

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
in terms of Article 140 of the Constitution of
Sri Lanka.

Samudra Aquarist Fishgate (Private)
Limited No. 11, Initium Road,
Dehiwela.

Petitioner

C.A/WRIT/501/2007

VS

1. The Director General of Customs,
Sri Lanka Customs ,
Times Building
Colombo 01.
And three(03) Others.

Respondents

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

COUNSEL : Shanaka Ranasinghe,
for the Petitioner.

F.Jameel DSG
for the Respondents.

Argued on : 28.09.2010 and 22.03.2011 J.L.
Written Submission on : 29.07.2011 (Petitioner)
16.12.2011 (Respondent)
Order on : 24.09.2012

S.Sriskandarajah, J.

The Petitioner is a limited liability Company incorporated in terms of the Companies Act. The main business of the Petitioner is the importation and exportation of ornamental fish, aquatic plants and bulbs. The Petitioner through its wharf clerk on 18th July 2002 submitted a CUSDEC dated 08.07.2002 and sought to export bulbs of water plants, which it had described as "Aponogeton ulvaceus". The Assistant Superintendent of Customs who was on duty informed the 2nd Respondent the Superintendent of Customs and on inspection by the 2nd Respondent refused approval for export as said goods required a permit for export and it was detained. Samples were obtained from the consignment in the presence of the representative of the Petitioner. These samples were sealed and the thumb impression of the representative of the Petitioner was obtained. According to the Respondents the said samples were sent to Peradeniya Botanical Gardens as advised by the Forest Department on 24.02.2012.

The Petitioner in an application to the Court of Appeal bearing No. 1301/2002 has sought and obtained an interim relief to release the goods after allowing the customs to collect samples for testing. The said Court of Appeal Application for a writ of prohibition prohibiting the Respondents from embarking upon an inquiry into the said consignment in terms of Customs Ordinance or any other Law was dismissed after hearing. Customs commenced an inquiry against the Petitioner for committing an offence of miss description under Section 47 of the Customs Ordinance on an attempted

exportation of 754,500 Nos weighing 1500Kg of Aquatic Plant Tubes scientifically known as Aponogeton Crispus declared as Aponogeton Ulvaceus on export CUSDEC No.25219 of 18.07.2002 valued at Rs. 703,303/- and of 85,500 Nos export CUSDEC No. 27070 dated 01.08.2002 the value of the total quantity exported is Rs. 799,755/-. At the inquiry the Customs led 13 witnesses, the Managing director of the Petitioner Company gave evidence on the basis of the evidence led ,the inquiring officer framed six charges.

Charge 1- against the Roger Ratnayake Managing Director , Samudra Aquarist Fishgate (Pvt) Ltd under Section 12 and 44 of the Customs Ordinance read with Forest Ordinance in respect of CUSDEC 25219 dated 18.07.2002.

Charge 2-against Roger Ratnayake Managing Director , Samudra Aquarist Fishgate (Pvt) Ltd under Section 57 of the Customs Ordinance in respect of CUSDEC 25219 dated 18.07.2002.

Charge 3- against the Roger Ratnayake Managing Director , Samudra Aquarist Fishgate (Pvt) Ltd under Section 12 and 44 of the Customs Ordinance read with Forest Ordinance in respect of CUSDEC 27070 dated 01.08.2002.

Charge 4- against Roger Ratnayake Managing Director , Samudra Aquarist Fishgate (Pvt) Ltd under Section 57 of the Customs Ordinance in respect of CUSDEC 27070 dated 01.08.2002.

Charge 5- against Roger Ratnayake Managing Director , Samudra Aquarist Fishgate (Pvt) Ltd under Section 130 of the Customs Ordinance in respect of CUSDEC 25219 dated 18.07.2002.

Charge 6-- against Roger Ratnayake Managing Director , Samudra Aquarist Fishgate (Pvt) Ltd under Section 130 of the Customs Ordinance in respect of CUSDEC 27070 dated 01.08.2002.

The inquiring officer had found that the culpability of the Petitioner was established beyond reasonable doubt made order on 3rd May 2007 declaring as forfeited the goods declared in both CUSDECS under Section 12,44 and 57 of the Customs Ordinance. He had also imposed a forfeiture of Rs.2,109,909/- on Mr.Roger Alfred Ratnayake, Chairman and the Managing Director of the Petitioner Company, being the treble the value of goods entered in Customs Exports Goods Declaration No. 25219 of 18.07.2002, under Section 130 of the Customs Ordinance. This amount was mitigated to a forfeiture of Rs.703,303/- under Section 163 of the Customs Ordinance after considering the annual income of the Petitioner and the impact of such a forfeiture on its employees. Another forfeiture of Rs.2,109,909/- was imposed on Mr.Roger Alfred Ratnayake, Chairman and the Managing Director of the Petitioner Company, being the treble the value of goods entered in Customs Exports Goods Declaration No. 27070 of 01.08.2002, under Section 130 of the Customs Ordinance. This amount was mitigated to a forfeiture of Rs.703,303/- under Section 163 of the Customs Ordinance after considering the annual income of the Petitioner and the impact of such a forfeiture on its employees.

The Petitioner in this application has sought a writ of certiorari to quash the aforesaid orders dated 3rd May 2007 marked and annexed as P13 to the Petition.

The Petitioners position was that the goods that sought to be exported were *Aponogeton Ulvaceus* which does not require a permit for export in terms of Schedule B of the Ministry of Forestry and Environment Circular No.03/2001 and that the Petitioner never attempted to export any other goods by miss description.

The Respondents contended that the evidence of Dr.S.Wijesundera Director of the Botanical Gardens in his evidence on 25.07.2002 said the samples were grown and when the plants flowered he examined it under a hand lens and followed by a dissecting microscope and a taxonomic investigation and found

that the specimen examined matched with *Aponogeton Crispus*. It is the position of the Respondent that the plants which were taken from the custody of the Petitioner when they were ready for export were "*Aponogeton crispus*" and not "*Aponogeton ulvaceus*" as claimed by the Petitioner.

The Petitioner's challenge to the aforesaid finding is on the basis of question of the reliability of the collection and the production of the sample to the expert for testing and report. The Petitioner contended the evidence submitted at the inquiry had not proved beyond reasonable doubt that the samples were properly drawn and the mandatory rules pertaining to sealing of samples have not been adhered. Further it was not established that the chain of custody of the production was not broken until it reaches the expert for report.

The presumption under Section 114(d) of the Evidence Ordinance is that judicial and official acts have been regularly performed. Sending the production for examination and report is an official act of the Customs. In the absence of evidence that there are other productions that would have got mixed-up with the samples of the productions relating to this application or that there is allegation that samples were tempered with an inquiry officer cannot come to an adverse finding that the proper samples were not submitted for examination and report. In any event it is the position of the Customs that the chain of custody of production was properly established. The proof of the chain of custody is a question of fact and the inquiring officer is the person who can arrive at a correct finding. This court in these proceedings cannot decide on questions of facts.

For the aforesaid reasons this court dismisses this application without costs.

President of the Court of Appeal