

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

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

**C.A. (Writ) Application
No: 0250/2026**

Nilusha Samanmali Amarasuriya
No. 13/B, Malpana,
Kengalla, Kandy

Petitioner

1. Seevali Arukgoda
Director General of Customs
Sri Lanka Customs, No. 40,
Main Street, Colombo 11.
2. A.W.L.C Weerakoon,
Senior Deputy Director,
Sri Lanka Customs,
No. 40 Main Street,
Colombo 11
3. Sri Lanka Ports Authority,
Level 7, HQ Colombo
464, T.B. Jaya Mawatha,
Colombo 10.
4. The Commissioner General,
Department of Motor Traffic,
No. 341,
Elvitigala Mawatha, Colombo 05.
5. S.M. Piyatissa,
Secretary,
Ministry of Labour,
6th Floor, Mehewara Piyesa,
Narahenpita,
Colombo 06

6. Aruni Ranaraja
Secretary,
Minister of Foreign Affairs,
Foreign Employment and Tourism
17th Floor, Mahewara Piyasa,
Narahenpita,
Colombo 05.

7. T.T. Upulmali Premathilaka,
Controller General of Imports
And Exports
Imports and Exports
Control Department,
No. 75-1/3,
1st Floor, Hemas Building,
Sir Marcus Fernando Mw,
Colombo 01

8. Hon. Attorney General,
Attorney General's Department
Colombo 12.

Respondents

Before : R. Gurusinghe, J.
&
Dr. S. Premachandra, J.

Counsel : Sumathi Dharmawardena, PC with Pathmasiri Bandara
and Bulani Weerawardane,
Instructed by Amila Kumara
for the Petitioner.

P. Hewawasam, SSC with Rajika Aluwihare, SC
for the 1st – 4th, 7th and 8th Respondent

Supported on: 19-05-2026

Decided on: 10-06-2026

ORDER

R. Gurusinghe, J.

The petitioner imported an electric vehicle (EV) pursuant to a permit issued by the Ministry of Labour and Foreign Employment. The 2nd respondent alleged that the cut-off date prescribed for the importation of the vehicle under the said permit issued to the petitioner was 31/08/2024. It was alleged that the petitioner failed to effect the importation within the stipulated time frame, which was before 31/8/2024. Consequently, the 2nd respondent conducted an inquiry in the exercise of the powers vested under Section 81 of the Customs Ordinance and, upon such inquiry, decided to forfeit the vehicle in terms of Sections 12 and 43 of the Customs Ordinance.

The petitioner instituted the present Writ application seeking, *inter alia*, the following reliefs:

INTERIM RELIEFS

- (b) To grant an interim order directing the 1st respondent and or the 2nd respondent to submit the records and/or files relating to the release of vehicles in respect of the CusDecs marked as P-21B, P-22B, P-23B and CusDec No. 2286 (Z-1), 2198 (Z-2), 2203 (Z-3), 2279 (Z-4), 2282 (Z-5), 2209 (Z-6), 2220 (Z-7), 2162 (Z-8), 2171 (Z-9) and inform to Your Lordship's Court the procedure applied in releasing the vehicles stated in documents marked (\P-21B, P-22B, P-23 B, and CusDec No. 2286 (Z-1), 2198 (Z-2), 2203 (Z-3), 2279 (Z-4), 2282 (Z-5), 2209 (Z-6), 2220 (Z-7), 2162 (Z-8), 2171 (Z-9).
- (c) To call and grant an interim order restraining the 1st respondent and or the 2nd respondent from wrongfully applying the Imports and Exports Control regulations in P3, P4, P5, P6, P7 along with conditions set out in the import permit marked P9.
- (d) To call and grant an interim order staying the decisions in P15 & P17 of the 7th respondents where she had formed an opinion that there is a violation of Regulating No. 02 of Gazette Extra-ordinary 2370/15 dated 07.02.2024.

