

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

Merbok MDF Lanka (Pvt) Ltd.,  
A Company duly incorporated in  
Sri Lanka and having its  
registered office at No. 41,  
Janadhipathi Mawatha,  
Colombo 1.  
Petitioner

**CASE NO: CA/WRIT/49/2016**

Vs.

Conservator General of Forests,  
Forest Department,  
Sampathpaya,  
No. 82,  
Ramalwatta Road,  
Battaramulla.  
And 4 Others  
Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Manoj Bandara for the Petitioner.  
Hashini Opatha, S.C., for the 1<sup>st</sup>-3<sup>rd</sup> and 5<sup>th</sup>  
Respondents.

J.C. Weliamuna, P.C., for the 4<sup>th</sup> Respondent.

Decided on: 08.03.2019

Samayawardhena, J.

The petitioner company filed this application seeking to quash P25 whereby the Conservator General of Forests directed the petitioner to obtain, in terms of “*the Gazette Notification No.1161/6 dated 2000.12.05*” marked P19, Export Permit for the exportation of consignments of MDF (Medium Density Fibre) Boards mainly made of rubber wood.

It is the contention of the petitioner that Export Permit is not necessary for exportation of the said finished product.

Section 24(1)(p) of the Forest Conservation Ordinance, which was introduced for the first time by the amending Act No. 23 of 1995, read as follows:

*The Minister may make regulations respecting the transit of all forest produce by land or water. Such regulations may, among other matters—*

*(p) regulate the import and export of timber and seeds of forest, tree species and other forest produce and provide for the issue of permits for the same.*

By the amending Act No. 65 of 2009, which became law on 16.11.2009, the above quoted section 24(1)(p) was repealed and replaced with the new sub sections (p), (q) and (r).

After the last amendment by Act No. 65 of 2009, section 24(1), insofar as relevant to the present purposes, reads as follows:

*24(1) The Minister may make regulations respecting the transit of all forest produce by land, air or water. Such regulations may, among other matters:*

*(p) regulate the import and export of timber and forest produce and the levying of fees;*

*(q) prohibit the export from Sri Lanka of any timber or forest produce, except under the authority of a permit issued for such purpose by the Conservator-General of Forests; and*

*(r) prohibit the export of any specified timber or forest produce.*

*The Minister may direct that any regulation made under this section shall not apply to any specified class of timber or other forest produce or to any specified local area.*

The learned counsel for the petitioner for the first time in the written submissions has mounted the argument that, after repealing of section 24(1)(p) by the amending Act No. 65 of 2009, the regulations made by the Minister under the repealed section and published in the Government Gazette No. 1161/6 dated 05.12.2000 under “*Export of Timber Seeds of Forest Tree Species or Other Forest Produce Regulations No.1 of 2000*” marked P19 are invalid. This is a valid argument which cuts across the 1<sup>st</sup>-3<sup>rd</sup> respondents’ case/defence.

The Gazette P19 referred to by the Conservator General of Forests in P25 dated 02.12.2015 which is sought to be quashed in these proceedings contains “*Regulations made by the Minister of Forestry and Environment by virtue of the powers vested in him by section 24(1)(p) of the Forest Ordinance (Chapter 451) as amended by Act, No. 23 of 1995*”. Those Regulations made under the repealed section 24(1)(p) of the Forest Ordinance as amended by Act, No. 23 of 1995 have no force in law after the amending Act No. 65 of 2009, which became law on 16.11.2009.

No Regulations under the new section 24(1)(p)-(r) regarding import and export of timber or forest produce have been made up to now by the Minister.

By the last amending Act No. 65 of 2009, section 64 was also repealed and replaced with a new section, to which, *inter alia*, the following new sub sections were added.

*64(3) Every regulation made by the Minister shall be published in the Gazette and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.*

*64(4) Every regulation made by the Minister shall, within one month after its publication in the Gazette, be brought before Parliament for approval.*

*64(5) Every regulation which is not so approved shall be deemed to be rescinded as from the date of such disapproval but without prejudice to anything previously done thereunder.*

For the aforesaid reasons, I hold that, for the time being, there is no law, which requires Export Permit to be obtained for the exportation of timber or forest produce, and therefore P25 decision of the Conservator General of Forests is *ultra vires*. Hence I quash the same by certiorari.

Even though this is sufficient for the present purposes, for completeness, I must deal with the other arguments put forward by the learned counsel for the petitioner.

Another argument of the learned counsel for the petitioner is that:

*Section 24(1)(p) of the amending Act No. 65 of 2009 does not vest any power on the Minister to make regulations for the issue of permits to export forest produce. Instead, the Minister has been given the power only to make regulations for levying of fees.<sup>1</sup>*

I am unable to agree.

What section 24(1) says is that the Minister can make regulations, among other matters, to regulate the import and export of timber and forest produce and the levying of fees. List is not exhaustive, and the power to make regulations in respect of issuance of permits for importation and exportation of timber and forest produce has not been excluded or prevented. By the said amendment, enforcement has not been curtailed but strengthened in many respects. Empowering the Minister to make regulations for levying fees for importation and exportation of timber and forest produce is an additional feature which was not there before the amendment. Levying a fee is not a substitution for an export licence.

By this amendment the following new section was also introduced as 24A.

*24A (1) It shall be lawful for an officer of the Department of Customs to levy a fee in respect of all timber or forest produce exported from Sri Lanka, at the port of shipment, at such rates, as are prescribed from time to time.*

*(2) This section shall be enforced as if it forms part of the Custom Ordinance (Chapter 235) and the provisions of that Ordinance shall apply accordingly.*

---

<sup>1</sup> Vide paragraph 39 of the written submissions.

The next argument of the learned counsel for the petitioner is the finished product of the petitioner made mainly of rubber timber does not fall into the category of “*timber*” or “*forest produce*”. According to the learned counsel “*In terms of the Forest Ordinance, ‘timber’ includes trees when they have fallen or have been felled, and all wood.*”<sup>2</sup> However I find that, this definition is incomplete. According to section 78:

*“timber” includes trees when they have fallen or have been felled, and all wood, whether cut up or fashioned or hollowed out for any purpose or not;*

That means, even a finished product made out of wood, such as the petitioner’s one, falls into the category of “*timber*”.

According to section 78, “*forest produce*” also, among other things, includes “*timber*”.

I reject that argument.

Judge of the Court of Appeal

---

<sup>2</sup> Vide paragraph 56 of the written submissions.