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 a Writ of Certiorari and a Writ of Prohibition in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA. (Writ) Application No.611/2010 & 612/2010

Toyota Lanka (Private) Limited,
No. 337, Negombo Road,
Wattala.

Petitioner

Vs.

1. W.A. Chandradasa,
   Addl. Director- General of Customs,
   Department of Customs,
   Customs House, Colombo 01.

2. K. Premnath,
   Assistant Director of Customs,
   Department of Customs,
   Customs House, Colombo 01.

3. Director- General of Customs,
   Department of Customs,
   Customs House, Colombo 01.

Respondents

Before: **R. Gurusinghe J.**

&

M.C.B.S. Morais J.

Counsel:	Faisz Musthapha, PC with Faisza Marker, PC, Thushari Machado, Riad Ameen & Varuna Wijenayaka for the Petitioner instructed by Dilini Gamage. Chaya Sri Nammuni, DSG with Varnani Dissanayake, AAL for the Respondents.
Written Submissions:	By the Petitioner – on 15.09.2010, 15.10.2010, 28.06.2019, 25.09.2019, 05.02.2025 By the Respondents – on 28.06.2019, 12.09.2019,17.03.2025
Argued on:	22.11.2024
Decided On:	**27.03.2025**

Judgment

M.C.B.S. Morais J.

This is an application for mandates in the nature of a Writ of Certiorari and a Writ of Prohibition in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

The Toyota Lanka (Private) Limited (hereinafter sometimes referred to as the Petitioner) seeks a writ of Certiorari to quash the purported decision made by the Department of Customs (hereinafter sometimes referred to as the Respondent) in terms of section 18(2) of the Customs Ordinance. It was agreed between the parties that one judgment would be delivered regarding the writ application bearing No. 612/2010 and the writ application bearing No. 611/2010 since the issue of law is identical to both applications. The Petitioner has sought a writ of certiorari to quash the decision made by the 1st Respondent on 1st of September 2010, in terms of section 18(2) of the Customs Ordinance. Accordingly, the Petitioner has prayed for the followings,

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I. Issue notice on the Respondents;

II. Call for the record;

III. *Issue a writ of certiorari quashing the aforesaid decision dated 1/9/2010 of the 1st Respondent produced marked P16 to recover the purported short payment of Rs.67,380,782/- in terms of Section 18(2) of the Customs Ordinance;*

IV. *Issue a writ of prohibition restraining the Respondents from taking any steps in pursuance of the aforesaid decision dated 1/9/2010 contained in the letter produced marked P16 to recover the purported short payment of Rs.67,380,782/-;*

V. *To make an interim order restraining the Respondents from taking any steps in pursuance of the aforesaid decision dated 1/9/2010 contained in the letter produced marked P16 to recover the purported short payment of Rs.67,380,782/- until the final hearing and determination of this Application;*

VI. *To grant costs; and*

VII. *To grant such other and further relief as to Your Lordships' Court shall seem fit and meet."*

The Petitioner Company is a fully owned subsidiary of Toyota Tsusho Corporation, incorporated under the Companies Act of Sri Lanka. Accordingly, the Petitioner who is an importer of Toyota Motor Vehicles into Sri Lanka, imported 31 units of Toyota Land Cruiser Prado Model LJ I-20R-GKMEE Vehicles in 13 batches in the years 2003, 2004 and 2005 which is classified under the HS Code '8702.10.01'. At the time of importation, the Petitioner has submitted the Bill of Entry in terms of the Customs Ordinance. The Petitioner contends that before the vehicles were released, they were physically examined by a Customs officer who was empowered to do so.

However, on the 6th of December 2005, the Department of Customs issued a seizure notice under section 125 of the Customs Ordinance. The Respondent contends that the H.S Code '8702.10.01' does not apply to the said vehicles as every vehicle had only 9 seats instead of 10. Accordingly, it is contended that the said imported vehicles should be classified under HS Code '8703.32.07'.

The Petitioner contends that the motive of the said seizure was to earn rewards in terms of section 153 of the Customs Ordinance. Therefore, the Petitioner has filed a writ application No.2118/2005 seeking to quash the seizure. However, the application was initially dismissed by the Court of Appeal as it was premature. Being aggrieved by the order, the Petitioner has made an appeal to the Supreme Court Case No.49/2008, and the Supreme Court has delivered

judgment quashing the seizure notice in the judgment dated 20th of March 2009.(***Toyota Lanka(Pvt) Ltd and another V Jayathilaka and others (2009) 1 SLR 276***). However, at the end of the judgment of the Supreme Court, the Court refers as;

> *"This order will not prejudice the authority of an officer of customs or recover any sums that are due according to law."*

On the said basis, the Respondent purporting to act in terms of section 18(2) of the Customs Ordinance, sent a letter of demand dated 1st of September 2010, demanding the Petitioner the payment of Rs.67,380,782/= as 'Customs duty and other levies' based on 'misclassification'. The Respondent contends that the Toyota Prados that were classified under the HS Code '8702.10.01' should be classified under HS Code '8703.32.07' and alleges that there was a short payment of Rs.67,380,782/= as 'Customs duty and other levies'.

