

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

In the matter of an Application for a mandate
in the nature of Writs of *Certiorari* and
Mandamus under and in terms of Article 140
of the Constitution.

Singankutti Arachchilage Niroshan Kumara,
Kumara Enterprises,
No. 11, Muruthawala,
Pasyala.

PETITIONER

Vs.

Court of Appeal Case No:
CA/WRIT/315/2024

1. Mr. Nishantha Weerasinghe,
Commissioner General of Motor
Traffic,
Department of Motor Traffic,
No. 341, Elvitigala Mawatha,
Narahenpita,
Colombo 05.
2. Mr. P.B.S.C. Nonis,
Director General of Customs,
Sri Lanka Customs,
No. 40, Main Street,
Colombo 11.

RESPONDENTS

Before: Mayadunne Corea, J
Mahen Gopallawa, J

Counsel: A. R. P. Bandara with Kalana Batagoda for the Petitioner.
Abigal Jayakody SC for the Respondents.

Argued on: 01.07.2025

Written Submissions: For the Petitioner on 21.07.2025
For the Respondents on 25.07.2025

Decided on: 26.09.2025

Mayadunne Corea J

The Petitioner in this Application, *inter alia*, sought the following reliefs:

- “(b) *Grant and issue a mandate in the nature of a writ of Mandamus directing the 1st Respondent and/or his servants or their successors in office thereof, to forthwith register the Special Purpose vehicle bearing chassis numbers KDH201-0130862 & VW2E26-016295 as “DUAL PURPOSE VEHICLES subject to the only condition that MOBILE WORKSHOP FITTED which is the applicable registration procedure available at the time of importation of above vehicles to the country.*
- (c) *Grant and issue a mandate in a writ of Mandamus compelling the 1st Respondent to reply to the letter marked as P16(a) stating their position to refuse the registration of these vehicles as “DUAL PURPOSE VEHICLES” subject to the only condition that MOBILE WORKSHOP FITTED which was the applicable registration procedure available at the time of importation of above vehicles to the country.*
- (d) *Grant and issue a mandate in a writ of Prohibition preventing the 1st Respondent from registering the vehicles in question under the Department of Motor Traffic Number Series of “PZA” in terms of Gazette Notification No. 2224/24 dated 22nd April 2021.”*

The facts of the case briefly are as follows. The Petitioner imported two special purpose vehicles to Sri Lanka on or around 21.05.2019. Following the payment of customs duties, the vehicles were delivered for customs inspection purposes. The vehicles were

thereafter detained by the Sri Lanka Customs Preventive – Admin branch for an investigation relating to the importation of the said vehicles, and the 2nd Respondent failed to release the vehicles for a period of four years. The vehicles were released to the Petitioner on or around 21.06.2023. The Preventive Administrative Branch of the Sri Lanka Customs were unable to establish any violation committed by the Petitioner under the Customs Ordinance or any other law. Despite this, it is alleged that the Petitioner had to pay Rs. 2 million as a demurrage to have the consignment released. The Petitioner had to incur further expenses to have the vehicles restored to roadworthy condition.

The Petitioner further alleges that on 20.11.2023 the Petitioner submitted the vehicles for registration with the 1st Respondent. The officers of the 1st Respondent had informed the Petitioner that the vehicles should be registered under the “PZA” category according to the special Extraordinary Gazette Notification No. 2224/24 dated 22.04.2021. The Petitioner wrote to the 1st Respondent and requested to register the vehicles in terms of the Gazette Notification No. 2113/09 dated 05.03.2019, which was the registration procedure available and applicable at the time of importation of the above vehicles as “dual purpose vehicles” subject only to the condition “mobile workshop fitted”. The 1st Respondent, however, had failed to reply to the Petitioner’s letters.

The Petitioner’s contention

The Petitioner challenged the acts of the Respondents on the following grounds:

- The Petitioner was unable to complete the registration process until the new Gazette Notification No. 2224/24 came into effect as the vehicles were unlawfully detained by the Customs.
- The Petitioner has a legitimate expectation to register the vehicles as per the law/procedure available at the time of importation of the vehicles.
- Gazette No. 2224/24 was issued under the Excise (Special Provisions) Act, No. 13 of 1989 and is not relevant to the vehicles in question since the Petitioner imported the vehicles on 21.05.2019 and submitted the customs declaration on 22.05.2019 in terms of Gazette No. 2113/09.
- The Respondents cannot use conditions laid down in Gazette No. 2224/24 to register a motor vehicle imported and cleared from Customs in terms of Gazette No. 2113/09.

