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

In the matter of an Application for Mandates in the nature of Writs of Prohibition, and Mandamus in terms of Article 140 of the Constitution

CA (Writ) Application No. 989/2025

CA /WRT/841/2025

CA/ WRT/919/2025

CA/WRT/1032/2025

1. Prasad Enterprises (Pvt) Limited, No:102, Kandy Road, Mawathagama.

2. 4G Mobile (Pvt) Limited, 32/14, Anura Mawatha Thalapathpitiya.

3. Imex Link (Pvt) Limited 172/B, Dutugamunu Street, Kohuwala, Nugegoda

4. Nandana Aruna Sri Hewage, Carrying a partnership business under the name, style and firm of Silverline Group Colombo Road, Malpitiya, Boyagane.

5. Ruchika Kamal Vidanagamage Carrying a partnership business under the name, style and firm of Tharanga Enterprises of Seeradunna, Mawathgama.

Petitioners

Vs

1. Hon.Anura Kumara Dissanayake, Hon. President cum Minister of Finance, Planning and Economic Development, Ministry of Finance, Planning and Economic Development,
   The Secretariat, Colombo 01.

2. Dr. Harshana Sooriyaperuma, Secretary to the Ministry of Finance, Planning and Economic Development and Secretary to the Treasury, Ministry of Finance, Planning and Economic Development,
   The Secretariat, Colombo 01

3. P.B.S.C Nonis,

3A) Seevali P.Arukgoda Director General of Customs, Sri Lanka Customs Customs House Customs Headquarters, No: 40, Main Street, Colombo 11.
(3A Substituted Respondent)

4. Seevali Arukgoda

4A) N.K.Sapumal P. Jayawardena,

4B) T.Loganathan
Additional Director General of Customs (Revenue & Services) Sri Lanka Customs Customs House, Customs Headquarters, No:40, Main Street, Colombo 11.
(4B Substituted Respondent)

5. T.V.D. Damayanthi S . Karunarathna

5A) T.T.Upulmalee Premathilaka
Controller General of Import & Export, Import and Export Control Department, 1s Floor, Hemas Building Sir Marcus Fernando Mawatha Colombo 01. (5A Substituted Respondent)

6. Central Bank of Sri Lanka Janadhipathi Mawatha, Colombo 01.

7. Hon. Attorney General, Attorney General's Department, Colombo 12.

8. DFCC Bank PLC., No:35, Lake House Building, D.R.Wijewardena Mawatha, Colombo 10.

9. Commercial Bank of Ceylon Plc., No:21, Sir Razik Fareed Mawatha, Colombo 01.

10. Union Bank of Colombo Plc., No:64, Galle Road, Colombo 03.

11. Sampath Bank Plc., P.O.Box 997, No:110, Sir James Peiris Mawatha, Colombo 02.

12. HNB Bank Plc., City Office, Level 2, No:16, Janadhipathi Mawatha, Colombo 01.

Respondents

Before: Hon. Justice N. R. Abeysuriya PC (P/CA)

Hon. Justice K. P. Fernando

Counsel: K. Deekiriwewa with Dr. M. K. Herath, Dr. Kanchana De Silva and Wijerathna Bandara for the Petitioner

Sumathi Dharmawardane PC A. S. G. with Rajika Aluwihare S.C. for the 1st - 7th Respondents

Supported On: 05/08/2025

Written Submissions
Tendered On: 29/08/2025 (Petitioner) 01/10/2025 (Respondents)

Decided On: 19/12/2025

N. R. Abeysuriya, PC, J. (P/CA),

The instant application pertains to the refusal of one or more of the Respondents to allow the clearance of two vehicles imported into the country by the Petitioners due to the reason of non-compliance with certain requirements contained in the relevant regulations governing such importation.

