

VALLIBEL LANKA (PVT) LIMITED
v
DIRECTOR-GENERAL OF CUSTOMS AND THREE OTHERS

SUPREME COURT
SARATH N. SILVA, C.J.
AMARATUNGA, J. AND
K. SRIPAVAN, J.
S.C. APPEAL 26/2008
29 AUGUST, 2008

Customs Ordinance – Forfeiture of a vessel under sections 47 and 107 for non-payment of GST and NSL.

The petitioner sought a *Writ of Certiorari* in the Court of Appeal to quash the order of the 3rd respondent that the petitioner was liable to pay GST and NSL on the purchase price of the vessel named "MV Induruwa Valley". The Court of Appeal dismissed the petitioner's writ application. The Supreme Court granted Special Leave to Appeal and leave was granted to the petitioner on the following questions:

- (1) Did the Court of Appeal fall into substantial error by holding that the vessel "M.V. Induruwa Valley" had been imported into Sri Lanka and that the provisions of the Customs Ordinance pertaining to recovery and sanctions could be legitimately invoked in the case of an alleged default in payment of Goods and Services Tax and National Security Levy?
- (2) Did the Court of Appeal err by failing to consider that unlike in the case of certain other specific fiscal statutes, that in the case of Goods and Services Act No. 34 of 1996 as amended by Act No. 11 of 1998, it is only the charging levying and collection of GST that can be made as if it were a customs duty, whilst recovery of tax in default on the other hand is purely within the jurisdiction of the Commissioner-General of Inland Revenue?

- (3) Did the Court of Appeal fall into substantial error in law by classifying a ship/vessel as being a "good" in terms of the Customs Ordinance and also by holding that such a ship/vessel could be imported within the meaning of the provisions of the Customs Ordinance?
- (4) Did the Court of Appeal err in law when holding that the petitioner had failed to declare the vessel to the customs on arrival and had consequently failed to pay GST and NSL at the time when there was no such requirement in law?

Held:

- (1) In terms of section 16 of the Customs Ordinance the precise time at which importation of any goods shall be deemed to be the time at which ship importing such goods had actually come within the limits of the port.
- (2) A vessel arriving in the ordinary course of navigation carrying goods on board does not fall within the definition of an "imported good" in terms of section 16 read with section 47.

Per Sripavan, J.

"I am unable to find any provision in the Customs Ordinance which contemplates or makes provisions for a sailing vessel as being a "good" within the meaning of section 16 of the Customs Ordinance."

- (3) The Court cannot give a wider interpretation to Section 16, merely because some financial loss may in certain circumstances be caused to the State. Considerations of hardships, injustice or anomalies do not play an useful role in construing fiscal statutes. One must have regard to the strict letter of the law and cannot import provisions in the Customs Ordinance so as to supply any assumed deficiency.
- (4) When the GST Act makes general provisions in respect of certain matters and makes specific provision with respect to "recovery" the latter must prevail over the general. The special jurisdiction with regard to "recovery" must be exercised by the Commissioner General of Inland Revenue and not by the Director General of Customs.
- (5) When an administrative body exercises the power, it shall not act mala-fide or frivolously or vexatiously but shall act in good faith and for the achievement of the objects the enactment had in view.
- (6) It is the established rule in the interpretation of statutes that levy taxes and duties, not to extend the provisions of the statute by implication, beyond the clear import of the language used or to enlarge their operation in order to embrace matters not specifically pointed out.

In case of doubt, the provisions are construed most strongly against the State and in favour of the citizen.

- (7) The intention to impose duties and/or taxes on imported goods must be shown by clear and unambiguous language and cannot be inferred by ambiguous words.

- (8) The defence Levy Act No. 52 of 1991 as amended by Act No. 25 of 1994 in Section 5A(2) makes clear provision that the Defence Levy be deemed to be customs duty payable under the Customs Ordinance and the provisions of Customs Ordinance shall apply to the collection and recovery of any such amount. Accordingly, the 3rd respondent has the power to recover Defence Levy, if any under the provisions of the Customs Ordinance without forfeiting the vessel.

