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

In the matter of an Application under Article 140 of the Constitution for a mandate in the nature of Writs of Certiorari and Prohibition.

Court of Appeal Case No:
CA/WRIT/228/2024

Ferentino Tyre Corporation (Pvt) (Ltd),
No. 25, Alfred Place, Colombo 03.

Petitioner

Vs.

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

1B. Mr. Seevali Arukgoda,
   Director General of Customs,
   Sri Lanka Customs Department,
   No. 40, Main Street,
   Colombo 11.

2. C.P.G. Punchihewa,
   Senior Deputy Director of Customs,
   Sri Lanka Customs Department,
   No. 40, Main Street,
   Colombo 11.

3. U.J.M.H.B. Jayasinghe,
   Assistant Superintendent of Customs,
   Sri Lanka Customs Department,
   No. 40, Main Street,
   Colombo 11.

Respondents

Before: Mayadunne Corea, J
Mahen Gopallawa, J

Counsel: Suren de Silva with Jehan Samarasinghe instructed by D L & F De Seram for the Petitioner.
Vikum de Abrew, P.C., A.S.G., with Prabashanee Jayasekara, S.C. for the State.

Argued on: 26.03.2026.

Written Submissions: For the Petitioner on 13.05.2026.
For the Respondents on 05.06.2026.

Decided on: 31.08.2026.

Mayadunne Corea J

The Petitioner in this application sought, *inter alia*, the following reliefs:

"*b)* *Grant a mandate in the nature of a Writ of Certiorari quashing the purported order of the 2nd Respondent in Customs Case No. PCAD/2022/00050/CCR/00989 dated 18.03.2024 (A7)*

c) *Grant a mandate in the nature of a Writ of Prohibition restraining the 1st and/or 2nd Respondents and/or their servants and agents from taking any steps or action in terms of the aforesaid purported order in Customs Case No. PCAD/2022/00050/CCR/00989 dated 18.03.2024 (A7)*"

The facts of this case, in brief, are as follows. The Petitioner company is an approved entity under section 17 of the Board of Investment Law, No. 4 of 1978 and has been conferred rights and privileges pursuant to Board of Investment (herein referred to as 'BOI') agreements. According to the BOI agreements, the Petitioner company is entitled to sell 20% of its total manufacturing output in the local market subject to the payment of customs duties and other applicable levies.

By letter dated 09.12.2020, the Petitioner informed the BOI that it would commence the sale of tyres in both the local and export markets with effect from 18.01.2021. Although the Petitioner submitted applications to the BOI seeking approval for local sales, the BOI delayed granting such approvals. Notwithstanding the delay, the Petitioner proceeded with local sales.

Thereafter, in 2022, upon the BOI granting approval for 42 applications submitted by the Petitioner, the Petitioner approached the Sri Lanka Customs for the payment of Customs duties and other applicable levies. The Customs accepted the approvals issued by the BOI and further accepted four Customs Declarations (CusDecs), together with the payment of the applicable Customs duties and other levies tendered by the Petitioner.

However, the Customs refused to process the fifth CusDec and instead initiated Customs case no. PCAD/2022/00050/CCR/00989 against the Petitioner. It was alleged that the Petitioner had failed to obtain the requisite approval from the BOI for the local sale of tyres and had removed 431,239 tyres from its premises for sale in the local market without such approval, thereby defrauding the State of Customs duties amounting to Rs. 3,320,801,543. Upon conclusion of the inquiry, the 2nd Respondent made an order (marked as A7) directing the Petitioner to pay a mitigated forfeiture. Aggrieved by the said order, the Petitioner has invoked the Writ jurisdiction of this Court by filing the present application.

The Petitioner's contention

The Petitioner challenges the acts of the Respondents on the following grounds:

- The order marked A7 is *ultra vires*, illegal, arbitrary, *mala fide*, disproportionate and unreasonable.
- The Customs does not have jurisdiction to initiate an inquiry in view of the BOI approvals provided.
- The Customs does not have authority to determine the validity of BOI approvals.
- The Customs accepted four other CusDecs also relating to local sales made by the Petitioner.
- The Respondents have acted for collateral purposes and improper motives.

<u>The Respondents' contention</u>

The Respondents raised the following objections:

- The Petitioner has suppressed and misrepresented material facts.
- The Petitioner has failed to name the necessary parties.

