

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

**C.A. Writ Application No.
121/2015**

In the matter of an application in terms of Article 140 of the Constitution of Sri Lanka for mandates in the nature of writs of Certiorari, Prohibition and Mandamus.

Micro Cars Limited, a Company duly incorporated and existing in Sri Lanka and having its registered and/or principal office at 873, Kandy Road, Wedamulla, Kelaniya.

Petitioner

Vs.

1. Director General of Customs,
Customs House,
No. 40, Main Street,
Colombo 01.

- 1a. R. Semasinghe
Director General of Customs,
Customs House,
No. 40, Main Street,
Colombo 01.

- 1b. Mr. Chulananda Perera
Director General of Customs,
Customs House,
No. 40, Main Street,
Colombo 01.

- 1c. Mrs. P. S. H. Charles
Director General of Customs,
Customs House,
No. 40, Main Street,

Colombo 01.

- 1d. Major General (Retired) Vijitha Ravipriya
Director General of Customs,
Customs House,
No. 40, Main Street,
Colombo 01.
- 1e. Mr. P. B. S. C. Nonis
Director General of Customs,
Customs House,
No. 40, Main Street,
Colombo 11.
- 2. Mr. M. Ravindrakumar
Deputy Director of Customs,
Post Clearance Audit Branch, Customs
House,
No. 40, Main Street,
Colombo 01.
- 2a. Mr. Y. D. D. Dharmasiri
Deputy Director of Customs,
Post Clearance Audit Branch, Customs
House,
No. 40, Main Street,
Colombo 01.
- 2b(I). Mr. C. P. G. Punchihewa
Senior Deputy Director of Customs,
Compliance and Facilitation Directorate,
(Former Post Clearance Audit Branch),
Customs House,
No. 40, Main Street,
Colombo 01.
- 2b(II). Mr. W. R. P. Wickremarathne
Senior Deputy Director of Customs,
Compliance and Facilitation Directorate,
(Former Post Clearance Audit Branch),

Customs House,
No. 40, Main Street,
Colombo 01.

2c(I). Ms. S. D. Abeysekara
Senior Deputy Director of Customs,
Compliance and Facilitation Directorate,
(Former Post Clearance Audit Branch),
Customs House,
No. 40, Main Street,
Colombo 11.

2c(II). Ms. M. I. S. Pathmanathan
Senior Deputy Director of Customs,
Compliance and Facilitation Directorate,
(Former Post Clearance Audit Branch),
Customs House,
No. 40, Main Street,
Colombo 11.

3. Mr. B. J. P. Perera
Director of Customs,
Customs House,
No. 40, Main Street,
Colombo 01.

3a. Mr. Sunil Jayarathna
Director of Customs,
Customs House,
No. 40, Main Street,
Colombo 01.

4. Mr. M. Puviharan
Additional Director,
General of Customs,
Chairman-Appellate Body,
Customs House,
No. 40, Main Street,
Colombo 11.

- 4a. Mr. J. M. M. G. Wijerathna Bandara
Additional Director,
General of Customs,
Chairman-Appellate Body,
Customs House,
No. 40, Main Street,
Colombo 11.
5. Mr. R. P. D. T. Seneviratne
Additional Director,
General of Customs,
Secretary and Member Appellate Body,
Customs House,
No. 40, Main Street,
Colombo 01.
- 5a. Mr. R. P. D. T. Seneviratne
Additional Director,
General of Customs,
Secretary and Member Appellate Body,
Customs House,
No. 40, Main Street,
Colombo 11.
6. Mr. U. K. M. Ismail
Member Appellate Body,
Customs House,
No. 40, Main Street,
Colombo 01.
7. Secretary
Ministry of Finance & Planning,
The Secretariat,
Colombo 01.

Respondents

1. Mr. J.M.M.G.W. Bandara,

Deputy Director of Customs,
Post Clearance Audit Branch,
Customs House,
No.40, Main Street,
Colombo 01.

2. P.G. Sumanapala
Director of Customs,
Customs House,
No.40, Main Street,
Colombo 01.
3. H. R. N. C. Herath
4. S. A. S. P. Senanayake
5. G. V. U. D. Silva
6. M. R. Ranaraja
7. M. A. M. Nazir
Members of Appellate Body,
Customs House,
No.40, Main Street,
Colombo 01.

