

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

In the matter of an Application for the issue of mandate in the nature of a Writ of Certiorari under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA(Writ) Application No.365/08

S.M.M. Fazly  
Joint Proprietor,  
My Son Trading,  
410/1/1B, Kolonnawa Road,  
Kolonnawa.

**Petitioner**

Vs.

- (1) S.A.C.S.W. Jayathilake,  
Director General Customs,  
Customs House Bristol Street,  
Colombo 01.
- (2) Mali Piyasena  
Assistant Director of Customs,  
Customs House,  
Bristol Street,  
Colombo 1.
- (3) Hon. Attorney General,

Attorney-General's Department,  
Colombo 12.

**Respondents**

**BEFORE** : **S. SRISKANDARAJAH, J (P/CA)**

**COUNSEL** : Rienzie Arsaclarathna PC  
for the Petitioners,  
Viveka de Silva SSC  
for the Respondents.

**Argued on** : 26.11.2011

**Decided on** : 18.06.2012

**S.Sriskandarajah.J,**

The Petitioner is the proprietor of a firm called "My Son Trading". The Petitioner, on 4/04/2007, imported 2 consignments of MP2 brand semi automatic washing machines bearing Model No.MP740S, from China. On the 21<sup>st</sup> April 2007, the Customs Declaration Form with the necessary shipping documents were submitted to the Customs for the purpose of ascertaining the Customs duty and other levies the Customs that a sum of Rs.390,593/- is payable as Customs duty and other levy in respect of each consignment of the transaction value is US\$4,214.97, and the Petitioner accordingly paid the said sum in respect of each consignment. The Petitioner submitted that prior to the clearing of the aforesaid goods, the 2<sup>nd</sup> Respondent detained the above consignments contained in 2 containers on suspicion of under-valuation. The Petitioner submitted that he received a copy of the letter dated 31/01/2008 signed by the 1<sup>st</sup> Respondent informing him of the value determined in terms of Section 51(6) of the Customs Amendment Act No.2 of 2003 is US\$52 per unit under the provisions of Article

3 of Schedule (E). The Petitioner appealed against the said determination and sought approval of the 1<sup>st</sup> Respondent to clear the goods furnishing security acceptable to the Customs in a sum worked out on the basis of US\$52 per unit. The Petitioner contended that the 1<sup>st</sup> Respondent has refused to release the goods on the basis that he has reasonable suspicion that the importer has fraudulently declared a lower value. The Petitioner contended that the Customs have for the first time alleged fraud on the part of the Petitioner, and the said allegation of fraud, as is now preferred against him for the express purpose of refraining from releasing the goods in terms of Section 51(7) for fraud, the basis on which the 1<sup>st</sup> Respondent can refuse the clearance of goods and as such allegation is mala fide. The Petitioner in this application challenged the decision of the 1<sup>st</sup> Respondent contained in document P16 that the Petitioner has willfully failed to produce any documentary or other proof of the fact that the declared value represented the total amount actually paid or payable, and that the value declared by the Petitioner is less than half of the value declared by other importers for the similar washing machines from the same country of origin during the same period.

The 1<sup>st</sup> Respondent contended that the above said issues could be addressed in the inquiry that is contemplated to be held in terms of Section 8(1) of the Customs Ordinance, but the Petitioner has not submitted the relevant documents and, if the relevant documents are submitted, and if the Petitioner satisfies that the actual transactions were the transaction value of the goods and assisted the Customs in determining the correct value of the goods in terms of the Customs Ordinance, the issue relating to the release of these goods will be resolved.

As the Section 8(1) inquiry under the Customs Ordinance is an inquiry contemplated to ascertain the truth of the allegation leveled against the importer, and the said inquiry has still not concluded, and at this stage it is premature to comment on the finding of the 1<sup>st</sup> Respondent, the 1<sup>st</sup> Respondent has submitted the Customs inquiry under Section 8(1) of the Customs Ordinance was scheduled for 4/01/2008, and a

request was made by the Petitioner to postpone the same due to non-availability of his Attorney-at-Law, the Petitioner's request was allowed and the inquiry was re-fixed for 18/01/2008, but however the Customs inquiry could not be held or concluded thereafter due to the absence of the Petitioner at the said inquiry, and the said inquiry had been postponed due to this reason. When there is a dispute as regards to the value of the goods declared, it is the duty of the 1<sup>st</sup> Respondent to hold an inquiry to ascertain the correct value of the goods, and the Petitioner could have assisted the 1<sup>st</sup> Respondent in ascertaining the correct value of the goods, and if the Petitioner is not satisfied with the inquiry or the decision arrived at the said inquiry, he could have sought other remedies, but without attending the said inquiry, the Petitioner cannot challenge the decision contained in P16 to hold an inquiry in terms of Section 8(1) of the Customs Ordinance. The said inquiry is in order to ascertain the veracity of the declaration made to the Customs by the Petitioner with regard to the importation of the said consignment of the washing machines, and for these reasons I dismiss this application without cost.

President of the Court of Appeal