The Petitioners have prayed, *inter alia*, for the following reliefs, which have been reproduced below.

b) issue a mandate in the nature of writs of Prohibition prohibiting the 1st to 5th Respondents and their subordinates, servants, and agents from not allowing the Petitioners to clear the vehicle that had been duly imported through a Cross border LC;

c) issue a further mandate in the nature of writs of Mandamus directing the 3rd and 4th Respondents to release the personal guarantee provisionally tendered at the time of clearing of the vehicle from Sri Lanka Customs until the final determination of this case by Your Lordships' Court;

d) grant a further mandate in the nature of writ of Mandamus directing the 1st to 3rd Respondents to grant a demurrage waiver in respect of the above vehicles which were not permitted to be cleared by the 1st to 3rd Respondent arbitrarily by abusing of their powers hence, direct the 1st to 3rd Respondents to take tangible measures and intimate the Sri Lanka Ports Authority to grant the demurrage waiver and release the personal guarantee tendered by the Petitioners at the time of taking the vehicle out of Sri Lanka Ports Authority premises;

f) grant an interim relief under the present circumstances to clear the vehicle by tendering a Personal Guarantee to the CIF value declared in the commercial invoice or to the Customs value determined by the Sri Lanka Customs for the purposes of computing the precise customs duty as otherwise grave and irremediable and irreparable loss will be accrued to the Petitioners even though no fault had been committed by the Petitioners;

The two vehicles imported by the Petitioners which have been declared as "used" vehicles, are a Mitsubishi Eclipse Cross and a Honda CR-V Motor Vehicle. As per the available documentation, it is worthy of being mentioned the fact that the said two "used" vehicles have run for only 13 km and 50 km respectively. Both these vehicles have been shipped to Sri Lanka from a Port in Australia notwithstanding the fact that the actual exporter is a person in Singapore in whose favor the relevant Letters of Credit (*hereinafter sometimes referred to as LCs*) were opened in respect of the said imports.

When the two vehicles reached the Port of Colombo, the Customs Authorities refused to allow clearance on the ground that the importers i.e. the Petitioners have not complied with certain regulations promulgated under the Import & Export Control Act No. 01 of 1969.

The said regulations which govern the importation of used motor vehicles are contained in the following gazettes;

a) Gazette Extraordinary No. 1804/17 dated 03.04.2013
b) Gazette Extraordinary No. 2428/07 dated 19.03.2025

(Both these gazettes have been marked compendiously as X4 by the Petitioners.)

The 2013 gazette stipulates the pre-conditions to be satisfied for the legal importation of used motor vehicles.

For convenience, the following regulations in the 2013 gazette are reproduced below.

> *2. All used motor vehicles falling under H. S. Codes 87.02, 87.03, 87.04 and 87.05 being imported to Sri Lanka shall be subjected to a pre-shipment inspection and shall have a certificate of export inspection issued by the relevant authorized inspectors appointed by the Secretary to the Ministry of Finance and Planning.*
>
> *3. The said export inspection shall have annexed thereto:*
>
> > *(a) A certified copy of the cancelled vehicle registration certificate and export inspection certificate which shall be laminated and bear an embossed hologram seal.*
> >
> > *(b) A condition report with a complete description of the vehicle including a list of accessories.*
>
> *4. The documents referred to in regulation 3(a) and 3(b) above and the cancelled original certificate of registration with an English translation thereof shall form part of the documents hereinafter required under Letters of Credit.*
>
> *5.* ***The stamp of the local bank that opened the letters of credit and that of the corresponding bank in country of export shall be placed, on the original cancelled certificate of registration, its English translation and the documents referred to in regulation 3(a) or a copy of it and 3(b).***

As per regulation 6 of the aforementioned gazette, Commercial Banks shall accept the documents referred to above only if such documents were *"dispatched directly by their corresponding banks and shall not stamp cancelled vehicle registration certificates, their English translations and certificates of export inspection if directly dispatched by the exporter, importer or any other person."*

The said regulations also provide a definition to the term, "used motor vehicle" in regulation 8.2 which is reproduced below.

8.2 Used motor vehicle for the purpose of this regulation shall mean:

A motor vehicle that has been registered in a country of origin/export

Upon the consideration of the aforesaid regulations it is my view that emphasis has been placed on the document referred to as the cancelled certificate of registration the original, and its English translation of which must contain the stamp of the local bank that opened the LC and that of the corresponding bank in the country of export.

