

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

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

C.A. (Writ) No: 307/ 2008

MTV Channel (Private) Limited
No. 7, Braybrooke Place,
Colombo 2.

PETITIONER

Vs.

1. Mr. Sarath Jayathilake
The Director General of Customs,
Sri Lanka Customs,
Customs House,
Bristol Street,
Colombo 1.
2. Mr. U. Liyanage
Assistant Director of Customs, And
Inquiring Officer,
Sri Lanka Customs,
Customs House,
Bristol Street,
Colombo 01.
3. Mr. H.S.N.K. de Silva

Superintendent of Customs,
Customs Investigation Bureau
Sri Lanka Customs,
Customs House,
Bristol Street,
Colombo 01.

4. Board of Investment of Sri Lanka
West Tower,
World Trade Centre,
Echelon Square,
Colombo 01.

RESPONDENTS

Mrs. Sudharma Karunaratne
The Director General of Customs,
Sri Lanka Customs,
Customs House,
Bristol Street,
Colombo 1.

SUBSTITUTED 1ST RESPONDENT

Dr. Neville Gunawardena
The Director General of Customs,
Sri Lanka Customs,
Customs House,
Bristol Street,
Colombo 1.

SUBSTITUTED SUBSTITUTED 1ST RESPONDENT

Mr. Jagath P. Wijeweera

The Director General of Customs,
Sri Lanka Customs,
Customs House,
Bristol Street,
Colombo 1.

SUBSTITUTED SUBSTITUTED
SUBSTITUTED 1ST RESPONDENT

Mr. R. Semasinghe
The Acting Director General of Customs,
Sri Lanka Customs,
Customs House,
Bristol Street,
Colombo 1.

SUBSTITUTED SUBSTITUTED
SUBSTITUTED SUBSTITUTED 1ST
RESPONDENT

Mr. Chulananda Perera
The Director General of Customs,
Sri Lanka Customs,
Customs House,
Bristol Street,
Colombo 1.

SUBSTITUTED SUBSTITUTED
SUBSTITUTED SUBSTITUTED
SUBSTITUTED 1ST RESPONDENT

Ms. P.S.M. Charles
The Director General of Customs,
Sri Lanka Customs,
Customs House,

Bristol Street,
Colombo 1.

SUBSTITUTED SUBSTITUTED
SUBSTITUTED SUBSTITUTED
SUBSTITUTED SUBSTITUTED
1ST RESPONDENT

General Vijitha Ravipriya
The Director General of Customs,
Sri Lanka Customs,
Customs House,
Bristol Street,
Colombo 1.

SUBSTITUTED SUBSTITUTED
SUBSTITUTED SUBSTITUTED
SUBSTITUTED SUBSTITUTED
SUBSTITUTED 1ST RESPONDENT

Mr. P.B.S.C.Nonis
The Director General of Customs,
Sri Lanka Customs,
Customs House,
Bristol Street,
Colombo 1.

SUBSTITUTED SUBSTITUTED
SUBSTITUTED SUBSTITUTED
SUBSTITUTED SUBSTITUTED
SUBSTITUTED SUBSTITUTED 1ST
RESPONDENT

Before : Dhammika Ganepola, J.

Adithya Patabendige, J.

Counsel : Sanjeewa Jayawardena, PC with Rajeev
Amarasuriya and Rudrani
Balasubramaniam instructed by G. G.
Arulpragasam for the Petitioners.
Chaya Sri Nammuni, DSG for the
Respondents.

Argued on : 18.07.2025, 23.02.2026, 03.03.2026

**Written Submissions
tendered on** : Petitioner : 22.04.2026

Decided on : 05.05.2026

Dhammika Ganepola, J.