- (e) To call and grant an interim order staying the decisions in P16 of the 1st Respondent, where he had formed an opinion that the Petitioner had violated regulations.
- (f) To call and grant an interim order directing the 1st and 2nd Respondents to release the motor vehicles imported by the Petitioner set out in the document marked P-19, subject to any lawful condition imposed by Your Lordships Court.
- (g) To call and grant an interim order preventing the 1st Respondent from disposing of the vehicle in question in terms of Section 162 of the Customs Ordinance.
- (h) To issue an interim order staying the operation of the orders of the 1st and 2nd Respondent marked as P-29 and P-30 until the final determination of this matter
- (i) To call and grant an interim order declaring that the Petitioner has complied with the conditions set out in the vehicle import permit marked P-9 and specially declare that the subject vehicle was imported to Sri Lanka before the deadline set out to register at the Department of Motor Traffic (30.09.2024.)

FINAL RELIEFS

- (j) Issue a Mandate in the nature of a Writ of Certiorari quashing the decisions of the 1st and 2nd Respondents marked as P-28 and P-30 respectively
- (k) Issue a mandate in the nature of a Writ of Certiorari quashing the decisions of the 1st Respondent marked as P-16.
- (l) Issue a Mandate in the nature of a Writ of Certiorari quashing the decisions of the 07th Respondent marked as P-15 and P-17 respectively.
- (m) Issue a Mandate in the nature of a Writ of Prohibition, preventing the 1st Respondent from disposing of the vehicle in question in terms of Section 162 of the Customs Ordinance.
- (n) Issue a Mandate in the nature of a Writ of Mandamus, directing the 1st and/or 2nd Respondents and/or his successors and/or servants

and/or agents, to process the Cusdecs marked as P-19 and grant approval for the release of the vehicles imported by the Petitioner, subject to the payment of duties;

- (o) Issue a mandate in the nature of a Writ of Mandamus directing the 6th Respondent to grant demurrage and rent waiver for the period the vehicle was lying in the Port of Colombo due to the refusal of the 1st and 2nd Respondents to process the Cusdecs marked P-19
- (p) Issue a mandate in the nature of a Writ of Mandamus declaring that the Petitioner has complied with the conditions set out in the vehicle import permit marked P-9 and specially declare that the subject vehicle was imported to Sri Lanka before the deadline set out to register at the Department of Motor Traffic (30.09.2024)

In August 2022, the Cabinet of Ministers approved a Special Scheme permitting Sri Lankan employees employed overseas to import electric vehicles on the basis of foreign exchange remitted by them, through banking channels to Sri Lanka. A copy of the relevant Cabinet decision is marked P1(g).

Pursuant to the aforesaid Cabinet decision, the Minister of Labour and Foreign Employment published Circular No. 02/2022, bearing reference No. MFE/DEV/HOB/03/VOL2, dated 31-08-2022, setting out the procedure for granting permits to import Electric Vehicles, in appreciation of the contribution made to the national economy by Sri Lankan nationals employed abroad who remit their foreign exchange earnings to the country through formal banking channels. The petitioner produced a copy of the above Circular, marked P2.

The Gazette Extraordinary Nos. 2298/55 of 23-09-2022 (P3) and 2312/78 of 01-01-2023 (P4) were published under the provisions of the Import and Export (Control) Act No. 1 of 1969, with a view to facilitating the importation of the said Electric Vehicles (EVs) under the scheme introduced by Circular No. 02/2022 of the Ministry of Labour and Foreign Employment. In terms of the said Gazette Notifications, eligible permit holders may be entitled to import EVs under the scheme up to 31-12-2023.

By Gazette Extraordinary No. 2370/15 of 07-02-2024 (P5), the Ministry of Finance extended the operation of the aforesaid special scheme for the importation of EVs until 31-08-2024.

The petitioner had shown that she remitted over 230,000/- US Dollars to Sri Lanka, as confirmed by the letter issued by Sampath Bank PLC dated 19-09-2023, marked P1(e). There is no issue with the petitioner's eligibility, and accordingly, the petitioner obtained permit no. MOL/FE/EVP/1053, dated 27-06-2024 (P9), for the value of 115,120/- US Dollars, authorizing the importation of a fully electric Hummer vehicle. The said permits were issued in accordance with the Cabinet decision.

