

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

In the matter of an application under  
Article 140 of the Constitution for  
Mandates in the nature of Writs of  
Prohibition, Certiorari and Mandamus

Murugesu Thayabaran,  
40, Lily Avenue,  
Colombo 6

**PETITIONER**

Vs.

**C.A. Writ Application No.215/17**

1. Chulananda Perera  
Director General of Customs  
Customs House,  
40, Main Street,  
Colombo 11.

And others.

**RESPONDENTS**

Before : **P.Padman Surasena, J (P/CA) &  
A.L.Shiran Gooneratne, J**

Counsel : Nagananda Kodituwakku for the Petitioner.  
Sanjeewa Jayawardana, PC with Rajeev Amarasinghe for  
the 4<sup>th</sup> Respondent.  
Chaya Sri Nammuni, SC for AG.

Decided on : 02.03.2018

**P.Padman Surasena, J (P/CA)**

Court heard the submissions of the learned Counsel for all the parties. This inquiry was held to ascertain whether the Court is going to accept the amended petition that has been filed by the petitioner without obtaining prior permission of the Court. There is nothing recorded in the docket that this Court has granted permission for the petitioner to file an amended petition. Therefore this Court is of the opinion that the petitioner has filed the amended petition without permission of Court.

The next question to be considered by this Court is whether the petition that has already been filed by the petitioner should be accepted or not.

It is the submission of the learned President's Counsel for the 4<sup>th</sup> Respondent that the amended petition has entirely changed the scope of the original application.

This Court observes that the interest of the petitioner in the original application was to have the ongoing customs inquiry suspended and halted on the basis that the inquirer is bias.

In the amended petition what the petitioner prays for is to quash the determination made by the said inquiring officer at the end of the said inquiry.

This Court observes that the decision dated 14.07.2017 which is impugned in the amended petition was non existent at the time of filing this application. Therefore it is the view of this Court that the petitioner through the amended petition has entirely changed the scope of the previous application. This Court is of the view that amendments of this nature which entirely change the nature, character and the scope of an application should not be permitted. Therefore this Court decides to refuse to accept the amended petition.

Learned Counsel for the petitioner states that the original application cannot be proceeded with, without amending the said application. Therefore we decide to dismiss this application without costs.

**PRESIDENT OF THE COURT OF APPEAL**

**A.L.Shiran Gooneratne, J**

I agree.

**JUDGE OF THE COURT OF APPEAL**

Lwm/-