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

In the matter of an application for Orders in the nature of Writs of Certiorari, Prohibition and Mandamus under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

St. Anne's Enterprises (Pvt) Ltd,
3/3, Rockwood Place,
Colombo 07.

PETITIONER

C.A. Case No. WRT/0575/24

Vs.

1. The Director General of Customs,
   Sri Lanka Customs,
   40, Main Street,
   Colombo 01.

2. M.I.S. Pathmanathan,
   Senior Deputy Director of Customs,
   Sri Lanka Customs,
   40, Main Street,
   Colombo 01.

3. Mr. A.K.K. Thushara,
   Superintendent of Customs,
   Sri Lanka Customs,
   40, Main Street,
   Colombo 01.

4. Mr. Shamindra M. Gamachchige,
   Deputy Director of Customs,
   Sri Lanka Customs,
   Colombo 01.

5. Ms. T.M.D.D. Tennakoon,
   Assistant Superintendent of Customs,
   Sri Lanka Customs,
   Colombo 01.

6. Mr. E.A.V.V. Edirisinghe,
   Assistant Superintendent of Customs,
   Sri Lanka Customs,
   40, Main Street,
   Colombo 01.

7. Mr. Akila Wickramarachchi,
   55/5, Maithree Mawatha,
   2nd Lane, Ekala.

8. P.D.R. Wimalasekera,
   Documentation Manager,
   Worldlink Shipping Colombo (Pvt) Ltd,
   515/10, T.B. Jayah Mawatha,
   Colombo 10.

9. Mr. W.A.D.U. Kumara,
   Witness, Wharf Clerk of Scan Global
   Logistics Colombo (Pvt) Ltd,
   111, 15 Hunupitiya Lake Road,
   Colombo.

RESPONDENTS

BEFORE : K.M.G.H. KULATUNGA, J

COUNSEL : Suren Gnanaraj with Aqthar Hassan and Sakuni Weeraratne for the Petitioner instructed by C. Wanigabaduge.

Vikum De Abrew, PC, ASG with Prabhashanee Jayasekara, SC for the 1st – 6th Respondents.

Kaneel Maddumage with Thanuja Amarasinghe instructed by Praveen Premathilake for the 7th Respondent.

Sulakshi Batuwita for the 9th Respondent instructed by Niluka Dissanayake.

ARGUED ON **:** 08.07.2025

WRITTEN SUBMISSIONS ON : 27.08.2025 and 08.09.2025

DECIDED ON **:** 21.11.2025

JUDGEMENT

K.M.G.H. KULATUNGA, J.

1. The petitioner is a company engaged in the business of importing coconut oil, and upon a certain value addition, the same is re-exported in different forms. For this purpose, the petitioner company was registered under the Temporary Import for Export Processing Scheme, which is known as the TIEP 1 Scheme, within the meaning of Section 22A of the Customs Ordinance, where no duty was levied to such imports. The allegation against the petitioner company is that, upon so importing 84,000 kilogrammes of RBD coconut oil to be sold under H.S. Code 15131910, under the said scheme and the petitioner has sold the said consignment in the local market. The Customs, acting on information and complaints, had conducted an investigation and found

that the said consignment of 84,000 kilogrammes imported on 18.07.2023 has in fact not been re-exported. It was also revealed that it had been sold into the local market, in violation of the said TIEP Scheme.

2. Around 22.07.2024, the Customs had commenced an investigation into this violation. Upon the conclusion of the said investigation, the inquiry had commenced and concluded on 01.08.2024. The notice informing the relevant parties of the same had been served and issued on 31.07.2024 (R-7).

The inquiry.

3. The proceedings of the said Customs Inquiry is produced as P-8. According to which the said Inquiry had proceeded against P.D.R. Wimalasekara, the Documentation Manager of the Shipping Company; and the 7th respondent Mr. Akila Wickramarachchi, Imports and Exports Manager of St. Anne's Enterprises (Pvt) Ltd as well as the petitioner company. However, notice R-3, dated 31.07.2024, had notified the said persons but the petitioner company to be present for the Customs Inquiry in respect of this matter. Thus, the petitioner company was not notified summoned.

