

Observations of averments of the 4th respondents in the application

S.C.F.R 536/2010

1. Admits that the petitioner is an ASC. His citizenship is not disputed (Please check his personal file to verify his age – 53 yrs).
2. (a) Admitted
(b) Admitted
(c) Admitted
(d) Admitted
(e) Admits only that 5th respondent is the Board of Investment of Sri Lanka
(f) Admits only that 6th respondent is the Colombo Dockyard Ltd. which is registered under BOI law.
(g) Admitted
3. Unaware
4. No comment on what the petitioner is seeking to challenge in this application as it is self explanatory. However 2nd & 3rd respondents have all times acted as required by law.
5. No comment
6. Admitted. However the figure 30% needs to be corrected as 10%. Percentage of the reward share will depend on the degree of information provided to the Customs.
7. Unaware
8. Admitted
9. 1st sentence – unaware
2nd sentence – informants will be entitled to cash rewards only upon successful completion of the Customs case and that too, after the accused had exhausted all remedies available to him according to law.
- 10 (a) Customs inquiry could not complete and hence there are no findings of facts by the Inquiring Officer. However, when local sales are made by enterprises registered under BOI for export processing purposes they are required to pay Fiscal Levis due on such goods to Customs before the sales take place in the local market.

- (b) Admit that the CDL has not applied for Customs permission prior to sale of Marine Craft in question in the local market.
 - (c) Admitted. The CDL has failed to remit fiscal levies to the Customs prior to detection of the offence although the CDL has collected money for fiscal levies from Sri Lanka Navy and SLM.
 - (d) The CDL has failed to pay fiscal levies to the Customs on Marine Crafts sold to the local market which form the subject matter of this case.
 - (e) For contravention of law, by BOI enterprises attracts the forfeiture of the goods and in the event the suspect is proved to be knowingly concerned, the maximum further forfeiture amounting to three times of value of the goods or Rupees One Hundred Thousand (Rs. 100,000.00) can be imposed at the discretion of the Inquiring Officer. However, this is subject to mitigating powers of the DGC and the Hon. Minister as well as Judicial review by courts.
11. Unable to comment on the amount said to have been paid by CDL due to unavailability of documents.

UNLAWFUL ATTEMPTS MADE TO COVER-UP THE FRAUD

- 12. To be comment by the BOI.
- 13. This averment involves interpretation of law
- 14. To be inquired from the BOI
- 15. Denied. Customs Inquiry proceeded against the 6th respondent; but couldn't conclude due to court case file by the 6th respondent.
- 16. No attempts were made to annual inquiry proceedings. Customs Inquiry was reviewed after the tax amnesty law was repealed.
- 17. Unable to comment as the letter alleged have been sent is not available in the Court case file maintained by the Legal Affairs Division. Investigation file is reported untraceable.

18. Denied. The amnesty was granted by law and accordingly the Customs Inquiry was laid by. There is no evidence to prove that ex-DGC attempted to refund the deposit of Rs.94,015,050 made by CDL in 2001.
19. Admit only that the petitioner filed CA/1397/2004 which was later withdrawn by him on a settlement reached between the parties. Tax amnesty granted to CDL was withdrawn as a result of Tax amnesty No. 10 of 2004.
20. Inquiry was conducted according to law adhering to Principles of Natural Justice. According to P7 the undertaking given by the DGC is only to commence the Customs Inquiry as expeditiously as possible. Allowing counsel to raise objections in an inquiry is not in contempt of the undertaking given to the Court of Appeal in CA Writ 1397/2004.
21. Denied. Inquiring Officer is compelled to give hearing to all parties before an order is made. If suspects are not given adequate time to place evidence before the Inquiring Officer that will leave room for the suspect to seek judicial intervention which would result in prolonging of the Customs Inquiry.

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22. First sentence admitted. Second sentence is denied as Customs Inquiry was not suspended. But it could not be proceeded with, due to the Writ application filed by the CDL.
23. Denied. There was no collusion on the part of this Department. CDL would have named respondents against whom a Writ could be obtained which would effectively prevent the continuation of the Customs Inquiry.
24. An undertaking was given by the learned State Counsel to the Court of Appeal, to maintain the Status quo of the matter in dispute which calls in question the jurisdiction of the Customs to proceed with the Customs Inquiry.
25. Denied. Duration of a court case cannot be controlled by the DGC. The said Writ application was not filed by the ex-DGC and the abuse of legal process therefore cannot be alleged against him.

