

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

**SC/SPL LA/No. 82/2022**

CA (Tax) 29/2014

Tax Appeals Commission No.

TAC/IT/040/2013

In the matter of an Application for  
Special Leave to Appeal in terms of  
Articles 128(2) of the Constitution of  
the Democratic Socialist Republic of  
Sri Lanka.

Commissioner General of Inland  
Revenue

Department of Inland Revenue

Sri Chittampalam A. Gardiner  
Mawatha,

Colombo 2.

**RESPONDENT-PETITIONER**

Vs.

Cargills Quality Dairies (Pvt) Ltd.,  
40, York Street, Colombo 1.

**APPELLANT-RESPONDENT**

**BEFORE** : **JANAK DE SILVA, J**  
**SOBHITHA RAJAKARUNA, J &**  
**M. SAMPATH K.B. WIJERATNE, J**

**COUNSEL** : Nirmalan Wigneshwaran, DSG for Respondent-  
Petitioner.

Romesh de Silva, PC with N.R. Sivendran and Ms. Fihama Hanifa for Appellant-Respondent instructed by Ms. Dilhani Ahangama.

**ARGUED &**

**DECIDED ON** : 28<sup>th</sup> May 2025

**JANAK DE SILVA, J**

Learned Deputy Solicitor General for the Respondent-Petitioner and the learned President's Counsel for the Appellant-Respondent heard.

Court is of the view that leave to appeal should be granted on the following question of law:

- 1) Did the Court of Appeal err in considering whether the provisions of Section 7(1) of the Tax Appeals Commission Act No. 23 of 2011 as amended is directory or mandatory in the absence of a specific question of law being raised as part of the Case Stated?

At this stage, both Counsel agree that the Court can proceed to hear and determine this question of law acting under the proviso to Rule 16 of the Supreme Court Rules.

Section 11A(6) of the Tax Appeals Commission Act as amended empowers two or more Judges of the Court of Appeal to hear and determine any question of law arising on the Case Stated. Accordingly, it is clear that the questions of law that can be argued before the Court of Appeal is not limited to the questions of law

sent by the Tax Appeals Commission but can include questions of law arising from the Case Stated which the Court may frame before the argument is taken up *ex mero motu* or on the application of any one of the parties.

However, we observe that in this particular case, the Court of Appeal did not raise any specific question of law on the directory or mandatory nature of Section 7(1) of the Tax Appeals Commission Act as amended and therefore the observation and conclusion that the Court of Appeal makes in the judgment at page 15 in holding that the provisions in Section 7(1) is directory is wrong in law and must be set aside. Accordingly, we set aside that part of the judgment of the Court of Appeal. The rest of the Judgment of the Court of Appeal stands.

We direct the Tax Appeals Commission to hear parties on any objections that may be taken in terms of Section 7(1) of the Tax Appeals Commission Act and all others matters that may be raised before them and make order according to law. For sake of completeness, we state that we have not examined whether the requirements in Section 7(1) of the Act is directory or mandatory. This order is based on the Court of Appeal having gone into that matter without raising a specific question of law before the argument of the case was taken up.

The Registrar is directed to send a copy of this judgment to the Secretary of the Tax Appeals Commission forthwith.

**JUDGE OF THE SUPREME COURT**

**SOBHITHA RAJAKARUNA, J**

I agree

**JUDGE OF THE SUPREME COURT**

**M. SAMPATH K.B. WIJERATNE, J**

I agree

**JUDGE OF THE SUPREME COURT**

NS