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.

John Keells CG Auto (Pvt) Ltd.
No 117,
Sir Chittampalam A. Gardiner Mawatha,
Colombo 02.

CA (Writ) Application No. 810/2025

PETITIONER

vs

1. Director General of Customs
   Sri Lanka Customs,
   Customs House,
   Colombo 11.

& OTHERS

RESPONDENTS

Before: Hon. Justice N. R. Abeysuriya PC (P/CA)

Hon. Justice K. P. Fernando

Counsel: Farzana Jameel PC with Riad Ameen, Varuna Wijenayake, Shahanie Mackie instructed by Shehara Gunasekara for the Petitioner-Respondent.

Manohara De Silva PC with Harithriya Kumarage instructed by Sanath Wijewardane Associates for the party seeking intervention.

Sumathi Dharmawardena PC A.S.G. with Chaya Sri Nammuni D.S.G. with Medhaka Fernando S.C. and J. Sourjah S.C. for the Respondent-Respondents.

Supported On: 28/10/2025

Written Submissions Tendered On: 18/11/2025

Decided On: 12/12/2025

N. R. Abeysuriya, PC, J. (P/CA),

In the instant matter, the party seeking intervention *(hereinafter sometimes referred to as Intervenient Petitioners)* has sought intervention on two grounds which according to them are grounds considered by a catena of judicial authorities cited by them in support of the application for intervention.

The said grounds are,

1. The intervenient party has sufficient interest and is a necessary party in order for Court to assess the merits and demerits of the application.
2. The intervenient party is affected by the relief sought by the Petitioner.

The petitioners represent “parallel importers” of the same type of vehicles being imported by the petitioner in the petition i.e BYD. It is their contention that any judgment/ order in this writ application may directly affect them particularly with regard to the possibly higher customs duty the intervenient petitioner may be called upon to pay unless their concerns are also considered by this Court.

It is the contention of the said parties that they possess sufficient interest and are necessary parties to this application in as much as they will be adversely affected if an order is made in favor of the Petitioners by this Court, and as the Petitioner-Respondent's vehicles will be charged a tariff on a fixed HS code as prayed for in their application.

It is the contention of the party seeking intervention that they will be charged a higher tariff based on a different HS code.

The intervenient petitioners have filed written submissions setting out grounds for intervention and cited a number of judicial authorities. It is their position that in order for this Court to arrive at a just and reasonable decision, the views of the intervenient petitioners should be considered. In certain instances, the intervenient petitioners have been imposed a higher customs duty in comparison with similar vehicles imported by the Petitioner-Respondent.

Be that as it may, the primary legal issue which has now arisen in respect of this application is as to whether in fact, in a writ application intervention may be allowed taking into consideration the existing legal framework, judicial authorities and applicable Rules of the Court of Appeal.

The Petitioner-Respondent has strenuously contended that the existing Supreme Court Rules and the Court of Appeal (Appellate Procedure) Rules do not permit intervention due to the reason that there are no specific provisions permitting such intervention.

The Petitioner-Respondent has placed heavy reliance on the Divisional Bench Judgment in ***Weerakoon and Another vs. Bandaragama Pradeshiya Sabha***[1]. In the said case, the primary legal issue which was considered and determined was as to whether the intervenient petitioner was entitled to make an application for intervention in the absence of any provisions in the Rules of the Court of Appeal enabling a party to intervene in writ applications.

The judgment in the Weerakoon case is essentially based on the decision of the Supreme Court in ***M. D. Chandrasena and Two Others vs. S. F. De Silva***[2]. In the said case, the Supreme Court held that no rules have yet been framed to enable an intervenient to take part in proceedings for the issue of writs of *mandamus* or *certiorari* to which he is not a party. Furthermore, in the Weerakoon case, Ranjith Silva J has also cited several other judicial authorities which are in line with the aforesaid M.D.Chandrasena case, ***Harold Peter Fernando vs. The Divisional Secretary Hanguranketha and Two Others***[3] and ***Tyre House (Pvt) Ltd Director General Customs***[4] are two such authorities.

[1] CA WRT 586/2007 C.A.M 22.11.2011
[2] (1961) 63 NLR 143
[3] 2005 BLR 120
[4] CA/WRT/730/1995 C.A.M 05.06.1996

It was the contention of the Petitioner-Respondent that the Divisional Bench Judgment of the Court of Appeal in Weerakoon case, "finally settled" the legal position in respect of the issue of intervention in writ applications.

It was submitted by the Petitioner-Respondent that the said judgment exhaustively considered the legal position in respect of the issue of intervention in writ applications.

But however, I wish to observe the fact that none of the parties in the instant matter drew the attention of Court to the fact that, a party aggrieved in the Weerakoon case upon refusal of application to intervene appealed to the Supreme Court and the matter was finally decided by His Lordship Justice Surasena (as he was then) on 17.01.2024 in case number SC Appeal 166/2012, which completely cut across the stance of the Petitioner-Respondent.

The Supreme Court set aside the decision of the Divisional Bench in the Weerakoon case and made the following direction.

