

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

In the matter of an Application for the grant of Writs of Certiorari and Mandamus under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**C.A. WRIT NO. 459/2022**

Anoda Cocoa (Private) Ltd.,  
No.66, Gampalagedara,  
Pugoda.

**Petitioner**

**Vs**

1. T. T Upulmalee Premathilaka  
Controller General of Import and Export,  
Import and Export Control Department,  
No./25-1/3, 1<sup>st</sup> Floor,  
Hemas Building, York Street,  
Colombo 01.
  2. P.B.S.C Nonis  
Director- General of Customs,  
No. 40, Main Street,  
Colombo 11.
  3. (Dr.) Ramesh Pathirana  
Minister of Industries,
  4. J.M Thilaka Jayasundara  
Secretary
- Both of:  
Ministry of Industries  
No. 73/1, Galle Road,  
Colombo 03.
5. Hon. Attorney General

**Respondents**

Before : **Hon. N. Bandula Karunarathna J. (P/CA)**  
**Hon. M. Ahsan R. Marikar, J.**

Counsel : Upul Jayasuriya, PC with Pramod Polpitiya for the  
Petitioner.  
Milinda Gunethileake, ASG with N. Kahawita, SC for the  
Respondent.

Written Submission: By the Petitioner – Filed  
By the Respondents – Filed

Argued on : 31.05.2023

Decided on : 27.06.2023

**M. Ahsan R. Marikar, J.**

**Introduction**

- 1) The Petitioner had instituted this action and sought reliefs by the amended petition dated 16<sup>th</sup> December 2022. The instant application pertinent to the aforesaid amended petition is to consider issuance of notice and interim reliefs prayed for in prayers p,q,r, and s.
- 2) The said interim reliefs prayed for is as follows,
  - p)** grant an interim order staying the customs inquiry into the importation of the goods to which the Bill of Lading marked as P11 is applicable;
  - q)** issue an interim order directing the 2<sup>nd</sup> Respondent, and/or their servants and agents, and/or their successors in office not to encash the Guarantee bearing number LG/G22/6195 marked P18 until the final determination of this Application, subject to such terms, if any, as to Your Lordship's Court sees fit;
  - r)** in the exceptional circumstances of this case, grant an interim order approving the release of the goods imported under the Bill of Lading marked

P11 with no Bank Guarantee in favour of Sri Lanka Customs assuring the payment of a penalty;

**s)** an interim order be issued to release the Bank Guarantee marked P18 of a sum of One Hundred and Eighteen Million Two Thousand Six Hundred and Thirty Eight Rupees (LKR 118,002,638/-) which has been already furnished to the Sri Lanka Customs.

### **Facts of the Petitioner's case**

- 3) The Petitioner is a duly incorporated company by P1 business registration which is marked and produced with the petition. The Petitioner imported raw materials including full cream milk powder under HS CODE 0402.21.00, *inter alia*, for the purpose of producing chocolate under the brand name 'Anoda' and the blended milk product 'Puredale Kirithe'.
- 4) The Petitioner manufactures chocolate for industrial use and for cooking. Further, the Petitioner is registered under Industrial Promotion Act No. 46 of 1990 and has been verified by the Ministry of Industries as an industry contributing 42.51% and 31.03%.
- 5) For the aforesaid manufacturing of chocolate and Puredale Kirithe, the Petitioner on or about 14<sup>th</sup> February 2022 contracted with Pure Dale (Pte) Ltd in Singapore to import 153,375 metric tonnes of whole milk powder for a total price of USD 635,739.38. This order formed a part of a larger order placed by the Petitioner.
- 6) In terms of the Special Import License Payment Regulation No. 01 of 2011, published in the Gazette Extraordinary No. 1739/3 dated 2<sup>nd</sup> January 2012, the said milk powder is not an item that requires an import license issued under Control of Imports Act No. 01 of 1969.
- 7) The Petitioner has contended that the payment was agreed to be on Open Account Terms, to be made 90 days from the date of the Bill of Lading as per the Regulation 3(1)(b) of the aforesaid Special Import License Payment Regulation No. 01 of 2011. The said milk powder could be lawfully imported on Open Account basis and Consignment Account basis.

