

IN THE SUPREME COURT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA

Unilever Sri Lanka Limited,
258, M. Vincent Perera Mawatha,
Colombo 14.
Appellant-Appellant

SC/APPEAL/65/2023

CA/TAX/4/2013

Vs.

Commissioner General of Inland
Revenue,
Department of Inland Revenue,
Sir Chittampalam A. Gardiner
Mawatha, Colombo 2.
Respondent-Respondent

Before: Hon. Justice Mahinda Samayawardhena
Hon. Justice Menaka Wijesundera
Hon. Justice Sampath Abayakoon

Counsel: Dr. K. Kanag-Isvaran, P.C., with Dr. Shivaji Felix, P.C., and
Shivaan Kanag-Isvaran for the Appellant-Appellant.

Nirmalan Wigneshwaran, D.S.G., with Chaya Sri Nammuni,
D.S.G., and Hashini Opatha, S.S.C., for the Respondent-
Respondent.

Argued on: 29.04.2026

Written submissions:

by the Appellant on 24.07.2023 and 02.07.2026

by the Respondent 19.05.2026

Decided on: 14.09.2026

Samayawardhena, J.**Background**

This appeal concerns the liability of the Appellant, Unilever Sri Lanka Limited, to Value Added Tax (VAT) in respect of the supply of certain products which were physically manufactured by other companies under contractual arrangements entered into with the Appellant. The central question is whether, notwithstanding that the physical processes of manufacture were carried out by those companies, the Appellant can nevertheless be regarded as the “manufacturer” for the purposes of the Value Added Tax Act, No. 14 of 2002, as amended.

During the relevant taxable periods, Signal toothbrushes were manufactured by Polypak Secco Limited (PSL), while Vim scourer bars were manufactured by R.M. Chemicals Ceylon (Private) Limited (RMCC). The products were manufactured pursuant to agreements entered into with the Appellant and were thereafter supplied to the Appellant, which marketed and sold them in the course of its business.

The dispute arose from assessments made by the Inland Revenue Department on the footing that the Appellant was the manufacturer of the products and that the supplies made by it were liable to VAT. The Appellant challenged the assessments through the statutory appeal process. The matter ultimately came before the Tax Appeals Commission, which upheld the position taken by the Respondent.

Being dissatisfied with the determination of the Tax Appeals Commission, the Appellant appealed to the Court of Appeal by way of a case stated. The Court of Appeal dismissed the appeal and affirmed the determination of the Tax Appeals Commission, holding, in substance, that the Appellant is the manufacturer of the products within the meaning of the VAT Act.

The Appellant thereafter preferred the present appeal to this Court and sought, in the prayer to the petition of appeal, leave to appeal from the judgment of the Court of Appeal. Leave to appeal was granted on two questions of law. The first question, suggested by the Appellant, was whether the Court of Appeal misdirected itself in construing the meaning of the word “manufacture” as defined in section 83 of the VAT Act. In my view, that question is not material to the determination of this appeal. The question that falls for determination is whether the Appellant is a “manufacturer” in terms of section 3(1)(a) of the VAT Act. This was the second question of law, suggested by the Respondent.

Four other appeals between the same parties, namely SC/APPEAL/66/2023, SC/APPEAL/67/2023, SC/APPEAL/68/2023 and SC/APPEAL/69/2023, raise the same issue in respect of different taxable periods. When the five appeals were taken up before this Court, learned counsel for the parties agreed that those four appeals would abide by the judgment in the present appeal.

I shall therefore consider whether, upon a proper interpretation of the relevant provisions of the VAT Act and having regard to the contractual arrangements under which the products were manufactured, the Appellant was the manufacturer for the purposes of the Act.

Whether the Appellant was a manufacturer for the purposes of the VAT Act

The question that falls for determination is whether the Appellant was “a manufacturer” of the Signal toothbrushes and Vim scourer bars within the meaning of section 3(1)(a) of the Value Added Tax Act.

