

**IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST  
REPUBLIC OF SRI LANKA**

**In the matter of an Appeal  
from a judgment of the  
Court of Appeal.**

1. W.G.Chandrasena,  
No. 136/1, Lake Round,  
Kurunegala.
2. W.S.Wijeratne,  
No. 38A, Siri Saranankara  
Road, Dehiwala.

**Petitioners**

**Vs**

**SC APPEAL 31/2016  
SC (SPL) L.A. 63/2015  
CA (WRIT) 588/2011**

1. Sudharma Karunaratne,  
Director General of  
Customs, Sri Lanka  
Customs, Head Office,  
Bristol Street, Colombo 1.
2. M.M.I. Marikkar,  
Superintendent of  
Customs, Sri Lanka  
Customs, Head Office,  
Bristol Street, Colombo 1.

**Respondents**

**AND NOW BETWEEN**

1. W.G.Chandrasena, No. 136/1, Lake Round, Kurunegala.
2. W.S.Wijeratne, No. 38A, Siri Saranankara Road, Dehiwala.

**Petitioner Appellants**

**Vs**

1. Dr. Neville Gunawardena,  
Director General of Customs,  
Sri Lanka Customs, Head Office,  
Bristol Street, Colombo 1.  
(Substituted 1<sup>st</sup> Respondent  
Respondent)
- 1A. R.Samasinghe, Acting Director  
General of Customs, Sri Lanka  
Customs, Head Office, Bristol  
Street, Colombo 1.  
(Substituted 1<sup>st</sup> Respondent  
Respondent)
- 1B. Chulananda Perera, Director  
General of Customs, Sri Lanka  
Customs, Head Office, Bristol  
Street, Colombo 1.  
(Substituted 1<sup>st</sup> Respondent  
Respondent)
- 1C. Ms. P.S.M. Charles,  
Director General of Customs,  
Sri Lanka Customs,  
Head Office, Bristol Street,  
Colombo 1.  
(Substituted 1<sup>st</sup> Respondent  
Respondent)

2. M.M.I. Marikkar, Superintendent of Customs, Sri Lanka Customs, Head Office, Bristol Street, Colombo 1.

**Respondent Respondents**

**BEFORE : S. EVA WANASUNDERA PCJ.  
H.N.J. PERERA J. &  
MURDU FERNANDO PCJ.**

Counsel : Faiz Mustapha PC with Faiza Marker for the Petitioner Appellants.  
Milinda Gunatilleke DSG for the Respondent Respondents.

ARGUED ON : 03.08.2018.

DECIDED ON : 19.10.2018.

**S. EVA WANASUNDERA PCJ.**

This Court has granted Special Leave to Appeal from the Judgment of the Court of Appeal dated 13.03.2015, on the following questions of law set out in paragraph 7 (i) to (iii) of the Petition of the two Petitioners dated 21.04.2015, as well as two more questions of law raised by both parties on the day the application was supported in Court on 10.02.2016. They read as follows: \_

1. Did the Court of Appeal err in not taking cognizance of the fact that the Respondents have no power or authority to hold a fresh inquiry relating to the said vehicle after having inquired into the matter?

2. Did the Court of Appeal err in not taking cognizance of the fact that the decision, once validly made, is an irrevocable legal act and cannot be recalled or revised as held in **R Vs Home Secretary ex p. Ram 1979 1 WLR 148**?
3. Did the Court of Appeal misapply the facts of the case of **Navaratne Vs Director General of Customs CA 664/2001** to the instant case?
4. Did the statement of objections filed by the Substituted Respondents disclose any reason entitling to direct a fresh inquiry to be held?
5. Has the Petitioner failed to impugn the relevant order in the Court of Appeal on the basis that no reasons were given in ordering a fresh inquiry as per the document which was marked as P 10 in the Court of Appeal?

The subject matter of the case in hand is a Toyota Land Cruiser Jeep bearing registration number GA – 0638. The 1<sup>st</sup> Petitioner is the owner of the said Jeep. The Chassis number of the said vehicle is HDJ 101-000637. The Engine number is IHD – 0157001. The 1<sup>st</sup> Petitioner had purchased the said vehicle on 23.05.2003 and it was registered with the Department of Motor Vehicles at the time of purchase. It had been transferred to the 2<sup>nd</sup> Petitioner, according to the 1<sup>st</sup> Petitioner, for securing a loan from the Hatton National Bank on 20.12.2007 and since the 2<sup>nd</sup> Petitioner was residing in the Western Province, it had been registered as WP GA -0638. The 1<sup>st</sup> Petitioner had retained the possession of the vehicle at all times.