- 8) Subsequently, by Gazette dated 06.05.2022, Import Control Regulations were issued restricting the imports on Open Account Basis. However, by Gazette dated 24.06.2022 local manufacturers who have to import raw materials, which are not available locally in order to manufacture their product in Sri Lanka had been allowed to import, subject to the terms and conditions referred to in the said Gazette Notifications.
- 9) On or about 6<sup>th</sup> June 2022, the seller in Singapore had confirmed the Petitioner's sale order which is supported by the P9 document and the said consignment of milk powder had been loaded from New Zealand on or around 20<sup>th</sup> September 2022 and the Petitioner had made a request to the 4<sup>th</sup> Respondent seeking approval to clear the said consignment of milk powder on Open Account Terms. Further, by letter dated 14<sup>th</sup> October 2022 the Petitioner had renewed its request made to the 4<sup>th</sup> Respondent and the Petitioner had made every possible endeavour to obtain the recommendation of the Ministry of Industries.
- 10) After receiving the receipt of recommendation from the Ministry of Industries, in order to ensure that the perishable goods are cleared expeditiously, the Petitioner had made several requests to the 1<sup>st</sup> Respondent to issue a Letter of Authorization to enable the said consignment to be cleared on Open Account Terms.
- 11) On or around 15<sup>th</sup> November 2022 the Sri Lanka Customs had issued a detention notice in terms of Section 135 of the Customs Ordinance in respect of the aforementioned consignment of milk powder.
- 12) The 2<sup>nd</sup> Respondent had stated that the Petitioner had breached the Gazette Regulations which had been referred to earlier. On the said grounds the Petitioner was unable to clear the perishable consignment after taking all the necessary steps. Under the said circumstances, the Petitioner had pleaded the Writ Jurisdiction of this court to issue notice to the Respondents and to grant the interim order reliefs prayed for in the amended prayer of the petition.

### **Facts of the Limited Objection**

- 13) The 2<sup>nd</sup> Respondent and 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents had filed separate limited objections. On perusal of the said objections, both limited objections had been filed by the Attorney General. The Respondents have denied the position taken by the Petitioner. However as per paragraph 4 of the limited objections filed by the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> Respondents, the Respondents had admitted that the Letter of Recommendation for invoice dated 14<sup>th</sup> February 2022 to import full cream milk powder under the Open Account system had been issued on 19<sup>th</sup> October 2022.
- 14) In terms of Regulation No. 4(c) of the Gazette Regulation annexed as R(1), the request of authorization of the Controller of Imports and Exports which is based on the Letter of Recommendation of the Ministry, should be applied prior to the arrival of such goods to any port of Sri Lanka. As per the facts referred to in paragraph 4 (j) to (p) the Petitioner had failed to obtain the said authorization.
- 15) In the said circumstances, the Respondents have pleaded to dismiss the application made by the Petitioner. Further, the 2<sup>nd</sup> Respondent had contended that the milk powder imported by the Petitioner had violated the Provisions of Section 12 of the Customs Ordinance. In the said circumstances the Customs have conducted an inquiry and the shipment had been cleared subject to a bank guarantee on the 2<sup>nd</sup> of December 2022.

### **Disputed facts**

- 16) Considering the facts, arguments and the documents I am of the view that to issue the notices to the Respondents and to grant the interim reliefs, the following questions should be addressed,
  - I. Has the Petitioner imported 153,375 metric tonnes of Puredale Milk Powder to Sri Lanka?
  - II. Had the said consignment arrived to Sri Lanka and did Sri Lanka Customs seize the said milk powder as the Petitioner had violated the regulations issued by the Imports Control Regulations which was

published in the Gazette Extraordinary No. 2285/19 dated 24<sup>th</sup> June 2022?

- III. Is the Petitioner entitled to issue notice and to obtain interim reliefs as prayed for in the prayer p, q, r, and s in the amended petition dated 16<sup>th</sup> December 2022?

**I. Has the Petitioner imported 153,375 metric tonnes of Puredale milk powder to Sri Lanka?**

- 17) On perusal of P4, P9, P10, P11, P12, and P13 confirms that the Petitioner has ordered the milk powder consignment of 153,375 metric tonnes from Pure Dale (PTE) LTD of Singapore. The Respondents have not challenged that fact. They have also admitted that the Petitioner had ordered the said milk powder consignment.
- 18) In the said circumstances, the consignment of the aforesaid milk powder had been ordered by the Petitioner.

**II. Had the said consignment arrived to Sri Lanka and did Sri Lanka customs seize the said milk powder as the Petitioner had violated the regulations issued by the Imports Control Regulations which was published in the Gazette Extraordinary No. 2285/19 dated 24<sup>th</sup> June 2022?**

- 19) The said consignment had been loaded from New Zealand on or around 20<sup>th</sup> September 2022, after the Petitioner had placed the order from the Pure Dale (PTE) LTD Singapore for 153,375Mt of milk powder.
- 20) The Petitioner as per P12 document had requested from the 4<sup>th</sup> Respondent to clear the said consignment on Open Account Terms.
- 21) However, as the Petitioner had failed to obtain the said authorization prior to the said consignment reaching Sri Lanka, Sri Lanka Customs had ceased the said consignment as the Petitioner had violated the Provisions of the Section 4(1) of the Import Control Act and acted under Section 135 of the Customs Ordinance.