Factual Matrix of the Application

The Petitioner Company is a private television network in Sri Lanka that telecasts programmes in all three languages. The Petitioner Company had entered into a formal Agreement marked P6, whereby the Petitioner had been granted many concessions and benefits, including income tax and duty exemptions, with the Greater Colombo Economic Commission (GCEC)/Board of Investment Sri Lanka (BOI) in terms of Section 17 of the Greater Colombo Economic Commission Law No.4 of 1978. Clause 10(viii) of the said Agreement P6 stipulates that all imports of plant, equipment, machinery, construction material, raw material and other materials to be used for and by the Enterprise for the purpose of the said business shall not be liable to any import duty or license fee. The Petitioner claims that

from its inception and up to date over the last 16 years, it has imported all its plant, equipment, machinery, construction material, raw material, as well as other materials for its business, free of any customs duties. These imports had included Hi-Tech Equipment for the Repeater Stations, Building Materials, Studio Equipment, etc.

The Petitioner states that there is no requirement under law for the Petitioner to obtain any additional approval from the GCEC when importing the above duty-free exports. However, as an administrative practice and formality adopted by the Petitioner in view of a request made by the Sri Lanka Customs, to obtain some authorization from the GCEC, before the imported goods were released, the Petitioner had produced GCEC approval for the said imports. Nevertheless, in or about March 2007, the 3rd Respondent had commenced an investigation into the importations by the Petitioner of Proprietary Television Programmes. In or about October 2007, for the 1st time, the Sri Lanka Customs had detained 6 consignments of Video Cassettes/Tapes containing Proprietary Television Programmes for broadcast and had subsequently commenced the Customs Inquiry bearing No. CIB/INV/25/2007/CIB/1523 under Section 8(1) of the Customs Inquiry.

The Petitioner states that the above consignments are not liable to any import duties. However, in view of the directions issued by the Sri Lanka Customs, the Petitioner had requested an additional endorsement from the 4th Respondent Board regarding the duty-free importation of materials related to its business under Clause 10(viii) of the Agreement P6. In reply, the Petitioner had received the letter dated 24.12.2007 marked P21 from the 4th Respondent, informing that permission to import Proprietary Television Programmes on a duty-free basis is granted only for items imported after 15.10.2007. The Petitioner claims that there is no basis to distinguish between the period prior to 15.10.2007 and the period thereafter. In spite of such, the 1st Respondent had failed to release the above-mentioned detained 6 consignments of Television Programmes.

The Petitioner states that it was made to understand that the purported Customs Inquiry was commenced and proceeded on the basis that the

Petitioner Company had not made payments of Customs Duty and had not made Value Added Tax in respect of the alleged imports from 2002 onwards. The Petitioner claims that the Sri Lanka Customs commenced the said inquiry in bad faith and with extraneous motive of earning and securing the rewards payable on account of forfeitures that are imposed at the conclusion of such inquiry.

Furthermore, it is submitted that even after obtaining the letter P21 from the BOI, Sri Lanka Customs had still refused to clear the subsequent consignments of Television Programmes of the Petitioner claiming that each import requires a specific approval from the BOI. Although there is no legal requirement for the Petitioner to secure such further approval from the BOI, the Petitioner has sought this approval since October 2007 to prevent unwarranted delays and for administrative convenience.

Accordingly, the Petitioner *inter alia* seeks a Writ of Certiorari to quash the decision of the 1st to 3rd Respondents to hold the impugned Customs Inquiry, a Writ of Prohibition to prevent said Respondents from taking any further steps in respect of the aforesaid inquiry, a Writ of Mandamus directing said Respondents to release the detained 6 consignments to the Petitioner on the basis that the same are exempted from any import duty or license fee. The Petitioner alternatively seeks a Writ of Prohibition to restrain the 1st to 3rd Respondents from proceeding to recover Customs Duty, Value Added Tax and such other levy in respect of the consignments imported by the Petitioner.

The Petitioner challenges the aforesaid decisions of the 1st to 3rd Respondents *inter alia* based on the following grounds.

- Alleged imports are clearly exempted from import duty and any customs duty or other similar restrictions in view of Clause 10(viii) of the Agreement P6, and the same cannot be called into question by the Sri Lanka Customs.
- The Agreement P6 supersedes the provisions of the Customs Ordinance in view of Section 17 of the GCEC/BOI Law.
- The Petitioner cannot be considered as the person clearing the goods.