The 1<sup>st</sup> Petitioner was living in Kurunegala. On 06.03.2008 some custom officers had visited his home and had asked him whether he had this vehicle in his possession. Having come to know that it was with him, the custom officers had served a seizure notice dated 06.03.2008 and had taken possession of the vehicle. The 1<sup>st</sup> Petitioner had been informed that there will be an inquiry.

The inquiry was being held regarding the **modus operandi and the source of importation of the said vehicle** for the reason that registration No. GA-0638 had originally been issued for the jeep with chassis number BJ43-00485. The vehicle with chassis number **HDJ 101-000637 and engine number IHD-101-0157001 refers to another and a totally different vehicle**. Yet, the description of the totally different vehicle had been subsequently entered into the data base of the Department of Motor Traffic by **fraudulently substituting the description into the data base of the Department of Motor Traffic**. The non-erasable data base of the Department of Motor Traffic had disclosed that the vehicle bearing registration number **GA – 0638 is a jeep with chassis number BJ43-00485**. The first owner of

the said Jeep had been **D.R.P.Perera of Malabe who had sold the same to Walpita Gamage Chandrasena, the 1<sup>st</sup> Petitioner on 26.05.2003**. The 1<sup>st</sup> Petitioner had purchased the vehicle number GA 0638 bearing chassis number BJ43-00485.

Later on, the chassis number had been changed from BJ43-00485 to HDJ 101-0006637 on 08.01.2004 in the data base of the Motor Traffic Department. **It had happened while the 1<sup>st</sup> Petitioner was the registered owner.**

The inquiry was held for many days by V.S.Sudusinghe, Inquiring Officer. This Custom Officer who had held the inquiry had arrived at the conclusion that the prosecution has failed to prove beyond reasonable doubt against the 1<sup>st</sup> Petitioner and he had made order that the vehicle which had been seized be released to the 1<sup>st</sup> Petitioner. It is marked as **P5** and annexed to the Petition and is at page 229 of the brief in this case before this court. This investigation and the inquiry was held **as a result of information received by K.A.Dharmasena, Deputy Director of Customs.**

The inquiry had commenced on 07.04.2010 and had been concluded on 03.11.2010 with the Order made by the inquiring officer, Sudusinghe. He had arrived at the conclusion that the vehicle be released to the present owner.

But the vehicle was **not released** to the 1<sup>st</sup> or 2<sup>nd</sup> Petitioner and the Chief Assistant Preventive Officer (operation) had addressed a letter dated 18.07.2011 produced as P8 to the 1<sup>st</sup> Petitioner to be present for the customs inquiry in connection with the Customs Case No. POM/ 852/2008 on 27.07.2011. As the 1<sup>st</sup> Petitioner did not come, two more letters were sent asking him to be present. He sent letters asking for the release of the vehicle as ordered by Inquiry Officer, Sudusinghe. Finally, the **1<sup>st</sup> Petitioner had written that he is not willing to come for the said inquiry** once again and had informed on 22.09.2011 that he would be filing action against Sri Lanka Customs. As such an application was made to the Court of Appeal, for a writ of **certiorari to quash the notice sent to the 1<sup>st</sup> Petitioner to attend the inquiry marked P10.**

The Customs Inquiry was held to **ascertain whether the vehicle with Chassis number HDJ 101-0006637 was legally imported.** It is on information received by the Sri Lanka Customs that the vehicle in possession of the 1<sup>st</sup> Petitioner bears a chassis number and an engine which were not legally imported , that the investigation had commenced after a seizure order.

So, I understand that the Chassis number HDJ 101-0006637 being inside the Land Cruiser Jeep as at the date of seizure is the reason for the inquiry.

