

**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  
'Special Goods and Services Tax' or any part  
thereof is inconsistent with the Constitution*

1. **Bar Association of Sri Lanka,**
2. **Mr. Saliya Pieris PC,** The President,  
Bar Association of Sri Lanka,
3. **Mr. Rajeev Amarasuriya** Attorney-at-Law  
The Secretary The Bar Association of Sri Lanka

*The Petitioners of:* No. 153, Minindu Mawatha,  
Colombo 12

**PETITIONERS**

**SC (SD) Application. No-**

**Vs.**

**Hon. Attorney General,**  
Attorney General's Department,  
Colombo 12.

**RESPONDENT**

**TO :**

**HIS LORDSHIP THE CHIEF JUSTICE, AND THEIR LORDSHIPS AND  
LADYSHIPS; THE OTHER HONOURABLE JUDGES OF THE SUPREME COURT  
OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA.**

On this 27<sup>th</sup> day of January 2022.

*The Petition of the Petitioners above named appearing by Mr. G G Arulpragasam their registered  
Attorney-at-Law states as follows;*

1. The Petitioners state that;
  - a) The 1<sup>st</sup> Petitioner is the Bar Association of Sri Lanka;
  - b) The 2<sup>nd</sup> Petitioner and 3<sup>rd</sup> Petitioners are the President and Secretary respectively of the  
*Bar Association of Sri Lanka*, and a citizen of Sri Lanka and are entitled to proffer this  
application under *Article 121(1)* of the Constitution
2. The Petitioners state that the Respondent is the Hon. Attorney General, and is made a party  
hereto in terms of the Law and in particular *Article 134(1)*.
3. The Petitioners state that a Bill titled '*Special Goods and Services Tax*' was published in  
the Gazette on or around 07-01-2022 and placed on the Order Paper of the Parliament  
on **20-01-2022**

*Copies of the said Bill as published in all three languages as found on  
<http://www.documents.gov.lk/en/bills.php> are annexed hereto marked '**P1(a)**', '**P1(b)**' and  
'**P1(c)**' respectively and pleaded as part and parcel hereof.*



