

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

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

CA Case No: WRT 206-16

1. Lanka Maritime Services Ltd,
No. 400, Deans Road,
Colombo 10.
2. H.S.W. Anuradha K.B. Harasgama,
Lanka Maritime Services Ltd,
General Manager,
No. 400, Deans Road,
Colombo 10.
3. Murukkuwadura Sarath Mendis,
Captain, MT LMS Laxapana,
Lanka Maritime Services Ltd,
General Manager,
No. 400, Deans Road,
Colombo 10.

Petitioners

Vs.

1. Mr. Chulananda Perera,
Director General of Customs,
Sri Lanka Customs,
No. 40, Main Street,
Colombo 11.

2. Mr. M. Ravindrakumar,
Director of Customs,
Sri Lanka Customs,
No. 40, Main Street,
Colombo 11.
3. Mr. M.S.A. Hassen,
Superintendent of Customs,
Producing Officer,
Sri Lanka Customs,
No. 40, Main Street,
Colombo 11.
4. Mr. Wimal S.K. Liyanagama,
Deputy Director of Customs (Industries
& Services),
Sri Lanka Customs,
No. 40, Main Street,
Colombo 11.
5. Mr. P. Saman De Silva,
Director of Customs,
(Industries & Services),
Sri Lanka Customs,
No. 40, Main Street,
Colombo 11.
6. The Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

Before:

R. Gurusinghe J.

&

M.C.B.S. Morais J.

Counsel: Faisz Musthapha PC for the Petitioners.
Vikum De Abrew, ASG, PC for the Respondents.

Written Submissions: By the Petitioners – on 19.02.2026
By the Respondents – on 19.12.2025

Argued on: 20.11.2025

Decided On: 25.02.2026

JUDGMENT

M.C.B.S. Morais J.

This is an application for Writs of Certiorari and Mandamus in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

The 1st Petitioner, Lanka Maritime Services Ltd is a company duly incorporated under the Companies Act No. 07 of 2007 (hereinafter will be referred to as the Petitioner). The 2nd Petitioner is the General Manager at the 1st Petitioner company and the 3rd Petitioner is the Captain of the barge *MT LMS Laxapana*. The 1st Petitioner engages in the supply of bunker fuels for the ships.

The 1st Respondent, is the Director General of the Customs (hereinafter will be referred to as the 1st Respondent). The 2nd Respondent is the Director of Customs (hereinafter will be referred to as the 2nd Respondent). The 5th Respondent is the Director of Customs (Industries and Services) (hereinafter will be referred to as the 5th Respondent).

The Petitioner seeks writ of certiorari against the decision of the 2nd Respondent dated 24th of May 2016 and the decision of the 5th Respondent dated 23rd of June 2016, together with consequential relief in the form of a Writ of Mandamus. The Petitioner prays for the following specific relief;

“a) issue notice on the Respondents;

b) call for and examine the record maintained by the Respondents;

c) issue a Writ of Certiorari quashing the aforesaid decision dated 24th May 2016 of the 2nd Respondent in customs inquiry case No: INDS/PRJ/13/2014 marked "P28":

d) issue an interim order until the final determination of this Application staying the operation of the aforesaid decision dated 24th May 2016 of the 2nd Respondent in customs inquiry case No: INDS/PRJ/13/2014 marked "P28" subject to such terms and conditions as Your Lordships' Court may deem fit and meet;

e) issue a Writ of Mandamus directing the 1st and 4th Respondents or any one of them to refund to the 1st Petitioner the following sums recovered as aforesaid consequent to the said decision dated 24th May 2016 of the 2nd Respondent in customs inquiry case No: INDS/PRJ/13/2014 marked "P28":

(1) the aforesaid sum of Rs.59,410,418/- (obtained from National Development Bank PLC on the letter of guarantee bearing No. LG/G14/4417);

(ii) the aforesaid sum of Rs.40,000,000/- (obtained from HSBC on the letter of guarantee bearing No. 141363);

issue a Writ of Certiorari quashing the letter dated 23rd June 2016 marked "P34" purportedly nominating security as cost by the 5th Respondent;

g) grant the Petitioners costs, and

h) grant the Petitioners such other and further reliefs as to Your Lordships' Court shall seem fit.”

