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*, *Mandamus* and Prohibition.

Etna Trade Link (Pvt) Ltd,
No. 65, Ambathale Road,
Wennawatta, Wellampitiya.

PETITIONER

Vs.

Court of Appeal Case No:
CA/WRIT/648/2024

1. Director General of Customs,
   Sri Lanka Customs,
   No. 40, Main Street,
   Colombo 11.

2. Viraj Niroshan Thilakarathne,
   Producing Officer/Superintendent of Customs,
   Central Intelligence Directorate,
   Sri Lanka Customs Headquarters,
   Colombo 11.

3. K.L.P. Kumara,
   Inquiring Officer,
   Senior Deputy Director of Customs,
   Sri Lanka Customs Headquarters,
   Colombo 11.

4. A.K.K. Thushara,
   Superintendent of Customs,
   Sri Lanka Customs,
   Colombo 11.

5. C.S. Wickremaratne,
   Senior Deputy Director of Customs,
   Sri Lanka Customs,
   Colombo 11.

6. Sri Lanka Tea Board,
   No. 574, Galle Road,
   Colombo 03.

7. The Chairman,
   Sri Lanka Tea Board,
   No. 574, Galle Road,
   Colombo 03.

8. The Tea Commissioner,
   Sri Lanka Tea Board,
   No. 574, Galle Road,
   Colombo 03.

9. Niluka Abeyratne,
   Assistant Tea Commissioner,
   Sri Lanka Tea Board,
   No. 574, Galle Road,
   Colombo 03.

10. C.S. Madarasinghe,
    Assistant Tea Commissioner,
    Sri Lanka Tea Board,
    No. 574, Galle Road,
    Colombo 03.

RESPONDENTS

Before:	Mayadunne Corea, J Mahen Gopallawa, J
Counsel:	Farzana Jameel, P.C. with Shahanie Mackie instructed by Amila Kumara for the Petitioner. Vikum de Abrew, P.C., A.S.G. with Dr. Peshan Gunaratne, S.C. for the Respondents.
Argued on:	31.10.2025 and 18.11.2025
Written Submissions:	For the Petitioner on 12.01.2026. For the 1st to 10th Respondents on 22.01.2026.
Decided on:	30.04.2026.

Mayadunne Corea J

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

"*c) Grant and issue a mandate in the nature of a Writ of Certiorari quashing that part of the decision marked 'P9(a)', contained in the letter of the Sri Lanka Tea Board dated 27th March 2024 marked 'P9', addressed to the Director General of Customs, 'authorising' the Director General of Customs to 'prosecute the Petitioner for contravening the provisions of the Tea (Tax & Control of Export) Act No. 16 of 1959*

d) Grant and issue a mandate in the nature of a Writ of Certiorari quashing the decision made by the 1st to 5th or any one or more of the Respondents, to commence a Customs inquiry in relation to the Petitioner-Company's consignments of tea, declared under Customs Declarations Nos. CBEX E 14487 dated 06th March 2024 and CBEX E 15484 dated 11th March 2024

e) Grant and issue a mandate in the nature of a Writ of Certiorari quashing any decision made, or to be made by the 1st to 5th Respondents or any one or more of the Respondents, to impose penalties or forfeitures upon the Petitioner, based on the violations of sections 12, 44, 57 and/or 130 of the Customs Ordinance, in relation to the Petitioner's consignments of tea, declared under Customs Declarations Nos. CBEX E 14487 dated 06th March 2024 and CBEX E 15484 dated 11th March 2024

f) Grant and issue a mandate in the nature of a Writ of Certiorari quashing any decision made, or to be made by the 1st to 5th Respondents, or nay one or more of the Respondents, to inquire into the standard of tea sought to

be exported by the Petitioner under Customs Declarations Nos. CBEX E 14487 dated 06th March 2024 and CBEX E 15484 dated 11th March 2024

g) *Grant and issue a mandate in the nature of a Writ of Certiorari quashing the decision of the 3rd Respondent Inquiry Officer made on 27th September 2024, contained in the Customs Inquiry Proceedings dated 27th September 2024, in Customs Inquiry bearing number CINT/2024/0007/CCR/0761, marked as P20(c), to dispose of the Petitioner's tea under the provisions of section 162 of the Customs Ordinance*

h) *Grant and issue a mandate in the nature of a Writ of Prohibition prevent the 1st to 5th Respondents or any person(s) acting under their authority from continuing with the Customs Inquiry bearing number CINT/2024/0007/CCR/0761, in relation to the Petitioner-Company/s consignments of tea declared under Customs Declarations Nos. CBEX E 14487 dated 06th March 2024 and CBEX E 15484 dated 11th March 2024*

i) *Grant and issue a mandate in the nature of a Writ of Prohibition preventing the 1st to 5th Respondents or anyone or more persons acting under their authority, from making any decision to impose penalties or forfeitures upon the Petitioner, based on violations of sections 12, 44, 57 and/or 130, or any of the other provisions of the Customs Ordinance in Customs Inquiry bearing number CINT/2024/0007/CCR/0761; in respect of the Petitioner's consignments of tea declared under Customs Declarations Nos. CBEX E 14487 dated 06th March 2024 and CBEX E 15484 dated 11th March 2024*

j) *Grant and issue a mandate in the nature of a Writ of Prohibition prevent the 1st to 5th Respondents or any person(s) acting under their authority from making any decision to inquire into the standard of the tea sought to be exported by the Petitioner under Customs Declarations Nos. CBEX E 14487 dated 06th March 2024 and CBEX E 15484 dated 11th March 2024*

k) *Grant and issue a mandate in the nature of a Writ of Prohibition prevent the 1st to 5th Respondents or any person(s) acting under their authority from making any demands and/or initiating and/or taking any steps to initiate nay further or future inquiries concerning the consignment of tea declared under Customs Declarations Nos. CBEX E 14487 dated 06th March 2024 and CBEX E 15484 dated 11th March 2024, which are the subject matter of Inquiry bearing number CINT/2024/0007/CCR/0761*

l) *Grant and issue a mandate in the nature of a Writ of Prohibition prevent the 1st to 5th Respondents or any person(s) acting under their authority from implementing or taking steps to implement the decision of the 3rd Respondent Inquiry Officer made on 27th September 2024, contained in*

the Customs Inquiry Proceedings dated 27th September 2024 in Customs Inquiry bearing number CINT/2024/0007/CCR/0761

m) Grant and issue a mandate in the nature of a Writ of Mandamus directing the 1st to 5th Respondents to release to the Petitioner forthwith without delay, the Petitioner's goods currently detained by the Customs declared under Customs Declarations Nos. CBEX E 14487 dated 06th March 2024 and CBEX E 15484 dated 11th March 2024"

The Respondents obtained several dates to file their objections to the application but did not file any objections. Subsequently the Counsel for the Respondents informed Court that they would abide by the limited objections filed at the notice stage. Before the commencement of the hearing both parties moved to file written submissions. However, only the Petitioner has filed the same. These two facts were observed before the hearing commenced. However, at the hearing, the Respondents made submissions opposing the granting of the reliefs prayed for by the Petitioner. Subsequent to the hearing, both parties moved to file written synopsis and the same has been filed.

