P.C.
~~G.I.C.Q~~

34, 1965

IN THE PRIVY COUNCIL

No. 17 of 1964

ON APPEAL

FROM THE SUPREME COURT OF THE ISLAND OF CEYLON

B E T W E E N :-

JANIS WIJESURIYA APPELLANT

- and -

H. R. AMIT, GOVERNMENT AGENT RESPONDENT

RECORD OF PROCEEDINGS

LEMAN HARRISON & FLEGG,
44, Bloomsbury Square,
London, W.C.1.
Solicitors for the Appellant.

T. L. WILSON & CO.,
6, Westminster Palace Gardens,
London, S.W.1.
Solicitors for the Respondent.

P.C.
~~G.L.C.2~~.

IN THE PRIVY COUNCIL — No. 17 of 1964

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B E T W E E N :

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- and -

H. R. AMIT, GOVERNMENT AGENT — RESPONDENT

RECORD OF PROCEEDINGS

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IN THE PRIVY COUNCIL No. 17 of 1964

ON APPEAL

FROM THE SUPREME COURT OF THE ISLAND OF CEYLON

B E T W E E N :

JANIS WIJESURIYA APPELLANT

- and -

H. R. AMIT, GOVERNMENT AGENT RESPONDENT

RECORD OF PROCEEDINGS

No. 1

In the Magistrate's Court

No. 1

Notice for payment of arrears of tax

Translation of D.1.

Registered post

My No: AC/Z 11th May 1962

Mr. J. W. Wijesooriya,
Kotuwegoda,
Matara.

Sir,

Notice for payment of arrears of tax

Notice under Section 4(2) of the Heavy Oil Motor Vehicles Taxation Ordinance No: 56 of 1935

Take notice that :-

By virtue of the powers vested in me under Section 4(2) of the Heavy Oil Motor Vehicles Taxation Ordinance No.56 of 1935 as amended by the Heavy Oil Motor Vehicles Taxation (amendment) Act No.20 of 1961, you are hereby required to pay the sum of Rs.472/- being heavy oil tax due on your Motor Vehicle No. 22 Sri 854.

2. You are required to pay the above tax within 7 days of the receipt of this notice. In the event of failure to pay this amount within the specified period you are liable to be punished under section 5 of the above said Ordinance.

In the Magistrate's Court

No. 1

Notice for payment of arrears of tax continued

11th May 1962

3. The arrears of tax is as follows :-

Period	Tax due
1959 September to December	Rs.472/-

Your obedient servant,

Sgd/: H.R.Amit.

Government Agent, Matara.

The Kachcheri,
Matara, 11.5.62.

No. 2

Letter, H. R. Amit to Magistrate, Matara, with certificate referred to therein

1st June 1962

No. 2

Letter, H. R. Amit to Magistrate, Matara, with the Certificate referred to therein

The Magistrate,
Matara.

No.28.

I have the honour to inform you that the registered owner of Heavy Oil Motor Vehicle No: 22 Sri 854 is Jaunis Wijesuriya of Motuwegoda, Matara now resident at Wijesuriya & Co., Kotuwegoda, Matara within the jurisdiction of the Magistrate's Court, Matara.

2. The said owner has made default in the payment of the tax due on the said vehicle under the Heavy Oil Motor Vehicles Taxation Ordinance (Chapter 249) as amended by the Heavy Oil Motor Vehicles Taxation (Amendment) Act No: 20 of 1961 and I subjoin a certificate under Section 4(1) of the said Ordinance specifying the amount so due.

3. The notice required by section 4(2) of the said Ordinance was duly served on the said owner and a period of seven days has lapsed since the date of service of such notice.

Sgd/ H.R. Amit,
Government Agent, Matara.

The Kachcheri,
Matara 1.6.62.

In the Magistrate's Court

No. 2

Letter, H. R. Amit to Magistrate, Matara, with certificate referred to therein continued

1st June 1962

Certificate under Section 4(1) of the Heavy Oil Motor Vehicles Taxation Ordinance Cap.249

I, Harris Roysten Amit, Government Agent of Matara District do hereby certify in accordance with Section 4(1) of the Heavy Oil Motor Vehicles Taxation Ordinance (Chapter 249) as amended by the Heavy Oil Motor Vehicles Taxation (Amendment) Act No: 20 of 1961, that -

(a) the tax due under the Heavy Oil Motor Vehicles Taxation Ordinance (Chapter 249) as amended by the Heavy Oil Motor Vehicles Taxation (Amendment) Act No: 20 of 1961 on motor vehicle No: 22 Sri 854 is Rs.118/- per month.

(b) the owner of the said vehicle has made default in the payment of the tax amounting to Rs.472/- being the tax due under the said Ordinance for the months of 1959 September to December (four months) Rs.472/-.

Sgd/: H.R. Amit
Government Agent, Matara District.

The Kachcheri,
Matara, 1.6.62.

No. 3

Charge Sheet

1st June 1962

No. 3

Charge Sheet

(Ordinary proceedings)

Sections 187, 188

Date: 1.6.1962

The accused is charged as follows :-

You are hereby charged that you did within the jurisdiction of this Court at Kotuwegoda, Matara on 8.9.1959 possess a heavy oil Motor Vehicle bearing registered number 22 Sri 854 in respect of which Heavy Oil Tax was not paid on the said date in contravention of Section 5(1) of the Heavy Oil Motor Vehicles Taxation Ordinance (Chapter 249) as amended by the Heavy Oil Motor Vehicles Taxation

In the Magistrate's Court

No. 3

Charge Sheet continued

1st June 1962

(Amendment) Act No: 20 of 1961 and thereby committed an offence punishable under Section 5(2) of the said Ordinance read with section 4(1) thereof.

