

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

CA Application No: WRT 599/2026

*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.*

1. Prasad Enterprises (Pvt) Limited,
No. 102, Kandy Road,
Mawathagama.
2. 4G Mobile (Pvt) Limited,
32/14, Anura Mawatha,
Thalapathpitiya.
3. Imex Link (Pvt) Limited
172/B, Dutugamunu Street,
Kohuwala, Nugegoda.
4. Nandana Aruna Sri Hewage,
Carrying a Partnership business
under the name, style, and firm of
Tharanga Enterprises of
Seeradunna, Mawathagama.
5. Ruchika Kamal Vidanagamage
Carrying a Partnership business
under the name, style, and firm of

Tharanga Enterprises of
Seeradunna, Mawathagama.

PETITIONERS

Vs.

1. Hon. Anura Kumara Dissanayake,
Hon. President Cum Minister of
Finance, Planning and Economic
Development,
Ministry of Finance, Planning and
Economic Development,
The Secretariat,
Colombo 01.
2. Dr. Harshana Sooriyapperuma,
Secretary to the Ministry of
Finance, Planning and Economic
Development and Secretary to the
Treasury,
Ministry of Finance, Planning and
Economic Development,
The Secretariat,
Colombo 01.
3. Wimal S.K. Liyanagama,
Director General of Customs,
Sri Lanka Customs,
Customs House,
Customs Headquarters,
No. 40, Main Street,
Colombo 11.

4. T. Loganathan,
Additional Director General of
Customs (Revenue & Services)
Sri Lanka Customs,
Customs House,
Customs Headquarters,
No. 40, Main Street,
Colombo 11.

5. T.T. Upulmali Premathilake
Controller General of Import &
Export,
Import & Export Control
Department,
1st Floor,
Hemas Building,
Sir Marcus Fernando Mawatha,
Colombo 01.

6. Central Bank of Sri Lanka
Janadhipathi Mawatha,
Colombo 01.

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

8. DFCC Bank PLC,
No. 35, Lake House Building,
D.R. Wijewardena Mawatha,
Colombo 10.

9. Commercial Bank of Ceylon PLC,
No. 21, Sir Razik Fareed Mawatha,
Colombo 01.

10. Union Bank of Colombo PLC,
No. 64, Galle Road,
Colombo 03.

11. Sampath Bank PLC,
P.O. Box 997, No. 110,
Sir James Peiris Mawatha,
Colombo 02.

12. HNB Bank PLC,
City Office, Level 2,
No. 16, Janadhipathi Mawatha,
Colombo 01.

13. Sri Lanka Port Authority,
No. 19, Chaithiya Road,
Colombo 01.

14. Hambantota International Port
Group (Private) Limited,
Hambantota Maritime Center,
Mirijjawila, Hambantota.

RESPONDENTS

CA Application No: WRT 604/2026

*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.*

Sridhara Madurapperuma
“Wasana”, Pahajjawa,
Nakulugamuwa.

PETITIONER

Vs.

1. Hon. Anura Kumara Dissanayake,
Hon. President Cum Minister of
Finance, Planning and Economic
Development,
Ministry of Finance, Planning and
Economic Development,
The Secretariat,
Colombo 01.
2. Dr. Harshana Sooriyapperuma,
Secretary to the Ministry of
Finance, Planning and Economic
Development and Secretary to the
Treasury,
Ministry of Finance, Planning and
Economic Development,
The Secretariat,
Colombo 01.

3. Wimal S.K. Liyanagama,
Director General of Customs,
Sri Lanka Customs,
Customs House,
Customs Headquarters,
No. 40, Main Street,
Colombo 11.
4. T. Loganathan,
Additional Director General of
Customs (Revenue & Services)
Sri Lanka Customs,
Customs House,
Customs Headquarters,
No. 40, Main Street,
Colombo 11.
5. T.T. Upulmali Premathilake
Controller General of Import &
Export,
Import & Export Control
Department,
1st Floor,
Hemas Building,
Sir Marcus Fernando Mawatha,
Colombo 01.
6. Central Bank of Sri Lanka
Janadhipathi Mawatha,
Colombo 01.
7. Hon. Attorney General,

Attorney General's Department,
Colombo 12.