FACTS

In August 2014, the Petitioner's barge "MT LMS Laxapana" having lawfully obtained bunker fuel from Sri Lanka, declaring them as "ship stores" delivered bunker fuel in the Maldives and returned to Sri Lanka with residual Marine Gas Oil and Intermediate Fuel Oil. The Petitioner submitted the required cargo manifest to Customs declaring nil cargo, treating the bunker fuel as "ship stores" per established practices.

On entering the territorial waters of Sri Lanka, the barge was seized by the Sri Lankan customs under section 135 of the Customs Ordinance No. 17 of 1869 (as amended) for the purpose of investigation. Accordingly, the letter dated 10th of August 2014 was issued by the Sri Lankan Customs to the Petitioner, prohibiting the operation of bunker fuel with immediate effect. The Petitioner sought permission to resume operations by letter dated 12th of August 2014(P9). In respect of this, the Respondent required two bank guarantees for a sum of Rs. 61,000,000 and Rs. 40,000,000 and a Corporate guarantee for a sum of Rs. 26,400,000, which was furnished by the Petitioner. Thereby the seizure notice was withdrawn by the Respondent by the letter dated 13th of August 2014, permitting bunkering operations to resume and the cargo to be discharged and delivered to the ships.

Concerned that demands might be made on the guarantees before completion of the inquiry, the Petitioner filed Fundamental Rights Application No. SC/FR/257/2014 in the Supreme Court, which directed extension of the guarantees pending the customs investigation on the Petitioner and refused leave to proceed.

In respect of that, a custom inquiry bearing No INDS/PRI/13/14 was commenced under section 8(1) of the Customs Ordinance. The following allegations were imposed on the Petitioner at the inquiry,

"On 10/08/2014 when officers of the Customs Department went on board the MT LMS Laxapana on its return voyage (068) from Male, the vessel was found to have on board 470MT of Marine Gas Oil(MGO) and 2.4MT of Intermediate Fuel Oil (IFO) 380 Centistokes (CST), whereas respective outward and inward cargo manifest for voyages 067 and 068 delivered to Customs declares no cargo on board, Further a copy of the relevant manifest said to have been delivered to Male Customs found in the possession of

the Captain of the vessel revealed 340MT of MGO and 742MT of IF0380 consigned to a party in Male under BL LMS/LAX/026 and LMS/LAX/027 respectively and 470,775MT of MGO and 2.125MT of IF0380 as in transit cargo. Therefore, the vessel was seized in terms of Section 135 of the Customs Ordinance as she was engaged in smuggling. Subsequently on 11/08/2014 the fuel on board the vessel was conditionally released to be supplied to Chinese naval yessels on Bank Guarantee for Rs.61million. on 14/08/2014 the seizure of the vessel was withdrawn on a Bank Guarantee for Rs.40million and a Corporate Guarantee for Rs.26.4million.

The investigation based on the information and documents so made available revealed that LMS LAXAPANA has made 16 voyages to Maldives from 25/10/2013 to 08/08/2014 for the disposal of marine fuels in Maldives. Accordingly 10,351.438MT of MGO, and 3,850.544MT of IFO 380 have been so disposed in total based on Manifests Reported at Male and Bills of Lading. The said Manifests further records in Transit Cargo reported in Male totaling to has 533.213MT of MGO, 637MT of IFO 180 and 5676.694MT of 380CST. However none of the Outward Manifests and Inward Manifests submitted to Sri Lanka Customs for these voyages report any quantity taken on board from Sri Lanka to Male or from Male to Sri Lanka. Therefore it is evident that LMS Laxapana has so unlawfully taken away, in total, from Sri Lanka 10,884.651MT of MGO, 9527.238MT of IFO 380 and 637MT of IFO 180 during this period. Similarly 533.213MT of MGO, 637MT of IFO 180 and 5676.684MT of 380CST reported in transit in Male have been unlawfully brought back to Sri Lanka or have been disposed unlawfully.

