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

In the matter of an application for Orders in the nature of Writs of Certiorari and Prohibition under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Sunil Amarasinghe,
41/A/51, Kalumuthukatiyawatte,
Watareka, Meegoda.

PETITIONER

C.A. Case No. WRT/0531/25

Vs.

1. P.B.S.C. Nosis,
   Director General of Customs,
   Sri Lanka Customs,
   No. 40, Main Street, Colombo 11.

2. K.L.D. Malwita,
   Director of Customs,
   Preventive Division of Sri Lanka Customs,
   Sri Lanka Customs,
   No. 40, Main Street, Colombo 11.

3. U.A.N.R. Uduwila,
   Director of Customs and Inquiring Officer,
   Sri Lanka Customs,
   No. 40, Main Street, Colombo 11.

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

RESPONDENTS

BEFORE : K. M. G. H. KULATUNGA, J.

COUNSEL : S. N. Vijith Singh with K. Jackson for the Petitioner.

Medhaka Fernando, SC, for the Respondents.

SUPPORTED ON : 22.09.2025

DECIDED ON : 02.10.2025

ORDER

K. M. G. H. KULATUNGA, J.

1. The petitioner is seeking a writ of *certiorari* to quash a finding of a Customs Inquiry in which the petitioner, along with several others, was charged with an offence under Section 137 of the Customs Ordinance. The petitioner had been found guilty, and a forfeiture of Rs. 100,000.00 had been imposed. This application was filed against the said finding and forfeiture imposed on 07.04.2025. The charge as preferred alleges that the petitioner acted in collusive agreement with Customs Officer D.K.D. Wijeweera in the transaction of illegal disposal of palm oil.

2. The main ground of the petitioner is that the evidence does not establish the fact of the petitioner having an "agreement" with the errant Customs Officer, D.K.D. Wijeweera, to commit the alleged Customs offence of illegal disposal of palm oil. The second argument is that the Rs. 100,000.00 forfeiture imposed is excessive and disproportionate.

3. The facts that led to this Customs Inquiry may be summarised as follows. A consignment of five containers of imported palm oil, found to be unfit for human consumption, had been released for destruction. The contract for destruction had been tendered and obtained by a person named Gamini on 12.07.2023. The said Gamini has obtained the release of these containers from the Sri Lanka Customs and taken

them to the Asian Container Yard. Subsequently, it was found that a part of the said consignment had been sold to a person in Embilipitiya. Upon this investigation, an inquiry had been instituted against the petitioner, Gamini, Kamalkumar, and Customs Officer D.K.D. Wijeweera and several others. The evidence against the petitioner is that he was seen in the room of the said Customs Officer, D.K.D. Wijeweera on the day of the release, and also, Kamalkumar has testified that the petitioner knew of the intended sale. The release of the containers was processed and attended to by Gamini, the petitioner, and the Customs Officer, D.K.D. Wijeweera. The Customs held an inquiry, and the allegation was based on Section 137 of the Customs Ordinance. Section 137 reads thus:

> *"**137.** If any officer of the customs, or any person employed for the protection of the revenue, shall make any collusive seizure, or deliver up, or make any agreement to deliver up, or not to seize any ship, boat, or goods liable to forfeiture under this Ordinance, or shall take any bribe, gratuity, recompense, or reward for the neglect or non-performance of his duty, every such officer or other person shall forfeit for every such offence a sum not exceeding one thousand rupees, and be rendered incapable of serving the Government of Sri Lanka in any office whatever; and every person who shall give or offer, or promise to give or procure to be given any bribe, recompense, or reward to, or shall make any collusive agreement with, any such officer or person as aforesaid, to induce him in any way to neglect his duty, or to do, conceal, or connive at anything whereby the provisions of this Ordinance may be evaded, shall forfeit a sum not exceeding one hundred thousand rupees,"*

4. Section 137 has two limbs, and the charge against the petitioner is based on the second limb of making any collusive agreement with a Customs Officer to commit an offence. This is an application for a writ. It is not an appeal against the findings of fact made by the Inquiring Officer. As stated above, the primary basis is that the evidence is not sufficient to establish the fact of the "agreement" between the petitioner and the Customs Officer, D.K.D. Wijeweera to commit the alleged act of selling palm oil intended to be destroyed. In an application of this nature, what this Court would consider is the reasonableness,

propriety, and the legality of the finding, and if there is sufficient material to reasonably arrive at the finding as done by the trier of fact.