8. Bank of Ceylon,
Trade Services, 2nd Floor, Head
Office,
“BOC Square”, No.1, Bank of Ceylon
Mawatha, Colombo 01.

9. Hambantota International Port
Group (Private) Limited,
Hambantota Maritime Center,
Mirijjawila, Hambantota.

RESPONDENTS

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

Counsel : K. Deekiriwewa with M. K. Herath and
Wijerathna Bandara for the Petitioners.

Thilina Wariyapperuma instructed by Charith de
Silva for the 10th Respondent.

Suharshi Liyanagama instructed by Dhammika
Rajapaksha for the 11th Respondent.

Chaya Sri Nammuni, DSG with Rajika
Aluwihare, SC for the Respondents.

Written Submissions on : 08.09.2026 for the Petitioner.

Supported on : 24.08.2026

Decided on : 15.09.2026

K. Priyantha Fernando, J. (CA)

The Court issued formal notice on the Respondents on 24.08.2024 but reserved the order regarding interim relief.

**THE ORDER DELIVERED BY THIS COURT IN THE CONNECTED MATTERS
BEARING FACTUAL AND LEGAL SIMILARITIES**

In the four connected matters (CA/WRT/1081/2025, CA/WRT/1115/2025, CA/WRT/1126/2025 and CA/WRT/1144/2025) stay orders and interim relief has already been granted by the Order dated 26.05.2026.

The Petitioners (in the aforementioned connected matters), a vehicle importing sole proprietorship and individual buyers, sought writs of *Certiorari*, Prohibition, and *Mandamus* to quash the signed draft non-gazetted (till 13.11.2025) Regulation No. 2459/46 dated 24.10.2025 (X7) and the subsequently published antedated Gazetted Regulation bearing the same number and date, and so block its retroactive application, allow clearance of vehicles imported via Cross-border Letters of Credit (LCs), release tendered guarantees, and grant demurrage waivers. They also sought interim relief to temporarily clear their detained vehicles by providing corporate or personal guarantees covering declared CIF values, Customs values, and port storage charges.

The dispute arose due to the refusal of release of the imported motor vehicles, which was allegedly in violation with the Extraordinary Gazette No. 1804/17 as amended by Gazette No. 2428/07. Since the importation of vehicles via Cross-Border LCs under UCP 600 was an established regulatory practice under the Imports and Exports (Control) Act, No. 1 of 1969, the Petitioners argued that the Respondent, in excess of their statutory authority, violated principles of legitimate

expectation and estoppel, and relied on an antedated, retrospective, *ultra vires* regulation Gazette.

In the same case, the Respondents asserted that the Gazette was lawfully passed 24.10.2025, and approved by Parliament. The Respondents further argued that under Section 20(7) of the Import and Exports (Control) Act No. 01 of 1969, final legal validity had been given to the impugned Gazette. Thus, the Respondents contended that the application of the Petitioners was futile since Parliament had already approved the Gazette Notification in accordance with the statute.

This Court upheld that the Petitioner had made out a *prima facie* case on the basis that subordinate legislation made in contravention to the authority granted by the enabling principal Act, would be 'blatantly violating or infringing the above salutary Constitutional provisions.

As such, it was held that the arguable question of law was "Can a regulation outside the ambit of Article 76(3) of the Constitution, and Section 20 of the Import and Export Control Act become valid by reason of the fact that Parliament subsequently approved it?". Relying on the distinction between an Act of Parliament and subordinate legislation drawn by Lord Diplock in the case of *F. Hoffmann-La Roche and Co., AG and others v Secretary of State for Trade and Industry* (1974) 2 All E.R 1128. The same was applied in the case of *The Attorney-General of Ceylon, Appellant and W. M. Fernando, Honorary Secretary, Galle Gymkhana Club* 79 NLR 39 by Sharvananda, J. in which it was held that "*subordinate resolution may be ultra vires by reason of its contents or by reason of procedural defects*".

