

BY COURIER

Hon. Attorney General
Attorney General's Department
Hultsdorp
Colombo 1.

Attn: Mr. Harsha Fernando
Senior State Counsel

NOTE

Consent Motion - CA Writ Application No. 1661/2003

I bring to your kind attention that the Auditor General had deemed that he stood bounden in duty to have recently submitted a 'Special Report' to Parliament on the 'Audit on the Management of Government Tax Revenue', reporting on an enormous loss of Government Tax Revenue; and, *inter-alia*, in respect of which, I forwarded the attached Letter, the contents of which are self-explanatory and pertinent. Copy of my Letter dated 20.6.2005 referred to at paragraph 3 on page 4 of my aforesaid Letter is also annexed. I understand, that after having been discussed in Parliament, the matter is to be dealt with by the Public Accounts Committee of Parliament.

The said Special Audit Report submitted to Parliament by the Auditor General is very revealing and only underscores the need for and warrants the giving effect to the terms of the Consent Motion forwarded to be entered into in the pending Writ Application No. 1661/2003 in the Court of Appeal, a copy of which is attached.

The Consent Motion is in the background of the repeal of the Tax Amnesty, which had been determined by the Supreme Court to have defrauded public revenue causing extensive loss to the State, and that it is to be borne in mind that public revenue is held by the government in trust on behalf of the people. No legitimacy or legitimate expectation would flow in the circumstances of such fraud, moreso particularly perpetrated in relation to public revenue.


Nihal Sri Amereskere

29th August 2006

cc: Commissioner General of Inland Revenue
Director General of Customs
Director General of Excise
Controller of Imports & Exports
Controller of Exchange,
Chairman, Commission to Investigate Allegations
of Bribery or Corruption

Auditor General

ABDEEN ASSOCIATES

(Attorneys-At-Law & Notaries Public)

Razmara Abdeen
Miss. Bushra M. Hashim
Mrs. Manjula Pasqual
Miss. Chamari T. Athukorala
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Your Ref:

Our Ref: **BY COURIER**

11th September 2007

Hon. Attorney General,
Attorney General's Department,
Colombo 2.

Attn.: Mr. Arjuna Obeysekere,
Senior State Counsel

Dear Sir,

CA Writ Application No. 1661 / 2003

We write on behalf of our Client, Mr. Nihal Sri Ameresekere, F.C.A, F.C.M.A., the Petitioner in the above Application.

As per the annexed Schedule, this Application has come up in the Court of Appeal from October 2005, on several days, for 'terms of settlement' to be entered into. Secretary to H.E. the President (11th Respondent) has filed papers in this Application, concurring and agreeing with the Application of our Client.

As per the discussions had with the late Hon. Attorney General, K.C. Kamalasabeyson, P.C. the settlement terms had been finalised – vide Consent Motion forwarded in August 2006 and amended in February 2007.

We draw your kind attention to the following Sections of the Exchange Control Act.

"39 (1) Without prejudice to any other provisions of this Act, the Bank may give to any person in, or resident in, Sri Lanka directions requiring him – (a) to furnish, within such time and in such manner as may be specified in such directions, to the bank or to any person designated in such directions as a person authorised to require it, any information in his possession which the bank or the person so authorised, as the case may be, may require for the purpose of securing compliance with, or detecting evasion of, the provisions of this Act, or where such person does not have the information in his possession, to obtain such information from any such person in Sri Lanka or abroad as may be specified in such directions and to furnish such information to the bank or to the person authorised; or"

"39 (5) In this section, "bank" includes any Officer of the Department of Inland Revenue or Department of Customs generally or specially authorised by the Monetary Board to exercise the powers conferred by this section."

"43 This Act shall bind the State and shall apply to transactions by a Government Department or any person acting on behalf of the State."

"51 (1) Any person in or resident in Sri Lanka who contravenes any provision of this Act or of any regulation made under this Act or fails to comply with any direction given or condition or requirement imposed under this Act shall be guilty of an offence, notwithstanding that the offence may, by virtue of Part IV of this Act, be also punishable under the provisions of the Customs Ordinance."