It is common ground that the Petitioner is a company registered with the BOI and has entered into several agreements with the BOI

Now I will consider the Petitioner's contention along with the Respondents' objections.

As per the main agreement no. 94 the Petitioner has entered into with the BOI, the Petitioner has commenced a tyre manufacturing plant. As per the agreement, the Petitioner is required to export 80% of the produce and upon obtaining permission and upon payment of the relevant duties and other levies to the customs pertaining to the raw material, the Petitioner is allowed to sell 20% of the total produce to the local market. The Petitioner concedes that it has sold such products to the local market prior to obtaining the approval from the BOI for the same. It is also conceded that at the time of the sale, the Petitioner had not paid the relevant customs duties and the other applicable levies.

At the argument stage, the Petitioner's arguments were mainly two-fold namely, the Customs did not possess authority to determine whether the Petitioner had violated the BOI agreement and hence, the purported inquiry commenced by the Respondents is illegal, ultra vires and in excess of jurisdiction. This argument was based on section 17 of the BOI Law. This was substantiated by the argument that the BOI had not considered the Petitioner to have violated the agreement and had subsequently granted approval for the sale.

It appears that the Petitioner's main contention is that they have a valid agreement with the BOI and if a violation of the said agreement had occurred, then it is the BOI that has to inquire into it and take appropriate action and therefore, the contention that the customs does not have jurisdiction to commence an inquiry under the Customs Ordinance. Further, it was contended that the BOI cannot delegate its powers under section 17 of the BOI Law and hence, even if the BOI had made the request, the customs does not have jurisdiction to commence an inquiry.

At this stage, it is pertinent to note whether the inquiry that was held in the culmination of the order was made under section 17 of the BOI Law or was an inquiry pursuant to any other provision that enables the Custom to hold an inquiry under the Customs Ordinance.

<u>The BOI agreement no.94</u>

The Petitioner contended that they had entered into an agreement with the BOI to commence an enterprise under the above agreement. This would be an ideal opportunity to examine the said agreement. Clause 8 of the said agreement among other things stipulates that a minimum of 80% of the production has to be exported.

> *"(8) The Enterprise shall*
>
> *(ii) export a minimum of 80 per centum (80%) of the total production of the business*
>
> *In the event the Enterprise fails to meet the criteria as indicated in sub clause (i) and (ii) above, the Board reserves the right to withdraw all or any of the concessions granted to the Enterprise"*

This clause is followed by clause 9 which permits the Petitioner to sell 20% of the total production in the local market.

> *"The Enterprise shall be permitted to sell a quantity equivalent to Twenty per centum (20%) of the total quantity exported in the local market subject to the payment of customs duty and all other applicable levies including Corporate Income Tax."*

By this clause it is evident that the said sale of 20 % of the total production is permitted only upon the payment of the customs duties and the other levies. This position was not denied by the Petitioner.

The Petitioner also conceded that prior to the sale they had to obtain the approval of the BOI and upon obtaining such approval, had to pay the customs duties and levies. However, it is the position of the Petitioner that they had sought the approval of the BOI but as the approval was delayed, they had sold the said production. Hence, it is not disputed that the Petitioner has sold the products without the BOI approval and without paying the duties and the levies for the said 20% to the customs as stipulated in the agreement and thus, in non-compliance with clause 9 of the agreement no. 94.

<u>The Petitioners contention under clause 17 of the agreement no. 94</u>

The Petitioner contends that although they have failed to obtain the approval of BOI or to pay the relevant dues and levies under clause 17 of the agreement, the customs does not have jurisdiction to inquire into the said breach.

"(17)

(i) In the event of any default and/or failure of the Enterprise in performing or complying with any duty or obligation imposed on the Enterprise by this Agreement and/or any failure to comply with any representations, undertakings or commitments referred to in Clause (1) of this Agreement and/or in the event of cancellation or termination of the lease of the land in accordance with the provisions in Part III of this Agreement, the Board may by notice in writing, immediately withdraw and/or cancel all rights, privileges and benefits conferred in terms of this Agreement, in toto or in part, effective from the date as may be specified by the Board.