4. The Petitioners state that the Bill titled '*Special Goods and Services Tax Bill*' (hereinafter referred to as 'the Bill') in its entirety or any provisions of the Bill are inconsistent with the Constitution, and the jurisdiction of Your Lordships' Court is invoked to determine the same.
5. The Petitioners specifically state that *inter alia*, the following clauses are contrary to provisions of the Constitution;
  - a) Clause 2(3) of the Bill empowers the Minister to Order by publication in Gazette the rate of tax applicable and the basis of calculation of the Special Goods and Services Tax in relation to the specified goods and services, and is contrary to *inter alia*, *Articles 3, 4(a), 4(d)*, read with *Articles 12(1), 76(1), 148 and 152* of the Constitution. The Petitioners specifically state that;
    - i. *Article 148* of the Constitution gives full control of public finance to the Parliament and bars any local authority or any other public authority from imposing any tax, rate or any other levy, except by or under the authority of a Law passed by Parliament or of any existing law;
    - ii. *Article 152* of the Constitution, sets out a special procedure to be followed in respect of, *inter alia*, the imposition, augmenting or reducing of tax;
    - iii. *Article 76(1)* of the Constitution is contravened in that such clause amounts to an abdication/alienation of the Parliament's legislative power contrary to of the Constitution;
    - iv. *Article 12(1)* of the Constitution is contravened in that such clause provides unfettered discretion to the Minister to decide rates of tax and basis of calculation without the approval of Parliament;
  - b) Clause 2(4) of the Bill provides that an Order under Clause 2(3) continues to be in force until such is revoked by the Minister or until a subsequent Order made by the Minister. However, Clause 2(8) provides for the revocation of such an Order pursuant to Parliament refusing approval. Clause 2(4) is thus, *inter alia*, inconsistent with Clause 2(8) of the Bill, and such Order under Clause 2(3) would remain in force even after the rejection by Parliament. Furthermore, Clause 2(4) read with Clause 2(8) is violative of *inter alia*, *Articles 12(1), 14A* read with *Article 3 & 4* of the Constitution;
  - c) Clause 2(5) states that an Order under Clause 2(3) becomes operational 'immediately upon' the Minister placing his signature thereto. Clause 2(6) provides for the publication of such Order in the Gazette, but fails to stipulate a time frame within which the Minister is required to make such publication. The taxpayer would be unaware of such Order unless the Order were to be immediately published in the Gazette. However, if such Order was not immediately published in the Gazette, a citizen can be found liable in terms of *Clause 7(9)(a)* and be subjected to penal sanctions. Thus, Clause 2(5) read with Clause 2(6) is violative of *inter alia*, *Articles 12(1), 14A* and *Article 13(6)* of the Constitution and further violative of *Articles 76(1), 148 & 152* read with *Articles 3, 4(a) and/or (d)* of the Constitution;
  - d) Clause 2(7) requires that an Order under Clause 2(3) be brought before Parliament within three (3) months of the date of publication in the Gazette and is violative of *inter alia*, *Article 148* of the Constitution inasmuch as, *inter alia*, the Order is operative prior to being brought before Parliament;
  - e) Clause 2(8) provides that where the Parliament refuses approval of an Order, the Order is deemed revoked from the date of the resolution by Parliament, without prejudice to anything done prior to the date of such resolution. The clause violates *inter alia*, *Articles 3, 4(a) & (d), 12(1), 76(1) and 148* of the Constitution;
  - f) Clause 3(1) empowers the Minister to Order by publication in Gazette the exemption of *Special Goods and Services Tax*, without the approval of the Parliament. The Clause is violative of *inter alia*, *Articles 76(1), 148 & 152* of the Constitution and is further inconsistent with *Article 12(1)* read with *Articles 3 and 4(a) & (d)* of the Constitution;



