

**IN THE COURT OF APPEAL OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA**

In the matter of an application for writs of certiorari and prohibition under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

C.A. Writ Application
No. 344/2020

Saman Pradeep Nishantha Kodithuwakku,
No. 98/4/2, Kollupitiya Lane,
Colombo 4.

PETITIONER

-Vs-

1. Nadun Guruge,
Commissioner General of Inland Revenue,
Department of Inland Revenue,
Inland Revenue Building,
Sir Chittampalam A. Gardiner Mawatha,
Colombo 02.
2. Hon. Magistrate,
The Magistrate Court No. 08,
Magistrate's Court,
Colombo 12.

RESPONDENTS

BEFORE

:

A.H.M.D. Nawaz, J. (P/CA) and
Sobhitha Rajakaruna, J.

COUNSEL : Riad Ameen with Pratheepa Balendran for the
Petitioner.

Supported and

Decided On : 18.09.2020

A.H.M.D. NAWAZ, J. (P/CA)

These applications (CA Writ 344/20 and CA Writ 345/20) are made in respect of a Director of a company called Rank Entertainment Holdings (Pvt) Ltd. It is contended that the Petitioner is being summoned to appear before the learned Chief Magistrate of Colombo subsequent to the issuance of summons in Magistrate's Court Case bearing Nos. 40507/8/20 and 40509/8/20.

A cogent submission is made by the learned President's Counsel Mr. Riad Ameen that a wrong person has been summoned before Court when in fact it is the company, Rank Entertainment Holdings (Pvt) Ltd. which is liable to be summoned as a defaulter in terms of Section 8 (1) of the Finance Act No. 10 of 2015. The argument is made that in terms of this Finance Act No. 10 of 2015, it is the company called Rank Entertainment Holdings (Pvt) Ltd. that becomes liable and not the Director who has been summoned by way of the summons in the two cases. In a series of judgments such as *M.E.D. Silva v. Commissioner of Inland Revenue* 53 NLR page 280, *Ranjith Wijemanne v. Commissioner of Income Tax* (1951) Vol. I Ceylon Tax Cases 496, *Rajan Philip v. Commissioner of Inland Revenue* (1982) Vol. IV Reports of Sri Lanka Tax Cases 211, *Ramalin v. Commissioner Inland Revenue* (1988) 2 SLR 259, *Hamza v. Commissioner of Inland Revenue* (1991) Vol. IV Reports of Sri Lanka Tax Cases 301 and *Dias v. Commissioner General of Inland Revenue* (2011) 2 SLR 15. It has been authoritatively held the person summoned should be the defaulter.

In these cases, Mr. Riad Ameen learned Counsel who appears for the Petitioner strenuously argues that the Petitioner does not become liable for the tax in dispute. Having listened to this argument we advert our attention to the case of *Commissioner*

General of Inland Revenue v. Koggala Garments Limited (Court of Appeal minutes of 05.04.2017) - in Case bearing No. CA Application Tax/01/2008, where two Judges of this Court conclusively decided that any objection to jurisdiction must be taken before the tribunal which is seized of the matter in the first instance. This Court cited Wade and Forsyth Administrative Law 11th Edition 2014 where it is stated as follows.

“Where a jurisdictional question is disputed before a tribunal, the tribunal must necessarily decide it. If it refuses to do so, it is wrongfully declining jurisdiction and the Court will order it to act properly.”

In the circumstances, we direct that this jurisdictional bar must be first taken before the learned Magistrate before whom this matter is due to come up for a cause to be shown on 21.09.2020. It is proper that the learned Magistrate should address this question of jurisdiction in the first instance and make his order thereon. Therefore, until the Magistrate makes his order on the jurisdiction, we would decline jurisdiction and in view of this order, the Petitioner states that he would be withdrawing these applications, but with the reservation that he would have recourse to this Court on the jurisdictional question once the learned Magistrate has made its ruling.

All these jurisdictional questions focus on the same issue namely, Directors are not liable for the tax in dispute of a company for which only the company is liable to show cause as a defaulter.

PRESIDENT OF THE COURT OF APPEAL

Sobhitha Rajakaruna, J.

I agree.

JUDGE OF THE COURT OF APPEAL