

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

C.A. (Writ) APPLICATION NO: 197/2016

1. TRADEX WORLDWIDE (PVT) LTD
No. 131/60, Model Farm Road,
Colombo 08.

Presently at

No.201/1/E, Kittampahuwa,
Wellampitiya

2. M. R. MOHAMED RASHAD,
174/16, Koswatta Road, Nawala,
Rajagiriya.

PETITIONERS

Vs.

1. DIRECTOR GENERAL OF CUSTOMS
Sri Lanka Customs,
No.40, Main Street,
Colombo-01

2. P. J. B. BASNAYAKE'
Deputy Director of Customs,
Sri Lanka Customs,
No.40, Main Street,
Colombo-01.

3. M. S. J. DE SILVA
Chief Assistant Preventive Officer,
Sri Lanka Customs,
No.40, Main Street,
Colombo-01.

4. THE HON. ATTORNEY GENERAL
Attorneys-Generals Department
Hulftsdorp
Colombo-12

RESPONDENTS

CA 197/2016

WRIT APPLICATION

Before : Vijith K. Malalgoda, P.C.J. (P/CA)
P. Padman Surasena, J.

Counsel : K.M. Basheer Ahamed for Petitioners.
Janak de Silva, SDSG for Respondents

Decided on : 27.09.2016

Vijith K. Malalgoda, P.C.J. (P/CA)

Heard Counsel for the petitioner as well as the learned Senior DSG who is representing the Attorney General.

The two petitioners have come before this Court against an order made after the Custom's inquiry with regard to the exportation of tea by petitioners. As revealed before us, the petitioners had submitted the necessary documentation in order to export 34000Kgs of black tea in two containers, 17000 in each. The Custom had ceased the said consignment and at the Custom's inquiry, the two petitioners were found guilty of the two charges leveled against them. With regard to the first charge, which was under Sections 12,44 and 57 of the Customs Ordinance,

Inquiring officer has found them guilty for attempting to export 30,050 Kgs of refused tea, and the said quantity was forfeited and the balance 3950 Kgs of tea which was above ISO 3720 had been released to the petitioners. With regard to the 2nd Count, the 2nd Petitioner was imposed a mitigated forfeiture of Rs. 12206062/- under sections 130 and 163 of the Customs Ordinance. The petitioners have taken up the position that in the two charges framed against them, the Respondents have not specifically informed them of the offences they have committed. However, we observe that the said charges were framed after recording the evidence of the witnesses including the evidence of the 2nd petitioner. Before framing the charges the officer who conducted the inquiry had made his observations with regard to the matters what was revealed before the inquiry.

As observed by us and the documents before this Court specially in page 35 and 36 contains a report from the Tea Board where it is specifically stated that the two containers contained refused tea. We observe under the provision of schedule (b) of the Customs Ordinance "No tea shall be exported which is declared by the principal Director of Customs or by any officers authorized by him to be, in the opinion of the officer making such declaration, unfit for export as be adulterated and therefore likely to damage the reputation of Ceylon tea in foreign

markets." As revealed before us the two containers carried two sets of packaging where one set of packaging carried a running number and the other set of packaging does not carry a running number. The packages which were having a running number is identified as having standard above ISO 3720 and the other packages contained refused tea.

This clearly shows ~~that~~ the intention of the petitioners when exporting tea for the foreign markets. In response to the charge framed against the petitioners, the 2nd petitioner had pleaded as follows:-

"I humbly request you, not to forfeit the tea in question as this tea can be upgraded and then can be exported with the approval of the Sri Lanka Tea Board. There are lot of illegal tea, food exports which we cannot compete with them as we are carrying out a genuine business. Now the tea market is also down and we do not have business as before. This is the first time I am committing this kind of offense. I have paid the all the taxes and levies for these exports."

It clearly shows that the 2nd petitioner before this court had admitted his offense and pleaded in mitigation.

In this instance the forfeiture imposed on the 2nd Petitioner is justified. And therefore, we see no reason to interfere with

the findings of the Customs Inquiry which is challenged before us. Therefore, we see no reason to issue notices at this juncture.

Notices are refused. No cost is ordered.

PRESIDENT OF THE COURT OF APPEAL

P. Padman Surasena, J.

I agree.

JUDGE OF THE COURT OF APPEAL

LA/-