
OLAM INTERNATIONAL LTD**Vs.****SAMAN SILVA AND OTHERS**

COURT OF APPEAL
SAMAYAWARDHENA, J.
CA/WRIT/693/2007

Writ of certiorari—Customs Ordinance, sections 27, 154— Forfeiture of goods—Violation of audi alteram partem rule—Proof of ownership to goods—Necessity to establish the claim before the District Court, not before the writ court

After an inquiry, the Director of Customs ordered forfeiture of a sum of Rs. 100, 000 from the shipping agent, and forfeiture of the goods. The shipping agent did not challenge the order and paid the penalty. The petitioner who claims to be the owner of the goods filed this application against the Director General of Customs seeking to quash by way of a writ of certiorari the order of forfeiture of the goods on the ground that he was not heard before the order was made.

Held:

1. Proved violation of section 27 of the Customs Ordinance results in forfeiture of the goods by operation of law.
2. Section 154 of the Customs Ordinance sets out the procedure to be followed when claiming forfeited goods. The petitioner ought to establish that he is the owner of the goods by filing an action in the District Court.
3. When the Customs Ordinance itself specially provides for a remedy to address the grievance of the petitioner, he cannot invoke the writ jurisdiction of the Court of Appeal seeking relief.

Cases referred to:

1. Bhambra v. Director General of Customs [2002] 3 Sri LR 401
2. Attorney General v. Sathasivam (1966) 69 NLR 110
3. Ishak v. Luxman Perera, Director General of Customs [2003] 3 Sri LR 18

APPLICATION for Writ of Certiorari.

Faisz Musthapa, P. C., with Riad Ameen for the Petitioner.

Manohara Jayasinghe, S. S. C., for the Respondents,

cur. adv. vult.

October 23, 2019

SAMAYAWARDHENA, J.

After an inquiry, the Director of Customs ordered forfeiture of a sum of Rs. 100, 000 from the Shipping Agent, and forfeiture of the goods, which are “25 containers of sugar under section 27 of the Customs Ordinance as the same are not manifested.”

The Shipping Agent did not challenge this order and paid the penalty.

The Petitioner filed this application against the Superintendent of Customs, the Director of Customs and the Director General of Customs (hereinafter “the Respondent”) seeking to quash by way of writ of certiorari the order of forfeiture as manifested in the letter marked P17 sent by the Respondent to the then Attorney-at-Law of the Petitioner.

P17 reads as follows:

I write with reference to your letter dated 13th July 2007 addressed to Director General of Customs and to consider whether there should be any meaningless response to your letter, could you please inform your client to explain me through you, that on what method that he (your client) retained the title of the goods, after having shipped the same goods to Sri Lanka by vessel MN Faith/Sinar Lombok berthed at Port of Colombo on or around 17. 01. 2007. However Sri Lanka Customs dealt only with the goods of which were unladen violating section 27 of the Customs Ordinance inter alia and not with the titles, and for that reason as your client has no locus standi and was not summoned for the Customs inquiry.

Section 27 of the Customs Ordinance reads as follows:

And whereas it is expedient that the officers of customs should have full cognizance of all ships coming into any port or place in Sri Lanka, or approaching the coast thereof, and of all goods on board or which may have been on board such ships, and also of all goods unladen from any ships in any port or place in Sri Lanka:

It is enacted that no goods shall be unladen from any ship arriving from parts beyond the seas at any port or place in Sri Lanka, nor shall bulk be broken after the arrival of such ship within the territorial waters of Sri Lanka, before due report of such ship and sufferance granted, in manner hereinafter directed; and that no goods shall be so unladen except at such times and places and in such manner and by such persons and under the care of such officers as hereinafter directed; and that all goods not duly reported, or which shall be unladen contrary hereto, shall be forfeited; and if bulk be broken contrary hereto the master of such ship shall forfeit a sum not exceeding one hundred thousand rupees; and if after the arrival of any ship within the territorial waters of Sri Lanka any alteration be made in the stowage of the cargo of such ship so as to facilitate the unfading of any part of such cargo, or if any part be staved, destroyed, or thrown overboard, or any package be opened, such ship shall be deemed to have broken bulk;

Provided always that coin, bullion, cattle, and other livestock, and passengers with their baggage, may be landed previous to report, entry or sufferance.

Admittedly, the Petitioner was not summoned for the Customs inquiry, as it is the position of the Respondent that proved violation of section 27 of the Customs Ordinance results in forfeiture of the goods by operation of the law. Vide *Bhambra v. Director General of Customs.1*

This position is disputed by the learned President's Counsel for the Petitioner on two main grounds: (a) section 27 is inapplicable to the facts of this case, and (b) forfeiture is not automatic and shall necessarily be after a hearing.

The learned President's Counsel admits that "*whether section 27 was applicable is a matter that must be determined at the inquiry. The Respondents cannot invoke section 27 before deciding whether section 27 applies. Before deciding whether section 27 applies the Petitioner must be given a hearing.*" That means, the applicability or inapplicability of section 27 is not a pure question of law but a mixed question of fact and law, and therefore, such disputed matters cannot be decided in this writ application.

