

Wasantha Samarasinghe v Department of Inland Revenue

RTIC Appeal (In-Person Hearing)/747/2018- Order adopted subsequent to the hearing/consideration as part of the formal meeting of the Commission on 20.02.2019

Order under Section 32 (1) of the Right to Information Act, No. 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)

Chairperson: Mr.MahindaGammampila
Commission Member: Ms.Kishali Pinto-Jayawardena
Commission Member: Mr. S. G. Punchihewa
Commission Member: Dr. Selvythiruchandran
Commission Member: Justice Rohini Walgama

Appellant: Wasantha Samarasinghe
Notice issued to: D. M. L. Ivan Dissanayake, Commissioner-General, Department of Inland Revenue

Appearance/ Represented by:
Appellant – Wasantha Samarasinghe
PA- M. D. S. M. Devapriya, Senior Commissioner, SanathKarannagoda PMA, Y. S. R. P. A.
Kehelkatuwa PMA

RTI Request filed on	17.08.2018
IO responded on	17.08.2018(acknowledgement) 04.09.2018 (Response)
First Appeal to DO filed on	07.09.2018
DO responded on	17.09.2018
Appeal to RTIC filed on	01.10.2018

Brief Factual Background:

The Appellant by request dated 17.08.2018 requested the following information;

Ceylon Steel Corporation Ltd. (Ceylon Steel)
Ceylon Steel Corporation Ltd. (☺)
GTBCeylon Steel Corporation (Pvt.) Ltd. (GTB)
Melva Rolling(Pvt.) Ltd. (Melva)
CaptainSteel (Pvt.) Ltd. (Captain)
(CN) ConfabSteel (Pvt.) Ltd. (CN)
(SR) Steel (Pvt.) Ltd. (SR)
Melbourne Metal(Pvt.) Ltd. (Melbourne)
Melbourne Metal (Pvt.) Ltd. (Shakthi)

Ashok Steel Industries(Pvt.) Ltd. (Ashok)
Ashok Steel Industries (Pvt.) Ltd. (Sunstar)
Kaylas (RS)
IWW Industries (Pvt.) Ltd. (IWW)
BolkaIndustries(Pvt.) Ltd. (බෙල්කා)
Mocow Lanka Steel(Pvt.) Ltd. (DSI)
Moscow Lanka Steel(Pvt.) Ltd. (3 STAR)
Jetmore Steel(Pvt.) Ltd. (JET)

Information in relation to the amount of income tax, VAT, and Nation Building Tax paid by the above iron/ steel producing companies registered in Sri Lanka in the last 5 years, to be provided separately

The IO responded on 04.09.2018 stating that the information cannot be provided in terms of Section 5 (1) (a) and 5 (1) (c) (iii) of the RTI Act. Dissatisfied with the response the Appellant lodged an appeal with the DO on 07.09.2018. The DO responded on 17.09.2018. The Appellant was dissatisfied with this response and lodged an appeal with the Commission on 01.10.2018.

Matters Arising During the Course of the Hearing:

When the Commission inquired about the answers given by the Public Authority (PA) to the information request), the PA responded stating that the information officer had responded to the request by a letter dated 04.09.2018. A letter dated 07.09.2018 has been sent to the Information Officer of the Department of Inland Revenue by the Appellant informing him that the PA had not acted on the information requested and urged to act promptly. It was also emphasized by the Appellant that the letter dated 07.09.2018 was addressed to the Information Officer and when inquired by the PA as to whether it will raise any objection in this regard, the PA responded by stating that it aims to provide information as far as possible and thus has no objections in relation to the same. The PA further submitted that the PA had responded to the Appellant's said letter by letter dated 17.09.2018.

In response, the Appellant stated that he had not received the response letters dated 04.09.2018 and 17.09.2018. The letters were handed over to the Appellant at the Appeal hearing.

