

**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 and
Prohibition under and in terms of Article 140
of the Constitution of the Democratic Socialist
Republic of Sri Lanka.

C.A. CASE NO. WRT/0814/24

1. Manchanayaka Arachchige Dinesh
Nimanthan Lakmal,
No. J/03, 05th Lane,
Hendala, Wattala.
2. Mohamed Iqbal Mohamed Irfan,
No. 189/01, Maradana,
Beruwala.

PETITIONERS

Vs.

1. P.B.S.C. Nonis,
Director General of Customs,
Sri Lanka Customs,
No. 40, Main Street,
Colombo 11.
2. Gunawardana Jayathungage Vimukthi
Rukantha,
No. 60/9/17,
Sahaspura Straight Line Road,
Colombo 08.
3. Mohamed Althaf Nazeer,
8/1, Rich Tower,

No. 19, Jaya Road,
Colombo 04.

4. Warnakulasuriya Patabandige Ravindra
Rukman Perera,
No. 08, Munhena Road,
Makgona.

5. M. Anton Gnanapragasm,
363, Pathirana Place,
Pethiyagoda,
Kelaniya.

6. Mary Sanjeev Ani Silva,
No. 07, Diyalagoda,
Akuburugoda,
Maggona.

RESPONDENTS

BEFORE : K.M.G.H. KULATUNGA, J.

COUNSEL : Faiszer Musthapha, PC with Shaheeda Barrie and Amila Perera
instructed by Sanjeeva Kaluarachchi for the Petitioner.
K. D. Sampath, SC, for the Sri Lanka Customs.

SUPPORTED ON : 26.08.2025

DECIDED ON : 03.09.2025

ORDER

K.M.G.H. KULATUNGA, J.

1. This application *inter alia* is seeking a writ of *certiorari* to quash the decision to name the petitioners as suspects in a Customs Inquiry bearing No. PREV/2022/0079/CCR/072, was preferred by the

Petitioner. The same was taken up for support on 26.08.2025 and the order as to the granting of leave was reserved and this Order is accordingly made.

2. The learned Counsel for the petitioner, Mr. Faiszer Musthapha, President's Counsel's main concern was that the petitioner is now charged in the Magistrate's Court of Colombo under case No. B/68379/06/22 in respect of the detection of a quantity of imported cigarettes being a violation *inter alia* under the Customs Ordinance as well as the Penal Code. As such, the learned President's Counsel vehemently argued that the Customs cannot parallelly have a Customs Inquiry in respect of the same issue. Accordingly, he moved that notice be issued in respect of this matter. As opposed to the same, the learned State Counsel on behalf of the respondents submitted that the Customs Inquiry is different and distinct from the criminal action filed and pending the MC and there is no legal impediment to institute and proceed with both the Magistrate's Court matter as well as with the Customs Inquiry.
3. The facts as evident from the initial B Report may be summarised as follows: a division of the Special Task Force of the Sri Lanka Police, acting on information, received from a private informant, has conducted a raid. The initial information alleged to have been received is in respect of explosives or narcotics. Acting on this information, the officers have taken into custody a lorry with a 20-foot container, in which, a stock of 200,000 cigarettes suspected to have been illegally imported was found and recovered. The petitioners, along with several other suspects, have been arrested and the Police had reported the facts to the Magistrate's Court of Colombo under the case bearing No. B/68379/06/22. It is the position of the petitioner that there were attempts to incriminate the petitioner in respect of the said matter pending before the Magistrate's Court.

4. Whilst the said Magistrate's Court matter was pending, the Customs has commenced an Inquiry under the aforesaid reference number. It is the position of the petitioner that he has no involvement with the said consignment of contraband. Mr. Musthapha's main ground of seeking a writ against the Customs Inquiry is that proceedings cannot, in law, be conducted under the Customs Ordinance, when the matter has now been reported to the Magistrate's Court. It is specifically averred that it is procedurally improper and/or illegal and/or arbitrary for the Sri Lanka Customs to carry out an Inquiry whilst the Magistrate's Court of Colombo is also inquiring on the same matter/transaction. As it encompasses the same subject matter, there is no necessity of a separate Customs Inquiry, parallel proceedings would create confusion and prejudice, would result in double jeopardy, and the Customs Inquiry will lead to the determination of the issue now before the Magistrate's Court (*vide* paragraph 40 of the petition). What has been instituted before the Magistrate's Court is a criminal proceeding in respect of criminal offences as evident from the B Report. The offences suspected of are offences under Section 403 and 460 read with Section 102 or Section 32 of the Penal Code, and also read with Section 12 of the Customs Ordinance. This is the institution of criminal proceedings.
5. As opposed to that, the Customs Inquiry as evident from document P-5, is under the provisions of the Customs Ordinance. The proceedings under the Customs Ordinance are different and distinct to criminal action instituted in the Magistrate's Court. The primary object of a Customs Inquiry is for the recovery of revenue. Under the provisions of the Customs Ordinance, all exports require to be declared truthfully to the Customs, along with its value, and the Customs will impose the necessary duties, taxes, and levies which shall be recovered. The Inquiry now pending before the Customs is to ascertain and determine if there had been such a default or any other violation of the provisions of the Customs Ordinance and to determine the amounts to be so recovered. Thus, the purpose of the Customs Inquiry is to determine if

any offence has been committed under the Customs Ordinance. Upon so determining, the levy will be determined. The recovery procedure is also specified therein and for enforcement of recovery, it would be referred to the Magistrate. The failure to make payment of such duties, taxes and levies may entail jail terms.

6. Justice Sriskandarajah, in **Anton Clement Thomas Dawson and another vs. Neville Gunawardene** CA Writ Application No. 77/2012 (CAM 16.03.2012), considered the scope of an Inquiry under the Customs Ordinance 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.”

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 [citing **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.”*

7. The resulting position is that at this stage, there is no basis to grant the relief as prayed for by the petitioners on the premise that identical or similar charges would have been preferred both at the Magistrate’s Court as well as upon the Customs Inquiry. To that extent, this application is premature. As a further observation, if at the end of the Customs Inquiry, identical or similar charges as to what may be preferred in the Magistrate’s Court is framed, and criminal proceedings are instituted, then, the objection of double jeopardy may be raised before the appropriate forum. Further, what is pending before the Magistrate’s Court of Colombo is a criminal matter, which is different and distinct to that of recovery of Customs levies at an Inquiry under the Customs Ordinance. To that extent, the fact of the existence of the Magistrate’s Court proceedings in respect of the criminal offences will not render the Customs Inquiry illegal or unlawful.
8. In the above circumstances, there is no legal basis to grant the relief as sought by the petitioners, and also the application is premature, as aforesaid. Accordingly, I see no basis in law or otherwise to issue notice as prayed for.
9. Issuing of notice is accordingly refused and this application is *pro forma* dismissed. However, I make no order as to costs.

JUDGE OF THE COURT OF APPEAL