DEDIGAMA

V

PREVENTIVE OFFICER, SRI LANKA CUSTOMS AND OTHERS

COURT OF APPEAL
UDALAGAMA, J.,
C.A. 962/02
JULY 16, 2003 AND
SEPTEMBER 16 AND 30, 2003

Writ of certiorari – Quash decision to seize and forfeit vehicle – Customs Ordinance, sections 135, 152 and 164, – Tampered chassis – Onus probandi– Evidence Ordinance, section 106 – Availability of alternate remedy

The petitioner whilst being a member of the Uva Provincial Council, imported a duty free vehicle. On arrival it was found that the vehicle was tampered with and had an altered chassis number. The vehicle was seized by the Customs. The petitioner sought to quash the decision to seize and forfeit the vehicle.

Held: *Per* Udalagama, J.,

"Petitioner not having knowledge of such tampering is not a defence as the *onus probandi* is on the party importing an article to establish lawful importation."

Availability of an alternative remedy (section 164) prevents the petitioner from seeking relief by way of a prerogative writ.

APPLICATION for a writ of *certiorari*.

Case referred to:

1. *Attorney-General v Wimaladharma* - 78 NLR 327

Nalin Ladduwahetti for petitioner.

F. Jameel, Senior State Counsel for respondents.

Cur.adv.vult

January 30, 2004

UDALAGAMA, J.

The petitioner by this application seeks *inter alia* a writ in the nature of Certorari to quash the decision of 1 to 3 respondents to seize and forfeit the vehicle, the subject matter of this application, purportedly imported for the use of the petitioner and a writ in the nature of Mandamus to compel the 1 to 3 respondent to release the aforesaid vehicle to the petitioner.

It is the submission of the petitioner that in about March 2000 whilst being a Member of the Uva Provincial Council and entitled to the importation of a vehicle without duty provided same was not more than 3 years old allegedly through a friend arranged to ship the vehicle, the subject matter of this application from Dubai.

It appears that the petitioner subsequent to obtaining a certificate of export from the country of origin, the United Arab Emirates, opened a Letter of Credit in favour of the shipping agent to the value of US $ 11000 with instructions to ship the vehicle to the port of Colombo.

On arrival it was found as stated on behalf of the 1 to 3 respondents that the said vehicle was tampered with and had an altered Chassis number.

The 2nd respondent appears to have arranged to detain the said vehicle and sent out summons on the petitioner directing the latter to face an inquiry. The petitioner admits receiving summons from the 2nd respondent, vide para 17 of the petition.

Admittedly the petitioner had also been informed that this matter would be referred to the Government Analyst to ascertain whether or not the Chassis number had in fact been tampered with. Also admittedly the subsequent report of the Government Analyst confirmed the allegation that the Chassis number of the vehicle had been tampered with.

The petitioner appears to have also retained the services of one Varuna Seneratne to appear on his behalf and represent the petitioner in the subsequent investigation at the Department of Customs and had admittedly given the former a Power of Attorney (para 18 of the petition).

The petitioner claimed to have had no knowledge of the tampering as established by the report of the Government Analyst.

From the aforesaid it is apparent that the subject matter of this application, the vehicle had a tampered chassis number and that the petitioner was given an opportunity to place his case before the Customs.

The importation of a vehicle with a tampered chassis number in my view is clearly unlawful. I am also inclined to the view that the petitioner not having knowledge of such tampering is not a defence as the *onus probandi* is on the party importing an article to establish lawful importation *vide* the provisions of section 152 of the Customs Ordinance.

As held in *Attorney-General* v *Wimaladharma*[1]. "The burden of proving lawful importation under the provisions of section 152 of the Customs Ordinance is on the claimant and this no doubt is in conformity with the rationale underlying section 106 of the Evidence Ordinance that when a fact is within the knowledge of any person the burden of proving that fact is upon him".

In any event in view of the Government Analyst's report an offence under the Customs Ordinance had been clearly established and notwithstanding notice on the petitioner to show cause why the vehicle should not be forfeited, the latter having failed to respond I would hold that the 1 to 3 respondents acted within the provisions of the statute to forteit the vehicle. This court finds no *mala fides* in the aforesaid action of the respondents. There is not even a suggestion of *mala fides* on the part of the 1 to 3 respondents.

Besides, the petitioner had even failed to seek relief by resorting to the provisions of section 164 of Customs Ordinance to his own peril.

The availability of an alternative remedy in any event precludes the petitioner from seeking relief by way of a prerogative writ.

On an evaluation of documents filed this court is satisfied that the subject matter of the application was duly seized under the provisions of section 135 of the Customs Ordinance and the illegal tampering of the Chassis number established by scientific proof is an offence under the provisions of section 119 of the Customs Ordinance which in my view had been proved.

Besides, the petitioner had also been given ample opportunity to show cause which he had failed to pursue.

There appears to be no want or excess of jurisdiction on the part of the Customs Authorities or a denial of natural justice to the petitioner or an error on the face of the record to entitle the petitioner to relief by way of Cetiorari nor the existence of a duty owed to the petitioner by the 1 to 3 respondents to entitle the petitioner to a writ of *mandamus.*

For the aforesaid reasons this application is dismissed.

Application dismissed.