

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

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

Superlight Consolidated Pvt Ltd,
No. 258/22,
Dam Street,
Colombo 12

CA (Writ) App. No. 961/2025

PETITIONER

Vs.

1. P.I. Udaya,
Inquiring Officer,
Senior Deputy Director of Customs,
Sri Lanka Customs.
2. M.M.M. Mursideen.
Assistant Preventive Officer,
Preventive Directorate,
Sri Lanka Customs.
3. K.L.D. Malwita,
Director of Customs,
Preventive Directorate,
Sri Lanka Customs.
4. I.U.K.T. Jayawardane,
Director of Customs,

Central Disposal Directorate,
Sri Lanka Customs.

5. Seevali Arukgoda,
Director General of Customs,
Sri Lanka Customs.

All of;
Sri Lanka Customs,
No. 40, Main Street,
Colombo 11.

6. Laugfs Salt & Chemicals Ltd,
No. 101,
Maya Avenue,
Colombo 06.

7. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

Before: S. U. B. Karalliyadde, J

Dr. D. F. H. Gunawardhana, J.

Counsel:

Saliya Pieris, P.C. with Geeth Karunaratne, Bojaya Kasun and Dhimarsha Marso for the
Petitioner instructed by Dinush Randeniya.

Suren De Silva with Jehan Samarasinghe for the 6th Respondent instructed by JK Chambers
Attorneys-at-Law.

A. Jayakody, S.C. for the rest of the Respondents.

Supported on: 07.10.2025

Order delivered on: 10.10.2025

Dr. D. F. H. Gunawardhana, J.

Order

Introduction

The Petitioner is a body corporate duly incorporated under the Companies Act, No. 7 of 2007, which is capable of suing and being sued in its corporate name. Further, the Petitioner claims that he is the local buyer of a certain consignment of salt imported by the 6th Respondent as the consignee. The 1st Respondent is the Senior Deputy Director of Customs, who held an inquiry and delivered an order on 29.09.2025 (**P17**), and the 2nd Respondent is an Assistant Preventive Officer, attached to the Sri Lanka Customs, who investigated the matter. The 3rd Respondent is the Director of Customs, under whose supervision the investigation was conducted. The 4th Respondent is the Director of Customs, who is authorized to conduct the sales according to the tender (impugned). The 5th Respondent is the Director General of Sri Lanka, appointed in terms of the Customs Ordinance, No. 17 of 1869 (as amended), and the 1st to 3rd Respondents are his subordinates. The 6th Respondent is the consignee of the goods, whilst the 7th Respondent is sued in his representative capacity as Attorney General.

The consignment of certain salt imported by the 6th Respondent (later purchased by the Petitioner) has been seized by the Customs. Several seizure notices have been issued in terms of Section 125 of the Customs Ordinance, the said notices are marked as **P13**, **P14**, and **P16**. After an inquiry, the 1st Respondent has decided to confiscate the entire consignment of salt imported by the 6th Respondent and claimed by the Petitioner, by his order contained in **P17**. In addition to that, he

has decided to confiscate the vessel MV *Stella Beauty* by the same order in terms of Section 125 of the Customs Ordinance. In the circumstances, the Petitioner challenged the same and sought a *Writ of Certiorari* to quash the orders contained thereof.

However, thereafter, by letter marked as **P18**, the two orders made in respect of the cargo and the vessel have been cancelled by the 2nd Respondent and pending inquiry in terms of Section 135 of the Customs Ordinance. The vessel MV *Stella Beauty* has been released on a guarantee, whilst seizure in respect of the cargo still continues to operate pending the inquiry under Section 135 of the Customs Ordinance. In the meantime, the 1st Respondent has called for tenders to auction the seized cargo.

