

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

M. Dharmawardena

**PETITIONER**

C.A 645/2008(Writ)

Vs.

1. Director General of Customs  
Sri Lanka Customs  
Colombo 1.

And 5 others

**RESPONDENTS**

**BEFORE:** Sathya Hettige P.C. J. (P/ C.A) &  
Anil Gooneratne J.

**COUNSEL:** J. Joseph for the Petitioner  
M.N.B. Fernando D.S.G for Respondents

**ARGUED ON:** 20.07.2010

**WRITTEN SUBMISSIONS FILED ON:**  
21.09.2010 (Petitioner)  
19.11.2010 (Respondents)

**DECIDED ON:** 03.03.2011

**GOONERATNE J.**

A writ of Certiorari/ Prohibition and Mandamus has been sought by the Petitioner with regard to orders made at a Customs inquiry. Certiorari is sought to quash detention notice (X8). The said notice indicates that one unit backhoe wheel loader bearing No. 3CX4/412906 has been seized on 22.5.2008; writ of prohibition is also sought to prevent disposing or aliening backhoe loader bearing No. S/N 412905 and Mandamus to release the above backhoe loader on payment of due Customs charges.

The Petitioner's position briefly is that she left the country on 15.8.2007 having given a Power of Attorney (x4) in favour of Rohini Dharmawardena. Petitioner purchased on two commercial invoices used auto parts and used back hoe loader from Gold Seal International Trading Company U.K. Shipment arrived on 27.8.2007. The Power of Attorney holder collected the Bill of Lading and commercial invoice from the Seylan Bank on 17.8.2007 and given it to the 5<sup>th</sup> Respondent. The 5<sup>th</sup> Respondent submitted the customs declaration on 27.8.2007 declaring only used auto parts without including used back hoe loader. In the statement of the 5<sup>th</sup> Respondent dated 18.10.2007 it is admitted that the Petitioner sent documents to clear the Cargo Invoice P15 has not been declared by the 5<sup>th</sup>

Respondent on P4. Explanation is that due to an oversight P15 was not declared in P4. Petitioner had given evidence at the inquiry and admitted her signature in P4, but was not in the country on 27.8.2007. (vide X1, X5, X5a) serial No given in P15 is 409606 whereas the correct No. is 3CX4/4 12905.

The Respondent rejects the contention of the Petitioner and takes up the position that Back hoe loader was not declared in the CUSDEC by the importer and as such liable for forfeiture. At the inquiry importer had given evidence and stated she signed the cus-dec-vid inquiry proceedings of 08.04.2008 and evidence of Petitioner, 1R5 & 1R5A.

I would at this point incorporate the following facts as adverted by the Respondents.

1. On 26<sup>th</sup> August 2007, M/V Uniproper arrived in the Colombo Port and it had a container addressed to the Petitioner said to contain construction equipment. Even after 5 weeks of arrival of the vessel, as the cargo was not cleared, on 5<sup>th</sup> October 2007 investigation commenced based on intelligence of possible contravention of statutory laws and regulations.
2. On 08<sup>th</sup> October 2007 a detention notice (1R1) was issued and on 11<sup>th</sup> October 2007, a Custom Declaration (P2A) dated 27<sup>th</sup> August 2007 was received at the Customs Preventive Office, declaring used motor spare parts and a used body shell together with an invoice (P5/P16). Since the quantity, gross weight and freight charge reflected in the documents were found doubtful viz-a-viz the detained container, the 4<sup>th</sup> Respondent made further investigations and found another invoice (P15) with the representative who tendered the documents.

3. On 12<sup>th</sup> October 2007 the container was scanned. Since it revealed an object similar to a backhoe loader a detailed examination of the container was on 12<sup>th</sup> October 2007 the container was scanned. Since it revealed an object similar to a backhoe loader a detailed examination of the container was ordered in the presence of the consignee on 18<sup>th</sup> October 2007. At the said examination it was revealed that the quantity declared and the quantity physically available was different and specifically the JCB machine found therein was not declared. Therefore statements were recorded from the Consignee/Petitioner and Custom House Agent etc and steps were taken to collect the commercial invoices pertaining to the consignment.
4. On 22<sup>nd</sup> October 2007 the goods were valued and summons were issued on the Petitioner and the Customs House Agent for an inquiry under Section 8(2) of the Customs Ordinance for 29<sup>th</sup> November 2007.
5. On 08<sup>th</sup> April 2008 the Petitioner moved to proceed with the inquiry without a counsel and cross-examined the witnesses by herself. On 11<sup>th</sup> April 2008 charges were framed and consequent to tendering of written submissions on 02<sup>nd</sup> May 2008 the order was delivered forfeiting the Backhoe loader, Toyota body shell and rear lights and light frames
6. On 11<sup>th</sup> June 2008, the Petitioner paid the penalty and cleared all items excepting the backhoe loader and has now come before Your Lordships' Court with regard to the forfeiture and detention of same.

In paragraph 23 of the Amended Petition several grounds are suggested by the Petitioner for the issuance of the writs sought in this application. When we consider all the relevant facts it is apparent that item 11 of report 1R4 bears serial Nos. The backhoe loader was not declared as

required by law. Several excuses made in that regard seems to be unacceptable. To blame the Agent is no excuse. Petitioner is the importer and the signatory to the Cus Dec. (1R5 & 1R5A) Lane excuses as suggested by the Petitioner does not lend any support to fortify the case of the Petitioner. In fact the Petitioner has paid the penalty and cleared part of the goods and non-disclosure of back hoe loader is not denied. I cannot conclude that x8 order is illegal. The forfeiture took place for non-disclosure which was not denied by the Petitioner. No proper acceptable reasons were adduced by the Petitioner to grant relief for her. Further I cannot also infer mala fides on the part of the 1<sup>st</sup> – 4<sup>th</sup> Respondents, and documents not produced before the Customs Department Inquiring Officer cannot be considered by this Court.

In all the above circumstances we dismiss this application without costs.

JUDGE OF THE COURT OF APPEAL

Sathya Hettige J.

I agree.

PRESIDENT OF THE COURT OF APPEAL