

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

*In the matter of an application for mandates in
the nature of Writs of Certiorari, Prohibition
and Mandamus in terms of Article 140 of the
Constitution of the Republic of Sri Lanka.*

CA/WRIT/349/2021

M. Jeganathan carrying on a Partnership
Business under the name style and firm of
Woodlands Company No. 192,
4th Cross Street,
Colombo 12.

Petitioner

Vs.

1. Hon. Basil Rohana Rajapaksa
- 1A. Hon. Ranil Wickremasinghe
Hon. Minister of Finance,
Ministry of Finance,
The Secretariat,
Colombo 01.
(1A Substituted Respondent)
2. S. R. Attygalla
- 2A. K. M. Mahinda Siriwardana
Secretary to the Minister of Finance &
Secretary to the Treasury,
Ministry of Finance,
The Secretariat,
Colombo 01.
(2A Substituted Respondent)

3. T. V. D. Damayanthi S. Karunarathne
- 3A. T. T. Upulmalee Premathilaka
Controller General,
Department of Imports & Export
Control,
No. 75 1/3, 1st Floor, Hemas Building,
York Street,
Colombo 01.
(3A Substituted Respondent)
4. Major General G. V. Ravipriya (Retd.)
- 4A. P. B. S. C. Nonis
Director General of Customs,
Sri Lanka Customs,
Sri Lanka Customs House,
Main Street,
No. 40,
Colombo 11.
5. P. D. A. L. P. Saparamadu
Director of Customs,
Social Protection Directorate,
Sri Lanka Customs,
Sri Lanka Customs House,
Main Street,
No. 40,
Colombo 11.
6. G. B. Gnanaraj
Deputy Director of Customs,
Port Control Unit,
Sri Lanka Customs,
Sri Lanka Customs House,
Main Street,
No. 40,
Colombo 11.
7. The Manager
Sampath Bank PLC,
Pettah Branch,
People's Park Shopping Complex,
No. 999, Bodhiraja Mawatha,
Colombo 11.

8. The Manager
Commercial Bank of Ceylon PLC,
Pettah Branch,
People's Park Shopping Complex,
No. 180/1/31,
Colombo 11.
9. The Manager
NDB Bank PLC,
Head Office, No. 40, Navam Mawatha,
Colombo 02.
10. Hon. Attorney General
Attorney General's Department,
Colombo 12.

Respondents

Before : Sobhitha Rajakaruna J.
Dhammika Ganepola J.

Counsel : K. Deekiriwewa with Dr. M. K. Herath, Dr. Kanchana De Silva for the
Petitioner.

Vikum De Abrew PC, ASG with Suranga Wimalasena DSG for the 1st to
6th and 10th Respondents.

Senaka Hewavitharana for the 7th Respondent.

Kushan Seneviratne with S. Cassim for the 9th Respondent.

Argued on : 10.11.2022

Written Submissions : Petitioner - 16.11.2022
1st to 6th and 10th Respondents - 28.11.2022

Decided on

: 08.12.2022

Sobhitha Rajakaruna J.

The Petitioner has imported sugar consignments which are reflected in the Bills of Lading, marked 'X12' and CUSDECS, marked 'X15'. Sugar was made a licensable item in view of the Regulations published in Extraordinary Gazette Notification No.2199/20 published on 29.10.2020. By such Regulations, it is required to obtain Import Control Licenses ('Licenses') to import, inter alia, items under the HS headings 17.01.

In the meantime, the Licenses that have been issued for the importation of sugar was temporarily suspended with effect from 22.06.2021 by the Controller General of Imports and Exports ('Controller General'). The Petitioner claims that he was possessed with licenses collectively, marked as 'X9' for the importation of sugar. But the license No. IM-3-515-2021-001428 pertaining to the consignment which is the subject matter of the instant application has apparently expired on 30.06.2021 and the shipment of such consignment of sugar has taken place after 30.06.2021. Based on such grounds, the consignments of sugar relevant to the instant application have been detained.

