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

In the matter of an Application for a mandate in the nature of Writs of Certiorari, Prohibition and Mandamus under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA/WRIT/17/2019

Gamma Pizzakraft Lanka (Private) Limited
55/25, Vauxhall Lane, Colombo 02.

Petitioner

Vs.

1. S.P Charles
   Director General of Customs,
   Custom House,
   Colombo 01.

1A. Maj. Gen. (Retired) G. Vijitha Ravipriya
   Director General of Customs,
   No. 40, Main Street,
   Colombo 11.

2. M.R. Ranaraja
   Deputy Director of Customs,
   Custom House,
   Colombo 01.

3. D.P.M. Goonewardena
   Deputy Director Customs,2021,
   Custom House,
   Colombo 01.

4. H.K.U. Wasantha
   Superintendent of Customs,
   Custom House,
   Colombo 01.

5. D.G. Senanayake
Superintendent of Customs,
Compliance and Facilitation
Directorate,
Custom House,
Colombo 01.

Respondents

Before : Sobhitha Rajakaruna J.

Dhammika Ganepola J.

Counsel : Avindra Rodrigo, PC with Aruna de Silva for the Petitioner.

Chaya Sri Nammuni SSC for 1st to 5th Respondents.

Argued on : 04.03.2021 & 05.05.2021

Written submissions : 26.11.2021 (Petitioner's)

: 08.10.2021(1st to 5th Respondents')

Decided on- :16.03.2022

Sobhitha Rajakaruna J.

The Petitioner in this application is seeking a writ of Certiorari to quash the order issued after the Customs Inquiry by the inquiring officer dated 19.12.2018, marked 'P22'. The Petitioner is also seeking a writ of Mandamus directing the Respondents to return a sum of Rs. 1,000,000.00 paid by the Petitioner under protest on 19.12.2018.

The Petitioner is a fully-owned subsidiary of Gamma Pizzacraft Overseas Private Limited and is a non-exclusive 'franchisee' in Sri Lanka for 'Pizza Hut', a chain of fast-food restaurants. The 'Pizza Hut' franchise is owned in certain parts of Asia by 'Yum!' Asia Franchise (Pvt) Ltd ('Franchisor') whose business is to grant its franchise to distinct entities. The Petitioner has entered in to a separate International Franchise Agreement ('IFA') with the said franchisor in respect of several outlets in Sri Lanka. Petitioner is granted the right to use *inter alia* the Pizza Hut brand name and system in operating its restaurants subject to the terms and conditions of the IFA.

The Petitioner being the consignee has imported certain identified products such as cheese, tomato paste, dough blend etc., from sellers ('Seller') who have been approved by the

franchisor prior to the supply of goods. The position of the Sri Lanka Customs ('Customs') is that the values declared by the Petitioner in respect of those items are not consistent with the laws and regulations in determining the value of those goods for the purpose of computation of fiscal levies. The said stance taken by the Sri Lanka Customs based on the alleged grounds that certain identified percentage of revenue generated from the sales of products have been accrued to the Seller and such amounts have not been taken in to consideration by the Petitioner when the fiscal levies were computed and thereby the action of the Petitioner has led to erosion of State revenue. The inquiring officer has observed that the exclusion of the portion from the value for customs duties was a breach under sections 51 and 52 of the Customs Ordinance which would trigger Penal sanctions referred to therein.

It is an admitted fact by the defense and the prosecution at the said Customs Inquiry that;

a) 6% continuing fee calculated on the total Turnover of the Petitioner company on monthly basis is being remitted by the Petitioner to the Franchisor;
b) Petitioner utilizes 5% of the total Turnover of the Petitioner company for advertising and other promotional purposes being the contribution for advertising for and behalf of the Franchisor.

The main witness of the prosecution at the Customs inquiry has stated that non-declaration of those cost components violates the provisions of Article 1(1)(c) and Article 8(1)(d) of the Schedule 'E' of the Customs Ordinance.

