

**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 of the Democratic Socialist Republic of Sri Lanka.

**Court of Appeal Application No.  
CA/WRT/0019/21**

Unilever Sri Lanka Limited  
No. 258, M. Vincent Perera Mawatha,  
Colombo-14.

**PETITIONER**

**Vs.**

1. Major General (retired) G. Vijitha  
Ravipriya,  
Director General of Customs,  
Sri Lanka Customs,  
Customs House,  
No.40, Main Street,  
Colombo-11.

1A. Director General of Customs,  
Sri Lanka Customs,  
Customs House,  
No. 40, Main Street,  
Colombo-11.

**SUBSTITUTED 1A RESPONDENT**

2. J.M.M.G.W. Bandara  
Deputy Director of Customs,  
Sri Lanka Customs,  
Customs House,  
No. 40, Main Street,  
Colombo-11.
3. Sanjaya Ravindra  
Superintendent of Customs,  
Sri Lanka Customs,  
Customs House,  
No. 40, Main Street,  
Colombo-11.

**RESPONDENTS**

**BEFORE** : **P. Kumararatnam, J.**  
**R. P. Hettiarachchi, J.**

**COUNSEL** : **Dr. Kanag-Iswaran, P.C., with Nigel Bartholomeus, Shivaan Kanag-Iswaran and Jesma Irfan for the Petitioner. Sumathi Dharmawardena, ASG, P.C., for the Respondents.**

**DECIDED ON** : **06/03/2026.**

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**JUDGMENT**

**P. Kumararatnam, J.**

The Counsels appearing for the Petitioners and the Respondents consented to dispose this matter by way of Written Submissions.

The Petitioners instituted this Writ Application praying for the following relief in the Petition dated 11.01.2021.

- a) Issue notices on the Respondents;
- b) Grant and issue a mandate in the nature of a Writ of Certiorari, quashing the decision of the 2<sup>nd</sup> Respondent as evidenced in the proceedings of 22<sup>nd</sup> September 2020 marked “A32” to proceed with the purported Inquiry to recover Excise Duty under the Customs Ordinance;
- c) Grant and issue a mandate in the nature of Writ of Prohibition restraining the 1<sup>st</sup> and/or 2<sup>nd</sup> and/or 3<sup>rd</sup> Respondents their successors and/or any one or more of the Respondents and /or their servants and /or agents in any manner whatsoever or howsoever from proceeding with any inquiry with the view to the recovery of Excise Duty under the Customs Ordinance;
- d) Grant a declaration that Gazette Extraordinary No. 2092/8 of 8<sup>th</sup> October 2018, made under Section 2 of the Revenue Protection Act No.19 of 1962 marked “A9” has lapsed from and 8<sup>th</sup> February and is of no force or effect in law;
- e) Grant and issue a mandate in the nature of a Writ of Prohibition restraining the 1<sup>st</sup> and /or 2<sup>nd</sup> and/or 3<sup>rd</sup> Respondent their successors and /or any one or more of the Respondents and /or their

servants and/or agents in any manner whatsoever or howsoever from acting under and /or giving effect to Gazette Extraordinary No. 2092/8 of 8<sup>th</sup> October 2018, made under Section 2 of the Revenue Protection Act No. 19 of 1962 marked “A9” that has lapsed from and 8<sup>th</sup> February 2019 and is of no force or effect in law;

- f) Grant a declaration that Gazette Extraordinary No. 2092/5 of 8<sup>th</sup> October 2018, made under Section 3 of the Excise (Special Provisions) Act No. 13 of 1989 marked “A10” has lapsed from and 8<sup>th</sup> February 2019 and is of no force or effect in law;
- g) Grant and issue a mandate in the nature of a Writ of Prohibition restraining the 1<sup>st</sup> and/or 2<sup>nd</sup> and/or 3<sup>rd</sup> Respondents their successors and/or any one or more of the Respondents and /or their servants and /or agents in any manner whatsoever or however from acting under and/or giving effect to Gazette Extraordinary NO.2092/5 of 8<sup>th</sup> October 2018, made under Section 3 of the Excise (Special Provisions) Act No. 13 of 1989 marked “A10” that has lapsed from and 8<sup>th</sup> February 2019 and is of no force or effect in law;
- h) Grant a declaration that Gazette Extraordinary No. 2113/9, published on 5<sup>th</sup> March 2019, made in terms of Section 3 of the Excise (Special Provisions) Act No. 13 of 1989 marked “A17(a)” is of no force or effect in law (as no HS Classification exists from and after 8<sup>th</sup> February 2019 to impose Excise Duty on HS Classification 3823.19.20 by reason of Gazette Extraordinary 2092/8 marked “A9” having lapsed) and/or has lapsed and is of no force or effect in law;
- i) Grant and issue a mandate in the nature of a Writ of Prohibition restraining the 1<sup>st</sup> and/or 2<sup>nd</sup> and/or 3<sup>rd</sup> Respondent or their successors and/or any one or more of the Respondents and/or their servants and /or agents in any manner whatsoever or howsoever from acting under and/or giving effect to Gazette Extraordinary No.2113/9, published on 5<sup>th</sup> March 2019, made in terms of Section 3 of the Excise (Special Provisions) Act No. 13 of 1989 marked “A17(a)” is of no force or effect in law (as no HS Classification exists from and after 8<sup>th</sup> February 2019 to impose Excise Duty on HS