The aforesaid regulations contained in the 2013 gazette were amended by the gazette No 2428/07 dated 19.03.2025. It should be noted that regulation 5 of the original 2013 gazette has been left intact without any amendment. However the following proviso was added by the said new gazette which is reproduced below,

> *"Provided that, upon receipt of the export inspection certificate (pre-shipment inspection certificate) and condition report with a complete description of the vehicle including a list of accessories as specified in Regulation No. 3(a) and (b) referred above, without placing the stamp of the corresponding bank in the country of export, license banks shall release such documents subject to;*
>
> *i. Documents being dispatched directly by the corresponding bank, and*
>
> *ii. Authenticity of the export inspection certificate and condition report with a complete description of the vehicle including a list of accessories being verified online through the respective inspection agency, by endorsing "Authenticity of this document has been verified" on the said documents."*

Upon the plain reading of the aforementioned proviso, it is clear that it applies **only** to the export inspection certificate and the condition report and not to the cancelled certificate of registration. In the event of the export inspection certificate and/or the condition report are received without the stamp of the corresponding bank, such documents may still considered to be valid and acceptable if the conditions stipulated in (i) and (ii) of regulation 5 are satisfied. However, the cancelled certificate of registration must be in strict compliance with regulation 5.

It is the contention of the Respondents that in the instant matter the original cancelled certificate of registration bearing the stamp of the corresponding bank in the country of export (Australia) has not been produced by the Petitioners and thereby is not in compliance with the relevant regulations. It is also contended by the Respondents that the appropriate interpretation to be given to "*country of export*", in the context of the facts of the instant case, should be the country from where the vehicles are physically shipped i.e Australia. Under these circumstances, the said certificate must contain the

stamp of the corresponding bank in Australia. However, in this case, it is a bank situated in Singapore.

Neither the 2013 gazette nor 2025 gazette alluded to previously, provides a definition to the term "country of export". The Petitioners have placed heavy reliance on the set of guidelines contained in the **"International Standard Banking Practice for the Examination of Documents under UCP 600"** (*hereinafter sometimes referred to as ISBP).*

According to it, "*Exporting Country*" is:

I. The country where the beneficiary is domiciled, **or**
II. The country of origin of the goods, **or**
III. The country of receipt by the carrier, **or**
IV. The country from which shipment or dispatch is made

The Petitioners have strenuously contended that as per the aforesaid definition, it is possible that in certain situations the port of loading of goods maybe situated in a country different to that of the country of export where the supplier is domiciled and the corresponding bank is located. It has been further contended on behalf of the Petitioners that the relevant gazettes were, referred to previously in this order, do not contain a definition for the term "country of export" and therefore the ISBP definition ought to be adopted. It is their contention that the International Chamber of Commerce who had published the UCP (Uniform Custom Practice) had assigned an extended meaning to the country of export in the International Standard Banking Practice (ISBP) for the Examination of Documents under UCP 600.

I am of the view that it is quite apparent as per the aforesaid definition for the term "exporting country", **only one** of the four possibilities given in the definition may be considered as the exporting country in any given scenario. This would mean that for example, both the country where the beneficiary is domiciled and the country from where the shipment or dispatch is made cannot be considered as the exporting country in a single transaction. It will have to be **either** one of the two countries which could be considered as the exporting country.

In the instant matter, it would mean that either Australia which is the country from which the vehicles were shipped or Singapore which is the country where the beneficiary is domiciled would be the exporting country. If the contention of the Petitioner is accepted, both Singapore and Australia will have to be considered the exporting country.

If it is left to the whims and fancies of the Petitioners to allow considering more than one country as the exporting country in respect of a given transaction, no useful purpose will be served by having a definition since all countries would qualify to be considered so. This may lead to uncertainty and absurdity which would defeat the very purpose of having a definition.

When this matter was supported in Court, Counsel made copious reference to the International Chamber of Commerce (hereinafter sometimes referred to as the ICC) which formulated both the UCP 600 and the ISBP. It was submitted by Counsel that the ICC is the world's largest and most representative business organization, founded in 1919 to promote international trade, responsible business conduct, and global economic growth. Headquartered in Paris, the ICC represents businesses, chambers of commerce, and industry associations in more than 170 countries.

A key contribution of the ICC is its role in drafting and maintaining internationally accepted commercial rules and guidelines that bring uniformity, predictability, and legal certainty to cross-border trade. Among its most significant instruments are the Uniform Customs and Practice for Documentary Credits (UCP 600) and the International Standard Banking Practice (ISBP).