The Respondents' contention

The Respondents raised the following objections:

- The vehicles were detained by the Customs for the purposes of investigation. On 18.06.2019, the 2nd Respondent approved the Petitioner's request to have the vehicles released on a bank guarantee. However, the Petitioner failed to take steps to collect the vehicles.
- The 1st Respondent assigned the "PZA" number series for special purpose vehicles and the "PA" number series for dual purpose vehicles. Thereafter, a committee appointed by the Ministry of Finance submitted a report to the Committee on Public Accounts to register such vehicles under a "PZA" number series. Pursuant to a letter by the Ministry of Finance dated 08.10.2019, the 1st Respondent took steps to register special purpose vehicles under the "PZA" number series with effect from 01.10.2019.
- Subsequent to Gazette No. 2224/24 special purpose vehicles are registered under the "PZA" series.

Analysis

It is common ground that the Petitioner had imported two vehicles namely, a used Toyota Hiace mobile workshop and a used Nissan NV350 Caravan mobile workshop. The Cusdecs of the said two vehicles were marked as P5(a) and P5(b). Both have the commodity HS code 8705.90.11. The vehicles had arrived on 21.05.2019. After inspection and payment of duties, the vehicles had been sent to the Grayline Container Yard. Thereafter, on 23.05.2019 the two vehicles had been detained by the Customs for investigations.

Declaration of the vehicle

The Petitioner had declared the said two vehicles as special purpose vehicles. Subsequent to the declaration on 23.05.2019, the two vehicles were detained and on 27.05.2019 a detailed examination had been carried out to ascertain the correct classification of the vehicles. It is argued by the Respondents that they had referred the two vehicles to the Commodity Classification Directorate of the Customs. It was further argued by the Respondents that as there had been a concern that the vehicles imported are modified and sold in the market as vans, they had referred it to the Customs Commodity Classification Unit.

Release of the vehicles

The Petitioners strongly contended that the vehicles that were so detained were not released by the Respondents. The Respondents submitted that on the request of the Petitioner they had informed him that the vehicles could be released after obtaining a bank guarantee. This Court observes that the suggestion had come from the Petitioner himself by his letter dated 18.06.2019 marked as R1. In the said letter, the Petitioner has proposed and sought approval for the release of the vehicles upon tendering a bank guarantee pending the ruling by the Nomenclature and Classification Committee (herein referred to as “NC Committee”). The said letter contains several minutes of officers of the Respondents. In the first minute, the Director of Customs with a seal bearing Director of Customs notes that he has no objection for the release of the vehicles under suitable security. Thereafter, there is another minute dated 18.06.2019 on the same lines suggesting the security to be taken which has been approved on 18.06.2019. Subsequently, there is another minute dated 19.06.2019 giving instructions to calculate the value of the vehicle and also a minute to take steps to release the vehicle after retaining the original documents.

The learned State Counsel appearing for the Respondents vehemently contended that as per the document R1 and the minutes thereon, they had communicated the minutes to the Petitioner and that the Petitioner had failed to take any steps pertaining to their request made by R1. It was her contention that, if the Petitioner was interested and pursued with their request, the vehicle would have been released upon the security. The learned Counsel for the Petitioner, however, submitted that he was unaware of these minutes or the decision to release the vehicle upon accepting security until the NC Committee makes its decision. This Court observes that, if the Petitioner was interested in getting the vehicle released especially after the request marked as R1, he should have pursued the said application to see the outcome, which in this instance appears to have not happened.

It is also pertinent to note that, after the letter marked as R1 was dispatched on 18.06.2019, there is no further correspondence tendered by the Petitioner to demonstrate that he had followed up with the said request. In the absence of such further correspondence, it appears that the Petitioner after tendering R1 seems to have not followed up on their request. However, keeping the said fact as it may, it is not in dispute that the vehicle had finally been released on 21.06.2023. This is reflected as per the document marked P11. The Petitioner alleges that upon accepting the vehicle he had found that the vehicle had to be repaired and incurred a substantial cost in repairs and had to pay demurrages to Grayline Container Yard for keeping the vehicle for nearly four years.

