

CREST GEMS LTD.
v
THE COLOMBO MUNICIPAL COUNCIL

COURT OF APPEAL
TILAKAWARDANE, J. (P/CA)
CA No. 41/2002
SEPTEMBER 16 AND
NOVEMBER 18 2002 AND
JANUARY 29, 2003

Municipal Councils Ordinance, sections 247(A), 247(B), 247(C), 247(10)A, 247(l) and 247(C)(1) – Levy of tax in respect of maintaining an office for buying, selling and exporting gems and jewellery – Recovery of taxes – Inconsistency between English and Sinhala versions, which prevails? Karmanthaya (Industry) and Veladama (Trade).

The petitioner is a company buying and exporting gems and engaging in other export related activities. The respondent sought to levy and impose tax for carrying on an office for trading activities and a place for the sale of gems and diamonds. The petitioner refused to pay the purported tax on the ground that the Municipality had no jurisdiction to levy the tax, and sought to quash the notice relating to the recovery of tax.

Held.

- (i) Section 247B empowers a Municipal Council to impose and levy tax on any *trade* carried on within its administrative limits; the Sinhala version of the Ordinance empowers a Municipal Council to impose and levy such tax on any “*Karmanthaya*”.
- (ii) If there is an inconsistency between the English and Sinhala versions, then the Sinhala version prevails.
- (iii) The activity of the petitioner is a trade or “*Veladama*” in Sinhala and does not fall within the meaning of the word “*Karmanthaya*”; since the petitioner does not manufacture in the said place, no tax under section 247B could be levied.
- (iv) Section 247(C) empowers a Municipal Council to impose and levy tax on businesses and professions.

It is clear that Parliament never intended sections 247(A), 247(B) and 247(C) to overlap but to be mutually exclusive.

- (v) The Municipal Council could recover under section 247(A)(1) and 247(C)(1) and not under section 247(B).

APPLICATION for writs of certiorari and mandamus

Cases referred to:

1. *Ramsay v C.I.R.* – 54-TC 101, 1981 1 All ER 872AL
2. *Rawlings v Elibeck* – (1980) 2 All ER 12

Faisza Markar for petitioner.

Upul Jayasuriya for respondent.

Cur, adv, vult.

May 05, 2003

SHIRANEE TILAKAWARDANE, J.

Parties have agreed that the Judgment will be delivered by Hon. Shiranee Tilakawardane, J.

The petitioner has preferred this application seeking a mandate in the nature of a writ of mandamus compelling the respondent to act in terms of the Municipal Council Ordinance when recovering taxes thereunder from the petitioner.

The petitioner (Crest Gems Ltd) is a company for buying and exporting gems and other export related activities. The respondent, Municipal Council of Colombo, sent notices (marked P1a and P1b) dated 08/08/2001 to the petitioner purporting to levy and impose tax for carrying on an office for trading activities and a place for the sale of gems and diamonds. The petitioner by letters dated 15/08/2001 refused to pay the purported tax on the ground that the Municipality had no jurisdiction to levy this tax in respect of maintaining an office for buying, selling and exporting gems and jewellery and engaging in other export related activity under section 247B of the Municipal Councils Ordinance.

The only issue is whether the Municipal Council has the power to impose and levy tax under section 247B.

“A Municipal Council may impose and levy a tax on any trade carried on within the administrative limits of that council.”

This particular section empowers a Municipal Council to impose and levy tax on any trade carried on within the administrative limits. However the relevant section of the Sinhala (official language) version of the said Ordinance empowers a Municipal Council to impose and levy such tax on any “karmanthaya” carried on within the administrative limits thereof.

“247 ආ (1) යම් මහ නගර සභාවක පාලන සීමා තුළ කර ගෙන යන යම් කර්මාන්තයක් වෙනුවෙන් බඳදැක් නියම කොට අය කිරීම ඒ මහ නගර සභාව විසින් කළ හැකි ය.”

Therefore there is an inconsistency between the English and Sinhala versions of the said Ordinance and where there is an inconsistency between the English and Sinhala language versions the Sinhala language version prevails.

It has been submitted that the notices of the respondent seeking to recover from the petitioner the tax under section 247B of the Municipal Councils Ordinance for carrying on activities of maintaining an office for trading is *ultra vires* for the reasons that the petitioner maintains an office only for buying and selling of gems and jewellery. This activity is a trade or “velandama” in Sinhala and does not fall within the meaning of the word “karmanthaya” since the petitioner does not manufacture in the said place.

Sections 247A(1) and 247C(1) read as follows:

247(A)(1) “A Municipal Council may impose and levy a duty in respect of licences issued by the Council.”

247(C)(1) “A Municipal Council may by resolution impose and levy annually on every person, who within the administrative limits of such Council, carries on any business for which no license is necessary under the provisions of this Ordinance or any by-law made thereunder or any tax is payable under section 247B, a tax according to the taking of the business for the year preceeding the year in which such tax is payable.

.....For the purposes of this section:

- (a) business includes any trade or profession or calling or the business of a manufacturer, or of any person taking commission or fees in respect of any transaction or services rendered or the business of an independent contractor but does not include the occupation of maintaining any educational establishment or school to which grants from state funds are paid or to which such grants were earlier paid but at present are not paid.”

Section 247(C) of the Municipal Councils Ordinance empowers a Municipal Council to impose and levy tax on businesses and professions. It is clear that Parliament never intended sections 247(A), 247(B) and 247(C) to overlap but to be mutually exclusive. In other words, no person shall be liable to pay a duty, tax or levy for the same business under the above sections.

As has been submitted the Department of Official Languages has prepared a glossary of standard legal terms and the word “industry” is such as “trade” “industry” and “business” are used in law with very specific meaning and have achieved a legal clarity.

The learned counsel for petitioner has submitted that in the case of *K. Kaggodaarachchi v Perera*^{*} the learned High Court Judge held that the word “karmanthaya” in section 247(B) means “industry” and the person carrying on “trade” does not fall within that section.

S. Balaratnam in *“Income tax, wealth tax and gift tax in Sri Lanka”* (2nd edition) quoted Lord Justice Clerk as having held:

“No subject can be taxed unless the crown can find a clearly charging section and once that is found, the subject cannot escape taxation unless he can find a clearly exempting section.”

The cases of *Ramsay v CIR*⁽¹⁾ and *Rawlings v Elibeck*⁽²⁾ have been cited by the author in page no. 1 of the said book wherein Lord Wilberforce reviewed the principles adopted by the court in

interpreting taxing statutes and identified four basic rules of construction in interpreting the taxing statutes. One such rule is as follows:

“A subject is only to be taxed upon clear words, not upon intendment or upon the “equity of an act....”

Therefore in the absence of clear words in the statute or due to the inconsistency between the Sinhala and English versions of the said Ordinance the notice issued by the respondent to the petitioner purporting to recover tax on trading activities is deemed as null and void.

Accordingly this Court issues a writ of *certiorari* quashing the notice dated 08/08/2001 issued by the respondent to the petitioner relating to the recovery of tax for the year 2000 for the carrying on of an office for trading activities and sale of gems and diamonds at 142A, Kollupitiya Road, Colombo 3, in terms of section 247B of the Municipal Councils Ordinance and issues a writ of *mandamus* for recovery only in terms of the Municipal Councils Ordinance as set out above.

The petitioner's application is allowed with costs in a sum of Rs. 5000/-.

Notice issued under section 247B only quashed; writ of mandamus issued to act in terms of the Municipal Councils Ordinance.