.1.2012