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

In the matter of an application in terms of Article 121 read with Article 120 of the Constitution to determine whether the Bill titled "Nation Building Tax (Amendment)" or any part thereof is inconsistent with the Constitution.

A K D Upali Jayantha Nandalal
Karunaratne,
351 1st Lane, Dehiwala Road,
Boralesgamuwa

Petitioner

S.C. (S.D.) No: - VS -

The Attorney General,
Attorney General's Department,
Colombo 12.

Respondent

On this 13th day of March 2013

**TO: THE CHIEF JUSTICE AND THEIR LORDSHIPS THE OTHER HONOURABLE
JUDGES OF THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA**

The ***Petition*** of the Petitioner above named appearing by Lilanthi de Silva his Registered Attorney-at-Law states as follows:

1. The Petitioner is a citizen of Sri Lanka and is entitled to make this application in terms of Article 121(1) of the Constitution.

2. The Attorney General is made a Respondent under and in terms of the requirements of Article 134(1) of the Constitution.

3. The Bill titled "*Nation Building Tax (Amendment)*" (hereinafter referred to as "the Bill") was published in the Gazette of the Democratic Socialist Republic of Sri Lanka Part II of February 22, 2013 issued on 26th February 2-13 on the order of the Minister of Finance and Planning and placed on the Order Paper of Parliament on 8th March 2013.

True copies of the said Bill (in Sinhala, Tamil and English) are annexed hereto marked 'P1a', 'P1b', 'P1c' and pleaded as part and parcel hereof.

4. The long title of the said Bill describes it as a Bill "*to amend the Nation Building Tax Act, No. 9 of 2009*".
5. The Bill was among a total of 21 Bills placed on the Order Paper of 8th March 2013, and must also be viewed in the context of the 'objectives' of the other Bills, and what is sought to be achieved collectively by such Bills.

CLAUSE 1 OF THE BILL

6. The Petitioner respectfully draws Your Lordships' attention to the provisions of Clause 1 of the aforesaid Bill:

1. (1) *This Act may be cited as the Nation Building Tax (Amendment) Act, No. _____ of 2013 and shall be deemed for all purposes to have come into operation on January 1, 2013.*

7. The Petitioner respectfully states that the impugned clause of the Bill thus purports to have retrospective effect, and thus violates Article 12(1) of the Constitution which guarantees equal protection of the law.
8. The Petitioner respectfully states that any attempt to make the Bill have retrospective effect (i.e. come into effect prior to its enactment) would constitute a violation of Article 12(1) of the Constitution.

CLAUSE 2 OF THE BILL

9. The Petitioner respectfully draws Your Lordships' attention to the provisions of Clause 2 of the aforesaid Bill:

2. *Section 3 of the Nation Building Tax Act, No.9 of 2009 as last amended by Act, No. 9 of 2012 (hereinafter referred to as the "principal enactment", as last amended by Act, No.9 of 2005 is hereby further amended as follows:-*

(1) in subsection (3) of that section by the substitution in paragraph (iii) thereof, for the words, "paid in that quarter," of the words and figures "paid in that quarter other than such excise duty paid on the importation with effect from February 1, 2009," and

...

10. The impugned provision of the Bill (cited above) (as also demonstrated by the "Statement of Legal Effect") would thus result in inclusion of excise duty paid on the importation in the calculation of liable turnover, and thus is sought to be with retrospective effect.

11. The Petitioner respectfully states that the impugned clause of the Bill thus purports to have retrospective effect, and thus violates Article 12(1) of the Constitution which guarantees equal protection of the law.

12. The Petitioner respectfully states that any attempt to make the Bill have retrospective effect (i.e. come into effect prior to its enactment) would constitute a violation of Article 12(1) of the Constitution.

CLAUSE 3 OF THE BILL

13. The Petitioner respectfully states that the impugned clause 3 of the Bill *inter alia* seeks to amend PART I of the Schedule to the Principal Enactment and to add *inter alia* the following:

(xli) *Articles imported for any international sport event approved by the Minister of Finance*

(xliv) *Any article manufactured by a company identified as a Strategic Development Project in terms of subsection (4) section 3 of the Strategic Development Project Act, No.14 of 2008 sold to another Strategic Development Projects or to a specialized project approved by the Minister of Finance or to a company registered with the Board of Investment of Sri Lanka established under Board of Investment Law, No.4 of 1978, so far as such articles are considered as import replacement and supplied during the project implementation period; and*

(xlv) *Any machinery or equipment imported for the purpose of generating electricity by the Ceylon Electricity Board establish under the Ceylon Electricity Board Act, No.17 of 1969 or any institution which has entered into an agreement with the Ceylon Electricity Board to supply electricity being machinery or equipment classified under Harmonized Commodity Description and Numbers for customs purposes and approved by the Minister of Finance.*