(ii) In the event of the Board withdrawing and/or cancelling in toto or in part the rights, privileges and benefits as aforesaid the approval granted to the Enterprise shall deemed to have been cancelled, and all rights and privileges conferred upon the Enterprise for and in connection with conducting and/or operating the business shall thereupon cease, without prejudice to any claim by the Board against the Enterprise arising out of the breach of any covenant or term of this Agreement. The Enterprise if so determined by the Board shall be liable to pay the customs duty and other levies as determined by the Sri Lanka Customs on the items imported on duty free basis for the purpose of the business. The Enterprise shall have the right, if approved by the Board in writing to sell/transfer any such item referred to above to any other enterprise eligible for duty free facility in respect of same or to re-export same free of customs duty or restrictions provided the Board reserves to itself the right to cause or permit to be caused the examination of such items for the purpose of this Agreement.

(iii) If the Board is of the opinion that any default and/or failure referred to in sub-clause (i) above is unintentional the Board may first serve a written warning on the Enterprise requesting the Enterprise to remedy the default and/or to comply with this Agreement and/or such representations, undertakings or commitments referred to in Clause (1) of the Agreement within such period as may be prescribed by the Board. If at the expiry of such period, the Enterprise has without justification failed to act in accordance with such warning the Board shall act in accordance with sub-clause (i) above"

In response the learned ASG contended that the customs had not commenced the inquiry pursuant to clause 17 of the agreement, nor was it their intention to ascertain whether the Petitioner had breached the agreement that would trigger the events contemplated pursuant to clause 17 of the agreement. It is his contention that clause 17 contemplates an instance where there is a total violation that warrants the triggering of clause 17 culminating in the cancellation of the BOI approval.

The contention of the Respondents is that they have initiated an inquiry to ascertain whether the production has been sold to the local market without the payment of the duties and the levies on the raw material that was imported at the time of importation which is covered under clause 9 of the agreement. It is evident that the order impugned is the culmination of the said inquiry and not a finding on whether the BOI agreement has been violated or an inquiry under clause 17 of the said agreement. It appears that in addition to the main agreement, there had been several other agreements executed between the BOI and the Petitioner. This Court has considered the said agreements and found that clause 9 has been further amended by subclause 2(b) of agreement no. 203 attested in 2019. However, it is clear that what is exempted is the income generated from the local sales and the export income for a period of 15 years. The clause clearly provides that 20% of the total production is to be sold only subject to the payment of customs duties and the other applicable levies. It was also not disputed that the said customs duties and levies are determined by the customs subject to the Petitioner obtaining the prior approval from the BOI.

Did the BOI grant approval for the sale of 20% of the total production in the local market?

This takes me to the next issue as to whether the BOI had given approval to the Petitioner pursuant to clause 9 of the agreement to sell the above percentage of the production at the local market and whether the said sale had taken place in accordance with the agreement.

It appears that as per the documents tendered, the Petitioner had requested approval to sell 20% of its total production by the letter dated 09.12.2020 from the BOI. The Petitioner brought to our attention the documents marked as P33 at page 991 of the brief, whereby the Petitioner has sought the permission of the BOI to sell 1,813 tons of tyres to the local market. However, the said letter does not bear a date. Hence, when the said request had been made is not clear to the Court. It was submitted to this Court that the documents contained with a "P" marking are documents the Petitioner had tendered at the customs inquiry and which has been filed in this case. It was also brought to the attention of this Court that the document P34a at page 995 of the brief, whereby the Petitioner had informed the projected sales capacity for the period 2021 to 2025 and in the same letter had informed that they had sold to the local market 1,804,708 kg of tyres in 2021. However, the Petitioner concedes that this sale to the local market had occurred before the grant of approval from the BOI was received.

