

**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 Writ
Application No:

CA/WRT/803/2025

1.M.M.K. Rafeek,
12/22, Vellai Manal Road,
Thondy Ramanadapuram,
Tamil Nadu, India.

and Now No. 03, Ibrahim Beevi Line,
Thondi PO, Thiruvadanaï,
Ramanadathapuram,
PIN 623409, Tamil Nadu, India.

And Another

PETITIONERS

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

And 02 Others.

RESPONDENTS

Before: Hon. Justice N. R. Abeysuriya PC (P/CA)

Hon. Justice K. P. Fernando

Counsel: Lakshmanan Jayakumar with Sanjaya Wilson Jaysekara for the
Petitioner instructed by Chathuri Samarasingha

Manohara Jayasinghe, DSG for the Respondents.

Supported On: 30/10/2025 and 04/11/2025

Decided On: 19/01/2026

N. R. Abeysuriya, PC, J. (P/CA),

In this matter, the Petitioners have prayed for *inter alia* the following reliefs;

- a) *Issue a Mandate in the nature of a Writ of Certiorari, quashing the purported decision of the 2nd Respondent dated 15th May 2025, to frame charges against the Petitioners under Sections 12, 44, 107A (2), and 130 of the Customs Ordinance;*
- b) *Issue a Mandate in the nature of a Writ of Prohibition, prohibiting the 1st and/or 2nd and/or 3rd Respondents, their agents, officers, subordinates and/or successors from taking any further steps pursuant to and/or in relation to Customs Inquiry No. BENSP/NCU/2023/00064/CCR/01949;*
- c) *Issue a Mandate in the nature of a Writ of Mandamus, compelling the 1st Respondent and/or 2nd Respondent to release forthwith the entirety of the gold productions seized from the Petitioners under Customs Inquiry No. BENSP/NCU/2023/00064/CCR/01949, and to return same to the lawful possession of the 1st and/or 2nd Petitioner(s);*

The 1st Petitioner is a male person who is a citizen of India and from the state of Tamil Nadu. The 2nd Petitioner is a female person who is a citizen of Sri Lanka and residing in Maggona. It seems that these two individuals are total strangers who had no interaction prior to the incident in issue. The 1st Petitioner was enroute to India from Dubai transiting at the Bandaranaike International Airport (BIA). The 2nd Petitioner was flying to India and departing from BIA Katunayake. It should be noted that the two Petitioners were booked on different flights destined to India. It is common ground that the BIA doesn't have a separate transit and departure lounges unlike most other International Airports and has only one terminal building. Due to this reason, both departing

passengers from Sri Lanka and transit passengers can interact with each other without any restrictions at the Departure Lounge.

What has transpired at the Departure Lounge at BIA involving the two Petitioners is somewhat bizarre to say the least. It appears that the two Petitioners have in some manner establish contact at the Departure Lounge and a part of a consignment of gold which was been carried by the 1st Petitioner who was a transit passenger was handed over to the 2nd Petitioner to be taken to India.

What is even more bizarre is the fact that the said stock of Gold which was been carried by the 1st Petitioner was not in the form of solid gold bars, coins or jewellery but in “gel” form which is an uncommon and unusual method of transporting gold. It was also admitted by the Counsel for the 1st Petitioner that when the gold gel was taken out of Dubai the 1st Petitioner has declared the same to be “gold bars”.

No plausible and acceptable explanation has been offered by the Petitioners with regard to this entire series of acts which viewed objectively is suspicious at the least and contrary to normal conduct of persons engaged in a licit activity.

It is hard to imagine as to why gold was exchanged between two complete strangers who have never met before and both of whom were travelling to the same city in India but on different flights on the same day.

Both the Petitioners were arrested at the Departure Lounge of the BIA on suspicion. The Customs authorities thereafter had commenced a customs inquiry and its determination is currently awaited.

The Petitioners do not dispute the factual matrix of the instant matter as referred to above. However, the primary contention of the Petitioner is that since the alleged act of transferring a stock of gold from the 1st Petitioner to the 2nd Petitioner took place at the Departure Lounge of the BIA where the 1st Petitioner was in transit, there was in fact no “importation” or “exportation” of gold. It was submitted on behalf of the Petitioners that the gold in issue was not intended to be brought into the country or taken out of Sri Lanka because the gold was not brought out of the confines of the Departure/Transit Lounge of the BIA. Due to the said reason, it was submitted that this matter would not come under the purview of the Customs Ordinance and therefore no inquiry under the said ordinance could be conducted. The Petitioners cited several judicial authorities with regard to the scope and ambit of “import” and “export” in order to justify the stance of the Petitioner.

