

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

**CA Application No. 03/2013**

01. Rodamas Holdings (Pvt)Ltd,  
No:688, Aluthmawatha Road,  
Colombo 15.

02. K .Gnanasekaran,  
No:688, Aluthmawatha Road,  
Colombo 15

**Petitioners**

**Vs.**

1. Jagath Jayaweera  
Director General of Customs,

2. D.A.I Daranagama  
Director of Customs,  
Central Investigation Unit (CIB Unit),

3. Saman De Silva,  
Deputy Director of Customs,  
Central Investigation Unit (CIB Unit),

4. Mailwaganam Paskaran,  
Deputy Director of Customs,  
Inquiring Officer

5. M.S.A. Hassan  
Superintendent of Customs  
Prosecuting officer

6. N.D.K. Seneviratne Banda,  
Superintendent of Customs  
Prosecuting officer,

7. V. Wathsala Nanayakkara  
Superintendent of Customs,  
Central Investigation Unit (CIB Unit),  
Prosecuting officer,

***All of whom are from:***

- Sri Lanka Customs Department,  
Customs Headquarters,  
No: 40,  
Charmers query,  
Main Street,  
Colombo 11.
8. Daisang International (Private) Limited,  
No: 81,  
Averiwatta Road,  
Handala,  
Wattala.
  9. Wee Tiong (S) PTE Limited  
No:64-D,  
Kallang Pudding Road,  
02-00 Wee Tiong Building,  
Singapore 349323
  10. Seylan Bank PLC,  
No:90,  
Galle Road,  
Colombo 03.
  11. Han. Attorney General  
Attorney General's Department,  
Colombo 12.

**Respondents**

**Draft**

**C.A. Writ 03/2013**

**Before** : S. Sriskandarajah J. (P/CA) &  
P.W.D.C. Jayathilake, J.

**Counsel** : K. Deekiriwewa with L.M.Deekiriwewa and  
Mrs. M.K. Herath for the Petitioners.  
Dias Wickramasinghe DSG with Manohara Jayasinghe SC  
for the respondents.  
Sanjeeva Jayawardena PC with Senany Dayaratne &  
Sandamali Chandrasekera for 10<sup>th</sup> Respondent.  
Faiz Musthapa PC with Illiyas for the 9<sup>th</sup> Respondent instd.  
by Nithi Murugesu & Associates.

**Decided on** : 23.01.2013.

**S. Sriskandarajah J. (P/CA).**

Heard Counsel in support of this application and heard Learned President's Counsel for the 9<sup>th</sup> and 10<sup>th</sup> Respondents. The 1<sup>st</sup> to the 7<sup>th</sup> Respondents inform Court that they have no objection in issuing notice but the Learned President Counsel who is appearing for 9<sup>th</sup> and 10<sup>th</sup> Respondents oppose to the issuance of notice.

The issue before this court raised by the 1<sup>st</sup> and 2<sup>nd</sup> Petitioners are that the Customs inquiry commenced, conducted and concluded on a wrong basis as the Customs duties are properly paid and the goods were released, as such the Customs has no right to inquire into the matter. The Learned President Counsel who is appearing for the 10<sup>th</sup> respondent brought to the notice of court that the inquiry was under Section 119 of the Customs Ordinance and that was based on submitting false documents for the clearance of the said goods. The false documents were obtained and submitted to the Customs and these documents were obtained from the bank without due payment to the exporter. The documents obtained from the banks on DPP terms that is documents should be released on payment but the said documents were obtained without due payment. The 2<sup>nd</sup> Petitioner had made a confession in the investigating proceedings and also has given evidence in the Customs inquiry that he is involved in the removing of the said documents fraudulently.

The Learned Counsel for the Petitioner submitted that the said confession and evidence was obtained by force by the Customs . But the Petition and the Affidavit submitted by the Petitioners in this Court has not stated that the said confession or the evidence given by the 2<sup>nd</sup> Petitioner was obtained by force.

In these circumstances, the Petitioner has not come to this court with clean hands and therefore this Court refuses to issue notice.

**PRESIDENT OF THE COURT OF APPEAL.**

**P.W.D.C. Jayathilake, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL.**

Mm/-.