The Petitioner submitted to this Court the applications tendered to the BOI for the sale of products in the local market and attached approvals D1 to D42 at pages 761 to 844 of the brief. This Court observes that the applications made by the Petitioner to the BOI seeking permission for local sales do not bear any date. Hence, this Court cannot ascertain when the said applications had been tendered. However, it is sufficient to state that the said applications all are requests for approval for 20% of the production to be sold in the local market. The Counsel for the Petitioner submitted that although they had made the request seeking approval for the local sale, due to the long delay on the part of the BOI in granting such approval, they had sold the products in the local market on the assumption that they were approved. This cannot be ascertained as the applications do not bear any date. Hence, the date on which they had been made cannot be ascertained. However, as per the submissions, it is clear that the local sales have taken place prior to the Petitioner obtaining BOI approval. Further, the learned Counsel for the Petitioner submitted that the BOI should be aware of the fact that the product had already been sold, since the Petitioner had provided the invoice numbers. This submission is contrary to the agreement no. 94, as the said agreement as well as the Petitioner himself conceded that before the sales take place to the local market, the Petitioner not only has to obtain prior approval from the BOI for local sales, but that they also have to pay the duties and the other levies to the customs. The Petitioner's main contention is that the BOI had granted approval for the sale and hence, there is no customs violation that attracts an investigation and the subsequent penalty imposed. The question that arises is whether the Petitioner should have obtained BOI approval and paid the custom levies and duties prior to the local sales. Let me know examine this argument.

It is not disputed that the BOI had approved the sales only after the actual physical sale had taken place. This is undoubtedly a non-compliance with the clauses in BOI agreement no. 94 as well section 203 of the BOI Law. The Petitioner, by entering into a BOI agreement, is at an advantageous position than the other importers as the Petitioner does not have to pay the duties and the other applicable levies at the time of importation and clearance. The said exemption is given to attract the investors and on the assumption the goods would be exported with the option to sell 20% of the total production within the local market. In the event of the product being sold in the local market, the Petitioner is required to obtain the approval and pay the relevant duties and levies pertaining to the raw materials that were used for 20% of the products.

In this instance the Petitioner should have followed the procedure stipulated in the agreement. Nevertheless, the Petitioner has failed to follow the said procedure and has not only obtained the duty-free concession but has sold and earned profits without paying the duties or the levies for the raw material.

The Petitioner's contention is that the Petitioner had received the approvals from the BOI and hence, has not violated the clauses of the agreement and thereby, is now entitled to pay the duties and the levies. This is contested by the Respondents who in turn states that the BOI has approved only the future sales and the said approval does not cover the past sales. If I am to examine the application preferred by the Petitioner to obtain the approval it is clear that although the Petitioner says it has annexed the sales invoices, the wording is seeking approval for the future sales. The box in the application that gives the quantity clearly has the heading "quantity **to be sold**". Further, the approval that is granted under condition **A** clearly refers "to the value of the imported raw material component of the finished product and the applicable other levies as determined by the customs and submission of documentary evidence pertaining thereto to the Investor Service Department, **prior to the removal of the items**".

Hence, it is clear the approval is conditional. The customs is given the power to determine the relevant duties and the levies and it has to be done prior to the removal of the items.

> *"(B) Applicable Charge Inclusive of VAT as per service charge schedule of BOI for each renewal*
>
> *(C) The transaction is subject to verification by BOI/Sri Lanka Customs*
>
> *(D) The removal of the items are permitted to be effected only during 8.30am to 4.30pm on week days.*
>
> *(E) This local sale should be finalized within a period of one month from the date of this letter. If the local sale is not effected this application should be surrendered to the relevant service centre within three days from the date of expiry.*
>
> *(F) Settlement of any outstanding dues, if any, to the BOI prior to effect the removal of above items."*

This clearly negates the Petitioners argument that they have been given the approval for the past sales. The wording and the conditions imposed clearly establish that the approval is for future sales and the said approval is subject to the conditions thereto on and the payment of duties and the relevant levies are to be paid prior to the removal of the items. If, as the Petitioner submitted, the approval was given for past sales, the wording in the approval would be different and further, that would negate the conditions imposed prior to the removal of the items.

The Petitioner drew our attention to the wording used in the approval, which he himself relies upon to establish that approval was obtained. However, that wording militates against his contention that the approval relates to past sales. The wording of the approvals reproduced above clearly demonstrates that the approval was granted in respect of future sales, as conditions were imposed prior to the removal of the items.

This could have been clarified further by producing an affidavit from the BOI. However, for reasons better known to the Petitioner they have chosen not to bring in the BOI as a party to this case. This Court would comment on this elsewhere in this judgement.

This Court also observes that even as per the BOI agreement no. 94, the Petitioner subsequent to obtaining approval has to pay the duties and the levies. The said duties and the levies have to be paid to the customs. This is more evident in the wording of the approval, as the said approval clearly states that duties and the levies have to be determined by the customs. Thus, in my view, the Respondents' contention that the customs has jurisdiction to inquire into non-payment of duties and levies prior to the sale has to succeed.