Added Respondent

1. L. K. H. D. K. Aarewatte,
2. K. D. R. Perera,
3. A. M. L. K. Alahakoon,
4. S. A. T. B. Suraweera,
5. L. P. Gulawita
Members of Appellate Body,
Customs House,
No.40, Main Street,
Colombo 11.

Added-Added- Respondents

Before : Dhammika Ganepola, J.
Adithya Patabendige, J.

Counsel : Rasika Dissanayake instructed by Sanath
Wijewardane for the Petitioner.
Ganga Wakishta Arachchi, D.S.G.for the
Respondents.

Argued on : 27.10.2025

Written Submissions : Petitioner : 26.01.2026
tendered on Respondents : 17.12.2025

Decided on : 19.02.2026

Dhammika Ganepola, J.

The Petitioner is a Board of Investment-approved Company that engages in the business of manufacturing and local assembly of motor vehicles. In November 2012, the Petitioner had submitted documents for the clearance of ‘bodies of motor vehicles’ imported by the Petitioner under H.S. Codes Classification 8707.10.00 upon which the Petitioner had been informed by the Customs that there has been a duty amendment on the same by Revenue Protection Order (herein after sometimes referred to as “RPO”) No. 03/2012 published in the Gazette dated 18.11.2012 marked P3 amending the existing duty of 15% per unit to 15% or Rs.291,000/- per unit. In view of the devastating effect of the said Gazette on the Petitioner’s industry, the Petitioner had made representations to the Secretaries of the Ministry of Finance and the Ministry of Industrial Development and Commerce, requesting that steps be taken to resolve the issue and to facilitate the smooth functioning of the local automobile industry.

The Petitioner states that the then Secretary to the Ministry of Finance recognized the adverse impact of the RPO published in the Gazette marked P3 on the local industry and assured that the matter would soon be resolved by amending the duty rates to distinguish between 'used body shells imported for parts' and 'brand new body shells'. Furthermore, it is submitted that the subordinate officers of the Ministry had been instructed to take steps to effect such a duty amendment. Accordingly, the Petitioner claims that it had been directed to proceed with clearance of body shells upon submission of bank guarantees instead of paying the higher duty, until such time as the matter was finally determined. Further, Sri Lanka Customs has also agreed to the same. The Petitioner claims that due to the said representations made to the Secretary of the Ministry of Finance and the instructions given to the subordinate officers at the Ministry, the Petitioner had a legitimate expectation that the duty rates would be duly revised as promised.

However, since the promised duty revision had not come into effect even by the end of January 2013, the Petitioner had been required to pay the increased duties, to clear the imports by the end of January 2013 and to increase the selling prices of the vehicles with effect from 01.02.2013. The Petitioners submit that to date, the Petitioner has not been informed that the duty amendment as promised would not be effected.

When the matters had remained as such, the 2nd Respondent, by the letter dated 19.03.2013 marked P9, had informed the Petitioner that, as per the RPO No. 01/2012 published in the Gazette Extraordinary No. 1751/27 dated 30.03.2012 (marked "P10"), which came into effect from 31.03.2012, the applicable Customs duty should be 15% or Rs. 291,000/- per unit. It had been further informed that, due to an oversight, the above effective rate has not been updated in the system for motor vehicle bodies and cabs imported under H.S. Codes 8707.10.00 and 8707.90.90, and under the Customs Procedure Code (CPC) 4000-709. It had been further informed that owing to this lapse, imports under the above H.S. Code continued to process applying the rate of duty of 15%, which was prevailing before the revision. Accordingly, the Petitioner had been informed to settle the short levied, which had been calculated as Rs.

546,765,856.00 in respect of the imports made during the period of 31.03.2012 to 31.12.2012.

