

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST  
REPUBLIC OF SRI LANKA**

In the matter of an Application for the grant of Writs of *Mandamus*, *Certiorari* & *Prohibition* under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**CA Writ application No: 644/2021**

1. Vehicles Lanka (Private) Limited,  
No. 43. Katana Road, Thimbirigaskatuwa,  
Negombo.
2. Handun Harsha Prabath De Silva,  
Chairman/Managing Director,  
Vehicles Lanka (Private) Limited,  
No. 43. Katana Road, Thimbirigaskatuwa,  
Negombo.

**PETITIONERS**

**-Vs-**

1. S. P. Arukgoda,  
Inquiry Officer,  
Deputy Director of Customs,
2. Major General (Retd.) G. Vijitha Ravipriya,  
Director General of Customs,
- 2A. P.B.S.C.Nonis,  
Director General of Customs,

The 1<sup>st</sup> and the 2 A Respondents of;  
Sri Lanka Customs,  
No. 40, Main Street,  
Colombo 11.

**RESPONDENTS**

**Before: M. T. Mohammed Laffar, J.**

**S. U. B. Karalliyadde, J.**

**Counsel:** Faiz Musthapha, PC with Keerthi Tilakaratne for the Petitioners.

Vikum de Abrew, ASG with Ms. Amasara Gajadeera for the Respondents.

**Written submissions tendered on:**

19.07.2023 by the Petitioners.

31.08.2023 by the Respondents.

**Argued:** by way of written submissions

**Decided on:** 16.02.2024

**S. U. B. Karalliyadde, J.**

The 1<sup>st</sup> Petitioner is a duly incorporated limited liability Company in terms of the Companies Act, No. 07 of 2007 and the 2<sup>nd</sup> Petitioner is the Chairman/Managing Director of the 1<sup>st</sup> Petitioner Company. The Petitioners filed a fundamental rights application bearing No. SC FR 304/2011 in the Supreme Court in the year 2012 against a decision of the Cabinet of Ministers requiring the Petitioners to transfer their business from assembling vehicles with ‘used parts’ to ‘new parts’ for such vehicles to be registered by the Commissioner General of Motor Traffic. Thereafter, on 13.09.2012 a settlement was entered in that case by way of a judgment (marked as S8 at page 229 in C2) and permitted the Petitioners to register 2250 vehicles which are assembled using ‘used parts’ including vehicles that remained unsold with the Company (400 vehicles)

within 3 years from the commencement of the settlement. Thereafter, the Petitioners by the letter dated 10.10.2012 marked as C3, sought permission from the Controller of Imports and Exports (the Controller) to import the vehicle components that are necessary to assemble the vehicles and the Petitioners obtained Import Licences (marked as P1 – P4 in C2) to import ‘used parts’ to assemble 750 vehicles. However, the then Secretary to the Treasury by letter dated 28.02.2013 (marked as S9 in C2) addressed to the Director General of Customs informed that the Cabinet of Ministers requires the Hon. Attorney General to refer the judgment in the fundamental rights application (SC FR 304/2011) filed by the Petitioners to be reviewed and directed the Director General of Customs to suspend the clearance of imports of the Petitioners. Consequently, three containers of goods imported by the Petitioners under the Import Licences P1 to P4 were detained by the Customs since 28.02.2013. Then the Petitioners filed a Writ Application in this Court bearing No. CA (Writ) 57/2013 to quash the letter sent by the Secretary to the Treasury marked as S9, where Sriskandaraja, J. (P/CA) on his Order dated 15.03.2013 (marked as C4b) refused to issue Notices on the Respondents for the reason that the Petitioners have misrepresented the facts to the Controller and has obtained the licences for importation of vehicle body parts. Petitioners filed a leave to appeal Application before the Supreme Court (SC SPL LA 76/2013) against that Order and it was dismissed *in limine* and the Petitioners made another Writ Application to this Court (CA (Writ) 446/2014) on similar grounds, which was also dismissed on the basis that the Order pronounced in CA (Writ) 57/2013 is final