The Appellant does not physically manufacture those products at its own manufacturing facilities. Signal toothbrushes are manufactured by PSL and Vim scourer bars by RMCC. The Appellant contends that those companies are the manufacturers and that it merely purchases the finished products from them and thereafter sells them in the course of

its wholesale or retail business. The Respondent contends that, notwithstanding that the physical processes of production are undertaken by PSL and RMCC, the goods are manufactured under contractual arrangements with the Appellant which, considered in their entirety, establish that the Appellant is itself a manufacturer for the purposes of section 3(1)(a).

The starting point must be the statutory scheme.

Section 2(1) of the VAT Act imposes VAT on every taxable supply of goods or services made in a taxable period by a registered person in the course of carrying on, or carrying out, a taxable activity in Sri Lanka.

Section 3(1)(a), however, excludes certain wholesale or retail supplies from the charge to VAT. It provides:

Notwithstanding the provisions of section 2, tax shall not be charged on the wholesale or retail supply of goods, other than on the wholesale or retail supply of goods made by—

(a) a manufacturer of such goods...

The exemption available to a wholesale or retail supplier is therefore expressly unavailable where the supplier is a manufacturer of the goods in question. Accordingly, the Appellant can claim the exemption only if it is not a manufacturer of the Signal toothbrushes and Vim scourer bars supplied by it.

The word “manufacturer” is not defined in the VAT Act, but the word “manufacture” is. Section 83 defines “manufacture” as follows:

‘manufacture’ means the making of an article, the assembling or joining of an article by whatever process, adapting for sale any article, packaging, bottling, putting into boxes, cutting, cleaning, polishing, wrapping, labelling or in any other way preparing an article for sale other than in a wholesale or retail activity.

It is significant that Parliament has used the word “means”, rather than “includes”, in defining “manufacture”. Ordinarily, a definition employing the word “means” is exhaustive. What constitutes manufacture for the purposes of the Act shall therefore be ascertained from the definition itself.

The concluding words of the definition, “or in any other way preparing an article for sale”, shall be read in the context of the words which precede them. Those words encompass a wide range of activities, commencing with “the making of an article” and extending to assembling or joining an article “by whatever process”, adapting an article for sale, packaging, bottling, putting into boxes, cutting, cleaning, polishing, wrapping and labelling. The concluding expression serves to embrace other forms of preparing an article for sale falling within the scope of the definition.

The final words, “other than in a wholesale or retail activity”, are also significant. Some of the activities enumerated in the definition, such as packaging, bottling, cutting, wrapping and labelling, may also be undertaken in the ordinary course of wholesale or retail trade. By the concluding exclusion, Parliament has made it clear that the performance of such activities merely as part of a wholesale or retail activity does not, without more, constitute manufacture. The definition thus recognises a distinction between activities forming part of the manufacture or preparation of an article for sale and similar activities undertaken merely as incidents of wholesale or retail trade.

The Appellant places considerable emphasis on the fact that the activities enumerated in section 83 are physical or operational in character. It submits that those activities were performed by PSL and RMCC at their respective factories, using their plant, machinery and labour, and that the Appellant therefore cannot be regarded as the manufacturer. The Appellant further submits that matters such as ownership of trademarks, prescription of specifications, quality control, supervision of

production and assumption of commercial risk do not appear in the statutory definition and cannot be introduced by judicial interpretation.

I accept the premise that liability to tax must be determined by the language Parliament has enacted. Neither considerations of commercial convenience nor a judicial perception of what the VAT scheme ought to achieve can enlarge the statutory provision. I also accept the Appellant's submission to the extent that "manufacturer", although not separately defined, must be understood consistently with the statutory definition of "manufacture". A person cannot be regarded as a manufacturer unless the activity in question falls within section 83.

That, however, does not resolve the present appeal. While section 83 defines what constitutes "manufacture", the Act does not separately define who is to be regarded as "a manufacturer" for the purposes of section 3(1)(a). That question must therefore be determined by applying section 3(1)(a) to the particular circumstances of the case.