However, the Petitioner, by its letter dated 01.04.2013 marked P11, had informed the 1st Respondent that the Petitioner is not liable to settle the short levies claimed and had requested the withdrawal of the said letter P9. The 1st Respondent, having considered the above letter marked P11 as an appeal submitted by the Petitioner, had appointed an Appellate Body to look into the matter. Thereafter, the Petitioner had been reliably informed that, according to the findings contained in the report dated 28.10.2013, the Appellate Body decided that:

- i. The duty loss arising in view of the RPO marked P10, which accrued due to a mistake of the officers of Sri Lanka Customs, should not be recovered from the Petitioner.
- ii. The duties arising in view of the RPO marked P3 should be recovered from the Petitioner in instalments over a period of 7 years.

However, despite the above, the 1st Respondent, by its letter dated 01.08.2014 marked P19, had informed the Petitioner that the Petitioner's appeal had not been considered favourably. Consequently, the Petitioner had responded to said letter by its letter dated 12.08.2014 marked P20, stating that it is neither practical, ethical, nor lawful to hold the Petitioner responsible for the errors and mistakes of the officers of Customs and had requested the 1st Respondent to reconsider the decision contained in the P19.

Thereafter, the 1st Respondent, by its letter dated 26.12.2014 marked P21, had informed the Petitioner that the matters relating to the report of the Appellate Body were discussed with the Deputy Secretary to the Treasury, and the 1st Respondent was instructed to recover the customs duty and other levies payable from the Petitioner. The said letter P21 further states that the issue of recovery had been further discussed with the remaining members of the Appellate Body and the Petitioner, and that the Appellate Body had submitted a further report on 23.12.2013, marked as P22. The Petitioner submits that the said further report P22

also confirms the contents of the initial report of the Appellate Body dated 28.10.2013, and views that the monies short levied may be recovered from the Customs Officers' Management and Compensation (COM&C) Fund as the Customs Officers' negligence had paved the way for the short recovery. Accordingly, the Petitioner states that the letter dated 26.12.2014 marked P21 does not correctly reflect the decision of the Appellate Body.

The Petitioner claims that the 1st Respondent, by its letter dated 26.12.2014 marked P21, illegally coupled the payment of Rs.346,758,000.00 due in respect of the period of 18.11.2012 to 28.01.2013 as per the RPO P3, with the claim of Rs. 546,765,856.00 in respect of RPO, P10. Nevertheless, the Petitioner had informed its inclination to pay the sum of Rs. 346,758,000.00 (sum due in respect of the imports during the period of 18.11.2012 to 28.01.2013 as per the RPO, P3) and denied any liability to pay the sum of Rs. 546,765,856.00 claimed in respect of the purported RPO No.01/2012, published in the Gazette marked P10 allegedly 'short levied' for the imports during the period of 31.03.2012 and 31.12.2012, by its letter dated 04.03.2015 marked P24.

At the stage of argument, the Petitioner informed the Court that the Petitioner would pursue only prayers (C)(i) and (D) of the Petition, whereby the Petitioner moves this Court to issue a Writ of Prohibition preventing the Respondent from recovering the sum of Rs. 546,765,856.00 based on the purported RPO No.01/2012, published in the Gazette marked P10 and Writs of Certiorari to quash the following:

- (i) letter dated 19.03.2013, P9;
- (ii) letter dated 01.08.2014, P19;
- (iii) decision said to have been made on 04.11.2014, as reflected in the report P22; and
- (iv) letter dated 26.12.2014, P21.

It is apparent from the letter dated 19.03.2013, marked P9, that, due to an oversight, the Customs Automated System for motor vehicle bodies and cabs imported under H.S. Codes 8707.10.00 and 8707.90.90 had not

been updated. Consequently, this failure had resulted in the aforesaid short-levied sum of Rs. 546,765,856.00.

In the instant application, it was submitted that the relevant RPO No.01/2012, published in the Gazette marked P10, had been duly issued to all Departments of Sri Lanka Customs, giving directions to enforce it by Departmental Order, commonly known as DOPL No. 802. The duties and the charges leviable on imports had been calculated based on the Customs Declarations (CUSDECS) submitted by the Petitioner, which officers of Sri Lanka Customs had processed, in the Long Room and the Car Branch of the Imports Division of the Customs, following a long-established process containing several steps. A Senior Officer authorised by the 1st Respondent had confirmed the description and the rate of duty applicable, which warrants the delivery of goods. It is also submitted that the goods had passed Sri Lanka Customs and had been duly delivered. The aforesaid matters are not in dispute. Therefore, the Petitioner claims that a legitimate expectation accrued that the goods have been properly and correctly appraised and warranted for home use and argues that Sri Lanka Customs is estopped from claiming that the duty rates applicable were wrongly calculated.

