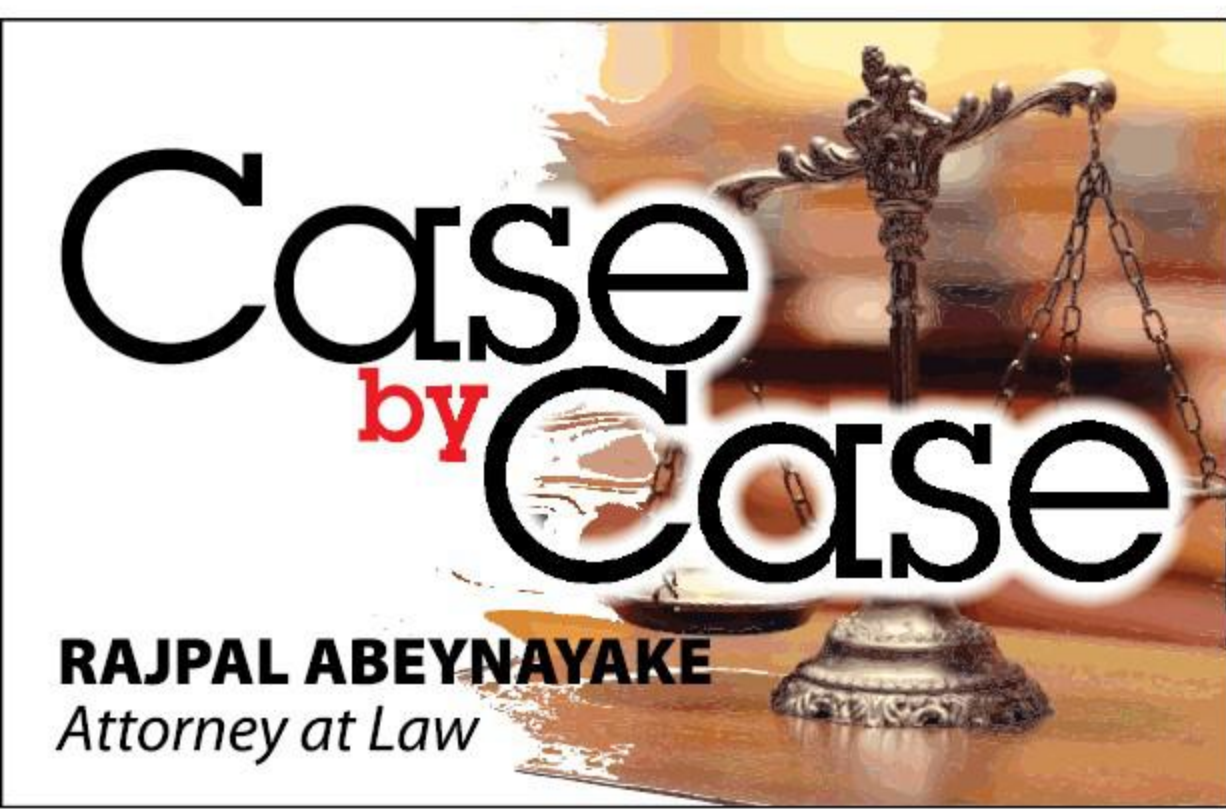


SAME COURT ISSUES JUDGEMENTS THAT ARE CHALK AND CHEESE

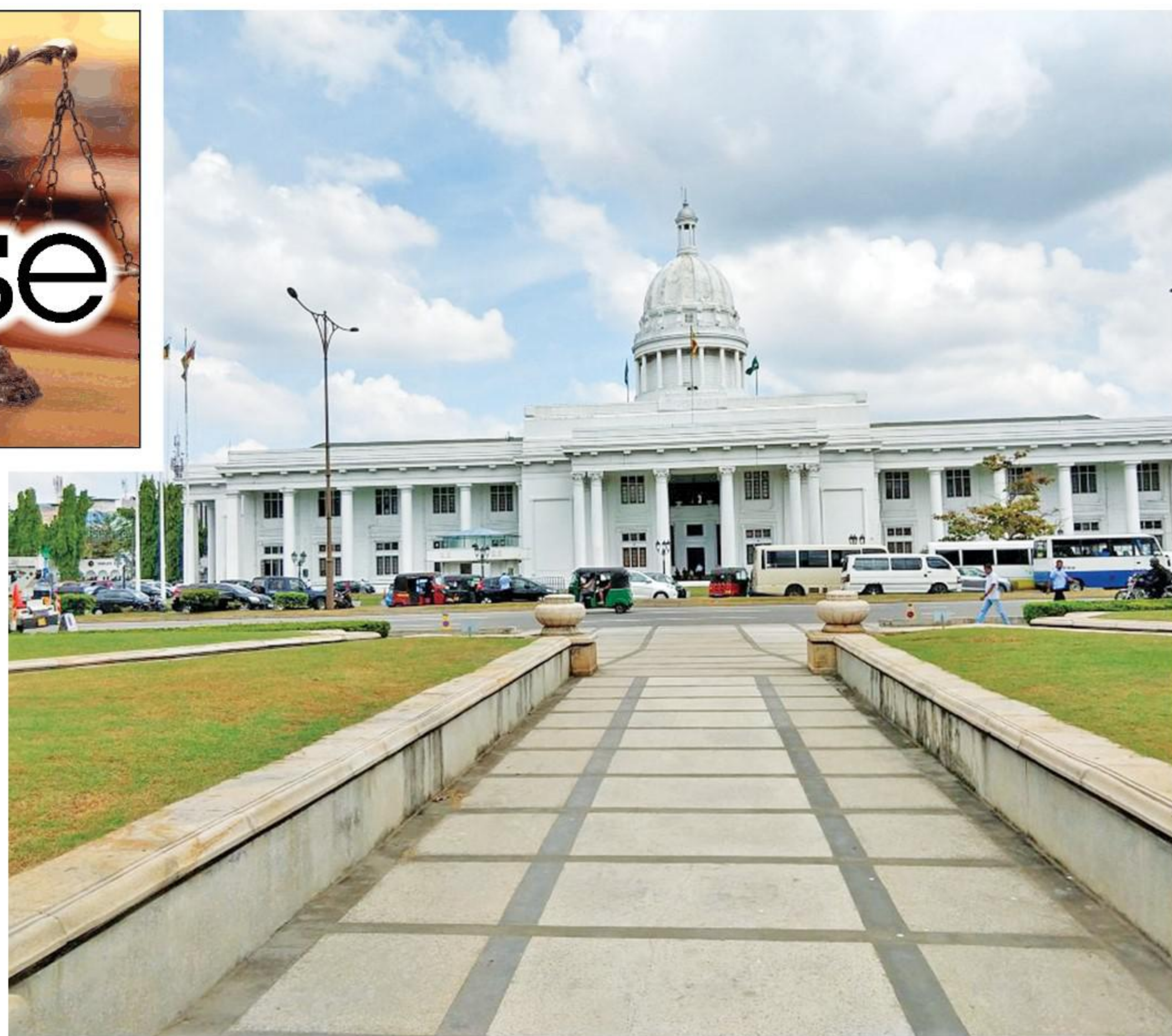


A petitioner selling jewellery, Crest Gems Ltd., refused to pay municipal tax contending that the relevant legislation, Section 247 of the Municipal Council Ordinance, in the Sinhala version of it states that a *karmanthaya* or industry has to pay tax, whereas they wereplying a trade and were therefore exempt. The petitioner made a writ application in the Court of Appeal and claimed categorically that they ran a business and not a *karmanthaya* or industry. (*Crest Gems Ltd. v. The Colombo Municipal Council* - SLR - 370, Vol 1 of 2003 [2003] LKCA 52; (2003) 1 Sri LR 370 (January 29, 2003)).

The judgement encapsulates the key issues in the case as follows: "The petitioner has preferred this application seeking a mandate in the nature of a *writ of mandamus* compelling the respondent to act in terms of the Municipal Council Ordinance when recovering taxes thereunder from the petitioner."