The distinction assumes particular importance where the physical acts constituting manufacture are performed pursuant to contractual arrangements involving more than one entity. Nothing in section 83 states that the manufacturer must own the factory, employ the workforce or personally perform, through its own employees and machinery, the physical operations enumerated in the definition. To confine "manufacturer" invariably to the person who physically performs those operations would therefore add a requirement which Parliament has not expressed.

At the same time, the fact that a person arranges for another to manufacture goods does not, by itself, make the former a manufacturer. An ordinary purchaser does not become a manufacturer merely because it orders goods according to specifications, prescribes standards of quality, inspects the finished product or requires the goods to bear its trademark. The statutory inquiry cannot therefore be resolved at either

extreme. Physical production is not invariably decisive, but neither is commercial control.

Where the physical acts constituting manufacture are performed pursuant to a contractual manufacturing arrangement, the contractual features of that arrangement are relevant in determining the capacity in which those acts were undertaken and to whom the manufacturing activity is properly attributable for the purposes of section 3(1)(a). They do not constitute an alternative definition of “manufacture” or displace the definition enacted by Parliament.

This does not introduce a separate or self-contained “control test”. Matters such as exclusivity, specifications, quality control, supervision, intellectual property rights, ownership of specialised tools, financial arrangements and restrictions upon dealing with the finished goods do not themselves constitute “manufacture”. Their relevance is evidential. No single consideration can be regarded as decisive in every case. The contractual arrangement must ultimately be considered as a whole.

This approach also accords with the manner in which modern manufacturing may be organised. The various activities included within the definition in section 83 need not, as a matter of commercial reality, always be performed by a single legal entity. Different stages of making, assembling, adapting, packaging, bottling, wrapping or labelling may be undertaken by different persons. The statutory characterisation cannot therefore depend mechanically upon identifying the person whose employees operated a particular machine or the premises at which a particular stage of production occurred.

The principles applicable to the construction of the exemption shall also be borne in mind. In the oft-cited case of *Cape Brandy Syndicate v. Inland Revenue Commissioners* [1921] 1 KB 64 at 71, Rowlatt J stated that “in a taxing Act one has to look merely at what is clearly said” and that “nothing is to be read in, nothing is to be implied”. That remains an important starting point in the interpretation of taxing statutes. The

present case, however, concerns the Appellant's claim to the benefit of a statutory exemption from tax.

The settled principle applicable to an exemption is that the person claiming its benefit shall bring himself within the terms of the provision granting it. The Revenue is not required to establish that the taxpayer falls outside the exemption. The exemption shall neither be enlarged by implication nor restricted by importing into it a requirement not found in the Act. It shall be applied according to the language Parliament has chosen, read in the context of the statutory scheme as a whole. Where there is ambiguity as to whether the taxpayer falls within the scope of the exemption, the ambiguity is resolved in favour of the Revenue rather than the taxpayer.

In *Bank of Commerce v. Tennessee and County of Shelby* (1896) 161 US 134 at 145–146, the Supreme Court of the United States, referring to a line of earlier authorities, stated:

These cases show the principle upon which is founded the rule that a claim for exemption from taxation must be clearly made out. Taxes being the sole means by which sovereignties can maintain their existence, any claim on the part of any one to be exempt from the full payment of his share of taxes on any portion of his property must on that account be clearly defined and founded upon plain language. There must be no doubt or ambiguity in the language used upon which the claim to the exemption is founded. It has been said that a well founded doubt is fatal to the claim; no implication will be indulged in for the purpose of construing the language used as giving the claim for exemption, where such claim is not founded upon the plain and clearly expressed intention of the taxing power.