The facts in brief of this case are as follows. The Petitioner is a private limited company specialising in the packaging and exportation of a diverse range of teas for both domestic consumption and export. On 21.03.2024, two consignments of tea intended for export were detained by the Central Intelligence Directorate of Sri Lanka Customs. The detained containers were subjected to a special examination conducted by the Sri Lanka Customs and the Sri Lanka Tea Board. Following this examination, by a letter dated 27.03.2024 (P9), the Assistant Tea Commissioner wrote to the Director General of Customs stating that the samples of tea fell below the ISO 3720 Standards, that the exportation of low-quality tea without a valid permit was a punishable offence under section 8(1)(c) of the Tea (Tax and Control of Export) Act, No. 16 of 1959, and that the Petitioner may be prosecuted for the offence.

Further, by letter dated 11.07.2024, the Assistant Tea Commissioner sent a notice of penalty to the Petitioner, whereby the Tea Commissioner had decided to compound the offence by accepting Rs. 2,374,388.80, representing 5% of the total value of the shipment (P15). Subsequently, a Customs inquiry was conducted into the said matter, the proceedings of which are marked P20(a)-(c). The Petitioner being aggrieved by the commencement of a Customs inquiry has filed this Writ Application.

The Petitioner's contention

The Petitioners grounds for a Writ is pleaded in paragraph 62 of the petition. At the hearing the Petitioner challenges the acts of the Respondents on the following grounds:

- The Petitioner's goods fall under HS Code 0902.40.92 as "Certified by the Sri Lanka Tea Board as wholly of Sri Lankan origin, Other.". The Sri Lanka Tea Board never disputed the wholly Sri Lankan origin of the Petitioner's goods.
- The Sri Lanka Customs has no authority to conduct an inquiry under the Customs Ordinance, No. 17 of 1869.
- Any difference in the quality of tea to be imported is solely within the jurisdiction of the Tea Board and not with Customs.
- The Petitioner has not violated any provision of the Customs Ordinance.
- The Tea Board nor the Customs have declared the tea to be adulterated.
- Upon the above-mentioned grounds, the Customs have no jurisdiction to conduct an inquiry thus the inquiry is *ultra vires*.

The Respondents' contention

The Respondents raised the following objections:

- The Petitioner had acted contrary to the provisions of the Tea (Tax and Control of Export) Act and Customs Ordinance.
- The Petitioner has failed to make a full and fair disclosure of material facts and is guilty of suppressing and misrepresenting material facts.
- Facts in dispute do not warrant the issuance of discretionary relief by way of Writ.
- The Petitioner's application is premature.
- The Petitioner's application is misconceived and/or wrongful in law.

Analysis

The learned President's Counsel for the Petitioner at the hearing confined her submissions to the following grounds. The following is a summary of the grounds pleaded in the petition, namely:

- Exclusive jurisdiction of testing the quality of tea lies with the Tea Board and hence the Customs has no jurisdiction.

- The conditions precedent to the commencement of an inquiry under section 8 of the Customs Ordinance is absent.
- As per Schedule B of the Ordinance there is a difference between adulterated tea and inferior quality tea.
- There is no parallel jurisdiction vested by law to Tea Board and Customs in respect of quality of tea.

It is common ground that the Petitioner is a tea exporter and is assigned exporter registration number 222672 and is also a tea packer. The Petitioner on or around 06.03.2024 had submitted CusDec bearing number CBEX E 14487 pertaining to a consignment of tea meant to be exported (P7). On 11.03.2024 a second CusDec bearing number CBEX E 15484 was lodged with the Customs (P8). It is observed that in both CusDecs the HS commodity code is given as 09024092 and bears the description as pure Ceylon black tea. In both CusDecs the consignee is given as "**M.A.B.G.T Dubai**".

Inspection of the consignment of tea

On or about 26.03.2024 the Customs with Sri Lanka Tea Board has done a special inspection of the cargo to be exported and drawn samples for testing. It is not disputed that upon testing the tea to be exported was found to be below the required ISO 3720 standard which fell in to the category of "refuse tea". It is observed that the category of "refuse tea" falls within a different HS code. Namely 902.40.99. It is also not in dispute that the Petitioner had no authorisation to export refuse tea nor had it declared that the consignment to be exported contain refuse tea under the cage of description in the CusDec. Parties are not at variance that as per the Tea (Tax and Control of Export) Act that to export tea, a permit under the authority of the Commissioner is required and in this case the Petitioner has obtained the said permit to export Pure Ceylon black tea. It is also observed that pursuant section 11 of the said Act, tea which is different to the quality of tea for which the permit has been obtained cannot be exported. It is also observed that even to sell or to be in possession of refuse tea there should be authorisation pursuant to the provisions of the Tea Control Act (section 22 to 24 of the Tea Control Act) There is no evidence tendered to this Court to demonstrate whether the Petitioner falls within the said section to possess or to sell refuse tea. The learned ASG contended that in view of section 7 of the Tea (Tax and Control of Export) Act, refuse tea is not permitted to be exported and what is allowed is only pure Ceylon black tea. At the hearing, the learned President's Counsel for the Petitioner conceded that the consignment was not Pure Ceylon black tea but refuse tea. However, she further contended that even refuse tea is derived from Pure Ceylon black tea.

It appears that upon the detection of refuse tea an inquiry had commenced by the officers of the 6th Respondent. The 9th Respondent had addressed a letter to the Director General of Customs giving a detailed finding and has informed that the consignment should not be allowed to be exported. Further, in the said letter the 9th Respondent had stated that the consignment should be "*denatured with the presence of all parties"*. It is interesting to note that even though the 9th Respondent had informed that the refused tea in the consignment is not allowed to be exported she has not ordered the consignment to be handed over to the Petitioner. The communication marked and tendered as P9 requires that the tea be denatured in the presence of both parties. While the learned ASG appearing for 6th to 10th Respondents interpreted the said order as to destroy the consignment in the presence of both parties, the learned President's Counsel appearing for the Petitioner contended that the said tea should be returned to the Petitioner. While conceding that the consignment cannot be exported, it is her contention that refuse tea is permitted to be sold in the local market. Hence, the application to make an order by this Court to return the consignment. However, as I have observed above the 9th Respondent in the document P9 does not give a direction to release the tea to the Petitioner, instead it requires that the tea be denatured in the presence of both parties.