Classification 3823.19.20 by reason of Gazette Extraordinary 2092/8 marked "A9" having lapsed) and/or that lapsed and is of no force or effect in law;

- j) Grant a declaration that Gazette Extraordinary No. 2118/71, published on 12<sup>th</sup> April 2019, made in terms of Section 10 of the Customs Ordinance marked "A34" is of no force or effect in law (by reason of Gazette Extraordinary 2092/8 marked "A9" which created the HS Classification 3823.19.20 having lapsed);
- k) Grant and issue a mandate in the nature of a Writ of Prohibition restraining the 1<sup>st</sup> and/or 2<sup>nd</sup> /or 3<sup>rd</sup> Respondent their successors and/or any one or more of the Respondents and/or their servants and/or agents in any manner whatsoever or howsoever from acting under and/or giving effect to Gazette Extraordinary No. 2118/71, published on 12<sup>th</sup> April 2019, made in terms of Section 10 of the Customs Ordinance marked "A34" is of no force or effect in law (as no HS Classification exists from and after 8<sup>th</sup> February 2019 to impose Excise Duty on HS Classification 3823.19.20 by reason of Gazette Extraordinary 2092/8 marked "A9" having lapsed) and /or that lapsed and is of no force or effect in law;
- l) Grant a declaration that Gazette Extraordinary No. 2178/15, published on 2<sup>nd</sup> June 2020, made in terms of Section 3 of Excise (Special Provisions) Act No. 13 of 1989 marked "A35" is of no force or effect in law (as no HS Classification exists from and after 8<sup>th</sup> February 2019 to impose Excise Duty on HS Classification 3823.19.20 by reason of Gazette Extraordinary 2092/8 marked "A9" having lapsed) and or has lapsed and is of no force or effect in law;
- m) Grant and issue a mandate in the nature of a Writ of Prohibition restraining the 1<sup>st</sup> and/or 2<sup>nd</sup> and/or 3<sup>rd</sup> Respondent their successors and /or any one or more of the Respondents and/or their servants and/or agents in any manner whatsoever or howsoever from acting under/and or giving effect to Gazette Extraordinary No. 2178/15 published on 2<sup>nd</sup> June 2020, made in terms of section 3 of the Excise (Special Provisions) Act No.13 of 1989 marked "A35" is of

no force or effect in law (as no HS Classification exists from and after 8<sup>th</sup> February 2019 to impose Excise Duty on HS Classification 3823.19.20 by reason of Gazette Extraordinary 2092/8 marked “A9” having lapsed) and is of no force or effect in law;