Per Sripavan

"In carrying out its task of enforcing the law, the Court has to insist on powers being exercised truly for the purpose indicated by the Parliament and not for any ulterior purpose."

APPEAL from the judgment of the Court of Appeal.

Sanjeeva Jayawardena with R. Amaraseeriyaa for the petitioner.

Mrs. F. Jameel, D.S.G. for the respondents.

Cur.adv.vult

August 27, 2008

SRIPAVAN, J.

The petitioner is a company duly incorporated under the laws of Sri Lanka and engaged in the business of, *inter-alia*, international and national transportation by sea. The petitioner purchased a sea-going vessel from Japan and brought same into the Sri Lankan territorial waters in or around April 1999. The vessel was registered under the Sri Lankan flag and named "MV Induruwa Valley". The respondents did not dispute that the said vessel is engaged in transporting essential cargo to the Northern Province. The petitioner alleges that on or around 2nd March 2001, officers of the Department of Customs acting in terms of an authority given under Section 128 of the Customs Ordinance (P4) entered the premises of the petitioner on the basis that there were uncustomed goods and/or goods the importation of which were restricted under Schedule "B" of the Customs Ordinance. The Executive Director of the petitioner was thereafter summoned for an inquiry before the third respondent on 4th April 2001 and 24th May 2001 as evidenced by the documents marked P5 and P6 respectively. After the conclusion of the inquiry the third respondent made the following impugned order.

"I have considered the evidence and the documents produced before me and also the verbal submission made by Mr. S.N. Godwin, Executive Director, M/s. Vallibel Lanka (Pvt)

Ltd. today on behalf of M/s. Vallibel Lanka (Pvt) Ltd. Since, it has been proved that the GST and the NSL has not been paid, I consider that the vessel is liable for forfeiture under Sections 47 and 107 of the Customs Ordinance (Chapter 235). However due to the reason, that the vessel is carrying essential cargo to to the North I release the vessel on a mitigated penalty of Rs. 7.5 Million (Rs. 7,500,000.00) under Sections 129, 163 and 47 of the Customs Ordinance."

The petitioner sought a writ of certiorari in the Court of Appeal to quash the said order of the third respondent that the petitioner was liable to pay GST and NSL on the purchase price of the said vessel. The writ application was dismissed by the Court of Appeal on 2nd November 2007. Being aggrieved with the judgment of the Court of Appeal marked P15, the petitioner sought special leave to appeal and leave was granted mainly on the following questions.

1. Did the Court of Appeal fall into substantial error by holding that the vessel "MV Induruwa Valley" had been imported into Sri Lanka and that the provisions of the Customs Ordinance pertaining to recovery and sanctions could be legitimately invoked in the case of an alleged default in payment of Goods and Services Tax and National Security Levy?
2. Did the Court of Appeal err by failing to consider that unlike in the case of certain other specific fiscal statutes, that in the case of Goods and Services Act No. 34 of 1996 as amended by Act No. 11 of 1988, it is only the charging levying and collection of GST that can be made as if it were a customs duty, whilst recovery of tax in default on the other hand is purely within the jurisdiction of the Commissioner General of Inland Revenue?
3. Did the Court of Appeal fall into substantial error in law by classifying a ship/vessel as being a "good" in terms of the Customs Ordinance and also by holding that such a ship/vessel could be imported within the meaning of the provisions of the Customs Ordinance?
4. Did the Court of Appeal err in Law when holding that the petitioner had failed to declare the vessel to the customs on arrival and had consequently failed to pay GST and NSL at the time when there was no such requirement in law?

