

**IN THE COURT OF APPEAL OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA**

Ole Springs Bottlers (Pvt.) Ltd.,
No.140, Low Level Road,
Embulgama,
Ranala.
Petitioner

CASE NO: CA/WRIT/373/2014

Vs.

1. Jagath Wijeweera,
Director General of Customs,
Customs House,
Colombo 01.
- 1A. Chulananda Perera,
Director General of Customs,
Customs House,
Colombo 01.
- 1B. P.S.M. Charles,
Director General of Customs,
Customs House,
Colombo 01.

- 1C. Maj. Gen. (Retd) Vijitha Ravipriya,
Director General of Customs,
Customs House,
Colombo 01.
2. D.N. Gunawardane,
Deputy Director of Customs,
Customs House,
Colombo 01.
3. G.J.S. Fernando,
Deputy Superintendent of
Customs,
Customs House,
Colombo 01.

Respondents

Before: Mahinda Samayawardhena, J.
Arjuna Obeyesekere, J.

Counsel: Sanjeewa Jayawardena, P.C., with Suren de
Silva for the Petitioner.
Suranga Wimalasena, S.S.C., for the
Respondents.

Argued on: 04.08.2020

Decided on: 14.10.2020

Mahinda Samayawardhena, J.

In paragraph 8 of the statement of objections, the Director General of Customs says “*the Petitioner has imported bottles preform of plastic being an intermediate product having tubular shape, with one closed end and one open end threaded to secure screw type closure, the portion below the threaded end being intended to be expanded to a desired size and shape.*” Further elaborating on this point, in paragraph 9 he says “*the Petitioner has imported bottle blanks for blowing up into bottles.*” To my mind, the Petitioner does not join issue with this assertion. The Petitioner says the same thing but in different words. The Petitioner refers to the same product as “*pre-formed shrink capsules*”, which are converted to plastic bottles by a process known as the “*stretch blow moulding process*”. The issue in this case relates to the correct HS code of this product, on which the payable customs duties and other levies are decided.

According to the Petitioner, the correct HS code at the relevant time for the said product was either 3923.50.10 or 3923.90.00. According to the Director General of Customs, the correct HS code at that time was 3923.30.90 and later 3923.30.10.

The Director General of Customs held an inquiry against the Petitioner on the basis that the Petitioner had imported four consignments under incorrect HS codes, thereby avoiding payment of correct duties.

The inquiry was on three charges under sections 47 and 129 of the Customs Ordinance. At the inquiry, four witnesses gave evidence – one for the Customs and the other three for the

Petitioner – and several documents were marked, and written submissions filed.

After the inquiry, the inquiring officer, the Deputy Director of Customs, made the following Order P13.

By going through the evidence placed before me and the plea given by the suspects I convey the following Order.

Order:

I impose M/s. Ole Springs Bottlers (Pvt) Ltd. represented by Mr. Vishal Jain a mitigated further forfeiture amounting to Rs. 11,742,202/- in terms of section 47, 129 & 163 of the Customs Ordinance (Chapter 235).

I do not wish to take action against Mr. Vishal Jain holder of Indian passport bearing No. G0101927 and I severely warn him not to repeat this type of offences relevant to state revenue.

Order conveyed.

The above cannot be considered an Order, as no reasons have been given for it. For an Order to be regarded as such in the eyes of the law, it shall be accompanied by reasons. Otherwise, it is a mere statement unenforceable in law. Making an Order without giving reasons is a negation of the rule of law. Where is justice if the parties to the inquiry do not know at the end of the day why one has won and the other has lost? The *audi alteram partem* rule will be an empty ritual if reasons are not given for decisions.

The inquiring officer cannot say “*by going through the evidence placed before me I convey the following Order*”. He must justify his conclusion by a proper evaluation of the evidence led before him. He cannot keep the reasons to himself and release an empty Order. He shall put down the reasons as part of the Order for the benefit of the accused as well as the appellate body to consider whether the conclusion is justifiable in the event the accused appeals against the Order.

Learned Senior State Counsel submits that since the evidence of the Deputy Superintendent of Customs in material respects was not challenged by way of cross-examination, the inquiring officer “*need not give specific reason for his decision*”. I totally reject this submission. After the evidence of the said witness, three witnesses gave evidence for the Petitioner. This was followed by the filing of comprehensive written submissions.

The statement in the impugned Order that the Order is made upon “*the plea given by the suspects*” is false. The suspects did not plead guilty at any stage of the inquiry.

Learned Senior State Counsel cannot, on behalf of the inquiring officer, give reasons for the decision in Court.

The Petitioner came before this Court predominantly seeking to quash P13 by a writ of certiorari and seek a refund part payment of the mitigated forfeiture on P13 by a writ of mandamus. The Petitioner is entitled to these reliefs on the said ground alone, i.e. failure to give reasons for the decision. There is no necessity to go into the merits of the case. This Court, in *Chandana Kumara v. Air Vice Marshall, Sri Lanka Air Force*

(CA/WRIT/333/2011, CA Minutes of 01.06.2020), has exhaustively dealt with this matter. There is no necessity to repeat the same here.

I grant the reliefs to the Petitioner as prayed for in paragraphs (b)-(d) and (g) of the prayer to the petition.

I am not inclined to grant the relief sought in paragraph (e) of the prayer to the petition, as the consignment mentioned therein was not a subject matter of the impugned inquiry, and also because I do not resolve the question of the correct HS code regarding this product.

Judge of the Court of Appeal

Arjuna Obeyesekere, J.

I agree.

Judge of the Court of Appeal