- n) Grant and issue in mandate in the nature of a Writ of Prohibition, on the 1<sup>st</sup> and/or 2<sup>nd</sup> and/or 3<sup>rd</sup> Respondents and their successors and/or any one or more of the Respondents and/or their servants and/or agents in any manner whatsoever or howsoever from claiming on and/or encashing the Twenty One (21) Bank Guarantees submitted by the Petitioner in respect of the consignments as set out in the document marked “A5”;
- o) Order the 1<sup>st</sup> and/or 2<sup>nd</sup> and/or 3<sup>rd</sup> Respondents and their successors and/or any one or more of the Respondents and/or their servants and/or agents to release and discharge the Twenty-One (21) Bank Guarantees submitted by the Petitioner in respect of the consignments as set out in the document marked “A5”;
- p) Issue an Interim Order restraining the 1<sup>st</sup> and/or 2<sup>nd</sup> and/or 3<sup>rd</sup> Respondent and/or their servants and agents from proceeding with the purported inquiry in Customs case No. PCAD/00006/CCR/00259 and/or from taking any steps thereunder and/or any further steps, in any manner whatsoever or howsoever until the hearing and determining of this Petition;
- q) Issue an Interim Order restraining the 1<sup>st</sup> and/or 2<sup>nd</sup> and/or 3<sup>rd</sup> Respondents and their successors and/or any one or more of the Respondents and/or their servants and/or agents in any manner whatsoever or howsoever from claiming on and/or encashing the Twenty One (21) Bank Guarantees submitted by the Petitioner in respect of the consignments as set out in the documents marked “A5” and/or taking further steps, until the hearing and determining of this Petition;
- r) Grant costs, and
- s) Such other and further relief as to Your Lordships shall seem meet.

As borne out from the case record, when this matter came up for support on 24.02.2021, the Learned Additional Solicitor General who appeared for the Respondents submitted that the Sri Lanka Customs was exploring an amicable resolution of this matter. The learned President's Counsel appearing for the Petitioner also informed the Court that any proposal to resolve this matter would be considered favourably by the Petitioner.

The Learned Additional Solicitor General gave an undertaking that the Sri Lanka Customs would not resume the inquiry until the matter is supported and the Bank Guarantees given by the Petitioner with regard to the impugned consignment will not be called upon until the matter is supported.

After several dates, as the parties could not come to a settlement, the Learned President's Counsel for the Petitioner informed Court that the matter could be fixed for support as the parties had failed to reach a settlement. In the meantime, an application for intervention had been filed, which the Petitioner had objected to. The Petitioner and the intervenient party consented to dispose of the inquiry by way of written submissions. After filing written submissions, by an order dated 27.07.2023 the Court had refused the Application for intervention, and the matter was fixed for support on 14.09.2023. The matter was supported on that day and both the Learned President's Counsel for the Petitioner and the Learned Additional Solicitor General for the Respondents made submissions, and the matter was reserved for order on 25.10.2023.

Based on the submissions of both parties and the circumstances of this case, this Court was inclined to issue notice on the Respondents. Further, this Court issued interim orders as prayed in the prayers (p) and (q) of the petition until a further order is made.

In this case, the Petitioner admitted that the excise duty which is due must be paid by him. Although this was offered to the Director General of Excise, it was not accepted. The main contention raised on behalf of the Petitioner

is that the Director General of Customs has no authority to hold an inquiry to recover the Excise Duty after the removal of the goods from customs.

**The background of the case *albeit* as follows;**

The Petitioner in this case, 'Unilever Sri Lanka Limited', is a subsidiary of the 'Unilever PLC' company which is notably known worldwide. The subsidiary operates in Sri Lanka and has been responsible for handling the manufacturing, marketing, distribution and sales of personal care, home care and food products for the local market since 1938. As per the document marked 'A1', the Petitioner has been importing industrial Monocarboxylic Fatty Acid (hereinafter referred to as 'Distilled Fatty Acid' /DFA) since 2006, under the HS Code 3823.19.90-Other from a number of countries. This was to facilitate the local manufacture of soap. The Petitioner had imported this Distilled Fatty Acid/DFA for 13 years and had duly paid the relevant customs duty at the time of clearance.

From 2007 to September 2018, no Excise Duty was payable in law. As such, no Excise Duty was levied under the Excise (Special Provisions) Act No. 13 of 1989. The petitioner had, at all other times, correctly classified and cleared through Customs after paying the Customs Duty. The Petitioner had also duly made declarations in the CUSDEC forms from October to February 2019 and had not faced any disputes or interruptions. As such, the imported goods had been cleared and taken to the Petitioner's warehouse.

On or around 15<sup>th</sup> February 2019, a shipment of Industrial Monocarboxylic Fatty Acid (Distilled Fatty Acid) had been seized by Sri Lanka Customs on the alleged basis that the Compliance and Facilitation Directorate of the Sri Lanka Customs had taken up an investigation under Section 9 of the Customs Ordinance, but had released the said consignment when Bank Guarantees of approximately Rupees Two Hundred and Forty-Six Million (Rs.246 million) had been submitted.