In those circumstances, the Petitioner has sought, *inter alia*, the following reliefs from this Court, invoking the writ jurisdiction of this Court:

“(a) Issue notice on the Respondent;

(b) Call for the original case record of the customs Case No. PREV/2025/00266/CCR/002090 before Your Lordships Court;

(c) Grant and issue and interim order staying any further proceedings of customs case no. PREV/2025/00266/CCR/002090 until the final determination of this application;

(d) Grant and issue and interim order restraining the 1st to 5th Respondents and/or any of their subordinate officers from taking steps to auction and/or tender and/or dispose, the consignment morefully described in P19 until the final determination of this application;

(e) Grant and issue interim order directing the 1st to 5th Respondents and/or any of their subordinate officers to release the consignment morefully described in P19 subject to a guarantee provided by the Petitioner subjected to the payment of the relevant duty;

(f) Grant and issue a mandate in the nature of a Writ of Certiorari quashing the impugned order dated 02.09.2025 produced marked P17 delivered under the customs case no. PREV/2025/00266/CCR/002090;

(g) Grant and issue a mandate in the nature of a Writ of Prohibition restraining the 1st to 5th Respondent and/or any of their subordinate officers from taking steps to auction and/or dispose, the consignment morefully described in P19;

(h) Grant and issue a mandate in the nature of Writ of Mandamus compelling 1st to 5th Respondents and/or any of their subordinate officers to release the consignment morefully described in P19 to the Petitioner;

(i) Grant and issue a mandate in the nature of Writ of Mandamus compelling 1st to 5th Respondents and/or any of their subordinate officers to comply the Special Imports and Export (Control) Regulations No. 06 of 2025 contained in the Gazette produced marked P2;”

This case was supported before us on 07.10.2025 and the following arguments were advanced before us by the parties.

Argument

Mr. Peiris’s contention is that now the Respondents are taking steps to have a fresh inquiry; thereafter, if they decide that the shipment had been on the ship after the due date, namely 06.06.2025, they will auction the goods on their own without following the Gazette Extraordinary bearing No. 2437/04, as the Respondents are not entitled to auction it, but must allow the consignee to re-export it. Therefore, the Petitioners are entitled to notice for the time being in challenging the order marked as **P17** in light of the document marked as **P18**.

However, on the other hand, Mrs. Jayakody argued that so far, the forfeiture made in terms of Section 135 of the Customs Ordinance is vacated by **P18** in respect of the consignment of salt as

well as the vessel. However, Customs has decided to proceed with an inquiry in terms of Section 125 of the Customs Ordinance. She further contended that no order has been made, as such even notice should not be issued in this Application as Customs has not decided on whether the consignment should be forfeited or confiscated, based on the Bill of Lading and commercial invoice.

In reply, Mr. Peiris argued that his client, the Petitioner not only sought to prevent the Respondents in taking any decision for forfeiture but also has sought a *Writ of Prohibition* preventing the Respondents from taking any action to auction or dispose of the consignment of salt. Further, he has sought a *Writ of Mandamus*, compelling the Respondents to release the consignment to the Petitioner.

The Counsel for the 6th Respondent, informed the Court that he will associate the submission of Mr. Salia Peiris, P.C., and contended that the consignment should be released to the Petitioner.

However, he sought the Court's permission to submit a document by way of an affidavit, stating that the 6th Respondent had informed the 1st to 5th Respondents that they need not release the consignment of salt imported by him to the Petitioner. However, Mr. Peiris vehemently objected to this, as he had not been given an opportunity to respond. Accordingly, we do not allow Ms. Jayakody to submit the said document at this stage by motion, before the order on the issuance of notice or interim relief is considered.

Now I will consider the facts relating to this case.