The section 18(2) of the Customs Ordinance refers as follows,

> *"(2) When any duties, dues or charges on any goods, imported or exported, have been short levied or where any such duties, dues or charges after having been levied, have been erroneously refunded, the persons chargeable with the duties, dues or charges so short levied or to whom such refund has erroneously been made shall pay the deficiency or repay the amount so erroneously refunded, if the payment of the amount short levied or erroneously refunded shall be demanded within twenty- four months from the date of such short levy or refund."*

The above reproduced section 18(2) of the Customs Ordinance requires the payment of short levy shall be demanded within twenty-four months from the date of the levy. However, the Petitioner has received the letter of demand for the short levy after the expiration of twenty-four months. Factually, the relevant vehicles were initially levied in 2003 to 2005 and the subsequent demand on short levies was made in 2010. Therefore, the Petitioner has sought a writ application No.612/2010 seeking a writ of certiorari to quash the letter of demand dated 1st of September 2010, as it is contrary to section 18(2) of the Customs Ordinance. However, the Respondent has objected to the application on the ground that the period of 24 months referred to in section 18(2) of the Customs Ordinance should commence from the date of the judgment of the Supreme Court in S.C. Appeal 49/2008 delivered on 20th of March 2009. Accordingly, this Court in the order dated 19th of October 2010 has sustained the argument of

the Respondent and decided the letter of demand was within two years. Consequently, the Petitioner has sought leave to Appeal from the Supreme Court against the said order of the Court of Appeal dated 19th of October 2010. The Supreme Court in SC Appeal 179/2010, by its order dated 2nd of July 2012 has held that it cannot be construed that the period of 24 months begins from the date of the judgment of the Supreme Court.

In the case of **SC Appeal No.179/2010**, Gamini Amaratuga J. has held,

> "*In dealing with this appeal I wish to make the following observations. The words in section 18(2) are plain, clear and unambiguous. The point of time from which the period of 24 months has to be reckoned is clearly laid down by the words "from the date of such short levy or refund in section 18(2). The Court of Appeal has held that the 24-month period begins to run from the due of the judgment of the Supreme Court i.e.20.03.2009. What the Supreme Court has said was that "This order will not prejudice the authority of an officer of customs to recover any sums that are due according to law". This sentence cannot be construed to mean that the period of 24 months begins to run from the date of the judgment of the Supreme Court.*"

Further, the following observations by His Lordship Gamini Amaratunga J are of utmost relevance.

> *"on the other hand, the last sentence of the judgment of the Supreme Court (quoted above) can reasonably be construed in two different ways to mean two different things. One can contend that it means that "any sums due may be recovered according to law." If this view is taken, it at once brings into focus section 18(2) of the Customs Ordinance. On the other hand, if the sentence is construed to mean that "any sums that are due according to law may be recovered" it brings in to focus the necessity of deciding the date of such a short levy. In this context, it is pertinent to note that the appellant company and the customs authorities had different views with regard to the appropriate classification of the H.S Code applicable to the motor vehicles in question. The Company's position was that classification 8702-10-01 was appropriate one, the customs authorities contended that it was classification 8703-32-07. The supreme Court has not decided the appropriate classification applicable to the motor vehicles in question. Without deciding the appropriate classification into which the vehicle in question falls, it is not possible, for the purposes of section 18(2)*

of the Customs Ordinance, to determine whether there had in fact been a short levy. The Court of Appeal has not given its mind to this aspect of the matter before deciding to refuse o issue notice on the respondents in the first instance although the customs authorities had issues the letter of demand sought be quashed on the assumption that H.S.C ode 8703.32.07 applied to the vehicles and that there had been a short levy of duty."

Therefore, it has become necessary for us to determine if the Supreme Court by its initial decision has intended to grant an exception to the time limit prescribed under section 18(2) of the Customs Ordinance. The sentence *"This order will not prejudice the authority of an officer of customs to recover any sums that are due according to law"* could best be interpreted as if there is any due as for the law at that time, this judgment should not prevent of such being charged. However, as apparent from the clear wording of section 18(2) of the Customs Ordinance, such a short levy could not be imposed after 24 months. Therefore, in my view by the time the Supreme Court Judgement was pronounced on the 20th of March 2009, there was nothing legally due as more than 24 months had lapsed since the alleged short levies.

Accordingly, the timeline prescribed under section 18(2) cannot be considered to start from the date of the judgment of the Supreme Court on 20.03.2009. Therefore, it is clear that the officers of the customs have not resorted to the initial steps prescribed by law in due course.

Now the issue of proper classification shall be addressed. Initially, the Petitioners has classified these vehicles under H.S. Code 8703.32.07, which the officers of the Respondents having inspected have approved. Subsequently, in 2005 the Respondents having suddenly found that the said classification was incorrect, decided to resort to section 47 of the Customs Ordinance which is held to be an inappropriate procedure. Therefore, it seems to be an internal issue of the Respondents as to the proper classification of the said vehicles, which has to be addressed after a proper inquiry. However, at this stage, this issue will not arise as whatever the classification it is, it would merely be of an academic interest and will not influence the outcome of this case as I have observed above, the issue of charging short levy is already prescribed.

Considering the materials discussed above, it is apparent that the decision to short levy the Petitioner, taken by the Respondent is contrary to section 18(2) of the Customs Ordinance, hence ultra vires.

Therefore, this application is allowed and the reliefs prayed by the prayer III and IV are granted.

No Cost ordered.

Judge of the Court of Appeal

R. Gurusinghe J.

I agree

Judge of the Court of Appeal