5. This Court, in exercising its writ jurisdiction, will not step into the shoes of the trier of fact and substitute its own conclusion but only consider if the inferences drawn and conclusions arrived at are reasonable and lawful. Wade & Forsyth's "Administrative Law" (11th Ed., at pg. 26) defines and distinguishes the appeal/review distinction as follows:

> *"The system of judicial review is radically different from the system of appeals. When hearing an appeal the court is concerned with the merits of a decision: is it correct? When subjecting some administrative act or order to judicial review, the court is concerned with its legality: is it within the limits of the powers granted?* ***On an appeal the question is 'right or wrong?' On review the question is 'lawful or unlawful?'"*** [emphasis added.]

In ***Chief Constable of North Wales Police vs. Evans*** [1982] 1 WLR 1155, Lord Brightman held:

> "*Judicial review is concerned, not with the decision but with the decision making process."*

Further, in ***Public Interest Law Foundation vs. Central Environmental Authority*** [2001] 3 Sri L.R. 330, Gunawardana J., at page 334, held:

> *"There is a distinction between appeal and review. If one appeals against a decision, one is claiming that the decision is wrong and that appellate authority or court should change the decision. The Court of Appeal, if it is persuaded by the merits of the case (appeal), may allow the appeal and thereby substitute its view for that of the Court or tribunal of first instance.* ***Under judicial review procedure, the Court of Appeal is not concerned with the merits of the case, that is, whether the decision was right or wrong, but whether the decision is lawful or not****." [emphasis added].*

Citing the above dicta of Lord Brightman (supra), Gunawardana, J. further held:

"It is worth observing that the review procedure is not well suited to determination of disputed facts – factual issues arising in this case being imprecise and disputed."

6. Upon considering the evidence, the Inquiring Officer concluded that the petitioner has been "collusively involved" with the Customs Officer, D. K.D. Wijeweera in the alleged act of selling the palm oil which was released for destruction. The argument of Mr. Vijith Singh, appearing for the petitioner, is that Section 137 requires proof of an "agreement", which is not the same as "collusive involvement," which is different from a person being in "agreement" with another. His position is that the agreement should be for the purposes of the sale after the release, which, if at all, will be upon the goods being taken to the Asian Container Yard. His agreement is that there is no evidence of his involvement with Customs Officer D.K.D. Wijeweera at that subsequent point of the illegal sale. It was also submitted that the Inquiring Officer had only found that there was a "collusive involvement" but failed to consider if there was an "agreement."

7. As for the words "collusive agreement," with any such officer or person as aforesaid, they will not, to my mind, mean a written agreement. It is akin to the concept of conspiracy by agreement under the Penal Code. It would mean no more than some form of positive understanding mooted out together. According to Black's Law Dictionary (8th Ed.), "collusion" is defined as "*an agreement to defraud another or to do or obtain something forbidden by law*." According to this definition, 'collusion' intrinsically involves the existence of an agreement in that context to achieve something forbidden by law. Therefore, when the word 'agreement' is qualified by 'collusive' it is no more than an express emphasis of an understanding or a meeting of minds to achieve the end result of the specified unlawful object or purpose. Therefore, Section 137 certainly does not contemplate an agreement of a formal nature in that sense but the meeting of the minds for an unlawful purpose. Thus,

the finding "collusively involved" will necessarily be that the petitioner was in "collusive agreement" with Customs Officer D.K.D. Wijeweera.

