

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 Mandamus under Article
140 of the Constitution of the Democratic
Socialist Republic of Sri Lanka.

C.A (Writ) Application No: 136/2012

1. Mohomed Kaleel Mohamed Shihan,
No. 60, Hospital Road, Dehiwela.
2. Mohomed Kaleel Mohamed Rizwan,
No. 60, Hospital Road, Dehiwela.

Carrying on a partnership under
the name style and firm of
“Moghul Holdings”

Petitioners

Vs.

1. Dr. Neville Gunawardena,
Director General of Customs,
Sri Lanka Customs,
Customs House,
No. 40, Main Street, Colombo 11.
2. Gardiya Hewawasam Gamage
Athula Lankadeva,
Deputy Director of Customs,
Sri Lanka Customs, Customs House,
No. 40, Main Street, Colombo 11.

3. P.A. Dias,
Additional Director General of Customs,
Sri Lanka Customs, Customs House,
No. 40, Main Street, Colombo 11.
4. N. D. de Silva,
Appraiser,
Sri Lanka Customs, Customs House,
No. 40, Main Street, Colombo 11.
5. Muslim Commercial Bank Limited,
542 A, Sri Sangaraja Mawatha,
Colombo 10.
6. Hon. Attorney General,
Attorney General's Department,
Colombo 12.
7. Jagath Premalal Wijeweera,
Director General of Customs,
Sri Lanka Customs, Customs House,
No. 40, Main Street, Colombo 11.
8. Chulananda Perera,
Director General of Customs,
Sri Lanka Customs,
Customs House,
No. 40, Main Street, Colombo 11.

Respondents

9. Mrs. P.S.M. Charles,
Director General of Customs,
Sri Lanka Customs, Customs House,
No. 40, Main Street, Colombo 11.

Added Respondent

Before: Arjuna Obeyesekere, J

Counsel: Ronald Perera, P.C, with Anslem Kaluarachchi for the Petitioners

**Ganga Wakishta Arachchi, Senior State Counsel, for the 2nd, 3rd,
4th, 6th and 9th Respondents**

Written Submissions of the

Petitioners tendered on: 25th April 2018

Written Submissions of the 2nd, 3rd, 4th,

6th and 9th Respondents tendered on: 23rd May 2018

Decided on: 26th November 2018

Arjuna Obeyesekere, J

When this matter was taken up for argument on 3rd September 2018, the learned President's Counsel appearing for the Petitioners and the learned Senior State Counsel appearing for the 2nd, 3rd, 4th, 6th and 9th Respondents informed this Court that written submissions have already been tendered by the parties and moved that this Court pronounce its judgment on the said written submissions.

The Petitioner has filed this application, seeking *inter alia* the following relief:

- (a) A Writ of Certiorari to quash the directions and/or advise and/or the endorsements contained in 'P5'¹;
- (b) A Writ of Mandamus compelling the 1st – 4th Respondents to assess the Customs Duty as per the amount declared in the Customs Declaration marked 'P4'.

The facts of this application very briefly are as follows.

The Petitioners state that they are carrying on business in partnership under the name, style and firm of 'Moghul Holdings'. The Petitioners state that in the ordinary course of business, they entered into a sales contract with M/s Seaboard Industry and Trading Limited on or about 12th July 2011 to purchase a consignment of Twist Drills, at a total cost of USD 7666². A copy of the said sales contract had been produced with the petition marked 'P2'.

Upon the arrival of the goods in Sri Lanka, the Petitioners had submitted a Customs Declaration, annexed to the petition marked 'P4', in which the value of the goods was declared as USD 7679.78. The Petitioners state that they have paid a sum of Rs. 229,113 being the customs duties, levies and other charges due on the said goods, calculated on the value given in the sales contract and declared to Customs in the Customs Declaration 'P4'. The Petitioners state that in spite of customs duties and other levies having been paid on the correct value, Sri Lanka Customs had directed that the goods should not be released until the value was finalised. The Petitioners have annexed to the petition, a

¹ 'P5' is a document submitted by the 2nd Petitioner to Sri Lanka Customs. Several officers of Sri Lanka Customs have made endorsements on the reverse thereof, with regard to ascertaining the correct value of the goods.

² The price of USD 7666 includes the cost of the goods and the cost of freight to Colombo.

document marked 'P5' on which several officers of Sri Lanka Customs have made endorsements with regard to ascertaining the correct value of the goods. This is the document that the Petitioners are seeking to quash by a Writ of Certiorari.