As per the Petitioners, the UCP issued by the ICC are a binding set of rules governing documentary letters of credit which would however apply only if expressly incorporated in to the Letter of Credit in issue. It establishes legal rights, obligations, timelines and standards for banks.

The Petitioners further submitted that ISBP for the examination of documents under UCP 600 which is also issued by the ICC is a supplementary interpretative guide which explains the manner in which UCP 600 is applied in practical situations. It reflects the prevalent actual international banking practices which are not stand-alone set of rules and it cannot override UCP 600.

The Respondents contended that, it is of significance that the ISBP which is a non-binding interpretative guide does not provide a single fixed definition for the term "exporting country".

I have already alluded to the categories of countries one of which may be considered as the exporting country elsewhere in this order.

The Respondents strenuously submitted that the categories of countries in the aforesaid interpretation are in the **alternative**, and not to be applied at the same time. Thus, more than one country cannot be considered as the country of export per transaction. This is

apparent by the use of the word "**or**" in the definition when referring to which country may be considered as the exporting country.

Therefore, ISBP itself recognizes that the appropriate meaning must be selected based on the facts and the context in which the term is used.

The stance of the Respondents is that the aforesaid definition of the ISBP should be read and understood in the context of the applicable local regulations.

As referred to previously, used motor vehicles shall mean a vehicle that has been registered in the country of origin or country of export.

In the present case, it is not in dispute the fact that,

1. The vehicles were registered in Australia.
2. The vehicles were deregistered in Australia.
3. Those were physically shipped from Australia to Sri Lanka.
4. The vehicles were never registered in Singapore.

If Singapore was to be considered as the country of export, simply because the beneficiary of the letter of credit is from that country, the vehicles would not qualify as "used motor vehicles" under the Sri Lankan law, due to the reason that there exists no cancelled certificate of registration from Singapore. It is the contention of the Respondents that the relevant documentation contains the official seal of the corresponding bank in Singapore and not Australia. Accordingly, when ISBP is applied correctly, by choosing the interpretation that fits the regulatory context, the Respondents contend that the only logical and legally tenable conclusion is that in the instant matter Australia is the country of export. It is the contention of the Respondents that in the aforesaid circumstances, the cancelled certificates of registration in the instant matter ought to have contained the seals of a corresponding bank in Australia.

Furthermore, the submissions of the Respondents were that ISBP and UCP 600 do not have statutory force in Sri Lanka and cannot alter or override local laws. This position has been made abundantly clear by a Central Bank of Sri Lanka direction addressed to authorized dealers marked as X2 by the Respondents. The Respondents are placing reliance on the following passage of X2 which is dated 28.05.2014.

> "*Where any article of the UCP or a part thereof is inconsistent with any laws, regulations, instructions, directions or operating instructions prevailing in Sri Lanka which are applicable to and binding on the authorized dealer, such laws, regulations, instructions, directions or operating instructions of Sri Lanka shall prevail to the extent of such inconsistency.*"

As per the applicable regulations in Sri Lanka, contained in the previously mentioned two Gazettes published in 2013 and 2025, the stamp of the local bank that opened the letter of credit **and** that of the corresponding bank in the country of export shall be placed on the original cancelled certificate of registration and its English translation.

This requirement, read together with regulation no 8.2, which provides a definition for used motor vehicles necessarily means that, unless the vehicles were originally registered in Singapore, it would not qualify as a used vehicle for the purposes of the regulation in issue.

It should also be noted that the two vehicles in issue in the instant matter are not of Australian manufacture but were made in Japan (i.e country of origin).

The learned Additional Solicitor General appearing for the Respondents drew the attention of Court to the fact that the cancelled certificate of registration is an important document required for the purpose of obtaining customs clearance when vehicles arrive at a port in Sri Lanka. It was further contended that this document signifies the fact that the vehicle in issue has been removed from the National Vehicle Register and it is no longer legally permitted to be used in that country (country of original registration). In effect, it confirms that the vehicle is free from any legal impediments preventing it from being exported.

It was also submitted that strict compliance with regulations pertaining to the said document is warranted in order to prevent the international trade in stolen vehicles.