8. The evidence is that the petitioner, with Gamini and the Customs Officer, D.K.D. Wijeweera, did participate in obtaining the initial release of the said container. Kamalkumar states that the petitioner was seen in the Customs Officer D.K.D. Wijeweera's room on the 12.07.2023. It is not denied and is almost common ground that the petitioner did help Gamini to obtain the release of these containers. The most important item of evidence emanating from Kamalkumar is that the petitioner, Gamini, and the Customs Officer, D.K.D. Wijeweera were all aware that this release was for the purpose of sale. It emanates in the following form:

> "කන්ටේනර් සම්බන්ධව අනෙකුත් රේගු නිළධාරීන් සම්බන්ධ නොවුණි. මා හට සම්බන්ධතා තිබුන් කපිල විජේවීර සහ සුනිල් අමරසිංහ මහත්වරුන් සමග පමණි. මෙම කන්ටේනර් වල තිබූ පාම් තෙල් විකිනීමට කපිල විජේවීර මහතා සමඟ මා කටයුතු කල බව සුනිල් අමරසිංහ මහතාද දනී. එම පාම් තෙල් මිනිස් පරිභෝජනයට නුසුදුසු බැවින් එම කන්ටේනර් නිදහස් කිරීමේ කාර්ය සඳහා ඉදිරිපත් කලයුතු සියලුම ලේඛණ සකස් කලේ සුනිල් අමරසිංහ මහතා විසිනි".

   This evidence, considered with the fact that one container of oil was found to have been sold, leads to the inference that the said Gamini and the petitioner were acting in collusive agreement with the Customs Officer to obtain the release of the palm oil to be sold.

9. The position of the petitioner is that he was merely there to help his friend Gamini. It is also his position is that Kamalkumar, being a business rival, is falsely implicating him. The petitioner, apart from merely stating that he was there to help a friend, gives no other reason for his participation in obtaining the release. It is clear that Gamini himself was in the business of taking goods for destruction. He is no stranger or novice as to the release of goods from the customs. The petitioner himself being in the same business. In these circumstances, it is very unlikely that the petitioner was present to merely help a friend.

This is more so, as Gamini himself is a veteran who needed no such help. If at all, it is for the purpose of liaising and colluding with the Customs Officer that the petitioner was required. Thus, considering the totality of the evidence, the inference and conclusion reached by the Inquiring Officer that the petitioner is collusively involved is one reasonable conclusion possible on this evidence. It certainly is far from being unreasonable and cannot be said to be so. The test is whether the inferences drawn and the conclusions arrived at are reasonable. Samayawardhena, J., in ***Mohammed Saleem Mohammed Razeen vs. Air Commodore Kasturi Arachchige Lakshman Ranatunga*** (CA/WRIT/352/2015, decided on 08.02.2019) held,

> *"Under judicial review, this Court, unless there is an obvious error of law on the face of the record, will not overturn a decision on merits."*

His Lordship went on to cite the following decision of ***Kalamazoo Industries Ltd vs. Minister of Labour & Vocational Training*** [1998] 1 Sri L.R. 235, which states that,

> *"The remedy by way of certiorari cannot be made use of to correct errors or to substitute a correct order for a wrong order and if the arbitrator's award was not set aside in whole or in part, it had to be allowed to stand unreversed."*

Thus, I find that the conclusion arrived at and the inferences made are reasonable and legitimate.

10. As for the proportionality of the sum of the forfeiture imposed, a sum of Rs. 100,000.00 has been imposed on each person charged. The nature of the offence, and especially the sale of contraband which was found to be unfit for human consumption, or obtaining the release of oil on the pretext of destroying it and then selling it, to my mind, is extremely serious in nature. In that context, the amount of Rs. 100,000.00 imposed on every accused person equally does not make it excessive nor disproportionate.

11. In these circumstances, I find that the petitioner has failed to make out any valid ground to justify the issue of notice. In the above circumstances, I see no basis in law or otherwise to issue notice in this application as prayed for. Issuing of notice is thus refused, and this application is accordingly dismissed. However, I make no order as to costs.

    Application is refused and dismissed.

JUDGE OF THE COURT OF APPEAL