Referring to the direction of the RTIC in *RTI Appeal 229/2017 M. Hemapala v Department of Inland Revenue*, where the Appellant requested information on Madolsima Plantation Ltd's tax return, the PA noted that the RTIC had taken into account that the information requested pertained to personal information in terms of Section 5 (1) of the Right to Information Act, subject only to release if an overriding public interest was established. The Appellant responded in counter, stating that he had the right to know this information as a taxpayer and notwithstanding the provisions of Subsection 5 (1), under and in terms Section 5 (4) the information in question should not be refused as the public interest in disclosing the information outweighs the harm that would result from its disclosure.

The PA further submitted that a summary on tax payments information is included in the PA's Annual Report; viz, that the tax payments of each company mentioned above are not included in the PA's Annual Report but only the summary payments thereto in each year.

Order:

On consideration of the submissions made by both parties, it is of note that there is a significant difference between the information requested in Appeal No. 229/2017 and this information request. That is, in RTIC 229/2017, the Appellant had requested letters that were exchanged between Madolsima Plantation Ltd and the Inland Revenue Department which attracted the privacy interests of individuals named in those letters.

However, in this Appeal, the Appellant had requested the amount of tax paid by the above-mentioned companies. Such information should be in the public records of the PA. This Commission may direct the disclosure of such information to the public if there is any public interest in it, even though the person (third party) has not consented in writing to the disclosure of such information under Section 5 (1) (a) of the Right to Information Act.

| In RTIC Appeal No: 99/2017 The Air Pilots Guild of Sri Lanka v Sri Lanka Airlines Ltd this Commission ordered the information requested to be disclosed on the ground that it is in the public interest even where the relevant third party has not consented to release of the same.

The function of the Commission is to ascertain whether the information requested can be legitimately and in law, be made available to the Appellant, subsequent to a consideration of whether the information does not fall within the purview of the several exemptions detailed in Section 5 (1) of the RTI Act and further, and in the event that the information does fall within the purview of an exemption is Section 5 (1), based on whether the public override in Section 5 (4) is found to apply.

Given the above circumstances, the attention of the PA was drawn to the fact that the information sought, namely, the information in relation to income tax, VAT and NBT paid by registered steel manufacturing companies in Sri Lanka for the last five years separately, the consent from such companies in or against disclosure under Section 29 (1) is not applicable because these information could not be classified as confidential information given by a 3rd party under and in terms of section 5 (1) (i) of the Right to Information Act (RTI Act).

It is also noted that Section 5(1)(c)(iii) of the RTI Act is not applicable as it relates to 'premature' disclosure of financial and economic policies relating to taxation.

The matter is re-fixed for hearing on 23.04.2019 to determine further action to be taken, as the Public Authority is seeking further date to discuss this information request with the Director-General of the Public Authority.

RTIC Appeal (In-Person Hearing)/747/2018- Order adopted subsequent to the hearing/consideration as part of the formal meeting of the Commission on 15.10.2019

Order under Section 32 (1) of the Right to Information Act, No. 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)

Chairperson: Mr.MahindaGammampila
Commission Member: Ms.Kishali Pinto-Jayawardena
Commission Member: Justice Rohini Walgama

Director-General: Mr. D. G. M. V. Hapuarachchi

Appellant: Wasantha Samarasinghe
Notice issued to: D. M. L. Ivan Dissanayake, Commissioner-General, Department of Inland Revenue

Appearance/ Represented by:

Appellant – Wasantha Samarasinghe
PA- M. D. S. M. Devapriya, Senior Commissioner, SanathKarannagoda PMA, Y. S. R. P. A. Kehelkatuwa PMA

Matters Arising During the Course of the Hearing:

Due to the security situation prevailing in the country the hearing scheduled for 23.04.2019 was re-fixed for 15.10.2019.As the PA had requested for time in order to apprise the Commissioner-General (DO) of the facts transpiring before the Commission and to obtain appropriate/ necessary instructions, the Commission queried whether the PA was now amenable to the release of the information.