and conclusive. Thereafter, the Petitioners preferred a Special Leave to Appeal application to the Supreme Court bearing No. SC (SPL) LA 50/2016 marked as C5. In the meantime, three containers containing vehicle bodies arrived in Sri Lanka on 10.03.2013 and another two containers on 17.03.2013 all of which were subsequently detained by the Customs pursuant to the letter marked as S9. While the Special Leave to Appeal Application No. SC (SPL) LA 50/2016 was pending, a Cabinet decision (marked as S10 in C2) was taken to give effect to the settlement entered into by the judgment marked as S8 in the fundamental rights application before the Supreme Court. Thereafter, the Petitioners withdrew the pending applications before Courts pertaining to this matter. By letter dated 24.01.2017 marked as C7, the Secretary to the Treasury directed the Director General of Customs to give effect to the Cabinet decision marked as S10. Thereafter, the detained containers were released to the Petitioners. Nevertheless, the 3 containers that were detained on 28.02.2013 were not released by the Customs. The goods that were contained in the 3 containers are mentioned in the Inventory marked as P5a to P5g. Thereafter, an inquiry was commenced in terms of Section 8(1) of the Customs Ordinance, No. 17 of 1869 (as amended) on 13.06.2018 with regard to the validity of the licences. After the Inquiry was concluded, for the reason that in Writ Application No. 57/2013 this Court has decided that the permits (P1 to P4) upon which the goods were imported were obtained by the Petitioners misrepresenting facts to the Controller, the 1<sup>st</sup> Respondent decided that the permits were not valid and therefore the goods should be forfeited by his Order dated 30.11.2021

marked as C2a. The position of the Petitioners at the Customs Inquiry was that the observations made by this Court in case No. CA Writ 57/2013 is erroneous in the light of the evidence given by the Controller at the Inquiry confirming that there is no misrepresentation and the licences are valid and that there was no pronouncement by this Court on the validity of the licences and the Court had not quashed the licences. In the Order marked as C2a, the 1<sup>st</sup> Respondent has concluded that in SC FR 304/2011 (marked as S8) the judgment which was brought to the notice of the Controller in obtaining import licences marked as P1 to P4 no permission has been granted to import motor vehicle parts and though the Courts had not effectively quashed the licences, the observations made by the Court in the Writ 57/2013 had effectively made it invalid. The Petitioners claim that the said decision of the 1<sup>st</sup> Respondent is unreasonable, irrational, illegal and *ultra vires* for the reason that the 1<sup>st</sup> Respondent had acted outside his powers as the sole power with regard to Import Control licences lies with the Controller under Section 7 of the Import and Export (Control) Act, No. 01 of 1969 (as amended) and the Controller had affirmed at the Customs Inquiry that the licences issued to the Petitioners are valid. Aggrieved by the said Order of the 1<sup>st</sup> Respondent, the Petitioners in the instant Application seek the following substantive reliefs, *inter alia*,

- (c) Grant and issue an order in the nature of Writ of Certiorari quashing the Order of the 1<sup>st</sup> Respondent Inquiring Officer dated 30.11.2021 in Customs Case No. Prev/FPO/896/2013 marked C2(a).

(d) Grant and issue an order in the nature of Writ of Mandamus directing the 1<sup>st</sup> and 2<sup>nd</sup> Respondents or any one or more of them, and/or officers serving thereunder, to release the detained goods as contained in the inventory marked P5(a) to P5(g) in C-2 and the remaining five (5) containers of goods.