"The petitioner (Crest Gems Ltd) is a company for buying and exporting gems and other export related activities. The respondent, Municipal Council of Colombo, sent notices dated August 8, 2001, to the petitioner purporting to levy and impose tax for carrying on an office for trading activities and a place for the sale of gems and diamonds. The petitioner by letters dated August 15, 2001, refused to pay the purported tax on the ground that the Municipality had no jurisdiction to levy this tax in respect of maintaining an office for buying, selling and exporting gems and jewellery and engaging in other export related activity under Section 247B of the Municipal Councils Ordinance."

The Court of Appeal stuck to the principle that the words of the legislation have to



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in its literal meaning justify the levying of taxes and noted the following case law: "The cases of *Ramsay v CIF&V and Rawlings* have been cited by the author in page no. 1 of the said book (S. Balaratnam, '*Income tax, wealth tax and gift tax in Sri Lanka*' (Second edition)) wherein Lord Wilberforce reviewed the principles adopted by the Court in interpreting taxing statutes and identified four basic rules of construction in interpreting the taxing statutes. One such rule is as follows:

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

Court held that the words in the statute aren't clear and that moreover there was an inconsistency between the English and Sinhala versions of the Ordinance.

Therefore, the notice issued by the respondent to the petitioner purporting to

recover tax on trading activities is deemed as null and void, Court held, quashing such notice by granting a *writ of certiorari*.

However, curiously this same case came up as an appeal from the Provincial High Court before a different bench of Appeal Court judges in the year 2000 (*Crest Gems Ltd. vs. Colombo Municipal Council* CA (PHC) 16/2000) and this bench noted that the Provincial High Court judge had gone into the Articles of Association of the petitioner Company and determined that the petitioner indeed engages in an industry of *karmanthaya* of manufacturing articles of jewellery.

The judgement in this case notes: "The Learned High Court Judge in dealing with the pivotal issue has adverted to the Memorandum of Association of Crest Gems Ltd, (petitioner) and has held that the respondent-petitioner IS engaged in the business as



'Industry' has a wide ambit.



Jewellery making can be described as an industry.

manufacture and exporters of articles of jewellery. Manufacturing of articles of jewellery falls within the terms '*karmanthaya*'. In the above setting it was held that the manufacturing of articles of jewellery falls within the term of '*karmanthaya*'.

When the appeal came up the writ application cited above was also cited and the respondent picked holes in the judgement made in the writ application: "It is contended by the respondent that in the case cited by the appellant to vit. *Crest Gems Ltd vs. the Colombo Municipal Council* - 2003 1 SLR- 370- Her Ladyship has not considered the dictionary meaning of '*karmanthaya*', and hence this Court IS not bound to follow the same. Moreover it is stated that the judgements marked as X2,

X4, XS cannot be given any weight as there is no dicta for this Court to follow. Therefore the respondent has adverted Court to the dictionary meaning of 'industry' which includes mining, agriculture, trade, (*velandama*), etc."

What was different in this judgement was that instead of relying on the literal meaning of the legislation, the judges took a commonsensical view and appeared to arrive at an appropriate judgement, given the simple fact that the appellant was indeed engaging in a trade, or a *karmanthaya* or some sort of enterprise, no matter how it was styled.

The judgement excerpt gives an insight into this line of reasoning: "In the said assertion it is the categorical position of the respondent that the word *karmanthaya* is synonymous with trade, business.

It is common ground that the appellant IS dealing in the manufacture and export of gems. It IS for the said purpose the respondent-appellant IS carrying on the said business in the said premises within the limits of the Colombo Municipality." (The capital letter emphasis is from the judgement, and is not mine.)

"Therefore In the above exposition of facts and law relating to the said issue this Court is of the view that same has rendered this appeal infructuous," it was held.

How basically the same matter came up in two different cases before the same Court is rather curious, but even more striking is the fact that the two separate benches delivered diametrically opposed judgements on the issue at hand. The appeal was dismissed subject to a cost of Rs. 10,000.

(The writer can be contacted at abeynayake@gmail.com.)