However, the said decision to detain was not challenged by the Petitioner and also the payment of demurrages and the cost they had to incur pertaining to the repairs of the vehicles was not a matter challenged before this Court, other than to state that they had incurred the said expenditure.

Petitioner's attempt to register the vehicle

Thereafter, the Petitioner, had submitted the vehicles for registration to the 2nd Respondent on 20.11.2023 (as pleaded in paragraph 18 of the Petition). It is the contention of the Petitioner that upon tendering for registration the Petitioner, had been informed that the law pertaining to registration of the category of vehicles the Petitioner had imported had changed and the new category to register the two vehicles had come into operation by Extraordinary Gazette No. 2224/24 dated 22.04.2021. The said Gazette is marked as P14. Accordingly, the Petitioner had been asked to register the vehicles under the new category. However, it is pertinent to note that this request is not before this Court.

Document marked P14

The Court had considered the Gazette marked as P14. As per the said Gazette which had been issued pursuant to section 3 of the Excise (Special Provisions) Act, No. 13 of 1989, the Extraordinary Gazette Notification No. 2113/9 dated 05.03.2019 which was in operation has been amended and the new Gazette P14 had come into effect from 23.04.2021. It was brought to the attention of this Court that by the said Gazette special purpose motor vehicles designed for the purpose of “mobile workshops” which has been classified under HS heading 8705.90 has been amended. In observing the said two Gazettes, the Court finds that there is a remarkable change as the following has been inserted immediately after item 8 of Schedule II of the Extraordinary Gazette Notification No. 2113/9 dated 05.03.2019. The Schedule B states as follows:

SCHEDULE B

By inserting the following item immediately after item 8 of the Schedule II of the Extraordinary Gazette Notification No. 2113/9 dated March 05, 2019, as amended.

<i>No. I</i>	<i>Description II</i>	<i>Excise Duty III</i>
9	Special purpose motor vehicles designed for the purpose of mobile workshops, imported by registered service undertakers classified under the HS Heading 8705.90, and registered under the Department of Motor Traffic Number Series of “PZA”, on the approval of the Secretary to the Treasury and not to be transferred within 05 years from the date of registration.	Rs. 2,000,000 per unit

However, the Petitioner contended that this should not apply to the Petitioner’s two vehicles. The Petitioner’s contention is based on the premise that what should apply to the two vehicles is what is contemplated under the previous Gazette No. 2113/09. Further, this Court observes that Schedule 1 of the above mentioned Gazette states the following:

SCHEDULE I

<i>H.S. Heading I</i>	<i>H.S. Code II</i>	<i>Description III</i>	<i>Excise Duty IV</i>
87.05		Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, breakdown lorries, crane lorries, fire fighting vehicles, concrete mixer lorries, road sweeper lorries, spraying lorries, mobile workshops, mobile radiological units)	
		Mobile workshops :	
	8705.90.41	Modified vehicles of heading 87.02, not more than three years old	Rs. 4,500,000/- per unit
	8705.90.42	Modified vehicles of heading 87.02, more than three years old	Rs. 6,000,000/- per unit
	8705.90.43	Modified vehicles of heading 87.03, not more than three years old	Rs. 11,000/- per cm3
	8705.90.44	Modified vehicles of heading 87.03, more than three years old	Rs. 11,000/- per cm3
	8705.90.45	Modified vehicles of heading 87.04, not more than three years old	Rs. 4,500,000/- per unit
	8705.90.46	Modified vehicles of heading 87.04, more than three years old	Rs. 6,000,000/- per unit