At this juncture, it would be pertinent to consider certain provisions of the customs ordinance. Sec 12 of the Customs Ordinance reads thus,

“(1) The goods enumerated in the table of prohibitions and restrictions in Schedule B shall not be imported or brought into or exported or taken out of Sri Lanka save in accordance with the conditions expressed in the said Schedule.*

“(2) Parliament may from time to time, by means of a resolution duly passed at any public session, amend Schedule B by the addition thereto of any goods other than those enumerated therein or by the omission therefrom of any goods enumerated therein or otherwise, and regulate the conditions subject to which the importation or bringing into or the exportation or taking out of Sri Lanka of any goods enumerated in the said Schedule* is prohibited or restricted”*

In the instant matter the fact that gold is a restricted item is not in dispute. As per Sec 12(2), Schedule B may be amended from time to time by way of a resolution passed by parliament in order to add or remove any item to or from the schedule. A formal amendment to the customs ordinance is not required.

The terminology used in Sec 12(1) is “imported or brought into” or “exported or taken out of Sri Lanka”. It was the contention of the Respondents that due to the manner in which Sec 12(1) is drafted, restricted items which are not brought into the country through formal channels are also subjected to the jurisdiction of Sri Lanka Customs since those have been “brought in” to the country. If in fact the terms “imported” and “brought in” have the same meaning there was no necessity for the legislature to include both sets of words in Sec 12(1). The same shall apply to the terms “exported” and “taken out” of Sri Lanka.

Sec 127 of the customs ordinance is applicable to arrest made under the said law. Sec 127 reads as follows,

“Every offence under this Ordinance shall be deemed to be cognizable within the meaning of the Code of Criminal Procedure Act, and any person against whom a reasonable suspicion exists that he has been guilty of any such offence may be arrested in any place either upon land or water by any officer of customs or other person duly employed for the prevention of smuggling. Every person so arrested shall with all convenient despatch, be taken before the nearest Collector of Customs to be dealt with according to law.”

Upon the plain reading of the said section it is clear that if a **reasonable suspicion** exist that a person has committed an offence under the customs ordinance such a person maybe arrested **in any place** by officers of Sri Lanka Customs.

In the instant matter the exchange of gold have taken place in the transit/departure lounge. By the time a departing passenger reaches the departure lounge that person would have completed all customs formalities which includes customs declaration made in respect of restricted items such as gold. The said lounge is indeed situated in the territory of Sri Lanka and as such Sec 127 of the Customs Ordinance is applicable even to the departure/transit lounge.

In the case of **Abdul Vahid Shaul Hameed vs Director General of Customs and others, (CA/WRT/ 19/2020) decided on 27.02.2023**, Sasi Mahendran J has made the following observations,

*“Thus, a transit passenger is at liberty to enjoy the transit promenade or engage in his or her lawful business activity or employment as a transit passenger pleases. However, the moment such a passenger is engaging in any unlawful business or the business of smuggling, as rightly held in the impugned order, such passenger loses that privilege and opens himself up to face the law enforcement authorities. The Customs has jurisdiction provided there is “reasonable suspicion” that a person is “guilty of any such offence”. That is a condition precedent that must be established prior to exercising jurisdiction. It is equally important that the officers must act bona fide (vide **Dias v. Director General of Customs 2001 3 SLR 281**).”*

It was the contention of the Respondents that there exists a reasonable suspicion in the instant matter with regard to the conduct of the Petitioners in a situation where the 2nd Petitioner having completed customs formalities and after reaching the Departure Lounge accepts a stock of gold from a complete stranger to be taken out of the country. The Learned Deputy Solicitor General submitted that upon an objective consideration of the factual matrix of this matter, the irresistible inference which may be drawn is that the bizarre conduct of the Petitioners was due to the fact that they intend to transgress provisions of Customs and any other applicable laws. If not, there ought to be a satisfactory and reasonable explanation forthcoming from the Petitioners.