Being dissatisfied with the ruling of Sri Lanka Customs not to release the goods until the value was finalised, by a letter dated 9th November 2011 annexed to the petition marked 'P6', the Petitioners had requested that the transaction value declared by the Petitioners be accepted, for the reasons set out therein. The Petitioners had further requested Sri Lanka Customs to inform them how the customs value had been determined if the transaction value given by the Petitioners cannot be accepted. The Petitioners had also requested that the goods be released in the meantime, on a bank guarantee.

There is an endorsement made by an officer of Sri Lanka Customs on 'P6' on the same date³, which reads as follows:

"Please see the explanation given by the importer. Consider that and see whether value determined by Valuation Division is correct. If it is necessary to take considerable time please release consignment on a bank guarantee."

The goods had accordingly been released on a bank guarantee dated 17th November 2011, issued by the 5th Respondent.⁴ The said guarantee was valid until 15th February 2012. Sri Lanka Customs had demanded payment under the said Guarantee prior to its expiry but this demand had subsequently been

³ 9th November 2011. This endorsement has been made on the front page of 'P6'.

⁴ The said Bank Guarantee has been annexed to the petition, marked 'P7'.

recalled after the Petitioners took steps to extend the guarantee until 15th August 2012. This Court observes that neither party has submitted any material to this Court with regard to the present status of the said guarantee.

The complaint of the Petitioners to this Court is that the officers of Sri Lanka Customs did not have the authority to give directions and/or make endorsements on 'P5' with regard to the value declared by the Petitioners. In the written submissions tendered on behalf of the Petitioners, it has been urged that the customs duty must be assessed as per the value declared in the Customs Declaration and that officers of Sri Lanka Customs had no jurisdiction and/or power and/or authority to adjust the value declared in the Customs Declaration.

This Court must observe at the outset that the Petitioners are not seeking to quash any decision of the Respondents. They are only seeking to quash 'directions, advise or endorsements' on 'P5'. This Court has examined the several endorsements made on the reverse of 'P5' and observes that none of the endorsements contain any decision. They are merely internal entries, discussing the steps that need to be taken to determine the value of the goods.

The Respondents have taken up the position in their Statement of Objections that the value indicated by the Petitioners was not realistic and that additional documentation was called from the Petitioners to substantiate the value. The Respondents have stated further that the decision of the Additional Director General of Customs in respect of the value of the goods is pending. This is borne out by the final two endorsements made on the reverse of 'P6' on 15th and 16th November 2011 respectively, which reads as follows:

“The values given by the appraiser for the commodity was based on the database value. Therefore, only relief I could recommend is to release the consignment on a bank guarantee⁵.”

“A bank guarantee is acceptable for liability and 10% of that amount. Copy documents to be sent to the Valuation Department for verification and report back.”⁶

The Respondents have stated in their written submissions that the Petitioners have failed to provide material to substantiate the declared value of the goods, although requested and that this application has been filed prior to any final decision being reached by Sri Lanka Customs with regard to the value of the goods. To this extent, this application is premature.

It is trite law that for a Writ of Certiorari to issue, there must be a decision. The Petitioners have not annexed a decision and the Respondents state there is no final decision. That a final decision has not been taken is apparent when one considers the aforementioned endorsements made on ‘P6’. Thus, this Court is of the view that in the absence of a decision, a Writ of Certiorari does not lie.

The Petitioners are also seeking a Writ of Mandamus compelling the Respondents to assess customs duty on the value declared by the Petitioners in their Customs Declaration marked ‘P4’.

⁵ It is only thereafter that the Petitioners have submitted the Bank Guarantee ‘P7’ on 17th November, 2011.

⁶ A similar endorsement has been made on the left side of the reverse of ‘P6’.

Several provisions of the Customs Ordinance require an importer to declare the value of the goods and sets out the consequences of not doing so. In terms of Section 47 of the Customs Ordinance, every consignee is required to tender a Bill of Entry, commonly referred to as the Customs Declaration or 'Cus Dec' setting out the details that are required in the said declaration including the value of the goods that are the subject matter of the said Bill of Entry.

Section 51 of the Customs Ordinance reads as follows:

“In all cases when the duties imposed upon the importation of articles are charged according to the value thereof, the respective value of each such article shall be stated in the entry together with the description and quantity of the same, and duly affirmed by a declaration made by the importer or his agent on a form⁷ ... as may be specified by the Director General and such value shall be determined in accordance with the provisions of Schedule E, and duties shall be paid on a value so determined.”

