TENNAKOON

v

DIRECTOR-GENERAL OF CUSTOMS AND ANOTHER

COURT OF APPEAL
TILAKAWARDENA, J. (P/CA) AND
WIJAYARATNE, J.
C.A. 856/2000
AUGUST 27, AND
NOVEMBER 25, 2002 AND
MARCH 25 AND,
JULY 10, 2003

Writ of certiorari – Customs Ordinance, sections 8(1), 119, 125 and 154 – Inquiry after seizure – Forfeiture – Forgery of certificate of registration – Knowledge of forgery – is it necessary? – Appeal to authority – Decision without hearing party – Validity – Availability of the alternative remedy.

The customs seized the vehicle and at the inquiry under section 8(1) it was found that the original certificate was a forgery. After inquiry the vehicle was forfeited in terms of section 119.

The petitioner sought to quash the order declaring the forfeiture of the vehicle and further sought to quash the 1st respondent's order disallowing the appeal.

Held:

(i) That the petitioner as well as the importer used the original certificate of registration (COR) for the purpose of clearance of the vehicle is an admitted fact. When it is used for the purpose of clearing the use is wilful and such is established in law, in terms of section 119.

(ii) There is no legal requirement to hear the petitioner before determining the appeal.

(iii) The petitioner has an alternate remedy, as the Customs Ordinance itself provides for such a course of action under section 154. In the circumstances the petitioner is not entitled to invoke writ jurisdiction.

APPLICATION for writs in the nature of certiorari and/or mandamus.

Case referred to:

1. *Lanka Jathika Sarvodaya Shramadana Sangamaya* v *Heengama, Director-General of Customs* – (1993) 1 Sri LR 14

Manohara de Silva with *W.D. Weeraratne* and *G.W.C. Bandara* for petitioner.

Farzana Jameel, Senior State Counsel for respondents.

Cur.adv.vult

September 8, 2003

WIJAYARATNE, J.

The petitioner in this application invoked the writ jurisdiction of this court seeking a mandate in the nature of a *writ of certiorari* to quash the order dated 16.05.200 made by the 2nd respondent declaring the forfeiture of the vehicle along chassis No. KZ 95-0184891 and further *writ of certiorari* quashing the order of the 1st respondent disallowing the petitioner's appeal dated 22.05.2000. Also sought was a mandate in the nature of a *writ of mandamus* directing the respondents to release the said vehicle.

The petitioner who is a member of the Central Provincial Council was issued with an import license for the importation of a vehicle (P1). The condition of such license was that the vehicle imported shall be either new or if used, or re-conditioned was three (3) years old at the time of shipment the age of the vehicle being computed from the date of first registration. The petitioner claimed that he had entrusted the said permit to a regular importer of vehicles and opened an irrevocable letter of credit in his name. The petitioner conceded that he had imported a Toyota Land Cruiser bearing chassis No. KZ J95-0184891. At the clearance of the vehicle by the agent of the importer, it was alleged that the Original Certificate of Registration (OCR) submitted for clearance was a forgery. The customs seized the vehicle and an

inquiry under section 8(1) of the Customs Ordinance was held (P2). The petitioner produced copies of documents furnished to him by the customs as documents produced at such inquiry. At the inquiry it was revealed that the OCR was a forgery. A charge under section 119 of the Customs Ordinance was framed against the petitioner and the importer. After inquiry an order was made declaring the vehicle in question forfeited in terms of section 119 of the Customs Ordinance and further declaring that the inquiring officer did not intend imposing forfeitures on the permit holder, the petitioner and the importer. Thereafter the petitioner was served with a seizure notice / forfeiture notice under section 125 of the Customs Ordinance (P3). The petitioner made an appeal to the 1st respondent dated 22.05.2000 (P4). The petitioner was informed by letter dated 02.06.2000 that his appeal had been disallowed by the first respondent (P5). The petitioner alleges that he was not heard before determining of the appeal and the appeal had been rejected without any consideration.

The petitioner urged that the prosecution at the inquiry under section 119 failed to establish that the use of the OCR was willful within the meaning of section 119 of the Customs Ordinance and therefore the order made by the 2nd respondent forfeiting the vehicle was contrary to law and had been made arbitrarily and in excess of jurisdiction. The petitioner also urged that the order disallowing the appeal (P5) was also contrary to law and had been made in excess of jurisdiction.

The respondents argued that the order made was within the ambit of the Customs Ordinance and the petitioner was not entitled to invoke the writ jurisdiction of this court in view of the fact that an alternative remedy was provided for in the Customs Ordinance under section 154, whereby he could have challenged such order in a court of competent writ jurisdiction.

At the argument stage, much empahsis was laid by the petitioner that the Original Certificate of Registration (OCR) which was found to be a forgery was not used willfully by the petitioner because the prosecution had failed to prove that the petitioner had any knowledge of such forgery. He relied on the fact that the inquiring officer did not impose any forfeiture on him or the importer because there was no evidence to prove that they either

had a hand in it or knowledge of the fact of forgery. However it is significant to note at this point that the petitioner never disputed the fact of the Original Certificate of Registration (OCR) being a forgery.

Examining the legality of the order of forfeiture of the vehicle in suit made under section 119 the fact that the petitioner as well as the importer used the Original Certificate of Registration (OCR) for the purpose of clearance of the vehicle is an admitted fact. When it is used for the purpose of clearance, the use is willful and such is established in law. In terms of the provisions of section 119 of the Customs Ordinance "....***willful use when counterfeited or falsified, any document required by the Ordinance***....." results in the liability of forfeiture. Accordingly the use of OCR being willful for the purpose of proving that the condition of the import license are satisfied, when the same is found to be a forgery, which fact the petitioner does not dispute, the inquiring officer has acted within the provisions of law in making the order of forfeiture of the vehicle in terms of section 119 of the Customs Ordinance.

With regard to the determination of the appeal the petitioner has not established that there was any legal requirement to hear him before determining the same, by the first respondent who is the chief administration officer functioning under the Customs Ordinance. The appeal is made on the basis of the inquiry proceedings and the orders made which are available to be examined by the 1st respondent who is obliged to consider evidence on record and the relevant provisions of the law for the purpose of administration of same fiscal statute. Consideration of an appeal in relation to proceedings of inquiry done under his purview without hearing the petitioner is not contrary to any law or legal principles. The order made by the first respondent is thus within his jurisdiction and not contrary to law.

The petitioner in this application seeks to challenge the forfeiture made under section 119 of the Customs Ordinance by a writ application when in fact the Customs Ordinance itself provides for such a course of action under section 154. The petitioner is not therefore without an alternative suitable remedy. The petitioner is not entitled to seek the writ jurisdiction of this court when there is an alternative remedy available to him. In the Sarvodaya case[1] it was held "Ordinarily the only remedy available to the petitioner for 100
claiming the said goods is to institute proceedings in terms of section 154, challenging the validity of the seizure."

The petitioner in his written submissions referred court to a similar case but he had not pleaded the same in his application. However, discrimination is not a ground upon which an application for writ can be based, even if it would entitle him to other remedies.

Accordingly, we see no merit in the application of the petitioner. In the result the application of the petitioner is dismissed with costs fixed at Rs. 10,000/-.

TILAKAWARDANE, J. (P/CA) – I agree

Application dismissed.