<u>The Petitioner's main contentions</u>

- ***The Customs does not have jurisdiction to initiate an inquiry in view of the BOI approvals provided.***

As I have stated above it is clear that the BOI has not given approval for the past sales. The wording of the approvals clearly demonstrates against such contention. Even if this Court is to consider for arguments sake that it has given the approval, the said approvals are conditional. It is not disputed that the Petitioner, by selling the items prior to obtaining the approval, is not in a position to fulfil the said conditions. Further, the approval does not remove the obligation imposed to pay the duties and the relevant levies as determined by the customs. To determine the duties and the levies shouldn't the customs have an inquiry, especially when the items have already been removed from the factory prior to approval and payment of duties and levies? Does it not constitute a customs offence? Further, when in the approval itself the Petitioner is informed that the customs duties and levies have to be paid as determined by customs. In the given circumstances, I am not inclined to accept the above contention of the Petitioner.

- ***The Customs does not have authority to determine the validity of BOI approvals.***

The Petitioner was not successful in establishing the said contention. As it is clear by the submissions of the learned ASG and the documents tendered, the customs by the purported inquiry does not seem to determine the validity of the approval. In my view, the wording in the approvals itself speak and the customs need not inquire to find out the validity of the approval. However, even from the evidence that has been tendered, it is clear that the BOI has clearly stated that the approvals are not for past sales (page 70 of the brief).

- ***The Customs accepted four other CusDecs also relating to local sales made by the Petitioner.***

This contention was replied by the learned ASG, whereby it was submitted that although four CusDecs had been processed while a post audit inquiry was proceeding, it had detected a systemic breach of the condition which violated the payments of the duties and levies which had prompted the customs to commence an inquiry. While observing that the customs should have been more vigilant to detect the said violations, as stated in my view, even if four CusDecs are accepted, a violation that has to be inquired into cannot be ignored merely because a violator had escaped on four occasions. Hence, I see no illegality that needs the intervention of this Court on this contention.

- ***The Respondents have acted for collateral purposes and improper motives.***

The Petitioner strenuously contended that the inquiry commenced for the purpose of obtaining a reward and not for the purpose of collecting the duties and the levies. The Respondents in response submitted that pursuant to the provisions of the Customs Ordinance they had commenced an inquiry. It was their contention that had the Petitioner complied with the clauses of the BOI agreement and the provisions of the Customs Ordinance pertaining to the payment of duties and levies, the necessity to commence an inquiry would not have arisen. This Court is in agreement of the said contention since if the Petitioner had complied with clauses and obtained the approvals and paid the duties and levies, they would have not given an opportunity to make the above allegation.

The Petitioner heavily relied on the cases of ***Sri Lanka Telecom PLC vs. Director General of Customs*** **CA Writ 387/2014, CA Minutes 21.09.2020**. However, I find the facts and circumstances of the said case are different to the instant case. The said case among other things focused on the alleged dispute between the entity and the BOI in the instant case. It is more fully non-compliance of the clauses that entails the payment of duties and levies to the customs. The learned ASG stresses the contention that the customs was not contesting clause 17 of the agreement, but is only contemplating the non-compliance with clause 9 of the agreement.

The Petitioner also relied on the ***Toyota Lanka (Pvt) Ltd and another vs. Jayathilaka and others*** **2009 (1) SLR 276**. The facts and circumstances of the said case are different from the instant case. Hence, in my view, the said case cannot help the Petitioner in the instant case before this Court.

I have considered the decision in the case of ***Lanka Corrugated Industries (Pvt) Ltd and a another vs. Director General of Customs and another*** **SC Appeal 16/2003, SC Minutes 01.04.2016**, where it was held

> "*Accordingly, the special provisions in section 27 of the Board of Investment Law shall apply when the goods are sold in the local market other than in accordance with the terms of the agreement marked P1. Thus, any goods taken out of the warehouse or the premises of the First Petitioner are deemed to be the goods imported into Sri Lanka. Therefore, the provisions of Customs Ordinance relating to forfeiture shall apply to such goods taken out of the premises of the First Petitioner.*
>
> *It must be noted that the First Petitioner could have elected to sell all his goods overseas without Customs duty. However, if it sells ten percent of the quantity exported in the local market, then it must pay the relevant Customs duty and other applicable levies. If the quantity sold in the local market exceeds ten percent then the provisions of the Customs Ordinance relating to forfeiture shall apply to such goods sold in the local market. The reason being that the goods sold in the local market not only reduces the quantity of export which deprives the country of foreign exchange and revenue but also defeats the very purpose of the law*."