I wish to at this juncture, allude to the fact that the relevant regulations are contained in the two gazettes referred to previously in this order published in 2013 and 2025 which were promulgated by virtue of the powers vested in the subject Minister under and in terms of the Imports and Exports (Control) Act No.1 of 1969. The said regulations were duly approved by Parliament. These facts are not in dispute in the instant case. It would be pertinent under these circumstances to consider the provisions contained in section 17 of the Interpretation Ordinance No 21 of 1901 (as amended) which reads thus,

> *"17 (1) Where any enactment, whether passed before or after the commencement of this Ordinance, confers power on any authority to make rules, the following provisions shall, unless the contrary intention appears, have effect with reference to the making and operation of such rules:*
>
> *17 (1) (e)* ***all rules shall be published in the Gazette and shall have the force of law as fully as if it had been enacted in the Ordinance or Act of Parliament;***

17 (2) In this section the expression "rules" includes rules and regulations, regulations, and by-laws."

There are similar provisions contained in Sec 20(7) of the Imports and Exports (Control) Act No 1 of 1969 which reads thus;

*(7) Any regulation made by the Minister shall, when approved by Parliament, **be as valid and effectual as if it were herein enacted**. Notification of such approval shall be published in the Gazette. (emphasis added)*

The *vires* of these regulations have not been impugned in the instant matter and therefore it is the responsibility of this Court to ensure that when making an order in respect of this matter, it ought to be done in a manner which would necessitate strict compliance with the said regulations.

It would be relevant and important to consider the intention of the legislature when it approved the aforementioned set of regulations in 2013 and 2025. The intention of the legislature ought to be the paramount consideration of Court when interpreting such regulations.

The Imports and Exports (Control) Act was enacted for the purpose of controlling and regulating the importation and exportation of goods to and from Sri Lanka and for matters connected therewith or incidental thereto. Under Sec 20(1) of the said enactment, the Minister may make regulations for the purpose of carrying out or giving effect to the principles and provisions of this Act.

The legislature when approving the regulations in issue, both in 2013 and 2025, has placed emphasis on the cancelled certificate of registration, I am of the view that this intention of the legislature must be given effect to. I am guided by several judicial authorities which considered the issue of interpretation of statutes in the context of giving due consideration to the intention of the legislature.

In **SC Appeal 59/2024 (China Great Wall Hospital Private Limited vs. Raguwan Sandanam)** decided on 12th September 2025, the Supreme Court has cited with approval several foreign authorities. His Lordship Justice Achala Wengappuli has cited the case of **Miller v. Salomans (1852) 7 Ex. 475** (at p.560) in which the Court in UK held thus;

"... I think, where the meaning of a statute is plain and clear, we have nothing to do with its policy or impolicy, its justice or injustice, its being framed according to our views of right or the contrary. If the meaning of the language used by the legislature be plain and clear, we have nothing to do but

to obey it - to administer it as we find it; and I think, to take a different course is to abandon the office of Judge, and to assume the province of legislation."

Justice Wengappuli has also cited the case of **Holmes v. Bradfield Rural District Council (1949) 2 KBD 1**, (at p. 7)

"[O]f course the mere fact that the results of applying a statute may be unjust or even absurd does not entitle a Court to refuse to put it into operation."

In **SC Appeal 59/2024**, the Supreme Court has also referred to **Maxwell** (at p. 536) and the following passage has been cited.

" [I]f language is clear and explicit, the Court must give effect to it, for in that case the words of the statute speak the intention of the Legislature. And in so doing it must bear in mind that its function is jus decree, not jus dare: the words of a statute must not be overruled by the judges, but reform of the law must be left in the hands of Parliament."(emphasis added)

In **SC Appeal 111/2022 (Duro Pipe Industrial Pvt Ltd vs Hettige Pradeep Silva)** decided on 02.12.2024, the apex court of this Country has once again reiterated the primacy of legislative intent when interpreting statutes. In this case, in considering certain provisions of the Industrial Disputes Act, the Court held that in interpreting such statutes the Court has "*a duty to ensure that the legislative intent is preserved.*"

In my view, when Parliament approved the 2013 and 2025 regulations referred to above, it intended that the stamp of the local bank that opened the letters of credit and that of the corresponding **bank in the country of export** shall be placed on the original cancelled certificate of registration and its English translation.

