

AMARASINGHE
v
JAYATHILAKE,
DIRECTOR-GENERAL OF CUSTOMS AND OTHERS

COURT OF APPEAL
SALEEM MARSOOF, (P/CA) AND
SRIPAVAN, J.
C.A 482/03
JULY 23, AND
AUGUST 17, 2004

Writ of mandamus – Customs Ordinance, Sections 12, 43, 125, 164, and 165, Vehicle declared forfeit – Can the Minister refuse any application made in terms of Section 164 and 165 – Export Control Act, No. 1 of 1969 – Condition precedent for issue of mandamus?

The petitioner imported a car which he had been using from 26.02.2000 in the United Kingdom. On arrival of the vehicle, it was detected by Customs and

after a formal inquiry the vehicle was declared forfeit. The petitioner requested the 4th respondent Minister to release the vehicle to him under sections 164 and 165 and request was rejected. The Petitioner sought a writ of mandamus compelling the 1st respondent to release the said vehicle after charging custom duties.

Held:

- i) A condition precedent for the issue of mandamus is the presence of a statutory right. The discretion vested upon the Minister cannot be claimed by the petitioner as of right. No person shall be compelled by madamus to exercise his discretion one way or other if he has honestly and reasonably exercised his discretion.
- (ii) The use of the words "it shall be lawful for the Minister to order, the same to be restored" in section 164 and "Miniser may by any order "in section 165, does not mean that the Minister has to necessarily release the vehicle when it is seized as forfeit.

APPLICATION for a Writ of *Mandamus*

Case referred to:

1. *Bangamuwa vs SMJ Senaratne, Director-General of Customs and another – (2000) 1 Sri LR 106*

Asoka Fernando for Petitioner

L.M.K. Arulanathan, Deputy Solicitor- General for respondents

Cur.adv.vult

September 09, 2004

SRIPAVAN, J.

The petitioner is a person born in Sri Lanka on 20/03/1953 and was employed in the United Kingdom for 22 years. He obtained his British citizenship in the year 1999. The petitioner alleges that until March 1999 he was a citizen in Sri Lanka. The petitioner imported a Ford Escort car which he had been using from 26.02.2000 in the United Kingdom. On arrival of the said vehicle to Sri Lanka on 22.03.2002, it was detained by the Sri Lanka Customs, on a suspicion of illegal importation. A formal inquiry into the alleged importation was held on 06.08.2002 and the said vehicle was declared forfeit in terms of sections 12, 43 and 125 of the Customs Ordinance read with the Import and Export Control Act No. 1 of 1969 as evidenced by the document marked P5.

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The petitioner sought the assistance of the political authorities to have the said vehicle released. Accordingly, the Secretary to the Prime Minister by letter dated 13.12.2002 marked P6 (c) informed the Secretary to the Ministry of Finance that the petitioner was willing to purchase the aforesaid vehicle at a reasonable price at an auction sale arranged by the Sri Lanka Customs. However, the petitioner was unable to purchase the said vehicle at the auction sale as his offer had been rejected.

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On 13.12.2002 the petitioner addressed a letter marked P9 to the 4th respondent requesting that his forfeited vehicle by the Customs be released to him. It is on this basis the petitioner seeks a writ of *mandamus* compelling the 1st respondent to release the said vehicle to the petitioner after charging custom duties.

When this application was supported on 31.03.2003, counsel for the petitioner submitted that in terms of an appeal made to the 4th respondent, the petitioner has received a letter dated 24.02.2003 marked P10 informing that the 4th respondent has made order under sections 164 and 165 of the Customs Ordinance and the same has been conveyed to the Director-General of Customs. Counsel further submitted that since he was seeking a writ of *mandamus* in terms of paragraph 'f' of the prayer to the petition he was not seeking any relief in terms of paragraphs 'c' and 'd' of the prayer to the petition.

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On 05.07. 2004 the counsel for the petitioner and the learned Deputy Solicitor General for the respondents agreed that the only issue to be considered was whether the petitioner is entitled to a writ of *mandamus* as prayed for in paragraphs 'e' and 'f' of the prayer to the petition. Paragraphs 'e' and 'f' of the prayer to the petition read as follows:-

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(e). Grant and issue a mandate in the nature of writ of *mandamus* compelling the 2nd respondent to issue an import licence (after charging a reasonable amount of penalty if necessary).

(f) Grant and issue a mandate in the nature of writ of *mandamus* compelling the 1st respondent to release the vehicle to the petitioner, charging custom duties (and if necessary charging a reasonable penalty).

Further, both counsel agreed that this application should be disposed of on written submissions only.

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It was not in dispute that the motor car imported by the petitioner was more than three years old from the date of first registration. The approved scheme issued by the 2nd respondent with regard to the importation of motor vehicles indicates that the importation of a motor vehicle which is older than three years must be authorized by a license issued by the Controller of Imports and Exports. In the absence of any such license at the time of importation the petitioner is not legally entitled to have the vehicle released to him. In any event, once the vehicle is seized as forfeit it becomes the property of the State and the power of restoration of seized goods is given to the 4th respondent under the Customs Ordinance in terms of sections 164 and 165. *Bangamuwa v. S.M.J. Senaratne, Director-General of Customs & another*⁽¹⁾.

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Section 164 of the Customs Ordinance reads thus:-

"In case any goods, ships, or boats shall be seized as forfeited, or detained as undervalued, by virtue of this Ordinance, it shall be lawful for the Minister to order the same to be restored in such manner and on such terms and conditions as he shall think fit to direct; and if the proprietor of the same shall accept the terms and conditions prescribed by the Minister, he shall not have or maintain any action for recompense or damage on account of such seizure or detention and the person making such seizure shall not proceed in any manner for the purpose of obtaining the condemnation thereof."

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Section 165 of the Customs Ordinance reads thus:-

"The Minister may, by any order made for that purpose, direct any ship, boat, goods, or other commodities whatever, seized under this Ordinance, to be delivered to the proprietor thereof, whether condemnation shall have taken place or not, and may also mitigate or remit any penalty or fine or any part of any penalty or fine incurred under this Ordinance, or may release from confinement, any person committed under this Ordinance on such terms and conditions as to him shall appear to be proper."

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There is significance in the use of the words "**it shall be lawful for the Minister to order the same to be restored**" and "**Minister**

may by any order” in sections 164 and 165 respectively. In my view, the aforesaid sections give the 4th respondent the discretion to release seized goods subject to such terms and conditions as he may think fit. I am unable to agree with the submission of the counsel for the petitioner that in terms of section 164, the Minister has to necessarily release the vehicle when it is seized as forfeit. If that argument is accepted, it would mean that the Minister cannot refuse any application made in terms of sections 164 and 165 of the Customs Ordinance. 90

Condition precedent for the issue of *mandamus* is the presence of a statutory right. The discretion vested upon the 4th respondent cannot be claimed by the petitioner as of right. No person shall be compelled by *mandamus* to exercise his discretion one way or other if he has honestly and reasonably exercised his discretion. The letter dated 24.02.2003 sent by the Director-General, Department of Fiscal Policy & Economic Affairs to the 1st respondent marked 1R6 shows that the 4th respondent has informed the 1st respondent that the petitioner's appeal for the release of the vehicle has been disallowed. In the circumstances, I do not see any legal basis to issue a writ of *mandamus* as prayed for. Accordingly, the petitioner's application is dismissed in all the circumstances without costs. 100

MARSOOF, J. (P/CA). I agree.

Application dismissed