In this context the Respondents have cited the case of **Panchalingam Associates (Pvt) Ltd vs The Monetary Board and others**

(CA/WRIT/145/2018) decided on 28.07.2020. I wish to cite the following passage from the aforesaid judgment of Samayawardhana J,

*“At this juncture, I must also make reference to the Wrongdoer Principle, which seems to be the further development of the Roman-Dutch Law principle spoliatus ante debet omnia restituendus est¹ The Wrongdoer Principle demands “A wrongdoer shall not be allowed to benefit out of his own wrongdoing.” Vide **Seelawathie Mallawa v. Millie Keerthiratne²** **Subramaniam v. Shabdeen³** and **Kariyawasam v. Sujatha Janaki.⁴** *Ex turpi causa non oritur actio* is another legal doctrine worth mentioning at this stage, according to which “a party cannot be permitted to pursue a legal remedy if it springs from his own illegal act.”*

The Respondents strenuously contended that had it not been for the unexplained and irregular conduct of the Petitioners there would not have arisen a situation which necessitated the institution of proceedings before this Court by way of a writ application.

As stated previously in this order the Customs authorities have not yet made any order/direction with regard to any violation of the Customs Ordinance. Prior to the Customs inquiry reaching the aforesaid stage, the Petitioners came before this Court by way of the instant writ application. In that context, the Respondents contend that the instant writ application is “premature” and as such should be dismissed. The attention of this Court was drawn to several judicial authorities with regard to the aspect of prematurity.

In the case of **Dr. Ranjit Fernando vs Sri Lanka Medical Council ([2003] 3 Sri L.R 173)**, the Court of Appeal has considered the aspect of prematurity and dismissed the application. Similarly in the case of **Peli Kankanamge Chandrasiri vs Department of Debt Conciliation Board and others (CA/WRIT/263/2024) decided on 26.09.2025** the writ application was dismissed. This case pertains to an order made by the 1st Respondent which is the Department of Debt Conciliation Board. In the said case, the Court held thus,

“As stated earlier in this Judgment, the Board had commenced its inquiry to ascertain the possession of the debtor. The said impugned decision clearly

¹ This means the party dispossessed ought first of all to be restored. Vide *Enso Nona v. Somawathie* [1998] 3 Sri LR 239 at 244.

² [1982] 1 Sri LR 384.

³ [1984] 1 Sri LR 48 at 56.

⁴ [2013] BLR 77.

states that the Board has conducted this inquiry into possession of the impugned premises. Further, the Board in its Order has specifically stated that the evidence led is only considered for the purpose of the possessory inquiry (page 294 of the brief). Hence, it is clear that the outcome of this inquiry is not final and the Board has not determined the final dispute between the parties. Further, as reflected on page 300 of the brief, the Board thereafter had fixed the matter for inquiry. Hence, in the absence of a final determination, **the instant Writ Application before this Court becomes a premature application which is not subject to be quashed by a Writ of Certiorari.**

The Supreme Court in the case of Ceylon Mineral Waters Ltd v. The District Judge, Anuradhapura (1966) 70 NLR 312 held that “an application for Writs of Certiorari and Prohibition should not be made prematurely.” Further, the Court of Appeal in **Wickrama Arachchi Athukoralage Asantha Udayakara v. Mr. Priyantha Weerasooriya, Inspector General of Police CA/WRIT/725/24 decided on 30.01.2025** followed the above decision.”

In **Lindagawa Gedara Lalani Dhamayanthi Karunasena vs Mr. R.M.C.M. Herath and others (CA /Writ Application No. 149/2020) decided on 05.04.2022** the Court considered several judicial authorities with regard to the aspect of prematurity and dismissed the writ application. In this case the writ application was filed prior to the 3rd Respondent in that matter who is a Divisional Secretary could take steps which he was obliged to do was considered to be premature. The court considered the judgment in **Ceylon Mineral Water, Ltd v. District Judge, Anuradhapura 70 NLR 312** in which it was held thus,

“The application made by the petitioner for Writs of Certiorari and Prohibition is premature. At the present moment, there is no order of the District Court of Anuradhapura to be reviewed by this court and so there is no reason to issue a writ of certiorari. As there is no evidence to show that the District Court of Anuradhapura is about to determine the claim made to the motor car seized in execution of the decree of that Court, no writ of prohibition can be issued. We therefore dismiss the petition. The dismissal of this petition should not be considered as a bar to the petitioner, if so advised, filing a new petition in appropriate circumstances.”

