

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

Ceylon Tobacco Company PLC,
No. 178,
Srimath Ramanathan Mawatha,
Colombo 15.
Petitioner

CASE NO: CA/WRIT/492/2015

Vs.

1. National Authority on Tobacco
and Alcohol,
11th Floor, Wing A,
Sethsiripaya, Stage II,
Battaramulla.
2. R.A. Prageeth Jaliya Jayathilake,
Public Health Inspector,
Office of the Medical Officer of
Health,
East Nuwaragam Division,
Anuradhapura.
3. M.A. Samantha,
Public Health Inspector,
Municipal Council,
Chilaw.

Respondents

D.S. Gunasekera (Pvt) Ltd,
No. 157, Main Street,
Anuradhapura.
Intervenient Petitioner

Before: Mahinda Samayawardhena, J.

Counsel: Faisz Mustapha, P.C., with Faisza Marker and
Manoj Bandara for the Petitioner.

Anusha Fernando, D.S.G., with Suranga
Wimalasena, S.S.C., for the 1st-3rd
Respondents.

Upul Jayasuriya, P.C., with Sandamal
Rajapaksha for the Intervenient Petitioner.

Decided on: 12.09.2019

Mahinda Samayawardhena, J.

The cardboard boxes containing cigarettes without displaying health warnings were seized and detained by the 2nd and 3rd Respondents during transportation and storage on the basis that such conduct violates section 34 of the National Authority on Tobacco and Alcohol Act, No. 27 of 2006, as amended by Act No. 3 of 2015. The Petitioner, Ceylon Tobacco Company PLC, states that such seizure upon failure to display health warnings on the “cardboard boxes” (which the Petitioner has named as “non-retail master cases”) is a misconstruction of the said section and also against the intention of the legislature, which is

to warn the end-user of the ill-effects of smoking. The Petitioner has filed this application seeking a writ of certiorari quashing the said seizure and detention of the boxes on that basis, and a writ of prohibition prohibiting the 1st Respondent National Authority on Tobacco and Alcohol and its officers including the 2nd and 3rd Respondents from such seizing, detaining, and thereafter instituting and or continuing with any prosecution on that basis.

According to the submissions made by the learned President's Counsel for the Petitioner and the Intervenient Petitioner, the case is largely dependent upon the meaning given to the word "carton" used in section 34 of the Act.

English text of Section 34, as it originally stood (before the amendment), reads as follows:

34(1) A manufacturer of a tobacco product shall cause to be displayed, conspicuously and in easily legible print, on every packet containing tobacco products manufactured by such manufacturer, a label of such dimensions as may be prescribed containing a statement of the tar and nicotine content in each tobacco product in such packet and such health warnings as may be prescribed. Different dimensions may be prescribed in respect of packets of different sizes.

(2) A person shall not sell or offer for sale, a packet containing tobacco products unless there is displayed on such packet, a label of the prescribed dimensions containing a statement of the tar and nicotine content in

each tobacco product in such packet and the prescribed health warning.

(3) Any person who contravenes the provisions of subsection (1) or subsection (2) shall be guilty of an offence under this Act, and shall on conviction after summary trial before a Magistrate be liable to a fine not exceeding two thousand rupees or to imprisonment for a period not exceeding one year or to both such fine and imprisonment.

It is clear that this section speaks of manufacturing, selling and offering for sale of only packets of tobacco products without health warnings.

This section was repealed and replaced by the following section by the amending Act No. 3 of 2015.

34(1) A manufacturer or an importer of a tobacco product shall cause to be displayed conspicuously and in legible print-

(a) on the top surface area of both front and back sides of every packet, package or carton containing the tobacco product manufactured or imported by such manufacturer or importer, health warnings, as may be prescribed, subject to the provisions of section 34A; and

(b) on every packet, package or carton containing the tobacco product manufactured or imported by such manufacturer or importer, a label or a statement specifying the tar and nicotine content

in each tobacco product in such packet, package or carton.

(2) A person shall not sell, offer for sale, supply, distribute or store a packet, package or carton containing tobacco products unless health warnings as provided for in subsection (1) (a) and a label or a statement as provided for in subsection (1) (b), are displayed conspicuously in legible print on every packet, package or carton containing the tobacco products.

(3) Any person who contravenes the provisions of subsection (1) or subsection (2), commits an offence and on conviction after summary trial by a Magistrate be liable to a fine not exceeding rupees fifty thousand or to an imprisonment of either description for a term not exceeding one year or to both such fine and imprisonment.

Section 34A enacts in detail how to display health warnings.

Then it is seen that this amended section covers manufacturing, importing, selling, offering for sale, supplying, distributing and storing of packets, packages and cartons containing tobacco products without health warnings.

It is important to realize that, after the 16th Amendment, Article 23 of the Constitution states that: “*All laws and subordinate legislation shall be enacted or made and published in Sinhala and Tamil, together with a translation thereof in English*”. The first proviso to that Article further states that: “*Parliament shall, at the stage of enactment of any law determine which text shall*

prevail in the event of any inconsistency between texts". Section 7 of the said amending Act, No. 3 of 2015, states that *"In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail."*

Then it is clear that the Law in this regard shall be understood as it is stated in the Sinhala text, and not in the English text, which is only a translation of the Sinhala text. The Act has originally been enacted in Sinhala and Tamil languages. Hence it is unnecessary to understand the meaning of the word "carton" found in section 34 of the English text as that is how the word "කාඩ්බෝඩ් පෙට්ටිය" found in section 34 of the Sinhala text has been translated into English. If the English translation for "කාඩ්බෝඩ් පෙට්ටිය" as "carton" is incorrect; instead of "carton", "cardboard box" or any other word or term can be used. In short, the English word "carton" shall be understood by the meaning given to the Sinhala word "කාඩ්බෝඩ් පෙට්ටිය", and not *vice versa*.

