

NAVARATNE
v
DIRECTOR-GENERAL OF CUSTOMS AND OTHERS

COURT OF APPEAL
TILAKAWARDENA, J. (P/CA)
WIJAYARATNE, J.
CA 664/2001
MAY 11, 2003
SEPTEMBER 11 AND 15, 2003

Writ of Certiorari – Customs Ordinance – Sections 2, 47, 119 and 129, “Duty Free” vehicle imported – Detained by Customs – Inquiry – Released – Order Revised by the Director-General of Customs – Validity – Does a writ lie?

The petitioner imported a “Duty Free” vehicle. The vehicle was detained by Customs upon arrival on suspicion. Petitioner was summoned for an Inquiry, before an Asst. Director of Customs – 2nd respondent and thereafter the vehicle was released from detention. Thereafter the 1st respondent – The Director General of Customs revised the said Order. It was contended that the decision once validly made is an irrevocable legal act and cannot be recalled or revised.

Held:

Per Wijayaratne, J.

“The Director-General of Customs has implied power and authority in the exercise of his superintendence of all matters relating to the Customs to revise any order made by any Deputy. Reasons dictate that for the proper management and due administration of all matters relating to customs and specially to such abuse of power and authority by the Officers of the Department, the Director-General of Customs should be vested with such powers and authority”.

(1) The order to be revised is not an Order “Validly” made in terms of section 47.

APPLICATION for a Writ of Certiorari.

Manohara R de Silva for the petitioner.

Y.J.W. Wijayatilake D.S.G., for respondents.

November 24, 2003

WIJAYARATNE, J.

The petitioner made this application seeking a mandate in the nature of *Writ of Certiorari* quashing the order of the 1st respondent revising the order of the 2nd respondent dated 28.02.2001 made after the inquiry in Customs Case No. POM/418/2000 conveyed to the petitioner by P7. The petitioner sought a further mandate of *Writ of Mandamus* directing the 1st respondent to release the subject matter of customs inquiry morefully described in the said order dated 28.02.2001 in accordance with the order of the 2nd respondent. 01

The petitioner who was a provincial Council member issued with an import license to import a duty free vehicle imported Toyota Prado vehicle in or about April, 2000. The vehicle was detained by customs upon arrival on suspicion and the petitioner was summoned for an inquiry which the petitioner attended in November, 2000. Thereafter on 18.01.2001, the inquiry officer preferred a charge against the petitioner as the importer of the vehicle and petitioner showed cause by way of written submissions. (Vide P3 and P4). The 2nd respondent inquiring into the case on 28.02.2001 delivered his order giving reasons therefore and releasing the vehicle from detention (P6). 10 20

The petitioner was communicated by letter of 1st respondent dated 03.04.2001 that the 1st respondent on 27.03.2001 revised the order of the 2nd respondent dated 28.02.2001 to the effect of

- (1) Forfeiting the Toyota Prado vehicle in terms of section 47 of the Customs Ordinance.
- (2) In the absence of incriminatory evidence, not electing to invoke the provisions of section 119 and 129 of the Customs Ordinance, against the importer. Vide P7.

This was followed by a forfeiture notice dated 09.04.2001. The petitioner states that the decision of the 1st respondent to revise the order of the 2nd respondent, the order revising the same and the forfeiture notice are unlawful, arbitrary, capricious, mala fide and 30

made without and/or in excess of jurisdiction and the 1st respondent acted ultra vires the provisions of the Customs Ordinance. The petitioner challenges the impugned orders on the basis that the 1st respondent has no authority or power to revise an order made by the 2nd respondent. The mandates of writs are sought in this premise.