Therefore LMSSL, and those concern are liable for action in terms of section 12,43,44 and 33 of the Customs Ordinance.

The investigation in respect of own consumption of marine fuels to propel the tankers belong to M/S Lanka Maritime Services(Limited), has not being concluded due to the unavailability of sufficient information and documents, although certain incompatibilities noted among the entries in the Oil Record Books, Customs Declarations and Oil Transfer Records of the JCT OIL Bank.

Therefore it is pleaded that any liabilities, if any, arising out of such further investigation, may be taken separately.”

However, following the evidence adduced, the charges were confined to an alleged violation of section 33 of the Customs Ordinance concerning the barge *MT LMS Laxapana's* inward journey from the Maldives to Sri Lanka on or about 10th of August 2014. Specifically, it was alleged that the bunker fuel had not been declared as cargo in the inward cargo manifest. The following charges were accordingly framed:

“a) I call upon M/s Lanka Maritime Services Ltd, represented by Mr. Anuradha Harasgama, General Manager, to show cause as to why I shall not declare forfeit the 470.775mt. of Marine Gas Oil valued at Rs.59, 228,517/- and 2.5125mt of intermediate fuel oil valued at Rs. 181 901/-in terms of Section 33 of the Customs Ordinance.

(b) I call upon M/s. Lanka Maritime Services Ltd, represented by Mr. Anuradha Harasgama, General Manager, to show cause as to why I shall not declare forfeit the vessel MT LMS LASAPANA (IMO REGISTRATION NUMBER:8519382) in terms of Section 33 of the Customs Ordinance.

(c) I call upon Mr. MSM Murukkuwadura the captain of the vessel MT.LMS Laxapana to show cause as to why I shall not order forfeit a sum not exceeding Rs. 100,000/- or Rs. 178,231,254/- being the treble the value of the goods at my election in terms of Section 33 of the Customs Ordinance.”

The Petitioner contends that the above charges framed are in contravention to section 33 of the Customs Ordinance. Accordingly, the Petitioner apprehending an imminent infringement of their Fundamental Rights, made an application to the Supreme Court, bearing case No. SC/FR/163/2016.

Meanwhile, the 4th Respondent has informed the Petitioner that the inquiry has been fixed at 2 pm on 18th of May 2016. The Petitioner, however, maintains that this notice reached him only

later that day. Accordingly, a further letter dated 19th of May 2016 was hand-delivered to the Petitioner, noting his absence from the inquiry and rescheduling it for 10 a.m. on 24th May 2016 for order. Pursuant thereto, the impugned order dated 24th of May 2016 was issued in respect of Customs Inquiry No. INDS/PRJ/13/2014.

“a. to forfeit the 470.775mt of marine gas oil valued at Rs.59,228,517/- and 25,125mt of intermediate fuel oil valued at Rs.181,901/-;

b. to forfeit the vessel MT LMS Laxapana (IMO Registration number 8519382) valued at Rs.40,000,000/-; and

c. to impose a forfeiture in a sum of Rs.100,000/- on the 3rd Petitioner.”

The Petitioner states that on the same day the order was delivered, the 4th Respondent issued two letters dated 24th of May 2016 to the National Development Bank PLC and the Hong kong and Shanghai Banking Corporation (HSBC), demanding encashment of the bank guarantees in the sums of Rs. 59,410,418 and Rs. 40,000,000 respectively, which sums were duly paid to the 1st Respondent (P29 and P30).

