

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

**In the matter of an Application for mandates in
the nature of Writ of *Certiorari* and *Mandamus*
and *Prohibition* under and in terms of Article
140 of the Constitution of The Democratic
Socialist Republic of Sri Lanka.**

1. S.H. Sadikeen
2. S.A.C. Wahida Rahuman

Being partners of the business carried on under the
name and style if "Wayamba Traders" having its
place of business at No. 86, Peer Saibo Street,
Colombo 12.

CA/Writ Application

No.219/2015

PETITIONERS

Vs,

1. Jagath P. Jayaweera,
The Director General of Customs (former),
Sri Lanka Customs,
No.40, Main Street,
Colombo 11.

1A. The Director General of Customs,
Sri Lanka Customs,
No.40, Main Street,
Colombo 11.

2. Leslie Gamini,
The Director of Customs
(Chief Exports Officer),
Imports/Exports Division,
Sri Lanka Customs,
No.40, Main Street,
Colombo 11.

3. S. Nikunanandan,
The Director,
Industries and Services (Bonds) Division,
Sri Lanka Customs,
No.40, Main Street,
Colombo 11.
4. A.M.C. Abeykoon,
Deputy Director of Customs,
Inquiry Officer
Industries and Services Directorate,
Sri Lanka Customs,
No.40, Main Street,
Colombo 11.
5. M.R. Rajmohan,
Deputy Director of Customs,
Industries and Services Division,
Sri Lanka Customs,
No.40, Main Street,
Colombo 11.

RESPONDENTS

**Before : Vijith K. Malalgoda PC J (P/CA) &
H.C.J. Madawala J**

**Counsel : Faisz Musthapha PC with N.M Shaheid and Faisza Makar
for Petitioners,
F.Jameel SDSG for the Respondents.**

Supported for Interim relief: 05.06.2015/ 11,06,2015

Written Submissions On : 22.06.2015

Order On : 22.07.2015

Order

Vijith K. Malalgoda PC J (P/CA)

Petitioners who are engaged in the business of importing and exporting Agro Commodities under the name of Wayamba Traders have come before this court seeking inter alia Writ of *Certiorari*, *Mandamus* and *Prohibition* as set out in paragraph (b) to (f) of the prayer to the Petition and sought interim relief as prayed for in paragraph (g) to the Petition.

In the said paragraph (g) the petitioner's prayed;

- g. " Interim order directing the 1st to 6th Respondents and /or any one or more of them to release the afore said 195 containers referred to in Cusdecs bearing Numbers 516633516823 ; to be re-exported subject to such terms and conditions determined by your Lordships Court"

Petitioners have submitted that they are registered operators to claim the benefit under scheme called TIEP Scheme and are entitled under the above scheme to import commodities for re- export free of Custom Duties.

Under the above scheme the Petitioners were involved in importing and re- exporting Areca nuts also called as Betel nuts. Petitioners further submitted that under the TIEP scheme they are bound to re-export the commodities they import, after processing it in Sri Lanka and therefore they are subject to Custom control both at the importation and exportation.

Petitioners admit that in accordance with the Plant Protection Act No 35 of 1999 and the Regulations made thereunder, the legal importation of Areca nuts requires a permit from the Department of Agriculture.

Petitioners submitted that they imported 72 consignments containing 5005.26 MT of Areca nuts packed in 303 containers which arrived from time to time during the past few months.

On 03.03.2015 an inquiry was conducted by the Respondents in respect of 19 detained consignments and imposed a forfeiture of Rs. 822,759,342 being treble the value of the goods, mitigated it to Rs. 59,900,000 in terms of section 163 of the Customs Ordinance and a further penalty of Rs. 100000/- was also imposed in terms of section 129 of the said Ordinance.

According to the Petitioner by 03.03.2015, 61 consignments out of 72 consignments have arrived at the port, consisting 259 containers [out of 303 containers] and all 259 containers were detained by the Respondents. After the said inquiry on payment of the forfeiture and penalty 89 containers were released by the Respondents. Further 11 consignments consist of 44 containers arrived at the port between 03.03.2015 and 02.04.2015 making total numbers of detained containers to 214.