As seen in the document marked 'A6', the Petitioner had questioned about the Customs inquiry of the imported Distilled Fatty Acid, to which the Deputy Director of Customs of Commodity Classification by way of letter, marked 'A7', had claimed that Industrial Monocarboxylic Fatty Acid was now classified under HS 3823.19.20, although it was classified as HS 3823.19.90 earlier. The petitioner, by way of a letter which is marked as 'A8', had informed the 1A Respondent that he would comply and immediately take action to change the HS code to 3823.19.20 as mentioned in the Customs communication, which is marked 'A7'.

The Petitioner had, after investigating, discovered two Gazette notifications which specified the new HS Classification of 3823.19.20- Palm Oil Fatty Acid. The two notifications are, namely, the Gazette Extraordinary No. 2092/8 dated 08.10.2018 which had been published under the Revenue Protection Act No. 19 of 1962, and the Gazette Extraordinary No.2092/5 dated 08.10.2018 which had been published under the Excise (Special Provisions) Act No. 13 of 1989 (as amended).

As per the Gazette Notification named Gazette Extraordinary No. 2092/8, which was marked as 'A9', the newly created HS Classification 3823.19.20- Palm Oil Fatty Acid was exempted from the payment of Customs Duty.

On the other hand, as per the Gazette Notification named Gazette Extraordinary No. 2092/5, which was marked as 'A10', it was specified that a 25% Excise Duty was imposed on the newly created HS Classification 3823.19.20-Palm Oil Fatty Acid.

Seven of the Petitioner's employees were summoned on 11.07.2019, and the Petitioner was informed that a formal Customs Inquiry had been initiated under Section 8(1) of the Customs Ordinance.

The Petitioner objected, founding his objections on the basis that the issue being considered at this Inquiry was a matter relating to the Excise Duty. As such, the Petitioner contended that the recovery of Excise Duty falls within the jurisdiction of the Director General of Excise and not the Director

General of Customs when the imported goods have been cleared by Customs. The petitioner relied on Sections 8 and 9 of the Customs Ordinance in relation to the jurisdiction of the customs to proceed with this inquiry. The Petitioner claims that this inquiry was completely devoid of jurisdiction, and that it was illegal, unlawful and ultra vires of the powers of the Customs Ordinance.

Even though the Petitioner brought up a number of objections from the beginning of this inquiry, the 2<sup>nd</sup> Respondent Inquiring Officer had made a decision, marked 'A32' only on 02. 09. 2020, and had directed that the Customs Inquiry would continue.

Meanwhile, the Petitioner had also written letters to the Commissioner General of Excise, to request to effect the payment of Excise Duty as per the Gazette Extraordinary No.2092/5 marked 'A10'. However, the Excise Commissioner had not replied to the letters sent by the Petitioner, marked 'A11', 'A16', 'A17', '17(i) and '17(ii)'.

In order to discuss the legality of recovering unpaid Excise Duties, the statutory provisions within the Excise (Special Provisions) Act No. 13 of 1989 have to be discussed.

Non **9.**

payment of  
excise duty.

[ 12,40 of  
1990]

[ 8,8 of  
1994]

(1) Where any excise duty has not been levied or paid on any excisable article or has been levied or paid only in part on such excisable article or where it has been erroneously refunded, an excise officer may, within a period of five year from the relevant date serve notice on the person chargeable with excise duty which has not been levied or paid or which has not been levied or paid in full or to whom a refund

has been erroneously made, requiring him to show cause why he should not pay the amount so specified in the notice :

Provided that where any excise duty has not been levied or paid at all or has been levied or paid only in part in contravention of any of the provisions of this Act or any regulations made thereunder or has been erroneously refunded, by reason of fraud, collusion or any wilful misstatement or suppression of facts, the period referred to in this subsection shall extend to ten years from the date on which detection thereof was made.

(2) The Director-General shall, after considering the representations, if any, made by the person on whom notice is served under subsection (1). determine the amount of excise duty due from such person, not being an amount in excess of the amount specified in the notice, and notify him accordingly, and thereupon such person shall pay the amount so determined....

Appeals to **10.**

the director-  
General.

[ 13,40 of  
1990]

[ 9,8 of  
1994]

(1) Any person may, if he is dissatisfied with any determination made in respect of him under section 9, appeal against such determination to the Director-General, within thirty days after the service of notice of such determination on him. Such person shall, notwithstanding the appeal, pay the excise duty payable on such determination unless the Director-General orders that the payment of excise

duty or any part thereof be held over pending the determination of such appeal:

Provided that, the Director-General, upon being satisfied that owing to absence from Sri Lanka, sickness or other reasonable cause, the appellant was prevented from appealing within such period, shall grant an extension of time for preferring the appeal.