Thereafter, the Petitioner has served notice to the Honorable Attorney General under section 461 of the Civil Procedure Code and notice to the Respondent under section 154 of the Customs Ordinance. In response to the said notice, the 5th Respondent by the letter dated 23rd of June 2016, purportedly nominated cash security in the sum of Rs. 15,000,000 to be deposited by the Petitioner to prosecute the aforesaid claim(P34). The Petitioner claims that the nominated security fee is an additional burden on the Petitioner and the actions of the Respondent are *mala fide*. The Petitioner further states that the order dated 24th of May 2016 was made without jurisdiction and is illegal, ultra vires and void and therefore be quashed by writ of certiorari. The application to the Supreme Court, bearing case No. SC/FR/163/2016 was withdrawn by the Petitioner and a writ application is pursued on the following grounds;

“(a) the 2nd Respondent having determined that "the evidence before me referred to the vessel LMS Laxapana entering Sri Lanka" and that "the evidence before me does not identify any other ship that entered Sri Lanka with bunker fuel" and that there "was no evidence presented before me that LMS Laxapana received bunker fuel from another ship

that can be treated as the importing ship", acted ultra vires, unreasonably and/or irrationally and/or committed an error of law in determining that LMS Laxapana is "not a importing vessel" and that instead it was a "boat or other means used for the conveyance of such goods" within the meaning of Section 33;

(b) the 2nd Respondent having determined that "the evidence before me referred to the vessel LMS Laxapana entering Sri Lanka" and that "the evidence before me does not identify any other ship that entered Sri Lanka with bunker fuel" and that there "was no evidence presented before me that LMS Laxapana received bunker fuel from another ship that can be treated as the importing ship", acted ultra vires, unreasonably and/or irrationally and/or committed an error of law in failing to reach the only rational conclusion on the basis thereof, namely, that LMS Laxapana was the "importing ship" and that consequently it could not have been forfeited under Section 33;

(c) the 2nd Respondent having determined in his order that "the evidence before me does not identify any other ship that entered Sri Lanka with bunker fuel" and that there "was no evidence presented before me that LMS Laxapana received bunker fuel from another ship that can be treated as the importing ship", acted ultra vires Section 33 of the Customs Ordinance, unreasonably and irrationally in determining that "it is an irrefutable presumption that the vessel LMS Laxapana had received cargo from an importing vessel";

(d) the 2nd Respondent having determined that LMS Laxapana was "not a importing vessel" and that "the evidence before does not identify any other ship that entered Sri Lanka with bunker fuel" and that there "was no evidence presented before me that LMS Laxapana received bunker fuel from another ship that can be treated as the importing ship", acted ultra vires in applying Section 33 in as much as Section 33 could not have been invoked where LMS Laxapana was not the importing ship and there was no evidence that LMS Laxapana had received bunker fuel from another importing ship;

(e) the 2nd Respondent having determined that LMS Laxapana was not an "importing ship", the 2nd Respondent acted ultra vires by failing to appreciate that on this logic of the 2nd Respondent there was no duty cast on the 1st Petitioner to submit a cargo manifest

and on this same logic of the 2nd Respondent the 1st Petitioner could also never have been faulted for submitting a nil cargo manifest;

(f) the 2nd Respondent acted unreasonably and irrationally in determining on the one hand that according to the evidence placed before the 2nd Respondent LMS Laxapana was intercepted with "undeclared cargo on board" suggesting that the vessel was carrying the cargo on board and on the hand determining that "the captain of the vessel within his knowledge personally aware that there was nothing on board cargo loaded in the tanker" suggesting that there was no cargo on board;

(g) the 2nd Respondent acted ultra vires and in violation of the rules of natural justice in as much as the 2nd Respondent in his decision made a determination based on an entirely new allegation, namely that "it is an irrefutable presumption the vessel LMS Laxapana had received cargo from an importing vessel", which allegation was never made or referred to during the customs inquiry and the Petitioners were never granted an opportunity to adduce evidence at the inquiry in respect of such allegation;