On the premise, that the Supreme Court had determined the said repealed 'amnesty', as a fraud perpetrated on public revenue, no protection, right or entitlement, or any legitimate expectancy, whatsoever, flows from such 'amnesty', to whomsoever.

Accordingly, the Controller of Exchange in terms of Section 39(5) of the Exchange Control Act, directed the then Commissioner General, Inland Revenue to forward the particulars of the persons, who had declared foreign assets and foreign income, but the Commissioner General of Inland Revenue evaded and avoided in complying with such direction, notwithstanding reminders.

We also draw your kind attention to the following Section 85 of the Bribery Act and Section 5 of the Commission to Investigate Allegations of Bribery or Corruption Act;

"85. Notwithstanding anything to the contrary in the Income Tax Ordinance or the Inland Revenue Act, No. 4 of 1963, or the Inland Revenue Act (No. 28 of 1979) the Commissioner General of Inland Revenue shall report to the Bribery Commissioner for investigation any case where he suspects from information available to him that any person is guilty of bribery." (emphasis added)

"5 (1) for the purpose of discharging the functions assigned to it by this Act, the Commission shall have the power -

- (e) to direct by Notice in writing the Commissioner General of Inland Revenue, to furnish as specified in the notice, all information available to such Commissioner General relating to the affairs of any person in respect of whom a communication has received under section 4 or of the spouse or a son or daughter of such person and to produce or furnish, as specified in the notice, any document or a certified copy of any document relating to such person, spouse, son or daughter which is in the possession or under the control of such Commissioner General;"

Section 6 of the Inland Revenue (Special Provisions) Act No. 10 of 2003, which was repealed by the Inland Revenue (Regulation of Amnesty) Act No. 10 of 2004, specifically excluded any amnesty, whatsoever, for bribery and corruption, due notice of which was taken by the late Hon. Attorney General, in finalising to the terms of settlement.

We appeal to you to have this long outstanding matter, as had been finalised, concluded by the next date, September 20, 2007.

This is not a matter of personal interest to our Client, but a matter of public interest and national importance, particularly *vis-à-vis* revenue administration, foreign exchange leakage, exchange rates and cost of living, and also the enforcement of the Rule of Law, particularly on the matter of bribery and corruption.

Yours faithfully,



Attorneys-at-Law

cc: Commissioner General of Inland Revenue
Director General of Customs
Director General of Excise
Controller of Imports & Exports
Controller of Exchange,
Chairman, Commission to Investigate Allegations
of Bribery or Corruption

Secretary to H.E. the President

C.A. WRIT APPLICATION NO. 1661/2003

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-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.	Re-fixed to be mentioned <u>20.9.2007.</u>

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(Attorneys-At-Law & Notaries Public)

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Your Ref:

Our Ref:

BY HAND

30th January 2008

Hon. Attorney General
Attorney General's Department
Colombo 12.


Attn: Mr. Arjuna Obeyesekere
Senior State Counsel

Dear Sir,

CA Writ Application No. 1661/2003

Further to our Letter dated 11.9.2007 and the subsequent discussions had, we are pleased to forward 6 copies of the finalized Consent Motion, duly signed by us, to be signed by the State Attorney, and to be filed in the Court of Appeal, to conclude this long outstanding matter.

Yours faithfully,


Abdeen Associates
Attorneys-at-Law

ABDEEN ASSOCIATES

(Attorneys-At-Law & Notaries Public)

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Your Ref:

BY COURIER

Our Ref:

2nd April 2008

Hon. C.R. de Silva, P.C.
Attorney General
Attorney General's Department
Colombo 12.

Attn: Mr. Arjuna Obeyesekere
Senior State Counsel

Dear Sir,

CA Writ Application No. 1661/2003

We act on behalf of our Client, Mr. Nihal Sri Ameresekere, F.C.A., F.C.M.A., the Petitioner in the above Application.

We write with reference to our Letter dated 11.9.2007, subsequent discussions had, our Motion dated 15.11.2007, and our Letter dated 30.1.2008 on the above-mentioned Application.