In my view, for this Court to consider the Petitioner's application, the Petitioner should have established that the Petitioner falls within the category prescribed under section 22 to section 24 of the Tea Control Act. As observed above in this judgement, in the absence of any material to demonstrate that the Petitioner falls within the scope of the said sections, this Court is not inclined to make such an order to release the tea to the Petitioner as parties are not in dispute on the fact the consignment contains refuse tea.

Inquiry by the 6th Respondent

It appears that subsequent to the findings of the 9th Respondent which the Petitioner did not contest there had been an inquiry by the 6th Respondent, which is evident by the document marked and tendered as P10. Upon being called to show cause on the violation of the provisions of the Tea (Tax and Control of Export) Act the Petitioner has replied to the said show cause by the document marked and tendered as P11. By the said letter, the Petitioner acknowledged that it had attempted to export a consignment different from that for which a permit had been obtained, expressed remorse for the said act, and pleaded in mitigation. In mitigation, the Petitioner has submitted that the said consignment was for a consignee in Iraq. This fact was admitted by the learned President's Counsel for the Petitioner at the hearing too and has pleaded that they had committed the act not to obtain an unjust profit but to cater to the needs of the consignee. However, the Petitioner has failed to tender any material to substantiate the consignee's

request. No proof of such communication by the consignee has been placed before this Court. It is also pertinent to note that in the CusDec the consignees address is an entity in Dubai and no material has been submitted to demonstrate that the final destination of the consignment was Iraq.

With the material submitted and as per the submissions made, this Court observes that the Petitioner although had described the consignment to be pure Ceylon black tea has in fact attempted to export refuse tea and as per the explanation tendered to this Court, it appears the said act had been done with the knowledge of the Petitioner. The reply by the Petitioner to the show cause letter issued by the 6th Respondent states as follows:

> "*මෙම වෙනස් කිරීම් කරනු ලැබුයේ ශ්‍රී ලාංකික තේ සන්නාමයට කැළලක් කිරීමට හෝ තේ මණ්ඩලයට අපහාස කිරීමට නොව අපගේ ඇණවුම්කරු ඉදිරියටත් ශ්‍රී ලාංකික තේ මිලදී ගැනීමට රඳවා ගැනීමට සහ ඔහුගේ ඇණවුමේ සඳහන් පරිදි එම වර්ගයේ තේ සැපයීමක් කිරීමට පමණි. තවද වර්තමානයේ අප රට මුහුණ පාන විදේශ විනිමය අර්බුදයට අප විසින් දායක වීමට කැමැත්තෙන් මිස වෙනත් ලාභ ප්‍රයෝජනයක් ලබා ගැනීමට අදහසක් නොතිබුණි. තවද තේ අපනයන ව්‍යාපාරයේ නියැලෙන බොහෝමයක් ශ්‍රී ලාංකික ව්‍යාපාර දැනුවත් කරුණක් වන්නේ ඉරාක ජාතිකයන් ආනයනය කරනු ලබන තේ වලින් විශාල ප්‍රතිශතයක් අප විසින් මෙම අපනයනයට සකස් කර යොමු කරන ලද තේ කොළ වලට සමාන තේ කොළ බව ප්‍රකාශ කර සිටිමු. තවද අප විසින් මීට පෙර මෙවැනි ආකාරයේ කිසිම ක්‍රියාවක යෙදී නොසිටි බව ප්‍රකාශ කර සිටින අතර අවාසනාවකට තේ මණ්ඩලය මගින් අනුමැතිය ලබාදුන් තේ වලට පරිබාහිරව සුළු වෙනස් කිරීමක් කරමින් එම තේ අපනයනය කලේ ඉහත සඳහන් කරුණු හේතු කොට ගෙන විනා වෙනයම් අයුතු ලාභයක් හෝ අයුතු ප්‍රයෝනයක් බලාපොරොත්තුවෙන් නොවන බව ප්‍රකාශ කර සිටිමි.*
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> *කෙසේ වෙතත් අප හට මෙම සිදු වී තිබෙන සිද්ධිය සම්බන්ධයෙන් සමාවක් අයැද සිටින අතර මෙම අපගේ ඉල්ලීම කාරුණිකව සලකා බලා පනතේ සඳහන් පරිදි මෙය සමථයට පත්කර ඉදිරියටත් නිසි ප්‍රකාරව තේ අපනයනය කිරීමට තවදුරටත් අවස්ථාව සලසා දෙන මෙන් කාරුණිකව ඉල්ලා සිටිමු.*
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> *තවද මෙම කරුණු සම්බන්ධයෙන් ඔබතුමාට සුදුසු යැයි හැඟේ නම් මා හට චෝදනා කර ඇති චෝදනාවට පරික්ෂණයක් කර අපගේ ඉදිරි ව්‍යාපාරික කටයුතු වලට හානියක් නොවන ආකාරයෙන් කටයුතු කරගෙන යාමට නියෝගයක් නිකුත් කිරීම සම්බන්ධයෙන් සලකා බලන ලෙස කාරුණිකව ඉල්ලා සිටිමි. තවද මා හට පාසල් දරුවන් සිටින අතර ඔවුන්ගේ සියළු වියහියදම් සහ මා විසින් තුර්කියට අපනයනය කළ තේ ඇණ වු වෙනුවෙන් මට අයවිය යුතු මුදල් නොලැබීමෙන් මාගේ සම්පත් බැංකුවේ ණය අවහිර වී ඇත. එම නිසා මාගේ වයස දසලකා බලා මා හට සහනයක් ලබා දෙන මෙන් කරුණාවෙන් ඉල්ලා සිටිමු.*"

Upon the mitigatory pleading by the Petitioner, the 6th Respondent by its letter marked and tendered as P15, decided not to prosecute the Petitioner but to compound the

offence by accepting a payment of Rs. 2,374,388.80 which amounts to 5% of the value of the consignment. The Petitioner has appealed against this decision to the chairman of the 6th Respondent by the document marked and tendered as P16. However, whether the imposed amount has been mitigated or not was not submitted to Court by either party. Further, no material has been tendered to the effect to demonstrate that the said decision in P15 has been changed or the imposed value has been paid. In the absence of any material to demonstrate the payment directed by P15, the only conclusion the Court can arrive is that the Petitioner has failed to make such payment.

The Petitioner who invokes the Writ jurisdiction of this Court should come with clean hands. In my view the Petitioner's non-disclosure of whether he has complied with P15 or not, amounts to a suppression of a material fact as the 6th Respondent has compounded the case on the basis of the Petitioner making the payment. I further observe in view of Petitioner's appeal P16 where the Petitioner has sought to permit him to proceed with future exports, the Tea Commissioner by P17 had allowed his requests for future exportation until the Customs inquiry is concluded. Hence, in my view the Petitioner's permission for future exports are tied with the Customs inquiry. It is the decision to hold this inquiry the Petitioner by this application is seeking to quash. However, the P17 document does not allow the Petitioner's request to further mitigate payment that has been imposed.

