

PARLIAMENT OF THE DEMOCRATIC

SOCIALIST REPUBLIC OF

SRI LANKA

TAX APPEALS COMMISSION

(AMENDMENT) ACT, No. 20 OF 2013

[Certified on 24th April, 2013]

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Tax Appeals Commission (Amendment) 1

Act, No. 20 of 2013

[Certified on 24th April, 2013]

L.D.—O. (9/2013).

ANACT TO AMEND THE TAX APPLEALS COMMISSION

ACT, NO. 23 OF 2011

BE it enacted by the Parliament of the Democratic Socialist Short title.

Republic of Sri Lanka as follows:-

1. This Act may be cited as the Tax Appeals Commission Amendment of

(Amendment) Act, No. 20 of 2013. section 2 of the

Tax Appeals

Commission

2. Section 2 of the Tax Appeals Commission Act, Act, No.23 of

No. 23 of 2011 (hereinafter referred to as the “principal 2011.

enactment”) as last amended by the Tax Appeals Commission

(Amendment) Act, No.4 of 2012 is hereby further amended

as follows:-

(1) in subsection (2) thereof, by the substitution for the

words “not more than three members one of whom

shall be” and the words “two other members” of the

words “not more than nine members three of whom

shall be” and “six other members” respectively.

(2) by the addition, immediately after subsection (2)

thereof of the following new subsection:-

“(2A) The Chairman of the Commission shall

constitute three panels comprising three members

each, from among the members appointed under

subsection (2) one of whom shall be a Judge as

specified in subsection (2) to hear and determine

any matter before the Commission.”.

3. Section 5 of the principal enactment is hereby Amendment of

amended by the substitution for the words “shall be five section 5 of the

principal

members.” of the words “shall be seven members.”. enactment.

2—PL 007104—4090 (03/2013)

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Amendment of 4. Section 7 of the principal enactment as last amended

section 7 of the

by the Tax Appeals Commission (Amendment) Act, No.4 of

principal

enactment. 2012 is hereby further amended as follows:-

(1) by the repeal of subsection (1) thereof and the

substitution therefor of the following:-

“(1) A person who is aggrieved by the

determination –

(a) of the Commissioner-General of Inland

Revenue appointed in terms of the Inland

Revenue Act, (hereinafter referred to as the

“Commissioner-General”) given in

respect of any matter relating to imposition

of any tax, levy, charge, duty or penalty

under the provisions of any of the

enactments specified in Column I of

Schedule I, or Schedule II to this Act; or

(b) of the Director-General of Customs

(hereinafter referred to as the “Director-

General”) given in respect of any matter

specified in subsection (1A) of section 10

of the Customs Ordinance (Chapter 235),

may appeal to the Commission in accordance with

the provisions hereinafter set out:

Provided that, every person who wishes to

appeal to the Commission under paragraph (a)

shall, at the time of making of such appeal, be

required to pay into a special account which shall

be opened and operated by the Commission for

such purpose, an amount-

(a) as is equivalent to ten per centum which is

non-refundable; or

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(b) as is equivalent to twenty five per centum

which is refundable subject to subsection

(1A) of this section or a bank guarantee for

the equivalent amount which shall remain

valid until the appeal is determined by the

Commission,

of the sum as assessed by the Commissioner-General

as being payable by such person as tax, levy, charge,

duty or penalty under any of the said enactments

and which assessment is the subject of the appeal.”;

(2) by the insertion immediately after subsection (1)

thereof, of the following new subsection:-

“(1A) (a) The amount referred to in paragraph

(a) or (b) of the proviso to subsection (1), as the

case may be, shall be transferred to the

Commissioner-General upon the determination of

the respective appeal to which such amount is

applicable and which shall be set off against the

sum as assessed by the Commissioner-General as

being payable by such person as tax, levy, charge,

duty or penalty under any of the said enactments

and which assessment is the subject of the appeal.

(b)Any excess of the amount referred to in

paragraph (b) of the proviso to subsection (1), may

be set off against the taxes due and which are

administrated by the Commissioner-General.

Where any balance if any of such amount shall be

refunded to the appellant on request made in that

behalf in writing to the Commissioner-General.”;

(3) in subsection (2) of that section, by the substitution

for the words and figures “specified in Column I of

Schedule I and Schedule II to this Act” of the words

and figures “specified in paragraphs (a) and (b) of

subsection (1) of section 7 ”;

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(4) in subsection (3) of that section, by the substitution

for the words “notification to the Commissioner-

General” of the words “notification to the

Commissioner-General or the Director-General, as

the case may be.”.