> *"Thus, with the concurrence of the learned Counsel for the Intervenient Petitioner-Appellant and the learned Counsel for the Petitioner-Respondent Respondents, we pro forma set aside the order dated 22-11-2021 pronounced by the Court of Appeal.* ***The Intervenient Petitioner-Appellant is allowed to intervene as a Respondent to the relevant Writ Application****."*

This matter was subsequently heard and decided in the Court of Appeal before a bench comprising of Justice Dhammika Ganepola and Justice Adithya Patabendige on 29.10.2025. I wish to cite the following paragraph from this judgment.

> *"The Respondents, having tendered their statements of objections, objected to the said application, and sought its dismissal. During the pendency of proceedings, the 4th Respondent, Bandaragama Pradeshiya Sabha, moved to intervene. This Court initially refused the said application for intervention.* ***Being aggrieved by that order, the 4th Respondent preferred an appeal to the Supreme Court, which thereafter directed this Court to allow the intervention.****"*

Accordingly, I hold that there is no legal impediment for an application seeking intervention to be allowed. Provided that the said party establishes to the satisfaction of Court that the party seeking intervention has sufficient interest and is affected by the relief sought by the Petitioner in a writ application.

In the case of ***Janak Liyanage and Others vs. Sirisoma Lokuwitharana and Others***[5], decided on 20.05.2025 by Justice Priyantha Fernando, has cited with approval the judgment in ***Meditek Devices (Pvt) Ltd vs. Director Medical Technology and Supplies***[6] wherein the Court of Appeal adopted a more liberal approach. Justice Thurairajah emphasized that if an intervenient party has a "sufficient interest" they should not be dismissed as mere busybodies and may be allowed to intervene.

I wish to cite the following paragraph of the judgment of Justice Priyantha Fernando in the aforesaid Janak Liyanage case.

> *"His Lordship Thurairajah J sitting in Court of Appeal considered the decision in the case of Government School of Dental Therapist Association Vs. Director General of Health Service and Others wherein court allowed intervention that, "Each of the Intervenient Petitioners in the present case cannot be said to be a different "meddlesome busybody" or a "meddlesome interloper" who does not have a sufficient interest in the pending application. I would therefore adopt the* ***liberalized rules in regard to the standing of a party entitled to seek a remedy to the case of an intervenient who similarly has a sufficient interest in the subject matter*** *of pending writ application and on that basis to permit the intervention." (Emphasis added)*

The Court of Appeal in the Janak Liyanage case has also cited the following judicial authorities which considered the aspect of intervention in writ applications.

> *In Jayawardhane v. Health and Others (CA Writ No. 978/2008), intervention was permitted because the court found the intervening party necessary for a full understanding of the case.*
>
> *Similarly, in Landrani Dewage Ranasinghe v. Commissioner General of Excise and Others (CA Writ No. 408/2015), the court ruled that although no formal rule governs intervention, it has the discretion to allow intervention based on sufficient cause and interest.*
>
> *Finally, in J.S. Dominic v. Hon. Jeewan Kumaratunga (SC Appeal No. 83/08), the Supreme Court departed from the restrictive precedent set in Harold Peter Fernando, affirming that parties may be allowed to intervene in Writ of Certiorari proceedings under appropriate circumstances.*

[5] CA/WRT/458/2023
[6] CA/WRT/99/2014

Furthermore, in ***Mahanayake Thero Malwatte Vihare v Registrar General***[7] and further clarified in ***Lakshman Nanayakkara v Land Reform Commission,***[8] where the Court recognised that the absence of specific Court of Appeal rules on intervention does not operate as an absolute bar, and that intervention should be permitted where a party's rights or interests will be materially impacted by the relief sought. The Division Bench in ***J.S. Dominic v Minister of Lands***[9] similarly adopted a liberal approach, emphasising that parties who would be affected by the decision must be afforded the opportunity to be heard.

The Supreme Court in ***S.C.A. 184/2017***[10] also acknowledged that intervention may be permitted even where previously refused, provided the intervenient is shown to be necessary for the complete and just adjudication of the issues.

Upon consideration of the submissions and the material placed before Court, it is clear that the Intervenient Petitioners have demonstrated *sufficient legal interest* in the subject matter of this application. The jurisprudence reflected in the authorities placed before Court establishes that intervention in writ proceedings is ultimately a question of fact, turning on whether the proposed intervenient will be directly affected by the outcome of the application.

In the present matter, the Intervenient Petitioners have demonstrated that the determination of the HS code and the consequential tariff classification will directly and substantially affect their operations. As the decided cases emphasize, where the relief sought would affect the rights, obligations, or competitive position of a party, such party constitutes a *necessary party* whose participation assists Court in evaluating the merits and demerits of the application.

The application for intervention is therefore allowed.

PRESIDENT OF THE COURT OF APPEAL

K. P. Fernando, J.
I agree.

JUDGE OF THE COURT OF APPEAL

[7] 39 NLR 186
[8] CA/WRT/444/2020 decided on 28.06.2023
[9] S. C. Appeal No. 83/08
[10] Decided by Prasanna Jayawardena, PC, J. on 21.09.2018