

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

*In the matter of an application for mandates
in the nature **Mandamus** and **Prohibition** in
terms of **Article 140** of the Constitution of the
Republic of Sri Lanka.*

A & A Merchandise (Pvt) Ltd,
29, Ketawalamulla Lane,
Colombo 09.

Petitioner

CA / Writ / 280 / 2023

Vs.

1. P B S C Nonis
Former Director General of Customs
Customs Headquarters
40, Main Street
Colombo 11.

1A. The Director General of Sri Lanka Customs
Customs Headquarters
40, Main Street
Colombo 11.

2. D P M Gunawardena
Former Deputy Director of Customs
Customs Headquarters
40, Main Street
Colombo 11.

3. A. K. K. Thushara
Assistant Superintendent of Customs
Customs Headquarters
40, Main Street
Colombo 11.

Respondents

Before : **Hon. Rohantha Abeysuriya PC, J.(P/CA)**
: **Hon. K. Priyantha Fernando, J.(CA)**

Counsel : Dharshana Weraduwaage for the Petitioner.
Mihiri de Alwis, S.S.C. for the Respondents.

Written Submissions on : 31.07.2026 for the Petitioner.
08.09.2026 for the 1st, 2nd and 3rd Respondents.

Supported on : 26.06.2026

Decided on : 10.09.2026

K. Priyantha Fernando, J. (CA)

1. The grievance of the Petitioner relates to two shipments of cigarettes which were received by the Petitioner in the Port of Colombo, for the **purpose of reworking and reshipping** them under the international entrepôt trade facility. The Petitioner has been engaged in the entrepôt trade facility since 2018 amongst other import and export trade. It is pertinent to note that the entrepôt trade

facility deals with cargo that is not meant for Sri Lanka, and is merely sent for the purpose of reworking goods while in the Port, which are then to be reshipped abroad so as to be re-exported.

2. The Petitioner brought to the attention of this Court to the Finance Act - Commercial Hub Regulations of Sri Lanka No. 1 of 2019 (marked as X6) and the Departmental Order No. 404 of 01.04.2002 (marked as X7) issued by the Department of Customs for the purpose of regulating the international entrepôt trade facility, for which the port of Colombo is globally recognised. Point E.15 of the Departmental Order No. 404 reads as follows:

“E.15. If an officer needs to examine entrepot cargo for any reason, he should obtain prior approval from the Director General of Customs or Deputy Director General of Customs. The officer should submit a report to the Director General of Customs or the Deputy Director General of Customs with a copy to the Director of Customs (Bonds) of the outcome of the examination.”

3. The Petitioner having sought permission from the 1st Respondent to rework the shipments under customs supervision completed the necessary work and the shipments were released from the Port of Colombo. The Petitioner submitted that after the reworked shipments had reached the port of destination, the shipments were recalled by the 3rd Respondent for ‘investigation purposes’.
4. Following the same, the Respondents commenced an inquiry against the Petitioner yet it is the Petitioner’s contention that the Respondents caused inordinate delay in concluding the same (extending the deadline for submitting the show cause notice), thus resulting in prejudice to the Petitioner. In remedy of the situation, the Petitioner sought the intervention of this Court by filing the CA/WRT/310/2022 matter and withdrew the matter further to an undertaking by the 3rd Respondent given on 10.11.2022. However, upon failure to abide by the same the Petitioner instituted yet another action bearing case no. CA/WRT/432/2022.
5. However, it is the Petitioner’s position that even after filing the said cases and in the absence of a representation made by the Respondents, the 3rd Respondent then made an order on 07.08.2023

declaring the forfeiting of the shipments and mitigating the initially imposed forfeiture of Rs. 262,907,310/- to Rs.1,300,000/-.

