

**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
Certiorari, Prohibition and
Mandamus under and in terms of
Article 140 of the Constitution.*

1. Polwattage Thilanga Nadeera
Partner-Delta Trading
International,
No.145A, Vajira Road,
Bambalapitiya.

2. Polwattage Chandrathilaka
Partner-Delta Trading
International,
No.142, Pahala Biyanvila,
Kadawatha.

Petitioners

CA (Writ) Application No: 739/2024

1. P.B.S.C. Nonis
Director General of Customs
Sri Lanka Customs,
No. 40, Main Street,
Colombo 11.

2. A.A.D.C. Shanthapriya
Director of Customs & Inquiring
Officer,
Sri Lanka Customs,
No. 40, Main Street,
Colombo 11.

3. Sumudu Dinuka Fernando
Producing Officer,
Assistant Superintendent of
Customs,
Sri Lanka Customs,
No. 40, Main Street,
Colombo 11.
4. M.M.D.M.B. Munasinghe
Senior Deputy Director of
Customs & Former Appraiser of
Customs Motor Vehicle Branch,
Sri Lanka Customs,
No. 40, Main Street,
Colombo 11.

Respondents

Before	:	Dhammika Ganepola, J. Adithya Patabendige, J.
Counsel	:	Sanjeewa Jayawardena, PC with Rukshan Senadeera for the Petitioners. Sumathi Dharmawardena ASG, PC with Sehan Soysa SSC, Ishara Madurasinghe SSC, and Rajika Aluwihare SC for the Respondents.
Supported on	:	18.06.2025, 15.07.2025, 28.08.2025
Written Submissions tendered on	:	Petitioner : 01.10.2025 Respondents : 23.09.2025

Decided on : 08.10.2025

Dhammika Ganepola, J.

The Petitioners in this application, operating under the name and style of Partnership “Delta Trading International”, have imported 14 Special Purpose Vehicles (SPV) under the description of Commodity (HS) Code 87.05 from Japan. Upon settlement of the assessed customs duties in respect of the said vehicles, the same had been released from the Motor Vehicle Section of Sri Lanka Customs. Thereafter, upon conducting a physical inspection of the said vehicles, the Revenue Task Force (RTF) Division of Sri Lanka Customs released 14 vehicles to the Petitioners on 18th June 2018, subject to a Corporate Guarantee. It was submitted that Sri Lanka Customs agreed to release the aforesaid Corporate Guarantee after the finalisation of the documents submitted by the Petitioners.

However, while the said vehicles had been parked in a private yard of the Petitioners, the officers from the Central Investigation Bureau of Sri Lanka (CIB) had seized the aforesaid vehicles and had issued seizure notices in respect of the same. Consequently, the Petitioners had been informed that the CIB had decided to launch an investigation in respect of the aforesaid vehicles, as officers of the CIB suspected that the Petitioners had imported said vehicles, which may be dual-purpose vehicles declaring the same as SPVs. Accordingly, officers of the CIB have requested the Petitioners to provide the original documents of the vehicles to which request, the Petitioners had responded, stating that the original documents in respect of the vehicles are with the RTF Division of the Sri Lanka Customs.

Being aggrieved by the seizure of the vehicles, the Petitioners had instituted the Writ Application bearing No. 231/2018 before the Court of Appeal, challenging the above seizure notices. It was submitted that the aforesaid application is now at the argument stage. In spite of such circumstances, the officers of CIB have proceeded with the purported inquiry under Section 8 of the Customs Ordinance, and a Charge Sheet (X37) had been issued against the Importer of the aforesaid vehicles on 21st October 2024, calling upon to show cause. In the instant application, the Petitioners seek *inter alia* Writ of Certiorari to quash the aforesaid decision to issue a charge sheet requiring Petitioners to show cause as

reflected in the document marked X37, a Writ of Prohibition prohibiting the 1st and 2nd Respondents from taking any steps in pursuance of the aforesaid decision and proceeding to the second distinct stage of a formal inquiry against the Petitioners and a Writ of Mandamus against the Respondents directing them to adopt the HS Code 8705.90.11 to the vehicles imported and released to the Petitioners. Similarly, the Petitioners have further sought an interim relief *inter alia*, staying the purported decision to issue a charge sheet requiring the Petitioners to show cause as reflected in the document marked X37 and restraining the 1st and 2nd Respondents from taking any steps in pursuance of such decision and proceeding to the second distinct stage of a formal inquiry against the Petitioners.

When this matter was taken up for support before this Court for issuance of notice and interim reliefs, both parties made oral submissions and subsequently filed the written submissions. This order pertains to the same.

The Petitioners contend that the purported inquiry held pursuant to the issuance of the Charge Sheet X37 had been conducted in a backdrop where the relevant original documents pertaining to the aforesaid vehicles were unavailable, and the adoption of such procedure is unjustifiable and unfair. The Petitioners submit that the verbal evidence given in the inquiry held in terms of Section 8 of the Customs Ordinance supports the said stance. Accordingly, the Petitioners advance the position that the Respondents are precluded from contradicting themselves and suggesting that original documents in respect of the conditional release of the vehicle are available. The Petitioners further submit that the examination of the vehicles after the release of the same by Sri Lanka Customs is illegal. The Petitioners further challenge the impugned process of the inquiry on the premise that the Respondents cannot rely upon the findings of the Government Analyst, as the Government Analyst has no authority to decide upon the matters pertaining to HS Code classification. Consequently, the Petitioners submit that the officers of the CIB of Sri Lanka Customs have followed the wrong administrative procedure in conducting the impugned inquiry. The Petitioners further contend that the preliminary objections which were raised by the Petitioners at the inquiry had not been determined.