(2) .....

(6) The Director-General may, upon any appeal made to him under subsection (1), affirm, vary or annul the determination against which such appeal was made and shall give notice in writing to the appellant of his decision on appeal.

Service **10A.**

of notice.

[ 10,8 of  
1994]

(1) Every notice or notification to be given by the Director-General, a Director of Excise, Deputy Director of Excise or any excise or notification shall be the name of the Director-General, of Excise, Deputy Director of Excise or such excise officer is duly printed or thereon....

Excise duty  
determined on  
appeal to be  
final.

**11.** Where no valid appeal has been lodged within the time specified in this Act against the determination of the Director-General in respect of the excise duty or where the amount of such excise duty has been determined on appeal, the amount determined by the Director-General or the amount as reduced, or increased or confirmed on appeal as the case may be Shall be final and conclusive for all purposes of this Act as regards the amount of the excise duty payable.

Excise duty to be a charge **11A.** Any excise duty in default shall be a charge upon all the assets of the defaulter.  
[ 11,8 of 1994] :.....

Recovery of excise **11B.**  
duty by seizure and sale.  
[ 11,8 of 1994] (1) There may be appointed persons be appointed persons to be tax collectors for the purposes of this Act.  
(2) .....

Proceedings for **12.**  
recovery before a Magistrate.  
[ 14,40 of 1990] (1) Where the payment of any excise duty is in default, the Director-General may issue a certificate containing particulars of the amount of the excise duty in default and the name and last known place of business or residence of defaulter to a Magistrate having jurisdiction in the division in which such place of business or residence is situate. The Magistrate shall thereupon summon such defaulter before him to show cause why further proceedings for the recovery of the excise duty shall not be taken against him, and in default, of sufficient cause being shown, the excise duty in default shall be deemed to be a fine imposed by a sentence of the Magistrate on such defaulter for an offence punishable with fine only or not punishable with imprisonment, and the provisions of subsection (1) of section 291 (except paragraphs (a), (d). and (i) thereof) of the Code of Criminal Procedure Act, No. 15 of 1979, relating to default of payment of a fine impose for such an offence shall

thereupon apply, and the Magistrate may make any direction which, by the provisions of that Subsection, he could have made at the time of imposing such sentence:

Provided that, nothing in this section shall authorize or require the Magistrate in any proceeding there under to consider, examine or decide the correctness of any statement. in the certificate of the Director-General.

The above cited provisions of law under the Excise (Special Provisions) Act very clearly laid down the procedure to recover excise duty after the removal of goods from the Sri Lanka Customs.

The Customs has the power to collect excise duty only before the goods have been removed from the Customs.

Section 5(2) (a) of the Excise (Special Provisions) Act states;

(a) Notwithstanding anything in this Act, every person who imports any excisable article manufactured outside Sri Lanka (not being an exempted article within the meaning of sections 3A,3B and 3C) shall pay to the Director-General of Customs, excise duty, in respect of such excisable article, prior to its removal from the customs warehouse or such other place at which such excisable article is stored, at the rates of excise duty determined under section 3.

In **Wasana Traders Lanka (Private) Ltd v Sudharrma Karunaratne, the Director General Customs and 6 others** CA. Writ No.689/2008 decided on 18.01.2011 the Court held that;

*The obligation on the Director General of Customs is to collect the Excise Duty before the removal of the goods as per Section 5(2) (a) of*

*the Excise (Special Provisions) Act, as amended. In the instant case the vehicles were removed from the customs.... The Excise duty is not imposed by the Customs Ordinance or by the Director General of Customs. It is imposed by the Excise (Special Provisions) Act but this Act.....There are extensive provisions laid down in the Excise (Special Provisions) Act to recover the Excise Duties that are not paid. Section 9 of the said Act provides for the procedure that has to be followed.*

*There is a statutory scheme embodied in the Excise (Special Provisions) Act to recover unpaid excise duties therefore it excludes any other procedure or remedy. When considering whether a person occupying a land acquired by the state under the Land Acquisition Act could be ejected by using the provisions of the State Lands (Recovery of Possession) Act, Justice U.de. Z. Gunawardana in Edwin v Tillakaratne [2001] 3 Sri.L.R 34 at 39 held:*

