

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF

SRI LANKA

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

1. TDH International (Private) Limited,
Randeniyawatta,
Mawathagama.
2. Kulatunga Mudiyanseelage Kanchana
Prasad Bandara Kulatunga,
Director,
TH International (Private) Limited,
02, Samodaya Niwasa,
Mawathagama.

PETITIONERS

CA WRIT APPLICATION

NO. CA /WRT /0381/ 26

Vs.

1. T.T. Upulmali Premathilake,
Controller General of Import & Export,
2. Dinusha Jayaweera,
Legal Officer

1st and 2nd Respondents are from:
Import and Export Control Department,
1st Floor,
Hemas Building,
Sir Marcus Fernando Mawatha,
Colombo 01.

3. Hatton National Bank PLC,
4. Rozanne de Almeida,
Vice President,
Head of International Trade Finance.
5. Amila S.D.Hewavitharana
Manager,
International Trade Finance,

3rd and 5th Respondents are from:
City Office,
Level 2,
No:16, Janadhipathi Mawatha,
Colombo 01.
6. Hambantota International Port
Group (Private) Limited,
Hambantota Maritime Center,
Mirijjawila,
Hambantota.
7. Hon. Attorney General,
Attorney General's Department
Colombo 12.

RESPONDENTS

Before: **B. Sasi Mahendran, J**

 Adithya Patabendige, J

Counsel: Deekiriwewa with M.K. Herath, K. Silva and Wijerathna Bandara for the Petitioner.

 Sarasi Dissanayaka for the 3rd, 4th and 5th Respondents.

 Chaya Sri Nammuni, DSG for the Respondents.

Written

Submissions: 28.09.2026 (by the Petitioner)

On

Supported 08.09.2026

On:

Decided On: 09.10.2026

B. Sasi Mahendran, J.

This order concerns the application for interim relief made by the Petitioner in the petition dated 26th May 2026.

The interim relief sought in prayers (i), (j) and (k) may be summarized as follows:

(i) A stay of the decisions of the 1st and 2nd Respondents communicated by email to HNB Bank and furnished to the Petitioner in typewritten form marked “X9A”.

(j) Permission to clear the vehicles upon furnishing a personal guarantee for the CIF value declared in the commercial invoice or the Customs value determined by Sri Lanka Customs under section 167 of the Customs Ordinance.

(k) Permission to remove the vehicles from the premises of Hambantota International Port Group (Private) Limited upon furnishing a personal guarantee for the charges demanded by that company in respect of the space occupied by the vehicles.

The Petitioner maintains that the impugned decisions are ultra vires and that, unless interim relief is granted, the Petitioner will suffer grave, irremediable and irreparable loss despite having committed no fault. Although framed separately, the three prayers seek, in substance, to enable the Petitioner to obtain the release of the vehicles pending the determination of this application.

It should be noted that, by order dated 14th July 2026, this Court identified the issue arising for determination in relation to the decision of the 1st Respondent, which decision was made upon the matter being referred to him by the 3rd Respondent, namely, the Bank. The question was whether such reference by the 3rd Respondent to the 1st Respondent, and the decision thereafter made by the 1st Respondent,

were *ultra vires*. This Court further held that the question to be considered in the present application is the applicability of Section 6 of the Gazette marked “X3(B)”.

I am also mindful that, if this Court ultimately declines to quash the decision of the 1st and 2nd Respondents marked “X9A”, the Respondents may proceed to take action under Section 9 of Gazette No. 2412/44 dated 31st January 2025, marked “X10”. This consequence is also reflected in the document marked “X9”.

For ease of reference, I reproduce section 9 of the said Gazette:

“9. If any motor vehicle(s), specified in the Regulation No. 5 above, is imported in violation to these Regulations and/or any prevailing Rules and Regulations applicable on importation of motor vehicle(s), such motor vehicles(s) shall be re-exported by the respective Importer within ninety (90) days from the date of the Bill of Entry (CUSDEC) with all associated costs borne by the said importer.”

I am mindful of the further question that arises as to whether, if the vehicle is released, this Court could restrain the Petitioner from transferring or otherwise disposing of the vehicle to a third party. The issue that therefore arises is whether such a restriction could properly be imposed as a condition attached to the release of the vehicle.

On the other hand, if this Court were ultimately to decline to quash the decision marked “X9A”, the vehicle would be liable to be re-exported in accordance with section 9 of the said Gazette. The question, therefore, is whether, in the circumstances of the present case, this Court should exercise its discretion and grant the interim relief sought by the Petitioner.

Our Court has considered the factors to be considered when issuing an interim stay order in a writ application.

