

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

WTL Automobiles (Private)
Limited,
No. 310,
Negombo Road,
Welisara,
Ragama.
Petitioner

CA CASE NO: CA/WRIT/92/2015

Vs.

Hon. Mangala Samaraweera,
Minister of Finance,
Ministry of Finance,
General Treasury,
The Secretariat,
Colombo 1.
And 6 Others
Respondents

Before: Mahinda Samayawardhena, J.
Counsel: K. Deekiriwewa for the Petitioner.
Milinda Gunathilake, Senior D.S.G., for the
Respondents.
Decided on: 20.11.2019

Mahinda Samayawardhena, J.

The petitioner filed this application seeking several reliefs in the prayer to the petition dated 26.02.2015. As seen from the journal entry dated 12.03.2015, the interim relief sought by the petitioner has been refused by this Court.

By paragraphs 1 and 3 of the counter written submission of the petitioner dated 22.05.2019, the petitioner states that the petitioner confines his relief only to paragraph (b) of the prayer to the petition, which reads as follows:

Grant a mandate in the nature of writ of certiorari to quash that invalid Order published in the Gazette bearing No.1901/3 dated 10.02.2015

This Gazette was marked X6 with the petition.

It is common ground that, this Order contained in X6 was made under Article 10 of Schedule E to the Customs Ordinance, which allows the Minister of Finance to prescribe minimum values for the purpose of imposing custom levies in respect of imported goods.

The petitioner in paragraph 19 of the said written submission (at page 10 thereof) admits the authority of the Minister to prescribe minimum values under the said Article.

Nevertheless, the petitioner (as seen from the said paragraph) argues that, the X6 Order is invalid, because the Minister had not obtained Cabinet approval prior to publishing that Order in the Gazette as required by the said Article.

The said Article 10 reads as follows:

Notwithstanding the provisions of this Schedule, the Minister may, with the approval of the Cabinet of Ministers, in the interest of national economy or for any other reason, by Order published in the Gazette fix, for such period as may be specified in that Order, minimum values for any goods, and the duties on those goods shall be charged on the basis of such minimum values.

The Gazette marked X5 is beneficial or in favour of the petitioner, which recognizes, insofar as used motor vehicles are concerned, transacted value of the vehicle, for the purpose of imposing custom levies.

It is the contention of the petitioner in the petition that, the Sri Lanka Customs arbitrarily refused to implement that Order contained in Gazette X5 on the basis that, by doing so, there would be a huge revenue loss to the government, and thereby (directly or indirectly) forced the Minister to rescind X5, and, instead, issue the impugned Gazette marked X6, which is unfavourable to the petitioner.

According to the counter affidavit of the petitioner dated 25.01.2018, Cabinet approval for the Gazette marked X4 has been obtained more than three years after the Gazette, and no Cabinet approvals have been obtained for Gazettes marked X4, X5 and X6.

However, the petitioner only contests Gazette marked X6 on the ground of publication without Cabinet approval. The petitioner seeks only to quash X6 on that basis, but not the other (favourable) Gazettes for which no Cabinet approvals have been obtained.

It appears to me that, with the change of Government after the Presidential Election on 08.01.2015, the new Minister of Finance, in a hurry, issued X5 Order on 29.01.2015. After him being made to realize the negative impact of that Order to the national economy, he has, in a hurry, within 12 days of issuing that Order, rescinded it, and issued the new Order marked X6.

If the argument of the petitioner is to be accepted, all the Orders X3-X6 are invalid, as no Cabinet approvals had been obtained to any of them at the time of publishing them in Gazettes. Only quashing the Order X6 in isolation is not justifiable. It will not solve the larger issue.

It appears that the Cabinet approval has later been obtained for X5 and X6 Orders.

As seen from R5 and R6, the Order contained in X6 had also been challenged on the same basis in a Fundamental Rights application before the Supreme Court, and the Supreme Court, after hearing both parties, has refused to grant leave to proceed.

The petitioner shall understand that the petitioner cannot seek the relief by way of writ as of right. Writ is a discretionary remedy. The Court is entitled to take all the surrounding circumstances into account, when granting or refusing a discretionary remedy.

In the facts and circumstances of this case, I am not convinced that the petitioner shall be granted the relief as prayed for in paragraph (b) of the prayer to the petition.

I dismiss the application of the petitioner without costs.

As agreed, the petitioners in connected writ applications (95/2015, 96/2015 and 116/2015) will abide by this Judgment.

Judge of the Court of Appeal