

**KURUWITA MANCHESTER TEXTILE MILLS LTD  
AND ANOTHER  
v  
DIRECTOR- GENERAL OF CUSTOMS**

COURT OF APPEAL  
TILAKAWARDENA, J. (P/CA)  
WIJEYARATNE, J.  
CA 1386/2000  
FEBRUARY 21, 2003  
MAY 30, 2003

*Writ of Certiorari – Quash charges – Customs Ordinance – S. 8 (1), S. 51, S.52 – Sale of unexportable fabric – Dispute pertaining to the value? – Show cause why forfeiture should not be imposed – Charges framed against individual and not against the Company – validity – Statements recorded during investigation – are the Petitioners entitled to same?*

The petitioner company was permitted to sell unexportable fabric in the local market subject to conditions stipulated. As there was a dispute pertaining to the value which had been set out in the custom declaration form, the petitioner was requested to show cause as to why a forfeiture of Rs. 68,828/- should not be imposed on them. The petitioners sought to quash the charges framed against the 2nd Petitioner (The General Manager).

**Held:**

- (i) In terms of S. 51 and S. 52 the value that had been placed on the unexportable goods which were sought to be sold in the local market could not be valued merely on the market value of those goods but had to consider the input of the imported value that had been placed upon.
- (ii) It is clear that the respondents are empowered to determine the value of all items with reference to Schedule E, and they had the power to make a decision regarding the value of the goods, that were under their purview. The petitioners cannot invoke the writ jurisdiction upon grounds that the respondents were precluded from determining the value.
- (iii) The Inquiry is held under the provisions of Section 8 (1). There is no statutory provision which mandated the issue of the Statements to the petitioners. This is not a judicial inquiry.

- (iv) Though the 1st petitioner company has a separate legal entity, the 2nd petitioner has been employed as the Representative of the company, The company has no physical existence in its affairs, it is managed through its agents, the charges framed against the 2nd petitioner General Manager on behalf of the company were valid, and could be maintained.

**APPLICATION** for a *writ of certiorari*.

*Manohara de Silva* for petitioner

*Farzana Jameel*, SSC for respondents

### **SHIRANEE TILAKAWARDENA, J. (P/CA)**

The petitioners have preferred this application seeking a *writ of certiorari* against the respondents to quash the charges framed against the 2nd petitioner. The customs inquiry bearing reference No. PCAB/2000/63 on 01.11.2000, whereby the 2nd petitioner was called upon to show cause in respect of goods sold by the 1st petitioner Company and also to quash the proceedings made thereunder. The petitioners have also sought a writ of prohibition against the respondents from holding this inquiry or any such inquiry in respect of the goods that had been declared in document "P3A1" to 'P3K2' and also have sought a *writ of mandamus* to direct the 1st to 3rd respondents to issue statements of the prosecution witnesses to the petitioner. It is not in dispute that the 1st petitioner Company had entered into an agreement dated 27/03/1992 with the Board of Investments to carry on a business of "manufacturing high quality textile fabrics." Consequent to an amendment to the terms of the agreement on 1st of December 1999 the Company was permitted to sell 50% of its production in the local market, subject to the payment of corporate tax, turnover tax and defence levy (P2). It is conceded between parties that prior to the sale of the unexportable fabrics certain conditions that were stipulated by the Board of Investments of Sri Lanka (B.O.I) had to be complied with. One of such conditions was that there would be the payment of relevant customs duty, defence levy and other levies to the Sri Lanka Customs as determined by them and the documentary proof of such payments to the department. These were some of the contin-

gencies for the sale of the un-exportable qualities as seen in document P3A2 and the other connected documents wherein approval is sought. It was also conceded between parties that permission for the sale of such goods was granted and accordingly the petitioners were permitted to sell un-exportable fabric in the local market subject to the conditions stipulated. It is not in dispute that the custom duties that had been levied was in accordance with the value that had been disclosed in the Cusdec forms relating to such items which have been tendered in the pleadings of the petitioner. The documents that had been annexed to the petition marked 'P3A2' to 'P3K2' set out details of the goods which have been declared by the petitioner Company was unusable and for which they have sought permission of the Board of Investments for sale in the local market.

On 29.09.2000 the Post Clearance Audit Branch of the Sri Lanka Customs required the petitioners to present themselves for an inquiry on 01.11.2000 as there was a dispute pertaining to the value which had been set out in the relevant Cusdec forms on these goods. The petitioner was required to show cause as to why a forfeiture of Rs. 68,628/- should not be imposed upon them.

The only matter that is in issue in this case is whether the Director-General of Customs had correctly assessed the value of these goods and whether the value placed by the petitioners was an under valuation of the goods. In terms of the Customs Ordinance the price of goods could only be ascertained in terms of Section 51 and 52 read with Schedule E of the Customs Ordinance. These Sections read as follows.

### **Section 51:**

"In all cases when the duties imposed upon the importation of articles are charged according to the value thereof, the respective value of each such article shall be stated in the entry together with the description and quantity of the same, and duly affirmed by declaration by the importer or his agent, and such value shall be determined in accordance with the provisions of Schedule E, and duties shall be paid on a value shall be determined in accordance with the provisions of Schedule E, and duties shall be paid on a value so determined."