The inquiring officer has identified the following issues to be determined at the inquiry;

i. whether the 6% of continuing fee that has been paid by the franchisee to the franchisor and 5% of advertising contribution that has been utilized by the franchisee for and on behalf of the franchisor, can be considered as direct or indirect payment made by the buyer (in this case the Petitioner) to or for the benefit of the seller.
ii. the relationship between the franchisee and franchisor in this case can be considered as the Buyer and the Seller within the meaning of the provisions of schedule 'E' of the Customs Ordinance.
iii. whether the Customs declaration made by the Petitioner company that enumerated in the documents marked 'P2a' to 'P2d' are false declarations within the meaning of section 51 and 52 of the Customs Ordinance.

iv. whether the calculation of the loss of revenue has been made on objective and quantifiable data.

v. whether the investigating officers had followed the correct procedure as per the provisions of section 51A of the Customs Ordinance as amended by Customs (Amendment) Act No. 2 of 2003.

The inquiring officer of Customs has stated in his order dated 19.12.2018 as follows;

> "….. the provisions provided in the Manuals demonstrate that each and every phase of processing starting with the sourcing of materials and ending with the delivery of the highest level of service and superior products to the customer are closely monitored by the franchisor by way of designated and sophisticated auditing systems."
>
> "In these circumstances I do not agree with the defense that the purchases of built products by the company were done on ARMS LENGTH basis acting as independent buyer and seller depending on the prevailing market conditions. Therefore, the payment of 6% of continuing fee is an indirect payment made by the buyer to the Franchisor, who has overall control of purchasing of the imported built products in question."
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> "…...the payment of 6% of total revenue as continuing fee and spending 5% of the total revenue as advertising contribution necessarily represent the value of the imported goods because the imported built products are part and parcel of the end products that generate the total revenue."

The Petitioner's contention is that, it purchases and imports the ingredients, such as cheese, tomato paste, dough blend, spicy mix, sauces, tortillas, seasoning, cream cheese, string cheese and syrups from independent entities ('Seller') who are in no way related to the Petitioner or to the Franchisor, for the preparation of the approved products. As per the Petitioner such Sellers include; Messrs. Fonterra Ingredients Limited, VKL Seasoning Private Limited, Kagome Inc., Globo Foods Limited etc., which are distinct from the Franchisor. The Petitioner states that, it negotiates the quantities and the prices of the imports directly with the Seller on an arms-length basis and the Franchisor only approves the said suppliers strictly under and in terms of clause 5.3 of the IFA and further, the Franchisor does not in any way involve in the sale of the imports from the Seller to the Petitioner. The Petitioner further contends that, no additional payment and/or consideration accrues directly or indirectly to the Seller from the Petitioner other than the

purchase price of the imports. Therefore, the Petitioner submits that no part of the continuing fee or advertising contribution accrues directly or indirectly to the Seller.

However, the Respondents referring to clause 5.3 of the IFA submitted that the Petitioner is bound to purchase the supplies, materials, equipment and services used in the business exclusively from suppliers and using distributors who have been approved in writing by Franchisor. Respondents further submitted that the Manual issued by the Franchisor, marked '1R1' (marked at the inquiry as 'P7') describe the (a) manufacture, (b) storage, (c) transfer from one place to another, (d) supply & distribution and (e) all other processes and procedures in minute detail and accordingly, there is no arms-length negotiations possible with the Seller at the prevailing market conditions since the (i) items to be purchased, (ii) the suppliers and (iii) quality of the items have already been pre-decided by the Franchisor. Therefore, the Respondents' contention is that, it cannot be said that the Sellers are independent, separate and distinct persons from the Franchisor as the quality of the items are monitored from the initial stages to the end product by way of a stand-red audit system.

Moreover, the argument of the Respondents is that, in view of the said Manual there has to be some sort of an agreement between the Petitioner and Seller for the Seller to accommodate a procedure of manufacture of end products to such scrutiny by the Franchisor and no such agreement has been tendered at the inquiry. The Respondents' argument is based on the nature of monitoring of supply and distribution and all other processes by the Franchisor as enunciated in the said manual marked '1R1'. Another contention of the Respondent is that, the Petitioner does not pay the purchase price to the Seller and only the shipper is being paid with the purchase price as revealed by the sales invoices and also that the amount of control exercised by the Franchisor over the Sellers indicates that some part of the revenue from such sales accrues to the Franchisor making the Franchisor de-facto Seller.

I now advert to the legal background in respect of the 'transaction value' which is the price actually paid or payable to the Seller by the consignee (Petitioner) for the goods (such as cheese, tomato paste, dough blend etc.,) exported to Sri Lanka. The succinct issue in this matter is whether the 6% of continuing fee and 5% of advertising contribution made to the Franchisor by the Franchisee (the consignee at this instant) should be added to the said transaction value.