4. At the inquiry, upon stating the case in brief, the inquiring officer has led the evidence of several witnesses and produced documents P-1 to P-49 through the Assistant Superintendent of Customs, E.A.V.V. Edrisinghe. Then, witness W.A.D.U. Kumara, a Wharf Clerk of Global Logistics, had been led, and then, the statement of the suspect P.D.R. Wimalasekera, Documentation Manager of WorldLink Shipping Colombo, had been read out, where the said Wimalasekera had admitted that the said statement was correct and that there was nothing further to be added. His oral evidence had also been led. Finally, the Shipping Manager of the petitioner company, P.A. Wickramarachchi, had been called, and his statement having been read

over, he too had admitted that it is correctly recorded and there was nothing more to be added. His oral evidence has then been led. With these witnesses, the leading of evidence has concluded, and the inquiring officer, having formed the view that there is sufficient evidence to call upon the suspects to show cause, then called upon the suspects, the petitioner company and the 7th Respondents to show cause on the following:

> "*1) I call upon M/s. St. Anne's Enterprises (Pvt) Ltd, Daluwa, Puththalama Mr. Akila Mampuri, represented by Wickramarachchi, Shipping Manager of M/s. St. Anne's Enterprises (Pvt) Ltd to show cause as to why I should not declare forfeit Rs. 144,982,800.39 (One Hundred and Forty Four Million Nine Hundred and Eight Two Thousand Eight Hundred rupees and Thirty Nine cents) being the treble the value of the goods described as the production of this Inquiry which are not in the possession of the company, in terms of Section 50A(2) of the Customs Ordinance (Chapter 235).*
>
> *2) I call upon Mr. Akila Wickramarachchi, Shipping Manager of M/s St. Anne's Enterprises (Pvt) Ltd to show cause as to why I should not declare forfeit Rs. 144,982,800.39 (One Hundred and Forty Four Million Nine Hundred and Eight Two Thousand Eight Hundred rupees and Thirty Nine cents) being the treble the value of the goods described as the production of this Inquiry or impose a penalty of Rs. 100,000/- (One Hundred Thousand Rupees) at my election in terms of Section 129 of the Customs Ordinance (Chapter 235)."*

5. Upon being so called to show cause, Mr. Akila Wickramarachchi, Shipping Manager, had stated as follows:

> *"At this moment Mr. Akila Wickramarachchi, Shipping Manager of M/s St. Anne's Enterprises (Pvt) Ltd submits as follows.*
>
> *I have done this activities upon the instructions by the company Director Mr. Even Perera. I did not do such a activities to gain some extra benefits for me. As the company, St. Anne's Enterprises Private Limited faced huge lack of raw materials of RBD Coconut Oil then we moved to sale the imported RBD coconut oil 84,000 kgs to the local buyers to recover the company needs. Therefore, I seek*

your humble consideration in this regard and do not imposed me or our company such a heavy penalty."

6. Upon so showing of cause, the inquiring officer had concluded that the petitioner company, being represented by Akila Wickramarachchi, has accepted that they have committed this violation by disposing of locally TIEP Scheme imported oil to the value of Rs. 144,982,800.39 without paying due taxes and defrauding duty and other levies in a sum of Rs. 25,727,600.13 and thereby violated Section 50A(2) of the Customs Ordinance and recommended that the petitioner company be dealt with under the said Section and Section 129 of the Customs Ordinance.

7. The inquiring officer recommended a mitigated forfeiture of Rs. 48,327,600.13 on the petitioner company, in terms of Section 50A(2) and Section 163 of the Customs Ordinance. Similarly, a penalty of Rs. 100,000.00 was imposed on Akila Wickramarachchi. The petitioner company had on 02.08.2024, requested that they be permitted to pay the said sum in 6 equal instalments, and in fact, had made an initial payment of Rs. 14,000,000.00 on that day. The payment of Rs. 100,000.00 imposed on Akila Wickramarachchi had also been made on that day.

