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

In the matter of an application under and in terms of Articles 12(1) and 12(2) read with Article 126 of the Constitution

1. **T.M.V.K. THENNAKOON**
   No. 98, Thennakoon Traders, Belummahara, Mudungoda.

2. **T.M.G. TENNAKOON**
   No.148/4, Belummahara, Mudungoda.

3. **H.G. LILINONA**
   No. 78/B, Belummahara, Mudungoda.

4. **N.W. UNDUGODA**
   No. 190/3A Mudungoda.

5. **W.A. SHAMINDAPRIYA PATHMAKUMARA**
   No. 75, Bogaha Road, Gothatuwa, Angoda.

6. **M.G. INOKA DILRUKSHI**
   No. 935/3, Bogaha Junction Road, Gothatuwa.

7. **P.S.U.K. PERERA**
   No. 110/2, Kandy Road, Belummahara, Mudungoda

PETITIONERS

SC (FR) Application 137/2016

VS.

1. **HON. ATTORNEY GENERAL**
   Attorney General's Department, Colombo 12.

2. RAVI KARUNANANYAKE
Minister of Finance,
Ministry of Finance,
The Secretariat, Colombo 01.

2A. MANGALA SAMARAWEERA
Minister of Finance,
Ministry of Finance, The
Secretariat, Colombo 01.

3. DIRECTOR GENERAL OF CUSTOMS
No. 40, Main Street,Colombo 11.

4. COMMISSIONER GENERAL OF MOTOR TRAFFIC
Department of Motor Traffic,
No. 341, Elvitigala Mawatha,
Narahenpita, Colombo 05.

5. A.K. SENEVIRATNE
Director General, Department of Fiscal Policy, Ministry of Finance, The Secretariat, Colombo 01.

5A. K.A. VIMALENTHIRAJAH
Director General, Department of Fiscal Policy, Ministry of Finance, The Secretariat, Colombo.

6. SRI LANKA PORTS AUTHORITY
No. 19, Chetiya Road,
Colombo 01.

RESPONDENTS

BEFORE: Buwaneka Aluwihare, PC, J.
Prasanna Jayawardena, PC, J.
Vijith K. Malalgoda, PC, J.

COUNSEL: J.C. Weliamuna PC with Senura Abeywardena for the Petitioners.
Ms. Shaheeda Mohamed Barrie SSC for the Hon. Attorney General.

WRITTEN SUBMISSIONS FILED: By the Petitioners on 15th May 2018.
By the Respondents on 24th May 2018.

ARGUED ON: 06th April 2018

DECIDED ON: 21st November 2018.

Prasanna Jayawardena, PC, J.

The 7th petitioner is a businessman who carries on business under the name, style and firm of M/S "Gampaha Enterprises". He imports used cars from Japan and sells them in Sri Lanka. The 2nd to 6th petitioners are persons who are said to have imported used Nissan "Leaf" electric cars through the 1st petitioner's business, in the year 2015.

The petitioners' case is that, in terms of the Orders made by the Minister of Finance under the Excise (Special Provisions) Act No. 13 of 1989, as amended, and related directives issued by the Ministry of Finance, the petitioners are liable to pay Excise Duty at a rate of only 5% of the value of these cars prior to clearing these cars through customs and having them released from the port in Hambantota. The petitioners complain that the respondents have arbitrarily and unlawfully required the petitioners to pay Excise Duty at the rate of 50% of the value of the cars. The petitioners state they have not paid Excise Duty at the rate of 50% because they are not liable to do so and that, as result of this stalemate, the cars are still at the port. The petitioners annexed the documents marked "P1" to "P10" with their petition.

This Court granted the petitioners leave to proceed under Article 12 (1) of the Constitution. The 5th respondent - who is the Director General of the Department of Fiscal Policy - filed his affidavit along with the documents marked "R1" to "R8". The 7th petitioner filed a counter affidavit with the documents marked "P11" to "P13".

It is common ground that, from 27th February 2015 onwards, used Nissan "Leaf" electric cars imported into Sri Lanka were regarded as motor vehicles falling with the description *"Other electric, not more than three years old"* bearing the classification H.S. Code 8703.90.30 [the Harmonized Commodity Description and Codification System which is internationally used for purposes of tariff nomenclature]. This and other classifications in the H.S. Code are used, *inter alia*, for the purposes of fixing the Excise Duty payable at the time articles are imported into Sri Lanka. It is also common ground that the Order dated 26th February 2015 marked "P1" made by the 2nd respondent [Minister of Finance] under the Excise (Special Provisions) Act, fixed at 5% the Excise Duty payable on cars falling within the classification bearing H.S. Code 8703.90.30. The petitioners state that this Excise Duty of only 5% was fixed to

encourage the use of energy efficient and environmentally friendly cars such as Nissan “Leaf” electric cars. They say that, therefore, the 1st to 6th petitioners decided to import Nissan “Leaf” electric cars for their *personal use*.

The petitioners go on to aver that the 1st to 6th petitioners obtained the services of the 7th petitioner and placed orders with him to import Nissan “Leaf” electric cars falling within the classification of H.S. Code 8703.90.30. The 1st to 6th petitioners say they made advance payments to the 7th petitioner for that purpose and authorized him to import these cars for and on their behalf. They say the 7th petitioner established letters of credit to import these cars for their personal use. These letters of credit were marked “P2A” to “P2F”. They have been established on 29th October 2015 or on 30th October 2015. A perusal of these documents show that the letter of credit marked “P2A” is for the import of one car. The letter of credit marked “P2B” is for the import of three cars and both “P2C” and “P2E” are copies of “P2B”. The letter of credit marked “P2D” is for the import of two cars and “P2F” is a copy of “P2D”. Thus, the documents marked “P2A to “P2F” show that the 7th petitioner established three letters of credit to import a total number of six cars. The petitioners say these six cars were imported *for the personal use* of the 1st to 6th petitioners.

The 2016 Budget of the Government presented by the 2nd respondent [Minister of Finance] proposed to increase the Excise Duty payable on Nissan “Leaf” electric cars imported into Sri Lanka to 50% of the value of the car. In terms of that proposal, the 2nd respondent made the Order dated 20th November 2015 marked “P3” under the Excise (Special Provisions) Act fixing such Excise Duty at 50% with effect from 21st November 2015. The 2016 Budget was passed by Parliament on 19th December 2015.

The petitioners say that they believed that the increased Excise Duty of 50% which came into effect from 21st November 2015 onwards would be not be applied to the electric cars imported for them since the aforesaid letters of credit had been established long prior to that date - *ie:* that they were liable to only pay Excise Duty at the earlier rate of 5% which prevailed prior to 20th November 2015. The ship carrying these six cars reached the port at Hambantota on or about 02nd December 2015 and the vehicles were unloaded. When the petitioners tried to clear the six cars on payment of 5% Excise Duty, they were not allowed to do so.

Thereafter, the 2nd respondent made the Order dated 11th January 2016 marked “P4” under the Excise (Special Provisions) Act amending the earlier Order marked “P3” and stating, *inter alia*, that Excise Duty will apply at the rate of 5% specified in “P1” in respect of *“A motor vehicle imported solely for private use in respect of which the Letter of Credit (LC) was opened on or before 20.11.2015 and registered the vehicle on or before 31.03.2016 in the name of the person who uses it for his/her private purposes and shall not be transferred for a period of five (05) years from the date of registration without prior approval from the General Treasury.”*. Thus,

notwithstanding the increased rate of Excise Duty of 50% specified in "P3", "P4" stated that Excise Duty was to be applied at the earlier rate of 5% for cars imported under letters of credit established prior to 20th November 2015 *provided* the car had been imported *"solely for private use"* and the car was registered *"in the name of person who uses it for his/her private purposes"* on or before 31st March 2016.

However, the respondents later realized that there was a business practice in the motor vehicle import trade, for vehicle importers to sometimes establish letters of credit in their own names when they were executing orders placed by customers to import vehicles for the customer's personal use. To meet this type of situation the Ministry of Finance issued a notification dated 13th January 2016 marked "P5" stating *"Further, vehicle importers who have imported motor vehicles for personal use on LCs opened before Budget 2016 are permitted to be cleared from the Customs by paying the Duties under the rate prevailed at 20.11.2015, without paying any demurrages."*. Thus, "P5" clarified that the scope of the Order marked "P4" extended to instances where a car had been imported for the *"personal use"* of a person under a letter of credit that had been established prior to 20th November 2015 in the name of a vehicle importer.

Thereafter, the Deputy Secretary to the Treasury wrote the letter dated 21st January 2016 marked "P6" to the 3rd respondent [Director General of Customs]. This letter sets out how a person who is claiming that he is liable to pay Excise Duty at the earlier rate of 5% should demonstrate that the car has, in fact, been imported for his *"personal use"* even though the letter of credit is established in the name of a vehicle importer. In this regard, "P6" explains that such a person will be entitled pay Excise Duty at only 5% *"….. if sufficient proof is furnished to the satisfaction of the Director General of Department of Fiscal Policy that the vehicle is imported for such individuals' personal use. For this purpose, documentary evidence obtained from a bank that he/she has paid full or partial payment to the importer should be submitted along with the other documents."*.

In March 2016, the 1st to 6th petitioners submitted applications to the 5th respondent [Director General of the Department of Fiscal Policy] in terms of "P6" seeking approval to pay Excise Duty at the earlier rate of 5%. The petitioners submitted the documents marked "P7(a)" to "P7(f)" seeking to establish that the cars had been imported for the "*personal use"* of the 1st to 6th petitioners and that the 1st to 6th petitioners had *"paid full or partial payment"* to the 7th petitioner [*ie:* to the vehicle importer]. However, by his letters dated 28th March 2016 marked "P9A" to "P9F", the 5th respondent advised the 1st to 6th petitioners that their applications had been refused since the evidence submitted did not substantiate the requirements of "P4".

The petitioners allege that the rejection of their applications was arbitrary, unlawful and contrary to the principles of natural justice, and also that they had a legitimate expectation to have their applications approved. Further, they say that they have

been subjected to unfair discrimination because other similarly circumstanced importers have been permitted to pay Excise Duty at the earlier rate of 5% and, in this connection, produce the letter marked “P10”. The petitioners state that, in these circumstances, their rights guaranteed by Article 12 (1) of the Constitution have been violated.

In his affidavit, the 5th respondent denied the allegations made in the petition. He states that the petitioners failed to furnish satisfactory evidence to establish the requirements specified in “P6”. He averred that the documents marked “P7(a)” to “P7(f)” only depict that the 1st to 6th petitioners withdrew various sums of money from their bank accounts and that the 7th petitioner deposited other sums of money to his bank account. The 5th respondent stated that the documents furnished by the petitioners do not establish that the 1st to 6th petitioners paid any monies to the 7th petitioner for the purpose of establishing letters of credit. The 5th respondent’s position was that, in these circumstances, the petitioners are required to pay Excise Duty at the rate of 50% as specified in the Order marked “P3” prior to clearing the cars from the port.

The 5th respondent denied the petitioners’ allegation that other similarly circumstanced importers have been permitted to pay Excise Duty at 5%. He said that the importer named in the letter marked “P10” - *ie:* Ms. Rathnayaka - had furnished satisfactory documentary evidence to establish that the car was imported for her personal use and to establish that her husband [acting on her behalf] had made a payment to the vehicle importer. The documents furnished by Ms. Rathnayaka to the 5th respondent were marked “R4” to “R8”.

In his counter affidavit, the 7th petitioner stated that the respondents have failed to disclose any criteria which were to be used when determining applications to clear cars on payment of Excise Duty at the earlier rate of 5%. He alleged that the failure to state such criteria led to arbitrary and capricious decisions by the 5th respondent when he evaluated applications. The 7th petitioner stated that the petitioners had submitted appeals to the 3rd respondent on 31st May 2015 and these appeals were marked “P11”. He averred that, at the time of importing the cars, the petitioners were unaware that they would be called upon to submit documents to satisfy the requirements of the respondents and that the petitioners have *“submitted all possible and available evidence to substantiate the claims of the 1st-6th Petitioners and mine.”*. The 7th petitioner produced a letter dated 17th October 2016 sent to the 7th petitioner by the Assistant Manager of the Gampaha Branch of Hatton National Bank PLC, which was marked “P12(a)”. This letter enclosed five copies of bank deposit vouchers which were marked “P12(b)” to “P12(f)”. The 7th petitioner also produced a specimen deposit voucher marked “P13”.

I will first examine the petitioners’ complaint that the 5th respondent’s decision to refuse the petitioners’ applications to pay Excise Duty at the earlier rate of 5% was arbitrary and unlawful.

It is self-evident that the Order marked "P3" dated 20th November 2015 making a ten-fold increase in the rate of Excise Duty payable on electric cars, would have imposed an unexpected and very substantial financial burden on persons who had *previously* opened letters of credit to import electric cars believing that Excise Duty was payable at only 5%. This burden was particularly difficult in the case of individuals who had imported electric cars for their *personal use*. In this background, the Cabinet of Ministers has taken the Cabinet Decision dated 06th January 2016 marked "R2" that taxes and levies on cars imported under letters of credit established prior to 20th November 2015 should be charged at the rates which prevailed prior to 20th November 2015, *provided* the car was imported for the official or personal use of the person for whom the car was imported and *not* for any commercial purpose. It is also evident that the Order dated 11th January 2016 marked "P4" was issued a few days later in pursuance of that decision taken by the Cabinet of Ministers. Thus, the Order marked "P4" stipulated, *inter alia*, that Excise Duty was to be applied at the earlier rates specified in "P1" if the car was "*imported solely for private use"*.

The Cabinet Decision marked "R2" goes on to state that the Cabinet of Ministers directed the Secretary to the Treasury *"to formulate a suitable methodology to implement the* [aforesaid] *decision…."* taken on 06th January 2016.

In pursuance of this direction, on the same day that the Order marked "P4" was made - *ie:* on 11th January 2016 - the Secretary to the Treasury wrote the letter marked "R3" instructing the 3rd respondent [Director General of Customs] to release motor vehicles which have been imported for the *"personal use"* of importers on payment of Excise Duty at the earlier rates specified in "P1" provided the motor vehicle has been imported in the name of the person who has established the related letter of credit. However, since as mentioned earlier, there were many cases where persons who had imported cars for their personal use through a vehicle importer who established a letter of credit in the name of that vehicle importer, the Deputy Secretary to the Treasury later wrote the letter marked "P6" to the 3rd respondent stating that the aforesaid concession should also be extended to cases where a person has imported a car for his or her *"personal use"* but has done so using a letter of credit established in the name of the vehicle importer.

"P6" goes on to state how, in such cases, a person who is claiming that he is liable to pay Excise Duty at the earlier rate of 5% should demonstrate that the car has, in fact, been imported for his *"personal use"*. In this regard, "P6" explains that such a person will be entitled pay Excise Duty at the earlier rate of 5% only *"if sufficient proof is furnished to the satisfaction of the Director General of Department of Fiscal Policy that the vehicle is imported for such individuals' personal use. For this purpose, documentary evidence obtained from a bank that he/she has paid full or partial payment to the importer should be submitted along with other documents."*.

As set out earlier, the 1st to 6th petitioners fall within the category of persons contemplated in "P6". Therefore, as specified in "P6", the petitioners had to first adduce sufficient proof to satisfy the 5th respondent that the cars were imported for the *"personal use"* of the 1st to 6th petitioners. Second, the petitioners had to adduce *"documentary evidence obtained from a bank"* that the 1st to 6th petitioners had *"paid full or partial payment to the vehicle importer….."* [*ie:* to the 7th petitioner] for the cars that were to be imported under the letters of credit.

With regard to the first requirement - *ie:* that the cars were imported for the *"personal use"* of the 1st to 6th petitioners - the documents marked "P7(a)" to "P7(f)" include signed declarations by the 1st to 6th petitioners that the Nissan "Leaf" cars were imported for their personal use [*"වාහනය ගෙන්වන ලද්දේ මාගේ පුද්ගලික පාවිච්චියට බවත් මේ සියලු කරුණු සත්‍ය හා නිවැරදි බවත් මෙයින් දිවිරා ප්‍රකාශ කරන අතර..."*]. The 1st to 6th petitioners have each signed a declaration before a Justice of the Peace, who has placed his official seal on each declaration and signed them. The truth of these declarations is supported by the fact that the 7th petitioner subsequently established the letters of credit marked "P2A" to "P2F" for the import of six Nissan "Leaf" electric cars.

When deciding whether these declarations were enough to establish that the cars were imported for the personal use of the 1st to 6th petitioners, one has to be alive to the fact that, until the 1st to 6th petitioners had the opportunity to clear the cars from the port, register and insure the cars in their own names and take the other steps which manifest use, possession and ownership of a car, the 1st to 6th petitioners could have had little or no documents which *ex facie* established that the cars were imported for their personal use. While large scale vehicle importers may have a practice of receiving written orders and entering into written contracts prior to executing orders to import vehicles for the personal use of their customers, small scale vehicle importers who operate more informally may not necessarily obtain such formal documentation. In these circumstances, insisting on the 1st to 6th petitioners submitting written orders and written contracts to pass the hurdle of proving that the cars were imported for their personal use, would amount to imposing an unrealistic and unfair standard of proof upon them. In my view, it is necessary to keep in mind the purpose for which "P4", "P5" and "P6" were issued and the fact that the petitioners were placed in the unexpected situation of being called upon to now produce documentation which they may not have seen any reason to insist on at the time the orders and advance payments were made. In this light, I consider it irrational and improper for the 5th respondent to impose an unrealistically or impractically high standard of proof when dealing with these applications. Doing so would run contrary to the purpose of "P4", "P5" and "P6".

In any event, a perusal of the documents marked "R4" to "R8" furnished to the 5th respondent by the importer named Ms. Rathnayaka shows that the 5th respondent did not require her to furnish a written order to the vehicle importer or a contract with the vehicle importer prior to determining that she had imported the vehicle for her

personal use. In fact, it appears that, unlike in the case of the 1st to 6th petitioners, Ms. Rathnayaka had not even furnished a signed declaration that the car was imported for her personal use. However, the 5th respondent has taken the view that the documents marked "R4" and "R5" which only proved that Ms. Rathnayaka's husband had paid Rs. 2,953,500/- to the vehicle importer's bank account, were sufficient to establish that the car had been imported for her personal use. This is seen from the letter marked "P10" written by the 5th respondent to the 3rd respondent which states *"Mrs. Rathnayaka has submitted documentary evidence that an advance payment for importing of this vehicle is paid by his personal bank account to the importer (Copies of those letters of evidence are herewith attached). As such, it fulfills the requirement that the vehicle is imported for the individual's personal use and satisfies that the vehicle is imported solely for the private use ….."*. It should be mentioned here that the letter of credit and commercial invoice marked "R6" and "R7" do not given any indication that the car mentioned in those documents was imported for or on behalf of Ms. Rathnayaka or that she had made full or partial payment to the vehicle importer. The document marked "R8" is another copy of the letter marked "P10".

It has to be also kept in mind that the concessions referred to in "P4", "P5" and "P6" are all subject to the condition that electric cars cleared upon payment of Excise Duty at the earlier rate of 5% can be registered only in the name of the person who states it was imported for his or her personal use. A further restriction is placed by prohibiting that person from transferring the car to someone else for a period of five years without prior approval from the General Treasury. This makes it more likely that a person who submits to these restrictions does, in fact, intend to use the car for his or her personal use.

Taking into account the factors set out above and the observations made earlier with regard to the appropriate standard of proof which the 5th respondent should use in this type of application made to him, I am of the view that, in the circumstances of this particular case, the 5th respondent should have regarded the signed declarations by the 1st to 6th petitioners as sufficient to meet the first requirement specified in "P6" - *ie*: that the cars were imported for the personal use of the 1st to 6th petitioners.

With regard to the second requirement - *ie: "documentary evidence obtained from a bank"* which demonstrated that the 1st to 6th petitioners had *"paid full or partial payment"* to the 7th petitioner - the documents filed with the petition marked "P7(a)" to "P7(f)" include: (i) the aforesaid signed declarations by the 1st to 6th petitioners which also state that they withdrew specified sums of money from their bank accounts to make advance payments to the 7th petitioner for him to import electric cars for their use; (ii) letters issued by the banks at which the 1st to 6th petitioners maintain their bank accounts confirming that the 1st to 6th petitioners withdrew those specified sums of money from their bank accounts; (iii) receipts issued by the 7th petitioner to the 1st to 6th petitioners when he received those advance payments.

These receipts record that advance payment was made [by the petitioner who paid the money] for the purpose of importing a Nissan "Leaf" electric car and bear dates ranging from 08th September 2015 to 29th October 2015; (iv) letters issued by the 7th petitioner stating that the advance payments made by the 1st to 6th petitioners were later deposited in his bank account; (v) letters issued by the 7th petitioner's bank - the Gampaha Branch of the Hatton National Bank PLC - confirming that the sums specified in the letters were deposited to the credit of the 7th petitioner's bank account; and (vi) copies of the *face* of five deposit vouchers issued by the Gampaha Branch of the Hatton National Bank PLC which record the deposit to the 7th petitioner's bank account No. 051020142155 on the dates specified thereon, of the sums stated in these letters. It should be mentioned here that one letter issued by the bank confirming the deposit of Rs. 2,200,000/- to the 7th petitioner's bank account on 26th October 2015 and one deposit voucher recording a deposit of Rs.2,200,000/- on 26th October 2015 have been produced in respect of both the 5th and 6th petitioners.

The following instruction is stated on the *face* of these deposit vouchers: *"Please complete the 'Additional Details' required overleaf for deposits in excess of Rs. 200,000/- made by a person other than the Account Holder"*. Each of these deposit vouchers record a payment of much more than Rs.200,000/- and, therefore, one would expect that the `Additional Details" required by the aforesaid instruction were written down on the reverse of each voucher. However, copies of the *reverse* of the vouchers were not included among the documents marked "P7(a)" to "P7(f)".

As learned Senior State Counsel has pointed out, the letters issued by the 1st to 6th petitioners' banks described in (ii) above only establish that the 1st to 6th petitioners withdrew specified sums of money from their bank accounts. The documents which indicate that these sums of money were then paid by the 1st to 6th petitioners to the 7th petitioner are the receipts described in (iii) above. The respondents have sought to cast doubt on these receipts because they do not bear a printed serial number.

In this regard, it is seen that, in every case, the amounts which have been withdrawn by the 1st to 6th petitioners from their bank accounts [as confirmed in the letters issued by the 1st to 6th petitioners' banks] are substantial. These amounts range from Rs. 500,000/- to Rs.1,600,000/-. The 1st to 6th petitioners are unlikely to have withdrawn such large sums of money from their bank accounts unless the withdrawal was for the specific purpose of making a significant purchase or meeting a financial commitment. These are certainly not amounts which would have been withdrawn for ordinary day-to-day expenses. It has to be also kept in mind that the sums were withdrawn from their bank accounts long prior to any hint of the increase in Excise Duty on 20th November 2015. This lends credence to the 1st to 6th petitioners' statements that they withdrew these large sums for the specific purpose of making advance payments to the 7th petitioner.

Thereafter, the receipts issued by the 7th petitioner are in exactly the same amounts that were withdrawn from the 1st to 6th petitioners' bank accounts and the 7th petitioner has issued these receipts on the same day on which each of the petitioners withdrew the money from their banks. With regard to the respondents' submission that the receipts should be rejected because they do not bear a printed serial number, I do not think that the absence of a serial number necessarily negates the authenticity of the receipts. It could well be that the 7th petitioner saw no need to print serial numbers on receipts he used. It could also be said that, if the 7th petitioner had intended to fabricate false receipts, he could have easily inserted appropriate serial numbers, and perhaps the fact that this was not done suggests that the receipts are *bona fide*.

Here too, it is necessary to keep in mind that the imposition of substantially increased Excise Duty on 20th November 2015 was unexpected and, therefore, the 1st to 6th petitioners, who say they simply wished to import electric cars for their personal use using the services of the 7th petitioner, would have seen no reason to ensure that they hold a picture perfect documentary trail so long as they trusted the 7th petitioner. We have no reason to think they did not trust the 7th petitioner.

Taking into account the several factors set out above including the observation made earlier with regard to the appropriate standard of proof, I am of the view that, in the circumstances of this particular case, the letters issued by the 1st to 6th petitioners' banks taken together with receipts issued by the 7th petitioner, are sufficient to establish that the 1st to 6th petitioners paid the amounts specified in these documents to the 7th petitioner.

However, as mentioned earlier, the second requirement specified in "P6" is documentary evidence obtained *from a bank* that the 1st to 6th petitioners had made full or partial payment to the 7th petitioner. Clearly, the letters issued by the bank confirming that the 1st to 6th petitioners withdrew sums of money from their bank account and the receipts issued by the 7th petitioner when these monies were paid to him by the 1st to 6th petitioners [described in (ii) and (iii) above] do not, in themselves, satisfy this requirement - *ie:* because these receipts have not been issued *by a bank.*

In this regard, in their petition, the petitioners relied on the letters issued by the 7th petitioner's bank described in (v) above which confirm that the sums specified in the letters were deposited to the credit of the 7th petitioner's bank account and the copies of the *face* of the deposit vouchers described in (vi) above which record the deposit of these amounts to the 7th petitioner's bank account on the dates specified thereon. All these dates are after the aforesaid advance payments were made by the 1st to 6th petitioner. That accords with the petitioners' position that their advance payments were deposited by the 7th petitioner in his bank account. However, it is seen that the amounts deposited in the 7th petitioner's bank account are all considerably more than the amounts of the advance payments. The advance payments made by the 1st to

6th petitioners and the amounts deposited by the 7th petitioner in his bank account are set out below:

Petitioner	Amount and Date of Advance Payment to the 7th Petitioner	Amount and Date of Deposit to the 7th Petitioner's Bank Account
1st petitioner	Rs.500,000/- on 01/10/2015	Rs.1,750,000/- on 05/10/2015
2nd petitioner	Rs.1,600,000/- on 12/10/2015	Rs.2,300,000/- on 28/10/2015
3rd petitioner	Rs.1,400,000/- on 08/09/2015	Rs.3,190,000/- on 11/09/2015
4th petitioner	Rs.1,050,000/- on 29/10/2015	Rs.1,300,000/- on 30/10/2015
5th petitioner	Rs. 800,000/- on 19/10/2015	Rs.2,200,000/- on 26/10/2015
6th petitioner	Rs.1,000,000/- on 19/10/2015	-*do*-

To sum up, the petitioners' position is that: (i) the advance payments made by the 1st to 6th petitioners and recorded in the letters and receipts described in (ii) and (iii) above were held by the 7th petitioner and were later deposited to his bank account along with other sums of money; (ii) the full amounts deposited by the 7th petitioner to his bank account [which *include* the advance payments made by the 1st to 6th petitioners] are recorded in the letters and deposit vouchers described in (v) and (vi) above.

In this regard, learned Senior State Counsel submits that there is *"no independently verifiable evidence"* that the sums of money deposited to the 7th petitioner's bank account [which are set out in the third column of the above table] do, in fact, include advance payments made by the 1st to 6th petitioners to the 7th petitioner [which are set out in the second column of the above table]. Learned Senior State Counsel submits that the petitioners have only shown that 1st to 6th petitioners withdrew various sums from their bank accounts and, thereafter, the 7th petitioner deposited different amounts to his bank account. She submits that the petitioners have failed to demonstrate *"….. a credible nexus between the two,….."*. Learned Senior State Counsel contends that, therefore, the petitioners have failed to meet the requirement specified in "P6" of proof by means of *"documentary evidence obtained from a bank"* that the 1st to 6th petitioners had *"made full or partial payment to the importer"*.

If the documents submitted by the petitioners had remained at only the documents marked "P7(a)" to "P7(f)", I would have agreed with learned Senior State Counsel. However, the petitioners have, with their counter affidavit, submitted the documents marked "P12(a)" to "P12(f)" which establish their position that the advance payments made by the 1st to 6th petitioners were deposited to the 7th petitioner's bank account.

In this regard, “P12(a)” is a letter dated 17th October 2016 written to the 7th petitioner by the Assistant Manager of the Gampaha Branch of Hatton National Bank PLC. The letter states:

“Confirmation of the deposits made to Savings Account No. 051020142155

With reference to the above, we forward herewith certified copies of the deposit slips (both sides) made to the above Account on the following dates to purchase Vehicles as detailed in the respective deposit slips.

11.09.2015	*-*	*Rs. 3,190,000/-*
05.10.2015	*-*	*Rs. 1,750,000/-*
26.10.2015	*-*	*Rs. 2,200,000/-*
28.10.2015	*-*	*Rs. 2,300,000/-*
30.10.2015	*-*	*Rs. 1,300,000/-*

This letter is issued at your request.”.

Thus, although the petitioners had only filed with their petition marked “P7(a)” to “P7(f)” copies of the *face* of the five deposit vouchers by which the 7th petitioner deposited sums of money to his bank account, the bank has later provided copies of *both* the face *and* the r*everse* of each of these five deposit vouchers. These copies are marked “P12(b)” to “P12(f)” and are listed in the letter marked “P12(a)”.

The *face* of each of these deposit vouchers is the same as the deposit vouchers described in (vi) above and included in the documents filed with the petition marked “P7(a)” to “P7(f)”. However, the documents marked “P12(b)” to “P12(f)” show that the *reverse* of each of these deposit vouchers state the personal details of the 1st to 6th petitioners.

Thus, the reverse of the deposit voucher marked “P12(c)” states the name, address, identity card number and mobile telephone number of the 1st petitioner with the notation *“buy a car”*. The reverse of the deposit voucher marked “P12(e)” states the name, address and identity card number of the 2nd petitioner with the notation *“Leaf එකක් ගැනීම”*. The reverse of the deposit voucher marked “P12(b)” states the name, address, identity card number and mobile telephone number of the 3rd petitioner with the notation *“වාහනයක් මිලදී ගැනීම”*. The reverse of the deposit voucher marked “P12(f)” states the name, address and identity card number of the 4th petitioner with the notation *“විදුලි කාරයක් මිලදී ගැනීම”*. The reverse of the deposit voucher marked “P12(d)” states the names, address and identity card numbers of both the 5th and 6th petitioners with the notation *“buy two cars”*.

The same officer of the Gampaha Branch of the Hatton National Bank PLC who has signed the letter marked “P12(a)” has signed each of the documents marked “P12(b)” to “P12(f)” upon the seal of the Gampaha Branch of Hatton National Bank PLC.

The document marked "P13" is a specimen deposit slip used by Hatton National Bank. As in the case of the *face* of the deposit vouchers described in (vi) above and included in the documents filed with the petition marked "P7(a)" to "P7(f)", the specimen marked "P13" also bears the instruction requiring *"Additional Details"* in case of deposits on excess of Rs. 200,000/-. These *'Additional Details'* have to be stated on the reverse of each deposit voucher and are the *"Name/Address of Depositor"*, *"Depositor's N.I.C. No."*, *"Purpose"* and *"Telephone No."* It is well known that banks insist on obtaining these details when accepting deposits of large sums of money - especially cash deposits, as in this case - since banks have to comply with "Know Your Customer" requirements and similar duties placed upon banks by modern day compliance and regulatory standards, anti-money laundering rules and so on.

In view of these duties and regulations, it is reasonable to conclude that the Gampaha Branch of Hatton National Bank PLC would have insisted on these *"Additional Details"* being filled in *at the time* the deposits were made and the deposit vouchers were issued.

The documents marked "P12(b)" to "P12(f)" are copies of the original deposit vouchers which are in the custody of the bank. We have no reason to doubt the authenticity of "P12(b)" to "P12(f)" or to doubt that they show what was written on the deposit vouchers *at the time* the monies were deposited to the credit of the 7th petitioner's bank account.

Accordingly, the conclusion must be that the *"Additional Details"* stating the names, addresses, identity card numbers and telephone numbers of the 1st to 6th petitioners and the stated purpose of the deposit - *ie:* to buy cars - were written on the deposit vouchers *at the time* the deposits were made to the 7th petitioner's bank account.

Next, as stated above, these deposits were made during the period from 11th September 2015 to 30th October 2015. That is long before the Order marked "P3" was made on 20th November 2015 increasing the Excise Duties with effect from the next day.

In these circumstances, there was no reason for the 7th petitioner or his employee who filled in the deposit vouchers during the period from 11th September 2015 to 30th October 2015 to have written the names, addresses, identity card numbers, and telephone numbers of the 1st to 6th petitioners and stated that the purpose of the deposits was to buy cars, *unless* those details were, in fact, *true.*

Further, there is no reason to suspect that that the 7th petitioner knew that the Order marked "P3" will be made on 20th November 2015 and, therefore, fraudulently inserted these personal details on the deposit vouchers in September and October 2015 as part of an elaborate deception to gain a concessionary rate of Excise Duty. In any event, the 7th petitioner would not have had the 1st to 6th petitioners' names, addresses, identity card numbers and telephone numbers unless the 1st to 6th

petitioners had, in fact, furnished these details to the 7th petitioner when they placed orders for the import of the electric cars and made the advance payments to him.

As for the difference in the advance payments made by the 1st to 6th petitioners and the amounts deposited in the 7th petitioner's bank account, it appears that other monies received by the 7th petitioner in the course of his business and other activities were deposited along with the advances paid by the 1st to 6th petitioners. That would not be unusual for a business such as the 7th petitioner's venture. While the *'Additional Details'* furnished by the 7th petitioner to his bank would then be only partly correct and, therefore, in breach of the 7th petitioners' duty to the bank as a customer, that misconduct will not negate the fact that the *'Additional Details'* written on the vouchers in September and October 2015 establish that the advance payments made by the 1st to 6th petitioners to the 7th petitioner were deposited in the 7th petitioner's bank.

In my view, the documents marked "P12(b)" to "P12(f) taken together with the documents marked "P7(a)" to "P7(f) constitute sufficient material to satisfy the requirement specified in "P6" that there must be "*documentary evidence obtained from a bank that he/she has paid full or partial payment to the importer."*.

Next, it is common ground that the documents marked "P12(b)" to "P12(f)" have been considered by the 5th respondent. In paragraph [41] of the respondents' written submissions, learned Senior State Counsel has, very correctly, acknowledged the fact that the 5th respondent considered these documents. Learned Senior State Counsel has gone on to submit that *"….. the uniform criteria applied in respect of assessing documents was whether bank slips, along with a confirmation from a bank or a confirmation of a payment by cheque was furnished by the applicant. In the instant case the Petitioners had failed to provide a confirmation of payment by them from a bank. As such, whilst the Respondent did consider the new documents tendered the said documents could not be considered as meeting the requirement of 'documentary* ***evidence obtained from a bank*** *that he/she has paid full or partial* ***payment to the importers'****."*

Although the respondents claim that they applied *"uniform criteria"* when they considered applications made under "P4", "P5" and "P6", they have not furnished any document which sets out these *"uniform criteria"*. In any event, if the 5th respondent had formulated a set of *"uniform criteria"* or standards which were to be applied when determining applications made under "P4", "P5" and "P6", such criteria and standards should have been made known to applicants. There is nothing to suggest that this was done.

A proper examination and understanding of the composite effect of the documents marked "P12(b)" to "P12(f)" together with "P7(a)" to "P12(f)" would have shown that these documents demonstrated, on a balance of probability at the least, that advance payments made by the 1st to 6th petitioners were included in the amounts

deposited by the 7th petitioner to his bank account. Thus, it appears that the 5th respondent has failed to carefully examine these documents and understand what they established. It seems he has acted mechanically and rejected the petitioners' applications simply because there was no document issued by a bank stating that the 1st to 6th petitioners had each *directly* paid monies into the 7th petitioner's bank account. He has failed to see what was plainly before him - *ie:* that when "P12(a)" to "P12(f)" are viewed together with "P7(a)" to "P7(f)", they show that the advance payments made by the 1st to 6th petitioners to the 7th petitioner were later deposited by him to his bank account and, therefore, the petitioners had satisfied the requirements set out in "P6". Thereby, the 5th respondent has failed to properly apply "P4", "P5" and "P6" and he has failed to ensure the purpose for which these Orders and directions were made and issued. In these circumstances, the 5th respondent's refusal of the petitioner's application made under "P4", "P5" and "P6" is irrational, unreasonable, arbitrary and improper.

Accordingly, I hold that respondents have violated the petitioners' rights guaranteed by Article 12(1) of the Constitution and also grant the reliefs prayed for in prayers (c), (d), (e), (f) and (h) of the petition which must necessarily follow that determination. In view of this conclusion, I need not examine the other grounds urged by petitioners. The parties will bear their own costs.

Judge of the Supreme Court

Buwaneka Aluwihare, PC, J.
I agree.

Judge of the Supreme Court

Vijith K. Malalgoda, PC, J.
I agree.

Judge of the Supreme Court