The Petitioner strenuously contended that in the past (i.e. prior to May 2025) the provisions contained in the two gazettes in issue with regard to the requisite documentation were not strictly enforced by the Respondents which led to a situation where according to the Petitioners it generated "a legitimate expectation"

The Petitioners have furthermore advanced the contention that in the past subsequent to the publication of the 2013 and the 2025 gazettes (referred to above), Sri Lanka Customs and the other governmental agencies have permitted clearance of vehicles imported into the country in the same manner as the vehicles which are the subject matter of the instant writ application, although more specific details were given by the Petitioners pertaining to the importation of such vehicles. It was contended that this purported conduct of all or some of the Respondents generated a legitimate expectation with regard to the clearance of the vehicles which are the subject matters in the instant writ application.

In the aforesaid circumstances it would be pertinent to consider the concept of legitimate expectation only to the extent warranted by the facts of the instant matter.

In the landmark judgment delivered by His Lordship Justice Yasantha Kodagoda in **SC FR Application 172/2017** decided on 20th September 2023 (**Vavuniya Solar Power (Private) Limited vs. Ceylon Electricity Board & Others**) the concept of "legitimate expectations" has been described in the following manner.

> "*In other words, the doctrine of legitimate expectations is a means of keeping a public body bound by its own representations and practices. The recognition of this doctrine is founded upon the policy of the law of recognizing and protecting legitimate expectations, arising out of a public authority having undertaken expressly or impliedly, through representations made by itself or by its own practices, to take decisions and or conduct itself in a particular manner in the future. In effect, this doctrine requires public authorities to comply with its own undertakings, the failure of which gives rise to judicial review resulting in judicial pronouncements being made requiring the public authority to conduct itself in the prescribed manner, decide as directed by court and or sanctions being made for having frustrated legitimate expectations*"

However the primary legal issue which has arisen in this case is not simply to determine as to whether there has been discernible conduct/ representation and/or practices attributable to any one or more of the Respondents which was capable of generating "expectations" but even in such a situation, whether it was a "legitimate" one. In the process of judicial review, this Court could take cognizance only of a *legitimate* expectation as against a mere expectation or hope that relevant authorities would act in a particular manner in the given situation.

In the aforesaid **Vavuniya Solar Power (Private) Limited** case, Court has considered several previously decided judicial authorities on this issue. In **Desmond Perera and Others v. Karunaratne, Commissioner of National Housing and Others [(1994) 3 Sri L.R. 316]** the Court of Appeal has observed that establishing the fact that the Petitioner entertained a 'hope' or 'reasonable hope' was insufficient to successfully establishing a case warranting the issuance of writ based on the doctrine of legitimate expectation. Upon the consideration of this by the Supreme Court in the Vavuniya Solar Power (Private) Limited case Justice Yasantha Kodagoda has observed that the Petitioner must establish that ***he entertained or was entitled to entertain a well-founded expectation justiciable in law.*** *(emphasis added)*

In R. v. Department of Education and Employment, ex parte Begbie [(2000) 1 WLR 1115] it was held that relief cannot be granted under the concept of legitimate expectation unless such expectation is capable of being protected by law.

In the case of **Union of India v Hindustan Development Corporation [(1933) 3 SCC 499],** it was held thus;

> *"Time is a three-fold present: the present as we experience it, the past as a present memory and future as a present expectation. For legal purpose, the expectation cannot be the same as anticipation. It is different from a wish, a desire or a hope nor can it amount to a claim or demand on the ground of a right. However earnest and sincere a wish, a desire or a hope may be and however confidently one may look to them to be fulfilled, they by themselves cannot amount to an assertable expectation and a mere disappointment does not attract legal consequences. A pious hope cannot amount to a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in a natural and regular sequence. Again it is distinguishable from a mere expectation. Such expectation should be justifiable legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and, therefore, it does not amount to a right in a conventional sense."*

The aforequoted passage from the Indian Judgment has been cited with approval by Chief Justice (as she was then) Shirani Bandaranayake in **Siriwardana v Seneviratne and others [(2011) 2 Sri.LR 1]** wherein her Ladyship made the following observations;

> *"A careful consideration of the doctrine of legitimate expectation, clearly shows that, whether an expectation is legitimate or not is a question of fact. This has to be decided not only on the basis of the application made by the aggrieved party before Court, but also taking into consideration whether there had been any arbitrary exercise of power by the administrative authority in question."*