"Not Guilty".

Intld/: T.D.G. de A.

Magistrate.

6.9.62.

No. 4

Proceedings

11th October 1962

No. 4

Proceedings

Mr. Balasuriya with Mr. Nanayakkara for him. Mr. J.W.Wickramasinghe, Crown Proctor for the prosecution.

Mr. Balasuriya submits that the caption to chapter 249 states "An ordinance to impose a Tax on Motor Vehicles using uncustomed oil as fuel".

(2) He states that at the time of the alleged default it must be proved there was no tax due on diesel oil.

Mr. Nanayakkara submits that section 6(2) paragraph (f) of Heavy Oil Motor Vehicles Taxation Ordinance reads - "registered owner means the person registered as the owner of a motor vehicle under the provisions of the Motor Traffic Act." He submits that according to section 6(2)(f) of the old Heavy Oil Motor Vehicles Taxation Ordinance "registered owner" means the person registered as the owner of a motor car under the provisions of the Motor Car Ordinance,." Mr. Nanayakkara submits that repeal of the Motor Car Ordinance by the Motor Car Traffic Act has not done away with ownership under the motor car Ordinance and as such section 6(2)(f) of the Heavy Oil Motor Vehicles Taxation Ordinance, Chapter 190 of the 1938 Revision of the Legislative Enactment still holds good and will apply and the recovery of heavy oil tax has to be confined only to vehicles registered under the Motor Car ordinance.

Mr. Wickramasinghe submits that the preamble

cannot control the operative words of an Enactment. He submits that one cannot have recourse to the preamble and speeches made in Parliament to place a construction on a statute. He submits that when there is a conflict between the preamble and the operative words of an Enactment the operative words will prevail. He cites Rodgers interpretation of Statute 4th Edition page 216.

(It is submitted that all oil became oil subject to custom duty as from midnight on 12th July 1956).

Mr. Wickramsinghe cites Rodgers Interpretation of State, pages 185, 186 and 188 Presumption against absurdity. He cites Maxwell interpretation of Statute, 10th Edition, page 7. He cites Section 16, interpretation of retrospective legislation.

Mr. Nanayakkara submits that there is a distinction between tax being due and a person being in default.

Mr. Wickramsinghe submits that a Magistrate has no jurisdiction to inquire into whether this amount could be levied in this Court or not.

Mr. Wickramasinghe cites 59 N.L.R. 145: 53 N.L.R. 229.

It is admitted by the representative of the Government Agent, that this vehicle in question is one registered after 1956.

It is admitted by the defaulter that vehicle 22 Sri 854 is a heavy oil motor vehicle within the meaning of section 6(2)(c) as amended by Act No: 20 of 1961. It is also admitted by the defaulter that the amount of Rs.472/- claimed to be due by Government Agent for the period 1959 September to December has not been paid.

The defaulter also admits that he was the registered owner of this vehicle for the period September to December 1959. He also admits that he is a resident of Matara, within the jurisdiction of this Court.

The notice served by the Government Agent, Matara on the defaulter is now produced and filed of record marked D.1.

In the Magistrate's Court

No. 4

Proceedings continued

11th October 1962

The defaulter does not deny that 7 days notice has been given to him prior to 1.6.62.

Order on 1.11.62.

Sgd/: T.D.G. de Alwis.

Magistrate.

11.10.62.

No. 5

Judgment

8th November 1962

No. 5

Judgment

M.C. Matara Case No: 28

JUDGMENT

The Government Agent, Matara, seeks to have a sum of Rs.472/- levied from the accused as a fine under Section 4(1) of the Heavy Oil Motor Vehicles Taxation Ordinance. He has filed a certificate as required by Section 4(1) to the effect that the accused who is the registered owner of the Motor Vehicle No: 22 Sri 854 has made default in payment of tax amounting to Rs.472/- for the months September to December 1959 and that notice required by section 4(2) was duly served on the owner and that a period of 7 days has lapsed since the service of such notice. The accused appeared in Court on 6.9.62 and stated that he has cause to show why this amount should not be levied against him. The matter was inquired into on 11.10.62.

It was admitted that all oil became subject to customs duty as from midnight on 12th July 1956. The following further facts were admitted :- that Motor Vehicle No: 22 Sri 854 is one registered after 1956, that this vehicle is a heavy oil Motor Vehicle within the meaning of section 6(2)(c) as amended by Act No: 20 of 1961, that the sum of Rs.472/- claimed to be due for the period September to December 1959 has not been paid that the accused was the registered owner of this vehicle for the period September to December 1959 and that he resides within the jurisdiction of this Court. The accused also admits that he received the notice produced marked D.1 more than 7 days prior to 1.6.62 which is the date on which this application has been filed.

At the inquiry various submissions were made by the defence as well as by the Crown. It was submitted on behalf of the Crown that the Magistrate had no jurisdiction to inquire into whether this amount could be levied in this case or not. It was argued that once a certificate under Section 4(1) was filed my jurisdiction extended only to the recovery of the amount certified as a fine and also that the accused had no right to be heard. I am unable to agree with this submission. The right that the Magistrate has to levy this tax as a fine is conferred on him by this same ordinance. The Court has in my view the inherent right to inquire into whether this tax is legally due and whether it could be legally levied under this ordinance, and for that purpose the Court is bound to inquire into any objections that may be raised by the defence.

I shall now proceed to consider the objections raised by the defence. Three objections were raised :-

1. That the pre-amble to the Ordinance is that it is one to impose a tax on motor vehicles using uncustomed oil or fuel and as diesel oil is now customed oil, a tax cannot be levied.

