

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

Lalitha Jewellery PVT Ltd,
60, Sea Street,
Colombo 11.

Plaintiff-Appellant

Case No. CA 237/97 (F)

DC Colombo: 11159 MR

Vs.

H L A De Silva,
Deputy Director of Customs
(Intelligence and Investigations)
Department of Sri Lanka
Customs,
Colombo 1

The Attorney General,
Colombo 12

Defendant-Respondents

Before : **A.W.A. Salam, J.**

Counsel : Appellant absent and unrepresented and Y J W
Wijayathilaka ASG, PC with Miss D Thilakawardena for the
defendant-respondents

Argued on : 13.09.2011

Decided on : 01.11.2011

A.W.A.Salam, J.

This appeal arises from the judgment of the learned additional district judge¹ of Colombo dated 13 may 1997. By the said judgment the learned ADJ dismissed the action of the plaintiff filed against the defendant claiming a sum of Rs 500,000/- by way of damages.

The plaintiff is a private limited liability company engaged in the jewellery trade and also empowered and entitled to buy gold from private parties to be used in the manufacture of various items of jewellery. The grievances of the plaintiff as disclosed in the plaint are that the 1st defendant purporting to act in his official capacity as the deputy director of customs held an inquiry in respect of five pieces of gold plates that had been in the possession of the plaintiff at its place of business. The inquiry has been held in terms of section 129 of the Customs Ordinance (Chapter 235 the Legislative Enactments). At the inquiry on behalf of the plaintiff one Murugesu, a director of the plaintiff company had submitted that the gold in question had been bought from two customers and a portion of the purchase price was to be paid by cheque intended to be realized only when proof of

¹ ADJ

ownership is submitted. The plaintiff had in fact instructed the bank concerned to stop payment as the customers failed to produce any documents relating to ownership. At the conclusion of the inquiry the 1st defendant had forfeited the five gold plates in addition to the imposition of a penalty of Rs 500,000/-. In their answer defendants denied liability.

The trial on the disputed claim of the plaintiff proceeded on 19 issues raised by both parties. At the trial on behalf of the plaintiff company Meenachchinathan Murugesu, M/S Nirosini Dilrukshi Perera, Nihal Kiriya, and Thyriar gave evidence and the case of the plaintiff was closed reading in evidence P1 to P5. On behalf of the defendants Gardi Hewawasam Athula Lankadewa, Mohamed Lafir Mohamed, Manel Jayasekara, Deepal Ranjith and Hikkaduwa Liyanage Ariyapala de Silva had given evidence and defendant's case was closed producing the five pieces of gold plates in question.

The ADJ thereafter by the impugned judgment held inter alia that the plaintiff has failed to prove the alleged cause of action and dismissed the plaintiff's case. In order to come to this conclusion the learned ADJ has carefully analyzed the evidence given by the witnesses who testified on behalf of both parties and come to the conclusion that the five pieces of gold plates produced at the trial had been imported into this country without lawful means and in fact been stolen by certain employees of the Air Port and finally sold them to Murugesu. The learned ADJ further held that on behalf of the plaintiff the purchase price has been fully paid, even though on behalf of the plaintiff it was sought to establish that the payment made by way of cheques to the customers had been stopped. The learned ADJ has further come to the conclusion that the fine imposed on Murugesu was not excessive and had accepted the reasoning of the Customs Officer who explained the basis on which the fine was imposed.

Taking into consideration the evidence led at the trial and the analysis of the same by the ADJ, I am not inclined to accept the grounds of appeal urged by the appellant as being valid reasons to interfere with

the judgment of the learned ADJ. In the circumstances, this appeal stands dismissed.

There shall be no costs.

Judge of the Court of Appeal

Kwk/-