The challenge of the decision/observations

8. The petitioner has then preferred an appeal to the Director General of Customs, seeking the setting aside of the purported inquiry and requesting a fresh inquiry and also made representations by letter dated 29.08.2024 (P-11). The Customs has, by letter dated 05.09.2024 (P-13), refused to consider this application made through the Attorney- at-Law, on the basis that the said Attorney is not an officially appointed legal representative of the petitioner company. Thereafter, the petitioner has preferred this application on 09.09.2024. The grounds on which the petitioner is seeking relief in this application are as follows:

a. that the Customs inquiry was conducted without due notice to the petitioner company;

b. that the provisions of the law referred to in the show cause and alleged to have been violated is defective and incorrect;

c. that Akila Wickramarachchi did not have authority or the authorisation to represent the petitioner company at the inquiry; and

d. that, in any event, the purported inquiry was a sham, and the recommendation is invalid.

Was due notice given?

9. At the outset, I will endeavour to consider if due notice was given to the petitioner and if authorisation was given to Akila Wickramarachchi to represent the petitioner company at the inquiry. The petitioner alleges the that the petitioner did not have notice of the Customs inquiry against the company and that the letter of authorisation given to Akila Wickramarachchi, if at all, was for him to represent the company during the Customs investigation that preceded the inquiry, but not the inquiry proper. Section 8 of the Customs Ordinance contemplates two stages, namely the Customs investigation and the inquiry proper. When a Customs officer is satisfied upon an examination or investigation, he is then empowered to proceed with the inquiry proper. The former stage is certainly inquisitorial in nature. The petitioners' position is that Akila Wickramarachchi was authorised to represent the company during the first stage but not to represent the company at the inquiry proper.

10. The letter of authorisation dated 23.07.2024 is marked and produced by the respondents as R-2 reads thus:

"Letter of Authorization

This letter is to confirm that Mr. P. A. Wickramaarachchi bearing NIC 199234000346 who is employed with the company is authorized to act on behalf of ST. ANNE'S ENTERPRISES PVT LTD

in matters at the Sri Lanka Customs for filling or signing any applications/forms/letters and payment of any fees/penalties/ taxes in my absence since I am overseas.

Yours Sincerely,

[Signed]

Managing Director"

11. According to which, Akila Wickramarachchi, who is also the 7th respondent, has been authorised to act on behalf of the petitioner company. This letter is dated 23.07.2024. On the face of it, the authorisation empowers the 7th respondent to file or sign any application or form or letter and make payment of any fees, penalties or taxes. Mr. Gnanaraj for the petitioner submitted that this does not authorise the appearing or representing the petitioner company at the formal inquiry. The investigation appears to have been proceeded from around the 23.07.2024 up until 31.07.2024. This letter is dated 23.07.2024. Thus, it is apparent that it had been issued at that point of time, when the investigation commenced. The Authorisation is so granted, as the Director was absent and overseas. It is not general authorisation given for the 7th respondent to represent the petitioner company. In these circumstances, the submission that it did not authorise the 7th respondent to represent the petitioner company at the inquiry cannot be disregarded. In fact, this stands to reason. If the authorisation was granted after the notice of inquiry, even in this form, it could have been construed as an authorisation to appear and represent the petitioner at the inquiry proper. It is not so.

12. This position is now required to be considered with the second argument of there being no due notice issued or summons served on the petitioner company. The notice or the notification is provided by the petitioner marked P-7. It is addressed to the 7th respondent in the following form:

"Mr. Akila Wickremarachchi.
Imports & Exports Manager - M/s. St. Anne's Enterprises (Pvt) Ltd.
No 207/5,
Dharmapala Mawatha,

Colombo 07.

Dear Sir,

Customs File No. PCAD/2024/00152/CCR/01878

You are hereby requested to be present for the Customs inquiry into the above case which is scheduled to be held on 01st of August, 2024 at 10.00am at the Compliance and Facilitation Directorate, 5th Floor, Customs Head Quarters, No. 40, Main Street, Colombo 11.

Your attention is drawn to Section 8(1) & (2) of the Customs Ordinance (Chapter 235) in this regard.

Thank you.