6. The Petitioner contended that the order made on 07.08.2023 is bad in law for the following reasons:
 - a. Failure to appreciate that no offence was committed within the jurisdiction of Sri Lanka.
 - b. The vague nature of the show cause notice which merely required to show cause as to why the 3rd Respondent should not “forfeit the cigarettes in the 2 shipments” and the absence of the manner in which the Petitioner has violated Section 50A of the Customs Ordinance. Furthermore, it is the Petitioner’s contention that Section 107 of the Ordinance has not been complied with.
 - c. The forfeiture sought to be imposed is equal to three times the monetary value of the goods
 - d. The requirements of “importer should show cause against a personal monetary liability” as specified in Section 50A (2) of the Ordinance has not been followed as according to the Order “such goods are currently not in the possession of the importer”
 - e. A forfeiture under Section 50A (1) and 50A (2) of the Ordinance is fundamentally different and the Petitioner ought to have been specifically notified that 50A (2) was being invoked personally against him to seek personal monetary liability.
7. Furthermore, the Petitioner contended that the 3rd Respondent (the inquiring officer) has no power to act under Section 163 of the Customs Ordinance as such power of mitigation is vested with the Director General of Sri Lanka Customs (the Collector). The Order dated 07.08.2023 stated that the initial value of forfeiture (Rs. 262,907,310/-) was mitigated to Rs. 1,300,000/- by the 3rd Respondent. In the absence of a proper delegation, the Petitioner submitted that the Order was hence made without legal authority to do so.

8. The position of the Respondents is that the slew of discrepancies in the Bills of Lading and Customs Declaration submitted by the Petitioner relating to the **nature of the goods** and the **destination of the shipments** required intervention in the form of further investigations into the two shipments of cigarettes. The Bills of Lading contained substantially different descriptions of the goods, “2 cartons of industrial washing machines, 1 carton of industrial dryers; and PVC trunking”, requiring further investigations into the matter.
9. The Respondents directed the attention of this Court to the Supreme Court judgment of Toyota Lanka (Pvt) Limited and another V Jayathilaka Director General of Customs SC/Appeal/49/2008 decided on 20.03.2009 wherein it was held that:

“These mandatory consequences of forfeiture that are penal in nature demonstrate that the words “but if such goods shall not agree with the particulars in the bill of entry” apply to a situation of concealment and evasion to pay duties as distinct from a situation of misdescription and under payment of duties. In the latter situation the proper course would be to require the person to pay the “duties and dues which may be payable” being the statutory obligation of the importer in terms of Section 47 or in the event of a short levy to recover the amount due in terms of Sections 18 (2) and (3) or 18A referred to above. Where the person has been charged in excess, he has a statutory right to seek a refund in terms of Section 18(1).”

10. However, the Respondents have failed to address the specific circumstances of the Petitioner’s case, being one that is related to the International entrepôt trade carried out by the Petitioner and the specificity in the rules it is governed by.
11. As such this Court is of the view that the Petitioner prima facie case, this Court has identified 2 main questions of law which have been framed as follows:
- i. Were the actions of the Respondents (in relation to the two shipments received by the Petitioner under the international entrepôt facility) in line with the procedure and within

the confines stipulated in the Finance Act - Commercial Hub Regulations of Sri Lanka, No. 1 of 2019 and the Departmental Order No. 404.

- ii. Did the 3rd Respondent (Inquiring Officer) act *ultra vires* in making the impugned order dated 07.08.2023 in light of Section 163 of the Customs Ordinance, No. 17 of 1869 (as amended) which confers the power to make such an order on the Collector (Director General of Customs).
- iii. Is the impugned order dated 07.08.2023 bad in law? (considering the vagueness of the show cause notice, exorbitant value of the forfeiture and in light of the requirements under Sections 50A (1) and 50A (2) of the Customs Ordinance)

12. In the circumstances, I am inclined to issue Formal Notice on the Respondents.

Judge of the Court of Appeal

Hon. Rohantha Abeyesuriya PC, J.(P/CA)

I agree.

President of the Court of Appeal