Petitioners further submitted that they have paid shipping agents and Port's Authority sum of Rs. 89.7 Million in order to secure the release of the said 214 containers but at the time the present case is filed challenging the decision by the Respondents to forfeiture of 60 Million and to secure the release of the said containers, which are detained at the customs there were 195 containers detained out of 214 containers.

In between the date of filling the papers before this court and support the matter, further 135 containers were released leaving 60 containers with the customs.

However the position taken up by the Learned Senior Deputy Solicitor General was that under the provisions of Plant Protection Act (PPA) No. 35 of 1999 and the Regulations made thereunder, importation of Areca nuts can be regarded as lawful only if importation is made under the provisions of the above Act and the Regulations.

Learned Senior Deputy Solicitor General further submitted that it is the duty of the Petitioners to establish that the goods identified by Cusdec numbers in paragraph (g) are covered by a valid permit. Whilst challenging the validity of the said permits, the Learned Senior Deputy Solicitor General submitted that the Cusdec numbers which are set out in paragraph (g) relating to interim relief have not been proved to have arrived during the validity period of the permit.

Even though the respondents have failed to give specific reason for the detention of the said 60 containers, it appears to court that the main reason the respondents are alleging is that the goods were not covered by a valid permit at the time the goods were arrived at the port.

In response to the said argument, the petitioners have submitted that the 72 consignments of Areca nuts imported by the petitioners were imported on 4 permits issued by the Department of Agriculture.

The said permits bearing Numbers, NPQS/PIP/2014/1233, NPQS/PIP/2014/1234, NPQS/PIP/2014/1236 and NPQS/PIP/2014/1237 have been issued on 02.12.2014 and are valid for a period of three months, i.e until 02.03.2015.

The position taken up by the petitioners were that the permits were in operation at the time the order for the importation was placed or the goods were placed on board the vessel for carriage but the permit may have expired by the time the vessel arrives due to reasons beyond the control of the petitioners.

In support of their contention the petitioners have submitted an analysis of the relevant permits and the containers to which they relate, marked (X) along with the written submission. According to the said document, except for 10 vessels arrived in time, all the other vessels carried Areca nuts on the said permits have arrived after expiry of the permit but except for 2 instances in all the other instances good were boarded on the vessel when the permits were in operation. Petitioners have further submitted that as a practice, Director General of Agriculture had extended the validity of the said permits and in fact the validity of permits referred to above are now extended till 2nd September 2015.

This court further observes that each permit issued by the Department of Agriculture carries restrictions such as inspection and quarantine process by the officers of the Department of Agriculture.

In the case of **Duwearachchi and Another V. Vincent Perera and Others 1984 (2) Sri LR Senevirathne J** whilst discussing the main factors to be considered by a court for the issue of or non issue of interim relief, laid down the following principles when considering the grant or refusal of interim relief.

- i. will the final order be rendered nugatory if the petitioner is successful
- ii. where does the balance of convenience lie
- iii. will irreparable and irremediable mischief or injury be caused to either party

As submitted by the Petitioners the imported Cargo is with customs over three months now. They are agro commodities, which can also be considered as perishable Cargo. If the petitioner can satisfy that the said cargo was imported on a valid permit, we see no reason to detain them at the custom. The court is satisfied from the material submitted before court that the application for interim relief by the petitioners are not frivolous or vexatious.

Considering all these issues, the court decides to grant interim relief as prayed for by the Petitioner in paragraph (g) to the prayer of the Petition subject to following conditions;

- a) Respondents are directed to verify the permit under which the cargo referred to this petition had been imported to Sri Lanka and satisfy that they are imported on a valid permit.
- b) If the said cargo had arrived at the port after expiry of the permit but, if the permit was valid when order for the importation was placed or the goods were placed on board, the Respondents are

- c) directed to consider such instance as “goods imported on valid permit” if the petitioners can satisfy that the said permits are now extended to cover the date of arrival to the port.
- d) Release of the said cargo, subject to all other levies, taxes and charges if any imposed by the Respondents and other relevant agencies.
- e) It is also subject to any other conditions/ restrictions imposed in the permit including the requirement for quarantine and fumigation.

PRESIDENT OF THE COURT OF APPEAL

H.C.J. MADAWALA,

I agree,

JUDGE OF THE CUORT OF APPEAL