## Section 52:

“Where it shall appear to the officers of the Customs that the value declared in respect of any goods is not in accordance with the provisions of Schedule E., the goods in respect of which such declaration has been made shall be forfeited together with the package in which they are contained. Where such goods are not recoverable, the person making such false declaration shall forfeit either treble the value of such goods or be liable to a penalty of two thousand rupees, at the election of the Director-General.”

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In terms of these provisions of the Customs Ordinance the value that had been placed on these un-exportable goods which were sought to be sold in the local market could not be valued merely on the market value of these goods but had to consider the input of the imported value that had been placed upon this. This position was based on section 51 where it categorically and specifically stipulated that “..... such value shall be determined in accordance with the provisions of schedule E and duties shall be paid on a value so determined”. So the position of the respondents was that value could not be determined except with reference to Schedule E mere non compliance with such provisions of section 51 would attract the provisions of section 52 of the Customs Ordinance and date of the forfeiture of such goods which had not been valued in accordance with the provisions of Schedule E and the law referred to above. For a consideration of Schedule E, Clause 1 and Clause 2.7 are relevant.

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Clause 1 states as follows.

“The value of any imported goods shall be the normal price, that is to say, the price which they would fetch at the time of importation on a sale in the open market between a buyer and a seller independent of each other as indicated in paragraphs 2.7”.

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Clause 2.7 states as follows:

“That a sale in the open market between a buyer and a seller independent of each other presupposes.....”

In interpreting these provisions it is important to observe that the Customs duty is paid on value and not on costs although it could be observed that cost is one of the elements of value.

Therefore in terms of the aforesaid Customs Law whereas it is clear that the respondents are empowered by the aforesaid Customs Ordinance to determine the value of all items with reference to Schedule E, clearly had the powers, vested in under the Customs Ordinance to make a decision regarding the value of the goods that were under their purview. 100

In these circumstances such powers to determine the value, the petitioner could not invoke the writ jurisdiction of this Court upon grounds that the respondents were precluded from determining the value as it was ultra vires their powers.

One of the grounds that has been urged by the petitioner was whether the proceedings that had been conducted on 01/11/2000 are not in accord with the rules of natural justice. So much as they had failed to issue statements that had been recorded during the investigations. 110

It is important to note that the inquiry in this matter had been had by virtue of the powers vested in the respondents under section 8 (1) of the Customs Ordinance. Section 8 (1) reads as follows.

“Upon examinations and inquiries made by the Director General, or other principal officer of the customs or other persons appointed to make such examinations and inquiries, for ascertaining the truth of statements made relative to the customs, or the conduct of officers or persons employed therein, any person examined before him or them as a witness shall deliver his testimony on oath, to be administered by such Director-General or other principal officer, or such other persons as shall examine any such witness, who are hereby authorized to administer such oath; and if such person shall be convicted of giving false evidence on his examination on oath before such Director-General or other principal officer of customs, or such other person in conformity to the directions of this Ordinance, every such person so convicted as aforesaid shall be deemed guilty of the offence of giving false evidence in judicial proceedings, and shall be liable to the pains and penalties to which persons are liable for intentionally giving false evidence in a judicial proceeding.” 120 130

It was incumbent upon the respondents and its officers to examine these statements and to ascertain the veracity or truth of these statements and there appears to be no statutory provisions which mandated the issue of the statements to the petitioners. It is to be remembered that this inquiry is not a judicial inquiry. But is an administrative inquiry that is being conducted for the mere purpose of ascertaining the veracity and or credibility of the statements that had been recorded in terms of the Customs Ordinance. Indeed the document P6 informs the petitioners that they could obtain the inquiry proceedings on payments from the relevant branch, so that whereas the inquiring officer was not statutorily bound to issue statements had nevertheless given the opportunity to the petitioner to have the materials that had been used at the inquiry and accordingly we find that there is no breach of natural justice. 140

The petitioner has also taken up the position that the charges were framed against the 2nd petitioner, the General Manager (Finance) of the 1st petitioner Company and that such charges could not be maintained merely on behalf of the Company. However it is clear that the Company was all times represented through the 2nd petitioner at the inquiry and he had accepted to show cause on behalf of the Company during the inquiry. Therefore though the Company has a separate legal entity distinct from its members and share holders the 2nd petitioner has been employed as the representative of the Company in this case. In any event, as the Company has no physical existence in its affairs it is clearly managed by its agents, in this case the 2nd petitioner and therefore it can be concluded that the charges framed against the 2nd Petitioner on behalf of the Company were valid charges. Accordingly on a perusal of all the relevant matters, examination of documents, pleadings in this case this Court finds that this is not a fit and proper case to invoke the writ jurisdiction of this Court and accordingly the application is dismissed with costs in a sum of Rs. 5000/- 150 160

**WIJEYARATNE, J.**

I agree.

*Application dismissed.*