Conditions set out in P9 are as follows:

Importation of Fully Electric Motor Vehicles by Sri Lankans employed Abroad in Terms of the Ministry of Labour and Foreign Employment Circular No. 02/2022.

This refers to your application dated 28 October 2023 on the above subject.

02. *Approval is hereby granted to import one unit of electric motor vehicle in terms of Ministry of Labour and Foreign Employment Circular No. 02/2022 dated 31.08.2022 as amended, subject to the following conditions.*

- I. *You are liable to pay relevant government taxes and duties as described in para 5.5 of the said circular. (In LKR as against the foreign currency remitted to an authorized commercial bank.*
- II. *This permit is valid up to the importation of a fully electric vehicle for which maximum CIF value up to USD 116,120.00 (One hundred sixteen thousand one hundred and twenty USD only)*
- III. *Vehicle Model: Hummer EV*
- IV. *Letter of Credit should be established on or before 30 June 2024, and the vehicle should be registered at the Department of Motor Traffic on or before 30 September 2024.*

03. *You are kindly requested to forward this letter along with other relevant documents to the Director General of Customs for clearance of the vehicle.*

Accordingly, the petitioner had opened the Letter of Credit (LC) before 30-06-2024. The vehicle reached the Colombo Port on 12-09-2024. The petitioner contends that, had the Customs authorities released the vehicle upon its arrival, there would have been ample time to register the vehicle before 30-09-2024 and thereby comply with condition no. IV of the permit. The petitioner further asserts that P9 did not specify a deadline for the importation of the vehicle; however, a deadline for the importation is prescribed in Gazette No. 2370/15 dated 07-02-2024 (P5). Such a deadline was not envisaged by the

original Cabinet decision under which the scheme was introduced. Administrative regulations of this nature can generally be challenged collaterally.

The petitioner opened the irrevocable LC No. 417812442294 on 27-06-2024 (P10), three days before the deadline stipulated in the permit, in favour of Unik Trading Ltd., of the UK, to import one unit of an EV Hummer valued at Sterling pounds 86,500/-. Subsequently, the said LC was corrected on 04-07-2024 as evidenced in P11 to the effect that “the latest date of the shipment in field 44C should be 240831” (31-08-2024).

The petitioner further states that Overland Automobiles (Pvt) Ltd., acting as the facilitator for the importation of the vehicle, has arranged with the supplier to ensure that the vehicle reaches Colombo Port on or before 31-08-2024. However, due to congestion at Jebel Ali Port in the U.A.E., a circumstance allegedly beyond the supplier's control, the vehicle reached the Port of Colombo only on 12-09-2024, as reflected in item no. 21 of the Cusdec marked P19.

Petitioner further states that when she inquired from the forwarding company in Dubai, they informed her that the container carrying the subject vehicle was deposited at Jebel Ali Port by 29-08-2024, but the vessel departed only on 04-09-2024 due to port congestion. In support of this position, the petitioner produced documents marked P12 and P13.

The petitioner submitted the Cusdec (P19), and Sri Lanka Customs assessed the amount for the declaration and determined the total amount payable as Rs. 53,299,892/- as reflected in (P20).

Thereafter, an inquiry was conducted before the 2nd respondent, the Deputy Director of Customs. In paragraph 7 of the reasons for the order, 2nd respondent states as follows:

7. It is seen that the parties concerned in importation has opened the letter of credit on time and evidently the vehicle is ordered before that. Thereby, it is apparent that the vehicle has been ordered at least 02 months prior to the latest importation permitted date. Besides, no clear motive of the importer to deliberately import a vehicle after the permitted date can be seen. In fact, the importer does not seem to gain any benefit

by deliberately importing the vehicle after the permitted date, having opened the letter of credit on time. Therefore, it is my determination that the inability to import the vehicle on or before 31.08.2004 is a result of factors that have not been in the control of the importer.

