

Commissioner General of Inland Revenue
Director General of Customs
Director General of Excise
Controller of Imports & Exports
Controller of Exchange,
Governor, Central Bank of Sri Lanka
Chairman, Commission to Investigate Allegations
of Bribery or Corruption

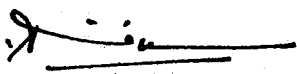
COPY

NOTE

Enclosed is a copy of a Draft of a Consent Motion formulated by my Lawyers for a Settlement in the pending Writ Application in the Court of Appeal No. 1661/ 2003 *vis- a-vis* giving effect to / implementation of the Repeal of the infamous 'Tax Amnesty'.

Copy of this Draft Motion for requisite amendments / modifications has been forwarded to the Hon. Attorney General, after the Secretary, Ministry of Finance / Secretary to the Treasury had been briefed.

A copy of a Note, which affords a brief synopsis, forwarded to the Secretary to His Excellency the President is also enclosed.



Nihal Sri Amereskere

20th April 2006

c.c. Secretary, Ministry of Finance
& Secretary to the Treasury
Secretary to His Excellency the President
Hon. Speaker of Parliament
Minister of Finance / His Excellency the President

Hon. Attorney General

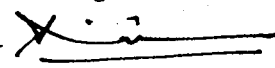
Mr. Lalith Weeratunga,
Secretary to His Excellency the President,

IMPORTANT NOTE

1. I enclose a draft of a Consent Motion formulated by my Lawyers for a Settlement in a pending Writ Application in the Court of Appeal pertaining to the consequential implementation arising from the repeal of the perverse 'Tax Amnesty'.
2. I met S/T yesterday, discussed and explained same. He basically concurred with the 3 matters which are to be given effect to / implemented . He directed the Advisor on Income Tax, Mr. R.P.L. Weerasinghe [former CGIR] to immediately finalise the same with the AG.
3. It is not only the Inland Revenue Department that has to give effect to / implement, but also, the Customs, Excise, Imports & Exports and Exchange Control Departments, and also the Bribery Commission, who are all Respondents noticed by Court, amongst others.
4. I had previously discussed this matter with AG and have sent him a copy of the Draft Consent Motion, together with a diskette to enable him to make any requisite changes.
5. The first part of the Motion sets out the historical perceptives and accordingly the rationale and justification for concluding this matter in terms of the Consent Motion.
6. The second part sets out 3 matters to be given effect to / implemented . The first 2 matters deal with the correct and effective enforcement of revenue assessment and collection in conformity with the Inland Revenue [Regulation of Amnesty] Act No. 10 of 2004, which repealed the perverse Tax Amnesty, and would enhance government revenue.
7. The 3rd matter deals with bribery and corruption and is in conformity with government policy and the enforcement of the rule of law. It is in accordance with the initiative taken by a Committee constituted to deal with fraud and corruption, on which you have been appointed as a Member by H.E. the President. There never was and there is no immunity for bribery and corruption.
8. The above 3 matters are in conformity with the 'Prayers' / 'Reliefs' in the Writ Application. You are the 11th Respondent and your predecessor in Office appearing through private Counsel had filed papers, together with an Affidavit, fully endorsing the Writ Application and concurring that the 'Prayers' / 'Reliefs' be granted
9. The Supreme Court having essentially determined that the perverse 'Tax Amnesty' was a fraud perpetrated on the country, no legitimacy or legitimate entitlement or right or expectation could flow from such a fraud to any person.
10. The AG appearing for the Respondents having consented on 29.8.2005 to conclude this matter to be settled on agreement to ensure the enforcement of the applicable laws, the matter was fixed for Settlement on 11.10.2005, and thereafter mentioned on 26.10.2005, 23.11.2005 and 6.2.2006 to finalise Terms of Settlement. The matter is now coming up for Settlement on 24.4.2006.

I shall be pleased to afford you any clarifications and explanations. Shall be very grateful, if you would kindly take prompt action to conclude this matter in the public interest.

Kind regards,


Nihal Sri Amersekere
19.4.2006

**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 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 WHEREAS the Petitioner too intervyened and made submissions at the aforesaid hearing, and Their Lordships of the Supreme Court pronounced in their Opinion, *inter-alia*, holding 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”

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 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 of the aforesaid Supreme Court Opinion, including the following:

“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”

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, which said Declarations were deemed to be Declarations made and to be dealt with under the Inland Revenue (Regulation of Amnesty) Act No. 10 of 2004, 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 aforementioned said repealed laws

AND WHEREAS no legitimacy or legitimate entitlement, right or expectation, whatsoever, would flow from a fraud, particularly as has been determined by Their Lordships of the Supreme Court to have defrauded public revenue causing extensive loss to the State

AND WHEREAS the Petitioner's stance taken in this Application 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 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 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 have agreed and consented to such amendment of the prayers to the Petition

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 to be dealt with 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 Declarents as may be applicable under the respective laws
- b) a Writ of Mandamus compelling and directing
 - i) the 2nd, 3rd, 4th and 5th Respondents to enforce the respective laws 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 to be dealt with in terms of the Inland Revenue (Regulation of Amnesty) Act No. 10 of 2004, and accordingly who are now liable to be dealt with in terms of the laws respectively being enforced by the said Respondents, and
 - ii) the 1st Respondent and his agents and/or assigns to communicate to the 2nd and/or 3rd and/or 4th and/or 5th Respondents all relevant informations in the aforesaid Declarations, which would require to be investigated and dealt with by the said Respondents in terms of respective laws being enforced by the said Respondents, and
 - iii) the 2nd and/or 3rd and/or 4th and/or 5th Respondents to call from the 1st Respondent requisite informations in the Declarations of any one or more of the aforesaid Declarents
- c) a Writ of Mandamus compelling and directing
 - i) the 1st Respondent to forward to the 7th Respondent 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 to be dealt with in terms of the Inland Revenue (Regulation of Amnesty) Act No. 10 of 2004
 - a) 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

- b) 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, and
- ii) the 7th Respondent to take any warranted action in terms of the law in respect of the said Declarants, and to call from the 1st Respondent requisite informations in respect of any one or more of the Declarents

On this 24th day of April 2006

Attorneys-at-Law
for the Petitioner

State Attorney for
1st to 10th and the 12th Respondents

Registered Attorney for
the 11th Respondent