The Schedule 'E' to the Customs Ordinance deals with customs valuation rules. The Article 1 of the said schedule 'E' stipulates that the custom value of any imported goods shall be the transaction value, that is, the price actually paid or payable for the goods when sold for export to Sri Lanka as adjusted in accordance with the provisions of its Article 8. The said Article 1 reads as follows;

> *1. The customs value of any imported goods shall be the transaction value, that is, the price actually paid or payable for the goods when sold for export to Sri Lanka adjusted in accordance with the provisions of Article 8.*

The proviso (c) to the said Article reads;

> *(c) that no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of Article 8;*

In view of the above provisions, Customs authorities are permitted to apply any part of proceed of any subsequent resale, disposal or use of the goods by the buyer (in this case the Franchisee/Petitioner) to the transaction value (to determine the value of the imports) only if such part of the proceeds will accrue directly or indirectly to the Seller.

In other words, the Sri Lanka Customs could add a part of proceeds to the transaction value only if there is evidence to establish the below mentioned multifactorial elements of the said provisions of the Article 1;

i. such part of the proceeds should generate through (a) resale, (b) disposal or (c) use of the goods by the Buyer.
ii. such resale, disposal or use of the goods by the buyer should occur subsequent to the main transaction between the Seller and the Buyer
iii. such part of the proceeds generated as above should accrue directly or indirectly to the Seller.

The said Article 8 declares items that should be added to the price actually paid or payable for the imported goods. The items of 'royalties' and the 'license fees' are enumerated in Article 8(1)(c) whereas Article 8(1)(d) deals with the aforesaid proceeds of any subsequent resale etc.;

Article 8(1)(c)*: royalties and license fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;*

The Article 8(1)(d)*: the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller.*

The tenor of the arguments of the Respondents is that, the continuing fee which is calculated as 6% of revenues and the advertising contribution which is calculated as 5% of the revenues are part of the proceeds of subsequent resale, disposal or use of the goods imported by the Petitioner and such proceeds accrues directly or indirectly to the Seller. As opposed to such argument, the Petitioners' deliberation is that the said continuing fee is remitted by the Petitioner to the Franchisor solely for the grant of the Franchise which entails the right to use the system, system property and marks as defined in the IFA (marked 'P4') and accordingly, it does not in any way relate to the imported goods which the Petitioner purchases from the Seller through transactions that are separate to and independent from the IFA. Petitioner further argues that it does not engage in any advertising activity upon the items it purchases from the Seller other than advertising the end products and services sold to customers at outlets. Therefore, the Petitioner's assertion is that the remittance of continuing fee and expenses of the advertising contribution are wholly unrelated to and unconnected with the imported goods in question.

At this stage, I need to advert to the issue as to whether there is any link between the 'continuing fee' in IFA and the 'royalties' mentioned in the said Article 1. Although, the provisions of the Inland Revenue Act No.10 of 2006 are not applicable to this case, the connotation of the word 'annuity' embodied in sections 3, 26, 32, 34 and 95 of the said Act, in my view, can be made an influence to the questions under review. Annuity is a right to receive periodic payments that is created by a contract or other legal documents. Hence, it can be assumed that, the annuity is akin to royalty or to the continuity fee referred to in this application. Lord Denham made a comparison between the rent paid under an agricultural lease and the royalties paid under a mining lease in the case of ***Queen vs. Westbrook 116 ER 69***, where he has said; *"royalty is in substance a rent; it is the compensation which the occupier pays the landlord for that species of occupation which the contract between them allows".* (*Vide* - E. Gooneratne, Income Tax in Sri Lanka, 2nd Edition, [2009])

However, on a careful examination of the provisions of Article 8(1)(c) indicates that the royalty and license fees related to the goods are to be added to the price actually paid or

payable for the imported goods only to the extent as prescribed as a condition of sale. It is well observed that the relationship between the Petitioner and the Franchisor is not in the nature of a sales agreement but it is merely a Franchise agreement. Additionally, I observe that a reasonable query raises with the provisions of the said Article 8(1)(c) as to whether the royalty and license fees mentioned therein is a payment made directly to the Seller or to the Franchisor based on the premise of a condition of sale. In the instant application the royalty has been remitted directly to the Franchisor which is a distinct company from the Seller and no condition of sale for any importation could be derived between the Franchisee and the Franchisor.