Yours Faithfully,
[Signed]
Deputy Director of Customs
Compliance and Facilitation Directorate
For Director General of Customs"

13. This, on the face of it and in fact, is a notification to the 7th respondent qua the Imports and Exports Manager of the company. It is not a notice issued to the petitioner company. Correspondingly, the respondents tendered a copy of the 'summons' which is alleged to have been issued in respect of the said inquiry as R-3. The said 'summons' is in the following form:

"Mr. Ranil Wimalasekera*,*
Documentation Manager - M/s. Worldlink Shipping Colombo (Pvt) Ltd, No. 515/10,
T.B. Jayah Mawatha,
Colombo 10.

Mr. Dhanushka Wijesuriya,
Wharf Clerk - M/s. Scan Global Logistics (Pvt) Ltd,
No. 94, St. Mary's Road,
Mattakkuliya,
Colombo 15.

Mr. Akila Wickremarachchi,
Imports & Exports Manager - M/s. St. Anne's Enterprises (Pvt) Ltd.
No 207/5,
Dharmapala Mawatha,
Colombo 07.

Dear Sir,

Customs File No. PCAD/2024/00152/CCR/01878

You are hereby requested to be present for the Customs inquiry into the above case which is scheduled to be held on 01st of August, 2024 at 10.00am at the Compliance and Facilitation Directorate, 5th Floor, Customs Head Quarters, No.40, Main Street, Colombo 11.

Your attention is drawn to Section 8(1) & (2) of the Customs Ordinance (Chapter 235) in this regard.

Thank you.

Yours faithfully,
[Signed]
Deputy Director of Customs
Compliance and Facilitation Directorate
for Director General of Customs."

There are three persons notified or summoned by R-3. The 1 and 2 are other parties of the shipping company and the logistics company. The 3rd person named is the 7th respondent. This too is once again a notice or summon to the 7th respondent *qua* the Imports and Exports Manager. Accordingly, there is no mention of the petitioner company in the summons either. On the face of it, this is not and cannot be deemed or considered as a summons or a notification made to the petitioner company. To that extent, the submission that the petitioner company was not notified of the inquiry is well-founded and correct.

14. It is also very significant and relevant to note that the notification P-7, as well as the *'summons'* R-3, are both dated 31.07.2024. This is in respect of an inquiry scheduled for 01.08.2024, at 10.00 AM. Even

taken at its face value, the parties named therein have not had at least 24 hours' notice.

15. At that point of time, without notice, the petitioner company could not have known that the investigation led to an inquiry against the company. An inquiry would arise subsequently. The petitioner would know or be made to know of this subsequent event only if it was so notified. However, in the present circumstances, as the 7th respondent participated at the investigation and represented the petitioner, one could surmise that when such a representative is personally notified personally of an inquiry, it would suffice to be construed or understood as being a notice to the principal. Even if that be so, what is important is that even the representative acting on behalf of the company did not have any intimation or notification that the company was required as a party at the inquiry. In these circumstances, the submission of the petitioner that the petitioner company did not have notice of any inquiry against the petitioner is well-founded.

16. No doubt, at some point, the 7th respondent was the representative of the company, but he himself, *qua* representative, should have notice of the fact that his principal, the company, is a party noticed and required for the inquiry. It is after the commencement of the inquiry that the inquiring officer had recorded the fact that the petitioner company is also a suspect. In these circumstances, it directly affects the right of the petitioner company to be heard meaningfully, in its full sense. This is further compounded and aggravated by the fact of proceeding with the inquiry in the manner as done, which I shall now consider.

Was the inquiry reasonable and fair?

17. I observe there is a much more serious issue that arises after the commencement of the inquiry. According to the inquiry notes R-4, on the day of the inquiry, six persons had been recorded as being present, of which the 4th and 5th are the company and the 7th respondent respectively. It is recorded that the company is represented by the 7th

respondent, and the company is referred to and named as a suspect. Similarly, the 7th respondent is also named as a suspect *qua* Shipping Manager of the company. Therefore, at this inquiry, both the company as well as the 7th respondent are suspects. The end result is that one of the suspects happens to represent the other. This is further compounded by the fact that there had been no legal representation for neither the company nor the 7th respondent. No doubt, it is recorded that they do not wish to retain the services of a defence counsel, but what is required to be considered is the effect and implication of proceeding in this manner, especially when the company had no notice. These proceedings may not be criminal in nature, but they lead to serious consequences as far as the suspect parties are concerned. As for the company, it may result in a mitigated forfeiture, and as for the 7th respondent, a penalty.