- The 1st to 3rd Respondents have no power to recover Value Added Tax by resorting to the inquiry procedure in Section 8(1) of the Customs Ordinance. The Petitioner, not being a final consumer of goods (merely acts as an intermediary in its collection and payment), would ultimately not have to bear any Value Added Tax.
- In terms of Article 8(1)(c) of Schedule E of the Customs Ordinance, Royalties and License Fees form part of the Customs Value only where there is a sale and the Petitioner is merely a licensee of the right to broadcast the television programmes and consequently, said Royalties and License Fees do not form part of the Customs Value.

The Position of the 1st to 3rd Respondents

The Respondents contend that the concessions under the BOI Agreement P6 with the Petitioner are confined to specific exemptions and such exemptions can be given only in accordance with the Regulations made under the BOI Act. It is claimed that the above Agreement P6 does not give any exemptions for fiscal levies applicable to the importation of BETA tapes. Such taxes and levies can be lawfully determined by the Customs upon an inquiry under Section 8(1) of the Customs Ordinance. The Respondents submit that the existence of the BOI Agreement is not a shield for acting according to Sections 8 and 9 of the Customs Ordinance.

In the said backdrop, I shall now consider the merits of the Application of the Petitioner.

Section 17 of the GCEC/BOI Law

Section 17 of the GCEC Law renders the GCEC with the power to enter into Agreements with any Enterprise. Said Section is reproduced below:

17(1) The Commission shall have the power to enter into agreements with any enterprise in or outside the Area of Authority and to grant exemptions from any law referred to in Schedule B hereto, or to modify or vary the application of any such laws, to

such enterprises in accordance with such regulations as may be made by the Minister.

(2) Every such agreement shall be reduced to writing and shall, upon registration with the Commission, constitute a valid and binding contract between the Board and the enterprise.

Schedule B of the GCEC Law includes the Customs Ordinance as well.

It is on common ground that the Petitioner had entered into four Agreements under Section 17 of the GCEC/BOI Law, with the GCEC/BOI, dated 07.02.1992 (marked P6), 22.09.1993 (marked P10), 20.10.1993 (marked P9) and 23.02.1994 (marked P8). Clause 10(viii) of all Agreements except Agreement P6 provides the exemptions applicable to the imports by the Petitioner Enterprise. As compared to the subsequent Agreements marked P10, P9, and P8, there are slight differences in the wording of Clause 10(viii) of the Agreement P6, which forms the subject matter of the present application. The Petitioner primarily relies on the distinct character of Clause 10(viii) of Agreement P6, in contrast to Clauses 10(viii) of the other Agreements.

Clause 10(viii) of the Agreement P6 is as follows:

“All imports of plant, equipment and machinery and construction material, raw material and other materials to be used and for by the Enterprise for the purpose of the said business shall not be liable to any import duty or license fee and shall not be subject to any custom or any other like restriction provided that this exemption shall not apply to any personal effects imported by the Enterprise for the private and personal use of any person in the Enterprise and provided that the Commission reserves to itself the right to cause or permit to be caused the examination of any imports for purposes connected with this agreement.”

The Petitioner submits that in terms of Clause 10(viii) of the Agreement P6, there is no requirement to obtain prior approval for the imports made by the Petitioner, unlike in the case of the other Agreements. However, Clause 10(viii) of all three other Agreements marked P10, P9, and P8,

provides that approval of the BOI is required for any duty exemptions on all imports of project related materials to be used for and by the Enterprise.

The Respondents argue that the Petitioner provides no good reason or explanation for intentionally omitting such an approval in Agreement P6 as opposed to the other Agreements, and for why the Petitioner alone should not be required to obtain BOI approval for each import. However, the Petitioner contends that the impugned Agreement P6 was the first and the oldest of such agreements related to this industry, which likely influenced the intentions of the framers of this Statute -based agreement at the time. Accordingly, the plain reading of Clause 10(viii) of Agreement P6 does not impose a mandatory explicit requirement to seek approval from the GCEC/BOI, whereas other Agreements do require such approval.