- g) Clause 3(3) of the Bill which provides that an Order under Clause 3(1) continues to be in force until such is revoked by the Minister or until a subsequent Order made by the Minister. However, Clause 3(7) provides for the revocation of such an Order pursuant to the Parliament refusing approval. Clause 3(3) is thus inconsistent with Clause 3(7) of the Bill, and such Order under Clause 3(1) would remain in force irrespective of the rejection by Parliament. Furthermore, Clause 3(3) read with Clause 3(7) is violative of *inter alia*, Articles 12(1), 14A(1)(a) read with Article 3 & 4 of the Constitution;
- h) Clause 3(4) states that an Order under Clause 3(1) becomes operational 'immediately upon' the Minister placing his signature thereto. Clause 3(5) provides for the publication of such Order in the Gazette, but fails to stipulate a time frame within which the Minister is required to make such publication. The taxpayer would be unaware of such Order unless the Order was to be immediately published in Gazette. However, if such Order was not immediately published in the Gazette, it could result in the imposition and collection of a tax not payable in terms of the law. Thus, Clause 3(4) read with Clause 3(5) is violative of Articles 12(1) & 14A of the Constitution and further violative of *inter alia*, Articles 76(1), 148 & 152 read with Articles 3, 4(a) and/or (d) of the Constitution;
- i) Clause 3(6) requires that an Order under Clause 3(1) be brought before Parliament within three (3) months of the date of publication in the Gazette and is violative of *inter alia*, Article 148 of the Constitution inasmuch as, *inter alia*, the Order is operative prior to being brought before Parliament;
- j) Clause 3(7) provides that where Parliament refuses approval of an Order under Clause 3(1), the Order is deemed revoked from the date of the resolution by Parliament, without prejudice to anything done prior to the date of such resolution. The clause violates *inter alia*, Articles 3, 4(a) & (d), 12(1), 76(1) and 148 of the Constitution;
- k) Clause 4 of the Bill provides that where an Order is made by the Minister under Clause 2(3) of the Bill, any tax, duty, levy, cess or any other charge imposed in terms of any enactment set out in the Schedule shall not be applicable from and after the date the Minister places his signature on the Order in terms of Clause 2(5) of the Bill. Such provision confers power on the Minister to suspend the operation of Scheduled enactments affecting Government Revenue without the approval of Parliament. Thus, Clause 4 is inconsistent with *inter alia*, Articles 76(1), 148, 152 as read with Articles 12(1) and 3 & 4(a) of the Constitution;
- l) Proviso to Clause 4 of the Bill provides that the enactments in the Schedule are applicable for the purposes of enforcement, prevention and punishment for contravention of the Act (the Bill in question) and regulations made thereunder. The provision is vague and overbroad, and unclear as to the specific provisions of the enactments in the schedules which are applicable. The Proviso to Clause 4 is thus violative of *inter alia*, Articles 12(1), 76(1) read with Articles 3, 4(a) & 4(d) of the Constitution;
- m) Clause 5(1) of the Bills sets up a unit under the purview of the *Deputy Secretary to the Treasury* who is responsible for the administration, collection and accountability of the *Special Goods and Services Tax*. The Bill thus contemplates setting up of a tax system parallel to the existing tax administration system which comprises *inter alia*, the *Inland Revenue Department*, the *Excise Department* and *Sri Lanka Customs*. Clause 5(1) is thus inconsistent with the scheme and structure of the Constitution inasmuch as in terms of Article 52(2) of the Constitution, the Secretary to the Treasury is tasked with the supervision over Departments of Government and other institutions under the charge of the Minister, and is not empowered to carry out duties and functions that should be performed by a Government Department. The unit set up is also outside the scope and ambit of the Auditor General. Thus the said clause is inconsistent with *inter alia*, Articles 3, 4(b) & (d), 12(1), 52(2) and 154(1) of the Constitution;
- n) Clause 5(2) of the Bill conferred unfettered power to the Secretary to the Treasury to appoint persons to the 'unit' set up under Clause 5(1), without setting out any qualifications and selection criteria, and such power is a derogation of the powers of the *Public Service Commission* and the *Cabinet of Ministers*. The said clause is thus



inconsistent with *inter alia*, Articles 55(1), 55(3) read with Articles 12(1), 3, 4(b) and 4(d) of the Constitution;