(h) the customs inquiry having being conducted and presented on the basis that LMS Laxapana had transported bunker fuel to Maldives and returned with the remaining bunker fuel on board, the 2nd Respondent acted ultra vires and in violation of the rules of natural justice by formulating a new allegation in the said order, namely that LMS Laxapana had no bunker fuel on board as per the inward port clearance and outward port clearance and therefore "it is an irrefutable presumption the vessel LMS Laxapana had received cargo from an importing vessel";

(i) the 2nd Respondent acted unreasonably, irrationally and ultra vires Section 33 of the Customs Ordinance and committed an error of law, in determining that the letter dated 13th August 2014 issued by Sri Lanka Customs withdrawing the seizure of the vessel to enable bunker fuel "to be supplied to Chinese naval vessels" and the statement in the said letter that the "the vessel is now free to engage in bunkering operations" did not constitute "permission for unshipping":

(j) the 2nd Respondent having determined that Section 33 applied only when "eventually the fuel was unshipped from the vessel acted ultra vires, unreasonably, irrationally and in violation of the legitimate expectation of the Petitioners in as much the 2nd Respondent treated fuel unshipped pursuant to express permission granted by Customs to engage in bunker operations as unshipping contrary to "rules, regulations, and restrictions" within the meaning of Section 33 on the basis that such express permission was granted only as "conditional relief" /"consequential relief":

(k) the 2nd Respondent acted ultra vires in failing to appreciate that treating unshipping of bunker fuel with the permission of Sri Lanka Customs officers as being a violation of Section 33 will also make the customs officers involved in, and/or granting permission for, such unshipping liable under Section 33 of the Customs Ordinance for being "knowingly concerned";

(l) the 2nd Respondent acted ultra vires and in violation of the rules of natural justice in as much as the 2nd Respondent never notified the Petitioners either in the charges framed or otherwise during the customs inquiry the specific "rules, regulations, and restrictions" within the meaning of Section 33 that were alleged to have been contravened by the Petitioners so as to enable the Petitioners to respond to the allegations by reference to the stipulations in them;

(m) the 2nd Respondent acted ultra vires and committed an error of law in acting on the basis that Section 29 of the Customs Ordinance constituted the "rules, regulations, and restrictions as the Director-General may from time to time direct and appoint" in relation to unshipping of goods contemplated in Section 33;

(n) the 2nd Respondent acted ultra vires and committed an error law in failing to appreciate that the legislature intended that a contravention of Section 29 in relation to cargo manifest should only carry the consequences set out in Section 29 and that Section 33 could not be invoked for a contravention of Section 29;

(o) the 2nd Respondent acted ultra vires and in violation of the rules of natural justice by determining that "several Sections of the C.O. require the declaration and the manner in which the declaration has to be made. Failure to give a proper declaration constitutes an

offence in terms of the C.O." in as much as the 2nd Respondent never framed any charges against the Petitioners on the basis of these "several Sections" referred to therein or otherwise notified the Petitioners of what these "several Sections" were prior to making the order or even in the order itself and the Petitioners were never afforded an opportunity of responding to these alleged violations of "several Sections" before the 2nd Respondent made the said order on the said basis;

(p) the 2nd Respondent having determined that Section 33 applied only when "eventually the fuel was unshipped from the vessel" erred in law in failing to appreciate that seizure of the vessel by the letter dated letters dated 10th August 2014 in terms of Section 125 of the Customs Ordinance was admittedly ultra vires in as much as Section 33 had not been contravened at the time of seizure since unshipping of bunker fuel had not taken place in Sri Lanka before that time;

(q) the 2nd Respondent acted ultra vires in failing to appreciate that the obligation to make a declaration in the cargo manifest was only for cargo and that the evidence led at the customs inquiry demonstrated that Sri Lanka Customs had accepted that Bunker Fuel carried in the barge for delivery to other ships was Ships Stores;