In the Vavuniya Solar Power (Private) Limited case (referred to previously), the Supreme Court was of the view that embodied in the doctrine of legitimate expectation, there are three key variables i.e,

I. *A public authority having through representations made by it or by its conduct generated an expectation,*
II. ***legitimacy of that expectation, and***
III. *The protection conferred by law on the expectation that had been generated.*

I am of the view that what need to be taken cognizance of by Court in the process of judicial review is not whether in fact the Petitioner entertained a particular expectation which he claims to be a legitimate expectation but whether he was legally entitled to entertain such an expectation. In other words if viewed objectively (as against

subjectively) if court forms the opinion that the Petitioner was entitled by law to entertain such an expectation he may be granted relief on that basis.

In this regard I wish to cite the following passage from Vavuniya Solar Power (Private) Limited case,

> *"As to legitimacy of the expectation arising out of a representation made or past practice of a public authority, the law is concerned only of the expectation the person concerned is entitled to develop, as opposed to the subjective expectation actually entertained in the mind of such person. Thus, the question to be asked is, what was the expectation the person concerned was* ***entitled by law*** *to develop in his mind by the representation or the conduct of the public authority concerned. Once the court identifies the legitimacy of the expectation generated by the public authority, the court needs to identify how that expectation needs to be protected, having regard to the competing interests of protecting discretionary freedom of the public authority versus maintaining legal certainty of its decisions."*

The Supreme Court in the aforesaid Vavuniya Solar Power (Private) Limited case emphasized that a Court cannot compel a public body to do what it is not empowered to do. In this regard I wish to cite two cases considered by the Supreme Court in the aforesaid case. In **Rowland v. Environment Agency [2005 Ch 1] , R (Bibi) v. Newnham London Borough Council [(2002) 1 WLR 237]** and **R (Bloggs 61) v. Secretary of State for the Home Department [(2003) 1 WLR 2724],** the Courts in the United Kingdom categorically held that the doctrine of legitimate expectations would not be applicable and Courts ought not to extend the powers of the public authority by rendering enforceable acts or decisions which are *ultra vires* of the authority of the public body itself.

In the Rowland case, it was held that legitimate expectation can only arise on the basis of a lawful promise. I also wish to cite the following passage from the judgment in the Vavuniya Solar Power (Private) Limited case which is of considerable relevance to the instant matter,

> *"Court cannot order public authorities to fulfill promises which are beyond their powers or* ***unlawful****. In the event a court recognizes that a public body has made certain representations which are ultra vires its powers, which have given rise to an expectation, it will not recognize the existence of an enforceable substantive legitimate expectation and therefore will not require the public authority to act contrary to law."*

Thus, upon the consideration of the aforementioned judicial authorities, it is apparent that every expectation of an individual citizen does not amount to a legitimate

expectation that is enforceable in a Court of Law. It is an erroneous belief that any expectation may be vindicated through the discretionary remedy of writs vested in the Court of Appeal of Sri Lanka, howsoever it may be generated. Countervailing policy considerations may negate any legitimate expectation that has arisen and sought to be enforced. Time and again Courts have emphasized that the expectation sought to be enforced ought to be the ones which the Court can **legitimately protect.**

The judicial authorities cited elsewhere in this order are to the effect that it is only a **lawful** promise or practice which could generate a legitimate expectation the benefit of which may be derived by the Petitioners.

When the factual matrix of the instant matter is considered, it is apparent that the Petitioners have sought the intervention of this Court to compel the Respondents to **refrain** from strictly enforcing the regulations contained in the 2013 and 2025 gazettes with regard to the importation of used vehicles.

In the aforesaid circumstances I am of the view that the petitioners have failed to establish a *prima facie* case warranting the issuance of formal notices on the Respondents.

For the foregoing reasons, the application is dismissed.

The order in the instant matter is also applicable to CA/WRT/841/2025, CA/WRT/919/2025 and CA/ WRT/1032/2025 which are on the identical legal issue and were considered in consolidation.

PRESIDENT OF THE COURT OF APPEAL

K. P. Fernando, J.
I agree.

JUDGE OF THE COURT OF APPEAL