2. That the Ordinance applies only to vehicles registered under the Motor Car Ordinance.

3. That the Amending Act No: 20 of 1961 has no retrospective effect as far as Section 4 is concerned.

The preamble to the Heavy Oil Motor Vehicles Taxation Ordinance is as follows :-

> "An Ordinance to impose a tax on motor vehicles using uncustomed oil as fuel".

It was admitted that as from midnight on 12.7.56 all oil became subject to customs duty. Mr. Balasuriya one of the Proctors appearing for the defence argued that in view of the preamble it must be shown that no customs duty was leviable on diesel oil at the time of the alleged default, and that as in fact diesel oil was subject to duty at the relevant time this tax cannot be levied. Under the principal Ordinance heavy oil is defined in Section 6(2)(c) as follows :-

In the Magistrate's Court

No. 5

Judgment continued

8th November 1962

"Heavy oil means crude petroleum, liquid fuel, gas oil or any other oil, not subject to import duty under the provisions of the Customs Ordinance." But this definition has been amended by section 2(1)(a) of Act No: 20 of 1961 with effect from 13th July 1956 the date on which all oil became subject to customs duty. The amendment is expressly with retrospective effect and retrospective effect will also be given to this amendment by the operation of Section 5 of the Interpretation Ordinance. Hence for all purposes the definition of heavy oil as from 13.7.56 will read as follows :-

> "heavy oil" means crude petroleum, liquid fuel, gas oil or diesel oil".

It is thus abundantly clear that the legislature has in 1961 enacted that diesel oil which is subject to customs duty will nevertheless be subject to tax under the Heavy Oil Motor Vehicles Taxation Ordinance. The question for consideration now will be whether the preamble will prevail over the deliberate Act of the legislature. As stated by Rodgers in his Construction of Deeds and Statutes (4th Edition) page 216 - it is clear that when the enacting words or sections are free from doubt, there is no necessity to resort to the preamble at all. Maxwell in his Interpretation of Statutes (10th Edition) at page 46 refers to various cases where it has been held that the preamble does not affect the plain terms of the Act and that very often the terms of an act extend beyond the terms of the preamble. It is stated at page 46 -

"But the preamble cannot either restrict or extend the enacting part, when the language and object and scope of the Act are not open to doubt. It is not unusual to find that the enacting part is not exactly co-extensive with the preamble. In many Acts of Parliament, although a particular mischief is recited, the legislative provisions extend beyond it. The preamble is often no more than a recital of some of the inconveniences, and does not exclude any others for which a remedy is given by the statute. The evil recited is not the motive of legislation; the remedy may both consistently and wisely be extended beyond the case of that evil, and if on a review of the whole act a wider intention than that expressed in the preamble appears to be the real one, effect is to be given to it notwithstanding the less extensive impact of the preamble".

It is thus patently clear that the operative words will prevail over the preamble and this objection of the defence must fail.

The 2nd objection taken by the defence was that the Heavy Oil Motor Vehicles Taxation Ordinance applied only to Motor Vehicles registered under the Motor Car Ordinance, Chapter 156 of the Legislative Enactments 1938 Revision. This objection is based on the argument that although the Motor Car Ordinance has been repealed by the Motor Traffic Act No: 14 of 1951 and by Section 242(1) of the Motor Traffic Act a Motor vehicle registered under the repealed Motor Car Ordinance shall be deemed to be a motor vehicle duly registered under the Motor Traffic Act and a person registered as the owner of a motor vehicle under the repealed Motor Car Ordinance shall be deemed to be the registered owner under the Motor Traffic Act, the Heavy Oil Motor Vehicles Taxation Ordinance has not been amended to make a person registered as owner under the Motor Traffic Act the registered owner under Section 6(2)(f) of the Heavy Oil Ordinance. On this basis it is argued that this tax could be levied only on motor vehicles that were registered under the Motor Car Ordinance. The Motor Car Ordinance was repealed in 1951 and admittedly this lorry No: 22 Sri 854 was registered after 1956. So that, this vehicle cannot be a vehicle registered under the repealed motor car Ordinance. Section 6(2)(f) of the Heavy Oil Motor Vehicles Taxation Ordinance (1938 revision) read with Section 2(1)(c) of Act No: 20 of 1961 would read "registered owner means the person registered as the owner of a motor vehicle under the Motor Car Ordinance." Section 6(2)(f) of the Heavy Oil Motor Vehicles Taxation Ordinance (1956 revision) reads "registered owner means the person registered as the owner of a motor vehicle under the provisions of the Motor Traffic Act." It was submitted that although a person registered as the owner of a motor vehicle under the Motor Car Ordinance shall be deemed the registered owner under the Motor Traffic Act, the converse, that a person registered as owner under the Motor Traffic Act will be deemed to be the registered owner under the Motor Car Ordinance, will not follow. It was further argued that any of the provisions of Section 3 of the Revised Edition of the Legislative Enactments Act No: 2 of 1956 did not empower the Commissioner under that Act to substitute in place of the words

In the Magistrate's Court

No. 5

Judgment continued

8th November 1962

"under the provisions of the Motor Car Ordinance" in Section 6(2)(f) of the Heavy Oil Motor Vehicles Taxation Ordinance (1938 revision) the words "under the provisions of the Motor Traffic Act" in the Motor Vehicles Taxation Ordinance (1956 revision). In this matter one must have recourse to Section 16(1) of the Interpretation Ordinance. This Section enacts that "when in any written law reference is made to any written law which is subsequently repealed, such reference shall be deemed to be made to the written law by which the repeal is effected or to the corresponding portion thereof." Hence in this case where ever a reference is made in the Heavy Oil Motor Vehicles Taxation Ordinance to the Motor Car Ordinance, that reference must be deemed to be made to the Motor Traffic Act which repealed the Motor Car Ordinance. Hence it is my view that the 2nd objection raised by the defence must also fail.