In ***Duwearachchi v. Vincent Perera, (1984) 2 SLR 94 at pages 103-105, Seneviratne, J.*** held that;

“The main factor to be considered by a court for the issue of or non-issue of a stay order (in this instance the vacation of a stay order) has been set out by His Lordship Samarakoon, C.J., in the case of Bilimoria v. Minister of Lands, Land Development and Mahaweli Development and Two Others. This decision dealt with the issue of a stay order in an application for a Writ of Certiorari. Samarakoon, C.J. stated the principle as follows :- "in considering the question we must bear in mind that a stay order is an incidental order made in the exercise of inherent or implied powers of court. Without such power the court's final orders in most cases would if

the petitioner is successful be rendered nugatory, and the aggrieved party will be left holding an empty decree worthless for all purposes - Vide Bertram, C. J., in Weerasooriya v. Sidambaram Chetty. His Lordship the Chief Justice further observed at page 15 "the interests of justice therefore required that a stay order be made as an interim measure. It would not be correct to judge such stay orders in the same manner as final orders. Interim orders by their very nature depend a great deal on a judge's opinion as to the necessity for interim action".

.....

The first test given above, whether if an interim stay order is not issued the relief which the petitioners will get will be rendered nugatory is a matter of importance and relevance to be considered in this instance. This principle is also connected to the other principle of the balance of convenience of the parties."

Recently, **His Lordship Samayawardhena, J**, in ***Piliyandala Tharuna Bauddha Samithiya Vs. Satharasinghe Achcige Don Chaminda***, SC/APPEAL/96/2025, decided on 10th February 2026, held that,

"As was authoritatively laid down by Justice Soza in the celebrated decision of Felix Dias Bandaranaike v. The State Film Corporation [1981] 2 Sri LR 287, the sequential tests to be applied in deciding whether or not an interim injunction should be granted are as follows:

(a) Does the plaintiff have a strong prima facie case?

(b) Where does the balance of convenience lie?

(c) Do equitable considerations favour the plaintiff?

However, in Amarasekere v. Mitsui and Co. Ltd. [1993] 1 Sri LR 22 at 34, Justice Amarasinghe quoted with approval the following observations of Lord Denning M.R. in Hubbard v. Vosper [1972] 2 QB 84 at 96, which were also quoted with approval by Sachs L.J. in Evans Marshall & Co. v. Bertola S.A. [1973] 1 WLR 349 at 378:

In considering whether to grant an interlocutory injunction, the right course for the judge is to look at the whole case. He must have regard not only to the strength of the claim but also to the strength of the defence, and then decide what is best to be done. Sometimes it is best to grant an injunction so as to maintain the status quo until the trial. At other times it is best not to impose a restraint upon the defendant but to leave

him free to go ahead. ... The remedy by interlocutory injunction is so useful that it should be kept flexible and discretionary. It must not be made the subject of strict rules.

I am in respectful agreement with the above view.”

Applying these principles, I accept that the continued presence of the vehicles at the port may expose them to corrosion and deterioration. The resulting prejudice to the Petitioner is a relevant consideration. It must be weighed against the consequences of permitting the vehicles to be cleared and removed before the legality of the impugned decisions has been determined.

However, the Court must also consider the consequences if the interim relief sought by the Petitioner were granted. The relief sought would, in substance, permit the Petitioner to obtain possession of the vehicle notwithstanding the decision of the relevant authorities and pending the final determination of the legality of that decision.

During the hearing, the Respondents submitted that the impugned decision was made in accordance with applicable law and that, under the relevant provisions, the vehicles must be re-exported. The Court must therefore consider not only the prejudice the Petitioner may suffer from the continued detention of the vehicles, but also the consequences to the Respondents and the statutory regime if the vehicles are released at this stage.

The proposed guarantees relate to the CIF or Customs value of the vehicles and the port charges. Those financial assurances do not, by themselves, ensure that the vehicles will remain available for re-export. The Court must therefore consider the adequacy of the proposed safeguards in relation to the regulatory consequence at issue, as well as the financial interests involved.

The Petitioner’s challenge to the impugned decisions raises questions for determination. Even assuming that the Petitioner has shown an arguable case, that consideration does not, by itself, justify the particular interim relief sought. The balance of convenience and the practical consequences of release must also favour the grant of that relief.

A further consideration is that, should the vehicle be released and subsequently transferred to a third party, the position of the Court at the conclusion of the substantive proceedings may become considerably more difficult to restore. The question whether the Court could adequately control or restrain any subsequent disposition of the vehicle is itself an issue which militates against granting the relief sought in the present circumstances.

The risk of deterioration cannot be disregarded. Nevertheless, it does not, in the circumstances of this case, outweigh the need to preserve the vehicles for any action lawfully required following the final determination. Having considered the nature of the relief sought, the competing interests of the parties, the proposed guarantees and the possible requirement of re-export, I am not satisfied that the Petitioner has established sufficient grounds for the grant of interim relief.

Accordingly, the application for interim relief in prayers (i), (j) and (k) is refused. This order determines only the application for interim relief. The legality of the impugned decisions and the applicability of the relevant regulatory provisions remain open for determination in the substantive application.

To expedite that determination, the Respondents are directed to file their objections on or before 30th October 2026. If the Petitioner wishes to file counter-objections, they may be filed within two weeks from the date on which the Respondents' objections are filed.

The matter is fixed for argument on 27th November 2026.

JUDGE OF THE COURT OF APPEAL

Adithya Patabendige, J

I AGREE

JUDGE OF THE COURT OF APPEAL