The PA stated that it had awaited a written communication by the Commission in relation to the same in order to submit to the Commissioner-General. Although the relevant minute/ order had not been communicated to the PA, the PA clarified that it had placed the matter before the Commissioner-General informing him of the status of the Appeal and the events transpiring before the Commission. The PA produced a copy of the unsigned letter addressed to the Commissioner-General as evidence of the same.

Excerpts of the relevant content are reproduced below;

... it is felt that clarifications on the legality and provisions of the Department as well as the rights of taxpayers need to be obtained.

Further, it is felt that the DO in terms of the RTI Act is the Commissioner-General of Inland Revenue and in a situation where there is no appeal to the DO from a decision of the IO a conclusion/ decision of this nature being provided by the RTI Commission is contrary to the laws and procedures.

It is felt that as this gives rise to a legal issue it is appropriate to forward this to the Attorney-General's Department for advice

As the DO under the Act, this is forwarded to you for information and a decision on this matter .

The PA, at the previous hearing, submitted that it is not taking up the objection that the Appellant not had directed his letter complaining of non-response to the DO but rather to the IO. The Appellant contended that the PA is intentionally delaying the provision of the information and that this letter provided before the Commission is unsigned and of no validity and therefore is not evidence of the fact that the PA has taken any steps subsequent to the previous hearing to apprise the Commissioner-General of the matter.

Order:

On the previous hearing in this Appeal, it was the view of this Commission that the requested information (i.e. the payment of tax by an entity liable to pay tax) relates to information that pertains to the collection of public funds/tax monies. It has not been contended by the Public Authority that the payment thereto has been disputed or is the subject of any controversy. As such, it was our thinking that this information may legitimately come within the scope of information released under the Act, subject to an overriding exception put forward by the Public Authority in terms of Section 5(1) of the RTI Act.

No such exception has yet been established by the Public Authority. Disclosure of the amount of tax paid by an entity to the state coffers cannot amount to 'serious prejudice' being caused to the economy of Sri Lanka by 'prematurely' disclosing economic or financial policies regarding taxation (Section 5(1)(c) (iii)). Nor does this amount to an instance where information has been supplied in confidence to a third party (Section 5(1) (i)) as what is requested here are not private and confidential documents submitted to the Public Authority by the entity in issue.

Further, it is noted that, as the information relates to taxation (i.e. the amount contributed by the said entity to the state coffers), the above reasoning in this appeal and relevant to the circumstances of the matter in question is limited to the immediate factual context of this appeal and may not be taken as a general precedent in relation to information pertaining to details of taxation.

In the circumstances, we issue this Order to enable the relevant officials of the PA to apprise the Commissioner-General and to place its response before the Commission in this regard on or before the next date of hearing which will be the final date in this Appeal.

The Appeal is adjourned.

Next Date of Hearing: 14.01.2020

RTIC Appeal (In-Person Hearing)/747/2018- Order adopted subsequent to the hearing/ consideration as part of the formal meeting of the Commission on 14.01.2020.

Order under Section 32 (1) of the Right to Information Act, No. 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)

Chairperson: Mr.MahindaGammampila
Commission Member: Ms.Kishali Pinto-Jayawardena
Commission Member: Justice Rohini Walgama

Director-General: Mr. D. G. M. V. Hapuarachchi

Appellant: Wasantha Samarasinghe
Notice issued to: D. M. L. Ivan Dissanayake, Commissioner-General, Department of Inland Revenue

Appearance/ Represented by:
Appellant – Wasantha Samarasinghe
PA- M. D. S. M. Devapriya, Senior Commissioner, SanathKarannagoda PMA

Matters Arising During the Course of the Hearing:

The PA was queried as to the response of the Commissioner-General once apprised of the proceedings and order of the Commission. The PA submitted that unless there is a public interest it was of the view that private information exempted by Section 5 (1) (a) could not be provided. The PA contended that a company would fall within this exemption given that a company is a legal entity.