Applicability of Exemptions for Imports Under Clause 10(viii) of the Agreement P6

The Petitioner claims that, as per the above Clause 10(viii), except for any personal effects imported by the Enterprise for the private and personal use of any person in the Enterprise all the other imports of plant, equipment and machinery and construction material, raw material and other materials to be used and for by the Enterprise for the said business shall not be liable to any import duty or license fee and shall not be subject to any Customs or any other like restriction. Therefore, the Petitioner contends that proprietary television programmes contained in the Beta Cam SP Video Tapes imported by the Petitioner are also exempted from any Customs Duty/ Import Duty or license fees or any other likely restrictions. Further, the Petitioner contends that the examination of the said imports by any other authority without the permission of the BOI is also exempted.

This Court is of the view that although the above Clause 10(viii) granted exemptions to the Petitioner for its specific imports, it is not an absolute/general exemption. Only a certain category of goods to be used by the Petitioner for its business has been exempted from the duties specified therein. The personal effects imported by the Petitioner for the

private and personal use of any person in the Petitioner Company are explicitly left out of the exemption. Since the Petitioner has not received an absolute/total exemption, the diverse range and nature of the imports specified under Clause 10(viii) necessitate obtaining approval from the GCEC.

Furthermore, it is important to observe that a reservation has been made by the GCEC in the said Clause 10(viii) to the extent that it has retained the right to cause or permit to be caused the examination of any imports for purposes connected with this Agreement.

“Provided that the Commission reserves to itself the right to cause or permit to be caused the examination of any imports for purposes connected with this agreement.”

Although the Petitioner states that examination of the said imports by any other without the permission of the BOI is also exempted by the above limb of Clause 10(viii), it does not give any concession or exemption to the Petitioner except a reservation for GCEC under Agreement P6. It also does not preclude Sri Lanka Customs from examining the said imports. The Customs Ordinance envisions, not merely the imposition of duties on imported goods, it also encompasses numerous other regulatory functions and objectives which cannot be repudiated by mere implications. Furthermore, it is my view that this reservation, which provides the GCEC with sufficient authority to intervene at appropriate stages, also makes it evident that the exemption granted by Clause 10(viii) is not absolute/total.

The Respondents argue that the Agreement P6 does not give the Petitioner any freedom to violate the Customs Ordinance, or pardon for non-compliance with the non-charging provisions of the Customs Ordinance, or to misdescribe or declare false values of goods imported. At this juncture, it is important to observe that Section 8 of the Customs Ordinance authorizes the making of examinations and inquiries in order to ascertain the truth of statements made in relation to the customs duties, or the conduct of officers or persons employed therein. The provisions of Sections 27, 47, and 51 of the Customs Ordinance provide a

legal obligation on the importer to duly declare all imports, irrespective of whether such imports are subject to payment of duty, free of duty or exempted from any other levies and the value of the goods. The BOI does not have statutory authority or power to do so.

Although the Clause 10(x) of the Agreement P6 provides that the provisions of the laws set out in Schedule B of the GCEC Law No.4 of 1978, which are inconsistent with the benefits and /or privileges set out in subclauses (i) to (ix) of the Agreement P6 shall not apply to the Enterprise in relation to the Petitioner's business, above provision are not inconsistent with the Clause 10(vii). Accordingly, above Clause 10(ix) also gives effect to the exemptions referred to in Clause 10(viii).

The Petitioner states that the television programmes contained in the imported Beta Cam SP Video Tapes, which have been detained by the Respondents, are automatically exempt from the payment of Customs Duty/Imported Duty as per Clause 10(viii) of Agreement P6. Therefore, such imports can be cleared without obtaining any further approval from the BOI. However, the parties are in variance on this matter. The Respondents claim that the above Beta Tapes cannot be included under the genus of the "plant, equipment, machinery, construction material, raw material, and other materials to be used and for by the Enterprise for the purpose of the said business" referred to in Clause 10(viii) for multiple reasons. Hence, it is my view that the relevant approval of the BOI is essential to determine the applicability of the exemption.

