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.

Sinnaiha Kamalakumar
No 838/11 Aluthmawatha Road
Colombo 15.

CA (Writ) App. No. 532/2024

PETITIONER

Vs.

1. Director General of Customs.
2. Deputy Director of Customs Central Disposal Directorate.
3. Senior Deputy Director of Customs Central Disposal Directorate.
4. Additional Director General of Customs Enforcement,
   Sri Lanka Customs.
5. Chief Accountant
   Sri Lanka Customs.

All of Them
Customs House,
No. 40 Main Street, Colombo 1.

6. Secretary To the Treasury.

7. Director General of Public Finance.

All of Them
Ministry of Finance,
Economic Stabilization
And National Policies
The Secretariate, Colombo 01.

8. Honourable Attorney General,
Attorney General's Department,
Hulfsdorp,
Colombo 12.

RESPONDENTS

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

Counsel:

Harishke Samaranayake for the Petitioner.

Vikum de Abrew, ASG with Ishara Madarasinghe, SC for the Respondents.

Argued on: 15.12.2025

Delivered on: 29.01.2026

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

Judgement

Introduction

The Petitioner by this Application challenges the higher rate of Value Added Tax (VAT) charged on the final sale price of items auctioned by way of a tender on the basis that the items were imported to Sri Lanka. The said sale was conducted by the 2nd Respondent on behalf of the Sri Lanka Customs (hereinafter referred to as "the Customs").

The Petitioner is a businessman engaged *inter alia* in the business of purchasing various items at auctions held by the Sri Lanka Customs and selling the same in turn and making a profit. According to him, he has successfully participated in more than 500 such business transactions with the Customs. The 1st Respondent is the Director General of the Customs, while the 2nd Respondent is the Deputy Director of Customs who is in-charge of the Commodity Disposal Directorate; the 3rd Respondent is assisting the 2nd Respondent. The 4th Respondent is the Additional Director General of Customs. The 5th Respondent is the Officer-in-charge of the Finance of Customs while the 6th and 7th Respondents are responsible for the financial and economic management of the Republic of Sri Lanka. The 8th Respondent is the Honourable Attorney General.

When the Petitioner had successfully bid at a tender sale submitted on the 29.06.2024 to purchase 66 gold biscuits (yellow) which had been confiscated by the Customs, and the same was awarded to him. According to the Petitioner, since the Customs has charged a higher VAT in addition to the other taxes, the Petitioner challenges the same in this Application.

After issuance of formal notice, the Respondents have filed their respective Objections. It is their position that the Petitioner is liable to pay higher rate of VAT as the items purchased at the tender by the Petitioner is not exempted from the VAT, on the basis of locally produced goods, since the

items had been imported to Sri Lanka. Further it is the position of the Respondents that, anomaly created under the earlier regulations were corrected by the document marked **1R2**. Accordingly, new rate of VAT was charged. As such, sought a dismissal.

This was argued before me on 15.12.2025; hence, this judgement.

The following arguments were advanced by the counsel at the hearing.

Arguments

The first contention of Mr. Samaranayake, Counsel for the Petitioner, is that the goods (gold) sold by Sri Lanka Customs cannot be considered or categorized as imported goods, as the Petitioner is not responsible for the importation, and the Petitioner has merely purchased some forfeited goods. Therefore, once the forfeiture is completed, the goods cannot be considered as imported goods for the purpose of VAT.

The second contention is that, therefore, since the Respondents have charged an additional 10% of the value of the goods on the basis that it is imported, in terms of Section 6 of the VAT Act, it is wrong, and only Section 5 should be applied. However, when the Court questioned him as to how any good or item is categorized as an imported item or a product of Sri Lanka, and whether it is based on the country of origin or not, Mr. Samaranayake did not give a clear answer to that.

On the other hand, Ms. Madarasinghe S.C. argued that imported goods depend on the country of origin of the product. Therefore, whether it is forfeited or not, if the country of origin is a different country other than Sri Lanka, and if such a good has passed through border security, it becomes imported goods for the purpose of the Value Added Tax Act, No. 14 of 2002 (hereinafter referred to as the "VAT Act").

Secondly, she argued that Section 2(1)(b) of the VAT Act applies to the situation; therefore, the Petitioner is liable to pay the additional tax.