The Sinhala text of section 34 after the amendment (without section 34A) reads as follows:

34(1) දුම්කොළ නිෂ්පාදකයකු හෝ ආනයනකරුවකු විසින් නිෂ්පාදනය කරනු ලබන හෝ ආනයනය කරනු ලබන, දුම්කොළ නිෂ්පාදන ඇතුළත් වන—

- (අ) සෑම පැකට්ටුවක, ඇසුරුමක හෝ කාඩ්බෝඩ් පෙට්ටියක ම ඉදිරිපස සහ පිටුපස යන දෙපැත්තේ ම ඉහළ මතුපිට පෘෂ්ඨය මත, 34අ වන වගන්තියේ විධිවිධානවලට යටත්ව, නියම කරනු ලැබිය හැකි පරිදි වූ, සෞඛ්‍ය අවවාද; සහ

(ආ) සෑම පැකට්ටුවක්, ඇසුරුමක් හෝ කාඩ්බෝඩ් පෙට්ටියක් මත ම, එහි ඇති එක් එක් දුම්කොළ නිෂ්පාදනයේ අඩංගු තාර සහ නිකොටින් ප්‍රමාණය නිශ්චිතව දැක්වෙන ලේබලයක් හෝ ප්‍රකාශයක්,

පැහැදිලිව මුද්‍රණය කර ප්‍රකටව පෙනෙන ලෙස ප්‍රදර්ශනය කිරීමට සලස්වා තිබිය යුතුය.

(2) දුම්කොළ නිෂ්පාදන අඩංගු සෑම පැකට්ටුවක, ඇසුරුමක හෝ කාඩ්බෝඩ් පෙට්ටියක ම, (1) (අ) උපවගන්තියේ විධිවිධාන සලස්වා ඇති පරිදි වන සෞඛ්‍ය අවවාද සහ (1)(ආ) උපවගන්තියේ විධිවිධාන සලස්වා ඇති පරිදි වන ලේබලයක් හෝ ප්‍රකාශයක්, පැහැදිලිව මුද්‍රණය කර ප්‍රකටව පෙනෙන ලෙස ප්‍රදර්ශනය කර ඇත්නම් මිස, යම් තැනැත්තකු විසින්, දුම්කොළ නිෂ්පාදන අඩංගු පැකට්ටුවක්, ඇසුරුමක්, හෝ කාඩ්බෝඩ් පෙට්ටියක් විකිණීම, විකිණීම සඳහා ඉදිරිපත් කිරීම, සැපයීම, බෙදා හැරීම හෝ ගබඩා කිරීම නොකළ යුතුය.

(3) (1) වන උපවගන්තියේ හෝ (2) වන උපවගන්තියේ විධිවිධාන උල්ලංඝනය කරන යම් තැනැත්තකු වරදක් සිදු කරනු ලබන අතර, මහෙස්ත්‍රාත්වරයකු ඉදිරියේ පවත්වනු ලබන ලඝු නඩු විභාගයකින් පසු වරදකරු කරනු ලැබීමේදී රුපියල් පනස් දහසකට නොවැඩි දඩයකට හෝ අවුරුදු එකකට නොවැඩි කාලයක් සඳහා දෙයාකාරයෙන් එක් ආකාරයක බන්ධනාගාරගත කිරීමකට හෝ ඒ දඩය සහ බන්ධනාගාරගත කිරීම යන දඬුවම් දෙකට ම හෝ යටත් විය යුතුය.

It is abundantly clear that by the said amendment, the legislature wanted to extend the display of health warnings from packets, to packets, packages and cardboard boxes; and also to expand the activities from manufacturing, selling and offering for sale, to manufacturing, importing, selling, offering for sale, supplying, distributing and storing. That means, after the amendment, these cardboard boxes containing tobacco

products, which are used *inter alia* for storage and transportation of packets of cigarettes shall contain health warnings as prescribed in section 34 of the amending Act.

As the learned President's Counsel for the Petitioner has argued that “කාඩ්බෝඩ් පෙට්ටිය” shall be understood as “සැහැල්ලු කාඩ්බෝඩ් පෙට්ටිය”, which is loosely called “cigarette carton” in duty free shops, let me add the following. “කාඩ්බෝඩ් පෙට්ටිය” in this context cannot be equalized to “lightweight cardboard box”. Although packets of cigarettes can be sold and offered for sale in such lightweight cardboard boxes, packets of cigarettes are not and cannot practically stored and transported in such lightweight cardboard boxes such as those used in duty free shops. Storage and transportation of packets of cigarettes, as seen from R12 and R13, shall necessarily be in hard cardboard boxes.

When the words of an Act are clear, there is no necessity to go into detail of the history of the law, the international conventions relating to the same and to apply various theories of interpretation of statutes to understand or to interpret the Law. If the words are unambiguous, the Court shall give effect to the plain words of the Statute. (*Sanji Pararajasingham v. Devi Pararajasingham* [2006] 1 Sri LR 260 at 268-269)

The requirement or demand that cardboard boxes containing tobacco products, which are used *inter alia* for storage and transportation of packets of cigarettes, shall contain health warnings as prescribed in section 34 of the amending Act is completely in consonance with the purpose of the amending Act and the intention of the legislature.

Application of the Petitioner is dismissed with costs.

Judge of the Court of Appeal