

**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* under and in terms of
Article 140 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

Court of Appeal Case No.

CA/WRT/0463/2021

1. Subramaniam Vasudevan,

No. 15, Alfred House Gardens

Colombo 03.

2. Sarasvathi Vasudevan,

No. 15, Alfred House Gardens

Colombo 03.

3. Vasudevan Shayanthan,

No. 15, Alfred House Gardens

Colombo 03.

4. Vasudevan Mahishini,

No. 15, Alfred House Gardens

Colombo 03.

5. Vasudevan Sudeshan,

No. 15, Alfred House Gardens
Colombo 03.

Trading under the name and style of
M/s Janatha Steels,
No. 20, Quarry Road,
Colombo 12.

Petitioners

Vs

1. Major General (Rtd.) G. V. Ravipriya,

Director General of Customs
Sri Lanka Customs,
Customs House,
No. 40, Main Street,
Colombo 11.

1A. **Director General of Customs,**

Sri Lanka Customs.

Customs House,

No. 40, Main Street,

Colombo 11.

Substituted 1st Respondent

2. **D. S. K. Rupasinghe,**

Superintendent of Customs

Sri Lanka Customs,

Customs House.

No. 40, Main Street,

Colombo 11.

3. **M. D. Gamalathge,**

Assistant Superintendent of Customs

Sri Lanka Customs,

Customs House,

No. 40, Main Street,

Colombo 11.

4. **E. G. Anton,**

Deputy Director of Customs
Sri Lanka Customs,
Customs House,
No. 40, Main Street,
Colombo 11.

Respondents

Before: **M. T. MOHAMMED LAFFAR, J.**
S. U. B. KARALIYADDE, J.

Counsel: Dr. K. Kanag-Isvaran, P.C. with Dr. Raj Mohan and Shivaan
Kanag-Isvaran, instructed by Ms. Sinnadurai
Sundaralingam & Balendra for the Petitioners.

Manohara Jayasinghe, D.S.G. with Ms. Navodi De Soyza,
S.C. for the Respondents.

Argued on: 24.05.2023

Written Submissions on: 28.11.2023 by the Petitioners.
28.11.2023 by the Respondents.

Decided on: 02.05.2024

MOHAMMED LAFFAR, J.

The Petitioners in this Application are seeking reliefs as prayed for in the prayers to the Petition dated 24/08/2021. When the matter was supported on 14/09/2022 for formal notices, this Court issued notices only in respect of paragraph (b) of the prayers to the Petition, which reads thus;

“b) Grant and Issue a mandate in the nature of a Writ of Certiorari, quashing the decision of the 1st Respondent contained in the letter dated 18th March 2021 marked "A-4" disallowing the appeal lodged in terms of Section 2 of the Customs Ordinance by letter dated 20th December 2017;”

On 25th October 2016, the 4th Respondent, visited the Petitioners premises and having produced a copy of a Letter of Authorization, the 4th Respondent's officers inspected the premises and obtained statements from employees working in the Imports Department, Accounts Department, Billing Department and the Recovery Department of the Petitioner Company. Subsequent to the initial raid on the 25th of October 2016, the 4th Respondent Officers visited the Petitioner Company premises for a further twenty one days. During the said visits, the 4th Respondent Officers further inspected and obtained statements from employees of the Petitioner Company.

It is submitted by the Petitioners that certain employees of the Petitioner Company were later summoned to provide additional statements and produce documents and that neither the 1st Petitioner nor the other employees of the Petitioner Company were afforded the chance to review the statements they provided, which were recorded by Customs Officers. Instead, they were instructed by the Customs Officers to sign the statements without verifying their contents beforehand.

On the 3rd of March 2017, the 1st Petitioner received summons from the Sri Lanka Customs to present themselves at a Customs Inquiry on the 10th of March 2017 at 10:30 am. The Customs Inquiry commenced at 10:30 am and was presided over by the Deputy Director of Customs as the Inquiring Officer, the 2nd Respondent as the Prosecuting Officer and the 3rd Respondent as the Producing Officer and two other Investigating Officers.