Further, it is observed that the Appellate Body appointed by the 1st Respondent to look into the alleged 'short levy', by its report dated 28.10.2013 marked R2, has observed that being mindful of the lapse on the part of Sri Lanka Customs in this unfortunate incident, it is not ethical to take steps to recover the impugned amount short levied from the Petitioner. *[page 39 of the report marked R2]*

I am mindful that good administration demands procedural justice. However, in the instant application, Section 18(2) of the Customs Ordinance, on which the Customs' claim is based, provides authorisation to claim a deficiency or short levy. The said Section is as follows.

"18(2) When any duties, dues or charges on any goods, imported or exported, have been short levied or where any such duties, dues or charges after having been levied, have been erroneously refunded, the persons chargeable with the duties, dues or charges so short

levied or to whom such refund has erroneously been made shall pay the deficiency or repay the amount so erroneously refunded, if the payment of the amount short levied or erroneously refunded shall be demanded within twenty- four months from the date of such short levy or refund.”

In view of Section 18(2) cited above, it should be considered whether the legitimate expectation claimed by the Petitioner falls within the ambit of the law specified therein. It is my view that in the instant application, whatever expectation the Petitioner could claim arising out of the fulfilment of procedural requirements is subject to Section 18(2) of the Customs Ordinance.

De Smith in **De Smith’s Judicial Review, Chapter 12-19, Eighth Edition, Sweet and Maxwell at pgs. 704,705, para 12-071** states that the general principle remains, however, that a public authority may not vary the scope of its statutory powers and duties as a result of its own errors or the conduct of others. Judicial resort to estoppel in these circumstances may prejudice the interests of third parties. ... Further, Lord Denning appeared to have relented when he said in respect of a purported grant of a planning permission by a town clerk unauthorised to grant the permission, that:

“The protection of the public interest is entrusted to the representative bodies and to the ministers. It would be quite wrong that it should be pre-empted by a mistaken issue by a clerk of a printed form - without any authority in that behalf ... when the result would be to damage the interests of the public at large.”

Therefore, based on the above principle, I view that the Petitioner in the instant application cannot claim any legitimate expectation against the statutory demand made by the Customs under Section 18(2) of the Customs Ordinance so long as implementation does not interfere with its statutory duty. However, whether the Sri Lanka Customs’ demand is legally sound or falls under the aforesaid fiscal statute should be assessed separately.

By the RPO No.01/2012, published in the Gazette marked P10, which came into operation from 31.03.2012, the Director General of Customs requires the demand and levy on each article specified in Column 3 of the Schedule thereto, at the general rate set out in the corresponding entry in Column 5 of that Schedule. Accordingly, the existing duty for imports under H.S. Codes Classification 8707.10.00, as per the No.01/2012, published in the Gazette marked P10, was 15% or Rs. 291,000.00 per unit. The 1st to 5th and the 7th Respondents claim that the prevailing Customs duty of 15% rate was revised by the above RPO No.01/2012, published in the Gazette marked P10.

The 1st to 5th and 7th Respondents state that as per the RPO No.01/2012, published in the Gazette marked P10, a tax of 15% or Rs. 291,000/= per vehicle body, whichever is higher, was payable on imported motor vehicle bodies. However, as a result of an oversight on the part of Sri Lanka Customs to update its automated systems, the prevailing previous duty rate of 15% was charged per vehicle body, although the specific rate of Rs. 291,000/= per body was due for the period from 30th March 2012 to 08th November 2012. Then the question arises as to the legality and authority of Sri Lanka Customs to decide upon which duty rate to apply, whether the lower or the higher duty rate. The Respondents claim that, legally, the officers were bound to apply the higher rate of duties out of the two duty rates with effect from 30.03.2012(P9), on the basis that the State revenue cannot be evaded unless allowed by law.

