

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

In the matter of an application for
Mandates in the nature of Writs of
Certiorari, and Prohibition in terms
Of Article 140 of the Constitution.

CA Application No.368/2010

PolyStar Poly Products (Private)
Limited
No.602, Halgahadeniya Road,
Kalapaluwawa, Rajagiriya

PETITIONER

Vs.

1. Sudharma Karunaratne,
Director General,
Custom Department and Director
General Excise (Special Provisions)
Unit of Sri Lanka Customs,
Times Building,
Bristol Street,
Colombo 01.
2. M.S. De Silva
Acting Director Excise (Special
Provisions), Excise (Special
Provisions)

Duty Unit, Custom Department,
Bristol Paradise Building,
Bristol Street,
Colombo 01.

3. S.M.S. Hemapala Samarasinghe
Excise Officer, Excise (Special
Provisions)

Duty Unit of Sri Lanka Customs,
Excise (Special Provisions) duty
Unit,
Custom Department,
Bristol Paradise Building,
Bristol Street,
Colombo 01.

4. Dr. P.B. Jayasundara,
Secretary to the Treasury,
Ministry of Finance & Planning,
General Treasury,
The Secretariat,
Colombo 01.

5. Hon. Attorney General
Attorney General Department,
Colombo 12.

RESPONDENTS

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

DEEPALI WIJESUNDERA, J

COUNSEL : K.Deekiriwewa with M.K.Herath,

for the Petitioner.

Anusha Samaranayaka SC

for the Respondents.

Argued on : 08.02.2012

Written Submission : 24.04.2012

Judgment : 20.05.2013

S.Sriskandarajah.J

The Petitioner in this Application has sought a Writ of Certiorari to quash a decision marked "X2" demanding the Petitioner to register with the Sri Lanka Customs Excise (Special Provisions duty) Division under the Excise (Special Provisions) Act No.13 of 1989 for the purpose of manufacture of excisable article, as defined in the gazette bearing No.1471/23 dated 16/11/2006 and 1574/8 dated 6/11/2008, made under Section 3 of the Excise (Special Provisions) Act No.13 of 1989, since the 1st Respondent has received information that the Petitioner without registering with the Sri Lanka Customs Excise (Special Provisions) Division is engaged in manufacturing articles made out of polythene. The Petitioner has also sought a Writ of Prohibition prohibiting the Petitioner from making such demands to the Petitioner, as they have no jurisdiction.

The Petitioner submitted that the Petitioner, by a letter dated 1/02/2010 of the Excise (Special Provisions Duty) Divisions of the Sri Lanka Customs, requesting the

Petitioner to Register with the said Division under the Excise (Special Provisions) Act No.13 of 1989, for the purpose of manufacture of excisable articles, as defined in gazette bearing No.147/23 dated 16/11/2006 and 147/8 dated 6/11/2008, made under Section 3 of the Excise (Special Provisions) Act No.13 of 1989. The Petitioner admitted that the Director-General of Customs is statutorily authorized to demand and levy excise (Special Provisions) duty from importers of goods at the time of importation under Section 5(2)(a) of the Act No.13 of 1989, provided the article that had been imported is an excisable article in terms of the gazette orders made by the Honourable Minister of Finance from time to time under the Section 3 of Excise (Special Provisions) Act No.13 of 1989, the Director General of Customs is exercising these functions merely for the convenience of the other Departments.

The Petitioner's position is that the Director-General of Customs is not statutorily authorized to demand and levy Excise (Special Provisions) duty from the manufacturers of articles locally, irrespective of the fact that these local manufacturers are manufacturing articles which are excisable under and in terms of the gazette orders made by the Honourable Minister from time to time. The Petitioner contended that for the demand and levy of Excise (Special Provisions) duty from the local manufacturers of the excisable articles that there should be an independent department or authority created under the Excise (Special Provisions) Act No.13 of 1989, headed by a Director-General of Excise (Special Provisions) who shall be in charge of the administration of the said Act. The Petitioner further contended, without there being an independent department or authority, there cannot exist a Director-General of Excise (Special Provisions) under the umbrella of Sri Lanka Customs as, at date, the Department of Excise (Special Provisions) duty is functioning as another division of the Sri Lanka Customs.

The Petitioner contended that in terms of the provisions of the Excise (Special Provisions) Act "Excise Officer" means, an officer appointed and invested with powers

under Excise (Special Provisions) Act No.13 of 1989, as amended. In those circumstances the appointment made by the Sri Lanka Customs, describing "Excise Officers" as Excise Officers of the Excise (Special Provisions duty) Divisions of the Sri Lanka Customs is ultra vires to the Excise (Special Provisions) Act. In the above circumstances, in the absence of a separate department called Excise (Special Provisions) department and appoint officers under the said department, it is illegal to request the Petitioner, to register with the Excise (Special Provisions Duty) Division of the Sri Lanka Custom, and to pay excise duty within two weeks, is ultra vires and, therefore, it has to be quashed by way of a Writ of Certiorari.

The Excise (Special Provisions) Act in Part I Section II, sub-section 1(a) states as follows:-

- 2(1). There shall be appointed by name or by office for the purpose of this Act;
- (a) A Director-General of Excise (Special Provisions) (hereinafter referred to as the Director-General) who shall be in charge of the administration of this Act.

In terms of Article 55(2), the Cabinet of Ministers are invested with the power of appointment, dismissal and disciplinary control in respect of Heads of Departments. The Cabinet of Ministers have made a decision to appoint the Director General of Custom by office as the Director-General of Excise (Special Provisions). This appointment is made in terms of the Excise (Special Provisions) Act. The said appointment was made under the Excise (Special Provisions) Act. The amendment to the said Act to levy excise duty on items other than liquor and tobacco, the said appointment and the imposition of the excise duty other than liquor and tobacco were all made in pursuance of a Cabinet approval. The appointment of Director-General of Custom as Director-General of Excise is an independent act of the Cabinet in terms of the Act, and it has no relevancy to the amendment of the said Act by including levy of excise duties on items other than liquor and tobacco. As the appointment of Director-

General of Custom as Director-General of Excise (Special Provisions) is in conformity with both constitutional provisions contained in the Excise (Special Provisions) Act, it is not necessary to establish a separate department to appoint a Director-General of Excise (Special Provisions) and establishing departments is a function of the Executive, and it can decide that two functions could be performed by one department by appointing officers of one department by office to the other departments. The word "Excise Officer" defined under Section 32 of the Act means, an officer appointed and invested with powers under this Act. In other words, a Custom Officer, by office, could be appointed under the Excise (Special Provisions) Act and, in that event, he would be (an Excise Officer).

In the above circumstances the Petitioner's claim that unless and until a separate department under the Excise (Special Provisions) Act is established, and a Director-General of Excise is appointed to the said department, the Respondent cannot claim the Petitioner to register with them under the Excise (Special Provisions) Act No.13 of 1989 for the purpose of manufacturing of excisable articles is ultra vires, is untenable and, therefore, this Court dismisses this application without cost.

President of the Court of Appeal

Deepali Wijesundera, J

I agree,

Judge of the Court of Appeal