
JAYARATNE
VS
DIRECTOR GENERAL, CUSTOMS DEPARTMENT AND OTHERS

COURT OF APPEAL.

SRIPAVAN, J. AND

DE ABREW, J.

C. A. 2238/2004.

MARCH 2, APRIL 1, AND MAY 12, 2005.

Writ of certiorari/mandamus - Customs Ordinance, sections 50(d) and 135 - Seizure - Validity? - Import and Export Control Act, No. 19 of 1969 - Importer acting in breach of conditions in lease - Authority given to customs to forfeit goods.

The petitioner- alleging that he is the registered owner of the motor vehicle. bought in good faith and for valuable consideration sought a writ of certiorari, to quash the seizure notice issued under section 135 of the Customs Ordinance.

HELD:

- (1) The previous owner of the vehicle in question was one W. One of the conditions subject to which the licences was issued to W was that the vehicle should not be sold, transferred or otherwise disposed of for a period of five years from the date of registration in Sri Lanka.
- (2) The vehicle has been transferred contrary to the conditions subject to which the import licence was issued.
- (3) The 1st respondent has the authority to forfeit such goods where the conditions are not complied with-section 50(a) Customs Ordinance.
- (4) The seizure notice is not a final determination affecting the rights of parties. The issuance of the seizure notice is not an illegal act or an act which is beyond the authority of the 2nd respondent.

APPLICATION for writ in the nature of certiorari/mandamus.

Case referred to :

Dias vs. Director General of Customs (2001) 3 Sri LR. 281.

K. Deekiriwewa for petitioner,

Farzana Jameel, Senior State Counsel for respondents.

Cur. adv. vult.

September 09, 2005

SRIPAVAN, J.

The petitioner alleges that he bought a registered Diesel Mitsubishi Pajero Jeep bearing chassis No. V 46-4044523 in good faith on or about 25.06.2003 for a valuable consideration of Rs. 3.6 Million.

The said jeep was registered in the name of the petitioner as evidenced by the Vehicle Registration Book marked X2. The Learned counsel for the petitioner submitted that the petitioner was served with a seizure notice dated 09.11.2004 issued by the 2nd respondent in terms of section 135 of the Customs Ordinance. It is this notice the petitioner is seeking to quash in these proceedings on the basis that he was a *bona fide* purchaser of the said jeep and even if an offence has been committed, there is no provision under the Customs Ordinance or the Exchange Control Act to deal with such type of situation ; hence any action by the respondents including the seizure was *ultra vires*.

It is manifestly clear from the petitioner's document marked X2 that the previous owner of the vehicle in question was G. N. Wasanthi of No. 18, Mahawewa, Thoduwawa. It is also apparent from the document marked 2R1 that import license was given to the said G. N. Wasanthi by the 3rd respondent to import the said vehicle. The date of issue of the said import license is 03.01.2003, One of the conditions subject to which the license was issued to G. N. Wasanthi was that the vehicle should not be sold, transferred or otherwise disposed of for a period of 05 years from the date of registration in Sri Lanka.

It would appear from the document X2 that the vehicle has been transferred contrary to the conditions subject to which the import license was issued to G. N. Wasanthi.

In terms of section 50(A) of the Customs Ordinance when goods are imported into Sri Lanka under any other law subject to any conditions to be fulfilled after the importation, the 1st respondent has the authority to forfeit such goods where the conditions are not complied with.

Accordingly, the Court is of the view that the 1st respondent has the authority to investigate the manner in which the vehicle in question has been transferred to the petitioner contrary to the conditions laid down in the import license, prior to taking any steps to forfeit the vehicle.

The affidavit filed by the 2nd respondent shows that he had reliable information warranting further probing. As held in *Dias vs. the Director General of Customs*¹ the scheme of the Customs Ordinance recognizes and gives an opportunity to the petitioner from whom the vehicle in question was seized to vindicate himself at a subsequent inquiry.

The Learned Senior State Counsel appearing for the respondents submitted that after importation of the said vehicle the importer acted in breach of the condition of the license based on which the importation was permitted. Further, the Learned Senior State Counsel argued that the details of the vehicle given in column 31 of the Custom's declaration marked 2R5 defer from the exchange copy marked 2R6 submitted to the Registrar of Motor Vehicles.

Accordingly, the Court is satisfied that the 1st respondent is in possession of reliable information warranting further investigation into the matter. The seizure notice issued by the 2nd Respondent is not a final determination affecting the rights of the petitioner. The Court is also satisfied that the issuance of the said seizure notice is not an illegal act or an act which is beyond the authority of the 2nd respondent. Thus the Court is not inclined to quash the said seizure notice marked X3.

The petitioner also seeks a writ of mandamus to compel the 3rd respondent to validly exercise the powers conferred on him in terms of the import and Export Control Act, No. 01 of 1969. The discretionary remedy of mandamus lies only in case of a breach of any statutory duty by any public authority. The Petition does not disclose a failure of any statutory duties on the part of the 3rd respondent. Thus a writ of Mandamus would not lie against the 3rd respondent.

The petitioner also seeks a writ of prohibition restraining the 1st and 2nd respondents from issuing a fresh seizure notice. A Writ of Prohibition would lie against the said respondents only if there is a total lack of jurisdiction. As observed earlier the 1st and 2nd respondents have acted fairly and reasonably in issuing the impugned seizure notice.

For the aforesaid reasons, the Court does not see any merit in the petitioner's application. The petitioner's application is accordingly dismissed with costs fixed at Rs. 15,000 payable by the petitioner to the respondents in equal shares.

DE ABREW, J. – I agree.

Application dismissed.
