

**TEA TANG LTD.**  
**v**  
**KOLONNAWA URBAN COUNCIL**

COURT OF APPEAL  
SRISKANDARAJAH, J.  
CA 949/2005  
MARCH 17, 2008  
MAY 8, 2008.

*Writ of Certiorari – Urban Councils Ordinance – Sections 160 and 166 – Levying of rates – Municipal Councils Ordinance Section 236, 237 and 238 – Increase of rates – Is the Ministers approval necessary to access the annual value afresh – Judicial review – Only on illegality? – Not on the basis that decision is right or wrong? – Alternate remedy?*

The petitioner sought a writ of certiorari to quash the decision to increase the annual value of the petitioners premises in respect of the years 2003-2004-2005 and prohibiting the Urban Council from revising the annual value without the sanction of the Minister.

The petitioner contended that they submitted objections to the 2003 assessment, but before a decision was arrived at a notice of assessment for 2004 was received and the annual value and rates contained therein were same as the annual value and rates for the year 2003. The petitioner objected to the valuation, and was informed that the Valuation Department had decided not to change the 2003 valuation. It was the contention of the petitioner that the annual assessment rates for the years 2003, 2004 and 2005 are *ultra vires* sections 237 and 238 of the Municipal Councils Ordinance.

**Held:**

- (1) The power to impose and levy rates by the 1st respondent is under section 160 of the Urban Councils Ordinance. Under Section 160(3) when the Council imposing any rate for any year resolves to levy without alteration the same rates as was in force during the preceding year the approval of the Minister is not required.
- (2) Section 236 of the Municipal Councils Ordinance provides for a person aggrieved by the decision under section 235 to institute action in the District Court and the decision of the Court is subject to an appeal to the Court of Appeal (section 236 (3)). Though the petitioner has lodged an objection and the decision was conveyed to him, the petitioner has not taken any action to challenge the decision in the District Court (section 236).
- (3) The Minister's approval is necessary to impose and levy a rate on the annual value of any immovable property for the 1st time (section 160 (1) Urban Councils Ordinance) but if the respondent levies without alteration the same rate as was in force during the preceding year the Minister's approval is not necessary (section 160(3)).
- (4) The petitioner cannot challenge the assessment of the annual value of the petitioner's property in this application. These proceedings are judicial review proceedings and the challenge can only be on the basis of legality or illegality and not on the basis that the decision is right or wrong.

The petitioner has an effective alternate remedy provided by statute to challenge the correctness of the assessment of the annual value.

**APPLICATION** for a writ of certiorari.

**Cases referred to:**

1. *Best Footwear (Pvt.) Ltd. and two others v Aboosally, Former Minister of Labour and Vocational Training and Others* 1997 2 Sri LR 137.
2. *Jayawardena v Silva* 73 NLR 284.
3. *Ishak v Lakshman Perera, Director-General Customs and Others* 2003 3 NLR 18.
4. *Tennakoon v Director-General Customs and Another* 2004 1 Sri LR 53.

*Manohara de Silva, PC* with *A. Wijesundara* for petitioner.

*Gamini Kirandage* for respondent.

*Cur.adv.vult.*

June 16, 2008

**SRISKANDARAJAH, J.**

The petitioner is a company incorporated under the Companies Ordinance and has its factory and stores at the premises bearing No. 235/4 and 235/2A, Old Avissawella Road, Orugodawatte

respectively. The said premises are coming under the Municipal limits of the Kolonnawa Urban Council.

The petitioner in this application is seeking a *writ of certiorari* to quash the decision to increase the annual value of the petitioner's premises bearing the assessment Nos. 235/4, 235/4/1/1 and 235/2A Old Avissawella Road, Orugodawatte contained in the assessment notice issued in respect of year 2003, 2004 and 2005 marked as P3, P6 and P9 and a prohibition prohibiting the Urban Council from revising the annual values of the aforesaid premises without the sanction of the Minister.

The petitioner submitted that in terms of section 160 of the Urban Councils Ordinance the Urban Council is empowered to impose and levy rates and taxes on the annual value of the immovable property situated within the town and the assessment of the said rates taxes and the annual value of the property is assessed in terms of section 166 of the Urban Council Ordinance as amended. For the purposes of levying rates and taxes the Urban Council has allocated three assessment numbers for the aforesaid premises namely: No. 235/2A for Stores, No. 235/4 for the Factory and No. 235/4,1/1 for the Manager's quarters.

The petitioner submitted that the petitioner received the assessment notice sent for the year 2003 in respect of these premises on 24th March 2003. In the said notice the 1st respondent has increased the annual value of the said premises which resulted in an increase in the total rates and taxes payable on the aforesaid three premises. The petitioner submitted its objection to the said assessment on 8.04.2003. An inquiry was held on the said objection on 20th August 2003 and the petitioner tendered written submission at the conclusion of the inquiry. But before the petitioner knowing the outcome of the said inquiry, a notice of assessment for the year 2004 was received by the petitioner and the annual value and the rates contained therein were same as the annual value and the rates contained in the notice of assessment received for the year 2003. The petitioner lodged an objection to the said notice of assessment.

The petitioner was informed by the 1st respondent that the Valuation Department after considering the objection of the petitioner for the annual assessment for the year 2003 has decided not to make

any change in the assessment. The petitioner submitted that the assessment notice issued for the year 2004 and 2005 contained the same annual value.