The Commission is of the view that a company does not fall within the purview of Section 5 (1) (a) of the RTI Act and it was limited to individual persons. The fact that the information request concerns monies due to the public coffers establishes that there is a public interest in the disclosure of the information.

The PA further submitted that in a previous appeal i.e., *M G Hemapala v Department of Inland Revenue* (RTICAppeal 229/2017) the Commission permitted that the relevant company be queried as to its consent to the disclosure of information and upon the grant of the same that the information be released. However, the Commission was of the view that this was limited to the facts of the said case, where the information request concerned correspondence between the Company and the PA and not the amount of tax paid by the Company and is therefore distinguished from the present case. The PA submitted that advice had to be obtained from the Attorney-General's Department in relation to the release of the same on its own accord without a direction from the Commission.

The PA further submitted that in terms of Section 209 of the Inland Revenue Act No 10 of 2006, which is a secrecy provision, it is prevented from disclosing the information except to the CIABOC, upon a court order, to the Ministry of Finance or in any other manner laid down in the said Section.

The Commission noted that the said Inland Revenue Act No 10 of 2006 had been replaced by 24 of 2017 and accordingly queried form the PA the status in terms of the new Act. The PA submitted that it was relying on the old Act as the information requested concerns a period

during which the Act No 10 of 2006 was in operation. Upon being queried as to the status under the new Act the PA submitted that the circumstances in which the information maybe released are even more stringent. The PA submitted that the disclosure of the details requested will enable anyone to calculate other figures in relation to the said companies which the companies will perceive as being prejudicial to their functioning.

The Appellant submitted that there was a grave need for this information to be disclosed as this will reveal that the companies in relation to whom the information is being sought have engaged in tax evasion amounting to over LKR 25 billion and that furthermore, it is in the interest of the public that the said information is disclosed.

Order:

The PA is directed to file written submissions inter alia substantiating is position vis a vis the Official Secrecy clauses contained in the Inland Revenue Act No 24 of 2017. The Appellant may respond within two weeks of the receipt of the PA's written submissions.

Order is hereby conveyed to both parties in terms of Rule 27 (3) of the Commission's Rules on Fees and Appeal Procedures (Gazette No. 2004/66, 03.02.2017).

RTIC Appeal (In-Person Hearing)/747/2018- Order delivered on 05.01.2021 subsequent to the hearing/ consideration as part of the formal meetings of the Commission on 20.02.2019, 15.10.2019, 14.01.2020 and 03.03.2020.

Order under Section 32 (1) of the Right to Information Act, No. 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)

Chairperson: Mr. Mahinda Gammampila
Commission Member: Ms. Kishali Pinto-Jayawardena
Commission Member: Justice Rohini Walgama

Director-General: Mr. D. G. M. V. Hapuarachchi

Appellant: Wasantha Samarasinghe
Notice issued to: D. M. L. Ivan Dissanayake, Commissioner-General, Department of Inland Revenue

Appearance/ Represented by:
Appellant – Wasantha Samarasinghe Voice Against Corruption Convenor
PA- M. D. S. M. Devapriya, IO/ Senior Commissioner, SanathKarannagoda MSO

Matters Arising During the Course of the Hearing on 03.03.2020:

The PA had by Written Submissions dated 28.01.2020 (in response to the Order of the Commission dated 14.01.2020) submitted that it was denying the information under and in terms

of Sections 5 (1) (a) and 5 (1) (c) (iii) of the RTI Act No. 12 of 2016. The PA further submitted that the relevant secrecy provisions in the Inland Revenue Act No 10 of 2006 is Section 209 and in the Inland Revenue Act No 24. of 2017 which has replaced the 2006 Act with effect from 01.04.2018 are Sections 100 and 191.