18. In these circumstances, apart from following the rules of natural justice, there should also be followed a procedure which should be fair. No doubt, the procedure to be followed in general is prescribed by the Customs Ordinance. The sum total of the prescribed procedure provides for the Customs Officers to investigate, inquire, issue the show cause and/or charge and also hear, determine, and decide on the matters inquired into regarding defaulting and defrauding of taxes, levies, and duties. Thus, the Director General of Customs and its officers happen to be the judge, jury, accuser and executioner, as well as the investigator, so to say. I am mindful that this special regime is provided for the effective recovery and protection of state revenue by way of taxes, duties, and levies. In such circumstances, there is a greater duty upon the Courts exercising supervisory jurisdiction to ensure that fairness is maintained in following the procedure and also that the procedure is reasonably followed.

19. The 7th respondent, whilst being the representative of another suspect and himself being a suspect, has also been called upon to give evidence during the inquiry prior to the show cause was issued. This, in my view,

further compounds the unfairness of the proceeding. The 7th respondent is an important witness against the company. Similarly, he himself is a suspect. In the absence of legal representation, I am at a loss to understand how one could put questions on behalf of the petitioner company in these circumstances. This, by no means is a procedure that can be accepted in a civilised society or considered lawful and fair by any stretch of imagination. As I see, when the representative himself is a suspect, it is implicit and necessary that there be some form of fair legal representation to at least question the representative when he gives evidence against the principal, the company. There has certainly been a serious violation and denial of the basic norms of fair procedure, and this has resulted in a denial of the right to be heard in the wider sense. The right to be heard is not the mere physical opportunity given to be represented either in person or by a representative at an inquiry. It should be meaningful and realistic. This is a classic situation in which all these basic civilised norms have been violated and followed in the breach, in the extreme.

20. When the absence of due notice is considered in conjunction with the procedure so adopted, the inquiry conducted, to my mind, is illegal and not lawful. Wade and Forsyth on 'Administrative Law' (11th Ed., at page 430), making reference to English case law such as ***R vs. Thames Magistrates' Court ex p Polemis*** [1974] 1 WLR 1371, ***Brentnall vs. Free Presbyterian Church of Scotland*** 1986 SLT 471, and ***Mahon vs. Air New Zealand Ltd*** [1984] AC 808, state the following:

> *"Disclosure of the charge or of the opposing case must be made in reasonable time to allow the person affected to prepare his defence or his comments. He must have fair notice of any accusation against him, and this is commonly included in the right to a fair hearing by calling it the right 'to notice and hearing'. At an inquiry, for example, any person who might be affected by adverse findings should be given fair warning so that he can defend himself against them at the hearing."*

21. In the abovementioned case of ***R. vs. Thames Magistrates' Court ex p Polemis*** **(supra**), Lord Widgery C.J., said: *"It is again absolutely basic*

to our system that justice must not only be done but must manifestly be seen to be done. If justice was so clearly not seen to be done, as on the afternoon in question here, it seems to me that it is no answer to the applicant to say: 'Well, even if the case had been properly conducted, the result would have been the same.' That is mixing up doing justice with seeing that justice is done." Lawson, L.J., in ***Maxwell vs. Department of Trade*** [1974] QB 523 said *"Doing what is right may still result in unfairness if it is done in the wrong way."* In ***Geeganage vs. Director General of Customs*** [2001] 3 Sri L.R. 179, U. de Z. Gunawardena, J., observed, at page 203, as follows:

> *"I should further note that the amount of time that a party has been given to reply to the case, if any, against him is a significant factor. Even if details of the opposing case are provided there is undoubtedly a need for the petitioner to have been given a proper opportunity to respond to the show cause notice against him and to prepare a case."*

His Lordship, citing the abovementioned ***R. vs. Thames Magistrates' Court ex p Polemis*** (supra), went on to hold, at page 204, as follows:

> *"…it is as clear as clear can be that the 2nd respondent had expected the petitioner's counsel to conjure up submissions in consequence of which the apparent opportunity given to file submissions became, a veritable sham. The situation that arose in this case is somewhat reminiscent of what happened in* ***R. vs. Thames Magistrates' Court ex p. Polemis.***"

22. The above can be traced back to the 'duty to act fairly' placed on administrative bodies. Judicial Review of Administrative Action by De Smith describes the connection between the duty to act fairly and observance of the principles of natural justice as follows:

> *"That the donee of a power must 'act fairly' is a long-settled principle governing the exercise of discretion, though its meaning is inevitably imprecise. Since 1967 the concept of a duty to act fairly has often been used by judges to denote an implied procedural obligation. In general it means a duty to observe the rudiments of natural justice for a limited purpose in the exercise of functions that are not analytically judicial but administrative. Given the flexibility of natural justice, it may not have been strictly necessary to use the term 'duty to act fairly' at all, but its usage is*

> *now firmly established in the judicial vocabulary. Its value has lain in assisting the extension of implied procedural obligations to the discharge of functions that are not analytically judicial, and in emphasizing that acting in accordance with natural justice does not mean forcing administrative procedures into a straitjacket. The comparatively recent emergence of this use of the 'duty to act fairly' may also enable the courts to tackle constructively procedural issues that have not traditionally been regarded as part of the requirements of natural justice."*

Was the inquiry a sham?

23. Now I will consider the observations or the findings of the inquiring officer appearing at page 14 of R-4. This, I will consider in the backdrop of the allegation and submission that this proceeding was a sham. The aforesaid procedure adopted proved that it is a sham. It is no more than going through the motions of an inquiry. The observation or finding refer to a consideration of a written submissions which is in the following form:

> *"I have carefully considered the oral and lengthy written submissions which were submitted as answers to the show cause. There I found and learnt the effort the company has put on to survive in this business amidst of various reasons. It is learnt that M/s St. Anne's Enterprises Pvt Ltd annually contribute in large amounts of foreign exchange to the country."*

Admittedly when no written submission was tendered and submitted, the reference so made to written submissions is critical and significant in the light of the allegation that the inquiry was in fact a sham. The inquiry and the pronouncing of the observations were all done within a space of not more than 12 hours. In these circumstances, everything should certainly be very fresh in the mind of the inquiring officer, the 2nd respondent. I am at a loss to understand how and why the inquiring officer could have thought or imagined that written submissions were filed or tendered. It is no more than a figment of his imagination. I find that, in the above context, it is unimaginable how a person could imagine the existence of a written submission. This remains unexplained, though raised by a petitioner. This is a clear indication

that either the whole or a part of the said observations was pre-prepared or prepared by a person other than the inquiring officer himself. In this context, though it appears insignificant when considered in isolation, but when taken as a whole in context and in the totality of the circumstances, it has a serious bearing and does substantiate that the inquiry was a sham, so to say.

Fresh inquiry will serve no purpose.

24. The learned ASG during the arguments submitted that in view of the unmeritorious conduct, the hard facts, and the convincing evidence against the petitioner company, there is no prospect of reaching a different conclusion upon a fresh inquiry. The conduct may be unmeritorious and evil, facts may be stubborn and the evidence convincing, with no prospect of a different finding, yet for all, the failure to afford a fair opportunity to be heard is a denial and a violation of the basic principle of *audi alteram partem*. I have heard of no exception where the right to be heard may be denied and not afforded if the inquiry thinks that it would serve no purpose. The purpose and rationale of this norm is to afford an opportunity and if it serves any purpose or otherwise could be ascertained only thereafter.

25. The maxim "*qui aliquid statuerit parte inaudlta altera acquum licet discerit, haud aequum fecerit"* means that he who determines any matter without hearing both sides, though he may have decided right, has not done justice, affirms and just says that. It is this principle that was reiterated by Lord Widgery C.J., of ***R. vs. Thames Magistrates' Court ex p Polemis*** (supra), when he said, it is no answer to say that, even if the case had been properly conducted, the result would have been the same. Even the Almighty God, omnipresent and omniscient with his intuitive foresight did grant an opportunity to Adam and heard him before condemning, though God certainly would have known of the facts and the necessary outcome through God's omniscient and divine foresight. Thus the argument a fresh inquiry will serve no purpose does not impress this court.