The last three paragraphs of the reasons for the order, and the order are as follows:

10. However, in the current situation, not only did the vessel arrive after the latest permissible shipment date, but more importantly, the responsible parties failed to even load the vehicle onto the vessel before 31.08.2024. Had the vehicle been shipped on or before 31.08.2024, I may have considered exercising the powers vested in me under Section 163 of the Customs Ordinance (Chapter 235) to allow for some leniency. Unfortunately, as this condition was not met in this incident, I am not inclined to invoke Section 163 in this case and extend a mitigation for this vehicle which shall be forfeited by operation of law.
11. In consideration of above points, even if I do not see the importer has deliberately intended to violate the law in connection to this importation, it is clear that they have had a window of opportunity to cancel the shipment or to obtain an import control license prior to effecting the shipment.
12. The defence has referred to several other instances where vehicles imported after 31st August 2024 were released by Customs upon recovery of a 2.5% penalty. However, neither the prosecution nor the defence presented sufficient or detailed evidence regarding the specific circumstances or background of those cases. As such, I was not in a position to take those matters into consideration. My decision has been confirmed strictly the scope of this case and based solely on the regulations pertaining to the importation which is in question.

Order

I declare the Hummer EV3X Electric SUV bearing Chassis No. IGKBOSDC8RU109938 declared to Customs through the CusDec bearing No. DBMVI 1 95 of 17.01.2025, valued at Rs. 109,148,728.27 (Rupees Hundred and Nine Million One Hundred and Forty-Eight Thousand Seven Hundred and Twenty-Eight and Twenty-Seven Cents Only) as forfeited in terms of Sections 12 and 43 of the Customs Ordinance (Chapter 235) read with the Import and Export Control Act No. 01 of 1969.

P9 permit has only 2 deadlines, namely;

- a. Letter of Credit to be opened on or before 30-06-2024
- b. The vehicle should be registered with the Department of Motor Traffic on or before 30-09-2024

The petitioner has duly complied with the first condition stipulated in the permit. The permit marked P9 was issued on 27-06-2024, and copies thereof were forwarded to the 1st and 7th respondents and the Secretary of Finance. The petitioner contends that none of the said authorities had informed either the petitioner or the 5th respondent (Secretary, Ministry of Labour) that the said permit P9 does not specify the last date for importing the subject vehicle as 31-08-2024, to avoid any ambiguity.

The petitioner was unable to register the vehicle prior to 30-09-2025 solely due to the fact that the vehicle had been detained by the Customs authorities. As a consequence of such detention, the petitioner was prevented from complying with the second condition stipulated in P9, which is the registration process within the prescribed period.

The 2nd respondent himself admitted that the petitioner had opened the Letter of credit on time, and the vehicle was ordered prior to that deadline. He also concedes that there was no improper motive on the part of the importer to deliberately import a vehicle after the permitted date, and also that the importer did not gain any benefit by importing the vehicle after the permitted date, having opened the letter of credit on time. He further went on to say, *"It is my determination that the inability to import the vehicle on or before 31-08-2024 is a result of factors that have not been in the control of the importer."* However, the 2nd respondent refused to act under Section 163 of the Customs Ordinance and proceeded to forfeit the vehicle.

It should be noted that the Cabinet of Ministers in granting approval for the scheme, did not prescribe any specific deadline by which the subject vehicle was to be imported. The only deadline specified in the Cabinet approval was that the vehicle be registered on or before a specified date. The Secretary to the Ministry of Labour and Foreign Employment did not include any deadline for

importation in the permit marked P9, as the Cabinet of Ministers had not set one.

Article 43 (1) of the Constitution states, “*there shall be a Cabinet of Ministers charged with the direction and control of the Government of the Republic.*” Accordingly, Cabinet decisions are to be implemented by the Ministers and Heads of Department in the discharge of their official functions.

In the Case of Bandaranaike vs. Weeraratne [1978-79] 2 Sri LR 412, wherein it was observed at page 434

“on the basis of Cabinet paper submitted and as a result of the discussion amongst its members, the Cabinet came to a conclusion. “*two things follow: 1st the decision is carried out by the departments; secondly, the members of the Cabinet and the Ministers and Junior Ministers outside the Cabinet who accepts the decisions, may call upon to defend it*”
Jennings – p. 276.”