The Court of Appeal has discussed whether the royalty payment is a condition of sale in the case of ***Utsch Lanka (Pvt) Ltd., and Another vs. Deputy Director of Customs and Others (2011) 1 Sri. LR 101.*** In the said case, Utsch Lanka (Pvt) Ltd entered in to a license agreement with the Erich Utsch AG of Germany who granted an exclusive right to the Utsch Lanka (Pvt) Ltd to use the necessary technology, expertise and to obtain training in connection with the manufacture, supply and delivery of retro-reflective number plates and number plate stickers. The terms and conditions of the said agreement included a payment of royalty fee of 10% per annum of the total turnover of the Utsch Lanka (Pvt) Ltd. Utsch Lanka's role was to engage in the business of embossing and printing motor vehicle numbers in blank plates imported from Erich Utsch AG and deliver the completed number plates for vehicles as and when required by the Commissioner of Motor Traffic Sri Lanka in terms of another agreement. Sriskandarajah J. considering the facts and circumstances in the said case, held that, the royalty payment is not related to the imported goods or it is a condition of sale of the imported goods (aluminium plates) and therefore, the royalty payment need not be added to the price actually paid (at p. 123). The Court has further held that, the royalty has a direct nexus to the finished product but it does not have a direct nexus to the imported goods (at p. 120).

In such scenario, it is necessary to keep in mind that interpreting a statute must be done within the frame work of law and the intention of the wordings of the Statue. In ***Film Exhibiters Guild vs. State of Andhra Pradesh AIR 1987 AP 110***, the Indian Court observed;

> *A taxing statute, if it professes to impose a charge, its intention must be expressed in clear, unequivocal and unambiguous language. The Court has to look at the language couched. Hunt into intention to find a charge is impermissible.* ***There is no equity about tax.***

There is no presumption as to a tax. Nothing is to be read in and nothing is to be implied. *No equitable construction of a charging section is to be applied. The charging section is to be construed strictly regardless of its consequences that may appear to the judicial mind to be.* ***The burden is on the State to show that the subject is within the provisions of the Act****.*

But in construing the machinery provisions for assessment and collection of the tax to make the machinery workable ut res valeat potius quam pereat, i.e., the Court would avoid that construction which would fail to relieve the manifest purpose of the legislation of the presumption that the legislature would enact only for the purpose of bringing about an effective result. ***It is not the function of the Court to hunt out ambiguities by strained and unnatural meaning; close reasoning is to be adopted; harmonious construction is to be adhered to****; all the relevant provisions are to be read together to gather the intention from the language employed, its context, and give effect to the intention of the legislature. Ingenious attempt to avoid tax is to be thwarted.* (Emphasis is added)

In that backdrop I need to evaluate the evidence, if any, considered by the Inquiring Officer arriving at the impugned decisions. The pith and substance of the submissions made on behalf of the Respondents in a nutshell is that;

a) The goods such as cheeses and sauces imported from the Seller are used by the Petitioner in order to make the pizzas. Thus, there is a 'disposal' and a 'resale' of the goods sold by the Seller.
b) These pizzas are sold in order to earn revenue by the Petitioner.
c) By Petitioner paying the continuity fee and advertising fee to the Franchisor, the Seller benefits due to the fiduciary relationship that exists between the Franchisor and the Seller
d) Thus, the subsequent resale of the goods of the Seller accrues indirectly to the Seller via the continuity fee and the advertising fee that is paid to the Franchisor which forms part of the revenue of the Franchisor which accrues to the Seller due to their close relationship

In view of the foregoing, the question that has to be examined at this stage is whether the Customs authorities have considered viable evidence in order to establish all the elements as I have laid down earlier in relation to Article 1(1)(c) read together with Article 8(1)(d) for the purpose of adding the said continuity fee and the advertising fee to the transaction value. As per the submissions made on behalf of the Respondents and on careful perusal

of the order marked 'P22' of the inquiring officer, it emanates that the final decision of the inquiring officer has been arrived at only based on objective and quantifiable data in terms of the said Article 8. In this regard, it is important to take in to consideration the contents of the interpretative notes to Article 8 at paragraph 3 (published in Extraordinary Gazette Notification No. 1335/25 dated 10.04.2004). The said Interpretative note reads;