The same principle received detailed consideration by a five-Judge Constitution Bench of the Supreme Court of India in *Commissioner of Customs (Import), Mumbai v. Dilip Kumar and Company* (2018) 9 SCC 1. Overruling *Sun Export Corporation, Bombay v. Collector of Customs*,

Bombay (1997) 6 SCC 564 and the decisions which had followed it, the Court unanimously held that the person claiming the benefit of a tax exemption must establish that his case falls within the exemption provision and that, where there is ambiguity as to whether the exemption applies, the benefit of that ambiguity goes to the Revenue and not to the taxpayer.

Applying those principles to section 3(1)(a), the expression “a manufacturer of such goods” shall be given its meaning in the context of the Act as a whole. Nothing in section 3(1)(a) or section 83 confines that expression to a person who personally performs the physical acts of manufacture through its own factory, employees and machinery. To impose such a limitation would be to introduce into the statutory scheme a requirement which Parliament has not enacted.

There is no real controversy that the processes undertaken by PSL and RMCC fall within the definition of “manufacture” in section 83. The question is whether the physical performance of those processes by PSL and RMCC necessarily precludes the Appellant from being regarded as “a manufacturer of such goods” for the purposes of section 3(1)(a). In my view, it does not. It is unnecessary for the determination of this appeal to decide whether PSL and RMCC may themselves be regarded as manufacturers under the Act. The issue before the Court is whether, having regard to the true legal and commercial character of the contractual arrangements, the Appellant has established its entitlement to the exemption claimed.

I now turn to those arrangements.

The written agreement with PSL demonstrates that the relationship went considerably beyond the ordinary purchase of independently manufactured finished goods. Clause 1 required PSL to obtain the relevant inputs from standard suppliers recommended by the Appellant. Under clause 2.1, PSL was required to manufacture and pack the products in accordance with specifications and quality standards

prescribed by the Appellant and communicated in writing, together with such updates as might from time to time be required.

The arrangements concerning the means of production are also significant. Clause 2.7 provided that the cost of major repairs to moulds, where not included in the agreed cost model, would be borne by the Appellant, subject to prior approval. Clause 3.1 required the Appellant to provide written specifications, quality acceptance criteria and inspection methodology. Under clause 3.2, the Appellant was to provide the plastic moulding tools required for production at its own cost, those tools remaining the exclusive property of the Appellant. PSL was required, where necessary, to assist in sourcing such tools from sources preferred by the Appellant. The agreement also placed responsibility upon the Appellant in relation to the insurance of those moulding tools.

The Appellant's involvement continued throughout production. PSL was required to cooperate continuously with the Appellant in upgrading and improving quality-control procedures. Quality-control records had to be maintained and made readily accessible to the Appellant, which was also entitled to carry out quality audits at the manufacturing site. PSL was required to preserve and enhance the goodwill attaching to the products and trademarks and to pack the products in the form and manner approved by the Appellant for sale under the trademark or brand specified by it. The agreement further restricted PSL from independently manufacturing or supplying the products otherwise than in accordance with the contractual arrangement.

The written agreement with RMCC displays the same essential features. Clause 3.1 required RMCC to manufacture Vim scourer bars and the other agreed products at the specified premises solely for the Appellant and in accordance with specifications communicated by the Appellant. Clause 3.3 restricted RMCC from entering into arrangements with other parties for the supply of products manufactured from the relevant premises and plant without the Appellant's consent. Under clause 4.4,

the use of packaging materials, trademarks, wrappers, pouches, designs and other packaging components was subject to specifications and approval by the Appellant. RMCC was also required continuously to cooperate with the Appellant in upgrading and improving quality-control procedures, to maintain quality-control records readily accessible to the Appellant and to permit quality audits at the site.

The financial arrangements provide further insight into the commercial character of the relationship. The cost model forming part of the RMCC agreement was prepared on the basis of volume forecasts supplied by the Appellant and was designed to provide RMCC with an agreed return on its investment. Where sales fell below forecast volumes, the Appellant assumed obligations to make minimum payments towards fixed costs. The Appellant also assumed obligations in relation to the servicing of financing obtained for the manufacturing operation and, upon termination, in relation to specified fixed costs. These matters do not themselves constitute manufacture. They are relevant because they demonstrate the extent to which the manufacturing operation was commercially structured around the requirements and commitments of the Appellant.