A truthful declaration of the price actually paid or payable for a good is paramount for the Customs to determine the value of the good and thereby, for a proper working of the Customs Ordinance. It is for this reason that Sri Lanka Customs has the power to investigate any instance of suspected undervaluation, either before or after the goods have been cleared by Sri Lanka Customs.

⁷ This form is known as the 'Value Declaration Form.'

Section 51A(1)(a) of the Customs Ordinance provides as follows:

“Whenever an officer of customs has reason to doubt the truth or accuracy of any particulars contained in a bill of entry or a declaration made under section 51 or the documents presented to him in support of a bill of entry under section 47, the officer of customs may require the importer or his agent or any other party connected with the importation of goods, to furnish such other information, including documentary or other evidence in proof of the fact that the declared customs value represents the total amount actually paid or is payable for the imported goods as adjusted in accordance with Article 8 of Schedule E.”

Thus, it is clear to this Court that Sri Lanka Customs has the power to require the importer to provide proof of the fact that the declared customs value represents the total amount actually paid, when it has reason to doubt the truth or accuracy of the particulars contained in the Customs Declaration.

This Court has examined the Customs Declaration ‘P4’ and observes that an endorsement has been made on the reverse thereof, requiring that a sample be sent for valuation, as it appears that Sri Lanka Customs had reason to doubt the truth or accuracy of the value declared by the Petitioners. The document marked ‘P5’, which has been initiated on 24th October 2011, contains several endorsements made by officers of Sri Lanka Customs, with the first endorsement being made on the same date. It appears that no steps were taken by Sri Lanka Customs until the Petitioners sent the letter ‘P6’ on 9th November 2011. Pursuant to the endorsement made on the front page of ‘P6’⁸

⁸ Supra

on 9th November 2011, it appears that the relevant documents were called from the Petitioners and have been received by Sri Lanka Customs.

Section 51A(1)(b) which sets out the procedure that should be followed after Sri Lanka Customs has called for further documents, reads as follows:

“After the receipt of further information or in the absence of any response, if the officer of Customs still has reasonable doubt as to the truth or accuracy of the declared customs value, it shall be deemed that the customs value of the imported goods in question cannot be determined under the provisions of Article 1 of Schedule E and the importer, if so requests, shall be informed by the officer in writing of the grounds for such doubt and be afforded an opportunity to be heard.”

In the written submissions filed on behalf of the Petitioners, it has been argued that in terms of Article 1 of Schedule E of the Customs Ordinance, customs duty 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. The Petitioners position therefore is that as they have correctly declared the transaction value, the Petitioners are only liable to pay customs duty on the said transaction value. This position is not correct for the reason that in terms of Section 51A(1)(b), if the Officers of Sri Lanka Customs have a doubt on the accuracy of the declared customs value or in other words the transaction value, even after the importer has submitted the necessary documents requested by Sri Lanka Customs, then, the provisions of Article 1 of Schedule E are displaced. Thus, the argument of the Petitioners is misconceived in law.

It has been consistently held by our Courts⁹ that a petitioner seeking a Writ of Mandamus must show that there resides in him a legal right to the performance of a legal duty by the party against whom the mandamus is sought. The essence of mandamus is that it is a command issued by the Superior Court for the performance of a public duty. Where officials have a public duty to perform and have refused to perform, mandamus will lie to secure the performance of the public duty, in the performance of which the petitioner has sufficient legal interest.

This Court is of the view that the Petitioners cannot claim a legal right to have the goods imported by them assessed for customs duty and other levies based on the transaction value as the Customs Ordinance empowers Sri Lanka Customs to amend this value in accordance with the provisions of the Customs Ordinance. This Court is also of the view that in terms of Section 51A(1) of the Customs Ordinance, officers of Sri Lanka Customs are under no public duty to accept the transaction value as the customs value if they have a reason to doubt the truth or accuracy of the value declared by the Petitioner. Hence, it is clear that a Writ of Mandamus does not lie in the circumstances of this case.

For the reasons set out in this judgment, this Court does not see a legal basis to issue the Writs of Certiorari and Mandamus prayed for. This application is accordingly dismissed, without costs.



Judge of the Court of Appeal

⁹ Janak Housing vs The Urban Development Authority 2008 (2) Sri LR 302.