The other objection raised by the defence was that the amending Act No: 20 of 1961 has no retrospective effect as far as Section 4 is concerned. Act No: 20 of 1961 has amended the definition of heavy oil in Section 6(2)(c) of the Heavy Oil Motor Vehicles Taxation Ordinance to read heavy oil means :- "crude petroleum, liquid fuel, gas oil or diesel oil". The amending Act has received the assent of the Governor General on 25.4.61, and the amendment is deemed to have come into effect from 13.7.1956. It was argued that Section 4(1) would apply only where default is made in the payment of tax. Section 2(3) enacts that the tax due shall be paid annually or monthly, and where the tax is paid annually it shall be paid on or before the 7th of January of the year in question and where it is paid monthly, it shall be paid on or before the 7th day of the month in question. It was submitted that in as much as diesel oil was brought within the purview of the Heavy Oil Motor Vehicles Taxation Ordinance only on 25.4.61, there can be no default prior to that date as there was no tax due by that time. But again the operation of the Interpretation Ordinance brings about a different result. Section 5 of the Interpretation Ordinance enacts as follows:-

> "when any ordinance is declared to be passed the expression "the principal Ordinance" shall mean the ordinance to be amended, and

the amending ordinance shall be read as one with the principal ordinance."

The amending Act No: 20 of 1961 specifically states that it is an Act to amend Section 6 of the principal enactment. Hence Section 5 of the Interpretation Ordinance will no doubt apply in this case. The effect of the operation of Section 5 of the Interpretation Ordinance where amendments are made in the principal enactment has been discussed and decided upon by Mr. Justice Nagalingam in the case of Kathirithamby vs. Subramaniam (5 N.L.R.62). There he states at page 65 "What, then, is the meaning to be given to the words that the amending ordinance shall be read as one with the principal ordinance. The plain meaning of the words is that the amendments should be incorporated into the main ordinance and read as if they had been enacted at the time that the main ordinance itself was passed

.....

It certainly would be doing violence to these words if the amending ordinance was to be treated as a separate piece of legislation to be construed without reference to the main ordinance." In this case Nagalingam J. was considering the effect of the amending Ordinance No: 58 of 1947 in the Jaffna Matrimonial Rights and Inheritance Ordinance in respect of the definition of the diatheddam property. On this basis of his arguments that I have quoted above he held that the amendment must be deemed to have been enacted at the time the principal ordinance was enacted and hence retrospective in operation. On the authority of Mr. Justice Nagalingam I have come to the conclusion that in this case Act No: 20 of 1961 operates as if it had been enacted together with the main ordinance and that it operates retrospectively in respect of the entire ordinance. I accordingly hold that the accused must be deemed to have been in default when tax was not paid for the four months September to December 1959, and that the Government Agent is entitled to have this amount levied as a fine.

I accordingly fine the accused Rs.472/-.

Sgd/: T.D.G. de Alwis.

Magistrate.

8.11.62.

In the Supreme Court

No. 6

Petition of Appeal

14th November 1962

No. 6

Petition of Appeal

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

Janis Wijesuriya of Kotuwegoda, Matara.

Defaulter - Appellant

M.C. Matara
Case No: 28

-Vs-

H. R. Amit, Government Agent, Matara. 10

Complainant - Respondent

TO: The Honourable the Chief Justice and the other Judges of the Honourable the Supreme Court of the Island of Ceylon.

On this 14th day of November, 1962.

The Petition of Appeal of the defaulter - Appellant above named respectfully sheweth as follows:-

1. A certificate purporting to be a certificate under Section 4(1) of the Heavy Oil Motor Vehicles Taxation Ordinance (Chapter 249) was issued by the Complainant - Respondent to the Magistrate, Matara. 20

2. The certificate reads as follows :-

Certificate under Section 4(1) of the Heavy Oil Motor Vehicles Taxation Ordinance (Chapter 249)

I, Harris Roysten Amit, Government Agent of Matara Division do hereby certify in accordance with Section 4(1) of the Heavy Oil Motor Vehicles Taxation Ordinance (Chapter 249) as amended by the Heavy Oil Motor Vehicles Taxation (Amendment) Act No: 20 of 1961 30 that -

(a) the tax due under the Heavy Oil Motor Vehicles Taxation Ordinance (Chapter 249) as amended by the Heavy Oil Motor Vehicles Taxation (Amendment) Act No: 20 of 1961, on Motor Vehicle No: 22 Sri 854 is Rs.118/- per month.

(b) the owner of the said vehicle has made default in the payment of the tax amounting to Rs.472/- being the tax due under the said Ordinance for the months of 1959 September to December (four months) Rs.472/-.

Sgd/: H.R. Amit.

Government Agent, Matara District.

In the Supreme Court

No. 6

Petition of Appeal continued

14th November 1962

The Kachcheri,
Matara, 1.6.62.

3. Pursuant thereto, the defaulter-appellant who is the registered owner of the motor vehicle No:22 Sri 854 was summond to appear in Court.

4. Thereupon the defaulter-appellant showed cause against the recovery from him of the said sum of Rs.472/- but the learned Magistrate made order imposing on the defaulter-appellant a fine in the said sum of Rs.472/-.

5. Being aggrieved of the said order the defaulter-appellant appeals therefrom to Your Lordships' Court on the following among other grounds that may be urged by Counsel at the hearing of this appeal :-

That - (a) The said order is contrary to law.

(b) As the Heavy Oil Motor Vehicles Taxation Ordinance is "an ordinance to impose a tax on motor vehicles using uncustomed oil as fuel", no tax is payable in respect of the aforesaid vehicle, since it used diesel oil which ceased to be an uncustomed oil as after 13th July 1956.

(c) The said vehicle is one registered under the Motor Traffic Act, and the Heavy Oil Motor Vehicles Taxation Ordinance does not apply to vehicles registered under the said Act.

In the Supreme Court

No. 6

Petition of Appeal continued

14th November 1962

(d) The amount sought to be recovered by the complainant-respondent being of the nature of arrears of tax, he could not have issued a certificate under Section 4(1) of the said Ordinance, since a certificate thereunder can be issued only where default is made in the payment of the tax but not for the recovery of any arrears of tax.

(e) The defaulter-appellant has made no default within the meaning of Section 4 of the said Ordinance, since no tax fell due on him in September-December 1959 in the manner set out in section 2 thereof.

(f) The complainant-respondent could not in any event have proceeded to recover the said sum of money since there is no provision either in the principal enactment or in the amending Act of 1961 which requires the defaulter-appellant to pay any arrears of tax.

WHEREFORE the defaulter-appellant prays:-

(a) that Your Lordships' Court be pleased to set aside the order of the learned Magistrate

(b) for such other and further relief as to Your Lordships' Court shall seem meet.

Sgd/: J. Wijesuriya.

Defaulter - Appellant.

Drawn by

Sgd/: B. H. Danapala
Proctor for defaulter - appellant.

I certify that the matters of law raised in this petition are fit questions for adjudication by the Supreme Court.

Sgd/: B.H. Danapala.
Proctor, S.C.

No. 7

Judgment

In the Supreme Court

No. 7

Judgment

14th October 1963

S. C. Application No: 484/'62

Application for Revision in M.C.Puttalam Case No: 13711

Assenkudhoos Abdul Basir of Puttalam.

Petitioner

-Vs-

The Government Agent, Puttalam.

Respondent

Present: H.N.G.Fernando, J.

Counsel: H.W. Jayewardene, Q.C., with S.C. Crossette-Thambiah for the Petitioner.

H.L. de Silva, Crown Counsel for the Respondent.

Argued on: 13th May, 1963.

Decided on: 14th October, 1963.

H.N.G.FERNANDO, J.

The Heavy Oil Motor Vehicles, Taxation Ordinance (now Chapter 249) imposes on what are called "Heavy Oil Motor Vehicles" a tax determined in a prescribed manner. The vehicles to which the tax applies are those which use heavy oil as fuel, and the term "heavy oil" was originally defined in Section 6 of the Ordinance to mean any oil not subject to import duty under the Customs Ordinance. It is apparent therefore that originally the object of the Ordinance was to impose a tax on certain types of fuel as an alternative to the levy of import duty on those types.

In 1956, by Gazette Notification of 12th July of that year, diesel oil became subject to an import duty leviable under the Customs Ordinance and in

In the Supreme Court

No. 7

Judgment continued

14th October 1963

consequence diesel oil ceased to be within the scope of the definition of "heavy oil" within the meaning of Chapter 249. Hence the petitioner in the present case who was the owner of a motor vehicle using diesel oil ceased from July 1956 to be liable to pay the tax imposed by that Chapter.

By an Amending Act No: 20 of 1961, Parliament amended the definition of "heavy oil" in order to bring diesel oil again within the scope of the definition, and this amendment was given retrospective effect as from 13th July, 1956. The present Appellant who apparently had not paid the tax under Chapter 249 at least for the period December 1959 to August 1961, was in September 1961 called upon in the prescribed manner to pay the tax for that period. There is no doubt that he is liable in respect of the period April 25th, 1961 to August 1961 to make the payment, for the Amending Act came into operation on April 25th, 1961. But there remains the question whether he is liable to make the payment for any period prior to April 25th,1961.

The effect of the retrospective provision in Section 2(2) of the Act No: 20 of 1961, is that, as from the 13th July, 1956, the definition of the term "heavy oil" must be held to have included diesel oil within its scope. This Court has recently had occasion in a very important context (R. Vs Liyanage et al 65 N.L.R. 75 at page 84) to consider the sufficiency of language similar to that which occurs in Act No: 20 of 1961, and held that the language sufficed to create a penal offence retrospectively. A taxing statute does not require to be construed more strictly than a penal statute. I am compelled to hold therefore that the effect of the amending legislation was to render diesel oil motor vehicles subject to the special tax for periods prior to the date of enactment of the amending Act.

In the Magistrate's Court, Counsel read a statement made in the House of Representatives on the 4th of April 1961 by the Leader of the House, in which it was stated that the purpose of the amending Bill was only to legalise past recoveries of the tax on diesel oil, and that there was no question of collecting the tax retrospectively. Unfortunately this statement cannot influence our construction of the meaning of the amending legislation because on the face of the Act there is no room for doubt as to the meaning.

But if in fact the Act has gone further in its effect than the Minister intended, perhaps this would be a case for ex gratia relief.

I would dismiss the application but without costs.

Sgd: H.N.G.Fernando.

Puisne Justice

S.C. Application No: 99/'63

Application for Revision in M.C. Matara Case No:28

Janis Wijesuriya of
Kotuwegoda, Matara.
Petitioner.

-Vs-

H.R. Amit,
Government Agent, Matara.
Respondent.

Present: H.N.G. Fernando, J.

Counsel: H.W. Jayewardene, Q.C., with N.R.M. Daluwatte for the Petitioner.

H.L. de Silva, Crown Counsel for the Respondent.

Argued on: 13th May, 1963.

Decided on: 14th October, 1963.

H.N.G.FERNANDO, J.