The PA submitted that the Inland Revenue Act has established various limitations on the disclosure of tax details pertaining to exports. Furthermore, it was submitted that the provision of the information requested enables other parties to calculate the declared income of the parties concerned and that, in terms of Section 5 (1) (d) of the RTI Act, this can affect the commercial competitiveness of the third party concerned moreover, that there is no public interest in the disclosure of the said information the PA has denied the information.

Final Order:

Sections 5 (1) (a), 5 (1) (c) (iii) and 5 (1) (d) of the RTI Act states that,

Subject to the provisions of subsection (2) a request under this Act for access to information shall be refused, where-...

(a) the information relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the larger public interest justifies the disclosure of such information or the person concerned has consented in writing to such disclosure; ...

(c) the disclosure of such information would cause serious prejudice to the economy of Sri Lanka by disclosing prematurely decisions to change or continue government economic or financial policies relating to...(iii) taxation...

(d) information, including commercial confidence, trade secrets or intellectual property, protected under the Intellectual Property Act, No. 36 of 2003, the disclosure of which would harm the competitive position of a third party, unless the public authority is satisfied that the larger public interest warrants the disclosure of such information;

Section 209 of the Inland Revenue Act No. 10 of 2006 pertains to the Official Secrecy clause urged as applicable by the PA; however, in view of the fact that the Inland Revenue Act No 24. of 2017 replaced the same with effect from 01.04.2018, the 2017 Act will be considered to govern the present case given that the information request pertaining to the present appeal was lodged thereafter. The relevant Sections are Sections 100 and 191 of the said Act.

Section 100 of the Act which concerns confidentiality vis a vis details provided by taxpayers to the PA states as follows;

(1) Except as provided for in subsection (3), (4), (5) or (7) every person having a duty under this Act or being employed in the administration of this Act, shall regard as secret and confidential all information and documents the person has received in an

official capacity in relation to a specific taxpayer, and may disclose that information only to the following persons:-

- (a) the employees of the Department and of the Customs Department in the course, and for the purpose, of carrying out their duties;*
- (b) the Minister in charge of the subject of Finance in the course, and for the purpose, of carrying out supervision of the Department;*
- (c) the Auditor-General or any person authorised by the Auditor-General, only when such disclosure is necessary for the purposes of official duties;*
- (d) tax authorities of a foreign country, in accordance with an international agreement entered into with a specific authority;*
- (e) the Attorney-General for the purpose any criminal proceedings or civil proceedings where actions are instituted by the State or actions filed against the State or where the opinion or advice of the Attorney General has been sought in writing by the Department of Inland Revenue;*
- (f) a court, in a proceeding to establish a taxpayer's tax liability or responsibility for an offence;*
- (g) the Land Reform Commission, only when such disclosure is necessary for the purposes of official duties; (h) the Controller of Exchange for the purpose of prosecuting violations of the Exchange Control Act;*
- (i) a Commission appointed under the Commissions of Inquiry Act, in an investigation into the affairs of any person or any person's spouse or child; and*
- (j) the Commission to Investigate Allegations of Bribery or Corruption established under the Commission to Investigate Allegations of Bribery or Corruption Act, No. 19 of 1994.*

(2) A person who is permitted to disclose information under subsection (1) shall maintain secrecy except to the minimum extent necessary to achieve the object for which disclosure is permitted.

(3) A person who receives information under subsection (1) shall maintain secrecy except to the minimum extent necessary to achieve the object for which the information was received.

(4) The Commissioner-General may disclose information concerning a taxpayer's affairs to the taxpayer or the taxpayer's authorised representative only after obtaining reasonable assurance of the authenticity of the claim.

(5) Information concerning a taxpayer may be disclosed to another person with the taxpayer's written consent.

(6) The obligation as to secrecy imposed by this section shall continue to apply in respect of any person notwithstanding that the person ceases to be appointed under or employed in carrying out the provisions of this Act.