The 1<sup>st</sup> Petitioner had bought the Land Cruiser Jeep No. GA 0638 which had at the time of its first registration been identified as BJ 43 - 00485. Subsequently, while vehicle GA 0638 was in **his custody**, the information on record in the Department of Motor Traffic has got changed so that the Chassis number of GA 0638 Vehicle in the records of the RMV reads as HDJ 101- 0006637. In the papers filed by the 1<sup>st</sup> Petitioner in the Court of Appeal, he had not denied at any time that his Jeep bearing No. GA 0638 bears the Chassis No. HDJ 101-0006637. He cannot deny that because in reality that is the Chassis which holds the body of his Jeep as at present. In fact, the first document annexed to his Petition in the Court of Appeal was a copy of the Registration Certificate of the said vehicle bearing number GA 0638 in which on the face of the record, the Chassis number is stated as HDJ 101-0006637. He had only **denied** that he was **responsible for the change of the record at the RMV**. He had also denied that he imported any vehicle with the Chassis No. HDJ 101-0006637. **But the fact is that the Jeep in his possession bearing registration number GA 0638 has the Chassis No. HDJ 101-0006637.**

The Order of Customs Case No. POM/852/2008 made by the inquiring officer, Sudusinghe is marked P5 and is at page 246 of the brief. The 1<sup>st</sup> and the 2<sup>nd</sup> Petitioners were the suspects in the case. The prosecution had marked P1 to P6a and five persons had given evidence at the inquiry. It is interesting to note some of the comments within the order of the inquiring officer. On the 2<sup>nd</sup> page of P5, he states that , “ According to his (meaning the 1<sup>st</sup> Petitioner, Chandrasena) evidence, the reason for transferring the ownership to the current owner Mr. Sunil Wijerathna (the 2<sup>nd</sup> Petitioner), who is a relation of Mr. Chandrasena is **to avoid payment of income tax.**” Again on the 3<sup>rd</sup> page of P5, the inquiring officer states, that “ P6a and P6b indicates that the Chassis number and the Engine number of the vehicle **registered** under GA 0638 **are BJ43-00485 and 0613460** respectively. The model of the vehicle is Land Cruiser and the colour is Navy Blue, the year of manufacture is 1983 as at 26.05.2003.”

**The date 26.05.2003 is the date on which the 1<sup>st</sup> Petitioner has bought the vehicle and transferred the same in his name.** The RMV records were changed in 2004 during the period of time he has been the owner of the same and in possession of the same.

The 1<sup>st</sup> Petitioner's former driver Wijayalath Pedige Amaradeva had given evidence at the inquiry explaining the circumstances under which the 1<sup>st</sup> Petitioner bought the Toyota Land Cruiser. The said evidence is at page 97 to 100 of the brief before this Court. He had stated that when the said vehicle was bought it was a vehicle, the front of which was damaged due to an accident. He had gone to get the vehicle and at that time it was on top of a towing lorry which had been arranged by the broker Herath. The vehicle had been brought to a person who repairs damaged vehicles / a mechanical 'baas' at the village Pelandeniya who repaired the same keeping the same at the repairer's own premises near his own house. Later on, the number plates and the registration book had been handed over to this driver by the broker Herath to be given to the 1<sup>st</sup> Petitioner. According to his memory the number plate was different from what was stuck on the damaged vehicle at the time it went for repairs. He further stated that the said broker Herath could not be found now.

According to the evidence, in the RMV records, changes had been effected on two **consecutive dates, i.e. on 08.11.2004 and 09.11.2004**. Year of Manufacture has been changed from 1983 to 1998. First date of registration has been changed from 27.12.1997 to 27.06.2000. Chassis number has been changed from BJ43-00485 to HDJ 101-0006637. Name of Current owner is written as Sun Beam Fabric (Pvt) Ltd. as at 08.11.2004 and it has been changed to Walpita Gamage Chandrasena ( i.e. the 1<sup>st</sup> Petitioner) and on 09.11.2004, **the very next day**, it has been changed with the name of the previous owner as K.R.P. Perera to a company by the name Sun Beam Fabric (Pvt.) Ltd. Most of all, it is interesting to see that on 08.11.2004 the colour of vehicle change has been recorded as Navy Blue to White. On the very next day, i.e. on 09.11.2004 the colour of vehicle change has been recorded as Green to Metallic Brown.

So, the **inquiring officer comments** that P6a, P6b and P6c are **contradictory**. The details other than the name of the owner being changed has to be authorized by the Commissioner of Motor Traffic and to verify that, the original file has to be looked into. It was reported to be missing from the RMV office. The inquiring officer states further that "It could not be verified whether the changes to GA 0638 has been authorized properly as the main file is missing." This comment of the inquiring officer sounds dubious and it looks like that he does not want to arrive at any conclusion on the grounds shining before his eyes and resilient in his ears

but he wants to put all that evidence away on the ground that the “main file is missing.”

