

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

*In the matter of an application for mandates in
the nature of Writs of certiorari and prohibition
of Article 140 of the constitution of the
Democratic Socialist Republic of Sri Lanka*

Sena Mills Refineries (Pvt) Limited,
No. 40, New Kelani Bridge Road,
Orugodawatte.

C.A. Writ 484/2015

PETITIONER

Vs.

1. Chulananda Perera,
Director-General of Customs,
Customs House,
Colombo 11.

(substituted 1A Respondent)

1A. P. S. M. Charles,
Director-General of Customs,
Customs House,
Colombo 11.

1B. Maj. Gen. (Retd.) Vijitha Ravipriya,
Director-General of Customs,
Customs House,
Colombo 11.

(substituted 1B Respondent)

2. C. Perinpanyagama,
Deputy Director of Customs
Customs House,
Colombo 11

3. M. R. Ranaraja,
Superintendent of Customs,
Customs House,
Colombo 11.

RESPONDENTS

Before: **M. T. MOHAMMED LAFFAR, J. &
K. K. A. V. SWARNADHIPATHI, J.**

Counsel : Suren de Silva, (A.A.L)
for the Petitioner.

Malinda Gunathilaka, (S.D.S.G)
for 1-3 Respondents

Decided on: On written submissions

Delivered on: 11.11.2021

K.K.A.V.SWARNADHIPATHI, J.

ORDER

The Petitioner's company filed this application on 08th December 2015 in terms of Article 140 of the constitution of the Democratic Socialist Republic of Sri Lanka, seeking a mandate in the nature of writs of certiorari and a prohibition against the Respondents. In October 2016, the Respondents' objections were tended, and the counter objections were filed in May 2017, and the matter was fixed for argument. However, before taking up for argument, the Petitioner filed a motion dated 1.10.2018 with an affidavit and documents marked X1 – X5.

On 29th July 2020, the Petitioner supported his application made on 1.1.2018 to tender the affidavit and documents marked X1 – X5. The Respondents objected to this application, and the Senior Deputy Solicitor General moved for a ruling regarding the affidavit and documents tendered on 01.10.2018 before taking the matter for argument. Both parties agreed to tender written objections. Accordingly, both parties filed objections and counter objections, and this order is in respect of the affidavit and documents filed on 01.10.2018.

In perusing the affidavit of 01.10.2018, it is filed by the Executive Director of the petitioner company. The respondents have demanded money from the Petitioner regarding consignments of crude palm fatty acid imported by the Petitioner from February 2012 to September 2013. This import was done under the H.S. code 3823.19.90 as per the classification ruling issued by the D Branch of the Sri Lanka Customs. However, that ruling by the D Branch was subsequently revised by the Nomenclature Committee of the Sri Lanka Customs on 27.6.2014, classifying the consignment under H.S. code 1518.00. Therefore, demand for money, which is the subject matter of this case, was made on the classification ruling made by the Nomenclature Committee, which was non-existent when the consignment was imported during the period 28.2.2012- 23.9.2013.

Therefore, the actual ruling should be the D Branch ruling classifying the product under H.S. Code 3823 and not 1518. the X1-X4 documents are true copies of Customs case No. PREV/114/2016. The inquiry was in respect of a consignment alleging that the product crude palm fatty acid imported by the Petitioner was, in fact, contaminated palm oil.

X1 – Proceedings of 1.8.2017

X2 – Proceedings of 27.10.2017

X3 – Inquiring officers order dated 12.7.2018 exonerating the Petitioner.

X4 – Decision of the Sri Lanka Customs to classify the product under 3824.99 according to the classification ruling of the world customs organisation produced at the inquiry as P55.

X5 – A document of the tariff guide for HS 3824

By the affidavit, the Petitioner had claimed under Section 18 of Customs Ordinance for money overpaid by Petitioner to be refunded.

The respondents objecting to this affidavit and documents argue that the customs inquiring disclosed by the Petitioner has no bearing on the present case. The inquiry was held in custom case No PREV/114/2016 was in respect of six different consignments imported by the Petitioner in 2016. In the writ Application No. 158/2016, the court of appeal has already

reached a final determination regarding the six consignments based on custom inquiry case NO. PREV /114/2016, which is still in force.

