

SAMARAWICKREMA
V
COMMISSIONER OF EXCISE AND ANOTHER

COURT OF APPEAL
P.R.P. PERERA J. (P/C.A.)
AND ISMAIL J
C.A. NO. 250/89
M.C. MALIGAKANDA 83838
APRIL 04, 1991

Excise Ordinance, Sections 15(a) and (f), 46(f) and (h), 47(1), 48 and 54(2)
- *Confiscation of lorry.*

Held-

Even though the lorry in which the bottles of illicit liquor were stacked was only parked, it can be said that the lorry was "used in carrying" the bottles and the confiscation of the lorry was valid.

Case referred to

1. *Renton & Co. Ltd. v. Palmyrah Trading Co. of Panama* (1987) AC 149

APPLICATION in revision of the Order of the Magistrate of Maligakanda.

Ranjith Abeysuriya, P.C. with Lakshman Wickramatunga and Achala Wengappuli for petitioner

Kalinga Indatissa, S.C. for the Attorney-General

Cur. adv. vult.

May 20 1991

P.R.P. PERERA J. (P/C.A)

This is an application by the petitioner to have the order of the learned Magistrate dated 10.03.89, confiscating vehicle No. 41 Sri 1113, and directing the same to be sold and the proceeds credited to revenue, set aside by way of revision.

On April 04th 91, when the argument of this matter was concluded. State Counsel moved for time to file written submissions, and this Court has permitted the State to file written submissions on or before 29.04.91. Written submissions of the petitioner in reply were due to be filed on or before 03.05.91. The state has failed to file written submissions before the due date and has thereafter filed certain

submissions on 02.05.91. The written submissions filed by the State, are therefore rejected as they have been filed out of time. No written submissions have been filed by the petitioner.

The facts of this case are briefly as follows - On 18.09.87, plaint was filed against three suspects under the provisions of the Excise Ordinance. The plaint alleged that the suspects had on 09.09.87, committed the following offences.

- (1) An offence under Section. 15 (f) of the Excise Ordinance, an offence punishable under Section. 46 (h) of the same Ordinance.
- (2) At the same time and place aforesaid, with having committed an offence under Section. 15 (a) of the Excise Ordinance punishable under Section 46 (f) of the Excise Ordinance.
- (3) That at the same time and place aforesaid with having committed an offence punishable under Section 47 (1) of the Excise Ordinance.
- (4) That at the same time and place aforesaid with having committed an offence under Section 15 (a), punishable under Section 46 (b) of the Excise Ordinance.
- (5) That at the same time and place with having committed an offence under Section 47 (1) and punishable under Section 48 (1) of the Excise Ordinance.

On 25.11.88 the aforesaid suspects pleaded guilty to the charges against them. The learned Magistrate accordingly imposed a fine of Rs. 10,000/- on the 1st accused. The 2nd and 3rd suspects were fined Rs. 5000/- each.

Among the productions at the trial was the vehicle bearing Registered No. 41 Sri 1113, which is the subject matter of this application. On the said date an application was made by the prosecution for the confiscation of this vehicle in terms of section 54 (2) of the Excise Ordinance. After inquiry the learned Magistrate made order on 10.03.89 confiscating this vehicle and directed that it be sold and the proceeds be credited to revenue.

Counsel for that petitioner submitted that the said order was bad in law and had been made without jurisdiction. It was Counsel's submission that the prosecution in this case, had conceded that at the time of the detection by the officers of the Excise Department, this vehicle was parked, and in the vehicle was stacked 1,200 bottles containing illicit liquor. It was Counsel's complaint that in terms of section 54 (2) of the Excise Ordinance a vehicle is liable to confiscation only if the same has been used in carrying an excisable article. Counsel urged that there was no material whatsoever to establish that the said vehicles was used in the transportation of any excisable article. Therefore no order for confiscation was warranted under the provisions of section 54 (2) or any other section of the Excise Ordinance.

In view of this submission it is relevant at this stage to reproduce Section 54 (2) of the Excise Ordinance which reads as follows:

"Any excisable article lawfully imported, transported, manufactured, had in possession, or sold along with or in addition to, any excisable article liable to, confiscation under this section, and the receptacles, packages, and coverings in which any such excisable article, materials, still, utensil, implement, or apparatus, as aforesaid is found, and the other contents, if any, of the receptacles or packages in which the same is found, and the animals, carts vessels, or other conveyance used in carrying the same shall likewise be liable to confiscation."

Counsel submitted therefore that in terms of Section 54 (2) that it is only a conveyance used in carrying an excisable article which is liable to confiscation. Admittedly the vehicle in question was detected by the Excise Officers while it was parked. According to the Concise Oxford Dictionary, the word "carry" means 'to convey in vehicle, ship hand or head etc.' The word "convey" according to this Dictionary, means "to transport" and the word "transport" is defined as "transportation from place to place". Therefore, on a strict interpretation of the word carry supports the submission of Counsel who argued that in order to come within the provisions of section 54 (2) the vehicle with the illicit liquor should have been in motion, at the time of detection.

Having regard however to the relevant provisions of the Excise Ordinance, and the object which this statute sought to achieve, I am

of the opinion that it would not be in the interests of justice to give such a technical interpretation to the words "used in carrying" in section 54 (2). I find support for this view in the decision of the House of Lords in *Renton and Co Ltd. vs. Palmyrah Trading Co. of Panama* 1987 A.C. 149 where a ship was held "to carry" goods from the moment they are loaded on board. Their Lordships in this case rejected the contention that there must be some evidence of transportation of motion, for a Court to arrive at a finding that the goods were being carried (Vide per Lord Morton at page 171).

Having regard to the provisions of the Excise Ordinance, and the mischief this Statute sought to prevent, I am of the opinion that the words "used in carrying" must necessarily be given a wider interpretation. In the instant case the vehicle in question was stacked with 1,200 bottles containing illicit liquor at the time of detection, and it would be inappropriate to give such a restricted meaning to the phrase "used in carrying" as contended for by Counsel in interpreting the provisions of section 54 (2) of the Excise Ordinance.

I therefore affirm the order of the learned Magistrate, dated 10th March 1989, confiscating lorry bearing Registered No.41 Sri 1113, and hold that such order was validly made under the provisions of section 54 (2) of the Excise Ordinance. The application of the petitioner is accordingly dismissed.

ISMAIL, J - I agree

Application dismissed.

SENDIRIS

V.

**ASSISTANT COMMISSIONER OF AGRARIAN SERVICES AND
ANOTHER**

COURT OF APPEAL,

S.N. SILVA, J.

C.A. APPLICATION NO. 1081/83

JULY 6, SEPTEMBER 26, AND DECEMBER 12, 1990.

Writ of Certiorari - Agrarian Services Act No. 58 of 1979, Section 18(1) - Arrears of rent - Prescription - Prescription Ordinance, Section 7 - Estoppel - Presumption against retrospective operation.