

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

1. Czarnikow Group Limited,
Paternoster House,
65, St. Paul's Church Yard,
London EC4M 8AB,
England.

Appearing by its Attorney
Denham Oswald Dawson.

2. Mondial Impex Private Limited,
119, 1st Floor,
Hunupitiya Lake Road,
Colombo 2.

Petitioners

CASE NO: CA/WRIT/408/2016

Vs.

1. Chulananda Perera,
Director General of Customs,
Customs House,
40, Main Street,
Colombo 11.

2. H.M.S. Premaratne,
Director of Customs,
Inquiring Officer,
Sri Lanka Customs,
Customs House,

40, Main Street,
Colombo 11.

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

Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Shavindra Fernando, P.C., with Eliza Candappa for
the Petitioners.

Manohara Jayasinghe, S.C., for the Respondents.

Argued on: 06.06.2018

Written Submissions filed:

by the Respondents on 21.08.2018

by the Petitioners on 31.08.2018

Decided on: 08.10.2018

Samayawardhena, J.

The two petitioners filed this application seeking (a) to quash by way of writ of certiorari the order of the 2nd respondent marked P19 whereby 50 containers of sugar were forfeited and (b) to compel the respondents by way of writ of mandamus to release to the petitioners the proceeds of the sale of sugar.

The petitioners had earlier filed the writ application No. 686/2007 regarding the same consignment of sugar in which a

settlement had been reached to hold a fresh inquiry by the Customs. Order P19 is consequent to that fresh inquiry.

The main, if not the sole, complaint of the petitioners against the said inquiry is the active role played by Mr. Saman de Silva-Deputy Director of Customs, who seized the consignment, at the aforesaid inquiry. The Inquiring Officer was the 2nd respondent-Mr. Premaratne-Deputy Director of Customs at that time.

Learned President's Counsel for the petitioners submits that the Inquiring Officer was bias and there was a collusion between the Inquiring Officer and Mr. Saman de Silva.

As seen from P19 and inquiry notes (eg. P17D, P17E, P17F, P17H, P17I, P17J, P17K), in addition to Mr. Ravindra-Deputy Superintendent of Customs, Mr. Saman de Silva has also acted as an Officer Assisting the Inquiring Officer-Mr. Premaratne. According to P17S, learned counsel for the petitioners who appeared at the inquiry has unhesitatingly recognized Mr. Saman de Silva as the Prosecuting Officer.

According to P11-the letter sent by learned Additional Solicitor General on behalf of the 3rd respondent-Attorney General, the custom inquiry was directed/instructed to be held "forthwith". Even though the letter is formally addressed to "*the Director General of Customs*", it has particularly been sent to the "*ATTENTION:-Mr. Saman de Silva (DDC)*". That letter further makes reference to instructions given over the telephone on 30.10.2014 (which, appears to be instructions given to Mr. Saman de Silva).

I must also add that P11 has been sent with a copy to the learned counsel for the petitioners upon the request made by the said counsel by P10 seeking a direction to the 1st respondent to hold the inquiry within two weeks from that letter.

In that backdrop, in my view, Mr. Saman de Silva had every right to actively involve in the whole process to make sure that the inquiry is commenced and concluded expeditiously. I see no collusion between the 2nd respondent-Inquiring Officer and Prosecuting Officer-Mr. Saman de Silva.

As seen from P13, at the commencement of the inquiry, learned counsel for the petitioners has objected the inquiry being held by Mr. Premaratne on three grounds: (a) notice was delivered on the 24th November 2014 regarding the inquiry to be held on the 26th November 2014 and there was insufficient time to prepare for the inquiry; (b) on the 10th November 2014 Mr. Saman de Silva informed the counsel that Mr. Premaratne would be the Inquiring Officer and the inquiry would be fixed in four days and concluded; (c) prior to the commencement of the inquiry Mr. Premaratne informed Mr. Saman de Silva to brief the case. This objection has been overruled by the Inquiring Officer-Mr. Premaratne, which in my view is not unjustifiable.

It is the contention of learned President's Counsel for the petitioners that in terms of clause 7.3.1 of the Manual of Procedure of the Sri Lanka Customs marked P14, if a party objects as such, the Inquiring Officer has no alternative but to refer the matter to the Director General of Customs irrespective

of the merits of the objection. I am unable to agree. Such a literal, mechanical interpretation cannot be given to that clause.

In any event, after overruling the objection, the Inquiring Officer, further accommodating the learned counsel for the petitioners, has postponed the inquiry until 16.12.2014. As seen from P15(a) dated 02.12.2014, learned counsel for the petitioner has thereafter, referring to the said clause, written to the Director General of Customs to appoint another inquiring officer, but the Director General of Customs has not thought it fit to accede to that request.

As learned State Counsel appearing for the respondents correctly points out, P14 is an internal document which has no force of law, the compliance of which is desirable but not mandatory. I must further add that the P14 Manual has been compiled not to thwart the steady progress of inquiries but to expedite them.

Let me now state briefly why I say that overruling of that objection is justifiable. Out of the three grounds, according to (b) above, on the 10th, learned counsel for the petitioners has been personally informed by Mr. Saman de Silva himself about the impending inquiry and even the name of the Inquiring Officer. If there was a collusion between the Inquiring Officer and Mr. Saman de Silva, such a voluntary disclosure can never be expected. This further goes to show that there is no room to say that notice given on the 24th regarding the inquiry to be held on the 26th was inadequate. In fact, as I stated earlier, by P10 dated 29.10.2014, learned counsel for the petitioners wanted the

inquiry to be commenced within two weeks from that date, and by P11 dated 04.11.2014 the Customs was directed/instructed to hold the inquiry forthwith. I must also emphasize that there is absolutely no irregularity or bias, in the Inquiring Officer asking the Prosecuting Officer, to brief the prosecution case at the commencement of the inquiry.

At the inquiry no documents regarding terms of payment, shipping and CUSDEC have been tendered by the petitioners. That is the crux of the matter. No proper person has been identified as responsible for entering 50 containers of sugar to the harbour. Notwithstanding the position of the petitioners that the importer was Kala Traders, the contracts relied upon by the petitioners marked P4(a)-(c) are still unsigned by Kala Traders; and moreover, a director of Kala Traders, by affidavit tendered in the earlier case-the precursor-CA (Writ) 686/2007 has disowned any connection whatsoever of Kala Traders to this 50 containers of sugar.

The allegation of the respondents is that the petitioners have acted in violation of sections 12 and 43 of the Customs Ordinance, No. 17 of 1869, as amended, which statutory provisions are fleshed out in schedule B to the Customs Ordinance read with Extra Ordinary Gazette 1022/06 of 08.04.1998 issued under Import and Export (Control) Act, No.1 of 1969, as amended.

In the facts and circumstances of this case, I see no illegality, irrationality or procedural impropriety of the impugned order.

Application is dismissed with costs.

Judge of the Court of Appeal