> *"Where objective and quantifiable data do not exist with regard to the additions required to be made under the provisions of Article 8, the transaction value cannot be determined under the provisions of Article 1. As an illustration of this, royalty is paid on the basis of the price in a sale in Sri Lanka of a liter of a particular product that was imported by the kilogram and made up into a solution after importation. If the royalty based partially on the imported goods and partially on other factors which have nothing to do with the imported goods (such as when the imported goods are mixed with the domestic ingredients and are no longer separately identifiable, or when the royalty cannot be distinguished from special financial arrangements between the buyer and the seller),* ***it would be inappropriate to attempt to make an addition for the royalty.*** *However, if the amount of this royalty is based only on the imported goods and can be readily quantified, an addition to the price actually paid or payable can be made*." (Emphasis added)

In this context even if one assumes that the Seller benefits with the said continuing fee and the advertising fee due to the alleged fiduciary relationship that exists between the Franchisor and the Seller, the question that arises is how the Customs ascertain the exact figure accrued to the Seller through the Franchisor in respect of separate consignments of goods such as cheese etc.;

At the Customs inquiry when the defense Counsel was cross examining, the producing officer of Customs on 05.03.2018, has answered a question in the below manner;

> *Q: there is nothing you can point to audited accounts that shows the sales revenue generated only from the imported built product?*
>
> *A: Yes, because it is not possible to singled out the sale proceeds of the imported billed products as they have sold after some process and included in the final product with the value of the other ingredients and material used in the end products.*

In light of these facts, I take the view that the Customs were unable to compute, based on available evidence, the accurate portion of the proceeds of any alleged subsequent resale,

disposal or use of the imported good which could be lawfully added to the transaction value of the particular consignment which is in question.

The crux of the secondary argument relied on by the Petitioner is based on the 'no evidence rule'. U. De. Z. Gunawardana J. in ***Geeganage vs. Director General of Customs (2001) 3 Sri. L.R. 179 (at 189)*** has observed that there was a growing body of case law reflecting the view that to act without evidence is to act ultra vires.

I drew my attention to the following questioning on 05.12.2017 and answers given thereto when the defense Counsel was questioning the producing officer of Customs, which are pertinent to the issue of availability of evidence;

A. *"Q: So your answer to my earlier question is there is no evidence produced at this inquiry showing that the continuing fee or advertising fee was remitted by the buyer/Franchisee to any of the entities identified in the commercial invoices as the seller or exporter?*

   A: Yes, there is no direct payment made by the buyer to the various entities mentioned in those commercial invoices summarized in P3(a) to P3(c).

B. *Q: Similarly, you have not produced evidence at this inquiry of any remittance being made by the Franchisor to the entities identified as seller/exporter in the invoices summarized in P3(a) to P3(c) relating to the imported goods or otherwise?*

   A: Other than the terms and conditions stipulated in P8 and the procedures of manuals marked P7 (1R1 to the Statement of Objections of the Respondents in the instant application) ***there is no evidence to prove making as any payments by the Franchisor to the respective entities identified in the respective commercial invoices as seller, supplier, shipper etc.***

C. *Q: Does it say anywhere in P7 or P8 that the Franchisor makes any payments to the sellers of the imported good?*

   A: In P7 or P8 (the IFA marked as P4 in the instant application) *it does not indicate that the Franchisor has been made any payments to the respective entities identified in the commercial invoices…."* (Emphasis added)

'No evidence' does not mean only a total dearth of evidence. It extends to any case where the evidence, taken as a whole, is not reasonably capable of supporting the finding; (***Allinson vs. General Medical Council (1894) 1 QB 750 at 760, 763; Lee vs. Showmen's***

Guild of Great Britain (1952) 2 QB 329 at 345) or where in other words 'no tribunal could reasonably reach that conclusion on that evidence.' (***R vs. Roberts (1908) 1 KB 407 at 423***) (*Also see* - ***H.W.R. Wade & C.F. Forsyth, Administrative Law, 11th edition, p.227***).

