

**RAJAPAKSE**  
**VS**  
**DIRECTOR GENERAL OF CUSTOMS AND ANOTHER**

COURT OF APPEAL.  
SRISKANDARAJA. J.  
CA 1200/2002.  
JUNE 12, 2006.  
SEPTEMBER 5, 8, 2006.

*Writ of Certiorari - Customs Ordinance – section 119- Import and Export (Control) Act - Vehicle imported - Chassis number tampered with - Forfeiture of vehicle- No knowledge of the falsification of documents - Is it a defence? "Willfully use"- meaning - Excise Profits Duty Ordinance No. 38 of 1941.*

The used vehicle imported by the petitioner was detained by the Customs, and after investigation it was found that the chassis number of the vehicle had been tampered with. After inquiry, the vehicle was forfeited in terms of section 119. The Petitioner contended that, the petitioner cannot be charged under section 119 as he is not the author of the document presented to Customs.

The contention of the petitioner was that, as he had no knowledge of the fraud the petitioner could not have willfully used the same.

**HELD:**

- (1) The word "willfully use" in section 119 has to be analyzed giving its ordinary meaning. The word "willfully" qualifies the word 'use' and no more.
- (2) The words 'willfully use' should not be construed as using, with the knowledge of intention.

The section provides 'Willfully use' when counter feited or falsified document and NOT willfully using counter feited or falsified document.

**APPLICATION for a Writ of Certiorari**

**Cases referred to :**

1. *Chellappah vs. Commissioner of Income Tax* - 52NLR 416
2. *In Re Young and Harston* - 31Ch. D. 174
3. *R vs Badger* - L. J. M. C. 81 at 90
4. *Tennakoon vs. Director General of Customs and another* - 2004-1 Sri LR 53 at 56.

*Cur. adv. vult.*

August 23, 2006

**SRISKANDARAJAH, J.**

The Petitioner imported to Sri Lanka a used Prado vehicle bearing chassis number KZJ - 195-0130788. Upon importation, the said vehicle was detained by the Sri Lanka Customs for the purpose of examination and investigation. The Petitioner was requested by a letter dated 19.05.2000 (A2 marked with the Petition) to appear at the Fort Preventive Office (Investigating Unit) on 23.05.2000 for the purpose of recording his statement. Thereafter by letter dated 20.11.2000 the Sri Lanka Customs informed the Petitioner that the Government Analyst has examined the vehicle in question and has confirmed that the chassis number of the said vehicle had been tampered with and re-introduced. Hence the Petitioner was asked to show cause as to why the vehicle should not be forfeited under the provisions of the Customs Ordinance read with the provisions of the Import and Export (Control) Act. After the Petitioner's reply to this letter the 2nd Respondent held an inquiry under the provisions of the Customs Ordinance. The inquiry was held on 07.08.2001, 09.08.2001 and 16.08.2001. At the conclusion of

the inquiry an order was made on 16.08.2001 that the vehicle in question to which information was provided to the Customs in documents marked P11 and P13 is untrue and falsified with regard to the chassis number of the vehicle and held that the vehicle is liable to be forfeited in terms of section 119 of the Customs Ordinance and declared that it is forfeited.

The Petitioner is seeking a writ of certiorari to quash the order dated 16.08.2001 forfeiting the Petitioner's vehicle and a writ of mandamus to release the said vehicle.

The Petitioner was charged under section 119 of the Customs Ordinance. This section deals with making of false declarations, signing, counterfeiting and using the false documents. The Government Analyst in his report marked 1R18 states that the correct chassis number of the vehicle imported by the Petitioner is KZJ 95-0130777 and not KZJ 95-0130788 as referred in the documents tendered by the Petitioner to the Customs.

The Petitioner contended that the Petitioner was charged under section 119 of the Customs Ordinance but he cannot be charged under the limb of that section for make and subscribe any declaration, certificate or other instrument or make or sign any declaration as he is not the author of the document presented to the Customs. The Petitioner submitted that he was charged specifically under the following limb of that section :

"If any person shall counterfeit, falsify, or willfully use when counterfeited or falsified, any document required by this Ordinance or any enactment relating to the Customs, or by or under the directions of the Collector or any instrument used in the transaction of any business or matter relating to the customs, or shall fraudulently alter any document or instrument, or counterfeit the stamp, seal, signature, initials or other marks of, or used by the Officers of the customs for the verification of any such document or instrument, or for the security of goods, or any other purpose, in the conduct of business relating to the customs, every person so contravening shall be liable to forfeit a sum not exceeding one hundred thousand rupees, and any goods, including currency in any form, in relation to which the document or statement was made shall be liable to forfeiture : Provided always is that this penalty shall not attach to any particular contravention for which any other penalty shall be expressly imposed by any law in force for the time being."