*"When the statutory scheme embodied in the relevant Act (Land Acquisition Act) itself provides a procedure for ejectment or remedy, it must, in the generality of cases, be taken to exclude any other procedure or remedy. One has to follow the procedure given in the Land Acquisition Act itself to remove the petitioner."*

*Firstly, the Director General of Customs cannot recover or collect an unpaid Excise duty after the removal of the goods from the Customs. Secondly the Director General of Customs cannot use the provisions of Section 18(2) to recover unpaid Excise Duty in view of the provisions to collect unpaid Excise duty in the Excise (Special Provisions) Act. Hence this Court issues a writ of Certiorari to quash the decision contained in document marked X7(a) and X 7(b) without prejudice to the collection of excise duty from the Petitioner in accordance with the Excise (Special Provisions) Act as amended.*

In the case of **Abeywickrema v Pathirana [1986]** 1 Sri L.R. 120 it was held that:

*“An order or decision by an official who had no legal authority to make that order/ decision is in law a nullity and is non-existent in the eye of the law; such an order/ decision is inoperative and void and it is open to a court to declare that it is a nullity.*

*“If one seeks to show' that a determination is a nullity, one is not questioning the purported determination - one is maintaining that it does not exist as a determination.” Per Lord Reid in the Anisminic Ltd v. Foreign Compensation Commission”*

The Respondent in their submission submitted that the Petitioner has used the wrong HS Code to import the subject goods at least until May 2019, therefore, an investigation had been initiated by the Sri Lanka Customs on or around February 2019 and shipments of DFA which was imported by the Petitioner were seized. However, they were released to the Petitioner upon providing bank guarantees.

Replying to the letter dated 24.04.2019 sent by the Petitioner, the Sri Lanka Customs opined that the product in question (Industrial Monocarboxylic Fatty Acid) is classified under the newly created HS Code 3823.19.20. The Petitioner promptly informed the 1A Respondent that he would comply and immediately act to change the new HS Code as suggested by the Sri Lanka Customs by a letter dated 03.05.2019.(A7). It is important to note that, even though the new HS Code was introduced in respect of Industrial Monocarboxylic Fatty Acid, the old HS Code 3823.19.90-Other was not cancelled.

The Learned Senior Additional Solicitor General submitted that the inquiry commenced by the Sri Lanka Customs was to find out whether the Petitioner had violated the Sections 47 and 129 of the Customs Ordinance and not for the collection of Excise Duty.

In this context, it is observed that in a situation of a disputed classification of goods or an underpayment or short levy of duties or dues, the proper course would be a requirement for payment of the amount due prior to the delivery of goods or recovery of the amounts due in terms of section 18 of the Customs Ordinance and forfeiture provided for in Section 47 thereof would not apply as seen in the case of **Toyota Lanka (Pvt) Ltd and another v Jayathilaka and others** [2009] 1 SLR 276.

It is pertinent to note that the newly created HS Code 3823.19.20 was exempted from customs duty from 09.10.2019 as per the Gazette Notification No.2092/8 dated 08.10.2018. Therefore, the only question remaining is regarding the collection of the 25% Excise Duty imposed on HS Code 3823.19.20- Palm Oil Fatty Acid as per the Gazette Notification No.2092/5 dated 08.10.2018 which was in operation since 09.10.2018. Hence, initiating a Custom inquiry is improper as the collection of Excise Duty is vested with the Commissioner General of Excise.

In **Vallibel Lanka (Pvt) Limited v Director General of Customs and three others** [2008] 1 SLR 219 Sripavan, J. held that;

*“It is the established rule in the interpretation of statutes levying taxes and duties, not to extend the provisions of the statute by implication, beyond the clear import of the language used or to enlarge their operation in order to embrace matters not specifically pointed out. In case of doubt, the provisions are construed most strongly against the state and in favour of the citizen. Thus, the intention to impose duties and/or taxes on imported goods must be shown by clear and unambiguous language and cannot be inferred by ambiguous words. The court cannot give a wider interpretation to section 16 as claimed by the learned DSG merely because some financial loss may in certain circumstances be caused to the state”.*

In the case of **Sohli Eduljee Captain (Secco Brushes Corporation) v. Commissioner of Inland Revenue, S.C. Special Determination No. 2/73, NLR 1974 Vol. 77** it was held that:

