

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

In the matter of an application under
Article 140 of the Constitution for
Mandates in the nature of Writs of
Certiorari and Mandamus.

CA (Writ) Application No: 392/2012

1. W.J.R. Abyegunawardena,

Ramson Enterprises,

7/49, padukka Road,

Godagama,

Meegoda.

Petitioner

Vs.

1. Director General of Customs

Customs House,

40, Main Street,

Colombo 11.

2. Athula Lankadeva,

Deputy Director of Customs,

40, Main Street,

Colombo 11.

3. Mahinda Dangampola,

Appraiser,

Deputy Superintendent of Customs,

40, Main Street,

Colombo 11.

4. The Attorney General,

The Attorney General's Department,

Hulftsdrop,

Colombo 12.

Respondents

BEFORE : P.W.D.C. JAYATHILAKE, J

COUNSEL : N. Kodithuwakku for the Petitioner.
Milinda Gunathilaka, DSG for the Respondent.

ARGUED ON : 23.06.2014
Written Submission filed on 07.08.2014

DECIDED ON : 02.10.2014

P.W.D.C. Jayathilake J.

The Petitioner is the managing partner of the partnership business of Ramson Enterprises which engages in the importation and the distribution of rubber based goods including rubber houses from Malaysia since 2005. A shipment of rubber houses ordered by the said enterprises from its Malaysian supplier arrived in the port of Colombo in October 2012. Formal customs declaration in respect of the above

mentioned shipment was presented for customs purposes to the customs import division together with the commercial invoice and other shipping documentation. As those documents were referred to the valuation directorate, the 3rd Respondent uplifted the value declared in the commercial invoice by 05% and it was referred to the 2nd Respondent for approval. Then the 2nd Respondent raised the value from 5% to 50% and demanded the Petitioner to pay additional levy for the uplifted value. When the Petitioner explained to the 2nd Respondent that the transaction price declared in the commercial invoice was the true transaction price the 50% upliftment was deleted and made it 40%. The Petitioner has stated when he once again met the 2nd Respondent and explained that value declared was the actual transaction value that he was informed unless he pays additional duty from the uplifted value, it would be enhanced by 100%.

The Petitioner has submitted a copy of the commercial invoice which he has tendered for customs purposes. It is in this document that the percentages of uplifted values have been made by the 2nd and 3rd Respondents. The Petitioner alleged that the acts of Respondents are

arbitrary, ultra vires and violation of the principles of natural justice guaranteed under Sec. 51 A (6) of the customs ordinance. Therefore, the Petitioner has prayed for mandate in the nature of writ of certiorari quashing the decision of the 2nd Respondent enhancing the transaction value by 50% and a writ in the nature of Writ of Mandamus compelling the 1st and/or the 2nd Respondents to accept the transaction value declared in the commercial invoice.

The Respondents in their objections have admitted the transaction of importation stated by the Petitioner and denied the allegations leveled against them. Their position is that final decision had not been made to reject the transaction value of the commercial invoice. The Respondents have admitted that it is Sec. 51 A that refers to the schedule 'e' of the customs ordinance which is applicable to the determination of value. But their explanation for not giving reasons for alleged upliftment of the value is that necessity for giving reasons did not arise as the transaction value was not rejected. But it has been admitted that the 3rd Respondent has recommended value verification to the 2nd Respondent for the reasons recorded. Subsequently 2nd Respondent has noted that

indicative values available in relation to comparable products were up to 50% higher than the declared value.

This should not be the way of verification of the value under Sec 51 A of the customs ordinance is the view of this court. If the authorized officers see some reasons for the verification of value, an opportunity should be given to the affecting party to show cause, why shouldn't it be done. Instead, it appears that what the Respondents have done was acting on their own dominance in deciding the upliftment of the percentage of value, arbitrarily. Therefore, this court is of the view that the whole process of actions of the Respondents is ultra vires and contrary to the rule of law.

Even though the Respondents have taken up the position that they have not finalized their decisions, what appears on the record is that they have decided on the value not only once, but several times. Since all those decisions fall into the above category, it seems that they have failed to make a justifiable decision for a verification of the value of goods. Therefore, what appears to this court is the transaction value declared in the commercial invoice has to be accepted for the customs

purposes. As such, this court grants reliefs prayed for in the paragraphs B and C of the petition issuing the writ of certiorari and Writ of Mandamus accordingly.

Relief granted.

JUDGE OF THE COURT OF APPEAL