For the reasons stated in my order in S.C. Application No: 484/'62, the application is dismissed but without costs.

Sgd/: H.N.G. Fernando.

Puisne Justice

In the Supreme Court

No. 7

Judgment continued

14th October 1963

S.C. No: 934/1962 M.C. Matara Case No: 28

Janis Wijesuriya of Kotuwegoda, Matara.

Appellant.

-Vs-

H.R.Amit, Government Agent, Matara.

Respondent.

Present: H.N.G.Fernando, J.

Counsel: H.W. Jayewardene, Q.C., with N.R.M. Daluwatta for the Appellant.

H.L. de Silva, Crown Counsel for the Respondent.

Argued on: 13th May, 1963.

Decided on: 14th October, 1963.

H.N.G. FERNANDO, J :

In view of my order in S.C.Application No: 99/'63, this appeal is dismissed.

Sgd/: H.N.G.Fernando.

Puisne Justice.

In the Privy Council

No. 8

Petition for Special Leave to Appeal

24th February 1964

No. 8

Petition for Special Leave to Appeal

IN THE PRIVY COUNCIL

ON APPEAL

FROM THE SUPREME COURT OF THE ISLAND OF CEYLON

B E T W E E N :- JANIS WIJESURIYA Petitioner

- and -

H.R. AMIT, GOVERNMENT AGENT Respondent

TO THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL

THE HUMBLE PETITION of THE ABOVE-NAMED PETITIONER

In the Privy Council

No. 8

Petition for Special Leave to Appeal continued

24th February 1964

S H E W E T H :-

1. That Your Petitioner prays for special leave to appeal to Her Majesty in Council against the Judgment and Order of the Supreme Court of Ceylon (H.N.G. Fernando J.) dated the 14th day of October, 1963, whereby the said Court dismissed the appeal by Your Petitioner against a fine of Rs.472 imposed by the learned Magistrate sitting at Matara upon the 8th day of November, 1962, and purporting to act in accordance with the provisions of the Heavy Oil Motor Vehicles Taxation Ordinance (Cap.249 of the Legislative Enactments of Ceylon 1956 Revision) as amended on the 25th April, 1961 by the Heavy Oil Motor Vehicles Taxation (Amendment) Act, No.20 of 1961.

2. That the Petitioner was at all material times the owner of a motor vehicle equipped with an engine which used diesel oil. The principal question for decision in the proceedings in the Courts below was whether the user of a Motor Vehicle which was lawful and exempted from liability under the Ordinance at the time when it was in fact used has been made punishable and liable to certain penalties by subsequent legislation. This question affects the rights and liabilities of a number of owners of motor vehicles in Ceylon besides Your Petitioner and is, in his respectful submission, a question of considerable importance which is eminently suitable for an authoritative decision of the Judicial Committee of the Privy Council.

3. That the proceedings against Your Petitioner were commenced by the Respondent sending a letter dated the 1st June, 1962, to the learned Magistrate at Matara alleging that Your Petitioner, as registered owner of a Heavy Oil Motor Vehicle, had made default in payment of tax stated to be due under the Ordinance and Act referred to above for the months of September, 1959 to December 1959 inclusive. Pursuant to Section 4(1) of the said Ordinance a certificate accompanied the said letter specifying the amount alleged to be due from Your Petitioner. Summons was accordingly served on Your Petitioner to show cause why action should not be taken against him under the Ordinance, and on the 6th September, 1962 he was charged as follows before the learned Magistrate :-

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"You are hereby charged that you did within the jurisdiction of this Court at Kotuwegoda, Matara on 8.9.1959 possess a heavy oil Motor Vehicle bearing registered number 22 Sri 854 in respect of which Heavy Oil Tax was not paid on the said date in contravention of Section 5(1) of the Heavy Oil Motor Vehicles Taxation Ordinance (Chapter 249) as amended by the Heavy Oil Motor Vehicles Taxation (amendment) Act No.20 of 1961 and thereby committed an offence punishable under Section 5(2) of the said Ordinance read with Section 4(1) thereof."

Your Petitioner pleaded "not guilty" and his trial took place on the 11th October, 1962.

4. That it appears from the record of the proceedings before the learned Magistrate that the Respondent to this Petition admitted that the vehicle concerned was registered after 1956 whilst Your Petition appears to have made the following admissions in the course of these proceedings :-

(1) That he was the registered owner of the vehicle from September to December, 1959.

(2) That the vehicle was a Heavy Oil Motor Vehicle within the meaning of Section 6(2)(c) of the Ordinance as amended by the Act.

(3) That notice of tax liability had been received and not complied with.

(4) That if tax was payable, the amount was as claimed.

5. That the following further facts are also not in dispute :-

The Heavy Oil Motor Vehicles Taxation Ordinance (hereinafter called "the original Ordinance") was enacted on 18th December, 1935 (1938 reprint Cap.190 and 1956 reprint Cap.249) to impose a tax on motor vehicles using uncustomed oil as fuel. In this Ordinance "heavy oil" was defined to include oils "not subject to import duty under the provisions of the Customs Ordinance". A "heavy oil motor vehicle" meant any motor car equipped (as Your Petitioner's vehicle was equipped) with an engine

which uses any "heavy oil". Until the 12th July, 1956 diesel oil was not subject to import duty under the Customs Ordinance, and motor vehicles of the kind owned by Your Petitioner were therefore liable to duty under the original Ordinance. On the 12th July, 1956, however, diesel oil became for the first time since the 18th December 1935 subject to an import duty leviable under the Customs Ordinance and Your Petitioner thereupon acquired a right to use his vehicle without being liable to pay any tax in respect thereof under the original Ordinance. Your Petitioner continued to enjoy and did in fact exercise this right until the Heavy Oil Motor Vehicles Taxation (Amendment) Act, No.20 of 1961 was enacted. This Act (hereinafter called the "amending Act") purported, inter alia, to include diesel oil within the definition of "heavy oil" and thereby reintroduced a tax on motor vehicles of the kind used by Your Petitioner. The amending Act also purported to bring this definition of "heavy oil" into effect retrospectively from the 13th July, 1956 (i.e. the date following the date on which diesel oil has become subject to import duty under the Customs Ordinance). In introducing the Bill in Parliament, the Leader of the House of Representatives explained the circumstances of the proposed new legislation. He stated that the intention was only to legalise past recoveries of the tax on diesel oil and that there was no question of collecting the tax retrospectively.