We enclose a copy of the finalized Consent Motion, including references to the mandatory provisions of the Inland Revenue Act, for the due performance thereof by the Commissioner General of Inland Revenue.

As per our said Letter dated 11.9.2007, we pointed out that the former Late Hon. Attorney General, having agreed in principle to the terms of settlement at that time, the settlement of this matter, from as far back as 10.10.2005, has been mentioned in Court on 21 days, *as per schedule attached*, now for nearly 2 ½ years, and still stands pending, since we understand that the written confirmation of consent is still awaited from the Commissioner General of Inland Revenue / his Officials for the due performance of the matters set out in the Consent Motion.

Our Client's action in the public interest, resulted in the repeal of the 'infamous' purported Tax Amnesty of 2003, by Act No. 10 of 2004, upon pronouncements by the Supreme Court, that the said Amnesty had defrauded public revenue, causing extensive loss to the State, and was inimical to the rule of law, and violative of the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights. Supreme Court Pronouncement and Determination are to be attached to the Motion

We appeal to you, in the national and public interest to conclude this matter, without any further delay.

Thanking you
Yours faithfully,



Attorneys-at-Law

- cc: Commissioner General of Inland Revenue
Director General of Customs
Director General of Excise
Controller of Imports & Exports
Controller of Exchange,
Chairman, Commission to Investigate Allegations
of Bribery or Corruption
- Secretary to H.E. the President
- Auditor General

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Your Ref: **BY COURIER**

Our Ref: 24th July 2008

C.R. de Silva, P.C. Esqr.,
Hon. Attorney General,
Attorney General's Department,
Hulftsdorp,
Colombo 12.

Attn: Mr. Arjuna Obeyesekere
Senior State Counsel

Dear Sir,

CA Writ Application No. 1661/2003

We act on behalf of our Client, Mr. Nihal Sri Ameresekere, F.C.A., F.C.M.A., C.F.E., the Petitioner in the above Application.

We refer to our Letter dated 2.4.2008 forwarded to you, together with the finalised Consent Motion, to which we have had no response. A copy is annexed for your easy reference.

When this Application was taken-up in the Court of Appeal on 22nd July 2008 as agreed, for intimation of settlement, you informed Court that steps have been taken and are being taken by your Clients, the Respondents, to secure and ensure the grant of the reliefs prayed for in the said Consent Motion in the public interest by our Client.

You would appreciate that having been the main mover for the repeal of the perverse Tax Amnesty Act No. 10 of 2003, which was pronounced by the Supreme Court to have defrauded public revenue causing extensive loss to the State and to be inimical to the rule of law, and which was consequently repealed by Act No. 10 of 2004 enacted into law on 20.10.2004, our Client is gravely perturbed by the inordinate delay in taking steps as required by your Clients, as mandated by law, and which are being sought as reliefs as aforesaid.

Our Client has been pursuing this matter, since he had discovered to his shock and dismay, that the Repeal Act No. 10 of 2004 had not been given effect to, and even to date no communications have been made to the Controller of Exchange, even though so required in terms of the Exchange Control Act in writing by the Controller of Exchange from the Commissioner General of Inland Revenue, and no communications have been made on the mere suspicion of bribery by the Commissioner General of Inland Revenue, as consistently mandated by the Inland Revenue Act.

The Court of Appeal has now granted time till 29.08.2008, on which date it is necessary in the circumstances, to inform Court with certainty, as to whether or not, the steps taken and firmly undertaken to be taken by your Clients, are adequate for the grant of the said reliefs prayed for in the public interest.

In the circumstances, as was indicated by our Client's Counsel, it is necessary and of paramount importance for you to intimate to us in unequivocal terms by official communication, what specific, definite steps have been taken and what steps are being taken by your Clients, to grant the reliefs prayed for by our Client, indicating definite time frames involved, given the persistent pattern of failure on the part of your Clients, to take *effective action* and the great importance of this matter to the public of this country. Timely receipt of such a communication, as confirmed in writing by your Clients, would enable our Client to consider the position to enter terms of settlement.

