



Consultants 21 Limited <consultants21@gmail.com>

Amended Draft Consent Motion

Consultants 21 Limited <consultants21@gmail.com>

Mon, Dec 17, 2007 at 1:32 PM

To: arjuna@dialogsl.net

Cc: Abdeen Associates <abdeen@sltnet.lk>

Dear Arjuna,

Pursuant to the fruitful discussion had this morning, I thought I will amend the Draft Consent Motion as discussed, whilst the matter is fresh in my mind.

The amendments to the Draft Consent Motion annexed are:

1. At page 3 in the Preamble, the 4th paragraph has been added in the citation from the Supreme Court pronouncement, to support Writ (a) (iii) as discussed. No other changes made to the Preamble.

Writ (a) (i), (ii), (iii) stands without amendment, except a new (a) (iv) has been added for the 1st Respondent to confirm to Court compliance by 30th June 2008 (6 Months).

2. Writ (b) has been amended as requested, deleting the obligation of the 1st Respondent to communicate to the 2nd, 3rd and 4th Respondents, even though the 1st Respondent had referred to the 3rd and 4th Respondents only

Writ (b) (i) covers 2nd, 3rd, 4th and 5th Respondents' duty to enforce their respective laws, as specifically authorized and empowered by Act No. 10 of 2004, more particularly Section 4 (4) thereof.

1st Respondent is required to communicate only to the 5th Respondent in terms of the requests in writing, which had already made by the 5th Respondent, referred to in the Preamble at paragraph 1 on page 4 (I annex scanned copies of Ministry of Finance Letters dated 1.7.2005 and 1.10.2004 in this regard.)

New (b) (iii) has been added for the Respondents to confirm to Court compliance by 30th June 2008 (6 Months)

3. Writ (c) no amendments have been made, except (c) (ii) has been added for the 1st Respondent to confirm to Court compliance by 30th June 2008 (6 Months)
4. Please note that Letter dated 11.9.2007 to which was attached the draft Consent Motion (which was filed in Court by Motion dated 15.11.2007) had been copied to the 1st, 2nd, 3rd, 4th, 5th, 7th and 11th Respondents. None of them have refuted and/or disputed the contents of the said Letter, except the 1st Respondent having sent observations on the Draft Consent Motion as discussed, and Draft Consent Motion amended accordingly.

I trust that in the national and public interest, this matter could be concluded and the Consent Motion filed in Court this week, particularly given the current critical predicament of revenue administration as explained, and as disclosed in the Auditor General's Special Report to Parliament, PAC Report and in the media.

Shall be pleased to afford you any further clarifications and explanations in this regard.

Kind regards,

Nihal

Consultants 21 Ltd.

www.consultants21.com

2 attachments

 **consent motion dated 17.12.2007.doc**
56K

 **Finance Ministry Letters.pdf**
62K

**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, 1st Floor, Hemas Building
York Street,
Colombo 1.
5. Controller of Exchange,
Central Bank of Sri Lanka
5th Tower, Level 7, Janadhipathi Mawatha,
Colombo 1.
6. Governor, Central Bank of Sri Lanka
Chairman, Monetary Board of Sri Lanka
1st 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 29th September 2003 and Your Lordships' Court made Order on 27th October 2003 to issue Notice on the 12th Respondent, and further made Order on 12th January 2004 to issue Notice on the 1st Respondent, refusing Notices to be issued on the 2nd to 11th Respondents

AND WHEREAS the 11th 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 15th 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 15th June 2004 in SC Appeal No. 47/2004 having directed that Notices be issued on the 2nd to 11th Respondents as well, Your Lordships' Court on 24th June 2004 made Order to issue Notices on the said Respondents for 26th 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 17th 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 "X1"

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 23rd 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 20th 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 31st 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 20th 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, but however, upon the Petitioner in June 2005 discovering to his surprise that the 1st Respondent (*the former incumbent in office*) had failed and neglected to take any action, whatsoever, as required of him to duly give effect to Inland Revenue (Regulation of Amnesty) Act No. 10 of 2004, and the 1st Respondent (*the former incumbent in office*) had failed and neglected to afford informations lawfully called for in terms of Exchange Control Act by the 5th Respondent, the Petitioner by Motion dated 20th July 2005, with notice to the State Attorney, who is the Registered Attorney for the 1st to 10th and the 12th Respondents and the Registered Attorney for the 11th 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 the Government had subsequently enacted the convention on the suppression of Terrorists 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 1st, 2nd, 3rd, 4th, 5th and 7th 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 termination of these proceedings upon the grant and issue by Your Lordships' Court, of the following:

- a) a Writ of Mandamus compelling and directing the 1st Respondent 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 31st 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, and
 - ii) to grant an Income Tax Amnesty in terms of the law up to 31st 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, and

- 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 Declarants 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, and
- iv) the 1st Respondent to confirm to Court by 30th June 2008, that actions to be taken on his part in terms of i), ii), and iii) above have been duly and fully performed.

b) a Writ of Mandamus compelling and directing

- i) the 2nd, 3rd, 4th and 5th Respondents, 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 Declarants, 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, and
- ii) the 1st Respondent and his agents and/or assigns to communicate to the 5th Respondent, as had been already called for by the 5th Respondent, 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 5th Respondent in terms of respective laws administered and enforced by him, and
- iii) 1st, 2nd, 3rd, 4th and 5th Respondents to confirm to Court by 30th June 2008 that actions to be respectively taken on their part in terms of i) and ii) above have been duly and fully performed.

c) a Writ of Mandamus compelling and directing

- i) the 1st Respondent to forward all Declarations made to the 1st 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
- x) by public servants, 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 persons 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) the 1st Respondent to confirm to Court by 30th June 2008, that action to be taken on his part in terms of i) above has been duly and fully performed.
- iii) the 7th Respondent to take warranted action in terms of the law in respect of the aforesaid Declarants referred to at x) and y) above, in terms of the provisions of Bribery Act, amended by Act No. 20 of 1994 and the Declaration of Assets and Liabilities Law No. 1 of 1975, amended by Act No. 74 of 1988.

On this day of December 2007

Attorneys-at-Law
for the Petitioner

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