

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

*In the matter of an application under
and in terms of Article 140 of the
Constitution of the Democratic
Socialist Republic of Sri Lanka for
writs of certiorari and prohibition.*

1. Hong Lam Integration Pte Ltd.

2. Hong Lam Marine Pte Ltd.

Both at: 6, Shenton Way,
#16-08, OUE
Downtown 2,
Singapore 06 8809

CA /WRIT 147/19

Petitioners

Vs.

1. Mrs. P.S.M. Charles

Director General of Customs
Customs House,
40, Main Street, Colombo 11

1A. Mr. K.A. Vimalenthirajah

Director General of Customs
Customs House,
40, Main Street, Colombo 11

1B. Mr. Vijitha Ravipriya

Director General of Customs
Customs House,
40, Main Street, Colombo 11

2. Mr. M.A. Hassan,

Deputy Director,
Sri Lanka Customs

Customs House,
40, Main Street, Colombo 11

3. Mr. R. Krunathilake

Deputy Superintendent of Customs
Sri Lanka Customs
Customs House,
40, Main Street, Colombo 11

4. Lanka Maritime Services Limited

4th Floor, Robert Senanayake Building,
46/5, Nawam Mawatha,
Colombo 02.

**5. MAS Marine Services Lanka (Pvt)
Ltd**

2nd Floor, Belcon Building,
174, George R De Silva Mawatha
Colombo 13.

Respondents

Before : Sobhitha Rajakaruna, J.

Dhammika Ganepola, J.

Counsel : Murshid Maharooof with Shoaib Ahmad and Githme Senanayake for
Petitioners

Vikum de Abrew SDSG for the 1st to 3rd Respondents

Supported on: 01.04.2021

Decided on: 16.07.2021

Sobhitha Rajakaruna, J.

The Petitioners filing the Petition dated 1st April 2019, have sought, inter alia, for a writ of certiorari quashing the decision of the 1st to 3rd Respondents to conduct an inquiry on the purported basis of "short delivery" or "short landing" of cargo on the voyage from 27th December 2018 to 21st January 2019. The Petitioners have further sought an interim order preventing the 1st to 3rd Respondents, from seizing and/or arresting the vessel *NT Splendore* until the final determination of the said application. Subsequently, the Petitioner filed an amended Petition dated 30th August 2019 mainly seeking for a writ of certiorari quashing the illegal seizure as set out in the purported letter and/or notice marked P20, dated 13th June 2019. Therefore, the Petitioner is now challenging the said notice of seizure which clearly indicates that 162.257MT of IFO 380CST has been seized in terms of Section 135 of Customs Ordinance for the purpose of investigation.

Accordingly, it is clear that the subject goods have been seized by the Sri Lanka Customs by the said seizure notice for the purpose of investigation.

When this matter was taken up before this court for support, for issuance of notice, on 17th February 2021 the learned Senior Deputy Solicitor General who appeared for the 1st to 3rd Respondents informed court that the Sri Lanka Customs would commence an inquiry to investigate the matter relating to the aforesaid seizure. On the same day, the learned Counsel who appeared for the Petitioners indicated to court, that he would inform court as to whether the application of the Petitioner would be withdrawn pending such an inquiry. On 10th March 2021 the learned Counsel for the Petitioner informed this court that the application of the Petitioner will not be withdrawn, and subsequently the matter was taken up for support for notice, on 1st April 2021.

The Petitioners, as per paragraph 43 of the amended Petition, complain that;

- (i) the said seizure is per se illegal and irrational for the reason that the cargo so seized was not liable to be forfeited which is a necessary precondition for any seizure of cargo;

- (ii) the 1st and 2nd Respondents seized goods that they could not do so under any circumstances, even if the Petitioners are liable for short delivery, as forfeiture is not a penal consequence of short delivery;
- (iii) seizure under Section 135 of the Customs Ordinance is in respect of goods forming the subject matter of a Customs Ordinance violation, whereas the goods seized are not such goods as the goods seized were shipped on an entirely different voyage from the voyage subject to the investigation.

In the case of ***Dias v Director General of Customs, 2001 3 SLR 281 (CA)***, the Court held that *"the notice of seizure is not a final determination, and the scheme of the Customs Ordinance recognizes and gives an opportunity to the person whose goods are seized to vindicate himself at a subsequent inquiry. Court would interfere only if the statutory procedure laid down is insufficient to achieve justice. There is nothing wanting in that procedure set out in the Customs Ordinance."*

The Petitioner's main argument in the instant case, as mentioned above, is that the ' seizure under Section 135 of the Customs Ordinance is in respect of goods forming the subject matter of a Customs Ordinance violation, whereas the goods seized are not such goods'.

The Court of Appeal in ***Thajudeen v. Sri Lanka Tea Board and another 1981 2 SLR 471*** has referred to CHOU DRI in his book on the Law of Writs and Fundamental Rights (2nd Edition) Vol.2 (at p.381) and highlighted that *"where the facts are in dispute and in order to get at the truth it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining their witnesses....."*.

In the case above the court has further observed that, *"the remedy by way of an application for a writ is not proper substitute for a remedy by way of a suit, specially where facts are in dispute and in order to get at the truth, it is necessary that the questions should be canvassed in a suit where the parties would have ample opportunity examining their witnesses and the Court would be better able to judge which version is correct, has been laid down in the Indian cases of Ghosh v. Damodar Valley*

Corporation, AIR 1953 Cal. 581 and Parraju v. General Manager B.N. Rly. AIR 1952 Cal. 610.”.

Therefore, this court takes the view that the questions raised by the Petitioners can be easily and effectively canvassed at the inquiry which is to be held at the Sri Lanka Customs. Even if the court decides to issue notice in this matter the court will have to determine the legality of the relevant decisions only upon the averments contained in the Petition. However, the facts disclosed in the averments of the Petition are in dispute and those facts are going to be investigated by another forum/tribunal. This court is unable to decide the legality of those decisions without going into questions of fact involved in this case. Accordingly, the Petitioners have made a premature application before this court and have failed to establish a prima facie case.

In the circumstances, we refuse to issue notice and dismiss this application.

Judge of the Court of Appeal

Dhammika Ganepola, J.

I agree.

Judge of the Court of Appeal