Repeal and 5. Section 8 of the principal enactment as last amended

replacement of by the Tax Appeals Commission (Amendment) Act, No. 4 of

section 8 of the

2012 is hereby repealed and the following is substituted

principal

enactment. therefor :-

“Procedure 8. (1) Any person aggrieved by the

for determination of—

preferring an

appeal.

(a) the Commissioner-General, in

respect of any matter relating to the

imposition of any tax, levy, charge,

duty or penalty; or

(b) the Director-General under

subsection (1B) of section 10 of the

Customs Ordinance (Chapter 235),

may if he is dissatisfied with the reasons stated

by the Commissioner-General or the Director-

General, as the case may be, prefer the appeal

therefrom to the Commission within thirty days

from the date of receipt of such reasons; or

(2) Where the Director-General fails to give

such determination within the time period

specified in subsection (1B) of section 10 of

the said Ordinance, such person also may

appeal to the Commission at the expiration of

the time period specified in subsection (1B) of

section 10 of the said Ordinance.

(3) The manner and the form of submitting

such appeal, the procedure to be followed by

the Commission in the hearing and

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determining of such appeal and the fees if any

in respect thereof shall be determined by the

Commission by rules made, from time to time,

in that behalf.”.

6. Section 9 of the principal enactment as last amended Amendment of

section 9 of the

by the Tax Appeals Commission (Amendment) Act, No.4 of

principal

2012 is hereby further amended as follows:- enactment.

(1) in subsection (1) thereof, by the substitution for the

words “to the Commissioner-General.” of the words

“to the Commissioner-General or the Director-

General, as the case may be.”;

(2) in subsection (2) thereof, by the substitution for the

words “The Commissioner-General shall” and the

words and figures “specified in Column I of

Schedule I and Schedule II to this Act”, of the

words “The Commissioner-General or the Director-

General, as the case may be, shall” and the words

and figures “specified in Column I of Schedule I or

Schedule II to this Act or any applicable provisions

of the Customs Ordinance (Chapter 235), as the

case may be,”;

(3) by the repeal of subsection (4) thereof and the

substitution therefor of the following:—

“(4) (a) in respect of an appeal under paragraph

(a) of subsection (1) of section 7, the

Assessor who made the assessment

appealed aginst or a person authorized

by the Commissioner-General in that

behalf; or

(b) in respect of an appeal under paragraph

(b) of subsection (1) of section 7, any

officer authorized by the Director-

General in that behalf,

Shall attend the hearing of the Commission at which

such appeal is heard, in support of the determination

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of the Commissioner-General or the Director-

General, as the case may be.”.

(4) in subsection (5) thereof, by the substitution for the

words and figures “specified in Column I of

Schedule I and Schedule II to this Act,” of the words

“specified in Column I of Schedule I or Schedule II

to this Act,”;

(5) in subsection (8) thereof, by the substitution for the

words “Commissioner-General” wherever those

words appear of the words “Commissioner-General

or the Director-General, as the case may be,”

(6) in subsection (10) thereof, by the substitution for

the words “as stated in the decision of the

Commission. The decision of the Commission shall

be notified to the appellant and the Commissioner-

General in writing.” of the words “as stated in the

decision of the Commission.”

(7) by the addition immediately after subsection (10)

thereof the following:—

“(11) The decision of the Commission shall be

final and be notified to the appellant, and the

Commissioner-General or the Director-General as

the case may be.”.

Amendment of 7. Section 10 of the principal enactment as last amended

section 10 of the by the Tax Appeals Commission (Amendment) Act, No.4 of

principal

2012 is hereby amended by the substitution for all the words

enactment.

commencing from “two hundred and seventy days” to the

end of that section, of the following:-

“two hundred and seventy days from the date of the

commencement of its sittings for the hearing of each

such appeal:

Provided that, all appeals pending before the

respective Board or Boards of Review in terms of the

provisions of the respective enactments specified in

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Column I of Schedule I, or Schedule II to this Act,

notwithstanding the fact that such provisions are

applicable to different taxable periods as specified

therein shall with effect from the date of coming

into operation of the provision of this Act be deemed

to stand transferred to the Commission, and the

Commission shall notwithstanding anything

contained in any other written law make its

determination in respect thereof, within twenty four

months from the date on which the Commission shall

commence its sittings for the hearing of each such

appeal.”.