In the circumstances, we await intimation in writing as requested, and request that the same be furnished not later than 15.8.2008, well in advance of 29.8.2008, the next date of mention in the Court of Appeal, so that the matter could be considered by Counsel and our Client.

Yours truly,

Rafiq

Attorneys-at-Law

cc: Mr. M.A. Sumanthiran, Attorney-at-Law
Mr. Viran Corea, Attorney-at-Law
Mr. Nihal Sri Ameresekere, F.C.A., F.C.M.A. C.F.E.

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(Attorneys At Law & Notaries Public)

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Your Ref:

BY COURIER

Our Ref:

2nd April 2008

Hon. C.R. de Silva, P.C.
Attorney General
Attorney General's Department
Colombo 12.

Attn: Mr. Arjuna Obeyesekere
Senior State Counsel

Dear Sir,

CA Writ Application No. 1661/2003

We act on behalf of our Client, Mr. Nihal Sri Ameresekere, F.C.A., F.C.M.A., the Petitioner in the above Application.

We write with reference to our Letter dated 11.9.2007, subsequent discussions had, our Motion dated 15.11.2007, and our Letter dated 30.1.2008 on the above-mentioned Application.

We enclose a copy of the finalized Consent Motion, including references to the mandatory provisions of the Inland Revenue Act, for the due performance thereof by the Commissioner General of Inland Revenue.

As per our said Letter dated 11.9.2007, we pointed out that the former Late Hon. Attorney General, having agreed in principle to the terms of settlement at that time, the settlement of this matter, from as far back as 10.10.2005, has been mentioned in Court on 21 days, *as per schedule attached*, now for nearly 2 ½ years, and still stands pending, since we understand that the written confirmation of consent is still awaited from the Commissioner General of Inland Revenue / his Officials for the due performance of the matters set out in the Consent Motion.

Our Client's action in the public interest, resulted in the repeal of the 'infamous' purported Tax Amnesty of 2003, by Act No. 10 of 2004, upon pronouncements by the Supreme Court, that the said Amnesty had defrauded public revenue, causing extensive loss to the State, and was inimical to the rule of law, and violative of the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights. Supreme Court Pronouncement and Determination are to be attached to the Motion

We appeal to you, in the national and public interest to conclude this matter, without any further delay.

Thanking you
Yours faithfully,

R. Anderson

Attorneys-at-Law

- cc: Commissioner General of Inland Revenue
Director General of Customs
Director General of Excise
Controller of Imports & Exports
Controller of Exchange,
Chairman, Commission to Investigate Allegations
of Bribery or Corruption
- Secretary to H.E. the President
- Auditor General

ABDEEN ASSOCIATES

(Attorneys At-Law & Notaries Public)

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Your Ref: **BY COURIER**

Our Ref:

19th March 2009

Hon. Mohan Peiris, P.C.
Attorney General
Attorney General's Department
Colombo 12.

Attn: Mr. Arjuna Obeyesekere,
Senior State Counsel

Dear Sir,

CA Writ Application No. 1661/2003

We write further to our Letter dated 2.4.2008 written on behalf of our Client, Mr. Nihal Sri Ameresekere, F.C.A., F.C.M.A., C.M.A., C.F.E., the Petitioner in the above Application, addressed to your predecessor in Office. (*Copy attached for your easy reference*).

We reiterate the contents of the above Letter, and draw your kind attention thereto, particularly, the Schedule attached therewith *disclosing the pendency of this matter for nearly 2½ years*.

The Settlement of this matter, agreed with the then Hon. Attorney General, Late Mr. K C. Kamalabayson, P.C., has been pending, *notwithstanding the pronouncement of a fraud by a full-bench of the Supreme Court*, and the matter being of utmost public interest, concerning revenue administration of the country !

Since 28.3.2008, this matter has been mentioned in Court for Settlement on 22.7.2008, 29.8.2008, 17.10.2008, 20.11.2008, 15.1.2009 and 16.2.2009, *due to the questionable tardiness of the Inland Revenue Officers*.