*“Express and unambiguous language is indispensable in a statute passed for the purpose of imposing a tax. In a Taxing Statute, if two constructions are possible, one in favour of the assessee and the other in favour of the assessor, the Court must adopt the construction which is favourable to the assessee.”*

In the case of **N.O.H. Hotel (Private) Limited “Amangalla” v. The Galle Municipal Council and Others, CA (PHC) 14/2021 (2023)** it was noted that:

*“This Court pays its minds to the trite rule of interpretation that fiscal statutes and statutes imposing penal or pecuniary liabilities must be strictly interpreted and any ambiguity must be constructed in favour of the individual.*

*As such, a narrower interpretation of statutes which impose levies is preferable and courts should not construe such statutes in a manner that places a heavier burden on the citizenry and such businesses.”*

Therefore, as per Section 5(2) (a) of the Excise (Special Provisions) Act No. 13 of 1989, the Director General of Customs cannot recover or collect an unpaid Excise Duty after the removal of goods from Customs. I too agree that the jurisdiction of the Director General of Customs ends after the removal of the goods from the Customs premises.

In **Vallibel Lanka (Pvt) Limited v Director General of Customs** (Supra) the Supreme Court further held that;

*“...Thus when the GST Act makes general provisions in respect of certain matters and makes specific provisions with respect to “recovery” the latter must prevail over the general. The special jurisdiction with regard to “recovery” must therefore be exercised by the Commissioner General of Inland Revenue and not by the Director General of Customs”.*

The Respondents by way of additional written submissions, invited this Court to consider the applicability of the Judgement **Ace Healthcare (Pvt) Ltd v the Director General of Customs and Others** CA Writ 171/2022 decided on 30.05.2023 to the present case. The basic question dealt in the case is set out in the judgment as follows;

*“The basic question which needs resolution in the instant Application is whether it is lawful for Sri Lanka Customs to inquire into the classification of the subject goods imported by the Petitioner when such goods have been already classified as HS Code 8479.89.90 by the BOI. Similarly, it needs consideration whether Sri Lanka Customs could exercise powers under Customs Ordinance in order to classify imported goods when such goods have been imported in terms of an agreement with the BOI under Section 17 of the BOI Law.”*

In the **Ace Healthcare** case (Supra) the question that arose at the time was regarding the importation of the relevant goods and the consignment that had been detained by the Sri Lanka Customs. But in the matter in hand, the goods have been already cleared. Hence, my considered view is that the **Ace Healthcare** case (Supra) has no relevance or application to the present case.

As per letters sent to the Excise Commissioner which had been marked 'A11', 'A16', 'A17', '17(i) and '17(ii) by the Petitioner, it crystal clear that the Petitioner never intended to evade the payment of the Excise Duty as claimed by the Respondents.

The Petitioner admitted that they were unaware of the two Gazette Notifications which changed the HS Code 3823.19.90 to HS Code 3823.19.20 and levying Excise Duty. Having come to know about the existence of the Gazette Notification which changed the HS Code, the Petitioner had sent a letter dated 25.04.2019 to the Deputy Director General of the Custom-Commodity Classification Unit and the said Unit opined that "Industrial Monocarboxylic Fatty Acid" is now classifiable under HS Code 3823.19.20. The Petitioner, thereafter commenced declaring their shipments under the newly created HS Code and had commenced payment of the applicable Excise Duty.

According to the letter sent by the Assistant Director (Administration) Parliament of Sri Lanka marked 'A27', the two Gazettes Notifications No.2092/5 and 2092/8 issued on the 08.10.2018 have not been tabled before Parliament for approval and is hereby rescinded.

Considering all the circumstances of this case, I conclude that the inquiry initiated by the Sri Lanka Customs is unnecessary as the Petitioner had admitted payment of Excise Duty. Further, the Customs cannot initiate an inquiry as the goods in question had been cleared from the Sri Lanka Customs upon importation.

In the foregoing circumstances, this Court issues a mandate in the nature of a Writ of Certiorari, quashing the decision contained in the document marked "A32" without prejudice to the collection of Excise Duty from the Petitioner in accordance with the Excise (Special Provisions) Act as amended.

Upon payment of Excise Duty, this Court order the Respondents to release and discharge the twenty-one (21) Bank guarantees submitted by the Petitioner.

I make no order with regard to costs.

**JUDGE OF COURT OF APPEAL**

**R. P. Hettiarachchi, J.**

I Agree

**JUDGE OF COURT OF APPEAL**