14. The Petitioner respectfully states that the impugned portions of Clause 3 of the Bill are thus:

(a) In the case of the exemption under paragraph (xli) - discriminatory (not applying to ALL businesses uniformly), and also arbitrary, grossly unreasonable and irrational, and thus and otherwise violates Article 12(1) of the Constitution which guarantees equality and equal protection of the law;

(b) In the case of the exemption under paragraph (xli) an abdication of Parliament's Constitutionally mandated Control over Public Finances, inasmuch as discretion is in effect granted to the Minister of Finance to determine which events / articles will benefit from the exemption, and thus and otherwise violates Article 148 of the Constitution and consequently Articles 4(a) and 3 of the Constitution;

(c) Similarly the exemptions sought to be introduced under paragraphs (xli) and (xlv) also involve an abdication of Parliament's Constitutionally mandated Control over Public Finances, inasmuch as discretion is in effect granted to the Minister of Finance to determine which projects / articles will benefit from the exemption, and thus and otherwise violates Article 148 of the Constitution and consequently Articles 4(a) and 3 of the Constitution;

(d) The exemptions sought to be introduced under paragraphs (xli), (xli) and (xlv) may result in arbitrary, irrational, grossly unreasonable or discriminatory decisions being made by the Minister, and thus and otherwise the provisions also violate the guarantee of equal treatment and equality before the law, guaranteed by Article 12(1) of the Constitution.

CLAUSE 4 OF THE BILL

- 15.** The Petitioner respectfully draws Your Lordships' attention to the provisions of Clause 4 of the aforesaid Bill:
4. *Where the Commissioner General of Inland Revenue or the Director General of Customs as the case may be collects under the provisions of section 4 or section 5 respectively of the principal enactment, the tax calculated considering the provisions of this Act, during the period commencing on January 1, 2013 and ending on the date of the coming into operation of this Act from a person to whom the provisions of this Act applies, such collection shall be deemed for all purposes to have been, and to be validly made and, the Commissioner General of Inland Revenue and the Director General of Customs.*
- 16.** The Petitioner respectfully states that the impugned clause 4 of the Bill (which is also apparently incomplete) thus purports to retrospectively grant powers to and / or sanctions the acts of the Commissioner General and / or Director General of Customs in having collected Levies, prior to the legislature having authorised the collection of same.
- 17.** The Petitioner respectfully states that the impugned clause 4 of the Bill thus purports to have retrospective effect and / or retrospectively sanction actions taken unlawfully and / or without lawful authority, and thus violates Article 12(1) of the Constitution which guarantees equal protection of the law.
- 18.** The Petitioner respectfully states that the impugned clause 4 of the Bill thus purports to have retrospective effect and / or retrospectively sanction actions taken unlawfully and / or without lawful authority, and thus violates Article 12(1) of the Constitution which guarantees equal protection of the law.

19. The Petitioner respectfully urges that Your Lordships be pleased to consider the need to address and redress the matters and concerns urged through this application, given the reality that the Sovereignty of the People, the Rule of Law and the Supremacy of the Constitution would be imperiled through the provisions of the said Bill that are inconsistent with and / or in contravention of the provisions of the Constitution, and thus ought not be permitted to pass validly into law through a simple majority in Parliament alone.
20. The Petitioner has not previously invoked the jurisdiction of Your Lordships' Court in respect of this matter.
21. The Petitioner respectfully reserves the right to furnish such further facts and documents in support of the matters set out herein at the Hearing should the Petitioner become possessed of any such material.
22. An affidavit of the Petitioner is appended hereto in support of the averments contained herein.

WHEREFORE the Petitioner respectfully prays that Your Lordships' Court be pleased to:

- (a) Determine that the provisions of Clauses 1, 2 and 4 of the said Bill are inconsistent with and / or in contravention of the provisions of Article 12(1) of the Constitution and cannot be enacted into law except if approved by a two-thirds vote of the whole number of the members of Parliament in favour as required by Article 84(2) of the Constitution;

- (b) Determine that the provisions of Clause 3 of the said Bill are inconsistent with and / or in contravention of the provisions of Articles 12(1), 148, 4(a) and 3 of the Constitution and cannot be enacted into law except if approved by the People at a Referendum in addition to a two-thirds vote of the whole number of the members of Parliament in favour as required by Article 83(a) of the Constitution;
- (c) Grant such further and other reliefs as to Your Lordships' Court shall seem meet.

**Registered Attorney at Law
for the Petitioner**