8. The following new section is hereby inserted Insertion of new

immediately after section 11 of the principal enactment and section 11A in

the principal

shall have effect as section 11A of that enactment:-

enactment.

“Appeals on 11A. (1) Either the person who preferred an

a question of appeal to the Commission under paragraph (a)

law to the

of subsection (1) of section 7 of this Act

Court of

Appeal. (hereinafter in this Act referred to as the

“appellant”) or the Commissioner-General may

make an application requiring the Commission

to state a case on a question of law for the

opinion of the Court of Appeal. Such

application shall not be entertained unless it is

made in writing and delivered to the secretary

to the Commission, together with a fee of one

thousand and five hundred rupees, within one

month from the date on which the decision of

the Commission was notified in writing to the

Commissioner-General or the appellant, as the

case may be.

(2) The case stated by the Commission shall

set out the facts, the decision of the Commission,

and the amount of the tax in dispute where such

amount exceeds five thousand rupees, and the

party requiring the Commission to state such

case shall transmit such case, when stated and

signed to the Court of Appeal, within fourteen

days after receiving the same.

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(3) For the purpose of the application of the

provisions of the Stamp Duty Act, No. 43 of

1982 –

(a) all proceedings before the Court of

Appeal on any case stated under this

section or incidental to the hearing,

determination or disposal of any

such case, shall be deemed to be civil

proceedings before the Court of

Appeal of the value of five thousand

rupees or of such greater amount as

is set out by the Commission in the

stated case as the amount of the tax

in dispute;

(b) every such case stated shall, together

with all books, documents and

papers annexed thereto by the

Commission, be deemed to be a

single exhibit in civil proceedings

before the Court of Appeal; and

(c) the Commissioner-General, if he is

the appellant, shall be deemed to be

a Government officer suing, or if he

is the respondent to the appeal, a

Government officer being sued, in a

suit virtue offcii.

(4) At or before the time when he transmits

the stated case to the Court of Appeal, the party

requiring it shall send to the other party, a

notice in writing informing him that a case has

been stated on his application and shall supply

him with a copy of the stated case.

(5) Any two or more Judges of the Court of

Appeal may cause a stated case to be sent back

to the Commission for amendment, and the

Commission shall amend the case accordingly.

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(6) Any two or more Judges of the Court of

Appeal may hear and determine any question

of law arising on the stated case and may in

accordance with the decision of Court upon

such question, confirm, reduce, increase or

annul the assessment determined by the

Commission, or may remit the case to the

Commission with the opinion of the Court,

thereon. Where a case is so remitted by the

Court, the Commission shall revise the

assessment in accordance with the opinion of

the Court.

(7) The Court of Appeal may, pending the

determination of the case stated to such Court,

make an interim determination as regards the

amount of tax recoverable by the

Commissioner-General in respect of the

amount of tax in dispute, on the basis of a report

furnished by the Commissioner-General.

(8) In any proceedings before the Court of

Appeal under this section, the Court may make

such order in regard to costs in the Court of

Appeal and in regard to the sum paid under

subsection (1), as the Court may deem fit.

(9) For the purposes of enabling the

Commissioner- General or any other party to

appeal to the Supreme Court against any order

of the Court of Appeal under subsection (6),

and for the purpose of the application of the

provisions of any written law relating to appeals

to the Supreme Court from the decisions of the

Court of Appeal –

(a) an order made by the Court of Appeal

under subsection (6) shall, together

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with any order of that Court under

subsection (8), be deemed to be a final

judgment of the Court of Appeal in a

civil action between the Commissioner-

General and such other party;

(b) the value of the matter in dispute in

such civil action shall be deemed to be

five thousand rupees:

Provided that, where the

Commission in the stated case, set

out an amount higher than five

thousand rupees as the amount of

the tax in dispute, the value of the

matter in dispute in such civil action

shall be deemed to be that higher

amount; and

(c) in respect of any such appeal, the

Commissioner-General shall not be

required to make any deposit or pay

any fee or furnish any security

prescribed by such written law.”.

Replacement of 9. Section 13 of the principal enactment is hereby

section 13 of the amended by the repeal of that section and the substitution

principal

therefor of the following:-

enactment.

“Repeals. 13. The provisions of the enactments

specified in Column I of Schedule I are hereby

amended or repealed in the sections or parts

thereof as are specified in Column II of that

Schedule to the extent and in the manner as

shall be specified therein.”.

Repeal of 10. Section 13A of the principal enactment is hereby

section 13A of repealed.

the principal

enactment.

