

**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 Writs of *Certiorari*, *Prohibition* and *Mandamus* in terms of Article 140 of the Constitution of the Republic of Sri Lanka.

Arumugam Thiruchelvam,
Power of Attorney holder of Arumugam Rajah who is carrying a proprietorship business under the name, style and firm of “**Galaxy Foods**” at No: 135,
5th Cross Street, Colombo 11.

PETITIONER

CA (Writ) Application No: 262/2017

Vs.

1. Hon. Mangala Samaraweera,
Hon Minister of Finance.
2. Dr. R.H.S. Samaratunga,
Secretary to the Treasury and,
Secretary to the Ministry of Finance.
3. K.A. Vimalenthirarajah,
Director General,
Department of Trade and Investment Policy,

1st to 3rd Respondents are from
Ministry of Finance,
General Treasury,
The Secretariat,
Colombo 01.

4. K.A. Chulananda Perera,

4A. P.S.M. Charles,
Director General of Customs,
Sri Lanka Customs Headquarters,
Customs House,
Charmers quay,
Main Street, No: 40,
Colombo 11.

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

RESPONDENTS

Before : P. Padman Surasena, J. (P/CA)

&

A.L. Shiran Gooneratne J.

Counsel : K. Deekiriwewa with L.M. Deekiriwewa, Dr. K. de Silva and M.K.
Herath for the Petitioner.

Dilrukshi Dias Wickramasinghe, ASG with Ganga Wakishta
Arachchi, SSC for the Respondents.

Written Submissions by the Petitioner filed on : 12/01/2018 & 06/03/2018

Written Submissions by the Respondents filed on : 11/12/2017

Supported on: 02/03/2018

Decided on : 18/06/2018

A.L. Shiran Gooneratne J.

The Petitioner has invoked the jurisdiction of this Court, inter alia, seeking mandates in the nature of writ of Certiorari to quash the Special Commodity Levy Gazette Notification bearing Nos. 1891/8 dated 02/12/2014, marked X4, 1898/43 dated 22/01/2015, marked X5, 1907/19 dated 25/03/2015, marked X6, and 1913/02 dated 05/05/2015, marked X7, and the Revenue Protection Order bearing Gazette Notification No. 1913/3 dated 05/05/2015, marked X8.

The said reliefs are sought on the basis of a claim for a refund/ release of revenue paid in excess of the amount chargeable on imports in terms of Section 18(1) of the Customs Ordinance.

When this case was taken up for support for notice, the ASG, appearing for the Respondents raised the following preliminary objections to the maintainability of this application.

- a) The undue delay caused in invoking the jurisdiction of this Court.
- b) The futility of this application on the basis that the benefits, if granted, cannot reach the consumer at this stage.

It is observed that, the Gazette Notifications sought to be quashed are dated 2 to 3 years prior to the date, the Petitioner invoked the jurisdiction of this Court. In paragraphs 9, 10 and 11, the Petitioner submits that the Gazette Notifications marked X4, X5, and X6, have already been rescinded by the Minister of Finance.

In support of this application the respective parties have cited several Judgments, where the Court has looked into the issue of undue delay in making an application for judicial review.

In the case of *Biso Menika Vs. Cyril de Alwis (1982) 1SLR 368 at page 378*, the court held,

“the proposition that the application for writ must be sought as soon as injury is caused is merely an application of the equitable doctrine and delay defeats equity and the longer the injured person sleeps over his rights without any reasonable excuse the chances of his success in a writ application dwindle and the court may reject a writ application on the ground of unexplained delay.”

Accordingly, the length of the delay, the extent and the effect of the decision under challenge are relevant factors.

It is trite law that, the Courts will not assist a claimant who sleeps on his rights. Therefore, a claimant must bring his claim promptly. On the question of promptness, a Court can refuse a remedy where there has been undue delay. As noted earlier, the delay in filing this application for judicial review is more than two to three years from the date of the impugned Gazette Notifications. The delay in filling action is unexplained and on this ground alone this application should be refused.

It is also observed that, as of now, the Commodity Levy charged on the commodity items imported by the Petitioner, has passed on to the customer, by its inclusion in the sale price of the relevant commodity item. Prayers (d) and (i) of the Petition shows that the intention of the Petitioner, of filing this application, is to appropriate the said commodity levy charged (already passed on to the consumers) to his benefit. Such a move is neither justifiable nor is in line with principles of equity referred to in the Judgment cited above. As such any relief granted to the Petitioner at this stage, would adversely affect the rights of the consumer. The Commodity Levy passed on to the consumer, if remedied, would also be detrimental to good administration.

In the circumstances, notice is refused and the Petition is dismissed without costs.

JUDGE OF THE COURT OF APPEAL

P. Padman Surasena, J. (P/CA)

I agree.

PRESIDENT OF THE COURT OF APPEAL