26. Admitted only that, the Court of Appeal issued a Writ of prohibition on 27.03.2009 against the continuance of inquiry and indicated that; if the good were delivered before the collection of Customs duty, "the said amount could be recovered interms of Section 18A of Customs Ordinance". Unable to comment whether the said order was made "per incuriam" or otherwise.
27. Admitted. However the Supreme Court ruled that if stealth is proved then the goods can be seized by an officer of Customs.
28. Per quote of a previous judgment of the Supreme Court.
29. Admitted.
30. Denied. Second respondent made a request to the 7th respondent to appeal against Appeal Court Judgment. The 7th respondent filed a special leave to appeal application in the Supreme Court and subsequently he opined that Customs could take necessary steps to recover the Customs duty in terms of Sec. 18 (A) of Customs Ordinance and, therefore decided not to proceed with application for special leave to appeal and informed the Supreme Court that the appeal will not be pursued with.
31. 1st sentence denied. The 2nd respondent having considered the demerits of the judgment decided to appeal against it and requested the 7th respondent to file an appeal at Supreme Court.
2nd sentence admitted. The 7th respondent filed an appeal for special leave to appeal against judgment of CA/Writ/1413. However, subsequently took steps to withdraw the same as Customs duty could be recovered in terms of Sec. 18 (A) of Customs Ordinance as per the Appeal Court Judgment.
32. Admit only that the AG's Department took steps to initiate the appeal SC/Spl/LA/100/2009 before the Supreme Court seeking permission to challenge the Appeal Court judgment in CA/1413/2005.
33. Admitted.
34. Admitted.
35. It was the Acting Attorney General who caused an appeal to be preferred in the Supreme Court.

36. 1st 2nd and 3rd sentences admitted.

Last sentence: Informant and petitioner would have benefited only upon successful completion of Customs case and that too after the suspect Company exhausts all remedies available to him according to the Law. Ex: under Section 163, 164, and 165 of Customs Ordinance and Judicial review.

37. Admitted.

38. No comment.

39. 1st sentence is admitted. Rewards can only be given after the recovery of forfeitures.

40. Admit only that the 2nd respondent was transferred as Director General of the Budget Department of the General Treasury, but he on his own volition opted to retire.

41. Admitted. ✓

42. No comment can be made as the petitioner has not substantiated his assertion.

43. View of the 1st respondent may be obtained. When Section 18A of the Customs Ordinance is invoked, Magistrate can order that the sum due to the State be paid in installments. Accordingly, fiscal levies which fell due in the year 2000, may be paid to the State by the defaulter, taking time as long as 20 years whereas an honest tax payer who had voluntarily complied with his tax liability for the year 2000 when it fell due, is denied the undue benefit which is accrued to the corporate defaulter.

44. Views of the 1st and 7th respondents may be obtained.

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46. Receipt of P₁₄ is admitted. Petitioner continues to be the president of the union from which P₁₄ has originated. However officers whose names are cited in P₁₄ have acted merely on the advice of the Hon. Attorney General as every public officer is expected to do so.

47. Written instructions were given to the Hon. Attorney General by my letter dated 03.08.2010 stating that withdrawal of the appeal to the Supreme Court at this stage is not appropriate. P₁₃. The Attorney General by his letter dated 26.08.2010 has acknowledged the receipt of P₁₃.

Petition 3
(19-10-2010)

48. Attorney General's letter dated 26.08.2010 was received by my office after the Supreme Court leave to appeal application was withdrawn by the learned DSG on 30.08.2010.

49. Answer to paragraph 48 is reiterated.

50. Views of the 1st and 7th respondents may be obtained.

51. Admitted.

52. Admitted.

53. Views of the 1st and 7th respondents may be obtained.

54. Answer to last sentence of paragraph 36 is reiterated.

55. - do -

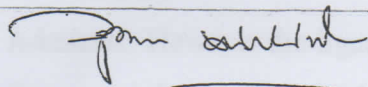
56. Cannot comment with precision.

57. - do -

58. Views of the 1st and 7th respondents may be obtained.

59. To be decided by the Supreme Court.

60. No record of a previous FR application.



W. Sudharma Karunaratne

Director General of Customs

Ty: B.R.V. Perera (89027)