At the Inquiry, both parties agreed to dispose of the matter by way of written submissions and accordingly, both parties have filed written submissions. Even though in CA Writ 57/2013 this Court has decided that the Petitioners have misrepresented facts to the Controller in obtaining licences, at the Inquiry, the Controller has testified that the Petitioners have not misrepresented the facts in obtaining the licences and the licences marked as P1 to P4 in question are valid. The Court can observe that in Writ 57/2013, even though this Court has concluded that the Petitioners have misrepresented facts to the Controller, it neither has decided that the licences are invalid nor taken steps to invalidate the same. Therefore, the Court should examine whether the conclusion of the Court in Writ 57/2013 should be a reason for the 1<sup>st</sup> Respondent to decide that licences are invalid and therefore the goods in question should be forfeited. The Supreme Court of India in the case of *East India Commercial Co., Ltd. vs. the Collector Of Customs, Calcutta*<sup>1</sup> held that,

*“Nor is there any legal basis for the contention that licence obtained by misrepresentation makes the licence non est, with the result that the goods should be deemed to have been imported without licence in contravention of the order*

---

<sup>1</sup> 1962 AIR 1893.

*issued under S. 3 of the Act so as to bring the case within cl. (8) of S. 167 of the Sea Customs Act. Assuming that the principles of the law of contract apply to the issue of a licence under the Act, **a licence obtained by fraud is only voidable: it is good till avoided in the manner prescribed by law.***” (emphasis added)

This decision of the Supreme Court of India was followed in a series of cases.

In *Union of India v. Sampat Raj Durgar, and the Collector of Customs Vs. Sneh Sales Corporation*<sup>2</sup>, the import licence under which goods were imported was cancelled before the clearance of the goods and the goods were sought to be confiscated on the basis that there was no valid licence for clearance of the same. Supreme Court of India held that,

*"The next question is whether the import of the said goods was contrary to law in any manner and whether the said goods are liable to be confiscated under the Customs Act. The only provisions relied upon by the appellants are Clauses (d) and (o) in Section 111 of the Customs Act. In our opinion, none of these clauses are attracted in the present case. Clause (d) contemplates an import which is contrary to any prohibition imposed either by the Customs Act or any other law for the time being in force. No such prohibition can be pleaded in this case since on the date of the import the said goods were covered by a valid import licence. The subsequent cancellation of the licence is of no relevance nor does it*

---

<sup>2</sup> 1992 AIR 1417.

*retrospectively render the import illegal. (East India Commercial Co. v. Collector of Customs)."*

In *Collector of Customs Vs. Sneha Sales Corporation*<sup>3</sup>, where it was contended that the cancellation of the licence by the Controller of Imports and Exports rendered it *ab initio* void was categorically rejected by the Supreme Court and held;

*"Shri Aroop Choudhary, the learned Senior Counsel appearing in support of the appeal, has urged that the Tribunal was in error in interfering with the order passed by the Collector regarding the confiscation of the goods as well as the imposition of penalty. As regards confiscation under Section 111(d) of the Act the submission of the learned Counsel is that since the licences have been cancelled by the Deputy Controller of Imports and Exports ab initio the Collector was right in holding that there was no valid authorisation for the import of goods and goods have been imported in contravention of the provisions of the Import (Control) Order, 1955 read with Imports and Exports (Control) Act, 1947. We are unable to accept this contention of the learned Counsel in view of the law laid down by this Court in East India Commercial Company Ltd. v. Collector of Customs, Calcutta (supra)."*

In the case of *Taparia Overseas (P) Ltd. and Anr. Vs Union of India and Ors.*<sup>4</sup> the Bombay High Court following the East India Commercial Company case held that,

---

<sup>3</sup> 2000 (121) E.L.T. 577 (SC).

<sup>4</sup> 2003 (181) ELT 47 (Bom.)