Inquiry by Customs

The Customs had commenced its investigation and recorded statements from the employees of the Tea Board. Further, it is alleged that they have searched the Petitioner's warehouse and has obtained a statement from the Director of the Petitioner Company. In the said statement the Director had once again conceded that they have purchased tea outside the tea auction and has blended the said tea with the purchases from auction in the said detained consignment. Both parties are not at variance that the Customs inquiry has not concluded and is still proceeding. Let me now consider the grounds that were contended by the Petitioner at the hearing.

Grounds

1. *No parallel jurisdiction between Tea Board and Customs pertaining to inferior quality tea*

The Petitioner's above contention is pursuant to his relief prayed in prayer (c), where it is impugning part of the document P9. The Petitioner contends that the exclusive jurisdiction to ascertain whether the tea is of inferior quality lies with the 6th Respondent and not with Customs. However, it is argued that by the last paragraph of P9 the Assistant Tea Commissioner had delegated his powers under section 18 of Tea (Tax and Control of Export) Act to the 1st Respondent when he states "*as per the section 18 of the said Act you are authorised to prosecute the offence committed by contravening the provisions of the said Act*". In response, the learned ASG informed that the 6th and 9th Respondents are withdrawing the said impugned paragraph. In view of the said submission the learned President's Counsel appearing for the Petitioner, submitted that she will not be pursuing with prayer (c)of the Petition. Hence, the contention will not arise.

In any event as per the submissions of both Counsel it is evident that the 1st Respondent has commenced an inquiry independent of the 6th Respondents inquiry. It appears that the inquiry commenced by the 1st Respondent pertains to section 8(1) of the Customs Ordinance, while the 6th Respondents inquiry was under a separate act. Hence, the question of whether there is parallel jurisdiction does not arise. Further, there is no material submitted to demonstrate that the Customs inquiry pertains only to ascertain whether the tea is of inferior quality.

2. *Whether the Customs has the jurisdiction to commence inquiry under section 8 of the Customs Ordinance.*

Section 8 of the Customs Ordinance reads as follows:

> "8.
>
> *(1) Upon examinations and inquiries made by the Director-General, or other principal officer of the customs or other persons appointed to make such examinations and inquiries, for ascertaining the truth of statements made relative to the customs, or the conduct of officers or persons employed therein, any person examined before him or them as a witness shall deliver his*

testimony on oath, to be administered by such Director-General or other principal officer, or such other persons as shall examine any such witness, who and hereby authorized to administer such oath; and if such person shall be convicted of giving false evidence on his examination on oath before such Director-General or other principal officer of customs, or such other person in conformity to the directions of this Ordinance, every such person so convicted as aforesaid shall be deemed guilty of the offence of giving fa 1 se evidence in judicial proceedings, and shall be liable to the pains and penalties to which persons are liable for intentionally giving false evidence in a judicial proceeding.

(2) A person making an inquiry under subsection (1) may summon as a witness any other person whose evidence is necessary for the purposes of the inquiry; and a person who is summoned under this subsection shall, if he does not comply with the summons or refuses to be sworn or affirmed or to give evidence, be guilty of an offence and liable to a fine not exceeding 'Twenty five Thousand rupees."

It is the contention of the Respondents, that the Customs has the jurisdiction to conduct an inquiry under section 8 upon any violation of the provisions of the Customs Ordinance. The learned ASG further reiterated that the inquiry under section 8(1) is only to ascertain the truth of the statements made relative to the Customs and to ascertain whether there is a violation of the provisions of the Customs Ordinance. Hence, it was his contention the inquiry impugned will not find the Petitioner has committed an offence that would result in a punishment. It is his contention that that stage would arise only if there is sufficient material elicited to call for a show cause. Let me now consider even to commence an inquiry under section 8 of the Customs Ordinance, whether there were any grounds.

The Petitioner's main contention is that the issue before the Customs is whether the consignment contains export quality tea or inferior quality tea which cannot be exported. However, I observe the Petitioner in this instance along with the consignment of tea has tendered to Customs, the Customs declaration forms marked P7 and P8. In the two CusDecs, the Petitioner has identified the consignment under HS code 09024092 and in the description the Petitioner has clearly stated that it contains pure Ceylon black tea in bulk. It was the contention of the learned ASG that pure Ceylon black tea identified by the HS code falls within classification ISO 3720. However, subsequent to the inspection by the report P12, it has been found that the entire consignment does not fall within the standard of ISO 3720 and the three samples taken from the three containers, identifies the tea as "absolute refuse tea. Clearly below ISO

3720 on leaf". Two of the other consignments too states that they contain "refuse tea. Cleary below ISO 3720 on leaf", while two other samples refer "clearly below on ISO 3720 on leaf". In view of the said report Customs have sought a classification opinion whereby the commodity classification branch has given the classification opinion that was marked and tendered by the Petitioner as P13 and by the said opinion it has been opined that the correct HS code is 0902.40.99. The documents P12 and P13 were not impugned by the Petitioner. There is no material to demonstrate that the Petitioner had sought to refer the classification to the Nomenclature Committee. Hence, it is safe to conclude that as the Petitioner has accepted the said two documents, the classifications the Petitioner had tendered to the Customs under P7 and P8 in cage 33 under commodity HS code and the description of the goods are wrong.

The report of the 6th Respondent's officers was marked and tendered as P12.This report was not challenged by the Petitioner. Upon receipt of the report, the Customs had called for a classification of the consignment from the commodity classification unit and has been informed that the relevant HS code for the consignment is not what the Petitioner had submitted but it should be 0902.40.99. This raises the question of compliance with section 57 of the Customs Ordinance by the Petitioner. In this I am also mindful of section 119 of the Customs Ordinance, as per the material submitted and the submissions made it appears the information submitted in the documents marked as P8 and P9 seems to be incorrect which in turn would attract the provisions contained in section 119. Hence the argument of violation of the Customs Ordinance, and, it is my view that, if there is a violation of the Customs Ordinance, then the 1st Respondent has jurisdiction to inquire in to the same. It is pertinent to note that the inspection of the consignment and obtaining of samples had been done in the presence of both parties.

In the instant case, the Petitioner's main contention in impugning the decision to commence an inquiry seems to be that Customs is attempting to ascertain the quality of tea which the Petitioner contends the Customs has no jurisdiction, but as per the arguments submitted by both Counsel, it appears the inquiry is not only on the said ground but also to ascertain whether there is any violation of the provisions of the Customs Ordinance.