On the conclusion of the inquiry, the Inquiring Officer informed the 1st Petitioner and the other three employees of the Petitioner company that a forfeiture of Rs. 200,000,000/- (Two Hundred Million) had been imposed on the said Petitioner Company and a further Rs. 100,000.00/- each was imposed by way of a penalty personally against the 1st Petitioner and the other three employees of the Petitioner Company as evinced in report marked **A6**

The Petitioner was informed by the 2nd Respondent that the Petitioner would be arrested and handed over to the Police if the penalties were not paid

immediately. Such payment was made by the Petitioners by way of 28 pay Orders / cheques to which was received through receipts marked "**A-12(a)**", "**A-12(b)**", "**A-12(c)**", "**A-12(d)**" and "**A-12(e)**"

Subsequently, the Respondents provided a certified copy of the Inquiry Notes containing the Order of the Inquiring Officer in Customs Inquiry No. PCAD/HQ0/79/ after the conclusion of the Customs Inquiry.

On the 20th of December 2017, the Petitioners appealed to the Director General of Customs, in terms of Section 2 of the Customs Ordinance, setting out grounds upon which the Order of the Inquiring Officer in Customs Case No. PCAD/HQ0/79/2016 should be set aside.

by letter dated 18th March 2021 marked **A4**, the 1A Respondent informed the Petitioners that;

"You are kindly informed that your appeal is rejected because there is no provision to grant the relief for your appeal since Section 154 of the Customs Ordinance read with Section 461 of the Civil Procedure Code, requires 01-month notice for an appeal against the Customs administration and your appeal has been submitted to Sri Lanka Customs after 09 months from the date of inquiry order."

The contention of the Respondents are;

- 1) Under Section 154 of the Customs Ordinance "reproduce" 1 month notice should be given before preferring an appeal. As the Petitioners have not complied with Section 154 the appeal is bad in law
- 2) Under Section 2 of the Customs Ordinance there is no duty cast upon the Director General of customs to entertain appeals

As per prayer (b) to the Petition, the Petitioners are seeking to quash **A4** by which the Director General of Customs informed the Petitioner that their appeal is rejected on the footing that they have failed to give 1 month notice as required in Section 154 of the said Ordinance. Therefore, *ex facie*, **A4** is erroneous as the matter in dispute does not come under Section 154 and therefore P4 is liable to be quashed *in limine*.

Therefore, it is necessary for this Court to decide as to whether Section 154 is applicable to the facts of the case in hand.

Section 154 of the Customs Ordinance reads as follows;

"All ships, boats, goods, and other things which have been or shall hereafter be seized as forfeited under this Ordinance, shall be deemed and taken to be condemned, and may be dealt with in the manner directed by law in respect to ships, boats, goods, and other things seized and condemned for breach of such Ordinance, unless the person from whom such ships, boats, goods and other things shall have been seized, or the owner of them, or some person authorized by him, shall, within one month from the date of seizure Of the same, give notice in writing to the Director-General or other chief Officer of customs at the nearest port that he intends to enter a claim to the ship, boat, goods and other things seized as aforesaid,....."

In interpreting the above Section, it is abundantly clear that appeals under Section 154 can be lodged when **the ships boats goods or other are seized as forfeited**. However, in the instant case the disputed items, namely steel, has not being seized as forfeited by the Customs, and no goods were submitted as productions in the inquiry. After inquiry only a penalty was imposed upon the Petitioners. Section 154 would only apply if such goods were seized as forfeited.

In this regard, I refer to the case of **Muthiah Sasitharan Vs. Director General of Customs**¹ where Vijith K. Malalgoda, PC J held;

"In the said circumstances, this court does not observe any nexus between section 129 and 154 of the Customs Ordinance for the Petitioners to give notice under section 154 since nothing such as ships, boats, goods and other things have been seized as forfeited from them."

Therefore, considering that goods have not being seized as forfeited by the Customs, and no goods were submitted as productions in the inquiry, Section 154 is not applicable for the scenario at hand.