However, it is observed that the RPO published in the Gazette marked P10 does not specify which rate of duty is payable on imported motor vehicle bodies. In a similar RPO bearing No. 03/2012 published in the Gazette Extraordinary No. 1783/18 dated 08.11.2012 marked P3 issued by the Secretary to the Ministry of Finance under the Revenue Protection Act, No.19 of 1962, imposing the rates of import duty, contains a clause on the selection of H.S. Codes and recovery of import duty. It specifies that where there are more than one general rate of duties specified, the rate that accrues the highest amount of duty shall apply unless specified otherwise. The said clause is as follows:

“ඉහත 7 වන ඡේදයේ අරමුණු පිණිස, තීරුබදු අනුපාත එකකට වැඩි ගණනක් පණවා ඇති කල්හී, වෙනත් ආකාරයකින් අය කළ යුතු යයි දක්වා නොමැති අවස්ථා වලදී, රජයට අය විය යුතු වැඩිම තීරු බද්ද ලබා දෙන තීරු බදු අනුපාතය තෝරා ගත යුතුය.”

(Clause 8 of 'P3')

However, in the instant RPO published in the Gazette, marked P10 does not contain a similar clause. Further, it is my view that the RPO No.01/2012, published in the Gazette marked P10, is a standalone independent law and not a law stemming from the previous RPOs. As such, in the absence of such a clause, the RPO published in the Gazette marked P10 creates an ambiguous situation pertaining to the demand for levy. In **JMC Jayasekara Management Centre (Pvt) Limited v. Commissioner General of Inland Revenue, SC/APPEAL/05/2021, Decided on 05.03.2025**, at page 21, the Supreme Court opines that,

“In the interpretation of taxing statutes, when the issue pertains to charging provisions that impose tax liability, as opposed to machinery provisions that outline the procedure for quantification and enforcement of such liability, the court must adhere strictly to the letter of the law rather than its spirit. If the language of a charging provision is clear and unambiguous, the Court is bound to give effect to it and cannot interpret the words differently on the basis that literal interpretation does not reflect the real intention of Parliament. If the wording of a charging provision is ambiguous, permitting one interpretation favourable to the taxpayer and another to the tax collector, the Court should adopt the interpretation that favours the taxpayer until such ambiguity is resolved by legislative amendment. ...”

N.S. Bindra, Interpretation of Statutes, 13th Edition (2023) Lexis Nexis, page 861, views that:

“It is true that a taxing provision must receive a strict construction at the hands of the courts, and if there is any ambiguity, the benefits of that ambiguity must go to the assessee. But that is not the same thing as saying that a taxing provision should not receive

a reasonable construction. The tendency of modern decisions upon the whole is to narrow down materially the difference between what is called a strict and beneficial construction. The principle of strict construction is applicable only to charging provisions or a provision imposing penalty, and is not applicable to parts of the taxing statute which contain machinery provisions."

In the above context, it is apparent that when interpreting the fiscal statutes (charging provisions) where there is an ambiguity as to the letter of the law, the interpretation that is beneficial to the taxpayer or the assessee should be adopted. Thus, it is apparent that the 1st Respondent is not entitled to charge the higher value of duty out of the two values specified in the RPO published in the Gazette marked P10. Accordingly, I view that there exists no shortage of levy and that no such shortage of levy could be recovered from the Petitioner under Section 18(2) of the Customs Ordinance as per the RPO published in the Gazette marked P10. Consequently, I hold that the attempt of the Respondents to recover short levy under Section 18(2) of the Customs Ordinance as per the RPO published in the Gazette marked P10 is an act of *ultra vires*.

In the foregoing, I am inclined to grant the Writ of Certiorari quashing the letters dated 19.03.2013 and 01.08.2014, respectively marked P9 and P19 and a Writ of Prohibition preventing the Respondents from recovering any of the sum of Rs. 546,765,856/- as an alleged 'short levy' based upon the RPO No.01/2012 published in the Gazette marked P10. I make no order for cost.

Judge of the Court of Appeal

Adithya Patabendige, J.

I agree.

Judge of the Court of Appeal