In view of the statement of the Petitioner's Director and in view of the Petitioner's own show cause response marked as P11, it appears the Petitioner has mixed the refuse tea and was aware of the said act. If that was the case, the Petitioner's classification under cage 33 and the description of the consignment is not only erroneous but it has been submitted with knowledge. The Petitioner's goods have been described incorrectly with the wrong HS code and wrong description. The learned ASG in response to the Petitioners argument that the Customs had commenced the inquiry to ascertain the

quality of tea, argued that since the consignment consists tea and there is a wrong identification against the HS code, the Customs is empowered under section 12 of the Customs Ordinance to ascertain whether the consignment falls within Schedule B of the Customs Ordinance and they further submitted, if so, that there can be a violation of the section 44 of the Customs Ordinance. It was further argued this question arises in view of Section 57 and 130 of the Act.

In view of the above submission the question arises as to whether the consignment of goods falls within the prohibited items in Schedule B. Schedule B in imposing restrictions states as follows:

> "*No tea shall be exported which is declared by the Principal Collector of Customs or by any officer authorised by him to be, in the opinion of the officer making such declaration, unfit for export as being adulterated and therefore likely to damage the reputation of Ceylon tea in foreign markets*".

Application of Schedule B of the Customs Ordinance

Lengthy arguments were presented by both parties on the application of Schedule "B" of the Customs Ordinance to the consignment in dispute. While the Petitioner contends that the said Schedule does not apply to the instant case, the Respondents contend that the Customs have jurisdiction to inquire and to ascertain the applicability of the Schedule to the consignment in dispute. As per the arguments and the wording of the Schedule it is clear the 1st Respondent has the jurisdiction pertaining to the exportation of tea to the extent relevant to the Schedule. Hence, the Petitioners argument that the 1st Respondent has no jurisdiction pertaining to tea as the said jurisdiction is vested with the 6th Respondent has to fail.

However, the learned President's Counsel for the Petitioner further contended that in order for the prohibition stipulated in the Schedule to take effect there should be a declaration to state the tea is adulterated. It is her contention that there is no such declaration. Let me now consider the wording in the Schedule.

> "*No tea shall be exported which is declared by the Principal Collector of Customs or by any officer authorised by him to be, in the opinion of the officer making such declaration, unfit for export as being adulterated and therefore likely to damage the reputation of Ceylon tea in foreign markets:*
>
> *Provided that this prohibition shall not operate against any tea on account of its cheapness or inferiority in quality. The exportation of tea shall be subject to the*

condition that the Principal Collector of Customs or any officer authorised by him may take samples thereof for the purposes of examination."

The same appears in Sinhala as follows:

"*රේගු අධ්‍යක්ෂ ජනරාල් හෝ වෙනත් බලධාරියෙකුගේ අදහසේ හැටියට විදේශ වෙළඳ පොළේ දී ශ්‍රී ලංකාවේ කීර්-ති නාමයට කැළලක් වන ආකාරයට අපනයන කරන මානුෂ්‍ය භාවිතයට නුසුදුසු තේ.*

එහෙත් තේවල තත්වයේ ලාභ බව මත මෙම තහනම් කිරීම බල පැවැත්වෙන්නේ නැත. එසේම අපනයනය කිරීමට ප්‍රථම ප්‍රධාන රේගු අයකැම්වරයා හෝ එතුමා විසින් බලය පවරන ලද ඕනෑම නිලධාරියෙක් විසින් මෙම පරීක්ෂා කිරීම සඳහා සාම්පල් ලබා ගත හැකිය."

In my view, in order for the prohibition in Schedule B to be attracted, the principal collector of Customs or by an officer authorised by him should form an opinion to state that consignment is unfit for export as being adulterated and therefore, likely to damage the reputation of Ceylon tea in the foreign market.

It is observed that the 6th Respondent by the report P12, has declared that the said consignment should not be exported and it has been conveyed to the DGC upon DGC's request. Hence, it appears that the part unfit for export is complied with. However, the learned President's Counsel for the Petitioner submitted that forming an opinion that the consignment is unfit for export is not sufficient but it should be unfit for export as it had been adulterated. Hence, it is argued that P11 or P12 does not use the word "adulterated". It was further argued that as per the proviso, the prohibition will not operate against any consignment of tea on account of its cheapness or inferiority in quality. It was further argued that by mixing tea purchased from places other than the Tea auction, the quality of tea would drop but cheapness or inferiority of quality does not invoke the prohibition under Schedule B.

The attention of this Court was drawn by the Petitioner to what is meant by refuse tea. As per the definition of the Tea (Tax and Control) Act, the definition Tea does not include refuse tea. The Tea (Tax and Control) Act, defines "tea" as follows:

""tea" means tea manufactured from the leaves, leaf buds or immature stalk of the tea plant grown in Sri Lanka, but does not include refuse tea".

Further, the learned Counsel for the Petitioner submitted that refuse tea is derived from pure Ceylon black tea. The Tea Control Act defines refuse tea as follows:

> *“" refuse tea " means sweepings, red leaf, fluff, mature stalk or any other product (not being made tea) obtained m the process of manufacture of tea”.*

Refuse tea does not fall within the interpretation of tea in the above Act. Then it cannot be considered “tea”. If so, then the question arises whether the description of the consignment in the CusDec can be considered as pure Ceylon black tea. If I am to accede to the proposition of the learned President’s Counsel for the Petitioner and hold that the refuse tea also is pure Ceylon black tea as it is derived from pure Ceylon black tea, then what can genuine pure Ceylon black tea be called?

Let me also consider the argument that the consignment has not been named as adulterated tea. The Petitioner contended that refuse tea does not fall in to the category of adulterated tea though it would be inferior quality tea. In substantiating this argument, the Petitioner has drawn this Court’s attention to a research paper titled “Adulteration and quality of black tea in Sri Lankan market” by Gunathilaka D.M.N.M and W.M.R.S.K Warnasuriya presented at the 2nd Faculty Annual Research Session of the Faculty of Applied Science of the University of Vavuniya in September 2021 where adulteration was addressed as follows:

> “*Adulteration of tea is becoming a severe issue in the Sri Lankan tea industry. Black tea is adulterated with sugar, glucose, sodium bicarbonate and ferrous sulphate to improve its colour and sand, iron fillings and leather flakes like physical adulterants to improve its bulk.*
>
> *…*
>
> *An adulterant is a substance that is added, mixed or packed with tea product to increase its bulk or make it appear better with more value than it really is…*”

This Court observes in the same paper the authors have gone further and says “***black tea can be adulterated with artificial colours, coal tar dye and AZO colours. Exhausted tea leaves or tea waste and sodium bicarbonate are also added to improve the colour***”. Thus, the same author is of the view that addition of tea waste or exhausted tea leaves are also considered a part of adulteration of tea.

