

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

**CA Writ No: 145/2016**

N.A.M. Senanayake,  
No: 30/10, Yakkala Road,  
Gampaha.

**Petitioner**

**Vs.**

K.A.Chulananda Perera,  
Director General of Customs,  
Customs Department,  
Customs House, No:40, Main Street,  
Colombo 11.

Dr. R.H.S. Samaratunga,  
Secretary to the Treasury &  
Secretary to the Ministry of Finance,  
Ministry of Finance and Planning,  
General Treasury,  
The Secretariat,  
Colombo 01.

Commissioner General  
Department of Inland Revenue,  
Inland Revenue Building,  
P.O.Box 515,  
Sir Chittampalam Gardiner Mawatha,  
Colombo 02.

Hon. Attorney General  
Attorney General's Department,  
Colombo 12.

**Respondents**

**BEFORE** : Vijith K. Malalgoda, PC.J. (P/CA) &  
P. Padman Surasena, J.

**COUNSEL** : K. Deekiriwewa with L.M. Deekiriwewa, M.K.  
Herath and Samantha Ramanayake for the  
Petitioner.  
Arjuna Obeysekara DSG for the Respondents.

**DECIDED ON** : 01.06.2016

**VIJITH K. MALALGODA, PC. J(P/CA)**

Heard counsel in support of this application and the learned Senior DSG representing the Respondents.

Petitioner has come before this Court by way of this application seeking writ of certiorari prohibition and mandamus against the Respondents with regard to an importation of a vehicle said to have imported under the tax payers concession. His submissions before this court was mainly based on the provisions of the Finance Amendment Act No. 13 of 2007 which was further amended by Act No. 13 of 2007. He submitted that under the provisions of the said act he is entitled to import a vehicle on tax concession stipulated in the said act and the Gazettes which are issued time to time at a concessionary rate as explaining in the Gazettes. His position was that when he imported the vehicle by X-8 the Secretary to the Treasury had made orders withdrawing certain benefits given under the

said Finance Act and the said decision of the Secretary to the Treasury suspending the tax concession is ultra-virus.

However, when going through the papers submitted before this Court by the Petitioner, we observed that instead of the said tax payers benefit the petitioner when clearing the vehicle had decided to clear the vehicle he has so imported based under procedure category B-16 and the Gazette 1949/29 dated 12.01.2016 category 'C'.

The said category reads thus;

'A motor vehicle imported solely for private use in respect of which with the letter of credit was opened on or before 20.11.2015 and registered the vehicle on or before 31.03.2016 in the name of the person who uses it for his or her private purpose and shall not be transferred for a period of five years from the date of registration without prior approval from the General Treasury.'

From the material placed before us it was clear that the letter of credit for the vehicle so imported was opened prior to 20.09.2015 exactly on 16.09.2015. The raid conducted by the customs, he referred to in the petition said to have taken place a date after 31.03.2016 in the early part of April. At the time the said raid was conducted the vehicle was not registered in any name but it was found in a car sale. The car sale owner too had given a statement to the Custom official with regard to the said vehicle when handing over the key to the vehicle to the Custom officials. From the above

facts it is clear that the petitioner was acting in violation of paragraph 'C' to the Gazette dated 12.01.2016. However, we observe that the Petitioner has not divulged these issues before this Court when he presented his case before us. He was totally depending on the tax payers permit to which he is entitled, but he has made use of a different category to import the vehicle. In paragraph 9 of his petition he refers that the Custom had not permitted the petitioner to clear the said imported car by utilizing the certificate he has referred to. But we observe that the Petitioner when he submits the cusdec through electronically he on his own declared that he is not coming under the category of tax payer certificate but he was coming under category B-16. When considering all these issues we see no merit in this application. Therefore, we are not inclined to issue notices in this case. Notices are refused. No cost is ordered.

Registrar is directed to issue a certified copy of today's proceedings to both parties on payment of charges to the Petitioner and free of charges to the Hon: Attorney General.

**PRESIDENT OF THE COURT OF APPEAL**

**P. PADMAN SURASENA**

I agree.

**JUDGE OF THE COURT OF APPEAL**

KRL/-