The first respondent in paragraphs 9 & 11 of the affidavit dated 15th October 2001 filed in the Court of Appeal states that the importation of

the said vessel took place as contemplated in Section 16 of the Customs Ordinance when it was brought into the Sri Lankan territorial waters and the failure to declare same was an offense under section 47. The court therefore has to examine section 16 of the Customs Ordinance in order to ascertain the time and mode of importation of the said vessel into the limits of the port. In terms of the said section the precise time at which importation of any goods shall be deemed to be the time at which **the ship importing such goods** had actually come within the limits of the port. (emphasis added). The pleadings do not show the time at which the ship importing "MV Induruwa Valley" had actually come within the limits of the port. I am unable to find any provision in the Customs Ordinance which contemplates or makes provision for a sailing vessel as being a "good" with the meaning of section 16. The provision relied on by the third respondent, namely, section 47 of the Customs Ordinance obligates an importer to deliver a bill of entry in respect of "goods" imported in a ship. section 107 too speaks of goods, packages or parcels taken or passed out of any ship. In carrying out its task of enforcing the law, the court has to insist on powers being exercised truly for the purpose indicated by Parliament and not for any ulterior purpose. The court is solicitous that when an administrative body exercises the power, it shall not act mala-fide or frivolously or vexatiously but shall act in good faith and for the achievement of the objects the enactment had in view. I am therefore unable to hold that a vessel arriving in the ordinary course of navigation carrying goods on board falls within the definition of an "imported good" in terms of section 16 read with section 47.

It is the established rule in the interpretation of statutes levying taxes and duties, not to extend the provisions of the statute by implication, beyond the clear import of the language used or to enlarge their operation in order to embrace matters not specifically pointed out. In case of doubt, the provisions are construed most strongly against the state and in favour of the citizen. Thus, the intention to impose duties and/or taxes on imported goods must be shown by clear and unambiguous language and cannot be inferred by ambiguous words. The court cannot give a wider interpretation to section 16 as claimed by the learned DSG merely because some financial loss may in certain circumstances be caused to the state. Considerations of hardship, injustice or anomalies do not play any useful role in construing fiscal statutes. One must have regard to the strict letter of the law and cannot

import provisions in the Customs Ordinance so as to supply any assumed deficiency. For the foregoing reasons too, I hold the vessel in question was not "imported" into Sri Lanka within the meaning of the Customs Ordinance.

Learned DSG strenuously contended that the GST Act as amended by Act No. 26 of 2000 draws a clear distinction between imported goods and other goods and puts the imported goods directly in a different category and vests the administration of the said Act on imported goods in the Director General of Customs. It is on this basis counsel argued that the intention of the legislature was that the GST on imported goods be brought under the regime of the Customs Ordinance. In view of the findings that "MV Induruwa Valley" was not imported into Sri Lanka, the application of Act No. 26 of 2000 does not arise. In any event, it is noted that in terms of the said Act, the charging, levying and collection of GST could be made as if it were a Customs duty whilst the recovery of tax in default on the other hand is vested with the Commissioner General of Inland Revenue by virtue of sections 39 to 49 in Chapter VIII of the GST Act No. 34 of 1996 as amended. Thus, when the GST Act makes general provisions in respect of certain matters and makes specific provision with respect to "recovery" the latter must prevail over the general. The special jurisdiction with regard to "Recovery" must therefore be exercised by the Commissioner General of Inland Revenue and not by the Director General of Customs.

The Defence Levy Act No. 52 of 1991 as amended by Act No. 25 of 1994 in section 5A (2) makes clear provision that the Defence Levy be deemed to be customs duty payable under the Customs Ordinance and **the provisions of Customs Ordinance** shall apply to the collection and recovery of any such amount (emphasis added). Therefore the third respondent has the power to recover Defence Levy, if any, under the provisions of the Customs Ordinance without forfeiting the vessel.

For the reasons set out above, the order of the Court of Appeal dated 2nd November 2007 marked P15 is set aside and a *writ of certiorari* is issued quashing the order made by the third respondent on 24th May 2001 in Customs case No. PCAB/2001/19 marked P7 and the letter dated 18th June 2001 marked P9 containing the communication of the said order to the Chairman/Managing Director of the petitioner company. I make no order as to costs.

SARATH N. SILVA C.J. - I agree.

AMARATUNGA, J. - I agree.