

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

Wasana Trading Lanka (Pvt.) Ltd.,
No: 310, Negombo Road,
Welisara, Ragama.
Petitioner

SC APPEAL NO: SC/APPEAL/11/2006

CA APPLICATION NO: CA/2144/04

Vs.

1. Sarath Amunugama,
Hon. Minister of Finance &
Planning,
Ministry of Finance & Planning,
General Treasury,
The Secretariat,
Colombo 01.
2. Dr. P.B. Jayasundara,
Secretary to the Treasury,
Ministry of Finance & Planning,
General Treasury,
The Secretariat,
Colombo 01.
3. S.A.C.S.W. Jayathilake,
Director General,
Customs Department,
Times Building,

Bristol Street,
Colombo 01.

4. Neville Nanayakkara,
Government Printer,
Government Printing Department,
118, Dr. Danister de Silva
Mawatha,
Colombo 08.
 5. Ananda Chandrasiri,
Proof Reading Division,
Government Printing Department,
118, Dr. Danister de Silva
Mawatha,
Colombo 08.
 6. O. Jansen,
Documentation Officer,
Government Publication Bureau,
No. 32, Lotus Road,
Colombo 01.
 7. Hon. Attorney General,
Attorney General's Department,
Colombo 12.
- Respondents

AND NOW BETWEEN

1. Dr. P.B. Jayasundara
Secretary to the Treasury,
Ministry of Finance & Planning,

General Treasury,
The Secretariat, Colombo 01.
2nd Respondent - 1st Appellant

- 1a. Secretary to the Treasury,
Ministry of Finance & Planning,
General Treasury,
The Secretariat,
Colombo 01.
Substituted 2nd Respondent-1st
Appellant
- 1b. Ranepura Hewage Samantha
Samaratunga,
Secretary to the Treasury,
Ministry of Finance & Mass Media,
General Treasury, The Secretariat,
Colombo 01.
Substituted 2nd Respondent-1st
Appellant
- 1c. Sajith Ruchika Attygalle,
Secretary to the Treasury,
Ministry of Finance,
General Treasury, The Secretariat,
Colombo 01.
Substituted 2nd Respondent-1st
Appellant
- 1d. K.M Mahinda Siriwardena,
Secretary to the Treasury,
Ministry of Finance,
General Treasury, The Secretariat,

Colombo 01.

Substituted 2nd Respondent-1st

Appellant

2. S.A.C.S.W. Jayathilake,

Director General,

Customs Department,

Times Building,

Bristol Street,

Colombo 01.

3rd Respondent-2nd Appellant

2a. P.S.M. Charles,

Director General of Customs,

Customs House,

40, Main Street, Colombo 11.

Substituted 3rd Respondent-2nd

Appellant

2b. Vijith Ravipriya,

Director General of Customs,

Customs House,

40, Main Street, Colombo 11.

Substituted 3rd Respondent-2nd

Appellant

2c. P.B.S.C. Nonis,

Director General of Customs,

Customs House, 40, Main Street,

Colombo 11.

Substituted 3rd Respondent-2nd

Appellant

3. Attorney General,
Attorney General's Department,
Colombo 12.

7th Respondent-3rd Appellant

Vs.

Wasana Trading Lanka (Pvt.) Ltd.,
No: 310, Negombo Road,
Welisara, Ragama.

Petitioner-Respondent

Dr. Sarath Amunugama,
Hon. Minister of Finance &
Planning,
Ministry of Finance & Planning
General Treasury,
The Secretariat,
Colombo 01.

1st Respondent-Respondent

Mahinda Rajapaksha,
Minister of Finance, Economic and
Policy Development,
Ministry of Finance, Economic and
Policy Development,
General Treasury, The Secretariat

Substituted 1st Respondent-
Respondent

Ranil Wickramasinghe,
Minister of Finance, Defence,

Women and Child, Technology and
Investment Promotion,
Ministry of Finance,
The Secretariat,
Colombo 01.

Substituted 1a Respondent-
Respondent

Neville Nanayakkara,
Government Printer,
Government Printing Department,
118, Dr. Danister de Silva
Mawatha, Colombo 08.

4th Respondent-Respondent

Ananda Chandrasiri,
Proof Reading Division,
Government Printing Department,
118, Dr. Danister de Silva
Mawatha, Colombo 08.