In the given circumstances, we filed Motion dated 17.11.2008 in the Court of Appeal, to have this matter referred to the Supreme Court, in terms of Article 126 (3) of the Constitution, *vis-à-vis* the violation of fundamental rights.

However thereafter, an assurance was given of a conclusion of the Terms of Settlement, which had been finalized, with final observations of the Department of Inland Revenue submitted thereon, our Client believes, by Mr. P.D. Pematratne, Commissioner, Inland Revenue, Board of Review, Legal & Investigations.

As had been requested by Senior State Counsel, our Client's attached responses on the above observations have been e-mailed to Counsel yesterday, to be forwarded to the Senior State Counsel, for the conclusion of this matter, together with a copy of the attached amended Terms of Settlement.

Our Client is appalled that the Commissioner General of Inland Revenue has intimated and/or *feigned* to the Hon. Attorney General, that he and his Officers do not have the competence to enforce statutorily mandated duties, obligations and responsibilities, to communicate *prima-facie* informations to other relevant Revenue Enforcement Authorities of the State, as mandated by the Inland Revenue Act !

We reiterate our appeal in the national and public interest, to have this matter concluded before the next date i.e. 26.3.2009, particularly given the critical situation of Government Revenue, inasmuch as, our Client raises the question, as to why Revenue Enforcement Authorities should have to wait to conclude a Settlement with our Client, to have duly performed their statutorily mandated duties, obligations and responsibilities, whereas they ought to have done so, *purely on being put on notice by our Client of the statutorily mandated requirements !*

Yours faithfully,



Attorneys-at-Law

cc. Secretary to H.E. the President
Auditor General

ABDEEN ASSOCIATES
Attorneys-at-Law & Notaries Public

Razmara Abdeen

*Ms. Manjula Pasquel
Ms. Manori Kariyawasam
Ms. Shyama Jayaratne
Ms. Prabodya Kularathna*

BY HAND

11th February 2011

Hon. Mohan Peiris, P.C.
Attorney General
Attorney General's Department
Colombo 12.

cc: Attn: Mr. Arjuna Obeyesekere,
Senior State Counsel

Dear Sir,

CA Writ Application No. 1661/2003

We write further to our Letter dated 19.3.2009. (*Copy attached for easy reference*).

We believe that due to pressure of work, you have not had the time to have dealt with this matter.

attach a Schedule of Minutes in the Court of Appeal from 10.10.2005, recording that the Attorney General's Department, appearing on behalf of the Respondents, had moved for time to file Terms of Settlement, and on which observations had been received from the Commissioner General of Inland Revenue, and responded to on 18.3.2009 by our Client.

From the contents of the Draft Consent Motion of March 2009 attached (*which had been revised several times*), you would note that our Client had pursued this matter, to ensure that laws enacted by Parliament for revenue administration are duly complied with, upholding the 'rule of law', since it is our Client, who successfully stood-up and *crusaded* against the perverse *purported* tax amnesty of Inland Revenue (Special Provisions) Acts Nos. 10 & 31 of 2003, which were castigated by the Supreme Court, as '*inimical to the rule of law and that it had defrauded public revenue causing extensive loss to the State*', reckoned, to be around Rs. 200 Billion.

Consequently, such perverse *purported* tax amnesty was a major plank at the General Elections of 2004, which resulted in fall of the then UNF Government, and the PA Government coming into power. With our Client's assistance, the very first law to be enacted by the new Parliament was the repeal by the Inland Revenue (Regulation of Amnesty) Act No. 10 of 2004 of the said perverse *purported* tax amnesty of 2003, *in the light of the Supreme Court pronouncement and the public hue and cry*.

Hence, our Client believes that there is a public duty and obligation, to ensure the due and proper revenue administration and the enforcement of the relevant laws. *It is in such circumstances, that our Client has been pursuing this matter*. We also draw your kind attention to our Motion in this connection dated 17.11.2008 (*attached*).

also attach copy of our Letter dated 2.4.2008 to your predecessor in office, Hon. C.R. de Silva P.C.