In another paper titled “Development of a Food Colourant Using Refused Tea Generated by Ceylon Black Tea Industry as a Substitute For Caramel Black (E, INS 150)” by Hewamalage T.K., Rumesh Liyange, Indira Wickramsingha to the IOSR

Journal of Environmental Science, Toxicology and Food Technology Volume 10, Issue 10 Ver III (Oct 2016), PP 29-36, the authors describe refuse tea as "***the waste produced during the manufacture of black tea. According to the tea control act no 51/1957, the refuse tea is defined as sweepings, mature leaves, fluff, mature stark or any other product (not being made tea) obtained in the process of manufacture of tea.***" Hence, it appears that even the mixing of refuse tea amounts to adulteration of tea.

The learned Counsel for the Petitioner also contended that the Respondent cannot rely on Schedule B of the Ordinance as there is no declaration by the Customs to consider the consignment as adulterated tea. It is correct that at the time of filing of this application there is no declaration by the 1st Respondent as to whether the tea is adulterated or not.

As stated in the Schedule, there is no declaration to the effect that the tea in the consignment is adulterated or unfit for human consumption. The Court was not addressed by the Counsel as to the point when this declaration should be made. Is it before the commencement of the Customs inquiry pursuant section 8(1) or at the conclusion if the Customs find sufficient material to issue a show cause? The Schedule is silent on when the said declaration should be made.

However, in response, the Respondent's contention was to form such an opinion the inquiry under section 8(1) has to conclude and it is common ground the said inquiry is still pending. Hence, it is argued that this application in any event is premature.

In the absence of explanation for the above question and in the absence of such a declaration by the authority specified in the Schedule as at now, I am inclined to accept the contention of the learned Counsel for the Petitioner that as at present the prohibition contemplated in Schedule B will not be attracted. However, in my view there is no impediment for the competent authority to form such opinion and make a declaration upon the facts that would be elicited at the inquiry under section 8(1), especially as in the case in brief whether section 12 is violated is also a ground to be inquired into.

It is also observed that whether the prohibition under Schedule B is imposed or not in view of P9, the 9th Respondent has disallowed the exportation of the disputed consignment. As stated elsewhere in this judgement tea cannot be exported without a permit. Thus, in view of P9 the Petitioner now cannot export the consignment of tea. Hence the argument as to whether the prohibition under Schedule B will be attracted

and if so, the exportation can be stopped, does not arise pertaining to the disputed consignment

The next ground raised is that the 1st Respondent has no jurisdiction to test the quality of tea. It was the contention of the Respondents that the quality of the tea was not an issue and further it was argued that in any event the Director General of Customs has received a report from the 6th Respondent as to the quality of tea and it is the 6th Respondents speciality.

The Petitioner also contended that the when the Tea Commissioner has compounded the offence the 1st Respondent cannot conduct an inquiry. I am not inclined to agree with this submission for two reasons. Firstly, the Petitioner has not disclosed to this Court whether it has made the payment imposed on him to compound the case. It is clear the decision to compound is based on acceptance of the decision and the payment of the money. It is also pertinent to note that the said letter P15 states as follows;

> *"If you are agreeable to above decision, please do payment to Sri Lanka Tea Board within 14 days of this letter."*

In the absence of any material pertaining to the said payment, whether the 6th Respondent has compounded the offence is not established. Secondly the alleged offence is under the Tea (Tax and Control of Exports) Act. Hence, the said Act would not have any bearing on the 1st Respondent conducting an inquiry under section 8(1) to ascertain whether there is a Customs offence committed by the Petitioners.

Let me now consider the objections raised by the Respondents.

Has the Petitioner suppressed or misrepresented facts and is in breach of *uberrima fides?*

This Court has constantly held that a Petitioner who invokes the Writ jurisdiction is duty bound to Court to disclose all material facts required for a proper adjudication. As I have observed above, the Petitioner contends that the 6th Respondent has compounded the offence committed by P15. The said compounding of the offence is subject to a payment of 5% of the value of the shipment. The Petitioner has been given a time period for the said payment. The Petitioner has appealed against the said decision. However, whether the appeal has been successful or not is not disclosed by the Petitioner.

Especially I observe the reply to the appeal is silent on the payment of the value of 5%. Hence, in order for this Court to accept the Petitioner's submission that the offence has been compounded, the Petitioner should disclose whether he has paid the said sum. The Petitioner has failed to tender any documents to demonstrate that said sum has been paid. In the absence of such, whether the offence is compounded or not is not clear. In my view, the Petitioner should have disclosed this material fact when he pleaded that the offence is compounded by the 6th Respondent.

Further, the Petitioner contended that they have been allowed to export tea after the alleged offence by P17. However, the Petitioner failed to disclose that P17 is conditional, namely the said permission is granted subject to the conclusion of the Customs inquiry. By this application the Petitioner is attempting prevent the Customs from proceeding with the said inquiry. Hence, the outcome of this case will have a bearing on the permission granted under P17. This material fact is not disclosed by the Petitioner in the petition nor was it disclosed at the hearing. In my view, a mere annexing of the document is not sufficient disclosure but it has to be pleaded as the Petitioner has pleaded the part which allowed him to proceed with the future export. This is a material non-disclosure which creates a doubt on the *uberrima fides* of the Petitioner.

Even though the Petitioner tendered part of the Customs inquiry proceedings the Petitioner has failed to plead that he had purchased tea outside the auction and blended the same with the tea purchased at the auction. The Petitioner has failed to plead and substantiate with material that the said act was done to cater to the needs of an Iraqi customer. The said request in any event has not been submitted to this Court. Accordingly, the Petitioner has failed to disclose that the tea in the consignment is not the tea purchased from the auction for which after testing a sample the permit from the Tea Board was obtained. The Petitioner also should have pleaded that though he had declared the consignment of the HS code pertaining to pure Ceylon black tea by his act the said consignment does not fall within the said HS code. The Petitioner not only tendered a wrong HS code and a wrong description in the CusDec but failed to plead that the wrong code and description was tendered to the Customs in P7 and P8. This once again is a clear breach of the *uberrima fides* and suppression of material facts from the Court. This Court has constantly held a Petitioner who fails to disclose all facts or is in breach of *uberrima fides* disentitle themselves from the reliefs pleaded.