Factual matrix

According to the Petition, there was a salt shortage experienced by the Island Nation; therefore, the Government in power, by an Extraordinary Gazette bearing No. 2437/4, issued under the Import and Export (Control) Act, No. 1 of 1969 (as amended), a regulation to facilitate the import

of salt due to the said salt shortage. Therefore, the said special regulation prevails over the General Regulation No. 1 of 2023, which restricted the importation of certain items into the country. According to the prevailing Gazette, which was in effect at that time, bearing No. 2437/4, it provided that consignments of raw, non-iodized salt and edible iodized salt (powdered and granulated salt) classified under HS Code 2501, listed in Schedule 1 of the said regulation, were permitted for import. As such, no consignment on board available on 10.06.2025 was subjected to any importation control. Accordingly, the 6th Respondent has imported a certain consignment of salt (exactly 6,000 metric ton). According to the Bill of Lading issued by the agents or the captain of the motor vessel MV *Stella Beauty*, dated 07.06.2025, the said consignment had been loaded onto the vessel on 07.06.2025, and the Bill of Lading is marked as **P3**. The vessel MV *Stella Beauty* departed the port of Tuticorin carrying the said consignment and arrived at the port of Trincomalee on 18.06.2025. When the said consignment arrived on 18.06.2025, the Sri Lanka Customs has prevented the Petitioner, the 6th Respondent or their agents from clearing the cargo.

Thereafter, the said consignment was seized by Customs on the basis that the Bill of Lading contained false or inaccurate information. It is the position of the Petitioner that the consignment was available for shipment from 04.06.2025 until departure of the MV *Stella Beauty*. Further, the loading was delayed due to two operational difficulties; namely severe congestion at the Tuticorin port and mechanical failure of the vessel's crane. Therefore, the loading commenced only on 10.06.2025 and was duly loaded onto the vessel MV *Stella Beauty*. It was also admitted by the parties at the inquiry at Customs that the loading commenced at 0200hrs on 10.06.2025. Therefore, the Bill of Lading was also dated the same. Nevertheless, it is the position of the Petitioner that the Bill of Lading marked as **P3** still falls within the extraordinary Gazette No. 2437/4, since it is indicated on the Bill of Lading that the goods available on board of the the vessel MV *Stella Beauty* on 10.06.2025. However, the Sri Lanka Customs treated it otherwise.

Inquiry by the Customs

The Director General of Customs, the 1st Respondent, has initially decided to read it as goods smuggled into Sri Lanka and decided to treat that it should be confiscated. Accordingly, embarked upon an inquiry in terms of Section 125 of the Customs Ordinance, which reads thus;

*“125. All goods and all ships and boats which by this Ordinance are **declared to be forfeited shall and may be seized** by any officer of the customs; and such forfeiture of any ship or boat shall include the guns, tackle, apparel, and furniture of the same, and such forfeiture of any goods shall include all other goods which shall be packed with them, as well as the packages in which they are contained; and all carriages or other means of conveyance, together with all horses and all other animals, and all other things made use of in any way in the concealment or removal of any goods liable to forfeiture under this Ordinance, shall be forfeited.”* [Emphasis is mine]

After inquiry, the 5th Respondent decided to forfeit the same. However, now, 2nd Respondent on behalf of the 5th Respondent decided to vacate the said order of forfeiture for both consignment and vessel, and release the vessel on a bank guarantee, and embarked upon an inquiry in terms of Section 135 of the Customs Ordinance which is reproduced below;

*“135. All goods, and all ships and boats, and carriages and all cattle, **liable to forfeiture under this Ordinance, shall and may be seized** in any place, either by land or water, by any officer of the customs or police, or any Grama Seva Niladhari, or any person employed for that purpose, by or with the concurrence of the Minister and every person who shall in any way hinder, oppose, molest or obstruct any officer of the customs or police, or any Grama Seva Niladhari, or any person so employed as aforesaid in the exercise of his office, or any person acting in his aid or assistance, or shall rescue, or cause to be rescued any goods which have been seized, or shall attempt or endeavor to do so, or shall before or at or after any seizure stove, break, or otherwise destroy any goods to prevent the seizure thereof, or shall rescue the same, then and in any such case the party so*

offending shall be guilty of an offence, and shall for every such offence forfeit a sum not exceeding one hundred thousand rupees.” [Emphasis is mine]