- o) Clause 7(5) of the Bill states that the Secretary to the Treasury must determine whether the taxable person is eligible for registration and register such person. The *Clause* is inconsistent with *Clauses* 5(1)(b), 7(1)(d) and 7(7) by which the Designated Officer (i.e. the Deputy Secretary) is given charge of administration, and accountability. Furthermore, the Secretary to the Treasury is only required to convey his decision to the taxable person 'at his earliest convenience', which is vague and ambiguous. *Clause* 7(5) is thus violative of *inter alia*, Article 12(1) read with Articles 3 and 4(d) of the Constitution;
- p) Clause 9(1) stipulates that the taxes payable under *Clause* 2 should be remitted to an account opened and maintained in the name of the Designated Officer. The clause is not specific as to the 'account' which is to be opened and maintained. The clause is thus inconsistent with *inter alia*, Articles 12(1), 148, 149, 150(1) & 150(2) read with Articles 3, 4(a) & 4(d) of the Constitution;
- q) Clause 10(1) of the Bill is inconsistent with *inter alia*, Article 12(1) read with Articles 3 & 4(d) of the Constitution in as much as the said *Clause* specifies only one mode of communication between the Designated Officer and the taxable person as opposed to the detailed system currently in place in the *Inland Revenue Department*.
- r) Clause 11(1) stipulates that where an appeal is made to the Court of Appeal, the taxable person must pay 50% of the amount payable to the account referred to in *Clause* 9 and the other 50% by bank guarantee. The right of appeal of a person is contingent on the ability of a person to pay the amount determined by the Designated Officer, and would adversely impact the right of appeal of persons. Furthermore, the requirement to pay by bank guarantee is untenable as a bank guarantee is only a security and not a payment instrument. Thus *Clause* 11(1) is inconsistent with *inter alia*, Article 12 read with Articles 3, 4(c) and (d) of the Constitution as well as the citizen's right to invoke the jurisdiction of the Court of Appeal under Articles 138 as read with Article 139 and thereafter by extension the citizen's right to invoke the jurisdiction set out in Article 127 as read with Article 128 ;
- s) Clause 11(3) states that the Designated Officer can make a claim on the bank guarantee upon a judgement of the Court of Appeal (if judgment is in his favour). The clause restricts the judicial power of the People inasmuch as the said *Clause* deprives the taxpayer's right to appeal to the Supreme Court under and in terms of the Constitution, including Articles 127 and 128 of the Constitution, particularly as such claim can be made without being afforded a right of appeal to the Supreme Court under and in terms of Articles 127 and 128 of the Constitution. Therefore, *Clause* 11(3) is violative of *inter alia*, Articles 12(1), 127, 128 read with Articles 3 and 4(c) and 4(d) of the Constitution;
- t) In Clause 11(4), the use of the words "as soon as convenient" and the words "earliest possible period of time" are vague and ambiguous and are therefore inconsistent with *inter alia*, Article 12(1) read with Articles 3 & 4(d) of the Constitution and show a patent lack of evenhanded between the State and citizen contrary to the Rule of Law;
- u) Clause 11(5) states that the penalty imposed in terms of *Clause* 14 of the Bill is to be considered as part of the *Special Goods and Services Tax* in default. A penalty by its very nature can only be imposed if a sum is in default. Therefore, a penalty cannot form part of the Tax in default. Thus, *Clause* 11(5) of the Bill is inconsistent with *inter alia*, Article 12(1) read with Articles 3 & 4(d) of the Constitution;
- v) *Clauses* 12(1), 12(7) & 12(8) of the Bill provide for the *Commissioner General of Inland Revenue (CGIR)* to take suitable and expeditious recovery action where any *Special Goods and Services Tax* is in default. However in terms of *Clause* 5(1) of the Bill, the *Special Goods and Services Tax* is to be administered and collected by a Designated Officer (i.e. Deputy Secretary to the Treasury) who is not attached to the *Inland Revenue Department*. Hence such clauses are inconsistent with *inter alia*, Article 12(1) of the Constitution read with Articles 3 and 4(d);



- w) *Clauses 12(3)(a) and 12(3)(b) are inconsistent with inter alia, Articles 12(1) read with Article 3 & 4(d) of the Constitution inasmuch as it does not provide for any balances to be paid to the Owner of the property so seized similar to what is contemplated in Clause 12(3)(c) of the Bill;*
  - ∞) *Clause 13(1) Bill also provides for the Commissioner General of Inland Revenue (CGIR) to take suitable and expeditious recovery action where any Special Goods and Services Tax is in default. However, in terms of Clause 5(1) of the Bill, the Special Goods and Services Tax is to be administered and collected by a Designated Officer who is not attached to the Inland Revenue Department. Clause 13(1) is inconsistent with inter alia, Article 12(1) read with Articles 3 and 4(d) of the Constitution; ;*
  - γ) *Clause 13(6) of the Bill states that the Certificate issued by the Commissioner General of Inland Revenue (CGIR) is sufficient evidence that the tax is in default, when the tax collecting responsibility falls on the Designated Officer and not the CGIR. Furthermore, the clause ousts the jurisdiction of Court to consider whether the Certificate is excessive, incorrect or under appeal and thus the said Clause takes away the taxpayer's right of appeal. The clause is thus inconsistent with inter alia, Articles 12(1), 127, 128 read with Articles 3, 4(c) & 4(d) of the Constitution; ;*
  - ζ) *Clause 14 would subject the taxpayer to the payment of a penalty notwithstanding the fact that the taxpayer may have appealed to the Court of Appeal under and in terms of Clause 10(7) of the Bill. Thus Clause 17 is violative of inter alia, Articles 3, 4(c), 4(d) & 12(1) of the Constitution.*
6. The Petitioners states that in the circumstances hereinbefore morefully enumerated, the Bill in its entirety, and specifically the clauses in the Bill referred to above, cannot become Law, unless passed by two-thirds of the whole number of members in Parliament and approved by the People at a referendum as required by *Article 83* of the Constitution read with *Article 80*
  7. In the aforesaid circumstances, the Bill in its entirety is inconsistent with the Constitution including *inter alia, Articles, 3, 4, 12, 14A, 52(2), 55(1), 55(3) 76(1), 127, 128, 138, 139, 148, 149, 150(1), 150(2), 152 & 154(1)* of the Constitution
  8. The Petitioners have taken steps to furnish a copy of this Petition to the Honourable Speaker of Parliament in compliance with *Article 121(1)* of the Constitution.
  9. The Petitioners have not previously invoked the jurisdiction of Your Lordships' Court in respect of this matter.
  10. The Petitioners state that in the aforesaid circumstances they are entitled to invoke the jurisdiction of Your Lordships' Court for the reliefs prayed for herein.
  11. The Petitioners respectfully reserve their right to furnish such further facts and documents in support of the matters set out herein at the hearing of this Application should the Petitioners become possessed of any such material.
  12. An affidavit of the 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners are appended hereto in support of the averments contained herein.