The Court in the said case determined the application of section 27 of the BOI law with section 50(A)(2) of the Customs Ordinance that was contended by the Petitioners in the instant case. I am inclined to agree with the said determination.

This will take me to the contention that the impugned order A7 is *ultra vires*, illegal, arbitrary, *mala fide*, disproportionate and unreasonable. For the above given reasoning in my judgement I am unable to agree with the said contention and therefore the contention cannot be sustained.

Even though I have now dealt with the Petitioner's contentions and I need not consider the objections raised by the Respondents I think I must consider the objection raised pertaining to the want of necessary parties.

Want of necessary parties

The Petitioner's main contention, if I am to describe in a broad sense, is that the Respondents are attempting to determine the violation of an agreement between the BOI and the Petitioner. Further, the Petitioner argued that the Petitioner has complied with the relevant clauses of the BOI agreement. Special emphasis was added to the fact that the Petitioner had obtained the approval for the local sales while the Respondents contested the said contention. The ideal party that would have assisted this Court in coming to a determination on the grounds contended would have been the BOI. However, for reasons better known to the Petitioner, the Petitioner did not think it necessary to make the BOI a party. Making the BOI a party would have made the issue before the Court clear. However, the Petitioner not only did not make the BOI a party and did not disclose any reason as to why they did not make the BOI a party yet relying on the approvals of the BOI and asking this Court to come to the conclusion that the disputed sales to the local market was done with the approval of the BOI and thus, the inquiry that culminated in A7 is bad in law. Considering all the circumstances and relief prayed by the Petitioner, I am inclined to agree with the Respondents that the BOI is a necessary party to this case as the Petitioner has invited this Court to determine that the BOI has given the approval for the past sales. In view of clause 9 of the agreement no. 94 and the evidence led before the customs inquiry, the decision of this Court would have a direct bearing on the stance of the BOI. Hence, in my view the objections raised on necessary parties have to succeed.

Also, the Respondents invited this Court to treat the said omission of making necessary parties was deliberate as the Petitioner has suppressed material facts and deliberately misrepresented facts pertaining to the approvals obtained and the date on which the approvals were sought.

Is the amount imposed as forfeiture excessive?

The Petitioners contended that the customs has imposed a staggering forfeiture which is far in excess. By forwarding this argument, it appears the Petitioners are attempting approbate and reprobate. On one hand the Petitioners argue that the entire inquiry is *ultra vires,* on the other hand they argue the imposed forfeiture is excessive which amounts to the Petitioners accepting the wrong doing and accepting a forfeiture which they assume should be lesser.

In response, it was submitted that as per section 27(2)(b) of the BOI Law, the goods released to the local market other than in terms of the agreement are deemed to be goods imported to Sri Lanka. This is the requirement imposed by clause 9 of the agreement. The said clause imposes a condition for the Petitioner to pay the applicable duties and levies. In this instance the said goods have been sold before the payment of the said applicable duties and levies and hence, the said sale attracts section 50(A) of the Customs Ordinance. As submitted by the Counsel, this Court observes that the relevant provision itself mentions the sum to be forfeited. Hence, the argument that the Respondents' imposition of forfeiture is excessive is not tenable.

Conclusion

I have considered the material tendered to this Court and the submissions of the parties. In my view, the Petitioner has failed to establish grounds urged before us to demonstrate any illegality in the impugned order. It is the considered view of this Court that the Petitioners have failed to comply with the conditions of the BOI agreement and the approvals that necessitated the Respondents having to commence an inquiry. Accordingly, for the reasons stated above I refuse to grant the reliefs sought by the Petitioner and proceed to dismiss this Writ application. The costs are to be borne by the respective parties.

Judge of the Court of Appeal

Mahen Gopallawa, J

I agree

Judge of the Court of Appeal