Having considered the above, I agree with the submission made on behalf of the Respondents that the duty exemptions for the imports made by the Petitioner must be approved by the GCEC and declared to Sri Lanka Customs before the imports are released.

Applicability of Customs Duty and Other Taxes for the Imports as per the Agreement P6

Then the question arises as to whether the said Clause 10(viii) has conferred the Petitioner total exemption from all fiscal levies applicable to imports. The Respondents contend that the BOI Agreement P6 does not confer total exemption from all fiscal levies, and the BOI is entitled to

grant only fiscal exemptions from the fiscal provisions of the laws set out in Schedule B of the BOI Law in terms of the regulations made under the Act. The related Regulations have been published in the Extraordinary Gazette Notification No.8/2 of 31.10.1978 marked R1. As per the said Gazette, the Regulations had been issued in respect of Sections 10 and 23 of the Customs Ordinance. Hence, Agreement P6 only applies to Sections 10 and 23 of the Customs Ordinance. Therefore, it is necessary to ascertain the correct value of the goods imported to determine the non-exempt fiscal levies, such as Value Added Tax (VAT), Port and Airport Development Levy (PAL), and Central Excise and Service Tax (CESS).

The Petitioner states that the argument of the Respondents is misconceived in view of the Supreme Court decision in **Ceylon Quartz Industries (Private) Limited v. The Director General of Customs and Others S.C. Appeal No.79/2002, decided on 04.10.2012**, in which the facts are similar to this application. In the said case, as well, the BOI had entered into an agreement with the Appellant to carry out its business as stipulated in the agreement, which include a duty exemption clause. In the said Application the Court had granted special leave to appeal on the following questions:

1. Can the Customs interpret the nature of the goods that can be exported under and in terms of the Agreement X8?
2. Is the power of the Customs restricted to verifying whether the goods exported conform to the goods said to be exported by exporters?

At the conclusion of the matter, the Supreme Court answered the said questions as follows.

1. The Customs cannot interpret the nature of the goods that can be exported under and in terms of the Agreement X8.
2. The power of the Customs is restricted to verifying whether the goods exported conform to the goods said to be exported by the exporters.

It is my view that the above decision of the Supreme Court lies in favour of the position advanced by the Respondents. Even in the above case, the

Supreme Court has acknowledged the role of the Sri Lanka Customs in regulating the import and export of goods. An Agreement (in the nature of P6) cannot restrain the Sri Lanka Customs from discharging its core functions and objectives. In light of the above Supreme Court decision, irrespective of the conditions contained within an Agreement entered into between the GCEC and an Enterprise, the Customs would nevertheless retain the authority to verify whether the goods imported/exported conform to the goods said to be imported/exported by importers/exporters.

Section 17 of the Customs Ordinance empowers GCEC to enter into agreements with any enterprise granting exemptions from the Customs Ordinance in accordance with the regulations made by the Minister. It would be absurd to presume that an Enterprise could be exempted from the entirety of a Statute by a mere Agreement in the nature of Agreement P6. Accordingly, the Petitioner's submission that the exemptions given in Clause 10(viii) necessarily have the effect of excluding the operation of the Customs Ordinance and encompass specific statutory exemptions as envisaged by Section 17 cannot be upheld. In the instant application, the Petitioner has failed to place any evidence to support the existence of any Regulation to such effect. Therefore, it is my view that, as per Clause 10(viii) of the Agreement P6, the Petitioner is entitled only to the fiscal exemptions referred to therein and not to the total exemption from all fiscal levies applicable to imports.

Application of the Petitioner is Premature

The Petitioner had instituted the instant application after the commencement of the inquiry under Section 8(1) of the Customs Ordinance, on the mistake that the Customs Inquiry had been initiated on the basis that the Petitioner had not paid the applicable customs duties. Although the Petitioner states that, as to its understanding, the purported Customs Inquiry commenced on the basis that the Petitioner had not made payments of Customs Duty and possibly also on the basis that the Petitioner had not made payments of VAT, the Respondents contend that the inquiry initiated under Section 8(1) of the Customs Ordinance is not based on the non-payment, but is based on the underpayment of

Customs Duty, Surcharge, VAT, PAL, and Social Responsibility Levy (SRL) for the imports of the Petitioner during the period of five years commencing from 01.04.2002. Therefore, the Petitioner claims that the calculation of the payment of import duties was done not to recover the same but to determine the value of the related goods in terms of Section 134 of the Customs Ordinance.