We suggest that a discussion be had in your Chambers, with the presence of the relevant public officers and our Client, with a view to finally concluding this matter.

It would appear that the revenue authorities are not committed to enforcing the relevant laws, which have been enacted by Parliament, thereby *abdicating* their statutory duties, obligations and responsibilities. In this context, reference is drawn to the scandalous VAT frauds that caused colossal losses to the State, which your Department is prosecuting.

ABDEEN ASSOCIATES

It appears meaningless for our Client, a professional, to have devoted his time, in the public interest, to have hitherto pursued this very important matter on his own, whereas it is well and truly the responsibility of the State / the relevant State Agencies.

The matter is due to be mentioned in the Court of Appeal on **Monday, 14.2.2011.**

Yours faithfully,



Attorneys-at-Law

ABDEEN ASSOCIATES

Attorneys - at - Law & Notaries Public

Razmara Abdeen
Ms. Manjula Pasquel
Ms. Prabodya Kularathna
Ms. M.A. Fathima Rizniya
Ms. Fathima Salma Azeez

BY HAND / COURIER

15th March 2012

IMPORTANT / URGENT

Ms. Eva Wanasundara
Hon. Attorney General
Attorney General's Department
Colombo 12.

cc: Mr. Arjuna Obeyesekere
Senior State Counsel

Dear Madam,

CA Writ Application No. 1651/2003

We write on behalf of our Client, Mr. Nihal Sri Ameresekere, F.C.A., F.C.M.A., C.M.A., C.F.E., the Petitioner in the above Application filed in the public interest.

Late Attorney General, Mr. K.C. Kamalasinghe, P.C., as far back as October 2005 suggested that Terms of Settlement be entered into, as borne out by the recorded Proceedings since 10.10.2005, copy attached.

The foregoing was after our Client's actions against the perverse Amnesties granted by Inland Revenue (Special Provisions) Act No. 10 and Inland Revenue (Amendment) Act No. 31 of 2003 were castigated by the Supreme Court in SC Opinion in SC Reference No. 1/2004 and SC (SD) No. 26/2004, consequent to which Parliament enacted Inland Revenue (Regulation of Amnesty) Act No. 10 of 2004, repealing the obnoxious provisions of the said perverse Amnesties Acts.

Senior State Counsel Mr. Arjuna Obeyesekere has had discussions in this regard with the relevant statutory authorities, particularly the Commissioner General of Inland Revenue, and his observations had been responded to by our Client, forwarded to the said State Counsel.

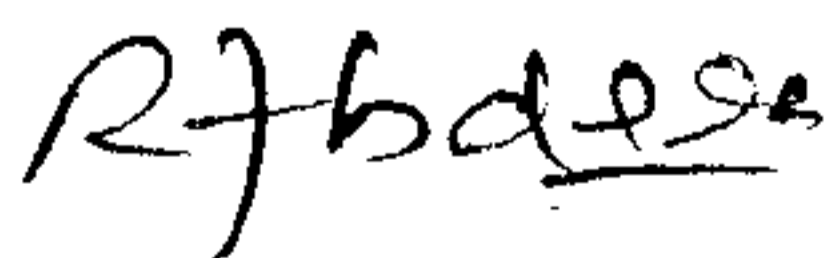
We attach copies of Letters dated 2.4.2008 and 11.2.2011 addressed to your predecessors, Mr. C.R. de Silva, P.C., and Mr. Mohan Peiris, P.C., together with the draft of Consent Motion for Settlement, which had been finalized and is pending to be entered into.

It is a matter of regret that the revenue administration of the State is not being enforced in terms of Statutes passed by Parliament, and the indifference to have the same enforced is appalling.

We appeal to you to have this long outstanding matter of utmost public interest concluded without any further delay.

This Application is coming-up for settlement on 29.3.2012.

Yours faithfully,



Attorneys-at-Law

cc. Mr. M.A. Sumanthiran, Attorney-at-Law
Mr. Viran Corea, Attorney-at-Law