Acquiescence.

26. Finally, I would consider the submission of the learned ASG that the petitioner has, by making a part-payment and seeking instalments, acquiesced, and this conduct disentitles the petitioner to the relief now sought for. It is correct that the petitioner company has made a payment of Rs. 14 million of the forfeiture of Rs. 48,327,600.13 and also submitted a payment plan. This conduct is seen as acquiescence. As opposed to that, the petitioner submits that the company was led with no option at the juncture, but to do as it did, due to the circumstances. The petitioner is admittedly a company engaged in the import and export trade. Suddenly, the company found to have been imposed with a mitigated forfeiture, and also, one of its employees imposed with a fine, and the said employee had been held by the Customs pending payment. As observed above, the inquiry had been concluded within 24 hours, with the sanction also imposed at the end of the said proceedings. In these circumstances, the reasons submitted for the immediate partial payment, considered on a realistic footing, cannot be disregarded. The learned ASG says that it is acquiescence. Of course, in law, if one party has acquiesced, the consequence would be an inference that such party has accepted the consequences of finding and cannot subsequently deny or challenge the same. F.N.D. Jayasuriya, J., in ***Commercial and Industrial Workers Union vs. Associated Battery Manufacturers (Ceylon) Ltd.***, ***and Three Others*** [1997] 1 Sri L.R. 234, held as follows:

> *"As regards the contention that it was the practice to hold such meetings without authorisation to which the Company did not object in the past - estoppel, waiver and* ***acquiescence*** *are all* ***matters of evidence and cannot be established inferentially by means of large conjecture."***

Acquiescence, to my mind, is also some form of agreeing or accepting a decision or an outcome. It is not voluntary or wholehearted acceptance and agreement. To that extent, it is an agreement without the full enthusiastic commitment. Acquiescence is neither wholehearted agreement, nor coercion. If the so-called acquiescence was due to

extreme compelling reasons, it will amount to coercion. If that be so, the legal consequences of acquiescence will not apply to such party who had been coerced. Coercion is also agreeing or complying, not out of free will, but due to being forced, compelled or pressured to act accordingly. In the circumstances of the present application, the petitioner complying with and conducting as done is, if at all, coerced acquiescence, which is certainly not acquiescence. Accordingly, I find that the submission of the learned ASG is not attractive and convincing in the circumstances of this matter.

Conclusion

27. In the above premises, I find that the inquiry, the observations and findings, as well as the mitigated forfeiture imposed on the petitioner are in violation of the rules of natural justice, without due notice and the procedure followed is far from fair and is procedurally flawed and not lawful, so far as the petitioner is concerned.

28. Accordingly, I hold that the petitioner is entitled to the relief as prayed for by prayers *(d)*, *(e)*, *(f)* and *(h)* which is are accordingly granted. The writs of certiorari granted under prayers *(d)* and *(e)* will however quash only and only so much of such orders and proceedings as is relevant to applicable and in respect of the petitioner company. The proceedings, findings and conclusions in respect of the 7th and the 8th respondents named herein, as well as any other, will not be affected and will remain valid and unaffected by this judgement and Orders issued thereunder.

29. As for the writ of *mandamus* issued under paragraph *(h*), the respondents are required to conduct a fresh inquiry in accordance with the law, with due notice to the petitioner, in respect of the Customs investigation No. PCAD/2024/00152/CCR/01878. Subject to the aforesaid, the other relief sought are not granted and are hereby refused. For clarity and avoidance of doubt, it is observed that relief prayed for by paragraph *(j)* has not been granted in view of the specific prayer *(h*) by which the petitioner sought a directive for a fresh inquiry.

As such, respondents are directed to conduct the said fresh inquiry expeditiously, and upon the conclusion of the same, consider the refunding of the said sum or part thereof of the part-payment made if the necessity so arises at that point.

30. Application is allowed to that extent; however, I make no order as to costs.

JUDGE OF THE COURT OF APPEAL