	8705.90.47	Other, not more than seven years old	Rs. 1,000,000/- per unit
	8705.90.48	Other, more than seven years old	Rs. 2,500,000/- per unit
		Other, Modified vehicles of heading 87.02, 87.03 and 87.04	
	8705.90.51	Modified vehicles of heading 87.02, not more than three years old	Rs. 4,500,000/- per unit
	8705.90.52	Modified vehicles of heading 87.02, more than three years old	Rs. 6,000,000/- per unit
	8705.90.53	Modified vehicles of heading 87.03, not more than three years old	Rs. 11,000/- per cm3
	8705.90.54	Modified vehicles of heading 87.03, more than three years old	Rs. 11,000/- per cm3
	8705.90.55	Modified vehicles of heading 87.04, not more than three years old	Rs. 4,500,000/- per unit
	8705.90.56	Modified vehicles of heading 87.04, more than three years old	Rs. 6,000,000/- per unit
		Other :	
	8705.90.91	g. v. w. not exceeding 4 tonnes, not more than seven years old	Rs. 1,500,000/- per unit
	8705.90.92	g. v. w. not exceeding 4 tonnes, more than seven years old	Rs. 2,500,000/- per unit

The learned State Counsel in a lengthy submission explained to the Court the rationale of bringing the amendment depicted in P14. It was her contention that the said amendment was warranted as the importers were abusing a lacuna in the registration process and were abusing the process by importing vans under the category of being mobile workshops attracting a small duty and thereafter modifying it and selling them as passenger vans. To establish his contention, the learned State Counsel appearing for the Respondents relied on the documents marked as R3, R4, R5. Keeping it as it may, this Court will now consider the pivotal question before this Court.

The Gazette applicable for registration of the Petitioner's vehicles

The learned Counsel for the Petitioner submits that the law applicable the registration of the Petitioner's vehicles should be the law that prevailed at the time of importation of the vehicles and not the law that prevails at the time he tendered his application for the registration of the vehicle. His submissions are based on two grounds, namely, the vehicles were imported during the period of the previous Gazette namely Gazette No. 2113/9 and which is prior to the Gazette No. 2224/24 coming into effect. Secondly, he argues that the reason the vehicles were not registered after importation was not a fault of his and that it was beyond his control.

Hence, he argues that the decision of the 1st Respondent not to registering his vehicles as per the applicable registration procedure available at the time of importation of the vehicles are among other things, *ultra vires*.

Applicable procedure pertaining to the Petitioner's two vehicles

As per the two Gazettes mentioned above, it is apparent the registration process that prevailed on 23.04.2021 was what was contemplated under Gazette Notification No. 2113/9. It is also not disputed that the two vehicles had arrived in the country on 27.04.2019 before Gazette P14 came into effect. However, the said vehicles had been detained by the 2nd Respondent due to an issue with the classification of the HS Code. This Court observes with dismay the time taken by the NC Committee to finally come to a conclusion regarding the HS Code of the vehicles. The NC committee had taken an abnormally long time. Finally, the NC Committee after a long delay had come to the conclusion that the HS Code in the Cusdecs was correct. However, the process had taken four years. During this time, the process of registration had been amended. However, the Court observed the Petitioner had not challenge the detention of the two vehicles nor the long period taken for them to come to the conclusion. Hence, this Court will not deliberate on the said issues.

The question before this Court would be which process of registration should apply to the Petitioner's vehicles. Before considering the said question, the Court would also like to observe the Petitioner's complaint and his unwillingness for the provisions of Gazette P14 being applied pertaining the registration of the two vehicles. His main contention was that under the previous Gazette, the said vehicles were registered as dual-purpose vehicles subject to a condition which states "mobile workshop fitted" and were given the normal registration numbers.

However, by the amendment introduced by P14, the excise duty had been increased to Rs. 2 million and the said vehicles were to be registered by the Department of Motor Traffic under a special number series (PZA) and also with an attached condition to state that it should not be transferred within 5 years from the date of registration.

As per the submissions of the learned Counsel for the Petitioner, his main grievance is the vehicles being registered under the number series PZA and the condition of non-transferability within the period of five years which he contends should not be

applicable pertaining to the two vehicles. This is especially evident by the letter written by the Petitioner to Commission General of Motor Traffic dated 20.03.2024 marked as P15a. Keeping the said observation as it may, this Court will now consider whether Gazette P14 should apply to the Petitioner's application for registration of the vehicle.

The Petitioner argues that he had paid all duties upon importation of his vehicles based on the law that was prevailing at the time of importation. Namely, pursuant to the provisions contained in Gazette No. 2113/9 dated 05.03.2019 (P10). The Petitioner further argues his vehicle had been detained for no fault of his.