The pivotal argument of the learned President’s Counsel for the Petitioner is that the decision of the Respondent to forfeit the goods shall be quashed by certiorari, as the said decision was made without giving the Petitioner, being the owner of the goods, a hearing, in violation of the fundamental rule of natural justice-*audi alteram partem*. The learned President’s Counsel states that “*it was decided in Manawadu v. The Attorney General [1987] 2 Sri LR 30 that the owner of the goods has to be given a hearing and goods cannot be forfeited without affording the owner a hearing.*”

This argument is based on the (wrong) premise that the Respondent admits that the Petitioner is the owner of the goods, whereas this is not so. Vide P17, which I quoted above, and paragraph 3 of the statement of objections of the Respondent whereby the Respondent disputes/denies/ does not admit that the Petitioner is the owner of the goods.

Such contentious matters cannot be decided by the writ Court and shall be decided by a District Court.

In the District Court, the burden is on the Petitioner to prove that he is the owner of the goods. Vide *Attorney General v. Sathasivam.2*

Section 154 of the Customs Ordinance sets out the procedure to be followed when claiming forfeited goods. That section runs as follows:

154(1) All ships, boats, goods, and other things which shall have been or shall hereafter be seized as forfeited under this Ordinance, shall be deemed and taken to be condemned, and may be dealt with in the manner directed by law in respect to ships, boats, goods, and other things seized and condemned for breach of such Ordinance, unless the person from whom such ships, boats, goods and other things shall have been seized, or the owner of them, or some person authorized by him, shall, within one month from the date of seizure of the same, give notice in writing to the Collector or other chief officer of customs at the nearest port that he intends to enter a claim to the ship, boat, goods, or other things seized as aforesaid, and shall further give cash security to prosecute such claim before the court having jurisdiction to entertain the same and otherwise to satisfy the judgment of the court and to pay costs in such sum as the Collector or proper officer of customs at the port where or nearest to which the seizure was made shall consider sufficient.

If proceedings for the recovery of the ship, boat, goods or other things so claimed be not instituted in the proper court within thirty days from the date of notice and security as aforesaid, the ship, boat, goods, or other things seized shall be deemed to be forfeited, and shall be dealt with accordingly by the Collector or other proper officer of customs.

(2) If after the institution of proceedings in the proper court, the claimant shall give cash security to restore the things seized or their value in such sum as the Collector or proper officer of customs at the port where or nearest to which the seizure made shall consider sufficient, the ship, boat, goods or other things seized may, if required, be delivered up to the claimant at the discretion of the Principal Collector of Customs or a Deputy Collector of Customs.

(3) After institution of proceedings in the proper court in respect of any ships, boats, goods or other things the court, may, on the application of the Director-General of Customs and if the claimants do not object thereto, authorise such Director-General to dispose of such ships, boats, goods or other things and deposit the proceeds of sale in court. Where the claimants object to the disposal of such ships, boats, goods or other things the court may require the claimants to deposit cash security, equal to the market value (as assessed by such Director-General) of such ships, boats, goods or other things, in court.

By looking at section 154(1), it is clear that even “the owner” of goods is caught up or covered by that section. That means, even if the Petitioner is the owner of the goods in question, he ought to claim the forfeited goods by filing an action in the District Court.

In reference to section 154, the learned President’s Counsel states that “*if the owner is not given notice of the inquiry and therefore is unaware when the goods are forfeited, then the owner cannot have recourse to the procedure section 154(1) within the time periods stipulated therein. Therefore, when an inquiry is held contrary to the rules of natural justice without any notice whatsoever to the owner of the goods, the only remedy available to the owner of the goods is to file a writ application as the procedure in section 154 cannot be invoked in such a case.*”

I regret my inability to agree with that argument, especially, in view of the facts of this case. As seen from P18, the Petitioner did in fact give Notice to the Respondent in terms of section 154 of the Customs Ordinance to file a case in the District Court to recover the goods forfeited by the Respondent. P18 Notice was given by the then Attorney-at-Law of the Petitioner to the Respondent within the stipulated time. P18 inter alia states:

You are hereby informed that my client intends to file action against you under section 154 of the Customs Ordinance in the DC of Colombo for the recovery of 675 metric tons of sugar (25 containers) given in BIL Nos. EISU 360600100149 (15 containers) and EISU 360600100131 (10 containers) belonging to my client which were forfeited at the Customs inquiry bearing the abovementioned Customs case number.

However, it appears to me that, thereafter, the Petitioner has not pursued that course of action and instead filed this writ application to achieve the same objective.

P18 is dated 23. 07. 2007, and this writ application is dated 31. 07. 2007. When the Customs Ordinance itself specially provides for a remedy to address the grievance of the Petitioner, the Petitioner cannot come before this Court by way of a writ application seeking the same relief. Vide *Ishak v. Luxman Perera, Director General of Customs, Bhambra v. Director General of Customs (supra)*.

In the former case, Tilakawardena J. at page 23 held that:

Applying the provisions of Section 154 of the Customs Ordinance it is clear that there is an existent remedy provided in terms of the aforesaid section in the District Court of competent civil jurisdiction. This was followed in several cases: (Fernando v Dharmasiri 72 NLR 320, Gunasekera v Weerakoon 73 NLR 262, Rodrigo v The Municipal Council, Galle 49 NLR 89, Samarakoon v Tikiribanda 51 NLR 259). In other words where there was an alternative remedy that was adequate for the adjudication of the matter that was being challenged by the aggrieved party except under exceptional circumstances this Court would not invoke the writ jurisdiction of the Court.

For the aforesaid reasons, I dismiss the application of the Petitioner but without costs.

Application dismissed.

Judgment by: Mahinda Samayawardhena, J.

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