In ***Blanca Diamonds (Pvt) Ltd v. Wilfred Van Else & others*** **(1997) 1 SLR 360**, the Court held that:

"*In filing the present application for discretionary relief in the Court of Appeal Registry, the petitioner company was under a duty to disclose (uberrima fides) all material facts to this Court for the purpose of this Court arriving at a correct adjudication of the issues arising upon this application. In the decision in Alponso Appuhamy v Hettiarachchi* [(14)] *Justice Pathirana, in an erudite judgement, considered the landmark decisions on this province in English Law, and cited the decisions which laid down the principle when that a party is seeking discretionary relief from the Court upon an application for a writ of certiorari, he enters into a contractual obligation with the Court when he files an application in the registry and in terms of that contractual obligation he is required to disclose uberrima fides and disclose all material facts fully and frankly to this Court*"

<u>The Petitioner's application is premature and misconceive in law</u>

The Petitioner is seeking to quash an inquiry that is conducted under section 8(1) of the Customs Ordinance. It was the contention of the Respondents that the Petitioner is yet to be found guilty of any Customs offence. The document marked and tendered as P19 clearly demonstrates that the inquiry is pursuant section 8(1) and (2). The document marked and tendered as P20(a) demonstrates that at the commencement the Petitioner had been informed that the inquiry pursuant to section 8(1) of the Customs Ordinance. The proceedings further demonstrates that it is the case in brief. In this context, the learned ASG submitted that if no offence is disclosed the Petitioners may be exonerated at the conclusion of the inquiry. I also observe even if there are sufficient grounds to issue a show cause notice, still the Petitioner can prove his innocence at the show cause stage, and, if aggrieved, the Petitioner still has a remedy in appealing to the Minister, a relief provided by the statute itself. Hence, I am inclined to uphold the objection of the Respondents that this application is premature. Further I also observe that since an appeal process to the Minster is available The Petitioner still have an alternate remedy that has not been exhausted.

The Supreme Court in ***Ceylon Mineral Waters Ltd v. The District Judge, Anuradhapura*** **(1966) 70 NLR 312 312** held that *"an application for Writs of Certiorari and Prohibition should not be made prematurely".* The Court of Appeal in ***Wickrama Arachchi Athukoralage Asantha Udayakara v. Mr. Priyantha Weerasooriya, Inspector General of Police*** **CA/WRIT/725/24 decided on 30.01.2025** and in ***Peli Kankanamge Chandrasiri v. Department of Debt Conciliation Board*** **CA/WRIT/263/2024 decided on 24.09.2025** followed the above decision.

Further, in the case of ***Mohammad Ismail Abdul Majeed v. M.L.M.H.M. Mohideen Hussain*** **CA Writ 511/2025 decided on 16.06.2025**, it was stated that

> "*… it is trite law that when an alternative remedy is provided by statute, parties are generally required to exhaust such remedy before invoking the writ jurisdiction of this Court. The writ jurisdiction, particularly the issuance of prerogative writs such as certiorari or mandamus, and prohibition is a discretionary remedy. It is not conferred as of right but is to be exercised by courts with caution, circumspection, and only when no efficacious alternative mechanism is available to address the alleged grievance. Alternative remedies are statutory mechanisms provided by the legislature such as appeals, revisions, reviews, or representations to higher administrative authorities, which offer aggrieved parties a structured process to ventilate and redress their grievances*."

It is also the contention of the Respondents that the ground that was urged before this Court, namely the jurisdiction of the Customs will arise only if the inquiry is pertaining to consignment of refuse tea and adulterated tea. However, as to whether there is any violation of any other provisions of the Customs Ordinance have to be considered at the inquiry commenced. Further, it is argued that all these concerns raised by the Petitioner are matters that should be raised at the inquiry. Thus, the argument that this application is premature. In response the Learned President's Counsel for the Petitioner conceded that the Customs inquiry is not concluded. However, it is her contention that there cannot be a Customs inquiry as the Customs lack jurisdiction. I have considered the submissions of both parties. As per the Petitioner's own submissions, it appears the entries made to the custom in the CusDec is erroneous as far as classification of goods are concerned. I have also considered the submission of the learned ASG who contended that the Customs inquiry is only pursuant to section8(1) and they are still in the process of leading evidence and is yet to ascertain whether there is a Customs offence. The Customs being the last border control authority, and, specially being empowered to prevent adulterated tea being exported which would tarnish the good name of the country, and, for the reasons I have enumerated above, I am inclined to agree with the Respondents objection on prematurity. In the circumstances the question arises as to whether at this stage the intervention of Court is necessary. The Courts on many instances have held that the Courts intervention by Writ application s should not be on instances where evidence is needed to ascertain whether an offence is committed.

In the case of ***Thajudeen v. Sri Lanka Tea Board and another*** **(1981) 2 SLR 471**, held as follows:

> "*That the remedy by way of an application for a Writ is not a proper substitute for a remedy by way of a suit, specially where facts are in dispute and in order to get at the truth, it is necessary that the questions should be canvassed in a suit*

where the parties would have ample opportunity of examining their witnesses and the Court would be better able to judge which version is correct, has been laid down in the Indian cases of: Ghosh v. Damodar Valley Corporation, (1) Porraju v. General Manager B. N. Rly"

Further, in the case of ***Hong Lam Integration Pte Ltd and another v. Director General of Customs and 4 others*** **CA Writ 147/2019, CA Minutes16.07.2021**, the Court held as follows:

"*this court takes the view that the questions raised by the Petitioners can be easily and effectively canvassed at the inquiry which is to be held at the Sri Lanka Customs. Even if the court decides to issue notice in this matter the court will have to determine the legality of the relevant decisions only upon the averments contained in the Petition. However, the facts disclosed in the averments of the Petition are in dispute and those facts are going to be investigated by another forum/tribunal. This court is unable to decide the legality of those decisions without going into questions of fact involved in this case. Accordingly, the Petitioners have made a premature application before this court and have failed to establish a prima facie case*."

I am also mindful that, if the Court were to intervene prior to the commencement or conclusion of the Customs inquiry under section 8(1), it would undermine the intention of the legislature and open the floodgates to institute Writ applications seeking to prevent such inquiries.

I am also mindful of the fact that every exporter is required to comply with section 57 of the Customs Ordinance. In this instance, the Petitioner contends that it has complied with the said requirement. However, in the light of the submissions pertaining to the wrongful classification of the goods shouldn't the Customs make an inquiry? The learned President's Counsel for the Petitioner argued that even if the classification is wrong, still there is no difference in the payment of duties. Yet shouldn't the said wrongful classification and a difference in the payment of duties be investigated? If not, wouldn't section 57 be redundant? Further as per the material submitted and the arguments made it appears the goods classified in the CusDec is different to the goods in the consignment to be exported. Hence, I am not inclined to accept the said argument of the Petitioner.

The prayers of the Petitioner

Prayer (c)

Prayer (c) of the Petition is based on the document P9. However, as the learned ASG submitted that they are withdrawing the last paragraph the learned President's Counsel informed that this relief will not be pursued.