Similarly in **Maheshwary Thambirajah vs W. Waragoda and others (CA/WRIT/376/2014) decided on 17.05.2019** the Court dismissed the writ application with cost on the ground that the writ application for certiorari was premature and not ripe for review. In this case the Petitioner filed the writ application seeking to quash by way of writ of certiorari a section 2 notice issued under Land Acquisition Act No. 09 of 1950 as amended. In this case the Court cited with approval the Judgment of Shiranee Tilakawardena J in **Gunasekara v. The Principal, MR/Godagama Anagarkika Dharmapala Kanishta Vidyalaya and Others (CA 388/2000-CAM 17.07.2002)** Samayawardhena, J in the Thambirajah case has cited the following paragraph of the Gunasekara case,

“Another matter that is relevant to this application is that at the time of filing of this application the acquisition proceedings were at an initial stage, and only notice under Section 2 of the Land Acquisition Act had been issued. A notice in terms of Section 2 of the Land Acquisition Act is issued when the Minister decides that the land in any area is needed for any public purpose. The Section 2(1) notice is issued with the objective of making a survey of a land and making boundaries thereon and to determine whether a land would be found within its parameters that would be suitable for the public purpose of the said Act.”

Furthermore, His Lordship Justice Samayawardhena in the Thambirajah case referring to the judgment in the Gunasekara case held thus,

“Justice Tilakawardene went on to hold in this case that the application for writ of certiorari was premature in the circumstances of that case, and should be dismissed in limine. Similarly, in Lucian de Silva v. Minister of Lands (CA 233/81-CAM 22.07.1982) and Wickremasinghe v. Minister of Lands (CA 235/81-CAM 22.07.1982), it was held that steps taken under Section 2 of the Land Acquisition Act are only investigative in character, and that it is premature to invoke the writ jurisdiction of our courts with a view of quashing a Section 2 notice.”

I also wish to cite the order of Gihan Kulathunga J in **Manchanayaka Arachchige Dinesh Nimantha Lakmal and another vs Director General of Customs and others (CA/WRT/0814/24) decided on 03.09.2025**. In the said writ application the Petitioners *inter alia* sought a writ of *certiorari* to quash the decision to name the Petitioners as suspects in a customs inquiry. In this case also the writ application was dismissed on the ground that it was premature. In arriving at the decision to dismiss the writ application

Kulathunga J has cited the judgment of Justice Sriskandarajah, in **Anton Clement Thomas Dawson and another vs. Neville Gunawardene CA Writ Application No. 77/2012 (CAM 16.03.2012)**, in which the scope of an inquiry under the Customs Ordinance was considered and opined that,

“It appears that the inquiry is to ascertain what are the charges that could be framed in the given circumstances. So it is left to the Customs Officials to ascertain facts either from any witness or from suspects to frame a charge and thereafter to explain the charge to the suspect and to give him an opportunity to call for evidence. But at the end of leading evidence if the Customs find, that there cannot be charge framed, the inquiry will come to an end at that point.”

Having considered the aforementioned judgments of Justice Sriskandarajah, Kulathunga J has held thus,

*Accordingly, it is upon the initial inquiry that charges may be framed, if there be evidence to support such charges. It is at this point one could determine and ascertain what the probable charges could be. To that extent, this application may be premature, as the formal charges are yet to be determined. An application for writ being premature is a basis to reject the same. This principle was considered in **Ceylon Mineral Waters Ltd. vs. The District Judge of Anuradhapura (70 NLR 312)**, where Abeyesundere, J., held that if there is no order to be quashed at the time a certiorari is applied for, that remedy will be refused for that reason alone. This decision was cited with approval in **U. A. Nissanka vs. Chulananda Perera Director General of Customs and others CA Writ Application No.377/2016 (CAM 15.07.2022)**. As explained in *Wade & Forsyth on Administrative Law (9th Ed., at page 518)*,*

*“If confusion and complication are to be avoided, judicial review must be accurately focused upon the actual existence of power and not upon the mere preliminaries. The House of Lords perhaps appreciated this point in **R vs. Secretary of State for Employment ex p Equal Opportunities Commission [1995] 1 AC 1...** a case of prematurity, where the issue was not ripe for review.”*

The decision of the 2nd Respondent dated 15.05.2025 is contained in the document marked P10(a). The said document contained several charges framed against the Petitioners under the Customs Ordinance. If at the end of the proceedings before the Customs authorities; there appears to be no evidence against the Petitioners for violation of provisions of the Customs Ordinance, they may be discharged. However the instant writ application seems to have

been filed prematurely before the Customs authorities made a determination on the culpability of the Petitioners at the end of the aforesaid inquiry.

In the aforesaid circumstances, I hold that the Petitioners have not established a prima facie case warranting the issuances of notices on the Respondents.

Application is dismissed.

PRESIDENT OF THE COURT OF APPEAL

K. P. Fernando, J.

I agree.

JUDGE OF THE COURT OF APPEAL