

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

In the matter of an application for  
Revision in terms of Article 138 of the  
Constitution.

Officer-in-Charge,  
Police Station,  
Vice Division,  
Kandy.

Complainant

C.A.Application No.  
CA(PHC)APN 110/10  
Kandy Provincial High Court  
Revision Application No.125/2008

vs

Warnakulasuriya Rushantha Anton  
Priyangith Perera.

Accused

Central Finance Company ,  
No.84, Kings Street,  
Kandy.

Claimant

AND

Central Finance Company ,  
No.84, Kings Street,  
Kandy.

Claimant-Petitioner

Vs.

1. Officer-in-Charge,  
Police Station,  
Vice Division,  
Kandy.

Complainant-Respondent

2. Hon. Attorney-General,  
Attorney-General's Department,  
Hulftsdorp, Colombo 12.

Respondent

AND NOW

Central Finance Company ,  
No.84, Kings Street,  
Kandy.

Claimant-Petitioner-Petitioner

Vs.

1. Officer-in-Charge,  
Police Station,  
Vice Division,  
Kandy.

Complainant-Respondent-Respondent

2. Hon. Attorney-General,  
Attorney-General's Department,  
Hulftsdorp, Colombo 12.

Respondent-Respondent

Before : Sisira de Abrew, J. &  
K.T.Chitrasiri, J.

Counsel : R.Wimalachandra for the Petitioner.  
Maheshika Silva SC for Respondents

Argued &  
Decided on : 22.08.2011

**Sisira de Abrew, J.**

Heard both Counsel in support of their respective cases.

This is an application to set aside the order of the learned High Court Judge dated 07.06.2010 wherein he affirmed the order of the learned Magistrate confiscating the vehicle.

The accused in this case was convicted on his own plea for transporting 180 bottles of illicit liquor in violation of the relevant Provisions of the Excise Ordinance. Learned Magistrate imposed a punishment on the accused. Thereafter learned Magistrate held an inquiry to ascertain whether the vehicle should be confiscated or not. After inquiry the learned Magistrate made an order confiscating vehicle bearing No. NW PA 6885. A representative from the Finance Company from which the registered owner obtained financial assistance to purchase the vehicle gave evidence at the inquiry. After the inquiry the learned Magistrate confiscated the vehicle.

Being aggrieved by the said order of the learned Magistrate, the Finance Company, the absolute owner made an application to the High Court to set aside the order of the learned Magistrate dated 10.10.2007. The learned High Court Judge by his order dated 07.06.2010 dismissed the petition of the petitioner

(absolute owner). The petitioner has filed this petition to set aside the both orders of the learned High Court Judge and the learned Magistrate.

The contention of the learned Counsel appearing for the petitioner is that there is no Provisions in the Excise Ordinance to confiscate the vehicle transporting illicit arrack. He relies on the judgment of B.V.Perera vs M.B.Abraham, 64 NLR 456. In the said judgment His Lordships Justice Abeysundara held thus:- “that the confiscation of the motor car was not warranted by the Provisions of Section 54 of the Excise Ordinance. Nor was there any evidence of the implication of the owner of the motor car in the offence with which the accused were charged”.

Section 54(2) of the Excise Ordinance reads as follows:-

“Any excisable article lawfully imported, transported, manufactured, had in possession , or sold along with, or in addition to, any excisable article liable to confiscation under this section, and the receptacles, packages, and coverings in which any such excisable article, materials, still, utensil, implement, or apparatus as aforesaid is found, and the other contents, if any of the receptacles or packages in which the same is found, and the animals, carts, vessels, or other conveyance used in carrying the same, shall likewise be liable to confiscation.”

The contention of the learned Counsel for the petitioner is that if a vehicle transporting lawfully imported liquor is detected by police, such vehicle could be confiscated by the Magistrate but the vehicle transporting locally manufactured liquor is detected by police such vehicle cannot be confiscated. He relies on the words " any excisable article lawfully imported" in Section 54(2).

We are unable to agree with this submission. If the argument presented by the learned Counsel appearing for petitioner is accepted, then a vehicle transporting lawfully imported liquor can be confiscated but a vehicle transporting locally manufactured liquor cannot be confiscated. We are unable to agree with this submission.

In my view when Courts interpreting the provisions of the law, court must give a meaningful interpretation to the law. In this connection I would like to consider a passage from Interpretation of Statute by Bindra, 7<sup>th</sup> Edition, page 235:-

"It is a well known Rule of Construction that a Statute should not be construed so as to impute absurdity to the legislature."

In our view if we accept the argument presented by learned Counsel for the petitioner we would be giving an absurd interpretation to Section 54(2) of the Excise Ordinance. Although learned Counsel appearing for the petitioner cited

the authority reported in 64 NLR 456, Justice P.R.P.Perera and Justice Ismail in *Samarawickrema Vs. Commissioner for Excise*[1991] , 1SLR, page 209 held thus:-

“Even though the lorry in which the bottles of illicit liquor was stacked was only parked, it can be said that the lorry was “used in carrying the bottles and the confiscation of the lorry was valid”.

We would like to follow the view expressed by their Lordships’ in the said judgment. In our view under Section 54(2) , it is lawful for the Magistrate to confiscate a vehicle transporting locally manufactured illicit liquor.

For these reasons we reject the contention presented by learned Counsel appearing for the petitioner and dismiss the petition of the petitioner.

Registrar of this Court is directed to annex a copy of this judgment to the appeal filed (if any) in respect of this matter.

*Petition dismissed.*

JUDGE OF THE COURT OF APPEAL

**K.T.Chitrasiri, J.**

I agree.

JUDGE OF THE COURT OF APPEAL

KLP/-