6. That the submissions made on behalf of Your Petitioner was summaries by the Learned Magistrate as follows:-

"1. That the preamble to the Ordinance is that it is one to impose a tax on Motor Vehicles using uncustomed oil as fuel and as diesel oil is now customed oil a tax cannot be levied.

2. That the Ordinance applies only to vehicles registered under the Motor Car Ordinance.

3. That the amending Act No. 20 of 1961 has no retrospective effect as far as Section 4 is concerned."

7. That the learned Magistrate by his Judgment

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dated the 8th November, 1962 rejected the submissions made on behalf of Your Petitioner and held that the Respondent was entitled to have the amount claimed levied as a fine. He accordingly made an order fining Your Petitioner Rs.472. Thereupon Your Petitioner presented a Petition of appeal to the Supreme Court in which the grounds of appeal were set out in the following terms.

That - (a) The said order is contrary to law.

(b) As the Heavy Oil Motor Vehicles Taxation Ordinance is "an ordinance to impose a tax on motor vehicles using uncustomed oil as fuel", no tax is payable in respect of the aforesaid vehicle, since it used diesel oil which ceased to be an uncustomed oil as after 13th July 1956.

(c) The said vehicle is one registered under the Motor Traffic Act, and the Heavy Oil Motor Vehicles Taxation Ordinance does not apply to vehicles registered under the said Act.

(d) The amount sought to be recovered by the complainant - respondent being of the nature of arrears of tax, he could not have issued a certificate under Section 4(1) of the said Ordinance, since a certificate thereunder can be issued only where default is made in the payment of the tax but not for the recovery of any arrears of tax.

(e) The defaulter - appellant has made no default within the meaning of Section 4 of the said Ordinance, since no tax fell due on him in September - December 1959 in the manner set out in section 2 thereof.

(f) The complainant-respondent could not in any event have proceeded to recover the said sum of money since there is no provision either in the principal enactment or in the amending

Act of 1961 which requires the defaulter - appellant to pay any arrears of tax.

8. That the said appeal was heard on the 13th day of May, 1963, together with one other which raised the same issues. Each of the said appeals was dismissed upon the 14th day of October, 1963. The reasons for the Judgment were contained in the case of Assenkudhoos Abdul Basir v. The Government Agent, Puttalam, and these reasons were incorporated into the instant proceedings by reference. The said Judgment appears only to deal with the question whether the amending Act operated retrospectively (which question was answered in the affirmative) and does not make reference to other matters set out in the grounds of appeal.

9. That Your Petitioner submits that both the learned Judge and the learned Magistrate fell into error in holding that the amending Act operated retrospectively. They failed inter alia to consider whether the said Act, being an Act purporting to impose a liability to taxation, was clear and precise in its terms. (The date of Assent of the amending Act was the 25th day of April, 1961). Section 2 of the amending Act is as follows :-

> 2. (1) Section 6 of the Heavy Oil Motor Vehicles Taxation Ordinance, hereinafter referred to as the "principal enactment," is hereby amended, in sub-section (2) of that section, as follows :-
>
> (a) by the substitution, in the definition of "heavy oil", for all the words from "or any other oil" to the end of that definition, of the words "or Diesel oil;";
>
> (b) by the substitution, in the definition of "heavy oil motor vehicle", for the words "motor car", of the words "motor vehicle"; and
>
> (c) by the substitution, in the definition of "registered owner", for the words "motor car", of the words "motor vehicle".
>
> (2) The amendment made in the principal enactment by paragraph (a) of sub-section (1) shall be deemed to have come into effect on the thirteenth day of July, 1956.

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(3) The amendment made in the principal enactment by paragraphs (b) and (c) of sub-section (1) shall be deemed to have come into effect on the first day of September, 1951.

10. That Your Petitioner respectfully submits that the said Section 2 is unclear and imprecise, in particular, in that in Section 2(1)(a) there is doubt whether the words "or any other oil" are to be included or excluded in the amending definition. Further, that the amending Act purports to amend Section 6 of Cap.190 of the Legislative Enactments of Ceylon, 1938, Revision, but this Act had already been replaced, as amended, by Cap.249 of the Legislative Enactments of Ceylon, 1956 Revision. Both the learned Magistrate and the learned Judge construed the reference in the amending Act to the "Principal Enactment" as being a reference to the said Cap.249. Your Petitioner respectfully submits that they erred in so doing because (inter alia) this would render Sections 2(1)(b) and 2(1)(c) otoise and redundant because the definition of "Heavy Oil Motor Vehicle" in the said Cap.249 already contains the words "Motor Vehicle" which are the words sought to replace other words. The word "vehicle" in this context is not contained in the said Cap.190 but the word "car" is used.