(7) The Commissioner-General may publish a list of the names of taxpayers –

- (a) who are in default of tax under section 152;*
- (b) who have failed to file a return as required; or*
- (c) on whom an understatement penalty has been imposed under Chapter XVII.*

Section 191 states as follows;

A person who contravenes subsection (2) or (3) of Section 100 shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one million rupees or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

Considering the above, the attention of the PA is drawn to Section 4 of the RTI Act and this Commission's ruling in RTIC Appeal 6/2017 *TISL v Presidential Secretariat*(order dated 04.12.2018) which is to the effect that Section 4 of the RTI Act overrides previous enacted law as statutorily detailed;

The provisions of this Act shall have effect notwithstanding anything to the contrary in any other written law and accordingly in the event of any inconsistency or conflict between the provisions of this Act and such other written law, the provisions of this Act shall prevail.

This Commission in RTIC Appeal 6/2017 *TISL v Presidential Secretariat* (order dated 04.12.2018) agreed with the views expressed by the Indian CIC in *M. R. Misra v. the Supreme Court of India*, (CIC/SM/A/2011/000237/SG) where the CIC specifically dealt with laws that conflict with the Indian RTI Act in the context of *Section 22* of the said Act:

... "where there is any inconsistency in a law as regards furnishing of information, such law shall be superseded by the RTI Act. Insertion of a non-obstante clause in Section 22 of the RTI Act was a conscious choice of Parliament to safeguard the citizens' fundamental right to information...If the PIO has received a request for information under the RTI Act, the information shall be provided to the applicant as per the provisions of the RTI Act and any denial of the same must be in accordance with Sections 8 and 9 of the RTI Act only.."

Given the above, the Commission envisaged two scenarios:

- 1. An earlier law/ rule whose provisions pertain to furnishing of information and is consistent with the RTI Act: Since there is no inconsistency between the law/ rule and the provisions of the RTI Act, the citizen is at liberty to choose whether she will seek information in accordance with the said law/ rule or under the RTI Act. If the IO has received a request for information under the RTI Act, the information shall be provided to the citizen as per the provisions of the RTI Act and any denial of the same must be in accordance with Sections 8 and 9 of the RTI Act only; and*
- 2. An earlier law/ rule whose provisions pertain to furnishing of information but is inconsistent with the RTI Act: Where there is inconsistency between the law/ rule and the RTI Act in terms of access to information, then Section 22 of the RTI Act shall override the said law/ rule and the IO would be required to furnish the information as per the RTI Act only."*

We find these sentiments to be entirely applicable in the context of Sri Lanka's RTI Act. Otherwise, as this Commission observed during the course of the hearing of this appeal,

(Minute of the Record 31/10/2018), allowing the existing range of special laws to supersede provisions of the RTI Act would ultimately render the RTI Act futile. This is a consideration that must anxiously weigh with us. (emphasis ours)

It is, therefore, our view that the spirit and letter of the RTI Act brought into Sri Lanka's statute books in 2016 with the modern objective of 'combating corruption and promoting accountability and good governance' (vide preamble to the RTI Act) cannot effectively operate if Section 8(1) of the DALL continues to be concurrently valid. It was precisely to address this situation that Section 4 of the RTI Act provides that; "The provisions of this Act shall have effect notwithstanding anything to the contrary in any other written law and accordingly in the event of any inconsistency or conflict between the provisions of this Act and such other written law, the provisions of this Act shall prevail." This, we find, falls within the four corners of the caution that, the generalia maxim will not apply if there is "...something in the nature of the general one making it unlikely that an exception was intended as regards the special Act." (Ceylon Coconut Producers Co-operative Union v. C. Jayakody, supra)

Applying Section 4 to its fullest extent is important because of what the RTI Act undertakes to achieve through fostering a culture of transparency and accountability' (Vide preamble to the Act)...