Thereafter, the Petitioners made an appeal to the Director General of Customs under Section 2 of the Customs Ordinance marked as A14. The contention of

¹ In CA/WRT/127 & 128 /2014 Court of Appeal minute dated 14.10.2016

the Petitioners appeal was that the Inquiring Officer did not hold a fair inquiry, the Petitioners were not properly heard, statements were recorded in Sinhala language whereas the Petitioners are primarily speakers of Tamil and not very conversant in Sinhala. Allegations against the Inquiry are set out in paragraph 32 to the written submission of the Petitioners. In those circumstances, a question arises as to whether there exist valid grounds to make the appeal pertaining to these irregularities.

With regards to appeals, Section 163 of the Customs Ordinance permits aggrieved parties to prefer an appeal which is confined **only to mitigate** a forfeiture or penalty and not nullify. However, at this juncture it is necessary to determine as to whether an appeal can be preferred under Section 2 of the Ordinance.

Section 2 of the Customs Ordinance reads as follows;

"There may be appointed a Director-General of Customs (hereinafter referred to as the "Director-General") and other officers and servants for the management and collection of the customs, and the performance of all duties connected there-with, on such salaries and allowances as may be provided in that behalf, and there may be required of every person now employed or who shall hereafter be employed in the service of the customs, such securities for his good conduct as the Minister may deem necessary, and the Director-General shall, throughout Sri Lanka, have the general superintendence of all matters relating to the customs."

Although Section 2 does not strictly denote an appeal process, the Director General's powers encompass the powers of the Customs and that included the power to conduct inquiries and appeals. Therefore, it is implicit that he is empowered to even accept appeals. If such an inference was not so, there would be no avenue to address grievances, leaving the Petitioners unheard and potentially leading to a situation where the Respondents can evade accountability.

In this regard, I refer to **Navaratne Vs Director General of Customs and Others**² as per Wijayaratne, J. with Tilakwardena, J. (P/CA)

"There is no specific provisions found in the Customs Ordinance specifically authorizing or empowering the Director-General of Customs to revise an order made by an inquiring officer deputizing the Director-

² (2003) 3 SLR 310

General of Customs. However, the provisions of section 2 of the Customs Ordinance vested the Director-General of Customs with the power of superintendence which reads,

"the Director-General of Customs shall, throughout Sri Lanka, have the General Superintendence of all matters relating to customs"

To "Superintend" means "to regulate with authority" and to regulate means "to adjust by rule, method or established mode; to subject to governing principles of laws" (Blanks Dictionary 6th Edition)

Thus the Director-General of Customs has the power to regulate/to subject to governing principles or laws, all matters relating to the customs, which includes subjecting the orders made by his deputies to the laws and to adjust matters by rules (of Department of Customs).

Accordingly this court is of the view that the Director-General of Customs has implied power and authority in exercise of his Superintendence of all matters relating to the Customs to revise any order made by any deputy. Reasons dictate that for the proper management and due administration of all matters relating to customs and specially to such abuse of power and authority by the officers of the Department the Director-General of Customs should be vested with such powers and authority.

Consequently I hold that the Director-General of Customs had the power to revise any order made by any Deputy or subordinate officer on legitimate grounds and or for reasons stipulated, in the direction of proper management and due administration of all matters relating to customs."

Hence, the Petitioners possess the right to file such an appeal under Section 2 of the Customs Ordinance. It is incorrect for the Director General to waive or disregard the duty imposed upon him under Section 2, which requires him to consider such appeals as there exists a duty on his part to hear such appeals. Therefore, the Director General is obligated to consider and address appeals brought forth by the Petitioners, rather than dismissing them without due consideration.

For the foregoing reasons, I hold that the Petitioners are entitled to the relief as prayed for in paragraph (b) of the prayers to the Petition. The Petitioners

are entitled to recover a sum of Rs. 25,000/- from the Respondents as the cost of the Application.

Application allowed. With costs.

JUDGE OF THE COURT OF APPEAL

S. U. B. KARALLIYADDE, J.

I agree.

JUDGE OF THE COURT OF APPEAL