The Trademark Licence Agreement entered into between Unilever PLC and the Appellant provides further context. The Appellant possessed the relevant rights to use the trademarks in Sri Lanka in connection with the manufacture, packaging, advertising and sale of the products. The products manufactured under the contractual arrangements were therefore intended to enter the Sri Lankan market under the commercial identity controlled by the Appellant rather than an independent commercial identity of PSL or RMCC.

None of these matters, considered separately, would necessarily establish that the Appellant was the manufacturer. Their significance lies in their cumulative effect. The agreements disclose not an ordinary transaction in which PSL and RMCC independently manufactured

products for the market and subsequently sold them to the Appellant, but arrangements specifically structured for the manufacture of the products for the Appellant. The goods were produced according to specifications and quality requirements prescribed by it, within arrangements under which it retained substantial rights concerning the means and standards of production, packaging and commercial identity, while the ability of the physical producers independently to manufacture or deal with the products was materially restricted.

The Appellant relies on the fact that PSL and RMCC are separate legal entities carrying on manufacturing businesses in their own right. They owned or operated the relevant factories, employed the labour and physically carried out the manufacturing processes. Those facts are not disputed. There is no basis, or necessity, to disregard their separate legal personality or to characterise the agreements as sham transactions, colourable devices or transactions lacking legal effect. The question is whether their physical performance of the manufacturing processes necessarily excludes the Appellant from being regarded as “a manufacturer of such goods” for the purposes of section 3(1)(a). For the reasons already given, it does not.

The Appellant also places considerable reliance upon the fact that PSL and RMCC issued VAT invoices when supplying the finished products to it and that VAT was charged upon those supplies. Those facts are likewise not disputed. Nor is it necessary to accept the Respondent’s post-argument contention that there was “no real supply” of goods by PSL and RMCC. The assessments and the proceedings before the taxing authorities proceeded upon the basis that PSL and RMCC physically manufactured the respective products and supplied them to the Appellant. This appeal can be determined on that factual foundation.

The fact that there was a taxable supply from PSL and RMCC to the Appellant does not, however, resolve the question arising under section 3(1)(a). VAT may operate upon successive supplies, and the tax treatment

of one supply does not necessarily determine the tax treatment of the next. The passing of title, the issuing of tax invoices and the charging of VAT upon the supplies to the Appellant are relevant circumstances, but are not determinative of whether the Appellant itself answers the description of “a manufacturer of such goods”. That question must be determined by applying section 3(1)(a) to the contractual manufacturing arrangements established by the evidence.

When those arrangements are considered in their entirety, I am unable to accept the Appellant’s characterisation of itself as merely a purchaser of finished goods engaged in wholesale or retail trade. Although PSL and RMCC physically carried out the manufacturing processes, the contractual arrangements disclose a relationship substantially different from that of an ordinary buyer purchasing finished goods from an independent manufacturer. In these circumstances, the fact that the Appellant did not own or operate the manufacturing facilities, employ the persons engaged in production or directly operate the machinery does not preclude it from being regarded as “a manufacturer of such goods” for the purposes of section 3(1)(a).

Conclusion

For the foregoing reasons, I hold that the Appellant was a “manufacturer” for the purposes of section 3(1)(a) read with section 83 of the Value Added Tax Act, No. 14 of 2002, as amended.

Accordingly, the judgment of the Court of Appeal dated 04.11.2022 is affirmed and the appeal is dismissed with costs.

As agreed, the parties in SC/APPEAL/66/2023, SC/APPEAL/67/2023, SC/APPEAL/68/2023 and SC/APPEAL/69/2023 shall abide by this judgment.

Judge of the Supreme Court

Menaka Wijesundera, J.

I agree.

Judge of the Supreme Court

Sampath Abayakoon, J.

I agree.

Judge of the Supreme Court