

**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.**

4S International (Pvt) Ltd,
No. 25/2, Nawa Nuge Road,
Peliyagoda

PETITIONER

CA/Writ Application

No. 210/2015

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 : Manohara de. Silva PC with Niranga Nanayakkara and Arenda Wijesundare
for the Petitioner,
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)

Petitioner to the present Application is in the business of importing and exporting Agro Commodities, has come before this court seeking inter alia Writs of *Certiorari*, *Mandamus* and *Prohibition* as set out in paragraph (b) to (j) of the prayer to the Petition and also sought interim relief as prayed for in paragraph (k) to the Petition

Petitioner has submitted that the petitioner is a registered operator to claim the benefit under scheme called TIEP Scheme and is entitled under the above scheme to import commodities for re- export, free of Custom Duties.

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

Petitioner further admits 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.

Petitioner was importing Areca nuts on valid permits until the end of year 2014. In February 2015 eleven consignments consisted of 48 containers arrived in the port. The said consignment was detained at the port and on 27.02.2015 an inquiry was conducted by the Respondents in respect of the 11 detained consignments which comprise 48 containers, for under valuation and imposed a forfeiture of Rs. 441,609,825 being treble the value of the goods, mitigated it to Rs. 31,280,000/- 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.

After the said Inquiry the petitioner had once again imported a further 23 consignments of Areca nuts containing 106 containers between 27.02.2015 and 18.05.2015.

Petitioner alleged that the Respondents have demanded the payment of US \$ 5000 for the release of each container, and the said 106 containers were detained at the customs indefinitely. Therefore the petitioner has decided to come before this court challenging the forfeiture and the penalty already imposed on 48 containers detained by the customs and secures the release of the balance 106 containers without further forfeiture. In order to secure the release of the said containers, interim relief was sought in terms of paragraph (k) in the prayer to the Petition of the petitioner.

In between the date of filing the papers before this court and support the matter, 59 containers were released leaving 47 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 Petitioner to establish that the goods referred to in paragraph (k) are covered by a valid permit. Whilst challenging the validity of the said permits the Learned Senior Deputy Solicitor General submitted that the containers referred to in paragraph (k) has not been proved to have arrived during the validity period of the permit.

Respondents have further argued that there can be no revalidation of permits that has lapsed. When a permit has lapsed it ceases to have any legal effect and force. In such circumstances, there is no doubt that the process of the application for a permit must be commenced a fresh. This court cannot agree with the above argument. As petitioner argued before us, due to circumstances beyond the control of the petitioner, the arrival of vessels get late and in such a situation what is important to consider is whether

the importer has place the order and the goods were placed on board when the permit was valid. In such a situation, this court cannot understand as to how the process for the application for a permit be commenced a fresh, rather than re- validating the permit to allow the cargo to be landed at the port and to allow the clearance process to take place.

Respondents have further challenged the maintainability of the present application on the grand that the Petitioner has violated Rule 3(1) and 3(8) of the Court of Appeal (Appellate Procedure) Rules.

Court observers that, the Petitioner after filing this application on 18/05/2015, on 26/05/2015 filed papers before this court to substitute the 1st Respondent who has resigned from his office on 25.05.2015. Thereafter again on 3rd June 2015 Petitioner has filed an affidavit from the Director of the Petitioner Company along with document mark P12C and P12C1 to C XXVI. Again on 11.06.2015 Petitioner has tendered an amended petition to include a new interim order to read as paragraph (k k) to the prayer of the Original Petition.

The said paragraph (k k) reads as follows;

(k k) . issue an interim order restraining the 1A to 3rd Respondents and / or any one or more of them from detaining the 23 consignments of Areca nuts imported by the Petitioner Company, more fully evinced by Bills of Lading marked P19 and /or preventing the Petitioner Company from clearing the same in a manner contrary to Law.

In reply to the said objection by the Respondents, Petitioner has submitted that, until the Petitioner listen to the submissions made on behalf of the Respondent on 27. 05.2015, he was unaware of the reason for the detention of 23 consignments by the Respondent, but the moment he got to know that the Respondents were in doubt whether the permits issued to the Petitioner covered the said consignments, decided to file the relevant permits and its extension before the next court date i.e. 05.06.2015 with notice to Respondents.

Petitioners have further submitted that they originally came before this court in order to prevent the respondents from imposing a forfeiture of US \$ 5000 for each container, since the Petitioner was made to understand by the Respondents that they are detaining the container to recover the said money.

However when the Petitioner got to know the exact reason for detention on 27th May, in Order to secure the release of the said 23 consignments, he decided to add a further interim relief as paragraph (k k) by way of an addition to the Petition, and that too was filed within the same limited time, considering the urgency of this matter.

When go through the said material, including the Original Petition and its prayers, we observe that the Petitioner was compelled to amend his papers to satisfy court and therefore filed these papers with an additional prayer from court to accept the same and file of record. I have no reason to reject the said argument by the Petitioner and therefore decided to reject the objection by the Respondents.

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 issue this court decides to grant interim relief as prayed for by the Petitioner in paragraph (k k) 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 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.
- c) Release of the said cargo, subject to all other levies, taxes charges imposed by the Respondents and other relevant agencies.
- d) 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