The respondents point out the issue on the custom inquiry No. PREV/114/2016 was for an importation of prohibited substance that is too harmful to human health in 2016, and the issue of the present case is a short levy for consignments imported in 2012 – 2013 upon a classification dispute.

Objecting to the application, the respondents state that the Petitioner had suppressed necessary materials he had failed to inform the court regarding the C.A. writ application NO 158/2016 on the 6th February 2016 the court of appeal pronounced its judgement in case No 158/2016 and pronounced the following among other findings.

- a) The substance contained in the detained six shipments cannot be categorised as "crude Palm Fatty Acid."
- b) That the analyses reports indicate that they could be adulterated palm oil;
- c) That it is not possible to conclude that the Petitioner had been importing the identical substance at all times, and
- d) According to the analysis reports, this substance has been identified as palm oil, the importation of that substance in its present form is a violation of law, and hence releasing such substance to the Petitioner would also be a violation of the law.

Therefore the Petitioner's application to file amended papers is based on incorrect and irrelevant facts. In replying to objections by the Respondents, the Petitioner has filed his position on 02nd December 2020. Petitioner had not tried to amend the original petition but only to bring in additional evidence. The Petitioner is not agitating to canvas the judgment of C.A. writ application 158/2016. He had filed S.C./5PL/LA/29/2017 against the decision of C.A. writ application 158/2016. However, the supreme court case was settled between parties. According to the settlement, parties agreed to hold an inquiry according to law. After that, the custom inquiry PREV/114/2016 was held.

By X9, a schedule of all Petitioner's shipments of the produced crude Palm Fatty Acid from November 2012 to April 2016 was shown. The Petitioner stated that the schedule included shipments of the present case and the shipments for the period 2012-2016.

After going through all the documents and submissions, I find that X9 contains consignments of Crude Palm Fatty Acid as follows.

28/2/2012 by reg no 28197

2/8/2012 by reg no 99384

8/8/2012 by reg no 102357

9/10/2012 by reg no 128853

14/11/2012 by reg no 6260

22/11/2012 by reg no 10759

4/41/2013 by reg no 2276

17/1/2013 by reg no 8712

23/1/2013 by reg no 11598

30/1/2013 by reg no 14404

7/2/2013 by reg no 18260

20/2/2013 by reg no 24621

26/2/2013 by reg no 26804

1/3/2013 by reg no 29208

11/3/2013 by reg no 32997

18/3/2013 by reg no 36436

28/3/2013 by reg no 41710

1/4/2013 by reg no 43246

3/4/2013 by reg no 45526

7/5/2013 by reg no 59428

16/5/2013 by reg no 64542

22/5/2013 by reg no 67428

3/6/2013 by reg no 71827

12/6/2013 by reg no 76642

20/6/2013 by reg no 80335

26/6/2013 by reg no 82965

4/7/2013 by reg no 87062

17/7/2013 by reg no 92862

19/7/2013 by reg no 94283

1/8/2013 by reg no 100668

2/8/2013 by reg no 101416

7/8/2013 by reg no 103963
19/8/2013 by reg no 108927
26/8/2013 by reg no 111917
5/9/2013 by reg no 117000
9/9/2013 by reg no 118366
13/9/2013 by reg no 121102
23/9/2013 by reg no 124499

The above tallies with dates and registered number of the customs inquiry No PCAD/14Q0/051/2013/CCR/4339. P27, also marked as R(A), judgment dated 06.02 2017 does did not speak of any consignments during 2012 – 2013. It has been confined to six consignments in 2016. When the writ application No 158/2016 was filed, the Petitioner was aware of the present case but opted to remain silent because the cause of action is different. Likewise, the contains of the consignments are also different. The consignment, in this case, has no bearing on the consignments of the other case. Therefore, it is my view that the affidavit and documents X1- X5 will have no bearing on the present case.

Therefore, the documents X1 – X5 and the affidavit filed by the Petitioner on 1.10.2018 will not be accepted for this case.

Judge of the Court of Appeal

M. T. MOHAMMED LAFFAR, J.

I agree.

Judge of the Court of Appeal