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

In the matter of an application for orders in the nature of Writ of *Certiorari* and Prohibition under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA/WRT/1082/2025

Finnland Distilleries Corporation (Private) Limited,
No. 123, 3rd floor, Anagarika Dharmapala Mawatha, Colombo 07.

<u>Petitioner</u>

Vs.

1. M.P.N.A. Premarathna,
Commissioner General of Excise,
Excise Department of Sri Lanka,
No. 353, Kotte Road,
Rajagiriya.

2. Secretary to the Ministry of Finance,
The Secretariat,
Colombo 01.

3. Hon. Attorney General,
Attorney General Department,
Colombo 12.

<u>Respondents</u>

Before:	**Damith Thotawatte, J.**
	K.M.S. Dissanayake, J.
Counsels:	Chamara Nanayakkarawasam for the Petitioner.
	Abigail Sooriyakumar, SC for the 1st – 3rd Respondents.
Supported:	11.06.2026
Written submissions tendered on:	30.06.2026 by the Petitioner.
Order Delivered:	07.07.2026

Thotawatte, J.

The Petitioner, a company engaged in the manufacture and bottling of liquor under licences issued by the Excise Department, has invoked the writ jurisdiction of this Court to challenge the validity of **Excise Notification No. 02/2025**, published in Gazette Extraordinary No. 2460/02 dated 27.10.2025 and made under Section 32 of the Excise Ordinance. The Petition proceeds on the footing that the impugned Notification rescinded the immediately preceding **Excise Notification No. 962** and fundamentally altered the regulatory framework governing the payment of excise duty.

According to the Petitioner, whilst the previous Notification required a defaulting licensee to pay the outstanding duty together with a fee at the rate of 03% per month and afforded a concessionary period of six months within which such payment could be made, the impugned Notification abolished that concession and introduced, for the first time, provisions rendering the defaulter's Bottling Licence liable to suspension after thirty days of default and all licences liable to suspension after ninety days of continuing default.

The principal legal foundation of the Petition is the contention that the **Minister, in promulgating Excise Notification No. 02/2025 under Section 32 of the Excise Ordinance, has exceeded the scope of the delegated legislative power conferred by Parliament**. The Petitioner submits that whilst Section 32 authorizes the making of rules regulating the time, place and manner of payment of excise duty and fees, it does not empower the Minister to introduce substantive consequences affecting the continued enjoyment of licences, such as rendering the Petitioner's Bottling Licence liable to suspension after thirty days of default and all licences liable to suspension after ninety days.

However, upon a consideration of the Petition and the written submissions, it is apparent that this proposition is advanced largely as a matter of assertion. Apart from referring to the language of Section 32 and comparing the impugned Notification with its predecessors, namely Excise Notifications Nos. 744, 912 and 962, the Petitioner has not identified any provision of the Excise Ordinance, nor cited any judicial authority or recognized principle governing delegated legislation, which demonstrates that Parliament intended to confine the rule-making power under Section 32 solely to procedural matters or to preclude the prescription of regulatory consequences for non-compliance. Nor has the Petitioner undertaken an examination of the statutory scheme as a whole to establish that the power to suspend licences has been expressly reserved elsewhere in the Ordinance or that the impugned Rules are otherwise inconsistent with the parent enactment.

In substance, therefore, the challenge rests principally upon the fact that the earlier Notifications merely imposed financial consequences for delayed payment whereas Notification No. 02/2025 introduces licence suspension as an additional consequence. While that comparison may demonstrate a change in regulatory policy, it does not, without more, establish that the Minister has acted beyond the powers conferred by Section 32. The question sought to be raised is thus one of statutory interpretation, unsupported by any independent evidentiary material or legal authority capable of demonstrating, even prima facie, that the impugned Notification is *ultra vires* the Excise Ordinance.

When the Petitioner's principal contention, namely that the Minister exceeded the scope of the delegated legislative power conferred by Section 32 of the Excise Ordinance, is left out of consideration, I am unable to discern any other independent public law ground capable of sustaining the present application.

The allegations of **arbitrariness, unreasonableness and disproportionality** are pleaded largely as conclusions without any supporting factual material demonstrating that the impugned Rules are irrational or that the Minister failed to take into account relevant considerations in promulgating them.