It is obvious by the contents of P5, the order , that the inquiring officer had failed to consider the fact that changing the chassis number of the GA 0638 Land Cruiser Jeep from BJ43-00485 to HDJ 101-00637 **had taken place while the said vehicle was in the possession of the 1<sup>st</sup> Petitioner.** The inquiring officer had further failed to recognize that the 1<sup>st</sup> Petitioner had failed to discharge his legal burden of proving the **legal importation** of the vehicle which was in his possession at the time of the inquiry **bearing chassis number HDJ 101-00637.** The failure to consider such crucial facts by the Inquiring Officer renders the order nugatory. It had been a futile exercise of his powers thus making the order invalid.

However the inquiring officer had made order to release the vehicle to the present owner. Yet the Sri Lanka Customs did not release the same. The Director General wanted to inquire more into the matter and sent a **notice to come** for a further inquiry. This notice is the subject matter for the Petitioners’ application to the Court of Appeal. The Court of Appeal dismissed the application made by the 1<sup>st</sup> Petitioner for a writ of certiorari to **quash the said notice.**

Section 2 of the Customs Ordinance as amended reads thus:

“ There may be appointed a Director General of Customs (hereinafter referred to as the ‘Director General’) and other officers and servants for the management and collection of the Customs, and the performance of all duties connected therewith; on such salaries and allowances as may be provided in that behalf, and there may be required of every person now employed or who shall hereafter be employed in the service of the Customs, such securities for his good conduct as the Minister may deem necessary, **and the Director General shall , throughout Sri Lanka , have the general superintendence of all matters relating to the Customs.**”

In the Court of Appeal case of ***Navaratne Vs Director General of Customs*** number **CA 664/2001 decided on 24.1.2003,** Court had held that the Director General of Customs had the power to revise any order made by the subordinate officer on legitimate grounds. Justice Wijayaratne analyzed the matter before court in this way: “ The main thrust of the arguments of the counsel for the Petitioner was on the suggestion that the 1<sup>st</sup> Respondent has no power or authority of revising the

order made by the 2<sup>nd</sup> Respondent. There are no specific provisions found in the Customs Ordinance specifically authorizing or empowering the Director General of Customs to revise an order made by an inquiring officer deputizing the Director General of Customs. However, the provisions in Sec. 2 of the Customs Ordinance vested the Director General of Customs with the power of superintendence.”

Later on in the said Judgment, Justice Wijayaratne states thus:

“ Accordingly, this Court is of the view that the Director General of Customs has implied power and authority in the exercise of his ‘superintendence’ of all matters relating to the Customs to revise any order made by any deputy. Reasons dictate that for the proper management and due administration of all matters relating to customs **and specially to such abuse of power and authority by the officers of the Department**, the Director General of Customs should be vested with such powers and authority. Consequently I hold that **the Director General of Customs had the power to revise any order made by any Deputy or subordinate officer** on legitimate grounds and or for reasons stipulated, in the direction of proper management and due administration of all matters relating to customs.”

The Order of the Inquiring Officer in the case in hand does not stand to reason. The inquiry was with regard to the illegal importation of the vehicle with the chassis number HDJ 101 – 00637. The 1<sup>st</sup> Petitioner has not explained anything in this regard at all and the inquiring officer had made no comments regarding his inability to explain how he has that vehicle with a chassis number for which no customs duty had ever been paid. **The registration number GA 0638 was not issued to the vehicle with the chassis number HDJ 101 – 00637.** The possessor of the vehicle, the 1<sup>st</sup> Petitioner had not explained how it happened. All that he had stated is that “ Well I did not change it.” Yet, he had filed the case before the Court of Appeal with the Registration of the Vehicle with GA 0638 and Chassis Number HDJ – 00637. The Inquiring Officer had not probed into the matter which he was given the authority to hold the inquiry and find out.

The Inquiring Officer had failed to do his duty and perform the task an inquirer was expected to do after the investigations were concluded with regard to the matter. He had continuously complained against the investigating officers, in his Order.

It cannot be considered as a legitimate order. Under Sec. 2 of the Customs Ordinance, the Director General of Customs has authority to superintend the order

of the inquiring officer and consequent to that to order a further inquiry into the matter. The Petitioners' counsel has argued that due to the fact that Section 167 of the Customs Ordinance states that Director General means all other officers mentioned therein, the statutory powers vested in the Director General has already been exercised by the Inquiring Officer and therefore the power to look into the matter has been exhausted. He argued that the Director General cannot have a further inquiry / fresh inquiry.