Prayer (d)

The Petitioner is seeking to quash the decision taken by 1st to 5th Respondents to commence a Customs inquiry in relation to the Petitioner company's consignment of tea. As per P20(a), the representative of the Petitioner had taken part at the commencement of the inquiry under section 8 (1) of the Customs Ordinance without any objections (proceedings 13-08-2024). The scope of the inquiry is summarised in the case in brief where it has been stated *inter alia* as follows: "*by not declaring goods correctly to Customs, and attempting to export refuse tea, the export shipment has violated the Customs law* ….".

In any event as I have stated above in this judgement that if there is a Customs offence, the Customs is empowered under the Customs Ordinance to inquire in to it. In my view, if goods have not been declared correctly or any provisions of the Customs Ordinance have been violated, then it is a matter for the Customs to inquire into. Accordingly, the Petitioner has failed to disclose any illegality in the said decision to commence an inquiry. It is also observed in view of P20(a), the Director of the Petitioner company has not objected to the commencement of the Customs inquiry. Therefore, it is trite law that a party cannot approbate and reprobate and in the circumstances, prayer (d) has to fail.

Prayer (e)

In prayer (e) the Petitioner is seeking a Writ of Certiorari to quash any decision made or to be made by the 1st to 5th Respondents. By the language used, it is apparent the Petitioner is unaware as to whether a decision has been made or not. It is also pertinent to note that if there is a violation of sections 12, 44, 57 and/or 130 of the Customs Ordinance, the Ordinance itself provides the 1st Respondent the right to impose penalties

or forfeitures. However, in this instance the Petitioner is seeking to quash a decision that is yet to be made. The said decision is not before Court. The learned ASG submitted that the inquiry is pursuant to section 8(1) of the Customs Ordinance and therefore, it was his contention that the findings of the inquiry will not attract any finality. Hence, in my view the Petitioner has failed to demonstrate any illegality and would not be able to demonstrate any illegality in a decision that is yet to be made. Accordingly, prayer (e) has to fail.

Prayer (f)

The Petitioner in his prayer (f) is seeking a Writ of certiorari to quash any decision made or to be made to inquire in to the standard of the tea sought to be exported. Once again, the Petitioner is inviting this Court to quash a decision which is yet to be made. There is no evidence submitted to this Court to establish that by the inquiry commenced, 1st to 5th Respondents are attempting to inquire into to the standard of the tea. As correctly submitted by the learned ASG, the status of the tea is already before the 1st Respondent (P12), whereby the Acting Tea Commissioner has given a detailed report on the tea to be exported and has categorically stated that it is not in conformity to ISO 3720 standard and therefore is not suitable for export. Accordingly, prayer (f) has to fail.

Prayers (h) and (i)

The Petitioners are seeking Writs of Prohibition against 1st to 5th Respondents from continuing with the Customs inquiry and also to prohibit the imposition of penalties or forfeitures. However, in view of my finding in prayers (d) and (e), answering these two prayers will not arise.

Prayer (j)

In view of my finding to prayer (f), prayer (j) will not arise.

Prayer (k)

It is common ground that the inquiry commenced by the 1st to 5th Respondents is under section 8(1) of the Customs Ordinance. In the event there is sufficient material to issue

a show cause, the Customs Ordinance itself provides for the said course of action which should result in further inquiries. Hence, the Petitioner in this prayer is seeking a Writ of prohibition preventing the 1st to 5th Respondents by exercising their statutory duties. A Writ of prohibition will not be available to prevent a State institution/agency from exercising its statutory duties according to law. In this instance, the Petitioner has failed to establish any probable illegality in the event there is sufficient material disclosed in the instant inquiry that is proceeding. In any event, this prayer has to fail as it is vague.

Prayer (m)

The Petitioner is seeking a Writ of Mandamus directing the 1st to 5th Respondents to release the consignment of goods to the Petitioner stipulated thereon. However, as I have stated above in this judgement, by the material submitted, the Petitioner has conceded that the consignment consists of refuse tea. As stated above the statute provides who is empowered to be in possession of refuse tea. However, the Petitioner has failed to establish that he falls within that category and is empowered to possess refuse tea. In order to obtain a Writ of Mandamus, the Petitioner has to demonstrate that the authorities have failed to honour a legal right of the Petitioner. In the absence of any material to establish that the Petitioner is entitled to possess refuse tea, prayer (m) has to fail.

Prayers (g) and (i)

Both these prayers emanate from the proceedings marked as P20(c), whereby, the inquiring officer has authorised the disposal of the consignment under section 162 of the Customs Ordinance. However, it appears that this order although does not violate the provisions of the Customs Ordinance, is directly contravenes the order made by the Assistant Tea Commissioner in P9. This Court considers the order made by the Assistant Tea Commissioner is contrary to the order made by the inquiring officer acting under the Customs Ordinance. The inquiring officer has given his reasons as to why he had not acted under P9 but instead followed the procedure laid down in the proviso to section 162 of the Customs Ordinance. The Petitioner does not challenge the decision to dispose of the goods on the basis that it is perishable.

As the decision has been made pursuant to section 162 of the Customs Ordinance and as the inquiry that is proceeding is under the provisions of the Customs Ordinance, in order for the Petitioner to succeed in this prayer, the Petitioner has to establish the purported order in P20(c) is illegal, *ultra vires* or unreasonable. However, the Petitioner

has failed to demonstrate that in view of section 162 of the Customs Ordinance, the decision is *ultra vires* or illegal. Hence, in my view these prayers too have to fail.

Conclusion

In summary, it appears the Petitioner has obtained the permit to export tea. The permit is issued for tea purchased at the tea auction and subsequent to an inspection of the samples of tea which is to be exported. After obtaining the permit, the Petitioner has purchased tea not from the auction and then blended both in the consignment to be exported. Upon inspection and testing the tea was reported to be absolute refuse tea. The 6th Respondent had conducted its own investigation pursuant to the Tea (Tax and Control of Export) Act and imposed a mitigated payment, while the Customs had commenced its own inquiry pursuant to the Customs Ordinance which the Petitioner impugn.

I have considered the material tendered to this Court and also the extensive submissions made. In my view, for the above stated reasons, the Petitioner by its conduct has disentitled itself from obtaining any relief in this Writ application. Also, a Petitioner is not entitled to obtain any relief in a Writ application as of a right.

It is the considered view of this Court that for the reasons stated above in this judgement this Court is not inclined to grant the reliefs the Petitioner has prayed for. Therefore, the Court proceeds to dismiss this Writ application. Both parties to bear their own cost.

Judge of the Court of Appeal

Mahen Gopallawa, J

I agree

Judge of the Court of Appeal