Hence, he argues that the registration cannot be made under the new Gazette which is marked as P14. In my view, payment of duty upon importation and registration of the vehicle has to be considered separately. A vehicle once imported, attracts a duty that has to be paid and, in this instance, it has been paid as per the provisions in Gazette P10. The payment of duty is not contested. Thereafter, once the vehicle is released the importer/owner in this instance should take steps under the Motor Traffic Act to effect registration of the imported vehicles. Let me now consider the provisions pertaining to the registration of motor vehicles stipulated under the Motor Traffic Act as amended.

Registration of motor vehicles under the Motor Traffic Act

Section 7 of the said Act stipulates the commencement of proceedings to register a vehicle. As per section 7, every importer/owner should make an application for registration to the Commissioner in a prescribed form. The said application has to be signed by the person who is entitled to the vehicle along with the particulars. Thereafter along with the application, pursuant to section 8, a prescribed fee has to be paid. For more clarity let me reproduce section 7 of the Motor Traffic Act.

“Section 7

- (1) Every application for the registration of a motor vehicle shall be made to the Commissioner-General substantially in the prescribed form, shall be signed by the person for the time being entitled to the possession of the motor vehicle, and shall set out all particulars relating to that motor vehicle in respect of such of the matters specified in that form as may be applicable to that motor vehicle.*

- (2) *Every applicant for the registration of a motor vehicle, other than a motor cycle, shall, if required to do so by the Commissioner-General, furnish proof of the weight of the motor vehicle to the satisfaction of the Commissioner-General.*
- (3) *Notwithstanding anything in subsection (1) to the contrary, any dealer in motor vehicles, who is authorized in writing for the purpose by a person who is absent from Sri Lanka, may make application on behalf of that person for the registration of a motor vehicle, and in any such case the application shall for the purposes of this section and of section 9 (1) be deemed to have been signed and made by that person.*
- (4) *The application for the registration of a motor vehicle which is let under a hire purchase or leasing agreement shall be forwarded to the Commissioner-General by the person who so let that vehicle. Every such application shall be accompanied by a statement in the prescribed form, and by the prescribed fee for the entry in the register, as required by subsection (5) of section 9 of the name of that person as the absolute owner thereof.”*

Upon plain reading of the provisions pertaining to registration, it is obvious that merely because there is a payment of duty by an importer, the registration process would not automatically commence. The payment of duty is made to the 2nd Respondent and is governed by a separate legal regime. The Petitioner’s main grievance before this Court is not on the payment of duty but on the registration of the two vehicles.

The registration process will commence only upon the importer making an application for registration and by making a payment of the prescribed fee. This establishes that payment of duty and the process of registration are two different fragments that the person entitled to the vehicle has to comply with. Hence, it is clear that the process of registration will commence only upon the fulfillment of the above two conditions.

The application for registration

Let me now consider, when the Petitioner tendered his application for the registration of the vehicles. As per his arguments and specifically pleaded under paragraph 18 of the Petition, the Petitioner pleads that he submitted the vehicles for registration on or around 20.11.2023. He attributes the delay for submitting for registration due to two reasons. One, the vehicles being detained by the 2nd Respondent pertaining to an inquiry, and the second, because the Petitioner had to repair the vehicles upon being released by the 2nd Respondent. The Petitioner as stated above, is not challenging the

decision to detain nor the time period it had taken to release the vehicles. In the absence of any such challenge, this Court will not consider the process pertaining to the detention and the decision of the Nomenclature Committee.

However, it is clear that according to his own pleadings, the Petitioner had waited till 20.11.2023 to submit his vehicles for registration. As I have stated above, the registration is a completely different process from the importation, the registration is governed by the Motor Traffic Act, and Regulations pertaining to registration of vehicles. The said law and regulations to be applicable would be as at the time of submitting the application for registration and on fulfillment of the requirements as stipulated pursuant to sections 7 and 8 of the Act, and the Regulations applicable published in the Gazette. The applicable legal regime at the time the Petitioner submitted his vehicles for registration is prescribed by P14, namely Gazette No. 2224/24 dated 22.04.2021, which came into effect on 23.04.2021. Accordingly, from that day the provisions pertaining to registration on payment of duty stipulated in Gazette Extraordinary No. 2113/09 dated 05.03.2019 is no longer in force.