Yet this can lead all the subordinate officers to misuse the powers assigned to them. Section 2 of the Customs Ordinance has provided for such situations. The Director General can superintend all the work of the other officers. In the case in hand , when the purpose of the inquiry had been overlooked by the inquiring officer and when he had not paid any attention to the evidence before him and the purpose of the inquiry, the Director General had come to the conclusion that a further inquiry should be done and that is the reason for having sent another notice to the 1<sup>st</sup> Petitioner to be present for the further inquiry regarding the subject matter. I hold therefore that it is the correct decision of the head of the department and the notice was issued quite correctly.

It was argued by the counsel for the Petitioners that the Court of Appeal did not take any cognizance of the law laid down in the case of ***R Vs Home Secretary ex p. Ram 1979 1 WLR 148***. The Counsel for the 1<sup>st</sup> Petitioner argued that 'a decision once validly made, is an irrevocable legal act and cannot be recalled or revised.' It was alleged that the Court of Appeal erred thus in not taking cognizance of that case in considering the case in hand. I have read through the said case, Regina Vs Secretary of State for the Home Department, Ex parte Ram 1979 1 WLR 148 to 155 and I do not see that the said case supports the case of the Petitioners that when a decision is once made by an officer who is given power by any statute is irrevocable and cannot be recalled or revised. It could be argued, I believe, that if it is a decision which is validly made by a person in authority that it cannot be recalled or revised by another. But if it is not validly made, is it not a revocable act?

Furthermore, the President's Counsel quoted from Wade on Administrative Law, 10<sup>th</sup> Edition at page 193 which reads thus:

“In the interpretation of statutory powers and duties, there is a rule that, unless the contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires. But this gives a highly misleading view of the law where the power is a power **to decide questions affecting legal rights**. In those cases, the **courts are strongly inclined to hold** that the decision, once **validly** made, is an irrevocable legal act and cannot be recalled or revised. The same arguments which require finality for the decisions of courts of law apply to the decisions of statutory tribunals, ministers and other authorities.”

The case of Regina Vs Secretary of State for the Home Department, Ex parte Ram 1979 1 WLR 148 to 155 was a case where an immigrant was given the right to enter and remain in the United Kingdom even though it had been stamped by the immigration officer, by mistake, with the stamp ‘to remain indefinitely in the U.K.’ The reasoning was that the immigrant was not an illegal entrant; the immigration officer had mistakenly stamped the passport with the stamp to remain indefinitely; and as such the applicant Ram was lawfully in the U.K. It was clear that the act of the immigration officer was a mistake and there was no fraud behind the act and order of the immigration officer. It was obvious that no fraud or dishonesty on either the immigrant or the officer. The act of stamping by the immigration officer was held to be a valid order. In this Case, Justice May had written the judgment. Justice Tudor Evans had agreed with Justice May with nothing to add. Lord Widgery, the Chief Justice had added that there was a new principle which had emerged out of the said case, namely, ‘that if the immigration officer had no authority to grant the particular permission which was granted, that vitiates the permission and render the leave void.’

This case has not brought up an authoritative stance in favour of the Petitioners in the case in hand, because nowhere within the quoted case, I find the argument of the Counsel that ‘once a decision is made it cannot be recalled or revised.’ Since the inquiring officer’s conclusion to release the Land Cruiser to the owner of the vehicle does not stand to reason when the extract of evidence before him is considered, the order of the inquiring officer cannot be taken as a valid order. The Director General has the power to superintend the other officers and as such has quite correctly decided to call the Petitioners for a further inquiry. The 1<sup>st</sup> Petitioner should have complied with the notice received by him to attend the ‘further inquiry’ which he had failed to do.

I have also gone through the Petition filed by the Petitioners in the Court of Appeal, the Statement of Objections of the Respondents and counter objections filed, to consider the matters which were raised at the time the questions of law were set down prior to the hearing of this matter.

I answer the questions of law enumerated at the inception of this judgment in favour of the Respondent Respondents and against the Petitioner Appellants. I hold that the Court of Appeal has not erred in the judgment delivered on 13.03.2015. I affirm the said Judgment of the Court of Appeal.

The Appeal is hereby dismissed. However I order no costs of suit in this Court.

Judge of the Supreme Court

H.N.J. Perera J.  
I agree.

Judge of the Supreme Court

Murdu Fernando PCJ.  
I agree.

Judge of the Supreme Court