(r) the 2nd Respondent acted in violation of the legitimate expectation of the Petitioners in failing to treat Bunker Fuel carried in the barge for delivery to other vessels as Ships Stores despite evidence that Sri Lanka Customs had by its consistent conduct accepted that it was Ships Stores and the 1st Petitioner had acted on the basis that it was ships stores;

(s) the 2nd Respondent acted irrationally and unreasonably in determining on the one hand that "when supplying marine fuel as bunkers for foreign going vessel within the territory of Sri Lanka such supply constitutes supply of ships stores" and on other hand determining that bunker fuel does not constitute ships' stores on the basis that "marine fuel found on board the vessel LMS Lakxapana was not for the propulsion of her sea journey" demonstrating that the 2nd Respondent did not have a consistent notion of ships' stores and that the 2nd Respondent modified the definition for ships' stores to suit the occasion;

(t) the 2nd Respondent acted ultra vires and without jurisdiction in making the said decision on the basis of Section 33 of the Customs Ordinance in as much as Section 33 of the Customs Ordinance did not apply to the circumstances of this case and therefore the said decision of the 2nd Respondent is a nullity;

(u) the said decision of the 2nd Respondent is ultra vires and vitiated by an error of law in as much as the 2nd Respondent has failed to exercise the discretion vested in him under Section 163 of the Customs Ordinance;

(v) the 2nd Respondent has acted ultra vires and committed an error of law in concluding that he does not have jurisdiction to act under Section 163;

(w) the said decision of the 2nd Respondent is unsupported by evidence and/or the said decision is based upon an unreasonable and irrational evaluation of evidence adduced before the customs inquiry;

(x) the said decision of the 2nd Respondent has been motivated by collateral considerations;

(y) the said decision of the 2nd Respondent is unfair, unreasonable and/or irrational;

(z) the said decision of the 2nd Respondent has failed to take into account relevant circumstances and acted upon irrelevant circumstances; and

(aa) the said decision of the 2nd Respondent is vitiated by abuse of discretion and a violation of the principles of proportionality”

ANALYSIS

The impugned orders dated 24th of May 2016 and 23rd of June 2016 rest solely on alleged violations of section 33 of the Customs Ordinance, founded on the barge *MT LMS Laxapana's* return from Male declaring nil cargo while treating residual Marine Gas Oil (MGO) and Intermediate Fuel Oil (IFO) as ship stores per established practice. The Respondents adduced no proof of smuggling, with inquiry proceedings confirming the barge as the sole vessel involved. This Court therefore confines its analysis to section 33 alone.

Section 33 of the Customs Ordinance authorizes the forfeiture of goods unshipped from an importing vessel in breach of the Director-General of Customs' regulations, alongside penalties for persons concerned. The said provision reads as follows:

“33. Goods unshipped from the importing vessel, or landed contrary to the regulations of the Director-General, forfeited. Penalty on persons concerned.

No goods shall be unshipped or carried from the importing ship to any wharf or other place, except under such rules, regulations, and restrictions as the Director-General may from time to time direct and appoint; and all goods unshipped or carried contrary to such rules, regulations, and restrictions, or any of them, shall be forfeited, together with the boat or other means used for the conveyance of such goods; and every person knowingly concerned in the unshipping or carrying of such goods, or into whose hands and possession such goods shall knowingly come, contrary to such rules, regulations, and restrictions, shall forfeit and pay a sum not exceeding one hundred thousand rupees, or treble the value of such goods, at the election of the said Director-General.”

Section 33 of the Customs Ordinance delineates two distinct statutory triggers for forfeiture, each in contravention of the Director-General's regulations:

1. Goods unshipped from the importing vessel; OR
2. Goods carried from the importing ship to any wharf or other place.

These triggers activate only where such unshipping or carriage occurs outside the rules, regulations, and restrictions prescribed by the Director-General, with forfeiture limited to the goods themselves and any ancillary “boat or other means used for the conveyance.”