The Respondents contend that the investigations conducted by Customs showed that the vehicles in question were originally registered in Japan as Dual-Purpose Vehicles. It had been revealed that after purchasing the

aforesaid vehicles, said vehicles had been re-registered in the name of the Shipper and had been categorised as 'Special' before being shipped to Sri Lanka. The investigations thus far have established that these vehicles were not originally designed as Special Purpose Vehicles (SPVs). It is the position of the Respondents that although the Petitioners had imported vehicles under HS Code 8705.90.11, classifying them as SPVs, such vehicles were detained by the RTF of Customs due to doubts as to whether these vehicles should be classified as dual-purpose vehicles under HS Codes 8704 and /or as SPVs under HS Code 8703. The Respondents submit that the matters pertaining to whether the Petitioners have duly complied with the applicable laws are yet to be determined, as the investigation into the aforesaid vehicles is still pending.

It is on the common ground that during the course of the inquiry under Section 8 of the Customs Ordinance, the Petitioners were allowed to cross-examine the witnesses and to file written submissions. Pursuant to the aforesaid inquiry, charges had been framed and the Petitioners had been allowed to show cause. Accordingly, the Petitioners had filed their show cause, and the order of the Inquiring Officer is yet to be delivered. There is a statutory duty lying upon the officers of Sri Lanka Customs to investigate the matter in issue and determine. However, before delivering the aforesaid order by the Inquiring Officer, the Petitioners had instituted the present application. The only remaining steps of the impugned process are for the Inquiring Officer to evaluate the evidence already presented, consider the representations made by the Petitioners, and make a final determination.

It is observed that if the Inquiring Officer had the opportunity to deliver the aforesaid order, the Inquiring Officer would have had the opportunity to look into the impugned preliminary objections raised on behalf of the Petitioners and the other arguments raised by the Petitioners, and also give due regard to the evidence led at the inquiry. However, if the interim reliefs and the substantive reliefs sought by the Petitioners under the instant application are granted, the Inquiring Officer will lose his opportunity to comply and pursue the above-mentioned remaining steps. I am of the view that the concerns and the alleged illegalities of the process challenged by the Petitioners under the instant application are matters that could be raised at the inquiry before the Inquiring Officer and that the Inquiring Officer should first be allowed to make his decision on the matter. Therefore, I am of the view that the application of the

Petitioners is premature. It is also my view that by instituting the instant application, the Petitioners attempt to deprive the Inquiring Officer from performing his statutory duties.

In the above context, I now move to consider the matters pertaining to the issuance of notice in this matter. It must be understood that the decision in respect of the issuance of notice should *inter alia* serve the purpose of preventing the administrative actions from being paralysed by a pending, but possibly spurious legal challenge, and administratively, such a procedure provides a mechanism for the efficient management of the ever-growing workload. The court is able to stop ill-founded, hopeless claims and entertain well-founded claims. [See *De Smith's Judicial Review, (Eighth Edition)* by Harry Woolf, Jeffrey Jowell, Catherine Donnelly, Ivan Hare. P.937 at 16-048]

It is my view that the decision to issue a charge sheet, which is intended to be challenged in this application, is an interim decision that was taken during the inquiry to facilitate the proceedings of the inquiry. **H.W.R. Wade and C.F. Forsyth, Administrative Law, 11th ed.,2014, at page 213-**

“It may in effect, say that, if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things, but not otherwise. There it is not for them conclusively to decide whether that state of facts exists, and, if they exercise the jurisdiction without its existence, what they do may be questioned, and it will be held that they have acted without jurisdiction.”

Further, the decision challenged in the instant application does not determine the legal position of the final determination of the inquiry. By issuing a charge sheet, the officers of Sri Lanka Customs do not come to a final determination in respect of this matter. The charge sheet is issued merely as a preliminary framework to facilitate the progression of the formal inquiry and to inform the party concerned of the charges levelled against him. I am also mindful of the fact that the Petitioners have already filed papers showing cause in respect of the Charge Sheet X37. By such conduct of the Petitioners have acceded the decision of the Respondents to proceed with the impugned inquiry and have waived off their rights to challenge the Charge Sheet X37. Hence, I hold the view that the best recourse available for the Petitioner is to await the final decision of the Respondents in respect of the Charge Sheet X37.

The Petitioners also seek a Writ of Prohibition prohibiting the 1st and 2nd Respondents from proceeding to the “second distinct stage” of a formal inquiry against the Petitioners. However, the Petitioners failed to satisfy this Court that the impugned process includes any such “second distinct stage of a formal inquiry”. In fact, the parties contended that the remaining step of the impugned process is for the Inquiring Officer to deliver his Order. I hold the view that the actions challenged by the Petitioners are only investigative in character, and that it is premature to invoke the writ jurisdiction of this Court with a view of challenging such actions. Therefore, no prejudice would be caused to the Petitioners by not issuing notices to the Respondents, as this Order shall not prevent the Petitioners from challenging the final decision of the impugned inquiry if they so wish. Therefore, I take the view that there is no decision of the Respondents that this Court could review in law. The Petitioners' application is premature. Accordingly, I refuse to issue formal notice on the Respondents. I proceed to refuse the application.

Application is dismissed.

Judge of the Court of Appeal

Adithya Patabendige, J.

I agree.

Judge of the Court of Appeal