5th Respondent-Respondent

O. Jansen,
Documentation Officer,
Government Publication Bureau,
No. 32, Lotus Road, Colombo 01.

6th Respondent-Respondent

Before: Hon. Justice S. Thurairaja, P.C.
Hon. Justice Kumudini Wickremasinghe
Hon. Justice Mahinda Samayawardhena

Counsel: Viraj Dayaratne, A.S.G., P.C., with Suranga Wimalasena,
D.S.G. and Tharanga Ranasinghe, S.C. for the Respondent-
Appellants.

K. Deekiriwewa for the Petitioner-Respondent.

Argued on: 18.03.2024

Written Submissions:

By the Respondent-Appellants on 30.04.2024

By the Petitioner-Respondent on 29.04.2024

Decided on: 18.07.2024

Samayawardhena, J.

At the time of filing this application in the Court of Appeal, the petitioner company was engaged in importing vehicles. It had imported several used vehicles on or about 14.10.2004. The 1st respondent, the Minister of Finance, increased excise duty for imported vehicles effective from 15.10.2004. The petitioner filed this application in the Court of Appeal on 04.11.2004 (20 years ago) seeking the following, in my view, vague reliefs.

- a) *Issue notice on the respondents in the first instance*
- b) *Grant an interim relief by way of a stay order by suspending the operation of the impugned Gazette Notification marked X4 and X5 and Orders marked X2, X3 and also Gazette Notification No. 1362/12 yet to be published so as to enable the petitioner to clear the vehicles already arrived and unloaded in the Colombo Harbour on provisional basis either by keeping only the documents with the Sri Lanka Customs OR by keeping a Bank Guarantee for the Duty*

Difference with the Sri Lanka Customs until the final determination of this case

- c) Grant an interim relief by way of a stay order by suspending or restraining the 1st Respondent, 2nd Respondent and 3rd Respondent from implementing, publishing another Gazette Notification imposing new Excise Duty rates and Depreciation Table for used vehicles already landed for those vehicles that have been ordered and still in transit*
- d) Grant a mandate in the nature of writ of certiorari to quash the impugned Gazette Notification marked as X4 and X5 and ministerial orders marked X2 and X3 and also Gazette Notification No. 1362/12 yet to be published*
- e) Grant mandates in the nature of writ of prohibitions restraining the 1st Respondent, 2nd Respondent and 3rd Respondent from implementing and publishing another Gazette Notification imposing new excise duty rates and Depreciation Table for used vehicles already landed and for those vehicles that have been ordered and still in transit*
- f) Grant a mandate in the nature of the writ of mandamus to compel the Minister to validly exercise the power and duty conferred on the Minister by the relevant statute by acting reasonably within the framework of the law*
- g) Declare that a collection of excise duty without any Gazette Notification being published from 01.01.2004 to 20.05.2004 was illegal and ultra vires and repugnant to the Exercise (Special Provisions Act No. 13 of 1989)*
- h) For costs*
- i) Any other and further relief Your Lordships' Court deem meet*

The petitioner has sought to quash X2-X5 and Gazette No. 1362/12 "yet to be published" by writs of certiorari.

The petitioner prayed to quash X2 dated 14.10.2004, which is a Depreciation Table issued by the 2nd respondent, the Secretary to the Ministry of Finance, in pursuance of an Order issued by the Minister of Finance, under the Customs (Amendment) Act, No. 2 of 2003. The Gazette No. 1362/15 dated 14.10.2004, which published this Table by the 2nd respondent was marked X4. The Depreciation Table cannot stand on its own; it is based on the Minister's Order/Gazette, which was not tendered or sought to be quashed by the petitioner. Without seeking to quash the Minister's Order/Gazette relevant to X2 and X4, there is no basis to quash X2 and X4.

X3 dated 14.10.2004 is the Minister's Order made under the Excise (Special Provisions) Act No. 13 of 1989, not under the Customs (Amendment) Act, No. 2 of 2003. Gazette No. 1341/28 dated 20.05.2004 marked X5 as the Gazette relevant to X3 is a different one, not relevant to X3.

The petitioner has tendered a number of other documents including Orders, Gazettes and documents obtained from various sources including the Government Printing Department, by way of counter affidavit and motions. The brief is very complicated and bulky consisting three volumes.

Be that as it may, after the hearing, the Court of Appeal by judgment dated 21.10.2005 dismissed the petitioner's application "subject to the observations" made by the Court in the judgment. By way of observations, the Court remarked that the Gazettes would not apply to vehicles imported before 20.10.2004, as the publication of the Gazettes was done after that date.

The Gazettes referred to in the judgment of the Court of Appeal are X4 and X5. The Court of Appeal made observations on the basis that the

Minister's Order marked X3 was Gazetted in the Gazette marked X5, which is not correct. The relevant Gazette was X11, tendered with the counter affidavit. The Court of Appeal did not state anything regarding X11.

If the petitioner contends and the Court of Appeal too thinks that what matters is the date of publication of the Gazette, not the date of the Order of the Minister, there is no material to establish the actual publication of the Gazettes.

Although the said observations of the Court of Appeal are against the Minister, the Minister did not seek special leave to appeal from the judgment of the Court of Appeal, but only the Secretary to the Treasury (the original 2nd respondent) and the Director General of Customs (the original 3rd respondent) sought special leave to appeal from this Court by petition dated 02.12.2005. This is what the said two respondents (as the 1st and 2nd petitioners) sought from this Court:

WHEREFORE the 1st and 2nd Petitioners respectively pray that Your Lordships' Court be pleased to:

- a) Grant Petitioners Special Leave to Appeal to Your Lordships' Court from the judgment of the Court of Appeal dated 21.12.2005 [sic], produced marked "H" hereto:*
- b) Set aside that part of the judgment of the Court of Appeal which holds that the order marked "X3" dated 14/10/2004, and the order marked "X2" dated 14/10/2004 would not apply to vehicles imported on a date prior to 20th October 2004.*
- c) Make order declaring that orders made under fiscal statistics (sic) imposing taxes take effect upon the order being made and signed by the minister in accordance with the law.*

- d) *Issue an Interim Order restraining the 1st Respondent from claiming or demanding that the rates of duty that existed prior to 15/10/2004 apply to it.*
- e) *Issue an Interim Order restraining the 1st Respondent and/any importer from claiming that the rates of duty that existed prior to 15/10/2004 would apply in respect of goods that were imported on or before 15/10/2004 do not apply to those imports.*
- f) *Make order declaring that the 2nd and 3rd Petitioners are empowered to apply the relevant rates of duty based on the time of removal from the Warehouse or other place at which such excisable article was stored immediately after its importation in to Sri Lanka, as required by Section 5 (1) (b) of the Excise (Special Provisions) Act No:13 at 1989 as amended.*

In the first place, if the Minister who was the original 1st respondent did not wish to appeal against the judgment of the Court of Appeal, the original 2nd and 3rd respondents who respectively published and implemented the Minister's Order cannot practically appeal against the judgment of Court of Appeal. This defect cannot be cured by filing an amended caption in the year 2022 by also naming the Minister an appellant.

In any event, the original 2nd and 3rd respondents only seek to "*Set aside that part of the judgment of the Court of Appeal which holds that the order marked "X3" dated 14/10/2004, and the order marked "X2" dated 14/10/2004 would not apply to vehicles imported on a date prior to 20th October 2004.*" X2 and X3 are not Gazettes. The adverse observations made by the Court of Appeal are against the Gazettes, in particular, the date of publication of the Gazettes, not against Notifications or Orders.

Both parties are confused and the Court of Appeal too was confused. I had to take several dates to understand the issues.

In the argument, the learned ASG submitted that subsequent to the delivery of the judgment of the Court of Appeal, Parliament passed the Protection of Government Revenue (Special Provisions) Act No. 1 of 2006 to be effective from 01.01.2004, and according to sections 3 and 4 of the Act, read with the Schedule to the Act, the judgment of the Court of Appeal will have no bearing on the collection of revenue, as what is decisive is not the date of publication but the date of the Order of the Minister. This Court, in this action, cannot make a formal pronouncement on that matter.

This appeal, as presently constituted, cannot be maintained. There is no necessity to answer the questions of law. I dismiss the appeal but without costs.

Judge of the Supreme Court

S. Thurairaja, P.C., J.

I agree.

Judge of the Supreme Court

Kumudini Wickremasinghe, J.

I agree.

Judge of the Supreme Court