

12th Sep 2002 Island.

No unconstitutionality in VAT bill — Choksy

By Kesara Abeywardena

Finance Minister K. N. Choksy yesterday in Parliament stated that there was no unconstitutionality involved in the passing of the VAT bill and the recommendations made by the Supreme Court were duly incorporated in the bill that was passed and certified by the Speaker.

He was responding to a point of order raised by PA MP Dinesh Gunawardena in Parliament on Tuesday. Gunawardena raised that a recommendation made by the Supreme Court in its determination regarding clause 20 (6) of the VAT bill had not been incorporated into the

Continued on page 4

No unconstitutionality...

bill that was passed by Parliament.

Minister Choksy argued that the Supreme Court had not made any order on clause 20 (6) but had only made a suggestion. Quoting the Supreme Court determination he said: "No question of unconstitutionality was involved here".

However Deputy Chairman of Committees Siri Andrahannadi who was in the chair said that a ruling on the matter would be given on a later date.

The statement of Minister K. N. Choksy said:

"The jurisdiction of the Supreme Court under the provisions of Article 120 read together with Article 121 of the Constitution is restricted to the question as to whether any Bill or any provision thereof is inconsistent with the Constitution.

In its Determination on the above Bill, the Supreme Court has been particular to confine itself to the strict issues of the constitutionality of the Clauses of the Bill.

In doing so, the Court identified only Clause 2(1) of the Bill as requiring amendment on the ground of inconsistency with the Constitution, and the court stated as follows: "Thus, since Clause 2(1) has now been suitably amended, as set out above, the unconstitutionality referred to has been removed and the provisions of the said Clause 2(1) would now cease to be inconsistent with the Constitution".

The above was the one and only item in the Bill which the Court required to be amended so as to make it consistent with the Constitution. This amendment was made by Parliament prior to

the passing of the Bill.

In regard to Clause 20(6), which forms the subject matter of the Point of Order raised by Dinesh Gunawardene, the Supreme Court clarified the matter clearly by stating, "no question of unconstitutionality was involved here". Having thus clarified the matter carefully, the Court went on to record an amendment suggested by the Additional Solicitor General which related merely to a matter of policy and not of constitutionality.

The Court thereafter further clarified its Determination in its concluding paragraph as follows: "We have examined the provisions of the Bill and are of the opinion that, upon the suggested amendment being effected, the Bill and its provisions will cease to be inconsistent with the Constitution. We accordingly determine that upon such amendment being given effect to, the provisions of the Bill will not be inconsistent with the Constitution".

The reference in the above quotation is in the singular, appropriately referring to "such amendment", i.e. in the singular and not in the plural, thus reiterating that the only element of unconstitutionality was in respect of Clause

From page 1

2(1).

Prior to the debate on the second reading of the Bill I discussed the Determination of the Supreme Court with the Hon. Attorney General who himself was of the view that the only amendment necessitated by the Determination was in regard to Clause 2(1). In doing so, I was fully conscious of the fact that the Additional Solicitor General had made the suggestion for the Amendment of Clause 20(6). Whilst normally such suggestions made in Court are given effect to, the present matter goes very much beyond normal instances in view of the fact that the subject matter involves the question of Constitutionality and a Bill before Parliament. It was therefore agreed to between Hon. Attorney General and myself that Parliament was not bound to make the amendment suggested to Clause 20(6) by the Additional Solicitor general, in as much as it was not part of the Court's Determination.

The Determination of the Supreme court has thus been duly complied with after full consideration of the matter, and the Bill with the amendment to Clause 2(1) made in the House was validly passed by Parliament".