However, Mr. Samaranayake replied that, as the Respondents, in their Objections, annexed document **1R2**, the Cost, Insurance, and Freight (CIF) value of the goods cannot be added as goods imported; therefore, Section 2 does not come into play in this situation.

Now I will deal with the factual matrix in detail since it is also common ground as some of the facts are not disputed by the parties, and also for the purpose of avoiding repetition of the same.

Factual matrix

The Petitioner is a businessman who is engaged in business inter alia making bids on Customs' seized items at auctions and tender sales. In fact, according to his own showing, he is a very seasoned bidder who has purchased items at auction sales and tender sales at Customs. Among the items that he has so purchased are gold items, perishable items, electronic items, ready-made garments and vehicles. The Petitioner has asserted that he makes a profit out of the transactions on resale of the same, after purchasing the same from the Customs.

According to the Petitioner, he had come across an advertisement for a tender sale, and the tenders had to be submitted 28.06.2024 before 10.30 a.m. He has submitted his tender to purchase 66 pieces of yellow gold biscuits of 24 carats; the tender guideline is also marked and annexed to the Petition as **P1**. Accordingly, he was a successful bidder for the said gold items and was awarded the tender the same.

To submit the tender, he had to initially deposit Rs. 2,000,000/- (Two Million Rupees) for the purpose of purchasing the said items that he had purchased at the tender sale. The sale price of the said tender was Rs. 156,613,156/- (One Hundred and Fifty-Six Million Six Hundred and Thirteen

Thousand One Hundred and Fifty-Six Rupees) and in total he was required pay Rs. 187,622,560.89 (One Hundred and Eighty-Seven Million Six Hundred and Twenty-Two Thousand Five Hundred and Sixty Rupees and Eighty-Nine Cents); a voucher had been issued to that effect as reflected in **P3**. A tender award letter was also issued by the Customs as reflected in **P4** marked and annexed to the Petition.

However, he has found that in addition to the general Custom duties, he had to pay 19.8% as VAT on the said items purchased. Accordingly, it is his complaint that the bid value is only Rs. 156,613,156/- plus 18% tax, which should amount to Rs. 184,803,524.08 (One Hundred and Eighty-Four Million Eight Hundred and Three Thousand Five Hundred and Twenty-Four Rupees and Eight Cents). However, the Customs has charged 19.8% tax including the VAT; therefore, increasing the total to Rs. 187,622,560.89; thus, an additional charge of VAT of Rs. 2,819,036.81 (Two Million Eight Hundred Nineteen Thousand and Thirty-Six Rupees and Eighty-One Cents) is claimed to have been charged.

As such, the Petitioner has appealed to the 1st Respondent; however, it was turned down by document marked as **P7** annexed to the Petition, and consequently, a portion of his deposit was also forfeited as marked and annexed to the Petition as **P6**. The reasons given in **P6** is that VAT has to be paid in addition to the other Custom duties since the items purchased are not products of Sri Lankan origin.

The Petitioner's contention is that he is only liable to pay VAT at 18%, on the basis that he has not imported the said gold biscuits, but he has purchased the same from the Customs, neither has the Custom imported it on its own for the Petitioner to be liable to pay 19.8% VAT on the basis that the items purchased by the Petitioner are imported goods. He relies on Sections 2 of the VAT Act.

It is the contention advanced on behalf of the Petitioner that once the goods cross the border security and are sold, whether imported or smuggled into Sri Lanka by a smuggler, once such goods are forfeited and sold at a Customs warehouse, they become local goods.

Further, his contention is that on the CIF value, neither Customs nor the Government can charge any VAT, since the CIF value had already been incurred or paid by the smuggler.

However, on the other hand, it is the contention on behalf of the Respondents that, since there was an anomaly with regard to the charge of VAT on goods sold at auction, hence the annexed document marked **1R2** was issued, and further VAT was charged on the goods sold and purchased by the Petitioner in the instant case as imported goods. Although the goods had been forfeited, they had been imported by a smuggler without a license or against the regulations; therefore forfeited at the border security by Sri Lanka Customs. Though the goods were sold at a warehouse, the fact of importation cannot be denied, since the CIF value is already attributable.