The Petitioner in the instant application primarily challenges the publication of the said suspension of licenses by the Controller General and seeks for a writ of Certiorari to quash the relevant notification, marked 'X7'. The Petitioner also seeks for a writ of Mandamus directing the 3rd and 4th Respondents to release the sugar consignments which are reflected in the Bills of Lading, marked 'X12' and CUSDECS, marked 'X15'.

The Petitioner's contention is that the Petitioner Company has imported such consignments of sugar based on the Licenses collectively, marked as 'X9'. However, the 1st to 6th and 10th Respondents ('Respondents') assert that an item bearing HS Code 1701.99.10 had been loaded as per 'X12' on 07.07.2021 to be shipped to Sri Lanka for which the Petitioner was the notified party and accordingly, the Petitioner has imported such items to Sri Lanka which was not permitted under the Imports and Exports (Control) Act No. 1 of 1969 at the time of importation.

The Respondents referring to the motion dated 24.09.2021 which is filed of record, illustrate the status of the sugar consignment imported by the Petitioner which is also part and parcel of the subject matter of this Application. The Respondents have filed the said motion as a result of the Order issued by this Court directing the 3rd Respondent to file a comprehensive motion giving details of the consignment and its actual present position of such consignment.

The following paragraphs of the said motion dated 24.09.2021 was brought to the attention of this Court;

“AND WHEREAS this application of the Petitioner relates to 3,294 Metric Tons (hereinafter referred as MT) of sugar and the 3rd Respondent has issued a debit note to release an amount of 2511 MT of sugar to the Petitioner. Consequently to the said debit notice in respect of 2511 MT of sugar, the Sri Lanka Customs has taken steps to withdraw the detention order regarding the same.

AND WHEREAS the remaining quantity of 783 MT of sugar is not released as result of the said quantity being imported subsequent to the expiration of the license issued to the Petitioner. This is evident as reflected in Bills of Lading dated 07.07.2021 and 06.07.2021 which are at page numbers 228 and 240 of the Petition and the relevant Custom Declaration which are at page numbers 266 and 278 of the said Petition at which license number IM-3-515-2021-001428 has expired on 30.06.2021. As per the above documents submitted by the Petitioner the License has expired on 30.06.2021 whereas the said quantity of sugar has been loaded on 07.07.2021 and 06.07.2021

AND WHEREAS the 4th Respondent has initiated steps in respect of the above quantity in terms of the Customs Ordinance.”

This Court on 29.09.2021 having decided to issue formal notice on the Respondents directed Sri Lanka Customs to conduct an inquiry within a period of two weeks in respect of the consignment of sugar of 783 MT (which is the subject matter of this application) and report to this Court. Such direction was made by Court for the best interest of justice and for fuller and proper adjudication of this matter. Sri Lanka Customs has completed the relevant inquiry under Section 8(1) of the Customs Ordinance in relation to the said quantity of sugar and subsequently, by Order dated 12.10.2021, the said consignment of sugar has been declared forfeited in terms of Section 12 and Section 43 of the said Customs

Ordinance read together with Imports and Exports (Control) Act. Further, an order has been made to release the said consignment to the Petitioner on a mitigated forfeiture in terms of Section 163 of the Customs Ordinance. Attention should be drawn to the payment of the amount of the mitigated forfeiture by the Petitioner in order to take over such consignments.

The Respondents strongly argue that the Petitioner is not entitled to maintain the instant Application as the Petitioner has failed to challenge the subsequent steps and the decisions made by the Sri Lanka Customs or not followed the proper course of action to duly resist the Order made by the Sri Lanka Customs on 12.10.2021. Thus, the contention of the Respondents is that the instant Application of the Petitioner is futile. It is noted that the learned Counsel for the Petitioner on 25.01.2022 withdrawing the documents filed along with his motion dated 01.11.2021 informed Court that he wishes to proceed only with the original Petition of the Petitioner dated 26.07.2021. The Respondents heavily relying on the precedence laid down in the cases of *Air Vice Marshall Elmo Perera vs. Liyanage and others (2003) 1 Sri. L.R. 331*, *Siddeek vs. Jacolyn Seneviratne and three others (1984) 1 Sri. L.R. 83* and *Ratnasiri and others vs. Ellawala and others (2004) 2 Sri. L.R. 180* submit that the Application of the Petitioner is futile and the relief sought by the Petitioner should be refused as the relief by way of judicial review is discretionary in nature.