POSITION OF THE PETITIONERS IN THE INSTANT MATTER

Whilst the position of the Petitioners has remained primarily the same in this matter as it was in the previously adjudicated matters, the Petitioners have sought indulgence of the Court to impugn a part of Regulation 9 in the 31.01.2025 Gazette which has not been impugned earlier. It is stated that for abundance of

caution, a necessity has arisen to impugn that part which alleged to be a nullity. The reason being the novel objection of the Respondents which insisted the Petitioners to re-export based on the part of regulation 9 of the impugned Gazette. It was contended that, under Section 15 read with Section 21 of the Import and Export Control Act, there is an unlimited right on Sri Lanka Customs in respect of Import and Export Control violations and Sections 12 and 43 has embraced it. Such unlimited right cannot be jettisoned by a side wind of the Minister's regulation; thus, a necessity has arisen to impugn that part of Regulation 9 dated 31.01.2025.

POSITION OF THE RESPONDENTS

It is pertinent to note at the outset that, the Respondents have failed to submit written submissions in the instant matter.

The Respondents submitted that the Court has a duty to safeguard the potential revenue (customs duty) due. The Respondents argued that the most suitable way of doing so would be by way of Bank Guarantee as opposed to Corporate Guarantee owing to the more streamlined process of recovering monies due under the Bank Guarantee as opposed to the Corporate Guarantee which would require Sri Lanka Customs to sue the Petitioners to recover any sum due.

However, while it is the duty of the Court to see that public revenue is safeguarded, it is equally the duty of the Court to see that a litigant is not harassed unnecessarily - Fonterra Brands Lanka (Pvt) Limited vs. Director General of Customs & another SC/Appeal /187/2014 decided on 22.10.2024. Furthermore, the Courts should be alert to see that such powers conferred by statute are not exceeded or abused. The case of R v Barnet and Camden Rent Tribunal, Ex parte Frey Investments Ltd. [1972] 2 WLR 619 was quoted by Sharvananda J. (as he then was) in Sirisena and others v. Kobbekaduwa, Minister of Agriculture and Lands 80 NLR 172. In Shell gas Lanka Limited vs. Consumer Affairs Authority & Others [2008] 1 Sri L. R. 128, Sriskandarajah, J. held that the duty of the Court is to see that power shall not be exercised in unlawful and arbitrary manner, when

exercise of such powers affects the basic rights of individuals. The Court should be alert to see that such powers conferred by the statute are not exceeded or abused.

In the circumstances prevailing (as was in the cases discussed above [decided by this Court on 26.05.2026]), it was contended by the Petitioners that grave and irreparable loss and damage will be caused to them and this application will be rendered nugatory unless this Court grant stay order and interim orders as prayed for in prayers (j) and (k) of the prayer.

In Duwearachchi and another v. Vincent Perera and another [1984 (2) SLR 95] an interim stay order in a writ application is an incidental order made in the exercise of the inherent or implied powers of the Court. It was held that the Court should be guided by the following principles:

- (a) Will the final order be rendered nugatory if the Petitioner is successful?
- (b) Where does the balance of convenience lie?
- (c) Will irreparable and irreparable mischief or injury be caused to either party?

Samarakoon C.J., in the case of Billimoria v. Minister of Lands, Land Development and Mahaweli Development and Two Others, stated that,

“In considering this 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 Sedambaram Chetty”.

It was further observed at page 15,

“The interest of justice therefore required that a stay order be made as an interim measure, it would not be correct to judge such orders in the same strict manner as a final order. Interim orders by their very nature must

depend a great deal on a Judge's opinion as to the necessity for interim action".

This Court has granted stay orders impugning the Gazette dated 24.11.2025 in the four other cases mentioned above. In those cases, the Respondents did not object to the releasing of vehicles on corporate guarantees.

In light of the above circumstances, **specifically the impugned Gazette that enabled the Petitioners to secure the temporary release of the vehicles by furnishing a Personal or Corporate Guarantee** (rather than an irrevocable and unconditional bank guarantee), the interim reliefs prayed for in prayers (j) and (k) are granted subject to an express undertaking given to this Court (i) not to register the vehicle until the matter is finally determined, and (ii) to honour the said guarantee should the matter be decided in favour of the Respondents.

The Petitioner is permitted to amend the petition as prayed for in prayer (l) subject to any objections of the Respondents.

Judge of the Court of Appeal

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

I agree.

President of the Court of Appeal