In the present case, the bunker oils were discovered and seized by Customs officers aboard the barge *MT LMS Laxapana* upon its arrival in Sri Lanka's territorial waters; especially, the oils were not unshipped from the importing vessel to land, any wharf, or other place as contemplated by section 33 of the Customs Ordinance. Their subsequent unshipping and distribution to the Chinese naval vessel occurred only after Customs formally withdrew the seizure notice (P13), upon the Petitioner's compliance with the Respondents' demand for bank guarantees, thereby

ensuring that that the process of “unshipping” was conducted strictly in accordance with the rules, regulations, and restrictions prescribed by the Director-General of Customs.

The inquiry proceedings unequivocally establish that no other ship or vessel was implicated in the alleged contravention, confirming the *MT LMS Laxapana* as the sole vessel in question and negating any inference of external transfer or smuggling activity. Hence, it is evident that no smuggling of goods occurred, and the statutory precondition for invoking section 33 namely, goods being “unshipped or carried contrary to the Director-General's regulations” remains wholly unsatisfied on the facts.

The second aspect of section 33 of the Customs Ordinance provides for forfeiture of goods where the specified conditions are satisfied; however, it expressly limits such forfeiture to the offending goods and the “boat or other means used for the conveyance of such goods,” thereby excluding the importing vessel itself from forfeiture under this provision. By application of the *ejusdem generis* rule, the phrase “boat or other means used for the conveyance” refers to ancillary craft or vehicles employed to transport the goods from the importing ship to the wharf such as; lighters, boats, or small craft and not the importing vessel, which remains distinct as the primary carrier. Forfeiture of ships or vessels is instead governed by separate provisions of the Customs Ordinance. Thus, section 33 does not empower the Director-General to forfeit the *MT LMS Laxapana*, as no “boat or other means” was implicated.

Therefore, the facts manifestly fail to satisfy the statutory precondition under section 33 of the Customs Ordinance as neither the goods were unshipped from the importing vessel, nor carried to any wharf or other place from the importing ship in contravention of the Director-General's regulations. In light of these circumstances including discovery of bunker oils found aboard the *MT LMS Laxapana*, the post-seizure distribution, and the absence of implicated ancillary craft, renders section 33 plainly inapplicable.

The Respondents contend that the Petitioner failed to submit an accurate cargo manifest for the *MT LMS Laxapana* upon its return to Sri Lanka from Male. However, the Petitioner consistently classified and declared the bunker oils as “ship stores” across previous transfers, a practice expressly accepted and approved by the Respondents (P2a–P2c). It is therefore irrational, to now impose inconsistent obligations on the Petitioner contrary to this established course of conduct.

Further, section 33 of the Customs Ordinance does not authorise forfeiture of goods for inaccuracies in a cargo manifest; such offences fall squarely under section 29, which imposes a penalty not exceeding Rs. 100,000 on the master of the ship for failing to deliver an accurate inward manifest or for knowingly making false declarations therein. The Respondents failed to invoke section 29, levy any such penalty, or even allege a breach thereof, instead had erroneously misapplied section 33, where the statutory preconditions, as established above, remain wholly unsatisfied on the facts of this case.

CONCLUSION

Accordingly, this Court finds that the decisions embodied in the Respondents' order dated 24th of May 2016 and letter dated 23rd of June 2016 are *ultra vires* as for the provisions of Customs Ordinance and void ab initio as it constitute misapplication of section 33.

Therefore, this Court grants a writ of certiorari quashing the decision of the 2nd Respondent contained in the order dated 24th May 2016; and the decision of the 5th Respondent contained in the letter dated 23rd June 2016.

This Court further grants a writ of mandamus as per prayer 'e' directing the Respondents to refund the Petitioners all sums levied or acquired pursuant to the order dated 24 May 2016.

Judge of the Court of Appeal

R. Gurusinghe J.

I agree

Judge of the Court of Appeal