- 22) Subsequently, the 2<sup>nd</sup> Respondent had held an inquiry and imposed a penalty. However, the said consignment had been released to the Petitioner after issuing a Letter of Guarantee by the Petitioner, which is marked and produced as P18.
- 23) In considering the facts and on perusal of the documents tendered by the Petitioner and the Respondents, I am of the view that the milk powder consignment which is a perishable item had been released to the Petitioner subject to the Letter of Guarantee.
- 24) In the said circumstances the matters pertinent to ceasing the said consignment and the inquiry held by the Customs and the consignment which had been released on a letter of guarantee are matters to be decided at the final argument.
- 25) Presently, there is prima facie material that the 2<sup>nd</sup> Respondent had acted in accordance with the **Gazette Extraordinary No. 2285/19 dated 24<sup>th</sup> June 2022**.

**III. Is the Petitioner entitled to issue notice and to obtain interim reliefs as prayed for in the prayer p, q, r, and s in the amended petition dated 16<sup>th</sup> December 2022?**

- 26) As per the facts of this case and on perusal of the documents the present issue pertinent to this action is that can the Bank Guarantee be stayed, which had been given by the Petitioner to the 2<sup>nd</sup> Respondent until the final determination of this case.
- 27) The contention of the Petitioner is that the 2<sup>nd</sup> Respondent has to release the goods imported by the Petitioner without a bank guarantee. The said fact should be considered in the main argument.
- 28) At this stage this court can understand that the 2<sup>nd</sup> Respondent after holding an inquiry had released the perishable goods imported by the Petitioner subject to a bank guarantee.
- 29) The said issue had occurred as per the facts and the documents that the Petitioner had failed to get the authorization from the relevant authorities as per the Extraordinary Gazette Notification No. 2285/19.

30) Beside these facts the Petitioner had claimed on legitimate expectation that the said goods should have been released by the Customs without a bank guarantee.

31) In considering **Samararatne Vs. Jayaratne**<sup>1</sup>, Per Gunawardena, J. (P/CA)

*"The doctrine of legitimate expectation is not limited to cases involving a legitimate expectation of a hearing before some right or expectation was affected but is also extended to situations even where no right to be heard was available or existed but fairness required a public body or officials to act in compliance with its public undertakings and assurances."*

*"Public Officers or the State although are at liberty to alter the Policy, yet by no means are free to ignore legitimate expectations engendered by their actions and/or conduct."*

32) Further, in the following decision of **Karunadasa Vs. Unique Gem Stones Ltd. and Others**<sup>2</sup> it is decided as;

*To say that Natural Justice entitles a party to a hearing does not mean merely that his evidence and submissions must be heard and recorded; it necessarily means that he is entitled to a reasoned consideration of the case which he presents. And whether or not the parties are also entitled to be told the reasons for the decision, if they are withheld, once judicial review commences, the decision "may be condemned as arbitrary and unreasonable"; certainly, the Court cannot be asked to presume that they were valid reasons, for that would be to surrender its discretion. The 2nd respondent's failure to produce the 3rd respondent's recommendation thus justified the conclusion that there were no valid reasons, and that Natural Justice had not*

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<sup>1</sup> [2001] 3) SLR 161.

<sup>2</sup>[1997] 1 Sri LR 256.



*been observed. The undertaking may or may not be binding on the State, most probably not, but the sacred principle is that No authority-not even the State, in the generality or circumstances, could resile from the undertaking that one has given without first giving the person adversely affected by the revocation or withdrawal of the promise an opportunity to make representation.*

- 33) In view of the aforesaid decision whether the Petitioner had a legitimate expectation and or his Natural Justice had been violated is a matter to be considered in the main argument.
- 34) Until that I am of the view a stay order should be issued to stop the 2<sup>nd</sup> Respondent from encashing the Bank Guarantee till the final determination of this case. As, in the event the Bank Guarantee is encashed the Petitioner's instant application will be futile and nugatory.

### **CONCLUSION**

- 35) In considering the aforesaid facts and documents we are of the view there are series of matters to be considered pertinent to the consignment which had been ordered and received by the Petitioner and the Extraordinary Gazette Notification issued.
- 36) On that we issue notices to the Respondents and interim order against the Respondents prayed for in prayer 'q' of the amended petition dated 16<sup>th</sup> December 2022.

**Judge of the Court of Appeal**

**N. Bandula Karunarathna J. (P/CA)**

I agree

**President of the Court of Appeal**