In light of the above and the given circumstances, it is my view that the Sri Lanka Customs had sufficient justifiable reasons and a legal duty to proceed against the Petitioner under Section 8(1) of the Ordinance. The Petitioner had not been deprived of the right to a fair hearing or to present his case at the inquiry. The Sri Lanka Customs had summoned the Petitioner for the impugned inquiry. This Court sees no reason to prevent the holding of such an inquiry. Hence, it is the view of this Court that the Application of the Petitioner is premature. In any event, it is my view that the Petitioner shall have the opportunity to take up all relevant defences relied upon by him at the inquiry conducted by the Sri Lanka Customs.

Furthermore, this Court is not compelled to address the concern of the Petitioner in respect of the Petitioner not being the person clearing the goods. Such issue shall arise only in the event the Sri Lanka Customs decides to impose a duty. Therefore, it is my view that it is premature for this Court to delve into such matters at this juncture.

Whether There was an Outright Transaction

The Petitioner contends that it does not purchase foreign television programmes outright but enters into a license agreement (marked P17) with foreign principals and pays a license fee for rights to telecast them in Sri Lanka. It is further submitted that the foreign principal retains the title of the said materials and only the right to possess and use is loaned to the Petitioner. After the completion of a specific time period, the Petitioner must return the same to the foreign principal. Accordingly, the Petitioner claims that there is no sale involved in the transaction, and the provisions of Section 8(1) of the amended Schedule E of the Customs Ordinance are inapplicable.

However, I am inclined to accept the submission made on behalf of the Respondent that, as per Article 1 of Schedule E of the Customs Ordinance as amended by Act No.2 of 2003, the said license fee is the price paid or payable for the purchase of the impugned imports. Article 1(1) and Article 8(1)(c) of the Customs Ordinance, as amended by Act No.2 of 2003, are as follows

Article 1

1. The customs value of any imported goods shall be the transaction value, that is, the price actually paid or payable for the goods when sold or exported to Sri Lanka, as adjusted in accordance with the provisions of Article 8 :

Article 8.

1. In determining the customs value under the provisions of Article 1, there shall be added to the price actually paid or payable for the imported goods-

(c) royalties and licence fees related to the goods being valued that the buyer must pay. either directly or indirectly, as a condition of sale of the goods being valued to the extent that such royalties and fees are not included in the price actually paid or payable ;

In **BC Computers Ltd v. U.S. Wickramasinghe and Others, CA. Application No. 764/07 (Writ)**, S. Sriskandarajah J. observed and gave effect to the stance that the Customs value for recovery of Customs levy and the other levies is the transacted value between the parties, which is clearly borne out by their license agreement. In light of the above, it is clear that the argument of the Petitioner that there is no sale involved in the transaction and that the provisions of Section 8(1) of the amended Schedule E of the Customs Ordinance are inapplicable is unequivocally invalid.

On the other hand, the Petitioner imported the impugned tapes containing proprietary television programmes to be used for their television stations. Return of the tapes to the party nominated by the

supplier or foreign principal may be a requirement of the agreement entered into between the Petitioner and the supplier. Nevertheless, once such tapes are imported to the country, whether such tapes are to be re-exported or destroyed after use, at the stage of recovering import duties is not a matter for the Customs to be concerned with. In any event, by the use of such products under the license agreement, the Petitioner shall be gaining a profit which should be subject to the relevant fiscal laws.

Conclusion

For the reasons given above and considering the circumstances of the application, this Court is of the opinion that, this is not a fit and proper case to exercise the writ jurisdiction of this Court and accordingly the application is dismissed with costs fixed at Rs. 50000/=.

Application dismissed.

Judge of the Court of Appeal

Adithya Patabendige, J.

I agree.

Judge of the Court of Appeal