The Petitioner contended that according to the submissions of the Respondents that the Petitioner's case would fall within the above limb on the basis that the Petitioner wilfully used documents which are counterfeited

or falsified. But in fact the Petitioner's case cannot fall within the above mentioned limb for the reason that admittedly the Petitioner had no prior knowledge of falsified or untrue documents. The Petitioner further contended that the inquiring officer in his order observed "I do not elect to impose any further forfeiture or penalty on the parties concerned in the absence of any knowledge or intention in the fraud". By the said order the inquiring officer has admitted that the Petitioner has not played any role in the perpetration of the fraud and or knowledge of the same.

The submission of the Petitioner is that if the Petitioner has had no knowledge of the fraud the Petitioner could not have wilfully used the same. The Petitioner submitted that the legislature has intentionally used the word "wilfully use" as opposed to mere "use" for the reason that the legislature wanted to punish a person who has an active hand or role in defrauding the customs and not a person who merely used the documents without the knowledge of any mal-practice.

The Petitioner contended that "wilfully use" has to be construed as using with the knowledge or intention in other words if a counterfeited or falsified document is tendered to the customs, it could be construed as wilfully use only if the person who tenders the said document had a knowledge of counterfeited or falsified or he had an intention to defraud.

The word "wilfully use" in section 119 of the Customs Ordinance has to be analysed giving its ordinary meaning. In this instant the word "wilfully" qualifies the word "use" and no more. The section provides "wilfully use **when** counterfeited or falsified, document" and not "wilfully using counterfeited or falsified, document".

The word "wilfully" judicially interpreted in *Chellappah v Commissioner of Income Tax* Basnayake J when interpreting the word "Wilfully with intent to evade tax" in section 12(5) of the Excess Profits Duty Ordinance, No.38 of 1941 held : wilfully in the above context should be construed as meaning deliberately or purposely with the evil intent of committing the act or acts enumerated in the section. But he observed the word "Wilfully" alone would mean :

The dictionary (New Standard Dictionary) gives the following meanings of the word "wilfully" with free exercise of the will ; voluntarily ; intentionally ; in law, designedly, as opposed to inadvertently; in penal statute, purposely, with evil intent; maliciously". In commenting on this word in the case of *re Young and Harston Brown*, L. J, observes :

"Wilful is a word of familiar use in every branch of law, and although in some branches of law it may have a special meaning, it generally, as used in courts of law, implies nothing blameable, but merely that the person of whose action or default the expression is used is a free agent, and that what has been done arises from the spontaneous action of his will. It amounts to nothing more than this, that he knows what he is doing, and intends to do what he is doing, and is a free agent."

In the case of *R. V. Badger*, it was held that a surveyor was not guilty of "Wilfully" receiving a higher fee than he was entitled to, when acting under an honest mistake'

For the above reasons I cannot agree with the submission of the learned Counsel for the Petitioner that "wilfully use" has to be construed as using with the knowledge or intention.

In *Tennakoon V. Director- General of Customs and Another* 56 Wijayaratne J, in analyzing section 119 of the Customs Ordinance observed thus :

"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 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 wilful and such is established in law. In terms of the provisions of Section 119 of the Customs Ordinance"... wilful use when counterfeited or falsified, any document required by the Ordinance..." results in the liability of forfeiture"

In this instant case there is no dispute that false documents were submitted by the Petitioner therefore the wilful use of those documents are established. Hence the offence set out in Section 119 of the Customs Ordinance is established. The 2nd Respondent in his order dated 16.08.2001 which was made after an inquiry held :

"I declare forfeit two vehicles at Rs.8 million in terms of section 119 of the Customs Ordinance."

"I do not elect to impose any further forfeiture or penalty on the parties concerned in the absence of any knowledge or intention in the fraud is established against them."

For the above reasons I hold that the above order is lawful and reasonable in the given circumstances. Hence I dismiss this application without costs.

*Application dismissed.*