

A F F I D A V I T

I, Wannigama Don Lakshman Perera, Director General of Customs of No2/4, Wijayamangalarama Road, Kohuwala being a Buddhist do hereby sincerely solemnly declare and affirm as follows:

1. I am the declarant above named.
2. Customs Preventive Division commenced an investigation on 22.03.1999 under case reference POM/390/99 into the alleged under valuation of Magnetic Computer Tape/Diskettes recorded with Tele banking Software by IBM World Trade Corporation. Pending the Customs Inquiry, Mr. Mohan Pieris Attorney-at-Law by his letter dated 14th October 1999 wrote to me acting on behalf of the above mentioned company stating *inter alia* that his client has understated the value of the diskettes containing software as USD 5/= by an error and submitted that his client be permitted to pay Customs Duties and other levies for the value so understated. He also stated that his client has already made a voluntary declaration of value USD 49,500/= whereas the actual transaction value is USD 99,000/=. He pleaded that his client be permitted to pay Duties for the balance value, which is USD 49,500/=. A certified copy of the said letter is annexed hereto **marked X1**.
3. On 02.02.2001 Mr. Mohan Pieris the same Attorney-at-Law represented Commercial Bank of Ceylon Limited in another Customs case No. CRTF/145/2000, an inquiry into the illegal importation of several Compact Discs, Floppy Diskettes and Magnetic tapes recorded with software by the said Bank. In his opening submission he took up the position that software being intangible property do not attract Customs Duty. Incidentally, the letter of credit opened by IBM World Trade Corporation for importation of the Software package has been opened through Commercial bank of Ceylon Limited and the end user of that software is another commercial bank namely, Seylan Bank. A certified copy of the Inquiry proceedings on 02.02.2001 is annexed hereto **marked X2**.

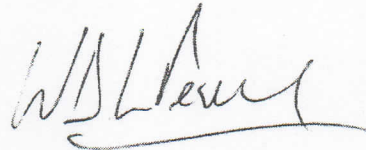
4. On **08.02.2001** Mr. Mohan Peiris representing the **Commercial Bank** in the case referred to in paragraph 3 above reiterated that the provisions of the Customs Ordinance do not apply to software. However the Customs Inquiry proceeded in terms of section 8 of the Customs Ordinance to determine *inter alia* whether the Commercial Bank Limited is liable under **section 52** of the Customs Ordinance. A certified copy of the submission made at the Inquiry on 08.02.2001 is annexed hereto **marked X3**.
5. On **13.02.2001** Mr. Mohan Peiris Attorney-at-Law appeared for the Customs Inquiry representing **IBM World Trade Corporation in case number POM/390/99** again and stated on behalf of his client that the value of the software package has been understated by a genuine error and requested the Inquiring officer to recover the duty payable by way of a penalty under section 52 of the Customs Ordinance. A certified copy of his submission made on 13.02.2001 at the Customs Inquiry is annexed hereto **marked X4**.
6. On 14.02.2001 Mr. Faiz Mutapha President's Counsel along with Mr. Mohan Peiris Attorney-at-Law supported the Court of Appeal Application **No.218/2001** by Commercial Bank of Ceylon Ltd. pleading in Court that software is not liable for Customs Duties and as an interim relief, to stay the Customs inquiry. **Paragraphs 6, 7, 21, 24, 25, 35,37, 39 and 40** of the said Application contain averments which are absolutely contrary to the position taken up and admitted by him at the Customs Inquiry in the case No. **POM/390/99**. The Magnetic tapes/Diskettes recorded with software which form the subject matter of the case number **POM/390/99** was imported from **Arkansas Systems Limited USA**. One of the software packages forming the subject matter of the Customs Inquiry No. **CRTF/145/2000** (Court of Appeal Application No. **218/2001**) imported by Commercial Bank Ceylon Limited is also a similar software from **Arkansas Systems Limited USA**. A copy of the petition in the Court of Appeal Application No. 218/2001 is annexed hereto **marked X5**.

7. This conduct of the Attorney-at-Law taking up completely different positions on the identical dispute involving 2 different clients is unethical and below the standard expected of an Attorney-at-Law performing his duties under Oath. The respect and regard usually received by an Attorney-at-Law at an administrative inquiry is based on the professionalism attributed to Attorneys-at-Law by the administrative tribunals. In my view the conduct of the said Attorney-at-Law amounts to professional dishonesty and professional misconduct. This would undoubtedly have a negative impact in recognizing legal representations at Customs inquiries.

Read over and explained signed and affirmed to at Colombo on this 16th day of February 2001.



K. A. N. S. Kodituwakku
Attorney - at - Law, Notary Public &
Commissioner of oaths



W. D. L. Perera
Director General of Customs