**WHEREFORE the Petitioners prays that Your Lordships' Court be pleased to:**

- (a) Entertain/hear the instant application;
- (b) Determine that the *Special Goods and Services Tax Bill* in its entirety, is inconsistent with and /or in contravention of the provisions of *Article 3* of the Constitution and therefore require the following of the appropriate procedure laid down in *Articles 83* as read with *Article 80* of the Constitution for enactment into law, 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;



- (c) Determine that *Clauses 2(3), 2(4), 2(5), 2(6), 2(7) 2(8), 3(1), 3(3), 3(4), 3(5), 3(6), 3(7), 4, 5(1), 5(2), 7(5), 9(1) 10(1), 11(1), 11(3), 11(4), 11(5), 12(1), 12(3)(a), 12(3)(b), 12(7), 12(8), 13(1), 13(6) and Clause 14* of the *Special Goods and Services Tax Bill* are inconsistent with and / or in contravention of the provisions of *Article 3* as read with *Articles 4(a), 4(b), 4(c), 4(d), 12(1), 14A(1), 52(2), 55(1), 55(3) 76(1), 127, 128, 138, 139, 148, 149, 150(1), 150(2), 152, 154(1)* of the Constitution and therefore require the following of the appropriate procedure laid down in *Articles 83* as read with *Article 80* of the Constitution for enactment into law, 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;
- (d) Determine that *Clauses 2(3), 2(4), 2(5), 2(6), 2(7) 2(8), 3(1), 3(3), 3(4), 3(5), 3(6), 3(7), 4, 5(1), 5(2), 7(5), 9(1) 10(1), 11(1), 11(3), 11(4), 11(5), 12(1), 12(3)(a), 12(3)(b), 12(7), 12(8), 13(1), 13(6) and Clause 14* are inconsistent with and / or in contravention of the provisions of the Constitution including *Articles 4(a), 4(b), 4(c), 4(d), 12(1), 14A(1), 52(2), 55(1), 55(3) 76(1), 127, 128, 138, 139, 148, 149, 150(1), 150(2), 152, 154(1)* and therefore require the following of the appropriate procedure laid down in *Articles 84* of the Constitution for enactment into law;
- (e) Communicate the determination(s) made above to the Honourable Speaker of Parliament; and
- (f) Grant such further and other relief(s) as to Your Lordships' Court shall seem meet.



Attorney-at-Law for the Petitioners

Settled by

**Ms. Harini Jayawardhana**  
Attorney-at-Law

**Mr. Pulasthi Hewamanna**  
Attorney-at-Law

**Mr. Ikram Mohammed esq.**  
President's Counsel

