

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

1. Henry Shanthikumar David
2. Maitland International (Pvt.)  
Limited. No. 59/23,  
Shounders Court, Colombo 2.

**PETITIONERS**

C.A 16/2012 (Writ)

Vs.

Director General of Customs  
Customs House,  
40, Main Street,  
Colombo 11.

**And 4 others**

**BEFORE:** Anil Gooneratne J.

**COUNSEL:** N. Kodituwakku for the Petitioners  
Arjuna Obeysekera D.S.G for the Respondents

**ARGUED ON:** 26.11.2013

**DECIDED ON:** 27.03.2014

**GOONERATNE J.**

Petitioners in this Writ application have sought Writs of Certiorari/Prohibition and Mandamus against the Respondents, all of whom are officials of the Department of Customs. When this application was taken up for hearing on 26.11.2013 learned counsel for the Petitioner informed this court that his clients would not pursue the relief pertaining to certiorari as contained in sub para 'b' of the prayer to the petition. As such what remains is a Writ of Prohibition and Mandamus. By a Writ of Prohibition and Mandamus Petitioner seek to prohibit and terminate a customs inquiry. There is no clue as to the statutory provisions relied upon by the Petitioners to seek the relief by way of prohibition and mandamus.

The case of the Petitioners as submitted to this court is that they were engaged in the business of importing electrical goods. Petitioner had on 19.11.2009 in order to clear a consignment of goods submitted a customs declaration. (Cusdec P2, and commercial invoice P3). The goods were subject to a physical examination which revealed mis-description and undervaluation. 1<sup>st</sup> Petitioner had admitted in a statement to the Customs Department that

there was undervaluation and mis-description, on 10.12.2009 and in a further statement on 24.12.2009 1<sup>st</sup> Petitioner clearly admitted under valuation and mis-description. About 1 ½ years later Petitioner attempted to take up the position of duress and that the above statements were made under duress. This no doubt is a question of fact and this court cannot in review proceedings decide on such disputed question of facts. The delay of 1 ½ years is also not acceptable.

Respondents position is that the cusdec submitted by the Petitioner revealed that the commercial invoice submitted by the Petitioners did not reflect the correct transaction value. On examination of cargo the above facts were found to be correct. Further investigations revealed that the essential characteristics and details of the goods such as model, brand name, make, size etc. had not been declared either in the cusdec or in the invoice. Thus the Petitioner is guilty of mis-description. The investigations also revealed that the Petitioner had failed to declare in the cusdec certain goods that had been imported by the Petitioner.

Customs investigation and subsequent inquiry were initiated not only on undervaluation of goods, but also the offence of mis-description and non-declaration of good which amount to smuggling. The false declaration as

contemplated under Section 52 of the Customs Ordinance and thereby submitting a lower value than the actual value had been confirmed by the report of the valuation division of the Customs Department. I note the following gathered from the material placed before this court.

- (a) Where the evidence reveals that an offence in terms of Section 52 of the Customs Ordinance has been committed (i.e the value declared in respect of any goods according to Section 51 is a false declaration), the necessity to follow Section 51A does not arise.
- (b) In any event, the inquiry was not limited to undervaluation but also encompassed mis-description and non-description and therefore, the provisions of Section 51A was not applicable in the circumstances of this case.
- (c) The evidence available with the Customs Department show very clearly that the Petitioners have knowingly undervalued the goods and that the 1<sup>st</sup> Petitioner has admitted undervaluation in the two statements made by him the Customs officers.

In view of all the facts placed before this court, I find no legal basis to terminate or halt a customs inquiry. Petitioner has not satisfied this court to grant the relief by way of prohibition and mandamus. Nor can I find any legal basis to refund the funds received by the Bank guarantee P6. The demand made therein is perfectly justifiable and is in order. Petitioners were guilty of

undervaluation and mis-description and non-declaration which offences attract the consequence of forfeiture in terms of Section 47 & 52 of the Customs Ordinance. I note that Bank guarantee P6 issued by Nations Trust Bank for a sum of Rs. 7 million was valid till 27.7.2010. The expiry date had subsequently been extended. Claim made by the Customs Department was during the validity period. I have also considered the letters marked and produced as 1R10, 1R11.

Mandamus cannot issue unless a there be a legal right of performance of a legal duty is established. Right to be enforced must be a public right and the duty sought to be enforced must be of a public nature. The case law cited by learned Deputy Solicitor General is relevant and applicable in the circumstance of this case. *Perera Vs. National Housing Development Authority* 2001 (3) SLR 50 at 53.

“on the question of legal right, it is to be noted that the foundation of mandamus is the existence of a legal right. Mandamus is not intended to create a right but to restore a party who has been denied his right to the enjoyment of such right”.

*Ratnayake and others Vs. C.D. Perera and others* 1982 2 SLR 451 at 456

“The general rule of mandamus is that its function is to compel a public authority to do its duty. The essence of mandamus is that it is a command issued by the superior courts for the performance of a public legal duty. Where officials have a public duty to perform and have

refused to perform, mandamus will lie to secure the performance of the public duty, in the performance of which the applicant has sufficient legal interest. It is only granted to compel the performance of duties of a public nature and not merely of a private character that is to say, for the enforcement of a mere private right, stemming from a contract of the parties”.

In all the above facts and circumstances I see no legal basis to grant any relief to the Petitioner. The violations are more or less admitted by the Petitioner. As such Petitioner’s application is dismissed without costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL