

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

In the matter of an Application under and in
terms of Article 126 of the Constitution of Sri
Lanka

T. R. Ratnasiri,
23/4, Makola South,
Makola.

S.C.F.R.No. 536/2010

PETITIONER

Vs.

1. **P. B. Jayasundara,**
Secretary to the Ministry of Finance and
Planning, The Secretariat Building,
Colombo 01.
2. **Sarath Jayathilake,**
177/30, Ananda Cumaraswamy Mawatha
Colombo 10
3. **Thilak Perera,**
Director of Customs,
Customs House, Bristol Street,
Colombo 1.
4. **Sudharma Karunarathna,**
Director General of Customs
Bristol Street, Customs House,
Colombo 1.
5. **Board of Investment of Sri Lanka,**
World Trade Centre, Echelon Square,
Colombo 01.
6. **Colombo Dockyard Ltd,**
P.O. Box 906, Port of Colombo,
Colombo 15.
7. **The Attorney General,**
Attorney General's Department,
Colombo 12.

RESPONDENTS

TO: HIS LORDSHIP THE CHIEF JUSTICE AND OTHER LORDSHIPS OF THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

On this 17th day of October 2010

The Petition of the Petitioner above named appearing by L. G. Marasinghe, his registered Attorney-at-Law states as follows:

INTRODUCTION

1. *The Petitioner T.R Ratnasiri is 53 years of age and a citizen of Sri Lanka. He is an Assistant Superintendant of Customs of the Department of Customs residing in Sri Lanka as captioned above.*
2. The Petitioner states that:
 - (a) *The 1st Respondent is the Secretary to the Ministry of Finance (hereinafter sometimes referred to as "ST");*
 - (b) *The 2nd Respondent is the former Director General of Customs [Oct 2002 – May 2010] (hereinafter sometimes referred to as "Ex DGC");*
 - (c) *The 3rd Respondent is a Director of Customs and the Inquiry Officer of the Customs inquiry [P/Misc/93/2000], details of which are provided in the ensuing paragraphs*
 - (d) *The 4th Respondent for the purpose of the instant application, is the Director General of Customs (hereinafter sometimes referred to as "DGC") since 24th May 2010 to date, who has general supervision of all matters relating to Customs and is accountable and responsible for the proper management and collection of Customs Revenue and proper performance of all duties connected to the Customs.*
 - (e) *The 5th Respondent is the Board of Investment (hereinafter sometimes referred to as the 'BOI') which is inter alia entrusted with the functions of monitoring and regulating the activities of the enterprises registered with the BOI. The BOI is a body created by the Act No.4 of 1978 as amended in 1980, 1983 and 1992.*
 - (f) *The 6th Respondent is the Colombo Dockyard Ltd (hereinafter referred to as "CDL) a limited liability company registered as an enterprise under Section 17 of the Board of Investment Act No 4 of 1978*

(g) The 7th Respondent is the Attorney General of the Republic of Sri Lanka (*hereinafter sometimes referred to as "AG"*);

3. The Petitioner, T. R. Ratnasiri, makes the instant Application under and in terms of Article 126(2) of the Constitution of Sri Lanka.
4. In the instant Application, the Petitioner seeks to challenge, *inter alia*, failure on the part of the 1st and the 7th Respondent to act as required by law and the decision taken and conveyed by the 7th Respondent to the 4th Respondent by his letter dated 26th August 2010 and the persistent failure on the part of the 2nd to 3rd Respondents to act as required by law and to complete the Customs Inquiry No P/Misc/93/2000, as per the undertaking given by the 7th Respondent in Writ Application CA/1397/2004 that was filed by the same Petitioner the details of which are fully described in the ensuing paragraphs in violation of the fundamental rights of the Petitioner and the Informant (concerned in the aforesaid Customs case) guaranteed under article 12[1] of the Constitution.
5. The Petitioner is also seeking a declaration to "quash and annul the unlawful decision by the 1st and the 7th Respondents to "recover" the Customs duty defrauded by the CDL in terms of Section 18A of the Customs Ordinance and to proceed under Sec. 50A and 129 of the Customs ordinance.

BACKGROUND OF THE CUSTOMS INQUIRY [P/Misc/93/2000]

6. The Petitioner states that the collection and protection of Government revenue is the primary duty of the Customs Department as required by the Customs law. Therefore, with a view to discharge this legal obligation effectively by preventing organised revenue frauds and any other forms of smuggling attempts, the Customs at all times seeks information from the public through regular appeals published in the print and electronic media. The Section 153 of the Customs Ordinance provides for cash rewards [minimum of 30% of the 'additional revenue' generated as penalties and forfeitures from revenue crimes] to encourage the Informants who are prepared to take risks and willing to come forward with credible information about smuggling and all forms of other revenue frauds. The Petitioner attaches hereto a true copy of an appeal made by Customs in the Daily News dated 02nd April 1999 marked '**P1**'.
7. The Petitioner states that on or about 09th October 2000, he was contacted by an Informant who had an accurate information about a revenue fraud running into over half a billion rupees, perpetrated by an Enterprise, registered with the BOI and that the informant had the intention of passing the information in the public interest. However, as the Informant was highly concerned about the threat that he would face as a result of his actions and hence requested for more details about the reward that

he would be entitled, at least to compensate the heavy risk involved in exposing the major fraud committed by the said Enterprise.

8. The Petitioner states that he had the information duly recorded and handed it over to the 2nd Respondent, then the Director of Customs [Preventive Division], for safe keeping. The relevant minute in this regard by the 2nd Respondent addressed to the Chief Preventing Officer dated 11.10.2000 and marked **P2** is attached herewith.
9. The Petitioner states that having being fully assured of protection of his anonymity and the cash rewards he would be entitled to, the Informant provided him with full details of the revenue fraud committed by the Colombo Dockyard Ltd (*CDL*) concerning a fraudulent evasion of duties running into over 619 million rupees on the sale of 21 marine crafts. The Petitioner states that as per the decision taken by the 7th Respondent as per his letter dated 26th Aug 2010, the Informant has been deprived of the cash reward he is entitled to under Sec 153 of the Customs Ordinance.
10. The Petitioner states that the inquiries conducted and completed by him on or about 12th October 2001 had revealed the following.
 - a. The CDL had sold 21 marine crafts manufactured with BOI concessions locally, an act of which is prohibited unless authorised by the BOI and Customs. The law requires that any enterprise which intends to sell any finished products manufactured with raw material imported on duty free basis for export trade, should first apply for permission from BOI, followed by Customs authorization and then pay all fiscal levies [Customs duties and other taxes] on the value of the goods so determined by the Customs on a Bill of Entry [Customs Declaration] furnished for Customs purposes as provided by Section 47 of the Customs Ordinance.
 - b. The CDL had not applied for BOI and Customs permission for the sale of 21 marine crafts.
 - c. The CDL included the duty component in the sale price of the marine crafts and recovered the total amount of fiscal levies from the buyers namely the Sri Lanka Ports Authority and the Sri Lanka Navy.
 - d. The CDL had misappropriated and or cheated the total fiscal levy component recovered from the buyers, amounting to a sum of Rs.619,483,827.00, thereby violating the provisions of Section 50A of the Customs Ordinance.
 - e. The contravention of the said provision of law attracts a minimum forfeiture of the value of the marine crafts. Further, under Section 129 of the Customs Ordinance, the CDL was also liable to be forfeited and

impose a fine of (300%) treble the value of the marine crafts for being knowingly concerned in the fraudulent evasion of the fiscal levies.

11. The Petitioner states whilst the Customs investigation was in progress, the CDL in an act of conceding the violations referred to above, deposited a sum of Rs.94,015,050.00 with Customs on two occasions [25th July 2001 and 15th August 2001]. This deposit was to be applied against the final determination of the Customs inquiry. A true copy of the detailed report on the relevant investigation prepared by the Petitioner marked 'P3' is attached herewith.

UNLAWFUL ATTEMPTS MADE TO COVER-UP THE FRAUD

12. The Petitioner states that the 6th Respondent CDL being a BOI approved enterprise is bound to follow the directives and conditions issued by the 5th Respondent BOI. And the Agreement entered into with the BOI clearly provided that in the event the conditions agreed upon with the BOI were violated, the CDL would be liable to be dealt with penalties and forfeitures as prescribed by the law. A true copy of the Memorandum and Articles of Association of the 6th Respondent CDL marked 'P4' is attached herewith.
13. The Petitioner states further that the Procedural laws made under the BOI law clearly stipulates action required to be taken against any enterprise found to have violated or abused the tax incentives provided under the BOI law. The BOI is required to stop and withdraw all facilities until the enterprise concerned fully complies with the sanctions imposed under the Customs law. These abuses include the unlawful disposal of the finished products (manufactured with raw materials imported free of fiscal levies) in the local market, without the prior approval of the BOI and the Customs and the evasion of fiscal levies payable thereon.
14. However, the Petitioner states that the BOI totally failed either to investigate into the fraud or to stop the facilities granted to CDL in spite of a prima-face case was presented to them against the CDL by the Petitioner during the course of the investigation.
15. The Petitioner states that the Customs Department too failed to take punitive action as provided by law against the CDL. The Customs inquiry [Case No: P/Misc/93/2000] that commenced on 07th February 2002 by Mr Thilak Perera, then a Deputy Director of Customs [3rd Respondent] came to a standstill with no action being taken for over two years for no valid reason whatsoever, except recording the evidence of the Petitioner.
16. Then on inquiry it became apparent to the Petitioner that attempts were being made to annul the proceedings of the Customs inquiry by the Inquiry Officer, Mr Thilak Perera, and the then DGC Mr Sarath Jayathilake, purportedly with the collusion of the CDL. Although the 2nd and 3rd Respondents were under a duty to finalise the Customs inquiry effectively and speedily, they displayed no interest whatsoever to complete the inquiry. Instead attempts were being made to

terminate the Customs inquiry by the 2nd Respondent under the Tax Amnesty Law [Act No 10 of 2003].

17. The Petitioner states that in the circumstances he made a written representation to the 2nd Respondent, against the termination of the Customs inquiry. As proof thereof the Petitioner attach hereto a true copy of the document dated 14th February 2004 marked 'P5'.
18. Then on 05th March 2004, the ex DGC Mr. Sarath Jayathilake purportedly acting in terms of the Tax Amnesty Law [Act No 10 of 2003] granted an official pardon to the CDL and terminated the Customs Inquiry. Petitioner annexes hereto a true copy of the notification of tax amnesty granted to the CDL, marked 'P6'. Further an attempt was also made by the Ex DGC to refund the deposit of Rs 94,015,050.00 made by the CDL in the year 2001 during the course of investigations into the customs fraud.
19. The Petitioner states that on the 25th of June 2004 he challenged the said unlawful tax amnesty granted by the Ex DGC to the CDL, before the Court of Appeal. Further to this legal action [Case No: CA/1397/2004] the Ex DGC was forced to withdraw the tax amnesty granted to the CDL and to give an undertaking to the Court of Appeal, to resume and complete the Customs inquiry '**as expeditiously as possible**'. The said undertaking given by the 7th Respondent to the Court of Appeal has full force in law up to this moment. The Petitioner states that further to the said undertaking given by the 7th Respondent on behalf of the Ex DGC, he withdrew the Court of Appeal action filed by him on 09th February 2005. A true copy of the said Court proceedings dated 09th Feb 2005 is attached hereto marked 'P7'.
20. The Petitioner states that the undertaking given to the Court of Appeal by the 7th Respondent on behalf of the Ex DGC was not honoured. Although the Customs inquiry was resumed on 10th March 2005, it was apparent that the Inquiry Officer Mr. Thilak Perera was resorting to delaying tactics by accommodating, unfounded legal submissions made by the CDL against the holding of the Customs inquiry. On 27th June 2005, the CDL was allowed to raise objections against the continuance of the Customs inquiry **in contempt of the undertaking given by 7th Respondent on behalf of the Ex DGC**, on the basis that the Customs lacked jurisdiction and on 25th July 2005 the inquiry was suspended for a 6-week period; matter of which should have been considered by the 7th Respondent and or the 2nd Respondent prior to the same undertaking being given in open Court in CA 1397/2004 and thus recorded.
21. The Petitioner states that the purported move by the 7th Respondent and the Ex DGC Mr. Sarath Jayathilake and the Inquiry Officer Mr. Thilak Perera, afforded the CDL adequate time to plan their strategies to evade the payment of fiscal levies in violation of the undertaking given by the 7th Respondent in open Court in CA 1397/2004.

CA/1413/2005 Petitioned by Colombo Dockyard Ltd.

22. The Petitioner states that in October 2005 the CDL initiated its own legal action against the Customs, before the Court of Appeal [CA/1413/2005] and demanded a

Writ of Prohibition against Customs from the continuance of the fraud inquiry. Further to this Court action by the CDL the Customs inquiry was suspended indefinitely with effect from 06th Sep 2005.

23. It is respectfully stated that in the said matter filed by the CDL, in which the Petitioner was not made a party by virtue of the undertaking given to him by the 7th Respondent in CA 1397/2004, was a collusive application to mislead their Lordships of the Court Appeal. The Petition of CA 1397/2004 marked "**P8**" is attached hereto.
24. The Petitioner states that the 2nd Respondent used this Court of Appeal application [CA/1413/2005] initiated by the CDL to justify the suspension of the Customs inquiry which in fact imposed no restriction on the DGC to suspend the on going inquiry, particularly in point of view of the undertaking given by the 7th Respondent on his behalf to the Court of Appeal and to the Petitioner.
25. **The Petitioner states that the said Court action was dragged on for 4 years for no apparent reason and the Ex DGC used it as a conduit to violate his own undertaking to the Court of Appeal given by the 7th Respondent in the case No CA/1397/2004 and to the Petitioner. This inordinate delay is tantamount to abuse of the legal process by the 2nd Respondent and the 7th Respondent as there was no interim order or any other legal impediment imposed against the Customs, to justify the suspension of the Customs inquiry proceedings.**
26. The Petitioner states that after 4 years of filing action by the CDL, the Court of Appeal issued a Writ of Prohibition on 27 March 2009 against the continuance of the Customs inquiry. Further, the Court made an order that the duties misappropriated by the CDL may be 'recovered' in terms of Section 18A of the Customs Ordinance. The said order made without considering the matters referred to in CA 1397/2004 **is an order made *per incuriam* and has no legal effect**. A true copy of the said court ruling dated 27th March 2009 is attached hereto marked '**P9**'.
27. The Petitioner states that the said ruling was based on the Supreme Court ruling given on 20th March 2009 in the SC Appeal No. 49/2008 filed by Toyota Lanka Ltd against the Customs which was pronounced exactly one week before the order of the Court of Appeal. In this case the Court held that where the Customs duty is under-paid the same shall be 'recovered' under Section 18A of the Customs Ordinance without invoking any penal provisions as provided by the Customs Ordinance against the importer.
28. *The relevant passage of the SC decision is quoted herein for the easy reference of your Lordship's Court.*

"...Hence I am fortified in the view and hold that the provision in Sec. 47 " but if such goods shall not agree with particulars in the bill of entry the same shall be forfeited....." apply to a situation in which by means of a wrongful entry goods are conveyed by stealth, to evade payment of customs duties or dues or contrary to prohibitions or restrictions. In such a situation of a wrongful entry and evasion, since

*the consequence of forfeiture is by operation of law, even if the officer had delivered the goods upon the submission of a CUSDEC, such goods may be seized at any subsequent stage in terms of section 125. I am further of the view and hold that the forfeiture provided for in section 47 would not apply to a **situation of a disputed classification of goods or an underpayment or short levy of duties or dues**. In such event the proper cause would be a requirement for payment of the amount due prior to delivery of goods or the recovery of the amounts due in terms of section 18A...” [page 14].*

29. The Petitioner states that the Customs Inquiry against the CDL was about wilful evasion of duties, and has no application to “*a situation of a disputed classification of goods or an underpayment or short levy of duties or dues*” as referred to in the Toyota Lanka case. The Supreme Court ruling itself distinguishes the difference between the ‘*evasions of payment of fiscal levies*’ with that of duties ‘*under-paid or unpaid on goods misdescribed*’ and therefore the Petitioner states that the ruling given by the Court of Appeal in the CDL case [CA/1413/2005] has no application to the matter under review as in instances where the payment of Customs Duty is evaded section 129 and 50A are invoked and in instances where the duties are underpaid, section 18A is invoked.
30. The Petitioner states that under the circumstances, DGC ought to challenge the Court of Appeal [CA/1413/2005] ruling. Yet the 2nd Respondent refused to take any steps to challenge the said Court ruling. He ignored the significant revenue loss incurred by the government and the encouragement given by the said Court ruling to the fraudster elements in general.
31. The Petitioner states that only because of his persistent appeal, the 2nd Respondent finally made a request to the 7th respondent on 13th May 2009 to appeal against the said Court of Appeal ruling. The Petitioner states that the 7th Respondent too was not in favour of challenging per incuriam Court of Appeal ruling [CA/1413/2005]. A true copy of the said letter addressed to the 7th Respondent dated 13th May 2009 is attached hereto marked ‘P10’.
32. The Petitioner states that he then made representations to the Solicitor General Mr Priyasath Dep, who was convinced that there was a vital question of law to be decided and took a firm decision and initiated the appeal [SC/SLA/100/2009] before the Supreme Court on 05th June 2009, seeking permission to challenge the Court of Appeal ruling in CA/1413/2005.
33. In this instance, in the absence of proper mechanism to levy such taxes through other tax agencies of the Government, a further substantive question of law has arisen i.e. whether the DGC is empowered to levy of goods and services tax, stamp duty, turnover tax, national security levy, and other taxes as provided for under the respective laws once the goods are passed through the Customs premises.
34. The order of the Court of Appeal in effect prevents the “Recovery” of such taxes by the DGC other than by the Commissioner General of Inland Revenue, who has no machinery in place to recover the same;

Sriskandaraja J.,

“In view of the authorities and the provision of the relevant laws it is apparent that the Commissioner General of Inland Revenue (This must be a misprint as learned Judge of the Court of Appeal has meant the Director General Customs) is not empowered to recover the respective levies under goods and services tax, stamp duty act, turn over tax act and the National Security act for the local sales of the products of the Petitioner. Therefore the 1st Respondent the DGC has no authority to hold an inquiry in to non-payment of goods and services tax, stamp duty tax, turn over tax and the National Security levy”.

35. The Petitioner states that the 7th Respondent refused to proceed with the application initiated by the Solicitor General Mr. Priyasath Dep and he was in favour of withdrawing the Supreme Court action. However, he was prevented from doing so owing to an aggressive media exposure against his alleged abuse of office. The Petitioner annexed hereto a true copy of the news item published in the ‘Sunday Leader’ newspaper dated 06th Sep 2009, marked ‘P11’.
36. The Petitioner states that in the circumstances 7th Respondent, called for a high level conference at the AG’s Department on 04th Nov 2009. It was attended by the 7th Respondent, the Solicitor General, Deputy Solicitor General Mr Sanjay Rajaratnam, 2nd Respondent and the then DGC Mr Sarath Jayathilake, Mr Z A M Jazeel [Director of Customs, Legal Affairs], Mr Peter Goonawardena [OIC, Legal Affairs] **and the Petitioner himself**. At the said meeting, 7th Respondent, in explicit terms advised the Customs to proceed with the Customs inquiry against the CDL and informed that he would defend the Customs Department’s right to proceed with the inquiry. This would certainly have paved the way for the invoking of the penal sanctions [Section 50A and 129] against the CDL and collection of **additional revenue** from which the Informant and the Petitioner would have been paid their legitimate share of reward.
37. The Petitioner states that the Special Leave Application filed before the Supreme Court was called up on three occasions. But the 7th Respondent changed his position expressed on 04th Nov 2009 and kept on postponing the matter. Whenever the application was called up before the Supreme Court the 7th Respondent requested further time apparently to reconsider whether to proceed with the appeal. And on **10th May 2010**, *after having waited for a period of almost one year after filing the action*, the 7th Respondent informed the 2nd Respondent, the then DGC Mr. Sarath Jayathilake, that he would withdraw the case on the next date that would fall on 30th August 2010. The DGC was further advised to initiate action to recover the Customs duties defrauded by the CDL under Section 18A of the Customs Ordinance. A true copy of the said letter marked ‘P12’ is attached.
38. The Petitioner states that the change of opinion by the 7th Respondent is incoherent and inconsistent with his own decision that was conveyed to the 2nd Respondent at the meeting held at the AG’s office on 04th Nov 2009.
39. The Petitioner states that actions suggested by the 7th Respondent was ill-conceived and irregular *as the application of Section 18A of the Customs Ordinance*

would completely negate the invoking of the punitive provisions against the CDL and further in violation of the undertaking given by him to Court of Appeal and to the Petitioner in CA/1397/2004. The Petitioner states that the application of Sections 50A and 129 of the Customs Ordinance only would guarantee the financial rewards to the Informant from the '**additional revenue**' to be generated by way of penalties and forfeitures that would be imposed on the CDL.

40. The Petitioner states that on or about 24th May 2010 the 2nd Respondent, Mr Sarath Jayathilake was removed from the office of the DGC before any action was taken on the AG's advice on the CDL case.
41. Thereafter, the new DGC Mrs Sudharma Karunarathna 4th Respondent took a firm stand on the CDL case and informed the 7th Respondent, that, considering the colossal revenue loss incurred by the government, that the withdrawal of the Supreme Court action would be inappropriate. Further the DGC in her reply communicated to the AG, specifically referred to the 7th Respondent's own opinion expressed during the meeting held at his office on 04th Nov 2009 to the then DGC Mr Sarath Jayathilake wherein he had informed that he would defend the right to proceed with the Customs inquiry. A true copy of her letter dated 03rd August 2010 marked '**P13**' is attached.
42. The Petitioner states that new DGC's resistance against the withdrawal of the Supreme Court action was short-lived. The 1st Respondent, the ST, Dr PB Jayasundara, apparently directed the new DGC and her staff at a meeting held on 16th Aug 2010, at the General Treasury to act as advised by the 7th Respondent. However the ST seemed to have been extremely careful not to confirm his directive in writing to the DGC.
43. The Petitioner states that the ST's directive to DGC was preposterous from the 'protection of government revenue point of view' as the said provision of law [Sec. 18A (4) of the Customs Ordinance] allowed the CDL to pay the colossal amount of public funds misappropriated, in instalment basis as they pleased frustrating many legal provisions of law namely section 50A and 125 of the customs ordinance. Further the said action absolutely ruled out any penal sanction that should have been invoked against the CDL by the Customs for defrauding of public funds amounting to over 619 million rupees.
44. The Petitioner states further that the said decision by the 7th Respondent, and the 1st Respondent, were entirely against the public interests. On the other hand their action has completely negated the legitimate rights and expectations of the Informant and the Petitioner who took enormous risk to expose the fraud committed by the CDL and also of the Customs investigators headed by the Petitioner himself.
45. The Petitioner states that the improper conduct of the 1st and 7th Respondents in this case warrants judicial scrutiny since it had effectively stopped the operation of the Customs law and denied the government of its rightful revenue.
46. The Petitioner states that in this background on 23rd Aug 2010 the Customs Officers Trade Union urged the new DGC Mrs. Sudharma Karunarathna not to comply with

the ST's directive which was improper and against the public interests. The Union urged the DGC that if she were to take any action based on ST's directions, to obtain ST's directive in writing. A true copy of the letter by the Officers' Trade Union to the DGC dated 23rd August 2010 marked 'P14' is attached hereto.

47. The Petitioner states that on 30th Aug 2010, the 7th Respondent informed the Supreme Court, that he was withdrawing the S. C. Application SC/SLA/100/2009. The Petitioner states that in the absence of DGC's approval for the withdrawal of the appeal, the action taken by the 7th Respondent is unilateral with no consultation or agreement of his Client, the DGC, whom he was representing in the Supreme Court.

48. The Petitioner states that after withdrawing the Supreme Court action without the consent of the DGC, a letter by the 7th Respondent was hand-delivered to the DGC on 31st Aug 2010, which was dated 26th August 2010 and contained the following paragraph.

'...please be advised that the Petition of Appeal was filed in the ordinary course as a matter of caution only. I am of the considered view that there is no merit in pursuing this appeal and in the circumstances the said appeal would be withdrawn...'

49. The whole purpose of the said letter could only be, to demonstrate that the DGC had been duly informed of the intended action of withdrawing the case, prior to the Supreme Court action was withdrawn. However, the Customs 'Received' stamp and the minutes by the Customs officials including the DGC, confirm that the 'hand delivered' letter had in fact been received by the Customs on 31st August 2010. A true copy of the said letter by 7th Respondent dated 26th August 2010 marked 'P15' is attached hereto.

INTENTION OF THE LAWMAKERS DEFEATED

50. The Petitioner states that in the totality of the aforesaid circumstances, the persistent failure on the part of the 1st and the 7th Respondent to deal with offender the CDL under the provisions of the Customs Ordinance [**50A and 125 of the Customs Ordinance**] for having knowingly been concerned in the unlawful disposal of the marine crafts has clearly defeated the very purpose of the enactment of the Customs Ordinance. Their decision, collectively or otherwise, to recover the Customs duties defrauded by the CDL under Section 18A of the Customs Ordinance, has effectively nullified the very purpose of the enactment of the Customs Ordinance and also the Public Interests that have been clearly undermined in this case.

51. The Petitioner states that the careful examination of the construction of the Customs Ordinance with penal provisions against the violators of the law, demonstrates that the intended purpose of the legislation is to ensure '**proper and effective management of the collection and protection of the government**

revenue.' The Customs law, whilst discouraging the revenue fraudsters, ensures justice to those who abide by law.

52. The Petitioner states that for the effective realisation of these objectives, the lawmakers have also incorporated statutory provision **[Section 153] for pecuniary rewards to the informants and the revenue fraud investigators, whose actions bring in 'additional revenue' to the government coffers by way of penalties, forfeitures and further forfeitures.**
53. The Petitioner states that the decision contained in the letter addressed to the DGC by the 7th Respondent and the efforts of the 1st Respondents has caused a colossal loss of government revenue in this case and has set up a bad precedence that would lead to zero response from the Informants who have hitherto come forward to give information about revenue frauds amidst serious threats to their lives. Their contributions by way of credible information have been responsible for bringing in **additional revenue** to the government coffers whilst discouraging smuggling activities. The 619 million rupee CDL fraud would never have come to light if not for the enormous risk taken by the Informant, who provided the precise information to Customs along with the efforts of the Petitioner.
54. The Petitioner states that the actual or feigned ignorance of the intended purpose of the creation of deterrent provisions [Section 129 and 50A] and provisions for financial rewards [Section 153] by the Respondents not only defeated the very purpose of the enactment of the Customs Ordinance but totally deceived and denied the Informant who took an enormous risk to expose the CDL fraud, of his legitimate expectations for a financial reward.
55. The Petitioner states that being the officer who led the relevant investigation also lost his legitimate expectations and right to a financial reward from the proceeds of revenue crime.

INFRINGEMENT OF FUNDAMENTAL RIGHTS

56. The Petitioner respectfully states that if not for the efforts of the informant whose name has been statutorily withheld there would not have been any inquiry against the CDL either under Section 50A, 129 or 18A.
57. The Petitioner further states that if not for his committed efforts there would not have been any inquiry against the CDL either under sect 50A, 129 or 18A.
58. Therefore, the Petitioner states that failure on the part of 1st and the 7th Respondents to act as the guardians of the law has denied and negated efforts of the Informant and the Petitioner of their legitimate right to a reward and thereby their right to equality before the law and the equal protection of the law, guaranteed by Article **12[1]** of the Constitution and hence the unlawful actions of the Respondents constitute an **infringement** of the fundamental rights of the Petitioner and the Informant who have been deceived by the actions of the Respondents. The Petitioner reaffirms that the unlawful and irresponsible actions

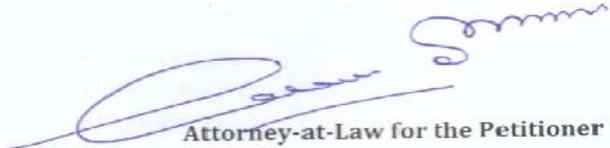
committed by the Respondents not only deny him and the Informant of their legitimate expectations for a financial reward but are also capable of providing leads to identify the informant which could lead to intimidations and life threats.

59. The Petitioner further specifically states that in the aforesaid circumstances, he is entitled to a declaration that his fundamental right to equality and the equal protection of the law guaranteed by Article **12(1)** of the Constitution has been infringed by any one or more of the Respondents and that the infringement complained hereof is continuous and has a recurring effect.

60. The Petitioner states that he has not invoked the jurisdiction of Your Lordships' Court previously in respect of the matters pleaded herein and pleads that documents 'P1' to 'P15' be deemed to be part and parcel hereof.

WHEREFORE, the Petitioner respectfully prays that Your Lordships' Court be pleased to:

- (a) grant leave to proceed with this Application in the first instance;
- (b) declare that anyone or more or all of the Respondents have violated the fundamental right of the Informant and the Petitioner which has been guaranteed under Article **12(1)** of the Constitution of Sri Lanka;
- (c) declare that "Recovery" of levy of Goods and Services Tax, Stamp Duty, Turnover Tax, National Security levy by the DGC as provided for is legal;
- (d) for a direction to quash and annul the unlawful decision by the 1st and the 7th Respondents to "recover" the Customs duty defrauded by the CDL in terms of Section 18A of the Customs Ordinance and instead to proceed under Section 50A and 129 of the Customs Ordinance;
- (e) direct the 4th Respondent to resume and complete the Customs inquiry by a fresh inquirer within a stipulated time frame that may be determined by the Court.
- (f) grant costs of this Application; and
 - i. grant such other and further reliefs as to Your Lordships' Court shall seem meet.


Attorney-at-Law for the Petitioner