Higher VAT on imported goods

The learned State Counsel for and on behalf of the Respondents, in support of her submissions, heavily relies on the Import and Export Control Act of 1969, where a distinction is clearly drawn between imported goods and locally manufactured goods. Although there is no such distinction in other statutory provisions, since the said provisions apply to the case in hand because the importation has in fact taken place, whether viewed from the perspective of the Respondents, Customs, or the Petitioner, the fact of importation cannot be removed or denied from the goods, as the country of origin is not Sri Lanka.

In the course of oral arguments, when I posed the question to the learned Counsel for the Petitioner, no particular answer was given as to how it should be ascertained whether goods are locally manufactured or imported, whether it depends on the country of origin. Admittedly, the 66 gold biscuits purchased by the Petitioner at the tender of sale were forfeited items, which had been imported or smuggled into Sri Lanka by a third party and thereafter forfeited by Customs. Therefore, the goods belong to the State and had crossed the border security.

Though the goods were sold at a warehouse within the territory of Sri Lanka, the fact that the country of origin is not Sri Lanka is very clear. In fact, the country of origin should have been mentioned in the commercial invoice, if available.

As contention was advanced on behalf of the Respondent that Regulation **1R2** was issued to correct the anomaly created by the provisions of **1R1**, and that such anomaly was corrected by **1R2** in terms of the Imports and Exports (Control) Act, 1969, the distinction is clearly drawn between goods originating from another country and those produced in Sri Lanka. Value Added Tax is imposed on imported items for several reasons, one being to discourage importation and to encourage local production. However, as far as gold biscuits are concerned, since no gold is produced in Sri Lanka at present, the importation of gold is discouraged. Therefore, whether it is brought into Sri Lanka with a licence or without a licence, a higher rate of tax is imposed.

Section 6 of the Value Added Tax Act, No. 14 of 2002 reads as thus;

> *"6. (1) The value of goods imported, other than the goods as prescribed by regulation shall be the aggregate of –*
>
> *(a) the value of the goods determined for the purpose of custom duty increased by ten per centum; and*

(b) the amount of any custom duty payable in respect of such goods with the addition of any surcharge, cess, any Port and Airport Development Levy payable under the Finance Act, No. 11 of 2002, and any excise duty payable under the Excise (Special Provisions) Act, No. 13 of 1989 on such goods.

(2) The Minister may, from time to time, prescribe by regulation, the manner by which the value of goods specified in the regulation made under subsection (1) is to be determined. Any such regulation made by the Minister shall be approved by the Cabinet of Ministers and published in the Gazette. Such regulation shall be placed before the Parliament for approval and shall be effective only upon it being approved by the Parliament."

In the instant case, it is the tax to be imposed according to law on the sale of the product which is already confiscated and remains the property of the Government. Even if that is so, the distinction still remains, as it is an imported good, particularly as it has crossed the borders of the country, despite it being smuggled or brought with a licence. Therefore, it is my view that since the law has not been changed, Parliament, in its wisdom, has enacted it in the manner it stands, and I am bound to follow it. It is also my view that imported goods have a different connotation from local products. Accordingly, the Petitioner is liable to pay the higher VAT.

However, since the Petitioner had delayed in collecting the items by paying the entirety of the amount of VAT charged by the Customs; nevertheless, the latter on a bank guarantee recovered all the items from Customs. However, as a part of the initial deposit was forfeited, according to law is justifiable since it is Government policy, whether one likes it or not; hence, I see no reason to interfere.

Therefore, the Petitioner's argument on the basis that once goods cross the border security, they become local goods cannot be sustained. Since the country of origin is not Sri Lanka, the goods sold at the auction and purchased by the Petitioner must be treated as imported goods, and on that basis VAT at the higher rate was correctly charged, accordingly the 19.8% of the VAT.

Conclusion

For the reasons adumbrated above, the higher rate of 19.8% of VAT charged on goods sold by the 2nd Respondent on behalf of the Government and purchased by the Petitioner is in accordance with the rules contained in **1R2**, read with Section 6 of the Value Added Tax Act, No. 14 of 2002 (as amended). Therefore, I see no reason to interfere with the same, and accordingly, dismiss this Application, but without costs as the Petitioner has already incurred sufficient costs.

JUDGE OF THE COURT OF APPEAL