It can be assumed that the process of detaining the subject consignment of sugar commenced due to the fact that the Petitioner's license was expired by the time the sugar was shipped from the port of loading and also due to the decision taken by the Controller General, which is reflected in 'X7'. The Petitioner without any reservation has participated at the customs inquiry upon which the decision dated 12.10.2021 has been made and such decision exists unchallenged up to date. The direct root cause for the said decision cannot be considered as the impugned decision of the Controller General ('X7'). Sri Lanka Customs has apparently examined at the said inquiry whether the Petitioner had imported the subject consignment of sugar lawfully with a valid license. Hence, it is important that the Petitioner lodge a claim appropriately, in order to get the said decision dated 12.10.2021 quashed before canvassing other matters, since it appears that the said decision dated 12.10.2021 is the terminal point of the process of the subject importation of sugar.

Now, I must examine whether the main relief sought by the Petitioner to quash the notification 'X7' has any demurral to the objection raised by the Respondents on futility.

The purported license No. IM-3-515-2021-001428 (annexed along with the documents marked as 'X9') relied on by the Petitioner has been expired on 30.06.2021 and as per 'X12' the relevant shipment has been loaded on 07.07.2021. No evidence has been placed before this Court contrary to the stand taken by the Respondents that the subject consignment of sugar has been shipped and landed after the expiry of the above license upon which the Petitioner claims validity of the shipment.

The aforesaid Extraordinary Gazette Notification No.2199/20 by which the importation of sugar has become subjected to Licenses from 30.10.2020 is still in full force. In terms of section 4(1) of the Import and Export Control Act, no person shall import into or export from Sri Lanka any goods except under the authority or otherwise than in accordance with the conditions of a license issued on that behalf under the said Act by the Controller General. Hence, I am convinced that when an expiry date is given in the Import Control License it should be considered as a condition for respective importation under such license. The consignments imported after the date of expiry should be considered as an importation without an Import Control License.

On the other hand, in terms of Section 12 of the Customs Ordinance, the restricted goods which are subjected to Import Control License shall not be imported. The goods which are imported in violation to the conditions stipulated and in contrary to the Regulations are eventually subjected to be forfeited in terms of Section 43 of the Customs Ordinance.

Thus, even in an event this Court decides to quash the Notification, marked 'X7', the importation of subject consignment of sugar cannot be justified as the Gazette Notification No.2199/20 is intact and the Petitioner is required to import the subject goods only by way of a valid license issued as a result of the said Gazette Notification No.2199/20.

The Petitioner is challenging the vires of the aforesaid Gazette Notification No.2199/20 by way of another Application bearing No. CA/Writ/341/2021 filed in this Court. According to the Respondents any decision given by this Court in the said Application CA/Writ/341/2021 will have no bearing on the instant application as the Petitioner had imported the relevant consignment of sugar without a valid license. It is salient that the Petitioner has chosen not to challenge the said Gazette Notification No.2199/20 in the instant application.

Especially based on the principles governing the applications for judicial review, every such application, in my view, should include the whole of the claim which the Petitioner is entitled to make in reference to the respective issues amenable to Review. Such Petitioner may relinquish such portion of his claim in order to bring an action within the jurisdiction of any court. I consider that it is reasonable to adopt a rationale here similar to what is embodied in section 34 of the Civil Procedure Court. If a Petitioner omits to sue in respect of or relinquishes any such portion of his claim intentionally, he should not, as a right, make a claim for Review for the portion so omitted unless it is done with a full disclosure of reasons for such omission or relinquishment. Anyhow, the reasons why the Petitioner has omitted to raise his claims against the above Gazette Notification No.2199/20 in the instant application are not known to Court.

For the reasons set out above, I am inclined to accept the proposition of the Respondents that the Application of the Petitioner is futile and accordingly, I hold that the Petitioner is not entitled to any of the reliefs prayed for in the prayer of the Petition.

Application is dismissed.

Judge of the Court of Appeal

Dhammika Ganepola J.

I agree.

Judge of the Court of Appeal