Therefore, it can be seen now that the 5th Respondent, the Director General, has decided to treat the vessel and the consignment are “**liable to be forfeited only**”, and not acted on the premise of “**declared to be forfeited**”. Thus, there is a difference between the two sections (between Sections 125 and 135 of the Customs Ordinance) in treating the goods and vessels seized. Therefore, at the inquiry, depending on the inquiry officer’s finding, “**it can be forfeited**” under Section 135 (emphasis is mine); however, it had seized on the premise that the consignment and the vessel are to be forfeited. Therefore, forfeiture is already decided. Now the 5th Respondent decided to later set aside the said order of forfeiture of the vessel and consignment by **P18** and embarked upon an inquiry in terms of Section 135. Then burden is on the Investigating Officer (Customs) to establish that consignment and vessel are liable to be forfeited and seizure has taken place on that basis. Therefore, this application appears to be a pre-emptive measure on the part of the Petitioner.

In support of my view, I wish to cite *Hong Lam Integration Pvt Ltd and Another vs Mrs. P.S.M. Charles and Others*¹, where Sobhitha Rajakaruna, J., commenting on an application seeking a writ in the very same Court (Court of Appeal), against an inquiry embarked upon in terms of Section 135 of the Customs Ordinance, held that seeking a writ before a decision is taken is a premature application. His Lordship had this to say:

“In the case above the court has further observed that, “the remedy by way of an application for a writ is not proper substitute for a remedy by way of a suit, specially where facts are in dispute and in order to get at the truth, it is necessary that the questions should be canvassed in a suit where the parties would have ample opportunity examining their

¹ Hong Lam Integration Pvt Ltd and Another vs Mrs. P.S.M. Charles and Others [CA(Writ) 147/2019] [CA Minute 16th July 2021]

witnesses and the Court would be better able to judge which version is correct, has been laid down in the Indian cases of Ghosh v. Damodar Valley Corporation, AIR 1953 Cal. 581 and Parraju v. General Manager B.N. Rly. AIR 1952 Cal. 610."

Therefore, this court takes the view that the questions raised by the Petitioners can be easily and effectively canvassed at the inquiry which is to be held at the Sri Lanka Customs. Even if the court decides to issue notice in this matter the court will have to determine the legality of the relevant decisions only upon the averments contained in the Petition. However, the facts disclosed in the averments of the Petition are in dispute and those facts are going to be investigated by another forum/tribunal. This court is unable to decide the legality of those decisions without going into questions of fact involved in this case. Accordingly, the Petitioners have made a premature application before this court and have failed to establish a prima facie case."

No decision was taken so far

The relevant authority, namely the Director General (5th Respondent), has so far not taken any decision on whether the said consignment of cargo or the vessel is liable to be forfeited as there was no finding. In those circumstances, decision has to be taken only on the findings after inquiry. Only when there is a finding, consequently when there is a decision on that finding; and if such a decision affects the rights of the parties, namely the Petitioner, then it can be challenged by way of a *Writ of Certiorari*. Until then, as there is no such decision, except for the seizure notice based on the information on the Bill of Lading, marked as **P3**, read with Statement of Facts issued by the Captain (marked as **P6**) and the Commercial Invoice marked as **P7**, the goods have been seized by the said seizure notice.

The seizure notice has been so issued on the basis that the consignment of 6,000 (Sixty-Eight Thousand) metric ton of salt has been brought to the Island as a restricted item according to the special Gazette Notification, marked as **P2** along with the Petition; the consignment has been loaded when the time was lapsing, as provided for that in **P2**, because the loading had started in 0200hrs on 10.06.2025, and ended five days later at 1200hrs on 15.06.2025 after the time provided. However, if on the documentation the Petitioner is still entitled to convince the 5th Respondent or any other officer of the Customs, it is *vis-a-vis*.

Conclusion

It is my view that no writ lies as there is no decision taken by any of the Respondents so far under Section 135 of the Customs Ordinance.

For the reasons adumbrated above, it is my view that this is a pre-mature application. Accordingly, I refuse to issue formal notice, and the application is dismissed *in limine* without costs.

JUDGE OF THE COURT OF APPEAL

S. U. B. Karalliyadde, J.

I agree.

JUDGE OF THE COURT OF APPEAL