11. That Your Petitioner further submits that in view of the matters set out in the preceding paragraph recourse should have been had for the purposes of interpretation to the preambles of both Cap.190 and Cap.249 which are in identical terms as follows:

> "An Ordinance to impose a tax on motor Vehicles using uncustomed oil as fuel."

and that the amending Act ought not in these circumstances to be held to operate in a manner that is repugnant to the said preambles. Also that if the amending Act was operating as claimed by the Respondent, liability would be incurred by vehicle owners retrospectively in a manner which could not be fully or accurately ascertained, in particular, in that such owners would, or might, not be fully aware of whether they had used or caused to be used any oil and vehicle between the 13th day of July, 1956, and the 25th day of April, 1961, such as would create a liability to tax in accordance with the provisions of the amending Act.

Additional difficulties are caused in this and other respects in that the definition of "Registered Owner" in Cap.190 is as follows :-

> "(f) 'Registered owner' means the person registered as the owner of a Motor car under the provisions of the Motor Car Ordinance."

whilst in Cap.249 the following definition appears :-

> "(f) 'Registered owner' means the person registered as the owner of a Motor Vehicle under the provisions of the Motor Traffic Act."

(Note:The Motor Car Ordinance was repealed by the Motor Traffic Act on the 1st September, 1951)

12. That the provisions of Section 6(3)(a) and (b) of the Interpretation Ordinance (1956 reprint Cap.2.) are to the following effect :-

> "6. (3) Whenever any written law repeals either in whole or part a former written law, such repeal shall not, in the absence of any express provision to that effect, affect or be deemed to have affected -
>
> (a) the past operation of or anything duly done or suffered under the repealed written law;
>
> (b) any offence committed, any right, liberty, or penalty acquired or incurred under the repealed written law."
>
> (c) .....

Your Petitioner submits that the language of the amending Act does not make or purport to make any "express provision" retrospectively amending any part of Section 2(2), 3, 4 or 5 of the original Ordinance. Accordingly the amending Act does not affect Your Petitioner's lawful possession or use of the vehicle during the period September, 1959 to December, 1959 inclusive or the right acquired and enjoyed by him under the Original Ordinance to use his vehicle during that period without incurring liability to pay tax or to be punished

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or penalised thereunder. Section 2(2) of the original Ordinance imposes on the owner a liability to pay the tax "in advance" for each month for which such tax was "due". The amending Act does not expressly or even by necessary implication amend the lenguage of Section 2(2) and cannot, therefore, fairly be construed so as to make an owner liable after the 25th April, 1961, to be penalised for a period of use in respect of which at the time of such user no offence (punishable under Section 5) was committed because no tax was in fact due or payable at the relevant time.

13. That Your Petitioner therefore humbly submits that for the reasons aforesaid that the Judgments of the Supreme Court of Ceylon and of the learned Magistrate at Matara were erroneous and by reason thereof he has suffered grave and substantial injury.

WHEREFORE YOUR PETITIONER HUMBLY PRAYS that Your Majesty in Council may be graciously pleased to grant him Special Leave to appeal against the aforesaid Judgment of the Supreme Court of the Island of Ceylon dated the 14th day of October, 1963, and of the Magistrate sitting at Matara dated the 8th day of November, 1962, or for such further or other relief as to Your Majesty in Council may seem fit.

AND YOUR PETITIONER WILL EVER PRAY ETC.

JOHN A. BAKER

No. 9

In the Privy Council

No. 9

Order in Council granting Special Leave to Appeal to Her Majesty in Council

Order in Council granting Special Leave to Appeal to Her Majesty in Council

26th March 1964

AT THE COURT AT BUCKINGHAM PALACE

The 26th day of March, 1964

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

LORD PRESIDENT
EARL MOUNTBATTEN OF BURMA
VISCOUNT BLAKENHAM
MR. SECRETARY THORNEYCROFT
MR. AMERY
SIR JOHN HOBSON

W H E R E A S there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 9th day of March 1964 in the words following viz.:-

"WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Janis Wijesuriya in the matter of an Appeal from the Supreme Court of Ceylon between the Petitioner and H. R. Amit Government Agent Respondent setting forth that the Petitioner desires to obtain special leave to appeal to Your Majesty in Council against the Judgment and Order of the Supreme Court of Ceylon dated the 14th October 1963 whereby the said Court dismissed the Appeal by the Petitioner against a fine of Rs.472 imposed by the Magistrate at Matara on the 8th November 1962 purporting to act in accordance with the provisions of the Heavy Oil Motor Vehicles Taxation Ordinance (Cap. 249 of the Legislative Enactments of Ceylon 1956 Revision) as amended by the Heavy Oil Motor Vehicles Taxation (Amendment) Act, No. 20 of 1961: And humbly praying Your Majesty in Council to grant him special leave to appeal against the Judgment of the Supreme Court of Ceylon dated the 14th October 1963 or for further or other relief:

In the Privy Council

No. 9

Order in Council granting Special Leave to Appeal to Her Majesty in Council

26th March 1964 continued

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Judgment and Order of the Supreme Court of Ceylon dated the 14th day of October 1963:

"And Their Lordships do further report to Your Majesty that the authenticated copy under seal of the Record produced by the Petitioner upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondent) as the Record proper to be laid before Your Majesty on the hearing of the Appeal."

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor-General or Officer administering the Government of Ceylon for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

W. G. AGNEW

IN THE PRIVY COUNCIL

No. 17 of 1964

ON APPEAL

FROM THE SUPREME COURT OF THE ISLAND OF CEYLON

B E T W E E N :-

JANIS WIJESURIYA — APPELLANT

- and -

H. R. AMIT, GOVERNMENT AGENT — RESPONDENT

RECORD OF PROCEEDINGS

LEMAN HARRISON & FLEGG,
44, Bloomsbury Square,
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Solicitors for the Appellant.

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Solicitors for the Respondent.