Hence, what is in effect from 23.04.2021 are the Regulations promulgated under section 3 of Excise (Special Provisions) Act, as stipulated in the Gazette Notification marked as P14.

To reiterate, the amendment made pertaining to the registration of vehicles, relating to the two vehicles the Petitioner has imported is in Schedule B of the said Gazette which I have reproduced above in this judgment.

Hence, any vehicle imported under the HS Heading 8705.90 which is submitted for registration after 23.04.2021 will attract the regime stipulated under P14, whereby a special motor traffic number series (PZA) would be allocated. Further, upon registration the conditions stipulated in Schedule B would be attracted.

This Court observes, that as, per the description, a vehicle to be registered under the PZA category could be done on the approval of the Secretary to the Treasury subject to the condition that it cannot be transferred within 5 years from the date of registration. Accordingly, this Court, observes that this would be the applicable legal regime for any registration of a vehicle under the above mentioned Harmonized Commodity Description and Coding System (herein referred to as the “HS Code”) with effect from 23.04.2021. Hence, the Petitioner’s main contention that since he had imported the vehicle prior to this Gazette coming into operation is not tenable. As I have stated

clearly, the law that would be applicable to the registration of the Petitioner's vehicle should be the law applicable as at the time he tenders the application for registration pursuant to sections 7 and 8 of the Motor Traffic Act.

It was not disputed by the parties that upon an application being received pursuant to section 9, the Commissioner General would assign a number and register the person as the registered owner and specifically enter in the register any requirements of the Motor Traffic Act or any other Act which is complied with, and, thereafter, issue the certificate of registration in the prescribed form.

The Petitioner also contended that since his importation of the vehicles were in the year 2019, the applicable Gazette stated by the 1st Respondent is published in 2022, the said Gazette should not have a retrospective effect. It was his contention that the law should be prospective and should not be retrospective. In this instance he submitted the cases of *Leechman and Company v. Rangalla Consolidated Limited 1981 2 SLR 373* and *Bandadranayake v Weeraratne (1978-79) 2 SLR 419*. I have considered the said case law and I find the facts and circumstances are different from the case before me. In this instance as I have stated above the application of P14 pertaining to the vehicles does not have a retrospective effect due to the fact that the applicable regime would be only subsequent to an application for vehicle registration being tendered. In this instance, the Petitioner has tendered for the first time to register his vehicle subsequent to P14 coming into effect in 2023. Hence, the argument that P14 cannot have a retrospective effect, has to fail.

It is also pertinent to note in this instant case before me, the Petitioner has failed to tender the application for registration of the vehicles even after the said vehicle had been released from the Customs. As per his own admission, the Petitioner contends that he needed to send the vehicles for repairs before it could be sent for registration. Hence, there is a further lapse of time from the time the vehicles were released from the Customs and the Petitioner making the application to the 1st Respondent.

The prayers in the Petition

Let me now consider the prayers of the Petitioner. The Petitioner by prayer (b) is seeking a Writ of *Mandamus* to direct the 1st Respondent to register the two vehicles in question according to the provisions contained in a Gazette which is no longer in force as the said Gazette had been amended by the Gazette marked as P14. In my view, the said prayer has to fail as the Petitioner cannot derive any legal right from a provision

which is no longer in force. It is also pertinent to note that for the same reason, the prayer (c) too has to fail.

Further, prayer (d) has to fail, as in my view, the Petitioner cannot obtain Writ of Prohibition to prohibit the 1st Respondent from acting according to the law that is in force.

As I have examined at length the merits of the Application before me and I find that there appears to be no merit in this Application, I will not address all objections raised by the Respondents.

Conclusion

This Court has carefully considered the submissions made and the documents tendered to Court. However, for the above stated reasons in this judgment I am not inclined to grant the reliefs prayed by the Petitioner. Therefore, I proceed to dismiss this Application. The parties to bear their own cost.

Judge of the Court of Appeal

Mahen Gopallawa, J

I agree

Judge of the Court of Appeal