Similarly, the plea of **legitimate expectation** is founded solely upon the existence of the previous regulatory regime established by Excise Notification No. 962 and not upon any representation, assurance or consistent practice giving rise to an enforceable expectation that the six-month concession would continue indefinitely notwithstanding the Minister's statutory power to amend or rescind the Rules.

The allegation of **mala fides** rests exclusively upon the chronology of the Petitioner's earlier writ application and the subsequent promulgation of Notification No. 02/2025, without any material capable of establishing an improper motive or purpose on the part of the Minister or the Excise Department.

The contention that the impugned Notification **adversely affects smaller manufacturers** and diminishes market competition is likewise unsupported by any empirical, financial or expert material and remains no more than an assertion.

Equally, the submission that the **Government suffers no prejudice** because delayed payment continues to attract a three per cent monthly fee merely questions the wisdom or desirability of the policy adopted and does not disclose any recognized ground of judicial review.

Finally, although the Petitioner asserts that **Rule 6** of Notification No. 02/2025 **operates retrospectively**, the Petition does not identify any accrued legal right said to have been impaired, nor does it cite any legal authority demonstrating that the transitional provision exceeds the enabling power or is otherwise unlawful.

In these circumstances, each of the remaining grounds either constitutes a bare assertion unsupported by evidentiary material or raises questions directed to the merits of legislative policy rather than the legality of the exercise of public power. Consequently, they do not disclose an independently sustainable basis upon which this Court's writ jurisdiction may properly be invoked.

Preventing a prospective enforcement & potential loss of personal revenue

Upon a consideration of the Amended Petition together with the Petitioner's Written Submissions, it is apparent that there is no material before this Court to indicate that, at the time this application was instituted, the Petitioner's Bottling Licence or any of its other excise licences had in fact been suspended pursuant to Excise Notification No. 02/2025.

Rather, the Petition proceeds on the footing that the impugned Notification renders those licences liable to suspension in the future in the event the prescribed duty and licence fee remain unpaid within the periods stipulated by Rules 4 and 5.

The Petitioner's complaint is therefore founded upon the apprehension that its Bottling Licence may be suspended upon the continuance of default for thirty days and that all of its remaining licences may thereafter be suspended upon the continuance of such default for ninety days, thereby disrupting its manufacturing and bottling operations. It is on the basis of that apprehended future consequence that the Petitioner seeks to impugn the Notification and restrain its implementation.

Significantly, however, the Petition is devoid of any material demonstrating that the impugned Notification had in fact been applied against the Petitioner. No order of the Commissioner-General of Excise suspending the Bottling Licence or any other licence has been produced; nor has the Petitioner annexed any notice of intended suspension issued under Rules 4 or 5, any administrative determination applying Excise Notification No. 02/2025 specifically to the Petitioner, or any evidence that enforcement proceedings had been commenced thereunder.

The reliefs prayed for reinforce this position. The Petitioner seeks, *inter alia*, a Writ of Prohibition restraining the Respondents from implementing Rules 4, 5 and 6 of the Notification and from suspending or cancelling its licences, together with interim relief to the same effect. Those prayers are plainly directed towards preventing prospective enforcement rather than challenging any suspension or other administrative decision that had already been made.

Accordingly, the material placed before this Court discloses no more than an apprehension that the Petitioner's licences may, at some future point, be suspended if Excise Notification No. 02/2025 is enforced. It does not establish that any licence had in fact been suspended or that any identifiable administrative decision affecting the Petitioner had been taken at the time of the institution of these proceedings. That distinction assumes considerable importance in determining whether there existed a specific administrative decision amenable to judicial review or upon a properly developed contention that the subordinate legislation itself is *ultra vires* the parent enactment. In the present case, the material discloses neither of these.

Accordingly, I am of the view that the substance of the Petition does not disclose grounds which are presently amenable to the writ jurisdiction of this Court.

For aforesaid reasons, I decline to issue notice on the Respondents.

This application is rejected *in limine* subject to cost.

Judge of the Court of Appeal

K.M.S. Dissanayake, J.

I agree

Judge of the Court of Appeal