The petitioners contended that the annual assessment made for the years 2003, 2004 and 2005 are *ultra vires* sections 237 and 238 of the Municipal Councils Ordinance.

The power to impose and levy rates by the 1st respondent Urban Council is under section 160 of the Urban Council Ordinance.

Section 160 provides as follows:

*160(1) The Urban Council of a town may, subject to such limitations, qualifications, and conditions as may be prescribed by the Council, and subject to the approval of the Minister, impose and levy a rate on the annual value of any immovable property or any species of immovable property situated with the town.*

*(1A) in pursuance of the powers under sub-section (1), the Council may impose a higher rate on premises used for business or commercial purposes.*

1AA

(2) .....

2A ....

2B ....

*(3) Where the Council in imposing any rates for any year, resolves to levy without alteration the same rate as was in force during the preceding year, the approval of the Minister shall not be required for the imposition and levy of such rate.*

(5) .....

The above section authorises the 1st respondent to impose and levy a rate on the annual value. Under Section 160(3) when the Council imposing any rate for any year, resolves to levy without alteration the same rate as was in force during the preceding year, the approval of the Minister is not required.

The assessment of annual value is provided in Section 166 of the Urban Council Ordinance. It provides:

*166. The assessment of any immovable property for the purpose of any rate under – this Ordinance shall, with the necessary*

*modifications, be made in manner prescribed by section 235 of the Municipal Councils Ordinance, with respect to immovable property within Municipal limits, and all the provisions of the said section, together with those of sections 233, 242, 243 and 241, shall, with the necessary modifications, apply with respect to every such assessment made for the purposes of this Ordinance.*

*Provided that, pending the making of any such assessment, any valuation of any immovable property made for the purposes of the assessment tax under the Police Ordinance, or any enactment passed in amendment thereof shall be deemed to be the valuation of such property for the purpose of any rate on the annual value thereof under the Ordinance.*

Section 235 of the Municipal Councils Ordinance provides:

- (1) *The Council shall cause to be kept a book, to be called the "Assessment Book", in which the annual value of each house, building, land, or tenement within the Municipality shall be entered every year, and shall cause to be given public notice thereof and the place where the assessment book may be inspected. [Shall not have effect in such areas as may be specified in an Order under section 2 of the Rating and Valuation Ordinance – See section 76 thereof]*
- (2) ....
- (3) ....
- (4) *Such notice shall further intimate that written objections to the assessment will be received at the Municipal Office within one month from the date of service of the notice.*
- (5) ....
- (6) ....
- (7) *When any objection to an assessment is disposed of the Council shall cause the decision thereon to be notified to the objector, and such decision shall be noted in the book of objections, and any necessary amendment shall be made in the assessment book.*

Section 236 of the Municipal Council Ordinance provides for a person aggrieved by the decision under section 235 to institute an action in the District Court and the decision of this court is subject to

an appeal to the Court of Appeal (236(3)). The petitioner admitted that he lodged an objection for the assessment of the annual value as provided by section 235 of the Municipal Council Ordinance and the decision was communicated to him but the petitioner had not taken any action to challenge the said decision in the District Court as provided by Section 236 of the Municipal Council Ordinance.

The petitioner's main contention is that the said decision to increase the annual assessment for the year 2003, 2004 and 2005 is *ultra vires* section 237 and 238 of the Municipal Council Ordinance. Section 237 has no relevance to the 1st respondent.

The Minister's approval is necessary to impose and levy a rate on the annual value of any immovable property for the first time (Section 160(1)) but if the 1st respondent levy without alteration the same rate as was in force during the preceding year the Minister's approval is not necessary (Section 160(3)). It has to be noted that the 1st respondent has not increased or varied the rate imposed on the annual value of the property. But the annual values of the said properties of the petitioner were increased after a fresh valuation of the said properties by the Valuation Department according to section 235 of the relevant Ordinance. The Minister's approval is not necessary to assess the annual value of a property a fresh (section 238 of the Municipal Council Ordinance is not applicable to the 1st respondent). The petitioner has not filed an action in the District Court challenging the decision for a fresh assessment and the determination of the annual value as provided in section 236 of the Municipal Council Ordinance hence the said assessment of the annual value of the said properties for the year 2003, 2004 and 2005 are valid. The taxes are imposed on this new annual value on the same rate (percentage) that was imposed on the previous years. Therefore the imposition of the rates for the year 2003, 2004 and 2005 by the 1st respondent on the properties of the petitioner is lawful. The petitioner cannot challenge assessment value of the petitioners property in this application for several reasons. One is that these proceedings is a judicial review proceedings and the challenge can only be on the basis of legality or illegality and not on the basis that the decision is right or wrong; *Best Footwear (Pvt) Ltd. and Two Others v Aboosally, former Minister of Labour and Vocational Training and Others*<sup>(1)</sup>. As there is no illegality in the assessment of the annual value and the imposition of rates the petitioner cannot have and maintain this

application. The other is the petitioner has an effective alternate remedy provided by statute to challenge the correctness of the assessment of the annual value; *Jayawardena v Silva*<sup>(2)</sup>, *Ishak v Lakshman Perera, Director-General of Customs and Others*<sup>(3)</sup>, *Tennakoon v Director-General of Customs and Another*<sup>(4)</sup>. In view of these findings this court dismisses this application without costs.

*Application dismissed.*