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11. The following new section is hereby inserted Insertion of new

section 13A in

immediately after section 13 of the principal enactment and

the principal

shall have effect as section 13A of that enactment:— enactment.

“Interpretation. 13A. For the purposes of this Act, unless the

context otherwise requires—

“Assessor” shall have the same meaning as

assigned to it in the Inland Revenue

Act;

“Inland Revenue Act” means the Inland

Revenue Act, No. 10 of 2006 and

includes where necessary and

appropriate, the Inland Revenue Act,

No. 28 of 1979 and Inland Revenue

Act, No. 38 of 2000.”.

12. The Schedule I of the principal enactment is hereby Replacement of

Schedule 1 of

repealed and the following new Schedule is substituted

the principal

therefor:- enactment.

“Schedule I

Column I Column II

Names of Enactments Applicable Amendment

1.Inland Revenue Act, (a) by the repeal of sections 166, 167,

No. 10 of 2006 168, 169 and 170; and

(b) by the substitution in subsection

(2) and (3) of section 172 thereof

for the words “Board of Review”

of the words and figures “Tax

Appeal Commission established by

the Tax Appeals Commission Act,

No.23 of 2011”.

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Inland Revenue Act, (a) by the repeal of sections 137, 138,

No.38 of 2000 139, 140 and 141 ; and

(b) by the substitution in subsection

(2) and (3) of section 143 thereof

for the words “Board of Review”

of the words “Tax Appeals

Commission established by the Tax

Appeals Commission Act, No.23

of 2011”.

Inland Revenue Act, (a) by the repeal of sections 118, 119,

No.28 of 1979 120, 121 and 122; and

(b) by the substitution in subsection

(2) and (3) of section 124 thereof

for the words “Board of Review”

of the words “Tax Appeal

Commission established by the Tax

Appeals Commission Act, No.23

of 2011”.

2.Value Added Tax by the repeal of sections 35 and 36

Act, No.14 of 2002

3.Nation Building Tax Section 8 is hereby amended by

Act, No.9 of 2009 the substitution for the words and

figures “Chapter XXII relating to

appeals other than sections 166,

167, 168 and 169 of the words and

figures “Chapter XXIII relating to

appeals other than sections 166,

167, 168, 169 and 170.”

4.Economic Service Section 11 is hereby amended by

Charge Act, No.13 the substitution for the words

of 2006 “relating respectively to appeals”

of the words and figures “relating

respectively to appeals other than

the provisions in sections 166, 167,

168, 169 and 170”

5. Stamp Duty (Special Section 11 of the Stamp Duty

Provisions) Act, No. (Special Provisions) Act is hereby

12 of 2006. amended by the substitution for the

words “Chapters XVIII to XXIV

of the Inland Revenue Act relating

to Assessment, Appeals,

Determination of Appeals” of the

words “Chapters XVIII to XXIV

of the Inland Revenue Act relating

to Assessments, Appeals,

Determination of Appeals, other

than sections 166, 167, 168, 169

and 170 relating to appeals to

Board of Review”

Tax Appeals Commission (Amendment) 13

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13. Schedule II of the principal enactment is hereby Amendment of

amended by the insertion immediately after item 2, of the Shedule II of the

principal

following:-

enactment.

“3. Finance Act, No.11 of 2004.

4. Debits Tax Act, No.16 of 2002.”.

14. (1) The amendments made to the principal enactment Retrospective

[other than the amendments made to section 2, the proviso effect.

to subsection (1) of section 7 and the amendments made in

relation to the appeals under the Customs Ordinance

(Chapter 235)] by the provisions of this Act shall be deemed

for all purposes to have come into force on April 1, 2011.

(2) The amendment made to section 2 of the principal

enactment by the Tax Appeals Commission Act, No.4 of

2012 shall be deemed for all purposes to have come into

force on March 31, 2011 and any act or decision made by

the Commission during the period commencing on March

31, 2011 up to the date of coming into operation of this Act

shall be deemed to have for all purposes to have been validly

made.

15. For the avoidance of doubts, it is hereby declared, Avoidance of

that the Commission shall have the power in accordance doubts.

with the provisions of the principal enactment as amended

by this Act, to hear and determine any appeal that was deemed

transferred to the Commission under section 10 of the

principal enactment, notwithstanding the expiry of the

twelve months granted for its determination by that sectoin,

prior to its amindment by this Act.

16. In the event of any inconsistency between the Sinhala text to

prevail in case

Sinhala and Tamil texts of this Act, the Sinhala text shall

of inconsistency.

prevail.

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