Sir William Wade and Christopher Forsyth in ***Administrative Law, 11th edition, p.227*** has categorically emphasized that the 'no evidence' rule has now been firmly established as a ground of judicial review. The said authors state;

> *"Despite lack of any decision reviewing the old authorities against a 'no evidence' rule, it seems clear that this ground of judicial review is now firmly established. There have been so many sporadic references to it on this assumption, and it conforms so well to the other developments in administrative law, that the older authorities to the contrary, impressive though they are, must now be consigned to the scrapheap of history. 'No evidence' thus takes its place as yet a further branch of the principle of ultra vires.*
>
> *The time is ripe for this development as part of the judicial policy of preventing abuse of discretionary power. To find facts without evidence is itself an abuse of power and a source of injustice, and it ought to be within the scope of judicial review. This is recognized in other jurisdiction where the grounds of review have been codified by statue. In Australia the Administrative Decisions (Judicial Review) Act 1977 expressly authorises review on the ground that there was 'no evidence or other material' to justify the decision where some particular matter has to be established [1], and a somewhat analogous provision has been enacted in Canada[2]."*

In the circumstances, I have no option other than to accept the proposition of the Petitioner that the Respondents have only endeavored to focus on clause 5 of the IFA ('P4') and the Manual ('1R1') and make out a wholly imaginary and fabricated nexus between the Seller and the Franchisor. I take the view. that the assumptions and facts for which there is no evidence, cannot be imported in to a situation where the liability is sought to be imposed.

In view of the foregoing, I am compelled to overlook the aroma of pervasive default sensed by the officials of the Customs against the Petitioner based on the legal grounds mentioned above. That is merely because of the fate that would have befallen the officials of Customs due to the series of hypothetical scenarios they have relied upon in determining the

[1] ss. 5, 6. See similarly the Administrative Justice Act 1980 of Barbados, s. 4

[2] Federal Court Act 1971, s. 28(1). See also Law Reform Commission of Canada, Report No. 14 (1980), recommendation 4.3

questions of this matter. Although, I am mindful of the fact of losing revenue to State I am not inclined to accept the assumptions arrived at by the Inquiring officer in the backdrop of the settled law in this regard. Be that as it may, the situation would have been different, in my view, if the investigation officers of the Customs find fresh and viable evidence.

I will now deal with the standard of proof under sections 51 and 52 of the Customs Ordinance as the inquiring officer has imposed a mitigated forfeiture of Rs. 68,500,000.00 on the Petitioner in terms of sections 51, 52, 163 and 165B of the Customs Ordinance as amended by Act No. 2 of 2003. A further forfeiture of Rs.1,000,000.00 has been imposed on the Petitioner in terms of sections 129 and 163 of the said Customs Ordinance.

The said section 52 reads;

> *"Where it shall appear to the officers of the customs that the value declared in respect of any goods according to section 51 is a false declaration, the goods in respect of which such declaration has been made shall be forfeited together with the package in which they are contained. Where such goods are not recoverable, the person making such false declaration shall forfeit either treble the value of such goods or be liable to a penalty of one hundred thousand rupees, at the election of the Collector of Customs."*

S. Sriskandarajah J. in ***Mireka Capital Land Private Limited vs. S. A. C. S. W. Jayatilake, Director General of Customs, CA/Writ/Application No. 983/2007 (decided on 15.06.2010)*** has held that section 52 specifically incorporates the requirement of culpability as a pre-condition for forfeiture. He has further observed that;

> *"Section 52 as it originally stood provided that where "it shall appear to the officers of the Customs that the value declared in respect of any goods is not in accordance with the provisions of Schedule E, the goods in respect of which such declaration has been made shall be forfeited…" The legislature by a subsequent amendment effected to Section 52 by Section 4 of Act No. 2 of 2003 incorporated the mental element (mens rea) by providing that the forfeiture will be imposed only if there is a false declaration.*
>
> *The word false declaration is not defined in the Customs Ordinance but as the forfeiture is penal in nature the word false declaration could be interpreted with the aid of a penal statue. Making a false document is defined in Section 453 of the Penal Code."*

In view of the above judgement, a false declaration is a declaration made with a fraudulent or dishonest intent and therefore, it is necessary for the Customs to prove that the Importer

making such declaration had an intention to defraud revenue in so far as section 52 is concerned. I see there is no evidence emanating from the Customs inquiry to establish the existence of the intention to defraud revenue on the part of the Petitioner.

For the reasons stated above, I issue a writ of certiorari to quash the order marked 'P22' and also a writ of Mandamus directing the Respondents to reimburse a sum of Rs.1,000,000.00, but without any interest, to the Petitioner. This order will not prejudice the authority of Customs to recover any sums that are due according to law. Application is partly allowed without costs.

Judge of the Court of Appeal

Dhammika Ganepola J.

I agree.

Judge of the Court of Appeal