The 1st respondent by way of response to the application of the petitioner admitted having revised the order of the 2nd respondent releasing the vehicle after careful study of all the evidence and submissions made at the inquiry and the decision to revise the order of the 2nd respondent was made as it was revealed that all the documents the importer tendered for the clearance of the goods, the vehicle, found not to tally with number on the vehicle which was certified by the Government Analyst to have been tampered with. Such information found to be false offended the provisions of section 47 of the Customs Ordinance and hence the order for forfeiture of the goods. 40

The petitioner countered this affidavit of the 1st respondent by refuting several averments of facts and reiterating the statements in the petition. 50

The main thrust of the arguments of the counsel for the petitioner was on the suggestion that the 1st respondent has no power or authority of revising the order made by the 2nd respondent. There is no specific provisions found in the Customs Ordinance specifically authorizing or empowering the Director-General of Customs to revise an order made by an inquiring officer deputizing the Director-General of Customs. However, the provisions of section 2 of the Customs Ordinance vested the Director-General of Customs with the power of superintendence which reads, 60

“the Director-General of Customs shall, throughout Sri Lanka, have the General Superintendence of all matters relating to customs”

To “Superintend” means “to regulate with authority” and to regulate means “to adjust by rule, method or established mode; to subject to governing principles of laws” (Blanks Dictionary 6th Edition)

Thus the Director-General of Customs has the power to regulate/to subject to governing principles or laws, all matters relating to the customs, which includes subjecting the orders made by his deputies to the laws and to adjust matters by rules (of Department of Customs).

Accordingly this court is of the view that the Director-General of Customs has implied power and authority in exercise of his Superintendence of all matters relating to the Customs to revise any order made by any deputy. Reasons dictate that for the proper management and due administration of all matters relating to customs and specially to such abuse of power and authority by the officers of the Department the Director-General of Customs should be vested with such powers and authority. Consequently I hold that the Director-General of Customs had the power to revise any order made by any Deputy or subordinate officer on legitimate grounds and or for reasons stipulated, in the direction of proper management and due administration of all matters relating to customs.

The order to revise the order of the 2nd respondent was made and due notice was given to the petitioner. The liabilities of any goods to be forfeited arises in terms of section 47 of the Customs Ordinance when,

"The person entering any goods inwards shall deliver to the Director-General a bill of entry of such goods..... But if such goods shall not agree with the particulars in the bill of entry the same shall be forfeited...."

In terms of the provisions of the law the intention of the person entering goods or genuineness of the purpose is immaterial if such goods shall not agree with the particulars in the bill of entry. In the instant case there is no dispute on facts that the particulars entered in the bill of entry (Cus-dec) did not agree with the goods (the vehicle) and such is thus forfeited by operation of law.

The inquiry proceedings P3 at the end contain the reasoning of the inquiry officer and his view that since there is no evasion or defrauding of duty payable as the vehicle is imported duty free, it did not offend provisions of section 47 is his personal view and not the interpretation of the provisions of the Customs Ordinance. There appears no reason or basis not to apply imperative provi-

sions relating to forfeiture when the goods (the vehicle) did not agree with the particulars in the bill of entry (cus-dec). It is this position that the 1st respondent remedied in revising the order of the 2nd respondent which is not in accord with the provisions of section 47 of the Customs Ordinance.

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The learned Counsel for the Petitioner quoting Wade on "Administrative Law" page 235 emphasized that "a decision once validly made is an irrevocable legal act and cannot be recalled or revised." This court is in full agreement with the proposition. However, the question that needs answer is whether the order revised was "validly made" in terms of the provisions of section 47. The 1st respondent exercising his powers of superintendence has noted the "mistake" in the application of the provisions of section 47 to facts established through the inquiry and hence exercised his powers of authority to revise the order made by the 2nd respondent on 28.02.2001 as referred to by Wade at page 120 235 and 236 of his thesis (referred to in the written submissions of the petitioner).

Accordingly this court rules that the 1st respondent in revising the order made by the 2nd respondent dated 28.02.2001 had acted within his powers of superintendence vested in him under section 2 of the Customs Ordinance and it is within his power to revise the order not validly made in terms of section 47 and make order according to provisions of Customs Ordinance and forfeit the goods which did not agree with the particulars in the bill of 130 entry.

In the result the application of the petitioner is dismissed with costs fixed at Rs. 5,000/-.

TILAKAWARDANE, J., (P/CA) - I agree

Application dismissed