Further, in considering the applicability of the substantive exemptions cited by the PA to deny the information, this Commission is of the view that Section 5 (1) (d) is inapplicable in that, the disclosure of the amount of tax paid by entities liable to pay tax is not encompassed within the reach of the information that this exemption purports to cover; namely, 'commercial confidence, trade secrets or intellectual property, protected under the Intellectual Property Act, No. 36 of 2003.' Consequently, the question of the disclosure being liable to 'harm the competitive position of a third party;' does not arise. Moreover, as would be detailed in succeeding paragraphs, we are satisfied that 'the larger public interest warrants the disclosure of such information' within the meaning of that Section.

In any event, this Commission recalls its reasoning in RTIC Appeal 26/2018, *Verité Research (Pvt.) Ltd. v. Central Bank of Sri Lanka* (order dated 27.11.2018) as follows;

It is relevant to note in this regard that the placing of the commas in that Section presents a cogent argument that what is deemed exempt under Section 5(1)(d) is information (including commercial confidence, trade secrets, or intellectual property) which are protected under the Intellectual Property Act. Hence those that are not protected under the Intellectual Property Act do not fall within the ambit of Section 5(1)(d). The comma inserted by the framers of the Act between the words "intellectual property" and the word "protected" leads to the two words being read as disjunctive, thus inferring with some force that the said Section applies only to information protected by the Intellectual Property Act.

In relation to the applicability of Section 5 (1) (c) (iii) to deny information in this appeal, the PA has failed to firstly demonstrate how the disclosure of incometax, (VAT and NBT) of the named

companies amounts to a premature disclosure of ‘decisions to change or continue government economic or financial policies relating to...(iii) taxation...’. Second, even in the unlikely event that tax amounts paid can be considered economic or financial policy, the ‘serious prejudice to the economy of Sri Lanka’ arising from the release of the said information has to be established. As such, we rule that the PA has failed to establish the applicability of this exemption.

Vis a vis the applicability of Section 5 (1) (a which has been previously considered in this appeal, we are of the view that the information requested pertains to a company and not an individual. This Commission reiterates that the exemption does not apply to the present case to deny the said information.

During the course of the hearing, the PA also argued that this information concerns a third party and as such, it cannot be provided in the event that the third party refuses to consent. However, this Commission, as stated in previous orders in this appeal, opined that the consent of such companies in or against disclosure to be obtained under Section 29 (1) of the RTI Act read with 5 (1) (i) of the RTI Act is not applicable in the circumstances of the case. The information sought relates to the income tax, (VAT and NBT) paid by registered steel manufacturing companies in Sri Lanka for the last five years separately, as determined by the Public Authority and pertains to information arrived at by the said Public Authority. As such, this does not amount to confidential information given by a 3rd party to the Public Authority under and in terms of Section 29 (1) read with 5 (1) (i) of the RTI Act.

In any event, we hold that there is sufficient public interest in the disclosure of the information under and in terms of Section 5 (4) of the RTI Act, overriding the exemptions claimed as aforesaid. The Appellant has alleged that there is tax evasion amounting to over LKR 25 billion on the part of the companies, which allegation has not been refuted. As such, we are cognisant of the fact that the matter concerns public monies owed to the Department of Inland Revenue, the key public institution responsible for the collection of revenue on behalf of the state and the Public Authority in this appeal. In any event, the amount of tax paid to the public coffers by the above-mentioned companies should be in the public records of the PA.

In the context of the above reasoning, the DO’s decision to deny the information is reversed and the DO is directed to disclose the information to the Appellant. Taking into account, the Public Authority’s strongly expressed concern regarding this appeal being used as a precedent for others to flood the Public Authority with similar requests, we stress that the Order in this Appeal is limited to the facts of the appeal and should not be taken as of general application in relation to information requests of similar nature under and in terms of the RTI Act.

The Appeal is concluded.

Order is hereby conveyed to both parties in terms of Rule 27 (3) of the Commission's Rules on Fees and Appeal Procedures (Gazette No. 2004/66, 03.02.2017).

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Mahinda Gammampila – Chairman

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Kishali Pinto – Jayawardena – Commission Member

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R. Walgama – Commission Member