*“On the above canvas of settled law; recognised by the Apex Court and catena of decisions of the various High Courts including of this Court, it is clear that a licence obtained by fraud is not void ab initio and is merely voidable. It is good till avoided in the manner prescribed by law.”*

In the case of *Bussa Overseas and Properties Vs Union of India and Another*<sup>5</sup>, it was observed by the Bombay High Court that,

*“The learned single Judge of our High Court took the view in the case of Shiv Shankar Tilakraj v. Union of India, 1987(28) ELT 342, that it was not for the Customs Authorities to find out whether the import licence issued by a competent authority was correctly given and whether the conditions precedent for the granting of import licence were satisfied in a particular case. The customs were not in law empowered to investigate into the correctness or otherwise of an import licence given by the appropriate authorities. In the case of Lokash Chemical Works v. M. S. Mehta, Collector of Customs, (Preventive) Bombay, 1981 ELT 235 another learned single Judge of our Court drew a distinction between the functions of Customs Authorities and Licensing Authorities in this regard. He held that even if it was assumed that the licence could not have been issued as per the Policy with respect of those items, once the licence was issued, no authority could prevent the import of items mentioned in the licence except by cancellation thereof in accordance with the Import (Control)*

---

<sup>5</sup> AIR 1991 BOMBAY 273.

*Order, 1955. It may be stated that the Supreme Court had also held in the case of M/s East India Commercial Co. Ltd. Calcutta v. Collector of Customs, Calcutta, that even an import licence obtained by misrepresentation did not make the licence non est. The result was that the goods should be deemed to have been imported under proper licence unless the licence was cancelled.”*

When considering the above-mentioned Indian authorities, it is clear that a licence obtained by fraud or misrepresentation is *ipso facto* not void but is voidable, and till it is avoided it continues to be valid. In the instant Application, the sole authority to issue or refuse to issue a licence in terms of Section 7 of the Imports and Exports (Control) Act is vested with the Controller. Section 7 reads thus,

*7. (1) The Controller shall have full power and discretion to make a decision either to issue or to refuse to issue a licence to an applicant therefor.*

Moreover, the Controller has the power to amend, suspend or cancel licences under Section 9 of the Imports and Exports (Control) Act. Section 9 reads as follows,

*9. (1) It shall be deemed to be a condition of every licence that the Controller may, at any time by order in writing, amend, suspend or cancel such licence and accordingly any of the powers conferred on the Controller by the preceding provisions of this sub-section may be exercised by the Controller at any time in respect of a licence.*

Therefore, it is evident that the Controller has the sole authority over the issuance of a licence. In the matter at hand, the Controller, having such authority has issued the licences that were in question and at the Inquiry held at the Customs he has given evidence stating that there was no misrepresentation made to him in obtaining the licences and the licences are valid. The Respondents contended that as Sriskandaraja, J. had held in the CA (Writ) 57/2013 that the licences had been obtained misrepresenting facts to the Controller the licence is invalid for the reason that two wrongs do not make a right. However, we must be attentive to the fact that in the case Writ 57/2013 neither the Court has examined the validity of the licences nor held that the licences are void. In the case *East India Commercial Co., Ltd. Vs The Collector of Customs, Calcutta* (Supra) it was held that,

*“This order, therefore, authorised the Government of India or the Chief Controller of Imports to cancel such licences and make them ineffective. The specified authority has not cancelled the licence issued in this case on the ground that the condition has been infringed. We need not consider the question of whether the Chief Controller of Imports or the Government of India, as the case may be, can cancel a licence after the term of the licence has expired, for no such cancellation has been made in this case, In the circumstances, we must hold that when the goods were imported, they were imported under a valid licence...”*

Upon perusing the above-mentioned judicial pronouncements and the evidence at the Customs Inquiry this Court is of the view that since there is no decision of a competent court or authority the licences marked as P1 to P4 are void for the reason that they were obtained by misrepresenting facts to the Controller being the sole authority of deciding to issue or refuse the licence, this Court cannot declare that the licences in question are void.

Therefore, this Court decides to issue a Writ of Certiorari quashing the impugned decision of the 1<sup>st</sup> Respondent dated 30.11.2021 and a Writ of Mandamus directing the Respondents to release the goods specified in the Inventory marked as P5a to P5g after levying the appropriate Customs duty.

*Application allowed.*

**JUDGE OF THE COURT OF APPEAL**

**M. T. Mohammed Laffar, J.**

**I agree.**

**JUDGE OF THE COURT OF APPEAL**