According to the Cabinet decision marked P1(g), the Secretary to the Ministry, The Ministry of Labour and Foreign Affairs was given the authority to issue permits. However, neither the inquiring officer nor the Director General of Customs sought clarification from the Authority, namely, the Secretary to the Ministry of Labour and Foreign Employment, which was specifically empowered by the Cabinet of Ministers, as to why a deadline for importation of the vehicle had not been incorporated in the permit marked P9.

The petitioner further points out that customs imposed only a mitigated forfeiture (a fine of 2.5% of the CIF value) in respect of eight electric vehicles that were imported under the same scheme and brought in after the cut-off date, 31-08-2024. It is significant that some of those vehicles were brought into Sri Lanka even after the petitioners’ vehicle, which arrived on 12-09-2024.

For example,

(X3 (d) is on 21-09-2024,

(X3 (e) is on 21-09-2024,

(X4) is on 23-09-2024.

The respondents’ position with regard to those vehicles is that, although they were brought into Sri Lanka after 31-08-2024, they had been shipped on board prior to the cut-off date. According to the provisions of Section 16 of the Customs Ordinance, time in respect of importation shall be deemed to be the

time at which the ship importing such goods actually comes within the limits of the Port.

In the present case, while the petitioner's vehicle was confiscated on the basis that it was not imported on or before 31-08-2024, Eight other electric vehicles, which also reached after 31-08-2024, were released after imposing a mitigated forfeiture.

Accordingly, the 2nd respondent in arriving at the impugned decision has considered extraneous factors rather than giving weight to the relevant ones. Furthermore, what has been stated in paragraph 12 of the order is factually incorrect, as evidenced by the evidence led at the inquiry. It is important to ensure that every individual is given fair and equal treatment by the authority to which they have been subjected. It is manifested that the 2nd respondent has unreasonably singled out the petitioner and forfeited the petitioner's vehicle.

The petitioner seeks an interim relief. As elaborated above, the petitioner has established a *prima facie* case. In the case of Duwearatchi and another v. Vincent Perera and Others [1984] 2 Sri LR 94, the Court held that the following three factors should be considered when granting incidental orders in the exercise of inherent powers of the Court.

- (i) Will the final order be rendered regulatory if the petitioner is successful?
- (ii) Where does the balance of convenience lie?
- (iii) Will irreparable and irremediable mischief or injury be caused to either party?

The vehicle imported by the petitioner has remained at the Port since 12-09-2024 for more than 17 months. The petitioner has averred that the cost of repairing or replacing the HV Battery would be approximately Rupees Nineteen Million (Rs. 19,000,000/-). It might take sometime to conclude this application in view of the subsequent appellate proceedings. Therefore, the continued retention of the vehicle at the port carries a substantial risk of further depreciation in its value and finally results in a total loss of value. When considering the balance of convenience, if the petitioner's application is dismissed, the petitioner may be ordered to pay the assessed value of the forfeited vehicle. If the petitioner is successful and the vehicle becomes valueless, the petitioner would suffer an irreparable loss for which an adequate remedy may not be available.

Therefore, the Court is inclined to grant an interim relief for the petitioner on the following terms.

The 1st and 2nd respondents are directed to release the motor vehicle imported by the petitioner, as set out in the Cusdec marked P19, subject to the petitioner's payment of the relevant government taxes and duties as described in para 5.5 of P2 circular dated 31.08.2022 (as per P9 permit) and any usual charges/levies.

The petitioner must supply a Bank Guarantee in favour of the Director General of Customs for an amount equal to 5% of the vehicle's CIF value (in Sri Lankan rupees) before the vehicle is released.

The said Bank Guarantee shall be extended from time to time until the final determination of this application. Further, the Bank Guarantee should not be encashed without the permission of this Court. The vehicle shall not be registered without the permission of this court.

Judge of the Court of Appeal

Dr. S. Premachandra J.

I agree.

Judge of the Court of Appeal.